



Agenda Report

18-426

Agenda Date: 4/24/2018

REPORT TO COUNCIL

SUBJECT

Discussion and Possible Action related to Rajeev Batra's Requested Supplemental Retirement Benefit

BACKGROUND

On March 15, 2018, retired Interim City Manager, Rajeev Batra sent an email (attached) requesting to be placed on a future Council meeting to discuss his benefit issue. On April 3, Council took action to place the item on the April 24 Council meeting for discussion and possible action.

The purpose of this agenda report is to transmit materials on the topic, including: Mr. Batra's Written Petition request and relevant correspondence; adopted Resolution appointing Mr. Batra as Interim City Manager and terms of that appointment; a brief letter to the Council from the City Attorney; and, the legal opinion from Liebert, Cassidy, Whitmore LLP.

DISCUSSION

In addition to the City Attorney's legal opinion transmitted on this matter, following are excerpts from the legislative documents approved by the City Council that provide context for the City Council to consider as part of the discussion.

Motion On Merit/Salary Increase

On March 7, 2017, the City Council took action as it related to a merit/salary increase for Mr. Batra. The motion is provided below and the additional direction is written verbatim in italics.

MOTION was made by Mahan, seconded by Kolstad, and unanimously carried, that the Council approve the 5% merit salary increase for Rajeev Batra, Interim City Manager, per the Miscellaneous of Understanding and update the City of Santa Clara's Compensation Schedule from \$25,141 per month to \$26,398 per month, *"...subject to getting some confirmation, preferably in writing, of the application of the Internal Revenue Code Section 401(A)(17) because if that - that's the compensation limitation law - so if we get an affirmative determination under that section, I understand that it will be of a greater benefit than this, but if we get a negative determination on that law, then this would be in place."*

Resolution to Appoint Interim City Manager and Terms of Appointment

On March 21, 2017, the Council adopted Resolution No. 17-8419 (attached), which provided an exception to the 180-day waiting period to allow Mr. Batra to serve in the vacant position of City Manager on an interim basis and included the following terms of appointment/employment as part of this approved action:

*“WHEREAS, the City of Santa Clara and Rajeev Batra certify that Rajeev Batra **has not and will not receive a Golden Handshake or any other retirement-related incentive;**”*

*“WHEREAS, the **entire employment agreement**, contract or appointment document between Rajeev Batra and the City of Santa Clara has been reviewed by this body and **is attached herein;**”*
and

*“WHEREAS, Rajeev Batra has not and **will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.**”*

Upon adoption of the attached Resolution, on March 22, 2017, the City issued an Offer of Employment Letter based on the approved terms of employment for the interim appointment and Mr. Rajeev Batra executed the document on March 24, 2017.

City Attorney Legal Opinion

On February 6, 2018, the Council held a Closed Session on this matter as it related to potential initiation of litigation and there was no reportable action. As stated during the written petition discussion, the City Council has waived its Attorney-Client privilege on this matter and, as such, the legal opinion was forwarded to Mr. Batra and is available as a public document.

Per the City Attorney’s memorandum and, as is set forth in greater detail in the legal opinion by Erin Kunz of the Liebert Cassidy Whitmore law firm (Attachment 3), the City Council does not have authority to provide Mr. Batra with the benefit he has proposed.

FISCAL IMPACT

Despite the fact that both the City Attorney’s legal opinion and City Council’s legislative record suggest that the additional retirement benefit is prohibited, staff is including the fiscal impact nonetheless to provide the City Council with a full set of information.

Below is a table (Table A) that was prepared by Finance and includes assumptions and the cost to the City over the life of a theoretical retirement benefit, based on what Mr. Batra is asking for, using 30, 35 and 40 years life expectancy between Mr. Batra or his spouse. In order to determine the true cost, the City would need to engage a consultant to prepare an actuarial study.

\$296,000	Average Salary, as stated by Batra
\$265,000	IRS limit in 2016
\$31,000	Difference
14.72	Years of Service with the City of Santa Clara
2.7%	PERs Formula
39.74%	Calculated PERs percentage
\$12,321	PERs percentage of 39.74% times \$31,000
2%	PERs annual COLA adjustment
\$500,000	Cost of the benefit over 30 years*
\$616,000	Cost of the benefit over 35 years*
\$744,000	Cost of the benefit over 40 years*

* Batra's paperwork stated that he would like the benefit to extend to his spouse, which could go beyond 30 years

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve commitment to a specific project which may result in potential significant impact on the environment.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any report to council may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Staff makes no recommendation, as the combination of the City Attorney's legal opinion and City Council's legislative record prohibit action (e.g., motion from the evening of March 7, 2017 and Resolution No. 17-8419, which speaks to the entirety of the employment terms and correspondence confirming acceptance of it).

Prepared by: Jennifer Yamaguma, Acting City Clerk
Reviewed/Prepared by: Brian Doyle, City Attorney
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Email dated March 15, 2018 from Batra
2. Email dated February 6, 2018 from Batra
3. Letter dated February 5, 2018 from Liebert, Cassidy, Whitmore, LLP
4. Emailed dated December 12, 2017 from Batra, including letter dated December 8, 2017 from Berliner Cohen, LLP
5. Memorandum dated August 31, 2017 from Batra
6. Resolution No. 17-8419
7. Minutes from the Council meeting of March 7, 2017
8. Legal Memorandum from City Attorney