



## Agenda Report

18-1250

Agenda Date: 9/24/2018

### REPORT TO CIVIL SERVICE COMMISSION

#### SUBJECT

Announcement of and Call for Applicants to the Salary Setting Commission

#### BACKGROUND

This report follows the September 17, 2018 Civil Service Commission ("CSC") item that was continued to this September 24, 2018, Special Commission Meeting to specifically address the eligibility and conflict of interest requirements applicable to applicants for the Salary Setting Commission ("SSC").

At the September 17<sup>th</sup> meeting, CSC requested that staff bring back on September 24<sup>th</sup> a more detailed explanation of the basis for requesting that the SSC applicants make particular representations or waivers, as well as an explanation of state law requirements on conflicts of interest that would be applicable to SSC. This information is presented in the Discussion section below.

As previously described, pursuant to Charter Section 702, the Civil Service Commission is announcing and calling for applicants for the City of Santa Clara Salary Setting Commission, which is charged with setting the compensation for the Mayor and Council. Council delegated the task of setting City Clerk compensation to the SSC by the adoption of Ordinance No. 1983. On September 18, 2018, Council passed-to-print an ordinance delegating the task of setting the elected Police Chief's compensation to the SSC.

Specifically, Charter Section 702 states in part:

Commencing on July 1, 2019, and every two years on July 1 thereafter, the compensation of the City Council and Mayor shall be set by a Salary Setting Commission consisting of five members to be appointed by the Civil Service Commission from the qualified electors of the City for a term of four years. The first members shall be appointed for a term commencing January 1, 2019. Initially, the Commissioners shall be appointed in a manner so that two are appointed for two-year terms and three are appointed for four-year terms.

SCCC 2.20.015 states, with respect to the City Clerk's compensation, "The elected City Clerk shall receive as compensation the sum of two thousand dollars (\$2,000.00) per month. Commencing on July 1, 2019, and every two years on July 1st thereafter, the compensation of the City Clerk shall be set by a Salary Setting Commission consisting of five members to be appointed by the Civil Service Commission, as set forth in City Charter Section 702." Assuming adoption, the Police Chief's salary setting will be similarly delegated to the SSC.

Thus, the relationships to be analyzed are those existing between the SSC applicants and the elected officials whose financial interests (i.e., income) would be affected by decisions made by those eventually chosen to serve on the SSC.

## **DISCUSSION**

**As noted above, the information below is in response to questions raised by the Civil Service Commission on September 17, 2018 regarding conflict of interest guidelines and regulations.**

### **Conflict of Interest Regulations:**

State conflict of interest requirements are contained in the Political Reform Act (Government Code ("GC") §87100, et seq.) and its implementing regulations (California Code of Regulations ("CCR") §18700, et seq.). CSC asked staff to explain why these state conflict of interest laws were being applied to the prospective SSC members. The following is a brief overview of conflict of interest rules.

The Political Reform Act provides: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (GC §87100.) The rules and guidelines described in this report all flow from this fundamental principle.

A "public official" is defined for conflict of interest purposes as any member (including a commissioner) of a body that has decision-making authority. CCR §18700. The SSC is granted by Charter and Ordinance, described above, final decision-making authority over compensation of the City's elected officials. Therefore, SSC members qualify as "public officials" under the Act.

The term "governmental decisions" is defined as any action or decision of an agency (including a commission) that has a financial effect on any person other than the agency making the decision. CCR §18700. Here, the SSC will be making decisions specifically regarding compensation of individuals holding an elected office who are not members of the SSC (namely, Mayor, Council, City Clerk, and potentially Chief of Police). Therefore, the compensation decisions made by the SSC will be "governmental decisions."

Because SSC commissioners will be prohibited under state law from making the compensation related decisions in which they could have a financial interest it is important for the Civil Service Commission to be aware of a potential conflicting interest when they are making an appointment to the SSC.

A conflict exists when the SSC member's own personal interests and/or those of a family member are affected by an official decision made by that member. CCR § 18700. Personal financial interests are generally divided into 6 broad categories:

- Business entity investments worth at least \$2,000 (GC §82005, §87103(a), CCR § 18700.2). This includes partnerships, corporations and joint ventures. For example, if a prospective SSC member or his/her family made a venture capital investment of some amount more than \$2,000 in a business started by a Council member, then the SSC applicant's personal financial interest would be considered affected by the decision to increase compensation for the

Council member.

- Real property in which the SSC member has an ownership stake of at least \$2,000 (Section 87103(b)). For example, if an SSC member or family member jointly owned real property with a Council member, then a vote by the SSC member to increase the Council's compensation would be deemed to affect the SSC member's financial interests.
- Income including private loans, commissions or incentives (CCR § 18700.1) amounting to a total of at least \$500, provided or promised to, or received by the SSC member within 12 months before the compensation decision is made (GC § 87103(c)). So if an SSC member received such funds from a Council member during the year before the vote on compensation, then the SSC's decision affects the member's financial interests.
- If an SSC member is a director, officer, partner, trustee, employee, or holds any position of management in any entity (GC § 82005, § 87103(d)) then the SSC member is deemed to have a financial interest in that business entity. So, if an SSC member and a Council member both hold such a position in the same entity, then the compensation decision made by the SSC to benefit the Council will be deemed to affect the SSC member's financial interests.
- Any gift, which includes any thing or act of value including forgiveness of debt, given to an SSC member of more than \$470 in the 12 months before the compensation decision is made (GC § 87103(e), CCR § 18940, §18941) is considered a financial interest. So, if a Council member gave a gift to an SSC member as stated, then a vote to increase the Council's compensation would be deemed to affect the SSC member's financial interests.
- General catch-all category of affecting an official's "personal finances." An effect on an official's personal finances will be found where "the official or the official's immediate family member will receive a measurable financial benefit or loss from the decision." (CCR 18702.5.) So, if any circumstances exist where it could be found that an SSC member will receive a material financial benefit from casting a vote, then that vote may be considered a conflicted vote.

Chair Bouza was provided with a response to his question regarding application of the rules to a possible recusal based on a potential conflict arising from his current candidacy for Council.

### **SSC Application Requirements:**

The application form for the SSC is Attachment 1. It requires applicants to provide contact information, confirm they are City residents and electors, and answer questions related to their understanding of the function of the SSC, why they wish to be a Commissioner, where they work, previous elected or appointed offices held, involvement in civic and charitable organizations, educational background, and if they are associated with any organization that could be deemed a conflict of interest.

- 1) To avoid conflict of interest issues or the perception of conflict of interest, SSC members will be asked to sign an acknowledgment pledging that: While serving on the SSC, a SSC member should not make a campaign contribution to a candidate for City of Santa Clara elective office.
  - a. Solicitation of campaign contributions by a sitting or prospective elected official from other officials or employees of the agency are prohibited, and is punishable as a misdemeanor (GC § 3205). And, public officials who have either accepted or directed a campaign contribution of \$250 or more are prohibited from making any governmental decision related to the donor (GC § 84308). In a situation where some involved in the compensation decision are appointed while others are elected, and where some or all of the parties may be or become candidates at various intervals, these abstention

requirements can create conflict pitfalls for both the appointed and elected parties. Hence the requirement to refrain from making campaign donations while serving on the SSC.

- b. Unpaid volunteering by an SSC member for a candidate is allowed, so long as the SSC member and the candidate comply with various state law requirements and Council P&P 045
- 2) Not be a candidate for City of Santa Clara elective office for the time period in which their vote to affect compensation is in effect.
    - a. Drafted in this way, it would also apply to SSC members who resign after casting a compensation vote.
    - b. Casting a vote to determine compensation, and then benefitting directly from that vote (i.e., receiving that compensation) would fall within the general catch-all of effect on personal finances described above.
  - 3) Not be a registered lobbyist for 1 year after completing service on the SSC.
    - a. This is consistent with the City's Ordinance 2.145.030: Post Service Activities for Compensation.
  - 4) That they are not a family member, paid staff member, business partner or associate, or otherwise connected in a manner triggering the financial conflict rules described above, of an elected Santa Clara City official.
- (See Attachment 2.)

SSC members will also be required to complete upon appointment and annually thereafter a Statement of Economic Interest, Form 700 as required by the Political Reform Act.

These conflict of interest provisions in Attachment 2 generally conform to state law, as explained above, are in line with best practices, and are intended to ensure that Commissioners understand their obligations under state law to refrain from conduct and relationships that pose real or potential conflicts of interest. It should be noted that the City has discovered recent conflict of interest issues and is dedicated to identifying and proactively addressing potential conflicts of interest or the perception of conflicts of interest that would hamper transparency or otherwise interfere in the conduct of City business.

### **Mechanics of Voting:**

Appointment to the Salary Setting Commission will generally follow the Voting Guidelines used to appoint members to all other City Commissions in that, the total number of votes each Civil Service Commissioner is eligible to cast will be determined by the total number of applications received. The top three candidates that receive the highest number of votes will serve for the full four-year term and the second highest two candidates will be appointed to the two-year term. Upon the closing of the application period, once the total number of applications is known, staff will present a recommendation on the number of votes that may be cast by each Civil Service Commissioner and include that information in the agenda report for the October 25 meeting.

### **FISCAL IMPACT**

It is important for the Salary Setting Commission to note that the City's current Ten-Year General Fund Financial Plan forecasts annual cumulative deficits between \$4 million to \$28 million over the next ten years. This means that ongoing expenditures are continuing to outpace ongoing revenue projections. However, by committing to fiscal discipline and addressing the annual deficits with cost reductions, alternative service delivery options, or increasing ongoing revenues it is anticipated that

the City's fiscal condition will be able to stabilize. As part of the development of the Fiscal Year 2019/20 Proposed Budget, the City's Ten-Year General Fund Financial Plan will be updated.

**COORDINATION**

This report has been coordinated with the City Attorney's Office, Finance Department and the City Clerk's Office.

**PUBLIC CONTACT**

Public contact was made by posting the Civil Service Commission 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 agenda report 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**

1. Announce and call for applicants to the Salary Setting Commission pursuant to Charter Section 702;
2. Set October 18, 2018 at 5:00 p.m. as the deadline to submit an application to serve on the Salary Setting Commission to the City Clerk's Office;
3. Set October 25, 2018, at 6:00 p.m. as the next regular Civil Service Commission meeting to conduct interviews and appoint members to the Salary Setting Commission; and
4. Set November 19, 2018 as the Oath of Office Ceremony for the newly established Commissioners of the Salary Setting Commission.

Reviewed by: Teresia Zadroga-Haase, Director, Human Resources

Approved by: Nadine Nader, Assistant City Manager