

# City Council Salary and Benefits

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Fall Conference  
September 2011



**CITY**OF SAN PABLO

*City of New Directions*

# BASE SALARIES

Population 250,000

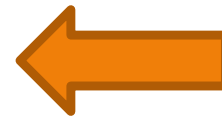


\$1,000/month

**BIG CITY**



Population 35,000



\$300/month

**SMALL CITY**



# Setting Salary By Ordinance: \$36516

- ☐ Ordinance required – resolution insufficient
  - ☐ No automatic increases (CPI)
  - ☐ Raises/reductions\* not effective until next term of office (of anyone) starts \*80 AG 119
  - ☐ 5% maximum per year since last increase
  - ☐ No compounding\*
  - ☐ \$150/mo. maximum for other boards and commissions
  - ☐ Not applicable to directly-elected mayors\*
- \*89 Ops.Cal.Atty.Gen. 159 (2006)









# Setting Salary By Ordinance: \$36516

- ☐ Ordinance required – resolution insufficient
- ☐ No automatic increases (CPI)
- ☐ No mid-term raises: not effective until new terms of office
- ☐ **5% MAXIMUM PER YEAR SINCE LAST INCREASE**
- ☐ No compounding\*
- ☐ Not applicable to directly-elected mayors\*
- ☐ \$150/mo. maximum for other boards and commissions

\* **89 Ops.Cal.Atty.Gen. 159 (2006)**



# **Issue: Calculating A Calendar Year**

**§36516(a)(4)**

- ❑ “May be increased by an ordinance...”**
- ❑ But amount of increase can’t exceed “5% for each calendar year since the effective date of the last increase...”**

## **"5% for each calendar year since the effective date of the last increase"**

- ❑ Effective Date of Last Increase: November 2006
- ❑ Next ordinance adopted July 2008 – less than two years after effective date. From effective date to date of next ordinance equals parts of 3 calendar years, but only 1 full calendar year: 5% raise? 10%? 15%?
- ❑ Nov '06 to Nov. '08 = 2 years = 10%
- ❑ Most rational approach: effective date to effective date

**Issue: What About  
Payments That Are Not In  
the Authorizing Ordinance?**

# **Expenses and Benefits – not counted as salary:**

**Gov't Code §§ 36514.5, 36516 (d) & (e)**

- Reimbursement for “actual and necessary expenses” doesn’t count as salary.
- “Retirement, health and welfare, and federal social security benefits” don’t count, so long as “the same benefits are available and paid by the city for its employees.”

## **Non-Health and Welfare, Non-Reimbursement Benefits Will Be Considered Part of Salary and Should Be Authorized By Ordinance!**

- Monthly stipend for cell phone, or for use of personal phone or fax line = salary
- If these benefits take dollar figure above the amount in your salary ordinance – Not OK.
- Car allowance OK despite AB 1234. 93 AG 9 (2010) ≠ salary

## Example: In Lieu Pay

- “In-lieu” pay: OK if considered “retirement” and contributed into city-established deferred compensation account.
- Not OK if paid in cash, because won’t be considered a “health and welfare” benefit. 89 AG 107 (2006).
- If cash “in-lieu” pay, when added to official salary, is still under the maximum statutory limit, what’s the problem?
- Must be in ordinance even if, when added to salary, would still be under the statutory limit. §36516(a)(4)

# Actual and Necessary Expenses

- PROHIBITED --
- Spouses: 75 AG 20 (1992)
- FPPC fines: 61 AG 32 (1978)
- Meals for 3rd parties: 85 AG 210 (2002)

# Conflict of Interest

- 1090 doesn't apply: §53208
- Council salary isn't "economic interest in a source of income" §82030(b)(2)
- Also is not a material effect on the official's personal finances. Regulation 18705.5(a). Except:



## **Conflict of Interest: 18705(b) Exceptions:**

- Disciplinary action with financial sanction against the official or a member of his or her immediate family
- **Salary for the councilmember which is different from salary paid to other council members (i.e. same “job classification or position”).**

# Conflict of Interest

- Scott Howard Advice Letter, A-07-182
- Can't vote for himself to be Mayor because Mayor gets an extra \$150 for car allowance.
- Query: what about voting on city budget with line items for council travel?

# Assembly Bill 23

Approved by Governor July 25, 2011

Gov't Code section 54952.3

## If:

- ☐ Council sits as body of another Board or Commission
- ☐ Council receives salary or stipend for serving on 2<sup>nd</sup> Board or Commission
- ☐ 2<sup>nd</sup> Board meets at same time, or serially, with Council
- ☐ Council is paying itself more \$\$ than set by statute for the second Board;

## Then:

- ☐ City Clerk must verbally announce the amount of compensation or stipend and that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend. Needn't announce the amount if it's set by statute.

# HEALTH AND WELFARE BENEFITS



# YOUR MONEY, THEIR BENEFITS

Part-time elected officials get pricey full-time health insurance; others are required to take cash even if they decline coverage

## **PART-TIME OFFICIAL WITH THE HIGHEST INSURANCE COST:**

**James Nejedly** Central Contra Costa Sanitary District  
**\$35,635.56** in insurance benefits in 2010



JOSE CARLOS FAJARDO/STAFF

James Nejedly attends a sanitary district meeting April 7 in Martinez. Nejedly says he was unaware of his health policy's cost until learning Bay Area News Group was requesting compensation data. "That's a large amount. I am the first person to say that number's totally out of whack. It's crazy."

By Thomas Peele, Daniel Willis and John Woolfolk  
*Bay Area News Group*

Hundreds of part-time elected officials throughout the Bay Area received full-time health care benefits in 2010 at taxpayer expense, with individual policies sometimes costing tens of thousands of dollars, according to government compensation data acquired by Bay Area News Group and published on its websites Sunday.

Several officials with multiple government positions double-dipped on health coverage, receiving two taxpayer-funded policies, the data show, and at one small school district in San Jose, the cost of health coverage provided to an elected official was more than four times higher than the cost of insurance provided to each rank-and-file employee.

"The only reason there isn't more outrage is that most people aren't aware of this," said Kris Vossberg, executive director of the Howard Jarvis Taxpayers Association. "It amounts to a gift of public funds, a theft from taxpayers. That's what it comes down to."

See **BENEFITS**, Page 10

## **Expanded Salary DATABASE**

Our salary database shows a full accounting of how much money government agencies spend on their employees, including salaries, pension contributions, deferred compensation and insurance costs. The data covers **255** government entities in **10** counties in and around the Bay Area, covering **224,346** people and totaling more than **\$15 billion**.

View the searchable database at  
**ContraCostaTimes.com/salaries** or **InsideBayArea.com/salaries**



## 'DOUBLE-DIPPERS,' BAY AREA HEALTH CARE BENEFITS, 2010

Elected officials who sit on two government boards or who work full time for other agencies may be eligible for benefits from both. These "double-dippers" sometimes use one policy for themselves and the other for a spouse, and some say they view the benefits as compensation for their time.

**Albert Boro**



San Rafael mayor

San Rafael  
**\$14,198.24**

Golden Gate Bridge District  
**\$19,293.12**

**James Davis**



Antioch mayor

Antioch  
**\$6,171.17**

Delta Diablo Sanitation District  
**\$21,444.26**

**Federal Glover**



Contra Costa County supervisor

Contra Costa County  
**\$15,438.72**

Delta Diablo Sanitation District  
**\$15,665.84**

**Laura Hoffmeister**



Concord mayor

Concord  
**\$6,992.12**

Clayton  
**\$7,602.54**

**Brian Kalinowski**



Antioch council member

Antioch  
**\$6,090.32**

Contra Costa Sheriff's Office  
**\$15,421.88**

**Nicholas Gonzalez Yuen**



Peralta Community College District trustee

Peralta district  
**\$23,319.84**

Foothill De Anza Community College District  
**\$7,063.68**

DAD, I'M  
CONSIDERING  
A CAREER IN  
ORGANISED  
CRIME.

GOVERNMENT OR  
PRIVATE SECTOR?



# **HEALTH and WELFARE BENEFITS**

## **Current Council Members**

- **1. Benefits provided for council members must be the “same benefits” that the City pays for “its employees” (§36516(d))**
- **2. The “medical plan” must provide benefits for “large number of employees” (§53202.3)**



# HEALTH and WELFARE BENEFITS

## Current Councilmembers

- 3. Where different benefit structures are provided for different sets of employees, **the maximum benefits received by the Council can be no greater than the most generous “schedule of benefits” provided to any category of non-safety employees (§53208.5).**

# **PERS MEDICAL BENEFITS for Retired Members**

## **PUBLIC EMPLOYEES MEDICAL & HOSPITAL CARE ACT (PEMHCA)**

**Gov. Code, §§22750-22948**

- **Councilmember must be enrolled in PERS and retire under PERS**
- **Retired members/employees eventually entitled to the same amount of health coverage that City pays for current employees: §§ 22890, 22892**
- **Current minimums: \$285 for family coverage; \$220 for two-party coverage; \$108 for single coverage**

## **“RETIRED” COUNCIL MEMBERS: ADDITIONAL HEALTH & WELFARE**

- OK to provide both PEMHCA and non-PEMHCA coverage: 76 AG 91 (1993)
- §53205: City can pay for entire premiums for retired council members
- §53201(a): authorizes payment for retired members “as provided in subd. (b)...”
- §53208: any member of a legislative body may participate in any plan of health and welfare benefits permitted by law.

## **NON-PEMHCA HEALTH AND WELFARE BENEFITS FOR COUNCIL MEMBERS WHO LEAVE OFFICE: GOV'T CODE §53201**

- Difference between “**retired**” council members and “**former**” council members
- A “former” council member is someone who hasn’t retired from the City’s retirement system, most likely PERS.

## Coverage for "FORMER" Councilmembers

- 53201(b): Broad authorization for coverage for former members who have served at least 12 years.
- 53201(c)(1): But, starting in 1995, newly elected members will get continued coverage on self-pay basis only.
- 53201(c)(2): If City didn't authorize con't coverage prior to 1/1/94, then it can't authorize it now.

- 1949: Current officers/employees can purchase own group insurance
- 1957: City can pay for group insurance
- 1963: City can pay for retired employees
- 1979: City can pay for retired councilmembers
- 1979: AG says “retired” means you’re in the City’s pension plan
- 1980: City can pay for former members who have served 12 years
- 1985: Former members with less than 12 years can participate on self-pay basis only
- 1994: Adds sub. (c) cutting off eligibility for newly electeds even if they serve for 12 years.

**Conclusion 1:** “Former” members who were already receiving the benefit prior to 1994 are grandfathered in.

**Conclusion 2:** Anybody elected before 1995, who served at least 12 years, is grandfathered in and allowed to receive continued health coverage, if the City had so authorized before 1995.

**Conclusion 3:** If City hadn’t authorized continued coverage before 1995, it can’t do so now. No “former” council member first elected after 1/1/95 is eligible for continued city-paid coverage, even with 12 years of service. May stay in the city’s health plan on a self-pay basis.

## **"FORMER" vs. "RETIRED"** **Councilmembers**

- §53201(a): Health and welfare benefits OK for "officers, employees, retired employees, and retired members of the legislative body, **as provided in subdivision (b)...**"



## **"FORMER" vs. "RETIRED"** **Councilmembers**

- §53201(b): OK to continue health and welfare benefits "for the benefit of **former** elective members" ... who (1) served in office after January 1, 1981, and whose **total service at the time of termination is not less than 12 years**, or (2) have completed one or more terms of office, but less than 12 years, and who agree to and do pay the full costs of the health and welfare benefits

## **Gov't Code §53201 (c)**

- Subsection (c): (1) “Notwithstanding any other provision of law,” if city provided benefits under (b) to former elective members on January 1, 1995, it can't provide those benefits to “any person first elected after January 1, 1995,” unless on a self-pay basis
- (2) If can't coverage not provided before January 1, 1994, then can't start providing them after that date.
- (3) Former members who received such benefits before 1/1/94 are grandfathered in.

## **"FORMER" vs. "RETIRED"** **Councilmembers**

- 90 AG 32 (2007):
- 1. (b) doesn't even mention retired members. It only refers to "former" members."
- 2. Reference to (b) is "at best, incongruous."
- 3. Legislative history supports application of (b) only to former members.
- 4. Resolve ambiguity in favor of those receiving public pensions.
- 5. (c) only applies to "former members."

## **So Are "Retired" Members Exempt From Gov't Code §53201 (b) and (c)?**

- **90 AG 32: "If subdivisions (b) and (c) were deemed applicable to PEMHCA annuitants, those provisions would conflict with the mandate of section 22890, subdivision (a), that contracting agencies must contribute to the health care coverage of their annuitants.**

# SUMMARY

- If it's not allowable expense reimbursement or health & welfare/retirement benefit, it's **SALARY**, and thus probably exceeds the stated salary in your ordinance
- Council can vote on its own salary & benefits. But if it affects them differently, someone will have to abstain.
- Council H&W benefits can't be greater than most generous benefits given to "any category of non-safety employees."

# **SUMMARY**

- **Post 1994-1995, Council members who leave office without retiring are likely out of luck re any continued medical coverage at city's expense**
- **Council members who do retire can get both PERS health coverage to the extent City contributes for everyone, AND City can supplement that coverage as it sees fit, so long as it doesn't exceed coverage provided to any category of non-safety employees**

# SUMMARY

- **Despite AG opinion, this is an open question and has not been discussed or approved by an appellate court.**

# CAVEATS

- **TAX RAMIFICATIONS**
- **REDUCING COUNCIL  
SALARY/BENEFITS: VESTED RIGHTS,  
IMPAIRMENT OF CONTRACT**
- **PERS PERSPECTIVE**



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