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Determining Elected Officials' Compensation: Daly City's City Clerk

Issue

Was the Daly City City Council justified in reducing the compensation of their newly elected City Clerk? How should the compensation for elected officials be determined?

Background

At its regular meeting of March 9, 2009, the Daly City City Council (Council) reduced the annual compensation of the recently elected Daly City City Clerk (City Clerk) from \$101,374 to \$52,988. The Council cited Daly City (City) budget concerns and the newly elected City Clerk's lack of relevant experience. The size of the compensation reduction together with the fact that the members of the Council had supported the opponent of the elected City Clerk raised the appearance of political reprisal.

California General Law cities, such as Daly City, are designated to have elected City Clerks and City Treasurers. However, cities can choose, by vote of the electorate, to have City Clerks and City Treasurers appointed either by the City Council or the City Manager. Most cities in San Mateo County have chosen appointment; only six have elected City Clerks—Belmont, Burlingame, Daly City, San Bruno, San Carlos and South San Francisco. In 1996, Daly City voters rejected a proposal to change the elected City Clerk position to an appointed position.

A city clerk has certain administrative duties related to local elections, local legislation, the Political Reform Act, city compliance with the Brown Act (open meeting laws), and other statutes and regulations. Before and after a city council takes action, the City Clerk ensures that documentation is in compliance with all federal, state, and local statutes and regulations, and that all actions are properly executed, recorded, and archived. A City Clerk must be bonded. The Appendix provides a specific list of City Clerk responsibilities as presented on the City's website.

Daly City is the largest city in San Mateo County by population. The City Clerk's office has four employees in addition to the City Clerk.

The City Clerks Association of California provides education courses for professional development, leading to two levels of certification issued by the City Clerks Association. The City's previous City Clerk was certified by the City Clerks Association.

Timeline

In August 2008, the City Clerk decided not to file for reelection. This City Clerk had held the office for five years and had fifteen years experience in the City Clerk's office before becoming the City Clerk. The decision was a departure from the historical practice of resigning far enough in advance of an election for the City Council to appoint a replacement whose skills and compensation experience were known, usually from within the City organization. The replacement's compensation was typically adjusted to reflect professional experience and relevant credentials, and the replacement could then run as an incumbent in the next election.

Two individuals filed for the City Clerk position for the November 2008 election.

The City Attorney informed the City Manager that, in her opinion, the compensation for the City Clerk could not be adjusted during the election year in 2008 but that compensation could be adjusted in the next calendar year beginning January 2009. From interviews with City officials, the 2008-2009 San Mateo County Civil Grand Jury learned that the candidates were not informed before the election that the City Clerk's compensation might be adjusted by the Council in the next calendar year.

The first public discussion of a compensation adjustment occurred at a "Special Meeting/Workshop Study Session" of the Council on January 23, 2009 under the agenda item of "Financial Strategies in Anticipation of Budget Adjustments." With the City facing a large potential budget deficit, many strategies were discussed to reduce City expenditures, including several labor cost reduction alternatives.

Another public Study Session for budget issues was held on February 25, 2009. In the City Manager's presentation titled "Response to the Economic Crisis," permanent budget savings were proposed for all City departments, including the City Clerk's Office. The City Clerk's budget reduction was listed at \$56,160 per year, reflecting an anticipated compensation reduction, including benefits. The City Clerk was not informed of the potential change in compensation until after the February 25th meeting. There was also no discussion with the City Clerk regarding other potential approaches to reducing expenditures in the City Clerk's office.

From interviews, the Grand Jury also learned that salaries of other City Clerks in the County were reviewed prior to deciding upon the reduction. After deciding on the reduction amount, the new compensation level for the Daly City City Clerk of \$52,988 is more than \$30,000 lower than the next lowest City Clerk salary in San Mateo County and \$40,000 lower than the next lowest salary for an elected City Clerk in the County.

At the regular meeting of March 9, 2009, the City Council formally accepted the City Manager's recommendation to change the City Clerk's compensation effective immediately. The new budget also called for many other labor cost reduction tactics, such as eliminating some open positions, pay freezes, and unpaid furloughs. However, no other city employee or official experienced a pay reduction of more than 10% while the City Clerk's was reduced by 48%.

Other Considerations

The newly elected City Clerk did not claim that she had experience working in a city clerk office during the election campaign. Yet, she was elected by 60% of the voters. The qualifications to run for City Clerk are: one must be a Daly City resident, an American citizen, and must be at least 18 years of age.

The City Manager recommended, and the Council approved, the compensation reduction of the City Clerk position. The arguments presented included:

- The City Clerk position is only part time and the staff handles the day-to-day responsibilities of the office,
- Based upon the experience of the newly elected City Clerk, she is considered at an entry clerk level and, therefore, should not be paid the salary in effect at the time of the election,
- The City Clerk's office has four support staff which is more than any other City Clerk's office in San Mateo County, and
- The City Clerk is not being treated as head of the City Clerk's office as were previous City Clerks and as is standard practice in other cities.

City management has denied the City Clerk access to information such as the Council committee assignments and calendar information that are typically considered public records. In addition, city management has refrained from assisting her in improving her professional skills to effectively fulfill the role of City Clerk.

It is generally accepted that elected officials will not have their compensation changed during their term of office. City councils, for example, can only increase their compensation for their next term, after they have stood for re-election at that increased compensation. The Grand Jury does not presume to interpret the law on this matter of the elected City Clerk but only to state the common expectation for compensation changes of elected city officials during their terms in office.

Investigation

The 2008-2009 San Mateo County Civil Grand Jury received several citizen complaints and undertook to determine the facts of this particular matter and examined the issue of determining compensation for elected officials. The Grand Jury interviewed the parties involved, including elected Daly City officials, an administrator of Daly City, and an officer of the City Clerks Association of California.

Findings

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. The Daly City City Council has the authority to set the compensation level and job description for the Daly City City Clerk position.
2. In March 2009, the City Manager recommended and the City Council approved the reduction in the City Clerk's compensation by 48%. This action took place four months after the City Clerk's election to office.
3. There are no professional qualifications required for a Daly City resident to run for City Clerk.
4. The role and responsibilities of the City Clerk were not changed from those of the previous City Clerk.
5. The current City Clerk does not have the same professional experience that previous City Clerks have had.
6. The City Clerk does not currently hold either of the two certifications offered by the California City Clerks Association -- Certified Municipal City Clerk or Master Municipal City Clerk.
7. Despite expressing concern about the new City Clerk's lack of experience, the City's senior staff has done little if anything to help the City Clerk learn the job.

Conclusions

The 2008-2009 San Mateo County Civil Grand Jury concludes that the Daly City City Clerk's compensation reduction was unjustified. The Grand Jury further concludes that:

1. It is inappropriate for a City Manager to recommend or a City Council to approve adjusting the compensation of an elected official during his or her term and without notice prior to an election. The City Clerk was elected when the salary for the position was posted as \$101,374 per year, and there was no notice from the Daly City City Council or Daly City's City Manager's Office that compensation would be changed following the election. Although there are no formal contracts between Daly City and elected officials, changing the salary several months later during the term of office is in essence changing the terms of an agreement between the City and an elected official without consent of the elected official.
2. The situation in Daly City has been handled poorly by the City Manager's Office and the City Council. The lack of pre-election clarification of expectations and compensation for the candidates for the City Clerk position is without excuse. The apparent lack of trying to improve skills of the City Clerk is shortsighted.
3. The City Council's position that the staff can handle much of the City Clerk's responsibilities making the new City Clerk's role part-time has no credence, since the new City Clerk's responsibilities are not any different from the previous City Clerk's responsibilities, according to City officials.
4. Due to the nature of the duties of the City Clerk, the position lends itself more to being appointed rather than elected.

Recommendations

The 2008-2009 San Mateo County Civil Grand Jury recommends that the City Council of Daly City:

1. Restore retroactively the compensation of the Daly City City Clerk to the level at the beginning of her term in November 2008.
2. Establish a fixed compensation for elected officials such as the City Clerk. A committee should be commissioned to review comparable compensation, position responsibilities, and other factors, and make a recommendation to the City Council.
3. Identify a human resources specialist to work with all parties to restore a productive working environment and to lay out a plan to improve the capability of the City Clerk.
4. Encourage the City Clerk to attain available training through the City Clerks Association and obtain certification.
5. Reconsider asking the electorate to change the position of City Clerk to an appointed instead of elected position.
6. Consider establishing certification or other minimum qualifications for future City Clerks if the office becomes appointed.
7. Refrain from reducing the compensation of elected City officials during their terms of office without their consent.

Appendix

According to the City of Daly City website the Office of the City Clerk exists to serve the public with information and assistance. The website lists the following functions of the City Clerk:

- To record and preserve the legislative actions of the City Council of Daly City
- To conduct Elections
- Administer and File Oaths of Office
- Serve as Filing Officer for Campaign Disclosure Forms and Statements of Economic Interest
- Give Notice of Public Hearings
(Post/Publish/Written Notification)
- Administer Oaths, Affirmations and Acknowledgments
- Receive and Open Bids
- Receive Petitions Relating to Initiative, Referendum or Recall
- Maintain Custody of City Seal
- Attest to Subpoenas
- Countersign General Obligation Bonds

Additionally, the Daly City City Clerk's Office is responsible for:

- Answering main City Hall line telephone calls
- Preparing agenda and city council chambers prior to meetings
- Receiving documents addressed to the City Council
- Developing and maintaining a Records Management Program
- Making public records available to the public
- Assisting with Applications for State of California Homeowner's/Renter's Assistance Programs for Seniors and the Disabled, Utility User's Tax and Garbage Discount Applications
- Receiving Claims
- Giving informational assistance to the public



CITY OF DALY CITY

333-90TH STREET

DALY CITY, CA 94015-1895

PHONE: (650) 991-8000

August 25, 2009

Hon. George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: Civil Grand Jury Report on Determining Elected Officials' Compensation:
Daly City's City Clerk

Dear Judge Miram:

On behalf of the City Council of Daly City, I have been requested to submit for the City the following responses to the Civil Grand Jury findings and recommendations pertaining to the above referenced report:

1. The City of Daly City completely **agrees** that the City Council has the authority to set the compensation level and job description for the Daly City City Clerk position.
2. The City of Daly City **agrees** that in March 2009, the City Manager recommended and the City Council approved the reduction in the City Clerk's compensation by 48%. The City further agrees that this action took place four months after the City Clerk's election to office.
3. The City of Daly City **agrees** that there are no professional qualifications required for a Daly City resident to run for City Clerk.
4. The City of Daly City **partially disagrees** that the role and responsibilities of the City Clerk were not changed from those of the previous City Clerk. The City Clerk's role and responsibilities, as statutorily defined in law, have not changed from those of the previous City Clerk. The reason for such partial disagreement is that due to technology enhancements undertaken and implemented after the departure of the prior City Clerk, an automated agenda system and video streaming of City Council meetings have made it much easier for the current City Clerk to perform two of the major responsibilities of the office, which include the preparation of agendas and minutes of Council Meetings. In addition, a new records management system has streamlined and automated other previously manual activities of that office.
5. The City of Daly City **agrees** with the finding that the current City Clerk does not have the same professional experience that previous City Clerks have had.
6. The City **agrees** that the City Clerk does not currently hold either of the two certifications offered by the California City Clerks' Association – Certified Municipal City Clerk or Master Municipal City Clerk.

Hon. George A. Miram

August 25, 2009

RE: Civil Grand Jury Report on Determining Elected Officials' Compensation:

Daly City's City Clerk

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7. The City of Daly City **strongly disagrees** with the finding that despite expressing concerns about the new City Clerk's lack of experience, the City's senior staff has done little, if anything, to help the City Clerk learn the job. The City Clerk's staff has, at the direction of the City Manager, assisted the new City Clerk with learning every aspect of her elected office. With 30 years of experience in the Clerk's office, the Assistant City Clerk is capable of performing all of the City Clerk's duties as delegated, as well as supervising the support staff in the Clerk's office and acts on behalf of the City Clerk in her absence. The Assistant City Clerk serves as an invaluable resource for the City Clerk to learn the duties of her office. The Assistant City Clerk and the additional three employees in the Clerk's office have supported the City Clerk in every way possible since her election. Further, the City Clerk's budget allows for the City Clerk to participate in formal training offered by the California City Clerks' Association to learn the nuances of her office and to become proficient in executing her statutory responsibilities as an elected official.

As to each Grand Jury recommendations related to the referenced report, the City offers the following responses:

1. The City of Daly City **will not** restore retroactively the compensation of the Daly City City Clerk to the level at the beginning of her term in December 2008. The reason that this recommendation will not be implemented is because the City believes that it is neither warranted nor reasonable given the City's ongoing fiscal crisis requiring significant reductions in all personnel costs and the new City Clerk's current lack of expertise and experience in executing the duties of her office. The City Clerk's training budget has not been reduced so sufficient funds are available for her technical and professional development.
2. The City has **implemented** this recommendation by establishing a fixed, five-step salary schedule for the City Clerk, consistent with that of the elected City Treasurer, and approved by the City Council. The salary schedule was created based on a survey of other similar positions in the Bay Area and a review of comparable compensation, job duties and other factors. The City Clerk will be eligible for salary step increases as her technical skills and proficiency are enhanced.
3. The City of Daly City **will not** implement the recommendation to identify a human resources specialist to work with all parties to restore a productive work environment and to lay out a plan to improve the capability of the City Clerk. Such action is not warranted or reasonable because all parties are currently working productively in a non-hostile work environment. The City Clerk has also made it very clear that she is independent and therefore not subject to City Council or City Manager imposed training. The City believes that it is incumbent upon the City Clerk to take the necessary personal initiative and seek training to improve her skills and capability to fulfill all required duties and responsibilities of her elected office. The City supports this endeavor as evidenced by the sufficient funds provided in her training budget to pursue outside technical and professional development.

Hon. George A. Miram

August 25, 2009

RE: Civil Grand Jury Report on Determining Elected Officials' Compensation:
Daly City's City Clerk

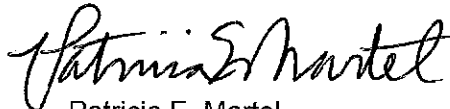
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4. The City of Daly City is restricted in its ability to require the elected City Clerk to obtain additional training and certification for professional advancement in her elected capacity. As an independent elected official, it is not the role of the City Council or City Manager to provide encouragement to the City Clerk to improve her technical skills. Such action should be undertaken by the City Clerk through her own personal initiative and desire to enhance her skills as an elected official. Nevertheless, the City encourages and supports the training and certification of the City Clerk through the allocation of training funds in the City Clerk's budget.
5. The City very much **concurs** with the recommendation to reconsider asking the electorate to change the position of City Clerk to an appointed instead of an elected position. At such time that the current City Clerk retires or otherwise leaves office in the future, the City Council may pursue implementation of this recommendation.
6. The City of Daly City **agrees** with the recommendation to consider establishing certification or other minimum qualifications for future City Clerks and will implement this recommendation, should the office eventually become appointed.
7. The City of Daly City **will implement** this recommendation to the extent that the law allows for the reduction of compensation for elected City Officials during their terms of office. While the City Council does not have plenary authority to reduce the salaries of all elected City Officials, as confirmed by the Grand Jury's Finding #1, the City Council does have the legislative authority to set the compensation and job description for the elected City Clerk and the City Treasurer. The recommendation to refrain from reducing the compensation of the City Clerk during her terms of office without her consent is baseless and unreasonable as it takes away the implicit authority of the City Council to set compensation for the City Clerk.

The City of Daly City appreciates the opportunity to provide written responses to the San Mateo County Civil Grand Jury Report on Determining Elected Officials' Compensation: Daly City's City Clerk. The City Council of Daly City approved the responses contained herein on August 24, 2009.

Should you or the Grand Jury require additional information, please contact me directly at (650) 991-8127.

Very truly yours,



Patricia E. Martel
City Manager

PEM/rp

cc: City Council
Annette Hipona, City Clerk
Rose Zimmerman, City Attorney