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Memorandum

TO: KELLEY BACON, DIRECTOR OF HUMAN RESOURCES **File No.:** 60093.00016

FROM: SHAWN HAGERTY

DATE: OCTOBER 5, 2011

RE: MINIMUM COMPENSATION OF THE ELECTED CITY ATTORNEY

QUESTION PRESENTED

Whether the compensation of the Elected City Attorney must be increased annually if necessary to remain consistent with the minimum compensation established by Section 503(c) of the City of Chula Vista City Charter.

BRIEF ANSWER

Yes, the compensation of the Elected City Attorney must be increased annually if necessary to remain consistent with the minimum compensation established by Section 503(c) of the City of Chula Vista City Charter.

DISCUSSION

In November of 2008, the residents of the City of Chula Vista approved Proposition Q, which amended the Chula Vista City Charter to make the office of the City Attorney an elected office of the City. Among other things, Proposition Q amends Section 503(c) of the Charter to provide, in relevant part, as follows:

The compensation of the elected City Attorney shall be set by the Council, *but shall be not less than* the median compensation paid to the City Attorneys of the six California cities whose populations are closest to that of the City of Chula Vista, provided that three are higher and three are lower in population, and that compensation may not be reduced during the City Attorney's term of office, except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.

(Emphasis added).

On December 8, 2009, the City Council added Chapter 2.11 to the Chula Vista Municipal Code to implement the provisions of Proposition Q. In Section 2.11.030 of the Chula Vista Municipal Code, the Council established a process by which it would annually calculate the minimum compensation of the City Attorney as required by Section 503(c) of the Charter.



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The process established by Section 2.11.030 is designed to culminate in an annual calculation of minimum compensation for the City Attorney not later than May of each year.

The question presented is whether the minimum compensation established by Section 503(c) of the Charter, as calculated through the annual process of Section 2.11.030, must be paid to the elected City Attorney on an annual basis. Although Section 503(c) of the Charter does not expressly state that the Council must *annually* set the compensation of the City Attorney at not less than the minimum, Section 503(c) of the Chapter compels that result. Through the regular budgeting process, the City Council sets the salary of the City Attorney. If the City Council did not increase the salary of the City Attorney annually to remain consistent with the minimum compensation established by Section 503(c) of the Charter, it would be indirectly setting the compensation at less than the minimum required by Section 503(c) of the Charter.

This reading of Section 503(c) of the Charter is consistent with the annual process set forth in Section 2.11.030 of the Municipal Code. Section 2.11.030 creates an annual process through which the minimum compensation of the City Attorney is to be calculated and made public by May of each year. There would be little purpose of this annual calculation if the minimum salary were not adjusted annually.

Based upon the provisions of Section 503(c) of the Charter and Section 2.11.030 of the Municipal Code, the compensation of the City Attorney should be increased in each fiscal year as needed to remain consistent with the minimum compensation required by Section 503(c) of the Charter. This increase would only be required to keep the compensation at the minimum; no increase would be required if current compensation was at or above the minimum. Consistent with Section 503(c), no decrease could occur in salary, except as part of a general reduction in salaries of all officers and employees in the same amount or proportion.

Since Section 2.11.030 of the Municipal Code requires the minimum salary to be set and made publicly available by May of each year, it is recommended that any required salary increase be done as part of the budget process. If such an increase has not been implemented as part of the budget process, it should be done as soon thereafter as possible, retroactive to the commencement of the fiscal year.