



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: NORA FRIMANN
City Attorney

**SUBJECT: Approve an Ordinance
Establishing a “Pay for Performance”
Process for the Mayor and City Council**

DATE: May 30, 2025

RECOMMENDATION

Approve an ordinance amending Title 12 of the San José Municipal Code to add Chapter 12.23 to establish an annual “Pay for Performance” evaluation process for the Mayor and City Councilmembers based on objective performance metrics, where the Council’s collective performance will be evaluated annually, beginning in Fiscal Year 2026-2027, and if the Council attains less than 100 percent of the adopted metrics in full or in part, a proportional salary reduction of up to five percent will be applied for the remainder of that fiscal year.

SUMMARY AND OUTCOME

The proposed ordinance creates a performance-based evaluation process for the Mayor and City Councilmembers. Beginning in Fiscal Year 2026-2027, the Council’s collective performance will be evaluated annually against Council-adopted, objective metrics. When the Council attains less than 100 percent of the adopted metrics in full or in part, a proportional salary reduction of up to five percent will be applied for the remainder of that fiscal year. If approved, the ordinance will take effect 30 days after final adoption and will apply to the Fiscal Year 2026-2027 evaluation cycle.

BACKGROUND

At its March 18, 2025 meeting, the City Council directed the City Attorney to return in June 2025, at the same meeting where budget adoption is agendized, with a proposed City Charter amendment establishing a Pay for Performance evaluation process that could reduce the salaries of the Mayor and Councilmembers if performance goals are not met.

On May 14, 2025, the Rules and Open Government Committee approved agendizing for Council consideration at its June 10, 2025 meeting, an ordinance, rather than a Charter amendment, to implement the Pay for Performance evaluation process.

ANALYSIS

The proposed ordinance adds new Chapter 12.23 to Title 12 of the San José Municipal Code. It expressly affirms the Salary Setting Commission's authority under Charter Section 407 to establish base salaries every five years and annual Consumer Price Index adjustments in the intervening years under Charter Section 407(c).

Because the California Constitution (Article I, Section 10) prohibits a local government body such as the City from retroactively increasing compensation to a public official for services already rendered by the public official, the proposed ordinance provides for potential prospective salary reductions under the Pay for Performance evaluation process, rather than automatic 5% annual reductions that the Mayor and Council may subsequently disburse back to themselves in the evaluation process. This is also consistent with City Charter Section 407(d), which provides that the City Council may only act to reduce its salary that has previously been set by the Salary Setting Commission or by annual Consumer Price Index adjustments in the intervening years. Prospective salary reductions under the Pay for Performance objective evaluation process, rather than automatic 5% annual reductions, also avoid any concerns as to the tax doctrine of "constructive receipt" of income that is initially withheld but subject to potential disbursement at some point in the future. Under the income tax doctrine of constructive receipt, a taxpayer is treated as having received income, and must report it, once the funds are credited to their account or otherwise made unconditionally available to them, even if they have not actually taken possession of the money.

Beginning in September 2026, the City Council will evaluate its collective performance each year using Council-adopted metrics that must be objective, specific, measurable, achievable, relevant, and time-bound. The Council may designate an independent evaluator, such as the City Manager, City Auditor, or an external performance management consultant, to compile the performance data and present the performance results to the City Council.

If the Council attains less than 100 percent of the adopted metrics in full or in part, a percentage salary reduction, capped at five percent, will be applied to the Mayor and all Councilmembers from October 1 through June 30 of that fiscal year based on an adopted scoring methodology. The reductions apply equally to all members, as required by the Charter, and expire at the start of the next fiscal year.

The ordinance also provides that within ninety (90) days after its effective date, the City Manager, in coordination with the City Attorney, will return to the City Council with a proposed Council Policy that sets forth the evaluation scoring methodology and detailed evaluation procedures. In addition, the City Manager will bring forward the recommended objective performance metrics that are aligned with the Council-adopted priorities for 2025-2026. At the conclusion of each fiscal year thereafter, the City Manager will bring forward the recommended objective performance metrics that are aligned with the Council-adopted priorities to be used for the next evaluation year, if they have been changed. The City Attorney will consult with tax counsel as necessary during the Council Policy development process. The ordinance further

directs the City Manager and City Attorney to develop procedures to implement the salary reductions described in this Section in compliance with all applicable laws.

EVALUATION AND FOLLOW-UP

Within ninety (90) days after the effective date of the ordinance, the City Manager, in coordination with the City Attorney, will return to the City Council with a proposed Council Policy that sets forth the evaluation scoring methodology and detailed evaluation procedures. In addition, the City Manager will bring forward the recommended objective performance metrics that are aligned with the Council-adopted priorities for 2025-2026.

COORDINATION

This memorandum has been coordinated with the City Manager's Office.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 10, 2025 Council meeting.

COMMISSION RECOMMENDATION AND INPUT

☒ No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

PUBLIC SUBSIDY REPORTING

☒ This item does not include a public subsidy.

/s/ Nora Frimann
NORA FRIMANN
City Attorney