



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Richard Doyle
City Attorney

SUBJECT: Waiver of Salary Increases

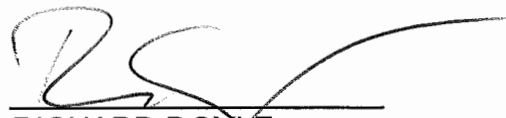
DATE: May 9, 2019

On May 1, 2019, the Rules and Open Government Committee deferred Item G.2, which requested a rejection of the Salary Setting Commission's decision to award a salary increase to the Mayor and instead, reduce the Commission's increase to an annual rate that does not exceed 3 percent for the duration of Mayor Liccardo's term. The Committee discussed alternatives to the Mayor's request and subsequently deferred the item to allow the City Attorney to consult outside tax counsel on the ability of an individual to waive a future cost of living increase.

Based on the advice of tax counsel, with respect to the increase in salaries effective July 1, 2019, an elected official could waive all or a portion of the salary increase, including cost of living increases. However, it is critical that the waiver (1) is in writing; (2) is irrevocable; (3) is specific as to what amounts of salary are being waived, and for what time period; (4) provides that it is a full waiver of any future claim for the waived salary amounts; and (5) is signed by the elected official before the salary subject to the waiver is earned.

With respect to the anticipated cost of living increase effective July 1, 2020, a waiver could be structured whereby the elected official continues to waive the base salary increase that was effective July 1, 2019, but accepts the City Charter's automatic cost of living increase that would be effective on July 1, 2020. Again, it is critical that the waiver be very specific as what amount is being waived in order to avoid the constructive receipt of income, and to comply with the requirements for the waiver outlined above. Thus, the irrevocable waiver must be made annually before any salary subject to an increase is earned. In other words, an elected official must make these irrevocable waivers before the City's fiscal budget is approved annually for the remainder of his or her term.

The irrevocable waiver is specific to only the individual making the waiver and does not result in a reduction of the base salaries that were set by the Commission. Thus, the base salaries set by the Salary Setting Commission for the positions of Mayor and Councilmember effective July 1, 2019 would remain unchanged for the five-year period.



RICHARD DOYLE
City Attorney
City of San José