

MEMORANDUM

DATE: September 1, 2010
TO: Langley City Council and Mayor
FROM: Councilmembers Fran Abel and Robert Gilman
RE: Ordinance 948 concerning the Mayor's Salary

At the August 16th Council meeting Ordinance 948 was discussed by the Council and tabled for further review. We have researched issues raised at that meeting and will use this memo to provide the results of our research and indicate the changes we are proposing in the ordinance.

STATE LEGAL FRAMEWORK:

To orient ourselves to the issues raised by Ordinance 948, we have found it helpful to go to the State legal framework on which this ordinance is based. Compensation for elected officials in general is addressed in the State Constitution, and the duties of and compensation for mayors in cities like Langley is further addressed in RCW 35A. In the following citations we have emphasized the parts we feel are most relevant by double underlining them. The constitutional provisions are:

ARTICLE XI COUNTY, CITY, AND TOWNSHIP ORGANIZATION

SECTION 8 SALARIES AND LIMITATIONS AFFECTING. The salary of any county, city, town, or municipal officers shall not be increased except as provided in section 1 of Article XXX or diminished after his election, or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed. [AMENDMENT 57, art, 1971 Senate Joint Resolution No. 38, part, p 1829. Approved November, 1972.]

And ...

ARTICLE XXX COMPENSATION OF PUBLIC OFFICERS

SECTION 1 AUTHORIZING COMPENSATION INCREASE DURING TERM. The compensation of all elective and appointive state, county, and municipal officers who do not fix their own compensation, including judges of courts of record and the justice courts may be increased during their terms of office to the end that such officers and judges shall each severally receive compensation for their services in accordance with the law in effect at the time the services are being rendered. ■ The provisions of section 25 of Article II (Amendment 35), section 25 of Article III (Amendment 31), section 13 of Article IV, section 8 of Article XI, and section 1 of Article XXVIII (Amendment 20) insofar as they are inconsistent herewith are hereby repealed. [AMENDMENT 54, 1967 House Joint Resolution No. 13; see 1969 p 2976. Approved November 5, 1968.] ■ ■ ■ **Reviser's note:** (1) Amendment 49 (1967 SJR No. 5) and Amendment 54 (1967 HJR No. 13) each added a new Article XXIX to the Constitution. Amendment 49 is carried herein as Article XXIX while Amendment 54 has been herein redesignated as Article XXX. ■ (2) The name of this Article has been supplied by the reviser.

The relevant portions of RCW 35A are:

RCW 35A.11.020

Powers vested in legislative bodies of noncharter and charter code cities.

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people ...

RCW 35A.12.070

Compensation of elective officers — Expenses.

The salaries of the mayor and the councilmembers shall be fixed by ordinance and may be revised from time to time by ordinance, but any increase in the compensation attaching to an office shall not be applicable to the term then being served by the incumbent if such incumbent is a member of the city legislative body fixing his or her own compensation or as mayor in a mayor-council code city casts a tie-breaking vote relating to such ordinance: PROVIDED, That if the mayor of such a city does not cast such a vote, his or her salary may be increased during his or her term of office. ...

And ...

RCW 35A.12.100

Duties and authority of the mayor — Veto — Tie-breaking vote.

The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance or charter. He or she shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests...

We see the following implications of this legal framework for the issues of the Mayor's duties, salary and benefits:

- During a mayoral term of office the Mayor's compensation can be increased but not decreased by the City Council.
- Prior to the election before a new mayoral term the compensation can be decreased or increased by the City Council, and as often as it chooses.

- The same rules apply to all forms of compensation -- benefits as well as direct monetary salary (this point was affirmed for us by Jim Doherty, a legal consultant at MRSC).
- The City Council has the authority to determine which positions ("officers and employees") there are in the whole of city government (the organization chart) and what the compensation will be for these positions. The Mayor has the authority to hire and fire the individuals that fill the organization chart and to oversee their management.
- State law (in RCW 35A.12.100) authorizes a Mayor, with the agreement of the Council, to manage the City in an indirect way, with the help of a "chief administrative officer" (also known as a City Administrator) or in a direct, hands-on way.

SPECIFIC QUESTIONS RAISED DURING THE AUGUST 16, 2010 COUNCIL MEETING:

With this as background, we turn next to specific questions raised during the August 16 meeting, namely:

1. Is the Mayor, as an elected official, eligible for the Public Employees' Retirement System (PERS)?
2. Can the Council's offer for the Mayor to have the option to participate in PERS be withdrawn?
3. Is the ordinance consistent with the five principles cited by Pat Mason of MRSC in his memo of July 6, 2010?

1. Is the Mayor, as an elected official, eligible for PERS?

RCW 41.40.010(11)(b) defines "Any position occupied by an elected official" as an "Eligible position" for the Washington public employees' retirement system. WAC 415-108-550 provides further information on eligibility and application for retirement service membership for elected officials. Thus the Mayor is, as far as State law is concerned, eligible for PERS. We have confirmed this by speaking with a legal counsel at the Washington State Department of Retirement Systems (WSDRS).

2. Can the Council's offer for the Mayor to have the option to participate in the PERS retirement system be withdrawn?

The legal counsel at WSDRS also clarified that the Mayor's option to participate in PERS is based on State law and is not a choice that can be made by the City Council. Any public official who receives a monthly salary greater than or equal to 90 times the State minimum hourly wage (currently means a monthly salary of \$769.50/month) is entitled to opt-in to PERS, and if he or she does so the City is required to pay the corresponding State-mandated contribution. So once the Mayor's salary was set above \$769.50 (which it has been since at least 2003), the City Council has no authority concerning the Mayor's participation in PERS.

3. Is the ordinance consistent with the five principles cited by Pat Mason of MRSC in his memo of July 6, 2010?

As we recall, members of the public cited the fifth principle from that memo: "It must have some permanency and continuity and not be only temporary or occasional," to suggest that the process of resetting the Mayor's salary to a base level at the start of each mayoral term was not consistent with legal requirements.

In rereading Pat Mason's memo we find that these five principles were set out by the Washington Supreme Court "to determine if a position would be considered to be a 'public office'." As Pat Mason says, "it is very clear that the mayor of a city meets all five elements" and is a 'public office'.

These principles are not about requirements for ordinances nor about how salaries of public officials can be set. Indeed, RCW 35A.12.070 (see above) states "The salaries of the mayor and the councilmembers shall be fixed by ordinance and may be revised from time to time by ordinance ". Ordinance 948 is consistent with this provision.

THE LARGER QUESTIONS OF THE ONGOING SCOPE OF THE MAYOR'S ROLE

Another aspect of the discussion at the August 16 meeting, and in other recent Council meetings, was differing visions of the Mayor's role, often described in terms of 'full-time' versus 'part-time'. Opinions have been expressed supporting 1) the choice provided by Ordinance 911 that allows, for each new mayor, either a "full-time" or "part-time with city administrator" approach, 2) a fixed "full-time" role, and 3) switching to a Council - City Manager form of government.

As we see it, the issue before the council with regard to this larger discussion is, do we need to have and complete this larger discussion before making a decision on Ordinance No. 948?

On the one hand, given the constraints of State law, that larger discussion has no practical impact on the present mayoral term or the duties and compensation for the current Mayor -- the subject of Ordinance No. 948. On the other hand, there appears to be interest in the community in that larger discussion. We will make no recommendation here in this report on the appropriate timing for that larger discussion and will wait to discuss it with the rest of the Council.

CHANGES IN THE DRAFT ORDINANCE SINCE AUGUST 16

Based on all of the above we have made the following changes to the draft of Ordinance No. 948:

- The ordinance abstract was reworded to make it clear that the ordinance is about establishing, for this mayoral term, the salary and benefits of the Mayor.
- The first "whereas" was reworded to emphasize that the current Mayor is handling duties previously covered by a City Administrator.

- Section 2 is now clearly about adopting and specifying the plan of administration.
- Section 3 has been reworded to tie it directly to LMC Section 2.60.017 and Section 2 of this ordinance.
- Section 4 now focuses only on benefits.
- The old Section 5 has been removed and replaced with a new Section 5 that focuses on reimbursements.
- There have also been a few minor copy-editing corrections.

We look forward to discussing this ordinance with the rest of the Council and others at the Council Meeting on September 7th.