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Agenda Item: ID#15-1028 (3-A)

Date: 10/22/15



## Supplemental Information Packet

Agenda Related Item(s) – ID#15-1028 (3-A)

### Contents of Supplement: Staff Report, Resolution and Amended Transparency Act

#### Item(s)

Approve Amendment to the Transparency in City Government Act

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

#### **Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

AGENDA ITEM NO.

COUNCIL MEETING: 11/12/15

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

**Date:** November 12, 2015

**FROM:** Council President Oliver Baines, III  
Councilmember Lee Brand

**SUBJECT:** Approve Amendment to the Transparency in City Government Act

## **RECOMMENDATION**

It is recommended that Council approve the attached resolution amending the "Transparency in City Government Act" to amend key provisions of the original act.

## **EXECUTIVE SUMMARY**

It is recommended that the Council pass this Amendment to the Transparency in City Government Act to improve the transparency in employee compensation disclosure, enhance the Council's authority over approving employee bonuses and to toughen the enforcement of the Act in the future.

## **BACKGROUND**

The Transparency in City Government Act was co-authored by Councilmember Lee Brand and former Councilmember Henry T. Perea. The Council approved the Act on a 7-0 vote in 2010. The employee compensation disclosure report was first presented to the Council in the budget deliberations in June 2011. The last report was presented to the Council in June 2012. For the past three years the Administration has failed to provide the report to the Council at budget time.

### **Summary of Changes to Transparency in City Government Act**

1. Any changes supersede any provisions of the FMC, resolutions, or employment contracts that are inconsistent, except for provisions of any approved MOU with a bargaining unit.
2. Bonus compensation is more specifically defined.
3. The employee/official compensation disclosure report shall be published and made available to the Council at the time the Mayor's proposed budget is provided to Council but in any event no later than June 1<sup>st</sup> of each year. The City Attorney shall timely advise the Administration and report to Council on the status of the compliance with this Act.
4. Review and approval of the annual employee compensation disclosure report by a majority vote of the Council is a condition of approving the annual City budget.
5. The reporting of all Unit 2 non-represented officials and employees shall specify earnings, itemized by the following categories:
  - a) Total earnings
  - b) Base pay/salary
  - c) Overtime
  - d) Cash bonus
  - e) Deferred compensation bonus

REPORT TO THE CITY COUNCIL

*Approving Amendment to Transparency in City Government Act*

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- f) Leave payoff/cash out
  - g) Auto allowance
  - h) Premium pay
  - i) Severance pay
6. For each City official and employee, no bonus in the form of cash compensation and/or deferred compensation contributions, or any equivalent, in excess of a total of 5% of base salary pay in any fiscal year shall not be paid without Council approval.
  7. Total compensation in the form of cash compensation and/or deferred compensation shall not exceed the upper salary range provided in the annual salary resolution.
  8. The Finance Department shall immediately report to the City Clerk the gross amount of any bonus paid; the City Clerk shall provide for publication of bonuses paid on the City's web site.
  9. For all Unit 2 non-represented management and confidential class officials and employees the approving authority may authorize an employment contract with the official or employee. Unless specifically authorized by the Council, for such employment contract to be valid and enforceable, the following conditions shall be required:
    - a) The contract shall be executed by the appointing official and the employee, and approval by the City Attorney as to form.
    - b) A copy of the fully executed contract, including any amendments, shall be provided to the City Clerk, who shall make the contract available for inspection on the City's website.
    - c) The contract may provide that the employee may accept a portion of salary/base pay in the form of deferred compensation.
    - d) The contract may provide for severance pay, not to exceed six (6) months base pay, plus the City's contribution of health care benefits during that time from the last day of service; health care benefits shall not be authorized for a time period that exceeds the stated severance term.
    - e) Severance pay shall not be authorized in the event of the employee's voluntary separation from service, retirement, or termination for cause, including but not limited to criminal conviction, misfeasance, or malfeasance in office.
    - f) Any existing applicable employment contracts shall be revised to conform to these provisions.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
FRESNO, CALIFORNIA, AMENDING THE  
"TRANSPARENCY IN CITY GOVERNMENT ACT"

WHEREAS, the Transparency in City Government Act was co-authored by Councilmember Lee Brand and former Councilmember Henry T. Perea, and approved on a 7-0 vote in 2010; and

WHEREAS, the employee compensation disclosure report was first presented to the Council in budget deliberations in June 2011; and

WHEREAS, for the past three years the Administration has failed to provide the report to the Council at budget time; and

WHEREAS, the Act as amended will improve the transparency in employee compensation disclosure, enhance the Council's authority over approving employee bonuses and toughen the enforcement of the Act in the future.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

SECTION 1. The Council hereby adopts the attached Exhibit "A" Amended Transparency in City Government Act as a formal Council policy.

SECTION 2. This resolution shall become effective upon its adoption.

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STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2015  
Mayor Approval/No Return: \_\_\_\_\_, 2015  
Mayor Veto: \_\_\_\_\_, 2015  
Council Override Vote: \_\_\_\_\_, 2015

YVONNE SPENCE, CMC  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

BY: \_\_\_\_\_  
Katie Doerr [DATE]  
Assistant City Attorney

KBD:ns [67127ns/reso]- 5/11/15

# **CITY OF FRESNO**

## **TRANSPARENCY IN CITY GOVERNMENT ACT**



**Amended November 12, 2015**

The following policies are enacted to help improve and enhance transparency in City of Fresno government operations by providing disclosure of City employees and elected officials compensation. This Act shall supersede any provisions of the Fresno Municipal Code, resolutions, or employment contracts that are inconsistent, except for provisions of any approved Memorandum of Understanding with a City bargaining unit.

## **ARTICLE I**

### **DEFINITIONS**

#### **Base Salary**

The base salary is the defined salary of an elected or public official as set forth in either the annually approved City salary resolution or by a negotiated contract between the City and a public official.

#### **Benchmark or Peer Cities**

Benchmark or peer cities represent those cities in California that are comparable population wise and demographically to Fresno.

#### **Bonus**

Compensation paid to employees in the form of either cash or City funded deferred compensation contributions. Bonuses are in addition to base salary, and payment shall remain in the discretion of the appointing authority at the time of payment. Any payments that are not discretionary, but are required to be paid or funded in an employment contract, shall be considered a portion of base salary.

#### **City Charter Officials**

Certain City officials are identified in the City's Charter including the Mayor, Council members, the City Manager, City Attorney, City Clerk and City Controller/Treasurer.

#### **Consultant Services**

Consultant services are professional services provided by individuals or entities who are not employed by the City of Fresno.

#### **Evergreen Provision**

A contract provision that automatically renews the length of the agreement after a predetermined period, unless notice for termination is given. Evergreens are often used for long-term agreements such as memberships or maintenance contracts.

#### **Executive Employees**

Executive level employees are unclassified, "at will" department head and above management positions.

#### **Gross Wages**

An employee's pre-tax compensation including all normal salary/hourly earnings, bonuses, overtime, deferred compensation, leave payoff/administrative leave, car allowance, and pay deferential.

#### **Municipal Code Section 4-107 (b)**

Municipal Code Section 4-107 (b) provides that except for legal services, the City Manager is authorized to contract for all services required by the City for which an appropriation has been made; provided the contract involves an expenditure of City moneys of less than or equal to fifty thousand dollars (\$50,000).



## **Professional Services**

Professional services are infrequent, technical or unique functions provided by independent contractors or consultants whose occupation is the rendering of professional services.

## **Request for Proposal**

A Request for Proposal (RFP) is a solicitation initiated by the City to provide a competitive process for selecting professional consultants, and establishing terms and conditions thereof.

## **ARTICLE II PURPOSE OF ACT**

Revelations in 2010 in the City of Bell, California and recently in the City of Fresno have brought attention to the compensation of public officials. In a time of declining revenues and decreasing budgets it is important for the City to demonstrate fiscal responsibility and transparency. Salaries, benefits and pension costs represent over 80% of the costs of the City General Fund. The public has a right to know compensation levels for all City employees. It is imperative that the City of Fresno takes the lead in providing full disclosure of compensation of its employees including executive public officials and elected officials. The purpose of this Act is to create an easy to find, readily available means to view current employees and elected officials compensation levels. It is also important to compare the compensation levels of City executive and elected officials with officials from our peer cities in California.

### **Objectives of Act:**

1. To provide annual disclosure of City of Fresno employees and elected official compensation.
2. To provide a comparative analysis of compensation levels for executive employees and elected officials in peer cities in California.
3. Adopt enabling legislation via a municipal resolution to establish necessary policies.

## **ARTICLE III CITY ELECTED OFFICIALS AND EMPLOYEE EARNINGS DISCLOSURE**

It shall be the practice of the City of Fresno to provide: 1) a list of all earnings of all City employees in Gross Wages as reported on the year end W-2 form; and 2) a separate list, as provided below, of earnings from the prior calendar year of all elected officials and all Unit 2 – Non-represented officials and employees. Both lists shall be in an easy to find location at the City website, and printed lists at the City Clerk's office. The list shall be updated annually to the City website as part of the Mayor's annual proposed budget. The list shall be published and made available to Council at the time the



Mayor's proposed budget is provided to Council, but in any event no later than June 1 of each year. The City Attorney shall timely advise the Administration and report to Council on the status of compliance with this Act.

**Review and approval of the annual employee/official compensation disclosure report(s) described in this Act by a majority vote of the Council is a pre-condition of approving the annual City budget.**

The earnings disclosure for all employees, except for the City Manager, Assistant City Manager, other Charter Officials, and department heads, will be listed by occupation/title only. It will not include individual employee names and will only list those employees who have been in the City's employment for 12 months or longer except for executive level employees. If an executive level employee has been employed for less than 12 months then the Gross Wages compensation shall be computed based on earnings to date and projected for an annual figure.

A description of health and retirement benefits by bargaining unit and for non-represented employees will also be provided along with the earnings disclosure.

The reporting for all elected officials and all Unit 2 Non-represented officials and employees shall specify earnings, itemized by the following categories:

1. Total earnings
2. Base pay/salary
3. Overtime
4. Cash bonus
5. Deferred compensation bonus
6. Leave payoff/cash out
7. Auto allowance
8. Premium pay
9. Severance paid

## **ARTICLE IV**

### **CONSULTANTS DISCLOSURE**

The total annual compensation paid to any consultant providing professional services for the City shall be disclosed including those consultants making less than \$50,000 per year. A report will be prepared by the City Manager detailing the following information:

1. The name of the consultant;
2. A description of the consulting services provided; and
3. A detailed account of all payments by the City to the consultant including the total paid for the fiscal year.

## **ARTICLE V**

### **EMPLOYMENT CONTRACTS, BONUS AND SEVERANCE PAY**

For each City official and employee, no bonus in the form of cash compensation and/or City funded deferred compensation contributions, or any equivalent, in excess of a total of five percent (5%) of salary/base pay in any fiscal year shall be paid without Council approval.

Additionally, without Council approval, total compensation in the form of salary/base pay plus any cash bonus or deferred compensation shall not exceed the upper salary range provided in the annual Salary Resolution.

The Finance Department shall immediately report to the City Clerk the gross amount of any bonus paid; the City Clerk shall provide for publication of bonuses paid on the City's website.

For all Unit 2 – Non-represented Management and Confidential Classes officials and employees, the appointing authority may authorize an employment contract with the official or employee. Unless specifically authorized by the Council, for any such employment contract to be valid and enforceable, the following conditions shall be required:

1. The contract shall be executed by the appointing authority and the employee, and approved by the City Attorney as to form;
2. A copy of the fully executed contract, including any amendments, shall be provided to the City Clerk, who shall make the contract available for inspection on the City's website;
3. The contract may provide that the employee may accept a portion of salary/base pay in the form of deferred compensation;
4. The contract may provide for severance pay, not to exceed six (6) months base pay, plus the City's contribution of health care benefits during that time, starting from the last day of service; health care benefits shall not be authorized for a time period that exceeds the stated severance term;
5. Severance pay shall not be authorized in the event of the employee's voluntary separation from service, retirement, or termination for cause, including but not limited to criminal conviction, misfeasance, or malfeasance in office; and
6. Any existing applicable employment contracts shall be revised to conform to these provisions.

## **ARTICLE VI**

### **BENCHMARK CITIES EXECUTIVE EMPLOYEE COMPENSATION MATRIX**

The compensation of executive employees for the 10 California benchmark cities shall be presented in a side-by side comparison matrix. The following executive positions shall be included in the peer city comparison: City Manager; Assistant City Manager; City Attorney; City Clerk; City Controller/Treasurer; Police Chief and Fire Chief. This matrix will detail comparable executive city positions showing the compensation levels. Compensation displayed will include base salaries and, when information is available, other types of compensation (e.g. performance bonuses). Because of the inherent difficulty in obtaining data on any additional compensation it may be difficult to disclose full compensation figures for defined executive positions from other peer cities.

If any future comparisons of any other employee classification become necessary, they shall use the same 10 California benchmark cities.

This matrix shall be updated every year to reflect current population statistics and compensation levels. Please see exhibit 'A' for sample matrix.

## **ARTICLE VII**

### **CALIFORNIA 10 LARGEST CITIES ELECTED OFFICIALS COMPENSATION MATRIX**

The compensation for elected officials of the 10 largest cities in California shall be presented in a side-by-side comparison matrix. The matrix will detail comparable elected officials' compensation levels. This matrix display shall be updated every year to reflect current population statistics and compensation levels. Please see Exhibit 'B' for sample matrix.

## **ARTICLE VIII**

### **ANNUAL COMPENSATION DISCLOSURE REPORT**

Once a year the City Manager will make a presentation to the Council and provide a written report to the Council members outlining all of the reporting described in Articles III, IV, V, VI and VII. The written report shall be made available to Council at the time the Mayor's proposed budget is provided to Council, but in any event no later than June 1 of each year, and the presentation shall be made during the annual budget hearings.

## **ARTICLE IX**

### **EXTENDED NOTICE FOR CONTRACTS WITH CONTINUOUS ("EVERGREEN") PROVISIONS**

The City Council shall be provided seven days prior notice of the effective date of any employee contract containing an evergreen provision automatically increasing

compensation for any employee earning a base salary of \$100,000 per year or more unless the increase is consistent with increases for other unclassified employees.

## **ARTICLE X**

### **TRANSPARENCY**

All information and reports described in this Act shall be available for public viewing at an easy to find identified link titled, "City Elected Officials and Employee Earnings Disclosure" at the City's Home Page website. Hard copies shall also be available to members of the public for viewing or pickup at the City Clerk's office during regularly scheduled business hours.

## **ARTICLE XI**

### **ONE-YEAR REVIEW**

One year from the adoption of this Amended Act, the Council shall, at a regularly scheduled meeting, review the implementation and practice of this Act and, if necessary, amend the Act to reflect required changes. The Act will continue to be effective whether or not the review takes place.

## **ARTICLE XI**

### **EFFECTIVE DATE**

This resolution shall take effect upon its adoption.