



CITY OF OXNARD

MEMORANDUM

January 12, 1978

BRIEFING REPORT

To: City Council

From: City Attorney

SUBJECT: Council Salary Adjustment

During the budget sessions in June of 1977, a proposal was made to increase the lump sum expense account of each councilman from \$137.50 per month to \$175 per month.

Section 36514.5 of the Government Code provides that councilmen may be reimbursed for actual and necessary expenses incurred in the performance of official duties.

The lump sum expense account obviates the necessity of councilmen having to keep track of each individual item of expense and having to claim reimbursement for them.

The case of Albright vs. City of South San Francisco, 44 CA3d 886, held that a lump sum expense account for councilmen was invalid, and that the councilmen would have to reimburse the city for that part of the payment which they could not prove was actually incurred.

The Albright case, however, did indicate that if the City Council adopted an ordinance making a finding that the actual and necessary expenses were a certain sum, then this would be an exercise of discretion of the Council which the court would not review or go behind.

Relying on the Albright case, the City Council adopted a resolution determining that the sums needed to reimburse councilmen for their actual and necessary expenses were \$137.50 per month for councilmen and \$237.50 per month for the mayor.

Legally, this exercise of discretion may not be subject to court review. Politically, it might be difficult for the Council to justify these amounts.

The lump sum expense account could become a legal problem if someone alleges that the Council acted unreasonably in determining that \$137.50 per month is an amount which the expenses equal or exceed. The Council might be put in the position of establishing that the expenses consistently exceed this amount.

Even if the Council prevails in the legal question, the lump sum expense account could become a political issue.

Because of these problems I believe the Council would be better off without a lump sum expense account. Councilmen then could claim reimbursement for actual expenses.

Sections 36516.1, 36516.2 and 36516.5 of the Government Code provide as follows:

"§36516.1 Elective mayor; additional compensation

A mayor elected pursuant to Sections 34900 to 34904, inclusive, of the Government Code may be provided with compensation in addition to that which he receives as a councilman. Such additional compensation may be provided by an ordinance adopted by the city council or by a majority vote of the electors voting on the proposition at a municipal election.

"§36516.2 Councilmen; compensation; increase by ordinance or amendment; prohibition against automatic increases.

Notwithstanding the limitations contained in Section 36516 with respect to increases or decreases in councilmen's salaries, the compensation of councilmen may be increased beyond the amount provided in Section 36516 by an ordinance or amendment thereto enacted by the city council but the amount of such increase may not exceed an amount equal to 5 percent for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment thereto is enacted; provided that no salary ordinance shall be enacted which provides for automatic future increases in salary.

"§36516.5 Prohibition against change in compensation during term of office; staggered terms

A change in compensation does not apply to a councilman during his term of office; however, the prohibition herein expressed shall not prevent the adjustment of the compensation of all members of a council serving staggered terms whenever one or more members of such council becomes eligible for a salary increase by virtue of his beginning a new term of office."

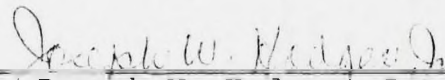
Pursuant to these sections, the Council could adopt the attached ordinance, increasing its salary by \$90 per month. In addition the Council can increase the Mayor's salary in an amount it feels appropriate.

In adopting the ordinance, you may want to consider reducing the lump sum expense account payments. Perhaps the Mayor's additional salary should replace the extra \$100 per month paid to him as a lump sum expense, or his entire expense account of \$237.50.

Reducing the lump sum expense account and replacing it with salary would not have any income tax consequences if each of you is reporting the lump sum as income and then itemizing expenses.

This ordinance must become effective before March 14, 1978, when a new term of office begins. If it were offered for a first reading on January 24, the second reading would be on January 31 and the effective date of the ordinance would be March 2.

Please let me or the City Manager know when you want it put on the agenda, and whether you want any changes in it or in the expense account resolution.



Joseph W. Hodges, Jr.

JWH:def