

# CITY OF OAKLAND OFFICE OF THE CITY ATTORNEY

## PUBLIC LEGAL OPINION

TO: Council President Fortunato Bas and Members of the Council

FROM: Maria Bee  
Chief Assistant City Attorney

DATE: May 16, 2022

RE: **What is the Council's Authority to Increase the City Attorney's Salary Based on Compaction?**

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Dear President Fortunato Bas and Members of the Council:

Please see the attached public legal opinion which addresses the referenced question.

Because this opinion interprets the City Charter and the powers of the City Council, it will be posted on the City Attorney's web site at:

<https://www.oaklandcityattorney.org/OpsReps/Opinions.html>.

Very truly yours,



MARIA BEE  
Chief Assistant City Attorney


Attachment

3175308v1

## MEMORANDUM

DATE: May 16, 2022

TO: Maria Bee, Chief Assistant City Attorney, City of Oakland

FROM: Karen Getman 

RE: Council's Authority to Consider Compaction as a Factor in Setting the City Attorney's Salary

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### **I. QUESTION**

May the Oakland City Council consider "salary compaction," also known as inequitable alignment, as a factor in setting the City Attorney's salary within the ranges authorized by the Charter?

### **II. BRIEF ANSWER**

Yes. Nothing in the Charter prohibits the Council from considering inequitable alignment, or "salary compaction," in determining where within the authorized range to set the City Attorney's salary.

### **III. ANALYSIS**

As described in the Public Legal Opinion dated May 2, 2022 concerning the Council's Authority to Increase the City Attorney's Salary, Oakland City Charter section 401(1) provides that the Council shall set the salary of the City Attorney within a range that is "not less than 70% nor more than 90% of the average salaries of City Attorneys of California cities within the three immediate higher and the three immediate lower cities in population to Oakland," and further that the City Attorney's salary "may not be reduced during the City Attorney's term of office, except as part of a general reduction of salaries of all officers and employees in the same amount or proportion."

The City Administrator has recommended that the City Attorney's salary be set at the top end of the allowable range, i.e. at 90% of the average salary of the City Attorneys

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whose salaries fall within the designated range. That recommendation is based in part on a finding that the City Attorney's current salary is lower than nearly all of the City Attorney salaries in the permissible range prescribed by the Charter and, of particular note, is "significantly lower" than the salaries of other City Attorneys in the Bay Area. In addition, the recommendation is based on a finding that there is an "inequitable alignment" in that the City Attorney's salary is lower than that of the Assistant City Attorneys whom she supervises and will be lower than the Assistant City Attorneys even if the City Attorney's salary is raised to the 90% level.

You have asked whether the Council is legally authorized to consider "salary compaction," also known as "inequitable alignment" or "salary compression," between the City Attorney's salary and the salaries of attorneys who work in the Office of the City Attorney under the supervision of the City Attorney. The answer is yes. As discussed in the Public Legal Opinion of May 2, 2022, the Council is the City's governing body and is "vested with all powers of legislation in municipal affairs to provide a complete system of local government . . ." Charter § 207. In particular, the Council "shall fix the compensation of all City employees, officers and officials except as otherwise provided by this Charter." *Id.* The City Attorney is such an officer. Charter § 400.

As noted above, the Charter does require the Council to set the City Attorney's salary within a range of 70 to 90% of the relevant comparison population of city attorneys. However, the Charter does not provide any limitations on factors the Council may consider in determining where on that range of 70 to 90% the salary should fall. Without such limits in the Charter, the Council, as the City's lawmaking and policymaking body, is free to consider any criteria it believes relevant and appropriate in setting the City Attorney's salary, provided the criteria are not otherwise unlawful (e.g., do not take into consideration factors deemed discriminatory under state or federal law).

The issue of "inequitable alignment" raised by the City Administrator is not an unlawful criteria. Inequitable alignment, or salary compaction or compression, occurs when salaries of subordinate employees approach or even exceed the salary of their supervisors. It can occur as a result of inflation, inequities in setting starting salaries, or other reasons. Salary compaction is of particular concern with government employment where civil servants and

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unionized employees may receive mandatory cost of living raises that are not applicable to senior, exempt officials. The policy of the State of California is to consider salary compaction, and indeed, the California Legislature requires that salary compaction be considered when setting the salaries of state officers. Cal. Govt. Code § 19825.5(b) (“When setting or adjusting the annual compensation of the president of the Public Utilities Commission or [other state officers] the [Department of Personnel Administration] shall consider the size and scope of the organization, compensation paid to other similar positions in other public jurisdictions, the scope of responsibility of the position, *the need to avoid salary compaction*, and other factors appropriate to the determination of compensation necessary to recruit and retain qualified employees in leadership positions for the state.”).

Therefore, it is entirely lawful and appropriate for the Council to consider alignment between the City Attorney’s salary and the salaries of her deputies in setting the City Attorney’s salary somewhere within the 70 to 90% range of comparable city attorney salaries.<sup>1</sup>

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<sup>1</sup> As noted in the City Administrator’s report, the Council may not reduce the City Attorney’s current salary “except as part of a general reduction of salaries of all officers and employees in the same amount or proportion.” Charter § 401(1).