



Agenda Item # \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Tell and Members of the City Council

**FROM:** Robert V. Wadden Jr., City Attorney

**DATE:** December 5, 2006

**SUBJECT:** Adoption of Ordinance No. 2094 Increasing Elected Official Compensation

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**RECOMMENDATION:**

Staff recommends that the City Council adopt Ordinance No. 2094.

**FISCAL IMPLICATION:**

Adoption of the proposed ordinance and would result in a net increase in elected official compensation of three hundred dollars (\$300) per official per month. Annually this would result in an increased expenditure of seven thousand two hundred dollars (\$21,600) effective in March 2009.

**BACKGROUND:**

At the City Council Meeting of November 21, 2006 the Manhattan Beach City Council unanimously introduced Ordinance No. 2094 which proposes a salary increase of \$300 per elected official (council members and City Treasurer) to be effective in March 2009 after the municipal election. The Council rejected a recommendation by the Finance Subcommittee to reduce reimbursement for auto use by \$200 per month.

Government Code section 36516 provides that for general law cities with a population up to 35,000 council members may receive a salary of up to \$300. In addition section 36516(c) provides that council members may receive up to a 5% increase annually over the maximum permitted amount. Staff research has indicated that Manhattan Beach Council members have been receiving their current \$200 per month without any increase for at least thirty years. The City Council requested that staff review the legality of a pay raise and do a salary survey of the surrounding cities to compare council salaries. That survey was provided to the Council at the May 16, 2006 meeting. At that meeting the Council directed the City Attorney to prepare a report and submit the matter to the Finance Subcommittee for review and recommendation.

On June 15, 2006 a report was submitted to the Finance Subcommittee which indicated it was the City Attorney's opinion that salary increases could not be compounded for the time since the last Council salary increase and that only simple percentage increases could be granted for each calendar year of that time. The City Attorney also indicated that any increase approved would not become effective for each Council position until after the current term for that position had expired. Subsequent to that meeting the Attorney General issued an opinion regarding compounding which is consistent with that of the City Attorney, i.e. that compounding of authorized salary increases is impermissible under the governing statute. The matter was referred one last time to the Finance

Subcommittee on October 30, 2006.

**DISCUSSION:**

*(a.) Maximum Salary Available*

A number of cities have aggregated the annual increase authorized in section 36516(c) over all the past years in which no increase has been authorized to result in large salary increases which appear to be consistent with state law. In the case of Manhattan Beach we can verify that there has been no increase for thirty years. Since 36516(c) was added to be effective in 1973 we may apply a 5% increase for each of the thirty years which would result in a 150% increase equal to \$300 per month. Calculated alternatively 5% of the annual salary of \$2,400 would be \$120 per year. Multiplied by 30 years this equals \$300 per month (\$3,600 per year). Either way the maximum permitted salary for the Manhattan Beach City Council would be \$500 per month (i.e., the existing \$200 plus the aggregated \$300), or \$6,000 per year.

Some cities have compounded the annual salary increases (i.e., calculated a 5% increase for the first year based on current salary then based the 5% raise for the second year on the increased salary and so on for each year for which an increase would be permitted). When staff initially reported to the Council on this issue they calculated potential salary based upon compounding. However between the Council meeting at which that report was made and the ensuing Finance Subcommittee meeting the matter was referred to the City Attorney. At that point we determined that the only reasonable interpretation of Government Code section 36516 was that any increase must be based on the currently received salary and compounding could not be allowed. This interpretation has been bolstered by the Attorney General which issued Opinion No. 05-604 (89 Ops.AttyGen. 159) in August 2006. Based on the plain language of section 36516 the Attorney General opines that increases, even for multiple years, may only be made based on the current salary being received. A copy of this opinion is attached.

*(b.) Effective Date of Increases*

Government Code section 36516.5 prohibits any change in compensation from becoming effective during the term of a council member in office. This section, however, permits the compensation to be implemented on a piecemeal basis if council members have staggered terms. Thus for those council members whose present terms expire in March 2007 any increase implemented now would become effective when they, or their successors, begin their new terms. Those whose terms are up in 2009 would have to wait until their terms expire and new terms begin in that year before receiving any increase authorized now. In order to assure that all council members receive the increase at the same time the Finance Subcommittee recommended that the increases effected by the proposed ordinance (as well as the decrease in car allowance they recommended) become effective after the March 2009 election when every member of the current council or their successor will be legible to receive it.

Attachments: Ordinance No. 2094.

cc: Tim Lilligren, City Treasurer

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Geoff Dolan, City Manager  
Bruce Moe, Finance Director

ORDINANCE NO. 2094

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA ADDING A NEW SECTION 2.010.100 TO CHAPTER 2.01 OF TITLE II OF THE MANHATTAN BEACH MUNICIPAL CODE SETTING ELECTED OFFICIAL SALARIES

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

- A. Presently, although City Council members receive \$200 per month as salary there is no ordinance setting City Council salary.
- B. Government Code section 36516 provides that City Council salaries shall be set by ordinance and provides that council members in cities with populations up to 35,000 may receive up to \$300 per month.
- C. This section also provides that starting January 1, 1973 city Council members may receive up to a 5% raise each year.
- D. Manhattan Beach City Council members have not received any salary increase in at least thirty years.

SECTION 2. The City Council of the City of Manhattan Beach hereby adds a new Section 2.01.100 to Chapter 2.01 of Title II of the Manhattan Beach Municipal Code to read as follows:

**"2.01.100 Elected Official Salaries**

Each member of the City Council and the City Treasurer shall be entitled to receive a salary (not including benefits) of five hundred dollars (\$500) per month."

SECTION 3. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other Ordinance of the City, to the extent that they are inconsistent with this Ordinance, and no further, are hereby repealed.

SECTION 5. This Ordinance shall go into effect and be in full force and operation separately with regard to each sitting Council member on March 17, 2009.

SECTION 6. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate, posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 5th day of December, 2006.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Mayor, City of Manhattan Beach, California

ATTEST:

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City Clerk