

## **City Explanation on the Need to Define Allowances as Part of Salary or Separate**

### **Subject: Clarification on the Treatment of Allowances in the Compensation of the Mayor and City Council Members**

Based upon past and recent discussions surrounding the introductory ordinance, there have been notable differences of opinion among City Council members regarding whether allowances provided to the Mayor and City Council members should be considered part of their salary or treated as a separate component.

Given these differing viewpoints, **city staff is recommending that the City Council clarify this matter by setting the salary, benefits, and allowances as separate components** for the following primary reasons:

#### **1. Enhanced Transparency and Accountability:**

- Separating the salary, benefits, and allowances clearly defines each component of compensation, ensuring full transparency to the public, elected officials, and city employees. This approach allows all parties to understand exactly what constitutes the total compensation package for the Mayor and City Council members.
- By distinguishing these components, the City can enhance accountability in its compensation practices and reduce potential misunderstandings or perceptions of impropriety.

#### **2. Compliance with Legal and Procedural Requirements:**

- When salary, benefits, and allowances are set as separate components, it ensures that any adjustments or changes comply with the specific legal and procedural requirements applicable to each category.
- For example, salary increases are subject to timing restrictions (effective only at the start of a new term and adopted at least three months in advance). Separating allowances from salary allows for more flexibility in adjusting allowances without the constraints that apply to salary changes.

#### **3. Flexibility to Adjust Allowances as Needed:**

- By treating allowances as a separate component from the salary, the City Council retains the flexibility to adjust them promptly in response to changes in costs, operational needs, or policy priorities.
- This separation allows the City Council to address the evolving requirements of public office without being constrained by the procedural requirements for salary

changes, thus ensuring that officials are adequately supported in performing their duties.

#### 4. **Effective Financial Planning and Budgeting:**

- Separating the salary, benefits, and allowances allows for more accurate financial planning and budgeting. Each component can be allocated and managed as a distinct line item in the city's budget, providing a clearer picture of total compensation costs.
- This approach enables more effective resource allocation and fiscal management, ensuring that the city can adapt to financial changes while maintaining budgetary discipline.

#### 5. **Mitigating Ambiguity and Reducing Legal Risks:**

- Setting salary, benefits, and allowances separately eliminates ambiguity and potential conflicts that could arise if these components are not clearly defined. It minimizes the risk of disputes or legal challenges regarding the inclusion of allowances in the salary or the application of specific rules.
- By adopting this clear and distinct approach, the City can protect itself from potential litigation and ensure compliance with all relevant laws and policies.

#### **Conclusion:**

Due to the differing opinions within the City Council and to enhance transparency, compliance, flexibility, and financial management, **staff recommends that the City Council set the salary, benefits, and allowances for the Mayor and City Council members as separate components.**

This recommendation aims to provide clarity, ensure consistent application of policies, and maintain public trust in the city's governance practices.

To help justify this recommendation, the city reviewed the entire city code section (Sec. 2-29), it appears that there is some ambiguity around whether allowances are considered part of the compensation for the Mayor and council members. There is a potential conflict between Items (2) and (3) collectively and Item (4) in the city code:

1. **Items (2) and (3):** These sections state that the annual salary for the Mayor (\$75,000) and council members (\$50,000) includes allowances. This language indicates that the total compensation package for the Mayor and council members is a fixed amount, which includes both the salary and any allowances.

**Salary and Allowances (Items 2 and 3),** The terms used ("including allowances") mean that the amounts (\$75,000 for the Mayor and \$50,000 for council members) are the total compensation provided for salary *plus* any allowances. This indicates that there is no additional amount for allowances beyond these totals.

2. **Item (4):** This section states that "members of the governing body shall be entitled to benefits on the same basis as all other city employees." Typically, "benefits" can include health insurance, retirement contributions, paid leave, etc., which are generally considered separate from "salary" and "allowances."

**Benefits (Item 4),** The term "benefits" typically refers to non-salary compensation provided to employees, such as health insurance, retirement contributions, paid time off, etc. Item (4) specifies that the governing body members are entitled to these benefits "on the same basis as all other city employees."

The conflict arises because Items (2) and (3) suggest that the Mayor's and council members' total compensation is capped at specific amounts (including allowances), while Item (4) seems to entitle them to additional benefits beyond the stated salaries, on the same terms as other city employees. If the annual salary for the Mayor and council members already "includes allowances," it could be interpreted that these allowances are the only additional forms of compensation they receive. However, Item (4) suggests they are also eligible for benefits on par with other city employees, which could add further compensation value.

The core issue here is how "benefits" under Item (4) are defined and how they relate to the "allowances" that are considered part of the total salary in Items (2) and (3).

If "allowances" in Items (2) and (3) are understood to cover all forms of additional compensation, including benefits, then Item (4) could be seen as contradictory. However, if "benefits" in Item (4) refer to standard employee benefits (like health insurance and retirement) that are separate from "allowances," there may not be a direct conflict.

To resolve this, the city should clarify:

- Whether the "allowances" included in the annual salaries in Items (2) and (3) are the same as or distinct from the "benefits" referred to in Item (4).
- What specific benefits the governing body members are entitled to, and whether these are in addition to or included in the amounts specified in Items (2) and (3).

**Clarification Needed to Avoid Conflict:**

- The language in Items (2) and (3) could imply that the specified amounts are all-encompassing compensation (salary + allowances). However, Item (4) adds an

entitlement to "benefits," which are generally considered separate from salary and allowances.

- If the benefits mentioned in Item (4) are distinct from the "allowances" mentioned in Items (2) and (3), then there is no conflict; it merely means that the members of the governing body receive both a salary (with allowances included) and standard employee benefits.
- However, if "allowances" in Items (2) and (3) were intended to cover all types of additional compensation, including benefits, then a conflict exists because Item (4) would seem to provide an additional form of compensation not accounted for in the fixed salaries.

There is no direct conflict if:

- "Allowances" in Items (2) and (3) are understood to mean only specific cash allowances (like those for transportation, home office, etc.).
- "Benefits" in Item (4) are understood to mean standard non-cash employee benefits (like health insurance and retirement).

However, there **could** be a conflict if the terms "allowances" and "benefits" are used interchangeably or if allowances were meant to include all forms of compensation, including benefits. Clarification in the code about the distinction between "allowances" and "benefits" would help avoid ambiguity.

To avoid any unintended salary increase, it is essential to clarify whether the intention is to provide the salary as a total compensation package (including allowances) or to separate the base salary from allowances. If the goal is not to increase compensation, the current language specifying "including allowances" should be retained and further clarified.

Based on the language provided, the following points can be concluded about whether the council can amend the allowances at any time:

**1. City Council Authority Over Salaries:**

- The language clearly states that the City Council has the authority to determine the annual salary of the Mayor and City Council members "by ordinance." This implies that the council has the power to set and amend the salaries, including any components that may constitute the salary, such as allowances, through legislative action.

**2. Restrictions on Timing for Salary Increases:**

- The ordinance specifies that any increase in salary will not become effective until the beginning of the next term for the Mayor or City Council members. Furthermore, the new term must commence at least three (3) months after the ordinance is adopted.
- This restriction on timing applies only to **salary increases**, not necessarily to other modifications. If allowances are considered a component of the salary, then increasing those allowances would also be subject to the same timing restriction.

### 3. **Allowance Amendments:**

- The language does not explicitly mention allowances or whether they are considered part of the "salary." Therefore, if allowances are treated as a separate category from the salary, the City Council could potentially amend or adjust them at any time without waiting for the new term to commence. However, if allowances are deemed a part of the salary, they would be subject to the same timing constraints for increases.
- If allowances are explicitly defined or treated as separate from the "salary," the City Council can amend them at any time.
- If allowances are considered part of the "salary" as described in the ordinance, the council can only amend them (increase them) to take effect at the beginning of a new term and at least three months after the ordinance adoption.

To fully resolve the ambiguity, the city council should clarify whether "allowances" are strictly part of the "salary" or treated separately for adjustment purposes.

It would be advisable to explicitly state in the ordinance whether allowances are considered part of the salary or are treated as a separate category that the City Council may amend independently of salary adjustments.

This clarification would ensure there is no conflict or misunderstanding regarding the ability to amend allowances independently of salary adjustments.

## **SIMILAR ISSUES REGARDING ALLOWANCES IN OTHER GOVERNMENTAL ENTITIES**

The City Council should be aware of similar issues regarding whether allowances are considered part of compensation or can be amended independently of salary have arisen in various municipalities and government bodies across Texas. Here are a few examples and scenarios where these issues have been addressed:

### **1. City of Houston: Mayor and Council Member Compensation**

- In Houston, the city code establishes that the Mayor, City Controller, and City Council members receive a set salary amount that includes "compensation for services." However, the code also allows for certain allowances (e.g., car allowances) and reimbursements for actual expenses incurred in the performance of official duties.
- In 2003, the City of Houston faced questions about whether specific allowances, like car allowances, were included in the base salary and whether they could be adjusted without impacting the overall salary structure. The city determined that while the base salary required voter approval to increase, allowances for expenses could be adjusted by the City Council as needed, provided they were not explicitly listed as part of the base salary.

### **2. City of Austin: Council Member Stipends and Allowances**

- In Austin, the City Council members are compensated with a set salary, which includes various components, such as stipends for office expenses, technology allowances, and travel expenses.
- In 2019, questions arose regarding the council's ability to increase certain allowances, like those for technology and home office expenses, separately from the base salary. The city attorney clarified that the Council could amend allowances for specific purposes independently of the salary, as long as the total compensation did not exceed certain caps set by city charter or ordinance.

### **3. City of Dallas: Compensation and Allowances for Elected Officials**

- The City of Dallas sets the salaries for its Mayor and City Council members, which includes allowances for transportation and other expenses. The city code states that these amounts are part of the total compensation package but also allows for additional reimbursements for documented expenses incurred during official duties.
- A conflict arose when the council debated increasing the transportation allowance. Some members argued that the increase constituted a salary change, while others argued that allowances for expenses were not the same as salary. Ultimately, the city

decided that allowances could be adjusted by council vote without the need for a new term to commence, as long as the base salary amount remained unchanged.

#### **4. Harris County: Commissioner Court Members' Allowances**

- In Harris County, the members of the Commissioners Court receive a set salary, and additional allowances are provided for various expenses, such as transportation and communication. The allowances are typically reviewed annually as part of the county's budget process.
- In 2017, questions arose about whether the county could amend these allowances without changing the salary structure. The county attorney provided an opinion stating that allowances, while part of the compensation package, could be adjusted independently of salary, provided they did not violate any existing statutes or budgetary limits.

#### **5. Texas Local Government Code: General Provisions**

- Under the Texas Local Government Code, there are provisions governing the compensation of elected officials, including mayors and city council members. While these provisions grant the governing body of a municipality the authority to set salaries and compensation, they generally do not specify how allowances are to be treated.
- Some municipalities have used this lack of specificity to their advantage by adopting local ordinances that provide flexibility in adjusting allowances separately from base salary, provided they comply with the broader guidelines of the Texas Local Government Code.

These examples show that while allowances are often included in the total compensation for elected officials, the ability to amend them independently of salary adjustments is generally determined by local ordinances, city charters, or specific provisions set by governing bodies.

The key factors are how "allowances" are defined in relation to "salary" and whether any local or state laws impose specific requirements or restrictions on making adjustments.