



CITY COUNCIL AGENDA REPORT

MEETING DATE: February 15, 2011

ITEM NUMBER: V-6

SUBJECT: AMENDMENT TO COUNCIL POLICY 300-2 REGARDING SEVERANCE FOR EXECUTIVE PERSONNEL

DATE: FEBRUARY 11, 2011

**FROM: CITY ATTORNEY'S OFFICE
CITY MANAGER'S OFFICE**

**PRESENTATION HAROLD W. POTTER, ASSISTANT CITY ATTORNEY
BY:**

**FOR FURTHER INFORMATION CONTACT: Thomas R. Hatch, Assistant City Manager @
(714) 754-5328**

RECOMMENDATION:

Approve amended Council Policy 300-2.

DISCUSSION:

In preparing the Employment Agreement for incoming City Manager Thomas R. Hatch, the City Attorney's Office and City Manager's Office suggested that existing Council Policy 300-2 be updated. The current policy addresses severance benefits and auto allowance for the City Manager and Department Directors. Because certain provisions in the proposed Employment Agreement differ from the existing Council Policy and in light of the need to update the policy generally to address "for good cause" terminations, the policy is being brought forward at this time.

It is recommended that the severance provisions in the Council Policy be bifurcated from the auto allowance provisions as there is no connection between the two subjects. Further review is needed on the auto allowance terms and this subject will be brought back at a later date as a new Council Policy. The existing terms and conditions for the auto allowance will remain in effect until such time as a new Council Policy is adopted. It is important to note this only applies to the City Manager and Department Directors – assigned vehicles to other personnel are addressed in existing Memorandum of Understanding with represented labor organizations.

A copy of the amended Council Policy 300-2 is attached as Attachment 1 with the existing Council Policy 300-2 attached as Attachment 2. Beyond removal of the auto allowance provision, the severance language has been revised to clarify that severance shall not be granted in the event termination is "for good cause." The Policy references the provisions of the City's Personnel Rules (Rule 26, section 1) which specifically

identifies actions which would subject an employee to disciplinary action including termination of employment. Those actions are identified in Attachment 3.

ALTERNATIVES CONSIDERED:

The proposed amendments to Council Policy 300-2 strengthen and clarify the severance provisions already in existence. The City Council may opt to leave the policy as it presently exists and deal with individual circumstances on a case-by-case basis.

FISCAL REVIEW:

There is no immediate fiscal impact of the proposed change in Council Policy 300-2. Potentially, the amended policy could reduce future financial obligations on the City for employees terminated "for good cause."

LEGAL REVIEW:

The amended Council Policy was prepared and approved by the City Attorney.

CONCLUSION:

It is recommended that the amended Council Policy 300-2 be approved as submitted.


Allan L. Roeder
City Manager

Kimberly Hall Barlow
City Attorney

- Attachments:
- 1 Council Policy 300-2 – Amended
 - 2 Council Policy 300-2 – Current
 - 3 Personnel Rules (Rule 26, section 1)

**COSTA MESA, CALIFORNIA
COUNCIL POLICY**

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
SEVERANCE POLICY	300-2	11/2/82 Rev. 12/1/89 Rev. 1/19/98 Rev. 5/15/00 Rev. 6/02/03 Rev. 2/15/11	1 OF 1

The purpose of this Policy is to establish additional compensation benefits for the City Manager, Department Directors, and other executive personnel as designated.

- A. SEVERANCE - As the City Manager is an "at will" employee employed at the pleasure of the City Council, he or she shall be afforded six months of compensation at the rate in effect at the time his or her employment would be terminated based on action by the City Council, except if termination is for good cause, unless otherwise agreed in writing between the City and the City Manager. This six months' compensation shall be in addition to any accrued vacation benefits. The purpose of this Severance Policy is to provide additional compensation should employment be terminated by action of the City Council only, without good cause, and is not applicable should the City Manager voluntarily resign, retire or die while employed. The City Manager will provide the City Council with a thirty-day (30) notice should he or she voluntarily submit a resignation. Good cause shall mean serious or repeated violations of the City's Personnel Rules, Rules 26, Section 1.
- B. All Department Directors employed after March 1, 1998 are designated as "at will" and are employed at the pleasure of the City Manager. Said employees shall be afforded the same severance benefits and consideration as stated for the City Manager, except where termination is for good cause. Good cause shall mean serious or repeated violations of the City's Personnel Rules, Rules 26, Section 1.

**CITY OF COSTA MESA, CALIFORNIA
COUNCIL POLICY**

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
AUTO AND SEVERANCE POLICY	300-2	11/2/82 Rev. 12/1/89 Rev. 1/19/98 Rev. 5/15/00 Rev. 4/01/08	1 OF 1

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All Department Directors employed after March 1, 1998 are designated as "at will" and are employed at the pleasure of the City Manager. Said employees shall be afforded the same severance benefits and consideration as stated for the City Manager.

B. AUTO ALLOWANCE - The following classifications shall be provided with a City vehicle or monthly automobile allowance:

Assigned City Vehicle: Fire Chief, Deputy Fire Chief, Fire Marshal, Police Chief, Police Captain, Police Lieutenant, Public Services Director

\$450 Monthly Automobile Allowance: City Manager, Assistant City Manager, Development Services Director, Finance Director, Administrative Services Director

Use of a City pool vehicle is available for all other employees for job-related purposes.

The monthly automobile allowance may be adjusted on an annual basis per the Executive Compensation Plan. In all situations, the City Manager has the sole discretion to grant, modify or deny use of a City vehicle or grant an auto allowance for Department Directors and Division Managers.

RULE 26 - DISCIPLINARY PROCEDURES**SECTION 1. BASIS FOR DISCIPLINARY ACTION**

The tenure of every City employee shall be based on reasonable standards of personal conduct and job performance. Failure to meet such standards shall be grounds for appropriate disciplinary action, which shall be commensurate with the seriousness of the offense and with consideration of the employee's prior performance record. Disciplinary action shall be based upon any of the following grounds:

- A. Fraud in securing employment or making a materially false statement on an application for employment or on any supporting documents furnished with or made a part of any application.
- B. Incompetency such as failure to comply with the minimum standards for an employee's position for a significant period of time.
- C. Neglect of duty, such as failure to perform the duties required of an employee's position.
- D. Willful disobedience and insubordination such as a willful failure to submit to duly appointed and acting supervision or to conform to duly established orders or directions of persons in a supervisory position.
- E. Dishonesty involving employment.
- F. Being under the influence of alcohol or intoxicating drugs while on duty without a prescription.
- G. Addiction to or habitual use of alcoholic beverages, narcotics or any habit forming drug.
- H. Inexcusable absence without leave.
- I. Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
- J. Discourteous treatment of the public.
- K. Improper or unauthorized use of City property.
- L. Violation of the rules and regulations of any department.

- M.** Any act of conduct undertaken which, either during or outside of duty hours, is of such a nature that it causes discredit to fall upon the City, the employee's department or division.
- N.** Failure to maintain proper conduct during working hours causing discredit to the employee's department or division.
- O.** Abuse of sick leave.
- P.** Inattention to duty, tardiness, indolence, carelessness or negligence in the care and handling of City property.
- Q.** The employee's failure to resolve a physical or mental infirmity(s) or defect(s), when it is within the capacity of the employee to do so and when directed by his/her supervisor.
- R.** Outside employment which conflicts with the employee's position and is not specifically authorized by the department head.
- S.** Acceptance from any source of any emolument, reward, gift or other form of remuneration in addition to the employee's regular compensation, as a personal benefit to the employee for actions performed in the normal course of the employee's assigned duties.
- T.** Falsification of any City report or record, or of any report or record required to be, or, filed by the employee.
- U.** Violation of any of the provisions of the City Code, ordinances, resolutions, any rules, regulations or policies which may be prescribed by the City Council, City Manager, department manager or supervisor.
- V.** Political activities precluded by Local, State or Federal law.
- W.** Other acts which are incompatible with service to the public.