



DATE: September 18, 2023

TO: Ad Hoc Committee

FROM: City Manager
Assistant City Manager
City Attorney
City Clerk

SUBJECT: Modifications to the Council Member Handbook

RECOMMENDATION

That the Ad Hoc Committee reviews updated sections in red text of the Council Member Handbook, as follows: (1) Compensation for Members of the City Council and Benefits; 2) Council Office Budget and Expenditure Guidelines; 3) Rules, Decorum and Order; 4) Council Committees and Appointments to Alameda County Agencies and Other Regional Boards; 5) Responsibility of Council Liaison; and 6) Committees, Commissions and Task Forces (City Council's Appointed Officials Handbook – Term of Office & Attendance and Vacancies); and provides any additional comments and feedback.

SUMMARY AND DISCUSSION

The Ad Hoc Committee met on August 21, 2023, to review the following sections of the Council Member Handbook: 1) Compensation for Members of the City Council and Benefits; 2) Council Office Budget and Expenditure Guidelines; 3) Rules, Decorum and Order; 4) Council Committees and Appointments to Alameda County Agencies and Other Regional Boards; 5) Responsibility of Council Liaison; and 6) Committees, Commissions and Task Forces (City Council's Appointed Officials Handbook – Term of Office & Attendance and Vacancies). The Committee provided guidance to staff regarding desired changes and this report captures that feedback.

1) COMPENSATION FOR MEMBERS OF THE CITY COUNCIL AND BENEFITS

City staff conducted a review of these sections and do not recommend any changes to the language therein. Attachment II contains compensation options drafted by Human Resources to bring pay for the Mayor and Council into closer alignment with the intent of the ordinance governing Council compensation.

Handbook excerpt (pages 5-6):

COMPENSATION FOR MEMBERS OF THE CITY COUNCIL

⁴Any compensation to be paid to members of the Council shall be established by ordinance and shall apply to all incumbent members of the Council. The Council may likewise change such compensation; however, such change shall not be effective until one or more members of Council becomes eligible for such change in compensation by virtue of beginning a new term of office.

In addition, each member of the Council shall receive reimbursement on order of the Council for Council authorized traveling and other expenses when on official duty. [Sec. 603. City Charter] Ordinance 01-12 will be updated in 2019.

Compensation for Members of the City Council:

- (a) Each Council Member shall receive compensation for services rendered in an official capacity.
- (b) From and after the fiscal year beginning July 1, 2003, and for each fiscal year thereafter, the compensation for the Mayor and each Council Member may be increased by an amount equivalent to the percent increase in the "Consumer Price Index San Francisco-Oakland Metropolitan Area - All Items," published by the Bureau of Labor Statistics, United States Department of Labor, for the twelve-month period ending June of each fiscal year. However, in no event shall any such increase be greater than 5%.
- (c) In addition, the Mayor and members of Council shall receive reimbursement for Council authorized travel and expenses while on official City duty.
- (d) Each Council Member and the Mayor may make voluntary contribution to deferred compensation benefits under the City of Hayward's Deferred Compensation Plan for employees. The rate of compensation received under this plan by the Mayor and each Council Member shall be the same as that received by Unrepresented Management employees, as amended from time to time.

[\[Section 2-1.10, Hayward Municipal Code\]](#)

2) COUNCIL OFFICE BUDGET AND EXPENDITURE GUIDELINES

The Council Ad Hoc Committee further reviewed the section and provided input as noted below in yellow and red highlights.

Handbook excerpt (page 13):

COUNCIL OFFICE BUDGET AND EXPENDITURE GUIDELINES

The City Council adopts an annual City budget for all services. The Council holds budget work sessions in May and June, which are open to the public. The draft budget is also scheduled for a public hearing in June at a City Council meeting and adopted at the following City Council meeting.

As part of the annual budget adoption, the City Council may appropriate budgets for each Councilmember and the Mayor to utilize in the execution of the duties of their respective offices.

The use of these funds must always be in compliance with the City's purchasing policies, the Employee Expense Reimbursement Policy, and other applicable City policies and procedures. In addition, the Council has established the following additional policies to govern the use of these funds:

- 1) Councilmembers and the Mayor can be reimbursed for actual and necessary expenses incurred in the performance of official duties, subject to budget, applicable laws, ethical standards, and procedures established by Council. The Mayor is allocated a total of \$5,000 to cover educational and discretionary expenses and each Councilmember is allocated a total of \$2,500 for the same. An expense will not be reimbursable if it supports a political activity or if it is paid for or reimbursed by another entity or person.
- 2) Expenses may be incurred for the following activities:
 - a) Attending educational seminars or seminars designed to improve elected officials' skill and/or information level;
 - b) Purchase of books or educational materials that will be returned to the City at the end of the term of office;
 - c) Participating in regional, state, and national organizations whose activities affect the City's interests or where the Council member serves as the appointed voting delegate (or alternate) or where the Council member serves on a committee or is asked to share the City's expertise;
 - d) Attending City-sponsored events or functions where payment shall be made for the Councilmember only to participate;
 - e) Communicating with representatives of regional, state, and national government on City-adopted policy positions when such trips have been preapproved and authorized by the whole Council;
 - f) Sponsorship of community events; and

- g) Other expenses approved by the City ~~Manager and Mayor Council~~ in advance of their incurrence.

ADD TEXT- Suggestion. Should the City Manager and Mayor disagree on approving certain expenses, members of the City Council could bring forward a Council Referral Memorandum to be considered by the entire Council.

- 3) Reimbursable expenses may include (and in compliance with the City's Employee Expense Reimbursement Policy): registration fees; transportation; lodging; meals (excluding alcohol); and long-distance phone calls/internet connectivity (used for City business).

Administrative Rule 2.51 - Employee Expense Reimbursement Policy

3) RULES, DECORUM AND ORDER

The Council Ad Hoc Committee suggested that staff include Code of Conduct language related to issues on social media and other matters.

Handbook excerpt (page 32-33):

RULES, DECORUM, AND ORDER

The purpose of the meeting is the business of the city of Hayward.

POINTS OF ORDER

The Presiding Officer shall determine all Points of Order subject to the right of any member to appeal to the Council. If any appeal is taken, the question shall be, "Shall the decision of the Presiding Officer be sustained?" in which event a majority vote shall sustain or reverse the Presiding Officer's determination.

DECORUM AND ORDER – COUNCIL MEMBERS

(a) Any Council Member desiring to speak shall address the Chair and, upon recognition by the Mayor, shall confine himself/herself to the question under debate.

(b) A Council Member desiring to question a staff member shall address questions to the City Manager, City Attorney, or the City Clerk in appropriate cases, who shall be entitled to answer the inquiry himself/herself or to designate some member of the staff for that purpose.

(c) A Council Member, once recognized, shall not be interrupted while speaking unless called to order by the Mayor; unless a Point of Order is raised by another Council Member; or unless the speaker chooses to yield to questions from another Council Member.

(d) Any Council Member challenged while speaking, shall cease speaking immediately until the question of order is determined. If ruled to be in order, the Council Member shall be permitted to proceed. If ruled to be not in order, the Council Member shall remain silent or shall alter remarks so as to comply with rules of the Council.

(e) Council Members shall accord the utmost courtesy to each other, to City employees and to the public appearing before the Council and shall refrain at all times from rude and derogatory remarks, reflections as to integrity, abusive comments, and statements as to motives and personalities.

(f) Any Council Member may move to require the Mayor to enforce the rules and the affirmative vote of a majority of the Council shall require him/her to so act.

(g) [Section 611 of the City Charter](#) provides that the City Council may determine its own rules of procedure, may punish its members for disorderly conduct, and compel their attendance at Council meetings. In addition to the sanctions identified herein, the failure of the Mayor or a Council Member to observe these rules of decorum may warrant the Member's removal from the Council Chambers in accordance with the procedures described in the section entitled "Enforcement of Decorum."

Sanctions and Procedures for Violations of Rules of Decorum and Order

(h) Council Members who fail to observe these rules of Decorum and Order, or violate any state or federal law, the City Charter, or any City ordinance or policy, may be reprimanded or formally censured, lose seniority or committee assignments (both within the City of Hayward or with inter-government agencies), have official travel restricted or be ordered to attend Council meetings, if the Council Member is absent without justification. Serious infractions of these rules of Decorum and Order could lead to other sanctions as deemed appropriate by the Council, including, but not limited to, referral to the Alameda District Attorney and/or Civil Grand Jury if the conduct is egregious or allegedly criminal in nature. Council Members should point out to the offending Council Member any perceived infraction of these rules of Decorum and Order as it occurs. No Council Member shall be reprimanded, sanctioned, or censured for the exercise of the Member's First Amendment rights. However, nothing herein shall be construed to prohibit the City Council from individually or collectively condemning or expressing disapproval of behavior in violation of these rules.

(i) It is the responsibility of the Mayor to initiate formal action if a Council Member's behavior may warrant reprimand, sanction, or censure. If no action is taken by the Mayor, action on the alleged violation may be placed on a future agenda for consideration by a majority of the full Council.

(j) Reprimand is the least severe form of action for a violation of these rules and may be issued by majority vote of the City Council without findings of fact or investigation. Reprimand is not considered a sanction or censure.

(k) Formal censure, loss of seniority or committee assignments and travel restrictions may be requested by any Council Member in writing submitted to the Mayor. The written request must set forth specific allegations of violations of state or federal law, the City Charter, or City ordinances or policies, including these rules of Decorum and Order, upon which the proposed sanction is based. If the Mayor determines that the request for censure or sanction warrants Council consideration, the request shall be scheduled for consideration by the Council at the next regularly scheduled Council meeting. If a majority of the Council wishes to take action on the request for sanction or censure, the request shall be scheduled for public hearing far enough in advance to give the affected Council Member adequate time to prepare a response to the request. The Council Member shall be given the opportunity to make opening and closing

statements; to present or question witnesses; and is entitled to be represented by an advisor or counsel of the Member's choosing. The Mayor, or the Mayor Pro Tempore if the Mayor is the subject of the sanction request, shall preside over the proceedings. The rules of evidence shall not apply. The City Attorney or designee shall provide legal advice to the Council, as needed. A decision to censure or impose other sanction requires the adoption of a resolution containing findings with respect to the specific charges, based on substantial evidence, by a two-thirds vote of the Council. **A Member's criticism of another Member (or Members) at a Council meeting or other public meeting, or criticism in a publication or via a social media platform, is protected speech and cannot be punished as described above.**

(l) The Mayor and Council are reminded that social media platforms should not be used to announce in advance of a noticed meeting how a Member intends to vote on a particular matter, as announcing how a Member intends to vote raises issues of due process and fairness. A Member's social media platforms can otherwise be used to encourage members of the public to attend such upcoming meetings. The Brown Act does not prohibit Members from communicating with the public via social media platforms regarding city issues/business, however the Brown Act does prohibit members from directly responding to any social media posts by other members regarding city issues/business.

4) COUNCIL COMMITTEES AND APPOINTMENTS TO ALAMEDA COUNTY AGENCIES AND OTHER REGIONAL BOARDS

The Council Ad Hoc Committee reviewed the section and provided input as noted below in red text.

Handbook excerpt (page 50):

COUNCIL COMMITTEES AND APPOINTMENTS TO ALAMEDA COUNTY AGENCIES AND OTHER REGIONAL BOARDS

The Council may organize among its members such standing committees as it may determine, each of which shall act as a fact-finding committee for the purpose of considering all available information on proposed legislation or matters of policy referred to such committee by Council and making recommendations thereon to the Council as a whole. [\(Sec. 600a, City Charter\)](#)

Each Council Member shall be assigned by the Mayor to various standing committees, including Alameda County agencies and other regional boards. Participation and attendance at those committee meetings is important. Continued absences from meetings without good cause may result in removal from a committee at the discretion of the Mayor, taking into consideration advice from other committee members. Attendance will be reported annually to the Mayor and Council for Mayor's appointees.

Additionally, each Council Member shall be assigned by the Mayor as Liaison to various boards, committees and commissions, and other public agencies or quasi-public agencies.

It shall be the prerogative of the Mayor, taking into consideration relative length of Council service, individual Council Member preference and equivalency, to assign individual Council Members to these various committees. Normally appointments are for a two-year period but

may be renewed at the Mayor's discretion where Council Members have particular experience or expertise with respect to the business of a particular committee.

Upon the Mayor's selection, the City Council will consider ratification of the Mayor's Council Appointments List via a Consent item. If terms coincide with the Mayor's appointments, the item will also include resolutions appointing members to the Alameda County Abatement District Board of Trustees and the Bay Area Water Supply and Conservation Agency and the San Francisco Bay Area Regional Water System Financing Authority Boards of Directors.

5) **RESPONSIBILITY OF COUNCIL LIAISON**

The Council Ad Hoc Committee reviewed the section and suggested that language be added as noted below in red text.

Handbook excerpt (page 52):
COUNCIL LIAISON

The Mayor shall designate a member of Council to be a liaison to each city board and commission. The method and length of appointment shall be as provided above in the section on Council Committees.

RESPONSIBILITY OF COUNCIL LIAISON

It shall be the responsibility of a Council liaison to attend as many board or commission meetings as possible in order to be currently aware of issues being dealt with, to listen and observe, and to bring back to the Council any needs, requests, or information from a board or commission. **A Council Liaison could share information during the Council Reports and Announcements section of the Council agenda or could ask the City Clerk to forward notes/minutes of meetings attended to the entire Council.** A Council Liaison shall not take part in the deliberations of the commission. The Council liaison also plays an important role informing and advising the Council's appointed bodies.

6. **COMMITTEES, COMMISSIONS AND TASK FORCES (CITY COUNCIL'S APPOINTED OFFICIALS HANDBOOK- TERM OF OFFICE & ATTENDANCE AND VACANCIES)**

The Council Ad Hoc Committee reviewed the section and suggested that City staff provide language for review. City staff conducted a review of these sections and provides recommendations as noted below in red underlined and strike through text.

Handbook excerpt (page 10):
Term of Office:

All members are appointed by the City Council, and they could be subject to removal by a motion of at least four affirmative votes of the Council. The Council's appointed officials shall serve for no more than two and one-half consecutive full terms of four years on any one commission. ([Resolution 73-235](#))

Section 902 of the Charter of the City of Hayward does not apply to the term of office for members of the Keep Hayward Clean and Green Task Force because the Task Force is not a board, commission, or committee as contemplated by the Charter. Its purpose is focused on improving the quality of life in the many diverse neighborhoods in the City through Saturday and other clean-up activities. The Task Force is not delegated with legal or jurisdictional responsibilities as are other boards, commissions, or committees created by the Council.

The term of office for the City's appointed officials shall terminate when successors are appointed.

Members who have successfully completed one term on one of the Council's appointed bodies may be eligible to be re-appointed to a second term. **According to Resolution 87-323, the City Council will remove or not reappoint any commission or task force member who has failed to attend at least seventy-five percent of all regular meetings held during the period September to June. Special meetings held in lieu of regular meetings will be taken into account when preparing the attendance record. Members eligible for reappointment and who have failed to meet the required performance criteria will be encouraged to submit an application to be considered at the same time applications for new candidates are received. ~~The Council would only interview candidates seeking re-appointment who have failed to meet the required performance criteria.~~** The performance criteria consist of the following: attending no less than seventy-five percent of all regular meetings held; complying with training and statutory requirements; being an active and focused participant; and being prepared for meetings, e.g., reviewing the materials in the agenda packet. The Council /Staff Liaison, in concert with the Chair, will provide performance data to the City Clerk, who in turn will forward it to the Council as part of the re-appointment process at the same time applications for new candidates are received. ~~Current members, identified as necessitating an interview, would be invited to interview with the City Council at a special meeting preceding the interviews for prospective members.~~

Current commission members who have served a minimum of two full consecutive terms on the same body will be eligible to request consideration of appointment to a different body. Their request will be considered by City Council during the annual interviews.

Handbook excerpt (page 11-12):
Attendance and Vacancies

If a member of a commission absents themselves from three consecutive regular meetings of such commission, unless by permission of such commission expressed in its official minutes, or is convicted of a crime involving moral turpitude, or ceases to be a qualified resident of the City, their office shall become vacant and shall be so declared by the Council. ([City Charter Section 905](#))

Members shall be required to attend no less than seventy-five percent of all regular meetings held. If a member misses two consecutive meetings, the staff liaison designated to the Council's appointed body will notify the City Clerk of said absences. The City Clerk will notify the member in writing that failure by a member to attend three consecutive regular meetings of a commission will be cause for Council to declare the member's position vacant. After three consecutive absences or in the event attendance at seventy-five percent of

meetings is not maintained, the City Clerk will notify the Council. Attendance records will be reviewed by the City Clerk and will issue notices to members with attendance issues. The City Clerk will present an attendance record to the Council during the annual interview process for the Council's appointed bodies.

The Keep Hayward Clean and Green Task Force considers its "Monthly Clean-Up Events" as an invaluable function and therefore equally important of its attendance policy; therefore, the attendance policy in [City Resolution 87-323 C.S.](#) related to regular meetings will be extended to the monthly clean-up events.

A member wishing to resign shall submit a letter of resignation to the City Clerk. Once the letter is submitted, the City Clerk will prepare a recommendation for Council to accept the resignation.

Any vacancies in any commission shall be filled by appointment by the Council during the annual appointment process for the City's Appointed Officials.

As the City Council finds more qualified candidates than available seats to appoint every year, the Council ~~will established~~ an alternate list ~~when selecting new members.~~ ~~in 2020~~. The alternate list ~~is will be~~ valid for one year and expires at the beginning of the new recruitment process. The process for appointing from the alternate list ~~will involves~~ two separate Council actions: adoption of a resolution accepting the resignation of a member; and adoption of a resolution recommending an alternate from the alternate list to fulfill the vacated position for the remainder of the unexpired term. The City Clerk ~~will would~~ ensure the alternate continues to be interested in serving and ~~will would~~ confirm the alternate's eligibility status prior to recommending an alternate.

Government [Code Section 54974](#) provides that whenever an unscheduled vacancy occurs, a special vacancy notice shall be posted in the office of the City Clerk, and as may be directed by the City Council, the City Clerk will conduct a special recruitment for the purpose of filling the unexpected vacancy.

The City Clerk shall, pursuant to Government [Code Section 54972](#), prepare an appointments list of all regular and ongoing commissions which are appointed by the City Council, which shall contain the information required in said section. All efforts will be made to provide public information relative to vacancies prior to such appointments.

The Brown Act provides that all meetings of a legislative body (commission/task force) of a local agency be open and public, and all public members be permitted to attend and participate, see Government Code section 54953(a). The Act requires posting an agenda, at least 72 hours before a regular meeting, containing a brief description of each item of business to be transacted or discussed at the meeting, and prohibits any action or discussion from being undertaken on any item not appearing on the agenda, see Government Code section 54954.2. Government Code section 54953(b) allows for meetings to occur via teleconference as follows:

- 1) all teleconference locations must be identified in the notice and agenda of the meeting;
- 2) each teleconference location must be accessible to the public;

- 3) members of the public must be allowed to address the legislative body at each teleconference location;
- 4) the agenda must be posted at each teleconference location; and
- 5) at least a quorum of the legislative body must be present within the boundaries of the local agency.

Pursuant to AB 361, until January 1, 2024 the Brown Act allows legislative bodies to meet by teleconference without following the requirements of Government Code section 54953(b) as follows:

- 1) The meeting occurs during a state of emergency declared by the governor;
- 2) The posted agenda for the meeting must include the means by which the public can participate via a call-in option or internet-based option;
- 3) If the public's ability to view/participate remotely is interrupted, the legislative body can take no action on items until the public's remote access is restored;
- 4) The legislative body adopts a resolution every 30 days confirming the continued existence of the state of emergency and the need to continue appearing via teleconference.

Pursuant to AB 2449, until January 1, 2026 the Brown Act allows legislative bodies to meet by teleconference without following the requirements of Government Code section 54953(b) as follows:

- 1) At least a quorum of the body participates in person at a single physical location that is identified on the agenda, open to the public, and within the boundaries of the agency.
- 2). The public shall be provided notice of the means to remotely observe the meeting and address the legislative body.
- 3) A member of the legislative body may participate remotely only in one of two circumstances:
 - A. With "just cause", the member can participate remotely after giving notice as soon as possible. AB 2449 defines "just cause" as (a) a family childcare or caregiving need; (b) a contagious illness; (c) a need related to a physical or mental disability that is not otherwise accommodated; or (d) travel while on official business. AB 2449 limits a member to participating remotely under this provision to two (2) meetings per calendar year.
 - B. In "emergency circumstances," defined as a physical or family emergency that prevents the member from attending in person, the member can participate remotely by requesting approval to do so from the legislative body. The legislative body may take action on the request as soon as possible, including at the beginning of the meeting, even if there was not sufficient time to place the request formally on the agenda.
 - C. Under either circumstance, the member in question must give a general description of the circumstances relating to their need to appear remotely, but need not disclose any medical diagnosis, disability, or other confidential medical information.

D. The member must disclose if anyone 18 years or older is present in the room with them during the meeting and describe the general nature of their relationship to that person.

E..a member cannot participate solely by teleconference under the new teleconference framework for more than three (3) consecutive months or more than twenty (20) percent of the agency’s regular meetings (or more than two meetings if the agency meets fewer than ten (10) times per year).

Also until January 1, 2026, the Brown Act requires the legislative body to have a procedure for receiving and resolving requests for accommodation pursuant to the Americans with Disabilities Act, and to resolve any doubts in favor of accessibility.

Outside of the limited circumstances authorized by AB 361 and AB 2449, public meetings can still occur via teleconference if the legislative body complies with the general (pre-pandemic) agenda, notice, and quorum requirements of the Brown Act contained in Government Code section 54953(b).

The City Council has expressed a strong preference for commissioners and task force members to attend meetings in person.

NEXT STEPS

Should the Ad Hoc Committee concur with the proposed amendments to the handbook, City staff will bring the amendments to the next Council meeting for review by the entire Council.

Prepared and Recommended by: Regina Youngblood, Assistant City Manager
Miriam Lens, City Clerk
Michael Lawson, City Attorney

Approved by:



Kelly McAdoo, City Manager