



AGENDA REPORT

Meeting Date: August 16, 2016

Item Number: D-10

To: Honorable Mayor & City Council

From: Laurence S. Wiener, City Attorney

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE REGARDING THE PERSONNEL PROCEDURES FOR HIRING AND RETENTION OF ASSISTANT CITY MANAGERS, DEPUTY CITY MANAGERS AND DEPARTMENT HEADS; AND

A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS AMENDING THE CITY OF BEVERLY HILLS EXECUTIVE COMPENSATION PLAN, AND THE CITY COUNCIL POLICY AND OPERATIONS MANUAL TO IMPLEMENT THE ORDINANCE REGARDING THE PERSONNEL PROCEDURES FOR HIRING AND RETENTION OF ASSISTANT CITY MANAGERS, DEPUTY CITY MANAGERS AND DEPARTMENT HEADS

Attachments:

1. Ordinance
2. Legislative Digest
3. Resolution
4. Legislative Digest

RECOMMENDATION

The City Attorney's Office recommends that the City Council introduce the ordinance entitled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE REGARDING THE PERSONNEL PROCEDURES FOR HIRING AND RETENTION OF ASSISTANT CITY MANAGERS, DEPUTY CITY MANAGERS AND DEPARTMENT HEADS", and adopt the resolution entitled "A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS AMENDING THE CITY OF BEVERLY HILLS EXECUTIVE COMPENSATION PLAN, AND THE CITY COUNCIL POLICY AND OPERATIONS MANUAL TO IMPLEMENT THE ORDINANCE REGARDING THE PERSONNEL PROCEDURES FOR HIRING AND RETENTION OF ASSISTANT CITY MANAGERS, DEPUTY CITY MANAGERS AND DEPARTMENT HEADS."

INTRODUCTION

The attached ordinance provides a role for the City Council in the hiring and dismissal of Assistant City Managers, Deputy City Managers and Department Heads. The attached resolution amends the City Council's policy manual and the executive compensation plan to implement the Council's new authority.

DISCUSSION

Pursuant to the City Council's discussion at a previous Council meeting, the Council appointed Vice-Mayor Krasne and Council Member Bosse as an ad hoc committee to work on an ordinance that gave the City Council authority to hire and dismiss Assistant City Managers, Deputy City Managers, and Department Heads. The subcommittee met with the City Attorney and developed the attached ordinance and resolution.

The attached ordinance allows the City Council to participate in the hiring and dismissal of Assistant City Managers, Deputy City Managers and Department Heads. With regard to hiring, the ordinance requires the City Manager to submit to the City Council the name of any candidate that the City Manager wishes to hire. If the City Council authorizes the hiring, the City Manager will do the background check and negotiate the final offer. If the City Council does not authorize the hiring, the City Manager must submit an alternative candidate to the City Council.

With regard to evaluation, any City Council member can place the evaluation of an Assistant City Manager, Deputy City Manager or Department Head on the closed session agenda.

With regard to a dismissal, upon the direction of three council members, the City Manager shall place on the closed session agenda the potential dismissal or release of the Assistant City Manager, Deputy City Manager or Department Head. The Council then has the option of dismissing or releasing those employees.

In addition, the resolution contains amendments to two documents to bring them into accord with the ordinance. First, the resolution amends the City's policies and procedures manual to detail the hiring process. Most significantly, the resolution provides that all council members shall be involved in the interview process to narrow the range of candidates.

Secondly, the resolution amends the executive compensation plan to allow the City Council, as opposed to a city manager, to make certain notice or severance decisions in connection with a dismissal without cause.

FISCAL IMPACT

The ordinance and resolution will have no material fiscal impact.



Laurence S. Wiener, City Attorney

Attachment 1

ORDINANCE NO. 16-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE
REGARDING THE PERSONNEL PROCEDURES FOR HIRING
AND RETENTION OF ASSISTANT CITY MANAGERS,
DEPUTY CITY MANAGERS AND DEPARTMENT HEADS

THE COUNCIL OF THE CITY OF BEVERLY HILLS DOES HEREBY ORDAIN AS
FOLLOWS:

Section 1. The City Council hereby amends Article 2 (“Personnel Procedures”) of Chapter 5 (“Civil Service, Personnel Procedures, and Employee Regulations”) of Title 2 (“Administration, Personnel, and Procedures”) of the Beverly Hills Municipal Code to add Section 2-5-206.5 to read as follows:

2-5-206.5: APPOINTMENT PROCESS FOR ASSISTANT CITY MANAGERS, DEPUTY CITY MANAGERS AND DEPARTMENT HEADS,

Appointment of all assistant city managers, deputy city managers and department heads requires the advice and consent of the city council.

The city council shall provide its advice and consent by considering the city manager’s recommendation of a candidate to the city council and voting to authorize or disapprove the city manager moving forward with the hiring process.

Following city council authorization, no further approval from the city council shall be required for that candidate. However, the city manager may conduct background checks and any other reviews or verifications, as appropriate. In the event that the city manager does not end up hiring that candidate, the city manager shall seek the city council’s advice and consent before hiring a different candidate.

The City Council may provide more detail concerning this process in the City Council Policy and Operations Manual.

Section 2. The City Council hereby amends and restates Section 2-5-208 of Article 2 (Personnel Procedures) of Chapter 5 (Civil Service, Personnel Procedures, and Employee Regulations) of the Beverly Hills Municipal Code to read as follows:

2-5-208: DISCIPLINARY ACTION:

A. The appointing authority shall have the right to discipline any employee under their jurisdiction, subject to the employee's right of appeal. All employees holding positions in the classified service shall be subject to suspension without pay, demotion, reduction in compensation, reprimand, or dismissal from office or employment for misconduct, incompetency, inefficiency, insubordination, failure to perform duties, falsifying an oath, failure to comply with the personnel rules and regulations adopted by council, or failure to observe the rules and regulations of their department. A reduction in pay shall not be deemed a demotion

within the meaning of this section if the reduction is part of a general program to reduce all salaries and wages as an economy program of the city.

B. The city council shall have the right to evaluate and dismiss or release any assistant city manager, deputy city manager, or department head positions for which advice and consent is required under Section 2-2-204(B).

1. Evaluation: At the request of a council member, the city manager shall place on the agenda for a closed session the evaluation of the staff member.

2. Dismissal or Release: At the request of three or more council members, the city manager shall place on the agenda for a closed session the proposed dismissal or release of the staff member.

Nothing in this subsection in any way limits the right of the city manager to discipline, dismiss or release any employee.

Section 3. The City Council hereby amends and restates Section 2-5-204 (“Appointing Authority”) of Article 2 (“Personnel Procedures”) of Chapter 5 (“Civil Service, Personnel Procedures, and Employee Regulations”) of Title 2 (“Administration, Personnel, and Procedures”) of the Beverly Hills Municipal Code to read as follows:

2-2-204: APPOINTING AUTHORITY:

A. The city council shall be the appointing authority for the positions of city manager, city attorney, and city clerk.

B. The city manager, subject to the advice and consent of the city council, shall be the appointing authority for all department heads except those designated in subsection A of this section, and for all assistant and deputy city managers.

C. The city manager shall be the appointing authority for all positions authorized in the city manager's office, except those designated in subsection B of this section.

D. For all positions below the department head level, and which are not included in subsection B of this section, the respective department head, subject to approval by the city manager, shall be the appointing authority.

Section 4. The City Council hereby amends and restates Section 2-3-102 of Article 1 (“Office of the City Manager”) of Chapter 3 (“Departments and Offices”) of Title 2 (“Administration, Personnel, and Procedures”) of the Beverly Hills Municipal Code to read as follows:

2-3-102: COMMUNICATIONS WITH ADMINISTRATION:

A. Except for the purposes of inquiry, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the council nor its members shall give orders to any such officer or

employee, either publicly or privately. The provisions of this subsection shall apply with respect to any intended action of the council relating to the imposition of any disciplinary action concerning a department head not included within the classified service. However, the provisions of this subsection shall not apply with respect to any action of the City Council under Section 2-5-208(B) to dismiss or release a department head, deputy city manager, or assistant city manager.

B. All officers and employees subject to the direction and supervision of the city manager shall deal with the council solely through the city manager. Except for purposes of inquiry, they shall not initiate communications to the council except through the city manager.

Section 5. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 6. Publication.

The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Adopted:
Effective:

JOHN A. MIRISCH
Mayor of the City of Beverly Hills,
California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager

Attachment 2

LEGISLATIVE DIGEST

ORDINANCE NO. 16-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE
REGARDING THE PERSONNEL PROCEDURES FOR HIRING
AND RETENTION OF ASSISTANT CITY MANAGERS,
DEPUTY CITY MANAGERS AND DEPARTMENT HEADS

THE COUNCIL OF THE CITY OF BEVERLY HILLS DOES HEREBY ORDAIN AS
FOLLOWS:

Section 1. The City Council hereby amends Article 2 (“Personnel Procedures”) of Chapter 5 (“Civil Service, Personnel Procedures, and Employee Regulations”) of Title 2 (“Administration, Personnel, and Procedures”) of the Beverly Hills Municipal Code to add Section 2-5-206.5 to read as follows:

2-5-206.5: APPOINTMENT PROCESS FOR ASSISTANT CITY MANAGERS, DEPUTY CITY MANAGERS AND DEPARTMENT HEADS,

Appointment of all assistant city managers, deputy city managers and department heads requires the advice and consent of the city council.

The city council shall provide its advice and consent by considering the city manager’s recommendation of a candidate to the city council and voting to authorize or disapprove the city manager moving forward with the hiring process.

Following city council authorization, no further approval from the city council shall be required for that candidate. However, the city manager may conduct background checks and any other reviews or verifications, as appropriate. In the event that the city manager does not end up hiring that candidate, the city manager shall seek the city council’s advice and consent before hiring a different candidate.

The City Council may provide more detail concerning this process in the City Council Policy and Operations Manual.

Section 2. The City Council hereby amends and restates Section 2-5-208 of Article 2 (Personnel Procedures) of Chapter 5 (Civil Service, Personnel Procedures, and Employee Regulations) of the Beverly Hills Municipal Code to read as follows:

2-5-208: DISCIPLINARY ACTION:

A. The appointing authority shall have the right to discipline any employee under their jurisdiction, subject to the employee's right of appeal. All employees holding positions in the classified service shall be subject to suspension without pay, demotion, reduction in compensation, reprimand, or dismissal from office or employment for misconduct, incompetency, inefficiency, insubordination, failure to perform duties, falsifying an oath, failure

to comply with the personnel rules and regulations adopted by council, or failure to observe the rules and regulations of their department. A reduction in pay shall not be deemed a demotion within the meaning of this section if the reduction is part of a general program to reduce all salaries and wages as an economy program of the city.

B. The city council shall have the right to evaluate and dismiss or release any assistant city manager, deputy city manager, or department head positions for which advice and consent is required under Section 2-2-204(B).

1. Evaluation: At the request of a council member, the city manager shall place on the agenda for a closed session the evaluation of the staff member.

2. Dismissal or Release: At the request of three or more council members, the city manager shall place on the agenda for a closed session the proposed dismissal or release of the staff member.

Nothing in this subsection in any way limits the right of the city manager to discipline, dismiss or release any employee.

Section 3. The City Council hereby amends and restates Section 2-5-204 (“Appointing Authority”) of Article 2 (“Personnel Procedures”) of Chapter 5 (“Civil Service, Personnel Procedures, and Employee Regulations”) of Title 2 (“Administration, Personnel, and Procedures”) of the Beverly Hills Municipal Code to read as follows:

2-2-204: APPOINTING AUTHORITY:

A. ~~Council~~The city council shall be the appointing authority for the positions of city manager, city attorney, and city clerk.

B. The city manager, subject to the advice and consent of the city council, shall be the appointing authority for all department heads except those designated in subsection A of this section, and for all assistant and deputy city managers.

C. The city manager shall be the appointing authority for all positions authorized in the city manager's office, except those designated in subsection B of this section.

~~C-D.~~ For all positions below the department head level, and which are not included in subsection B of this section, the respective department head, subject to approval by the city manager, shall be the appointing authority.

Section 4. The City Council hereby amends and restates Section 2-3-102 of Article 1 (“Office of the City Manager”) of Chapter 3 (“Departments and Offices”) of Title 2 (“Administration, Personnel, and Procedures”) of the Beverly Hills Municipal Code to read as follows:

2-3-102: ~~INTERFERENCE~~COMMUNICATIONS WITH ADMINISTRATION:

A. Except for the purposes of inquiry, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the city manager solely through the city manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately. The provisions of this subsection shall apply with respect to any intended action of the council relating to the imposition of any disciplinary action concerning a department head not included within the classified service. However, the provisions of this subsection shall not apply with respect to any action of the City Council under Section 2-5-208(B) to dismiss or release a department head, deputy city manager, or assistant city manager.

B. All officers and employees subject to the direction and supervision of the city manager shall deal with the council solely through the city manager. ~~They~~Except for purposes of inquiry, they shall not initiate communications to the council except through the city manager.

Attachment 3

RESOLUTION NO. 16-R-_____

A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS AMENDING THE CITY OF BEVERLY HILLS EXECUTIVE COMPENSATION PLAN, AND CITY COUNCIL POLICY AND OPERATIONS MANUAL TO IMPLEMENT THE ORDINANCE REGARDING THE PERSONNEL PROCEDURES FOR HIRING AND RETENTION OF ASSISTANT CITY MANAGERS, DEPUTY CITY MANAGERS, AND DEPARTMENT HEADS

THE COUNCIL OF THE CITY OF BEVERLY HILLS RESOLVES AS FOLLOWS:

Section 1. The City Council hereby amends Chapter 6 (City Organization) of the City Council Policy and Operations Manual to add a new subpart entitled "Appointment to Certain Executive Positions" to read as follows:

"Appointment Process for Certain Executive Positions

The city manager is the appointing authority, subject to the city council's advice and consent, for assistant city managers, deputy city managers, and department heads. For recruitments, the city council provides its advice and consent according to the process set forth below.

First, the city recruiter compiles a list of qualified candidates and then organizes three groups to interview the candidates and provide feedback to the recruiter as follows:

- Each group shall be comprised of community members, city staff, and city council members, but no group may have more than two council members.
- The city manager, in conjunction with the city council, shall set a date when the candidates will interview with the three groups. On that date, each group will convene separately and interview with each candidate. Following the final interview, each group will discuss and rank the candidates based on the general consensus of that group.
- The three groups shall meet with the recruiter and provide feedback on, and a ranking of, the candidates. No more than two council members shall be present in the same room, at the same time.

After the recruiter has met with all three groups, the recruiter shall inform the city manager of the top candidates based on the collective feedback and rankings. The city manager then interviews, and selects, at his or her sole discretion, one candidate to present to the city council for appointment.

After the city manager has selected a candidate, the city council shall vote to approve or disapprove the selection as follows:

- The city council shall hold a meeting in closed session regarding the hiring of the position. The position, but not the name, of the candidate shall be placed on the agenda.

- In closed session, the city council shall consider whether to authorize the city manager to, at the city manager's discretion, move forward with the hiring process. Authorization requires a simple majority vote.

Following city council authorization, no further approval from the city council is required. The city manager may conduct background checks and any other reviews or verification, as the city manager deems appropriate. The city will announce the hiring decision only after the city manager negotiates and executes an employment agreement to finalize the appointment. At all times, the members of the three groups shall keep the identities of all candidates confidential.

If the city council does not authorize the city manager to move forward with the hiring process, the city manager will bring in another candidate to the city council.

In the event that a recruitment is not conducted, the city manager shall follow the above process beginning with presentation of a candidate to the city council.

Section 2. The City Council hereby amends and restates subsection C (Notice of Termination/Severance) of Section XII (Separation from City Service) of the Executive Employee Compensation Plan to read as follows:

C. Notice of Termination/Severance

If the City determines to terminate an employee without cause (cause shall mean termination for conviction of a felony, or malfeasance in office) after one full year of Executive Employee service, the City shall provide a Department Director employee with four (4) to twelve (12) months prior notice of the termination date; and shall provide an Assistant Department Director or Senior Management employee with three (3) to eight (8) months prior notice of the termination date. The amount of notice within the applicable range shall be in the City Manager's discretion or in the discretion of the City Council if the City Council terminates an employee. In lieu of providing the required notice above, the City Manager or city council, as applicable, in his/her/its discretion may pay the eligible employee severance (severance shall include salary and benefits) at the rate of four (4) to twelve (12) months severance for a Department Director; and three (3) to eight (8) months severance for an Assistant Department Director or a Senior Management employee. The minimum amount of severance may be granted within the City Manager's discretion. The City Manager may grant severance above the minimum within the specified range only with City Council concurrence.

Section 3. This resolution will become effective upon the effective date of the Ordinance of the City of Beverly Hills Amending the Beverly Hills Municipal Code Regarding the Personnel Procedures for Hiring and Retention of Assistant City Managers, Deputy City Managers and Department Heads.

Section 4. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Council of this City.

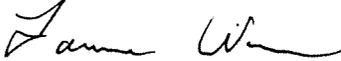
Adopted:

JOHN A. MIRISCH
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager

Attachment 4

LEGISLATIVE DIGEST

RESOLUTION NO. 16-R-_____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
BEVERLY HILLS AMENDING THE CITY OF BEVERLY HILLS
EXECUTIVE COMPENSATION PLAN, AND CITY COUNCIL
POLICY AND OPERATIONS MANUAL TO IMPLEMENT THE
ORDINANCE REGARDING THE PERSONNEL PROCEDURES
FOR HIRING AND RETENTION OF ASSISTANT CITY
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- The three groups shall meet with the recruiter and provide feedback on, and a ranking of, the candidates. No more than two council members shall be present in the same room, at the same time.

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- The city council shall hold a meeting in closed session regarding the hiring of the position. The position, but not the name, of the candidate shall be placed on the agenda.
- In closed session, the city council shall consider whether to authorize the city manager to, at the city manager's discretion, move forward with the hiring process. Authorization requires a simple majority vote.

Following city council authorization, no further approval from the city council is required. The city manager may conduct background checks and any other reviews or verification, as the city manager deems appropriate. The city will announce the hiring decision only after the city manager negotiates and executes an employment agreement to finalize the appointment. At all times, the members of the three groups shall keep the identities of all candidates confidential.

If the city council does not authorize the city manager to move forward with the hiring process, the city manager will bring in another candidate to the city council.

In the event that a recruitment is not conducted, the city manager shall follow the above process beginning with presentation of a candidate to the city council.

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