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Title: UPDATE ON RESPONSE LETTER FROM CALPERS REGARDING FORMER CITY CLERK JIM DEAR'S PENSION SPIKE

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Report to Mayor and City Council

Wednesday, June 08, 2016

Discussion

SUBJECT:

UPDATE ON RESPONSE LETTER FROM CALPERS REGARDING FORMER CITY CLERK JIM DEAR'S PENSION SPIKE

I. SUMMARY

Former City Clerk Jim Dear held the position of City Clerk for approximately one year before being recalled from office on February 23, 2016, and leaving office on March 14, 2016. While holding the position of City Clerk, Mr. Dear received a salary of \$122,916, an increase of more than \$100,000 from his previous position as Mayor. This 440% pay increase also had a proportional effect on his pension, since his pension is based on his highest 12 months of salary. Staff estimated that as a result of his salary increase, Mr. Dear would earn an additional \$1,000,000 in pension payouts over a 20-year retirement.

During the same time that Mr. Dear was receiving this salary increase and accruing the consequent spike in his pension, Mr. Dear was also engaged in misconduct that resulted in an official censure by the City Council and likely contributed to his recall, including conduct evidencing racial animus and bias in decision making, conduct undermining the integrity of city governance, and conduct that created and fostered a hostile work environment. Moreover, during his tenure in office, according to reports by City staff, Mr. Dear intentionally decreased his own work load by delegating all substantive tasks to supporting staff members, and maintaining only basic ceremonial tasks for himself.

Since Mr. Dear was an elected official, the City Council was limited in its ability to discipline Mr. Dear beyond officially censuring him. Consequently, at the City Council meeting on January 19, 2016, the City Council directed City Manager Ken Farfsing to request that the Los Angeles County District Attorney's Public Integrity Division examine any and all criminal violations based on former City Clerk Jim Dear's actions and his own statements that he ran for office to increase his pay and to spike his pension. The Council further directed the City Manager to request an investigation by CalPERS of any misconduct regarding Mr. Dear's pension increase.

Both requests have been issued. To date, the City has not received a response from the District Attorney's office. However, the City Manager has received a responsive letter from CalPERS. The CalPERS letter is not entirely clear, but does indicate that Mr. Dear's salary as City Clerk will not be applied to the calculation of his pension for the years that he served on the City Council. It is unclear whether CalPERS will consider Mr. Dear's time as Mayor as part of his time on City Council. However, it would not seem logical to make a distinction between time on City Council and time as Mayor, in this case, since the Mayor is a member of the City Council. Staff will be following up with CalPERS to seek clarification on this point.

If CalPERS agrees that Mr. Dear's time as Mayor should be counted as time on City Council, Mr. Dear's salary as City Clerk would apply *solely* to the calculation of his pension for the one year that he served as City Clerk, as well as any other CalPERS employment that he had prior to working for Carson. This result could potentially save the public hundreds of thousands of dollars.

II. RECOMMENDATION

DIRECT staff to continue working with CalPERS to ensure that former City Clerk Jim Dear's pension is accurately calculated in light of CalPERS regulations and Mr. Dear's misconduct while in office, in order to avoid an unwarranted pension spike.

III. ALTERNATIVES

TAKE another action that the Council considers appropriate.

IV. BACKGROUND

In response to direction from the City Council, City Manager Ken Farfsing has requested assistance from outside agencies in investigating potential misconduct by former City Clerk Jim Dear concerning the pension spike resulting from his tenure as City Clerk. Specifically, the City Manager has sent a letter to the Public Integrity Division of the Los Angeles County District Attorney's Office providing grounds for the claim that Mr. Dear had intentionally deceived the Carson voters, had had no intention to discharge the duties of his office or to remain in the office of City Clerk for the full four-year term, and had taken the office primarily to raise his pension and salary. The City has not yet received a response to this letter.

The City Manager also sent a letter to CalPERS asking CalPERS to determine whether Mr. Dear had engaged in any misconduct, whether his pension spike is allowed under CalPERS regulations, and whether there is any way to reduce or undo Mr. Dear's pension spike. On May 11, the City received a responsive letter from CalPERS. City staff have since spoken with CalPERS's staff to seek clarification on the content of the letter. What seems clear from the letter is that Mr. Dear's Clerk salary will not be used to calculate his pension during the time that Mr. Dear served as a member of the City Council. This result is based on CalPERS's analysis of Government Code Section 20039, which applies to "state service as an elective or appointed officer on a city council or a county board of supervisors." It seems that this provision should include Mr. Dear's time as Mayor, since the Mayor is treated as a member of the City Council in Carson. City staff are engaged in ongoing discussions with CalPERS on this point. Another possible avenue of discussion concerns whether or not Mr. Dear was actually a full time employee during his time as City Clerk in light of the fact that he intentionally reduced his own duties. There is a possible argument that Mr. Dear's Clerk salary should not count as a "payrate" that can be used for calculating his pension since he was not handling the full duties of his office. Staff will continue to discuss this issue with CalPERS.

Any decision by CalPERS to not allow Mr. Dear to apply his salary as City Clerk to the calculation of his full pension could dramatically reduce his pension spike and potentially save the public hundreds of thousands of dollars. Consequently, staff will continue to discuss these issues with CalPERS and advocate for a result that would reduce Mr. Dear's pension windfall.

V. FISCAL IMPACT

None at this time.

VI. EXHIBITS

None.

Prepared by: Kenneth C. Farfsing, City Manager