



Legislation Text

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**AGENDA REPORT
REQUEST FOR CITY COUNCIL ACTION**

DATE: 6/21/2017

TO: Honorable Mayor and City Council Members

FROM: Administrative Services Department

SUBJECT:

City Council Consideration to approve: (1) Resolution No. 2017-046, amending the compensation and benefits of non-represented management/confidential group employees; (2) Resolution No. 2017 - 047 amending the compensation and benefits of non-represented executive group employees; (3) Side Letter Agreements with the Corona Firefighters Association, Corona Supervisors Association, Corona Police Employees Association, Corona Police Supervisor Association, and the Corona General Employees Association; and (4) Resolution No. 2017-049 adopting a consolidated 457(b) Deferred Compensation Plan document, all of which will permit employees to contribute accrued annual leave to their 457(b) Deferred Compensation account at separation from employment with the City, to require that employees make an advance irrevocable election to buy back annual leave, and to clarify the terms and conditions for employees to obtain a loan against their 457(b) Deferred Compensation account.

RECOMMENDED ACTION:

That the City Council:

1. Adopt Resolution No 2017- 046 governing Compensation and Benefits of Non-Represented Management/Confidential Group Employees to permit employees to contribute accrued annual leave to their 457(b) Deferred Compensation account at separation from employment with the City, to require that employees make an advance irrevocable election to buy back annual leave buy back, and to clarify the terms and conditions for employees to obtain a loan against their 457(b) Deferred Compensation account.
2. Adopt Resolution No 2017- 047 governing Compensation and Benefits of Non-Represented Executive Group Employees to permit employees to contribute accrued annual leave to their 457(b) Deferred Compensation account at separation from employment with the City, to require that employees make an advance irrevocable election to buy back annual leave, and to clarify the terms and conditions for employees to obtain a loan against their 457(b) Deferred Compensation account.
3. Approve Side Letter of Agreement modifying the 2007-2017 Memorandum of Understanding between the City of Corona and the Corona Firefighters Association to permit employees to contribute accrued annual

leave to their 457(b) Deferred Compensation account at separation from employment with the City, to require that employees make an advance irrevocable election to buy back annual leave, to clarify the terms and conditions for employees to obtain a loan against their 457(b) Deferred Compensation account, and to clarify the forty-hour assignment pay eligibility requirements.

4. Approve Side Letter of Agreement modifying the 2009-2015 Memorandum of Understanding between the City of Corona and the Corona Supervisors Association to permit employees to contribute accrued annual leave to their 457(b) Deferred Compensation account at separation from employment with the City, to require that employees make an advance irrevocable election to buy back annual leave, and to clarify the terms and conditions for employees to obtain a loan against their 457(b) Deferred Compensation account.
5. Approve Side Letter of Agreement modifying the 2008-2017 Memorandum of Understanding between the City of Corona and the Corona Police Employees Association to permit employees to contribute accrued annual leave to their 457(b) Deferred Compensation account at separation from employment with the City, to require that employees make an advance irrevocable election to buy back annual leave, and to clarify the terms and conditions for employees to obtain a loan against their 457(b) Deferred Compensation account.
6. Approve Side Letter of Agreement modifying the 2008-2017 Memorandum of Understanding between the City of Corona and the Corona Police Supervisors Association to permit employees to contribute accrued annual leave to their 457(b) Deferred Compensation account at separation from employment with the City, to require that employees make an advance irrevocable election to buy back annual leave, and to clarify the terms and conditions for employees to obtain a loan against their 457(b) Deferred Compensation account.
7. Approve Side Letter of Agreement modifying the 2009-2015 Memorandum of Understanding between the City of Corona and the Corona General Employees Association to permit employees to contribute accrued annual leave to their 457(b) Deferred Compensation account at separation from employment with the City, to require that employees make an advance irrevocable election to buy back , and to clarify the terms and conditions for employees to obtain a loan against their 457(b) Deferred Compensation account.
8. Adopt Resolution No 2017- 049 approving a Consolidated 457(b) Deferred Compensation Plan document that combines the current 457(b) plans into a single restated document and provides authority for staff to make revisions and modifications to the Plan

ANALYSIS:

After meeting and conferring in good faith with the employee associations, certain provisions of the Memoranda of Understanding (MOU) for each employee group to be revised as follows:

1. Incorporate the option for employees to roll over accrued annual leave to their 457 (b) Deferred Compensation Plan on a tax-deferred basis upon separation from employment;
2. Change the City's procedures for allowing employees to elect to buy-back some of their accrued annual leave by requiring that employees make an irrevocable election to buy back annual leave in advance of earning the annual leave; and
3. Clarify the terms and conditions for employees to take out loans against their 457(b) Deferred Compensation.

The above revisions are also proposed for the benefit resolutions applicable to Non-Represented Management /Confidential Group Employees and Non-Represented Executive Group Employees. With respect to CGEA, the above revisions will be considered by the entire Association on Tuesday, June 20th. If CGEA decides to not proceed with a side letter to incorporate the above revisions into the CGEA MOU, that side letter will be removed and you will not be asked to approve it as one of the recommended actions.

Roll-Over of Accrued Annual Leave

The option to roll over accrued annual leave to the 457 (b) Deferred Compensation Plan is legally permissible subject to specific requirements pertaining to the timing of the election to roll over the accrued annual leave. First, the election must

occur before the beginning of the month in which the amounts would otherwise be paid or made available resulting from the separation of employment (i.e., before the first day of the month of separation from employment). Second, the employee must be employed in the month in which the value of leave would otherwise be paid or made available. Third the value of leave to be contributed to the employee's 457(b) account must not, when added to other deferrals made during the plan year, exceed the maximum deferral limitations in the year of deferral (\$18,000 for 2016 plus catch-up contributions of \$6,000 for employees 50 years of age or older). The proposed revisions for accrued annual leave roll over are consistent with IRS Treasury Regulation Section 1.457-4(d)(1).

The attached side letter would amend the MOU to permit the employees to contribute accrued annual leave to their 457 (b) Deferred Compensation account upon termination or retirement up to the maximum deferral amounts established by federal law, so long as the employee submits a deferral election form to the City for such contribution before the first day of the month of separation. The attached benefit resolutions for the Management/Confidential Group and the Executive Group employees include the same revisions.

Advance Irrevocable Election to Buy Back Annual Leave

Recent developments with IRS regulations require a change to the City's procedures for allowing employees to elect to buy-back some of their accrued annual leave. Without these changes, the IRS could determine that the value of the maximum amount of annual leave that an employee could cash-out is taxable income regardless of whether the employee actually chooses to buy-back the leave. Under the "constructive receipt" doctrine, if an employee is given a choice to cash out leave which has already accrued, the employee will have taxable income equal to the cash-out value at the time that the choice is made available to the employee, even if the employee does not choose the cash-out. The only way to avoid this taxable occurrence is to require employees to make an irrevocable election to buy-back annual leave prior to the employee accruing the annual leave. In other words, the employee needs to elect whether to buy-back the annual leave before the employee accrues or earns the annual leave.

The attached side letters would amend each MOU to require employees who desire to buy back annual leave to submit an Annual Leave Buy-Back Request at the end of June each year specifying the number of annual leave hours that the employee elects to buy back based upon the annual leave hours that will be earned in the subsequent 12 month period (commencing with the first full pay period of the fiscal year and ending with the last full pay period of that fiscal year). To comply with federal tax regulations and to ensure that employees who choose not to buy back annual leave are not subject to taxation, the advance election to buy back annual leave must be irrevocable. The attached benefit resolutions for the Management/Confidential Group and the Executive Group employees include the same revisions.

The attached side letters also include language that would require the City to implement, on or before July 1, 2018, a process that allows Employees to make an advance irrevocable election twice per year to buy back annual leave that will accrue after the election provided that the City's computer and software technology can accommodate an automated electronic method for processing annual leave buy back request forms, as determined by the City Manager. If the City's computer and software technology can accommodate an electronic method, the City and the employee groups shall meet and confer in good faith to negotiate a side letter or other agreement to implement the twice per year buy-back process, including, without limitation, the time for submission of annual leave buy back request forms and the minimum criteria that an Employee must satisfy to buy back annual leave. If the City's computer and software technology cannot accommodate an automated electronic method for processing annual leave buy back request forms, the City shall provide notice to the employee groups on or before June 1, 2018.

Participant Loans

The attached side letters would amend each MOU to clarify the terms and conditions for employees to take out loans against their 457(b) Deferred Compensation account. These revisions are necessary to bring the participant loan procedure into compliance with Internal Revenue Code Section 72(p). The attached benefit resolutions for the Management/Confidential Group and the Executive Group employees include the same revisions.

CFA - 15% Assignment Pay

Section 13.2.1 of the current CFA MOU states that an additional 15% above base pay is provided to employees working the positions of Firefighter, Engineer, and Captain when those positions receive a 40 hour per week assignment on a regular or probationary basis. Management met and conferred with CFA on this item to clarify eligibility for the 15% above base pay for employees. Effective July 1, 2017, the 15% above base pay will not be paid to an employee who is absent from duty due to a work related injury or illness and is receiving pay pursuant to Section 4850 of the California Labor Code, an employee who is absent from duty related to a non-industrial injury or illness under the Family Medical Leave Act or the California Family Rights Act, or to an employee who is on an unprotected leave of absence.

Consolidated Deferred Compensation Plan

Finally, a consolidated 457(b) Deferred Compensation Plan document is being presented for your consideration and approval. The attached 457(b) Deferred Compensation Plan combines the existing 457(b) plans into a single restated document and provides authority for the Assistant City Manager/Administrative Services Director to make revisions and modifications for the efficient implementation of the plan. The consolidated document will replace the existing separate plan documents with Nationwide and ICMA.

COMMITTEE ACTION:

Not applicable.

STRATEGIC PLAN:

Not applicable.

FISCAL IMPACT:

None.

ENVIRONMENTAL ANALYSIS:

No environmental review is required because the proposed action is not a project governed by the California Environmental Quality Act.

PREPARED BY: EDELIA EVELAND, HUMAN RESOURCES MANAGER

REVIEWED BY: DEAN DERLETH, CITY ATTORNEY

REVIEWED BY: KERRY D. EDEN, ASSISTANT CITY MANAGER/ADMINISTRATIVE SERVICES DIRECTOR

REVIEWED BY: MICHAEL E. ABEL, CHIEF OF POLICE AND ASSISTANT CITY MANAGER

SUBMITTED BY: DARRELL TALBERT, CITY MANAGER

Attachments

1. Resolution No 2017-046 Compensation and Benefits of Non-represented Management/Confidential Group Employees (redline).
2. Resolution No 2017-046 Compensation and Benefits of Non-represented Management/Confidential Group Employees (clean).
3. Resolution No 2017-047 Compensation and Benefits of Non-represented Executive Group Employees (redline).
4. Resolution No 2017-047 Compensation and Benefits of Non-represented Executive Group Employees (clean).
5. Corona Firefighters Association Side Letter (redline).
6. Corona Firefighters Association Side Letter (clean).
7. Corona Supervisors Association Side Letter (redline).
8. Corona Supervisors Association Side Letter (clean).
9. Corona Police Employees Association Side Letter (redline).
10. Corona Police Employees Association Side Letter (clean).
11. Corona Police Supervisors Association Side Letter (redline).
12. Corona Police Supervisors Association Side Letter (clean).
13. Corona General Employees Association Side Letter (redline).
14. Corona General Employees Association Side Letter (clean).
15. Resolution No. 2017-049 adopting a Consolidated 457(b) Deferred Compensation Plan.
16. Consolidated 457(b) Deferred Compensation Plan.