

Mayor and Council Communication

DATE: 12/14/21

M&C FILE NUMBER: M&C 21-0964

LOG NAME: 14COUNCILAIDETRANSITION

SUBJECT

(ALL) Adopt Attached Ordinances Regarding the Transition of Council Aide/District Director Positions to Pensionable Employment Positions by Amending Chapter 2.5 "Retirement" and Section 2-180, "Coverage of the System," of the City Code and by Reallocating Appropriations in the General Fund Up to \$167,000.00 for City Retirement Fund Contribution Costs

RECOMMENDATION:

It is recommended that the City Council:

1. Adopt the attached ordinance revising the "Retirement" chapter of the City Code by amending section 2.5-2 to address council aide positions becoming members of the retirement plan and to provide a one-time, irrevocable election allowing those currently serving in such positions to remain in their current position and status, ineligible for the retirement plan;
 2. Adopt the attached ordinance amending Section 2-180 of the Human Resources Article of Chapter 2 of the City Code to provide that City Council Aides/District Directors do not have rights to administrative appeal from adverse employment actions and to make non-substantive changes to enhance clarity; and
 3. Adopt the attached ordinance reallocating appropriations in the General Fund for the purpose of funding costs of city contributions for the City Council Aides/District Directors who become participating members of the Retirement Fund by decreasing the General Operating and Maintenance category of Non-Departmental up to \$167,000.00 and increasing the Salaries and Benefits category in City Manager's Office by the same amount, with the amount of appropriation subject to the final figures calculated after all individuals have made their elections.
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DISCUSSION:

The purpose of this Mayor and Council Communication (M&C) is to take actions associated with the position of Council Aide/District Director being reconstituted as a pension-eligible regular full-time employment position.

Historically, individuals serving in the position of City Council Aide/District Director have been hired, disciplined, and fired directly by the Councilmember and have not been considered regular full-time employees and as a result have not been eligible to participate in the Employees Retirement Fund (the Fund). The aides/directors have instead participated in the City of Fort Worth's (City) FICA-alternative program, which consists of employee contributions to a third-party administrator into a 401(a) plan, from which participants will receive payment in retirement. Because all regular full-time employees are members of the Fund, the City has not been a general participant in Social Security since 1945.

The City Council recently requested that the City Manager evaluate the transition of the aide/director position to a pension-eligible position with the accompanying benefits afforded to regular, full-time general City employees. Some individuals, particularly those who have been serving in the aide/director position for a number of years, have expressed concerns with being required to join the Fund at a late date and wish to instead continue participating in the City's 401(a) FICA-Alternative Plan.

All currently serving aides/directors will be given a one-time option to transition to a regular, full-time general employee as described in more detail below. Those that opt not to transition to regular, full-time employment will remain in their current position and status, ineligible to participate in the Fund. All future aides/directors will be hired into regular, full-time positions eligible for and required to participate in the Fund.

Adoption of the first attached ordinance would revise the Retirement Fund Chapter of the City Code by amending section 2.5-2. The ordinance would provide a one-time, irrevocable election that allows an individual currently serving in a non-pension-eligible position that is being eliminated and replaced with a regular, full-time, pension eligible position to not become a member of the Fund so long as certain identified criteria are all met.

Two of the key requirements are that the pre-tax employee contributions under either option (pension or FICA alternative) are the same and that an election must be made before the first date for which contributions under the Fund are scheduled to be made. These requirements are needed to comply with IRS (Internal Revenue Service) regulations and guidance regarding pre-tax retirement contributions.

As currently proposed, the new aide/director pension-eligible position would "come online" on January 1, 2022, which is the beginning of pay period 2 for calendar year 2022, and Fund contributions will be made for all service rendered to the City on or after that date. Each individual must make his or her election no later than December 30, 2021, which is the last City business day before the date on which the change in status will otherwise take effect.

The election is irrevocable, and any individual who opts not to become a regular, full-time employee would be required to continue participating in the FICA-alternative program with contributions at the same rate as those made to the Fund. Any individual who fails to make an election or whose attempted election does not fully comply with the criteria will automatically become a member of the Fund as of January 1, 2022. The City's

Human Resources Department has had on-going discussions with the affected individuals and will continue to assist them with information to make an informed decision.

In accordance with state law, any individual who begins working as an aide/director on or after January 1, 2022, will automatically become a participating member of the Fund on the date of the person's employment with the City.

Note – Individuals who become participating members of the Fund will pay an employee contribution for compensation attributable to service on or after January 1, 2022. The City intends to “pick up” the contribution amount and treat it as an employer contribution payable on a pre-tax basis, reducing participants' taxable income. Complying with tax law restrictions requires that the election not to participate in the Fund be made in advance and precludes an election being made after the “pick up” of these contributions begins on January 1, 2022. Because the City is closed on December 31, 2021, in observance of the New Year's Day holiday, elections must be made by 5:00pm on December 30, 2021.

Because of the unique nature a Council Aide/District Director serves as an assistant and envoy for his or her employing Councilmember, they would continue to be hired, disciplined, and fired at the discretion of their individual Councilmember as has historically been the case. To memorialize this understanding, it is recommended the City Council adopt the second attached ordinance, which amends section 2-180 of the Human Resources article of the City Code to provide that City Council Aides/District Directors do not have rights to administrative appeal from adverse employment actions. In reviewing Section 2-180 to make this clarification, the City Attorney's Office noted that this provision would benefit from non-substantive restructuring to enhance clarity and recommends making revisions as noted in the attached.

When this change goes into effect on January 1, 2022, the approved position (AP) count reflected in the adopted budget will be increased by nine. The per-employee cost is higher for someone who is participating in the Fund than for an individual in the FICA-Alternative Program. The third attached ordinance would reallocate receipts and appropriations in the General Fund by reducing Non-Departmental by \$167,000.00 and increasing City Manager's Office by that same amount. This amount represents the maximum additional cost that would occur if all nine existing aides become participating members in the Fund. Because it is anticipated that some individuals may opt to remain outside the Fund, the actual amount that is needed may be lower. Therefore, the attached appropriation ordinance includes language that would reduce the appropriation amount to the actual cost, which will be calculated after all of the impacted individuals have made their election.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

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FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that funds are currently available in the General Operating and Maintenance category within the General Fund and upon approval of the above recommendations and adoption of the attached appropriation ordinance, funds will be available in the Salary & Benefits category within the General Fund. Prior to an expenditure being incurred, the City Manager Department has the responsibility of verifying the availability of funds.

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Expedited