



## OFFICE OF THE CITY ATTORNEY

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# ORD-36

## REVISED

**DAWN MCINTOSH**  
City Attorney

**GARY J. ANDERSON**  
Assistant City Attorney

March 21, 2023

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

### RECOMMENDATION:

Declare ordinance amending the Long Beach Municipal Code by repealing Section 2.06.060 related to compensation of members of advisory bodies, and amending Section 2.18.050 related to general regulations of advisory bodies, read the first time and laid over to the next regular meeting of the City Council for final reading; and

Adopt Resolution amending Fiscal Year 2023 Salary Resolution (Resolution 22-0159) to allow members of certain City advisory bodies the option to serve on said bodies as a volunteer without compensation or as a volunteer eligible for an expense reimbursement payment. (Citywide)

### DISCUSSION

This office has prepared and submits the above described Ordinance and Resolution for your consideration. The following changes related to members of certain advisory bodies are included in proposed Ordinance and Resolution:

- Allow members of certain advisory bodies the option to serve as volunteers without compensation or as a volunteer eligible for an expense reimbursement payment not to exceed \$500. Expense reimbursement payments are intended to reimburse members of advisory bodies serving as volunteers for related expenses incurred in the performance of their official duties.
- Updates to requirements to reflect ethics trainings and the written pledge to uphold the principles in City's Code of Conduct and Ethics, as required by Chapter 2.07 of the LBMC.
- Require trainings determined by the City Clerk to be necessary for effective service on an advisory body within thirty (30) days of assuming office, including, but not limited to, trainings on the City's strategic

vision, ethics standards, and diversity, equity, inclusion, and racial justice principles.

- Allow for removal of any member of a City Council established advisory body at any time, with the concurrence of two-thirds (2/3) of the members of the City Council.
- Clarifies that terms of office for commissioners terminate on June 30<sup>th</sup> of even-numbered years and start on July 1<sup>st</sup> of even-numbered years.

Senate Bill 225 (SB 225) indicates a person, regardless of citizenship or immigration status, is eligible to hold an appointed civil office if the person is 18 years of age and a resident of the State. SB 225 also provides that a person appointed to civil office, regardless of citizenship or immigration status, may receive any form of compensation that the person is not otherwise prohibited from receiving pursuant to federal law, including, but not limited to, any stipend, grant, or reimbursement of personal expenses that is associated with carrying out the duties of that office.

The legislative history of SB 225 notes that under federal law, it is unlawful for a person or entity to hire an undocumented resident for employment. (8 U.S.C. § 1324(a).) While SB 225 authorizes undocumented residents to serve as appointed members of public boards and commissions, it does not authorize employment as an element of that appointment because State law cannot supersede federal law.

As such, the City's current policy which mandates compensation to members of advisory bodies may cause undocumented members to fall within the State's legal definition of an employee which is prohibited under federal law.

Therefore, to ensure the City's policy allows for undocumented residents to serve on advisory bodies, as required by State law, and to avoid possible violations of federal law, the City Attorney's Office recommends amending the current Salary Resolution and LBMC Section 2.18.050 to allow for certain members of advisory bodies to serve solely as volunteers without compensation or as a volunteer eligible for an expense reimbursement payment. An undocumented resident may serve on an advisory body and receive an expense reimbursement payment because federal and State law allow individuals to receive expense reimbursement payments without the individual being deemed an employee for tax purposes.

City officers are considered employees under State law for federal tax purposes. Members of the Civil Service, Harbor, Public Utilities, and Planning Commissions are deemed City officers by City Charter Section 500. Therefore, these members are also likely to be considered employees under State law for federal tax purposes and will not be eligible to serve as volunteers; a Charter Amendment is required to remove their status as "City officers."

Tax regulations require an individual to opt-out of receiving income the year before it is earned. Therefore, the option to serve as a volunteer will be immediately available to newly onboarded commissioners in 2023. Those commissioners who are already onboarded as of January 1, 2023 will have the option to serve as a volunteer for compensation or as a volunteer eligible for an expense reimbursement payment

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in 2024. To comply with tax regulations, commissioners will be required to affirm they would like to serve as a volunteer on an annual basis.

Additionally, the language in LBMC section 2.18.050.F has been amended to be consistent with the language in section 510 of the City Charter to allow for the removal of advisory body members at any time with the concurrence of two-thirds (2/3) of the members of the City Council.

**SUGGESTED ACTION:**

Approve recommendation.

Very truly yours,

DAWN MCINTOSH, City Attorney

A handwritten signature in black ink, appearing to read 'T. Anderson', with a stylized flourish at the end.

By

Taylor M. Anderson  
Deputy City Attorney



## REDLINE

Section 2.18.050 of the Long Beach Municipal Code is amended and restated to read as follows:

“The following regulations shall apply to all advisory bodies which are subject to this Chapter:

- A. The members of each body shall be appointed by the Mayor and confirmed by a majority vote of all members of the City Council;
- B. The members of each body must reside in the City at the time of appointment, and must maintain residence within the City at all times during their service on the advisory body;
- C. The term of office shall be two (2) years for members of each body. Members may be reappointed after their initial term, but in no event shall any person who has served four (4) consecutive, two (2) year terms on the same body be eligible for reappointment to that body. Serving any portion of an unexpired term shall not be counted as service of one (1) term. Members not eligible for reappointment may continue to serve until their successors are appointed and qualified. The terms of office for members of all advisory bodies shall terminate on the June 30th third Tuesday of July of every even-numbered year. The terms of office for members of all advisory bodies shall start on July 1<sup>st</sup> of every even-numbered year;
- D. ~~The m~~Members of advisory bodies ~~shall receive no~~ may receive compensation , including, but not limited to, any stipend, for the performance of their official duties ~~unless if such~~ compensation is expressly provided by the City Council in the Salary Resolution of the City. With the exception of members of those commissions identified in City Charter Section 500, members of those advisory bodies identified in the Salary Resolution of the City shall have the option to serve as a volunteer without compensation or as a volunteer eligible for an expense reimbursement payment. Expense reimbursement payments are intended to reimburse members of advisory bodies serving as volunteers for related expenses incurred in the performance of their official duties. Members of any advisory body expressly compensated by the City Council shall be ineligible to receive compensation unless and until they have adhered to the requirements set forth in subsection 2.18.050.G.;

- ~~1. A Form 700 is filed with the City Clerk: (1) within 30 days of assuming office, (2) every year thereafter by April 1st, and (3) within 30 days of leaving office; and~~

~~2. Ethics training required pursuant to California Government Code Section 53234 et seq. is complete and current within the time period specified therein.~~

E. Appointments to fill vacancies on advisory bodies shall be handled in the same manner as original appointments. When a vacancy occurs during a term, the appointment to fill such vacancy shall be for the unexpired portion of the term;~~;~~ ~~and~~

F. ~~The Mayor may remove any member of a City Council established advisory body at any time, with the concurrence of two-thirds (2/3) of the members of the City Council; and~~

~~The members of each body may be removed by a majority vote of all members of the City Council for the following causes:~~

~~1. Absence from three (3) consecutive meetings without official permission expressed in the official minutes;~~

~~2. Incompetence, malfeasance, misfeasance, neglect of duty, or conviction of a crime involving moral turpitude; and~~

~~3. Refusal to resign from an advisory body when no longer a resident of the City.~~

G. Members of advisory bodies shall:

1. File a Form 700 with the City Clerk within 30 days of assuming office, every year thereafter by April 1st, and within 30 days of leaving office;

2. Ensure ethics trainings required pursuant to California Government Code Section 53234 et seq. and Chapter 2.07 of this Code are complete and current within the time periods specified therein;

3. Pledge in writing to uphold the principles in City's Code of Conduct and Ethics; and

4. Complete all trainings determined by the City Clerk to be necessary for effective service on an advisory body within thirty (30) days of assuming office, including, but not limited to, trainings on the City's strategic vision, ethics standards, and diversity, equity, inclusion, and racial justice principles.



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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING SECTION 2.18.050; AND, BY REPEALING SECTION 2.06.060, ALL RELATING TO COMPENSATION AND TRAINING REQUIREMENTS FOR MEMBERS OF BOARDS AND COMMISSIONS

WHEREAS, on January 7, 2020 and June 6, 2020, the City Council adopted resolutions to amend the City's Salary Resolutions to allow members of advisory bodies to receive compensation for their service; and

WHEREAS, Senate Bill 225 (SB 225) indicates a person, regardless of citizenship or immigration status, is eligible to hold an appointed civil office if the person is 18 years of age and a resident of the State; and

WHEREAS, the legislative history of SB 225 notes that under federal law, it is unlawful for a person or entity to hire an undocumented resident for employment (8 U.S.C. § 1324(a).); and

WHEREAS, while SB 225 authorizes undocumented residents to serve as appointed members of public boards and commissions, it could not authorize employment as an element of that appointment because state law cannot supersede federal law; and

WHEREAS, the City's current policy which mandates compensation to members of advisory bodies may cause said members to fall within the legal definition of an employee; and

WHEREAS, under federal law, it is unlawful for a person or entity to hire an undocumented resident for employment (8 U.S.C. § 1324(a).); and

WHEREAS, to ensure the City's policy allows for undocumented residents to serve on advisory bodies, as required by State law, and to avoid possible violations of

1 federal law, the City’s Salary resolution and LBMC Sections 2.06.060 and 2.18.050 are  
2 being amended to allow for certain members of advisory bodies to serve as volunteers  
3 without compensation or as a volunteer eligible to receive an expense reimbursement  
4 payment; and

5 WHEREAS, since City officers may be considered employees under state  
6 and federal tax law, and members of the Civil Service, Harbor, Public Utilities, and Planning  
7 Commissions are deemed City officers by City Charter Section 500, members of these  
8 commissions will not be eligible to serve as volunteers; a Charter Amendment is required  
9 to remove their status as “City officers”; and

10 WHEREAS, LBMC Section 2.18.050.F has been amended to be consistent  
11 with the language in Section 510 of the City Charter to allow for the removal of advisory  
12 members at any time with the concurrence of two-thirds (2/3) of the members of the City  
13 Council; and

14 WHEREAS, LBMC Section 2.18.050.G has been amended to require  
15 members of advisory bodies to complete the ethics trainings and pledge required of LBMC  
16 Ch. 2.07 (“Code of Conduct and Ethics) and all trainings determined by the City Clerk to  
17 be necessary for effective service on an advisory body within thirty (30) days of assuming  
18 office, including, but not limited to, trainings on the City’s strategic vision, ethics standards,  
19 and diversity, equity, inclusion, and racial justice principles;

20 NOW, THEREFORE, the City Council of the City of Long Beach ordains as  
21 follows:

22 Section 1. Section 2.18.050 of the Long Beach Municipal Code is hereby  
23 amended and restated to read as follows:

24 2.18.050 General regulations.

25 The following regulations shall apply to all advisory bodies which are  
26 subject to this Chapter:

27 A. The members of each body shall be appointed by the Mayor  
28 and confirmed by a majority vote of all members of the City Council;

1           B.     The members of each body must reside in the City at the time  
2 of appointment, and must maintain residence within the City at all times  
3 during their service on the advisory body;

4           C.     The term of office shall be two (2) years for members of each  
5 body. Members may be reappointed after their initial term, but in no event  
6 shall any person who has served four (4) consecutive, two (2) year terms on  
7 the same body be eligible for reappointment to that body. Serving any portion  
8 of an unexpired term shall not be counted as service of one (1) term.  
9 Members not eligible for reappointment may continue to serve until their  
10 successors are appointed and qualified. The terms of office for members of  
11 all advisory bodies shall terminate on June 30th of every even-numbered  
12 year. The terms of office for members of all advisory bodies shall start on July  
13 1<sup>st</sup> of every even-numbered year;

14           D.     Members of advisory bodies may receive compensation for the  
15 performance of their official duties if such compensation is expressly provided  
16 by the City Council in the Salary Resolution of the City. With the exception of  
17 members of those commissions identified in City Charter Section 500,  
18 members of those advisory bodies identified in the Salary Resolution of the  
19 City shall have the option to serve as a volunteer without compensation or as  
20 a volunteer eligible for an expense reimbursement payment. Expense  
21 reimbursement payments are intended to reimburse members of advisory  
22 bodies serving as volunteers for related expenses incurred in the  
23 performance of their official duties. Members of any advisory body expressly  
24 compensated by the City Council shall be ineligible to receive compensation  
25 unless and until they have adhered to the requirements set forth in  
26 Subsection 2.18.050.G of this Code;

27           E.     Appointments to fill vacancies on advisory bodies shall be  
28 handled in the same manner as original appointments. When a vacancy





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Section 3. The City Clerk shall certify to the passage of this ordinance by City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of \_\_\_\_\_, 2023, by the following vote:

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Recusal(s): Councilmembers: \_\_\_\_\_

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City Clerk

Approved: \_\_\_\_\_

\_\_\_\_\_

(Date)

Mayor

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RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF LONG BEACH AMENDING ATTACHMENT "B" OF  
RESOLUTION NO. RES-22-0159 KNOWN AS THE SALARY  
RESOLUTION OF THE CITY OF LONG BEACH

The City Council of the City of Long Beach resolves as follows:

Section 1. Attachment "B" of Resolution No. RES-22-0159, adopted on  
September 6, 2022, is amended as follows:

III. MEMBERS OF BOARDS AND COMMISSIONS:

The compensation rates for members of Boards, Committees, and  
Commissions established by the City Charter and the City Council and for City  
representatives to specified bodies are fixed and prescribed by this Subsection III  
as follows:

Except for members of those commissions identified in City Charter Section  
500, members of Boards, Committees, and Commissions have the option of serving  
on a City advisory body as a volunteer without compensation or as a volunteer  
eligible for an expense reimbursement payment not to exceed \$500 per calendar  
year. Members who chose to serve as a volunteer eligible for an expense  
reimbursement payment shall only receive said payment at the end of the calendar  
year after confirmation that the member has complied with the requirements in this  
Subsection III and that the member has attended a minimum of three (3) meetings  
in accordance with the requirements in this Subsection III. Expense reimbursement  
payments are intended to reimburse members of Boards, Committees, and  
Commissions serving as volunteers for related expenses incurred in the  
performance of their official duties. Members of Boards, Committees, and



1 Commissions electing to receive compensation on a per meeting basis, as outlined  
2 in subsections D-11 through D-15 below, shall not be eligible to receive any  
3 payments to reimburse their expenses.

4 Absence in fact from a meeting of a Board, Committee, or Commission, when  
5 duly authorized for the purpose of attending a professional conference, meeting, or  
6 other official City business, shall not be deemed to be an absence from such meeting  
7 for the purpose of this Salary Resolution.

8 Board, Committee, or Commission members shall be ineligible to receive any  
9 compensation, as fixed and prescribed by this Subsection III, unless and until said  
10 member has adhered to the requirements set forth in Long Beach Municipal Code  
11 Section 2.18.050.G.

12 As used in this Subsection III, "meeting" shall mean a congregation of the  
13 body at the same time and location, including teleconference locations, to hear,  
14 discuss, deliberate, or take action on any item that is within the subject matter  
15 jurisdiction of the body, but shall not include the meetings of any subcommittee or  
16 other group not containing at least a majority of the members of the body. City Board,  
17 Committee, or Commission members may only receive compensation for one (1)  
18 meeting per day.

19  
20 SALARY RANGE

21 D-11 \$50.00 per member per meeting, not to exceed \$1,000 maximum per  
22 calendar year, attended of the following City Council Appointed  
23 Committees:

- 24 • Belmont Shore Parking and Business Improvement Area  
25 Commission (BIAA);
- 26 • Board of Examiners, Appeals, and Condemnation;
- 27 • Board of Health and Human Services;
- 28 • Citizens Advisory Commission on Disabilities;

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- Commission on Youth & Families;
- Cultural Heritage Commission;
- Equity and Human Relations Commission;
- Homeless Services Advisory Committee;
- Housing Authority of the City of Long Beach;
- Marine Advisory Commission;
- Metropolitan Water District of Southern California;
- Pedestrian Safety Advisory Commission;
- Senior Citizen Advisory Commission;
- Sustainable City Commission;
- Technology and Innovation Commission;
- The Long Beach Community Investment Company;
- Transactions and Use Tax Citizens Advisory Committee; and
- Veterans Affairs Commission.

D-12 \$75 per member per meeting attended of the Airport Advisory Commission, not to exceed \$1,000 maximum per calendar year.

D-13 \$100 per member per meeting attended of the Successor Agency to the Redevelopment Agency of the City of Long Beach, not to exceed \$500.00 per calendar year.

D-14 \$100 per member per meeting attended of the Economic Development Commission, not to exceed \$1000.00 maximum per calendar year.

D-15 \$200 per member per meeting, not to exceed \$7,000 maximum per calendar year, attended of the:

- Board of Harbor Commissioners;
- Utilities Commission;
- Citizen Police Complaint Commission;
- City Planning Commission;
- Civil Service Commission;

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- Ethics Commission;
- Long Beach Independent Redistricting Commission; and
- Parks & Recreation Commission.

Section 2. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of \_\_\_\_\_, 2023, by the following vote:

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Recusal(s): Councilmembers: \_\_\_\_\_

\_\_\_\_\_

City Clerk