



Legislation Text

File #: 23-0266, **Version:** 1

Adopt resolution amending Fiscal Year 2023 Salary Resolution (Resolution No. RES-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)

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 30th of even-numbered years and start on July 1st 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 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.

Approve recommendation.

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DAWN MCINTOSH, City Attorney