



Item Number: 18

City Council / Board of Directors

Written Communications

Meeting of: May 2, 2023

Submitted By:

Andre de Bortnowsky, City Attorney

Subject:

Ability to suspend stipend/salary based on Councilmember misconduct

Recommendation:

Any action is at the discretion of the City Council.

Fiscal Impact:

There is no fiscal impact associated with this action.

Background:

At the March 21, 2023 City Council meeting, a motion was made by Councilmember Becerra and approved by majority of the Council to have the City Attorney look into the possibility of suspending the stipend/salary of Councilmembers who engage in various forms of misconduct. This Staff Report examines various issues surrounding such proposed salary suspension.

Discussion:

Government Code Section 36183 states that: "*The [city] council may establish rules for the conduct of its proceedings. It may punish a member or other person for disorderly behavior at a meeting.*" That said, no specific types of punishment are listed in this statute and no case has explored what types of punishment are permissible thereunder.

Chapter 2.16 of the Victorville Municipal Code (enacted pursuant to Government Code Section 36516 *et seq.*) sets the amount and requires payment of salaries to Councilmembers, but does not allow for such salaries to be changed during Councilmembers current terms of office. The method of setting salaries is initially based on the City's population and increased thereafter in connection with the formula set forth in Government Code Section 36516(a). Government Code Section 36516(b) further appears to permit Councilmember salaries to be increased or decreased by a determination of the voters, which can be made at any municipal election.

While there appears to be no State statute, case law, or Attorney General Opinion supporting the ability of a city council to suspend the stipend/salary of one of its members, it has come to our attention that the City of Cypress (“**Cypress**”) recently adopted an ordinance allowing for the levying of fines, suspension of salary/stipends, and other forms of punishment for violations of the council’s rules of decorum (adopted via ordinance) and/or its “Civility, Conduct and Governance Policy.” It further appears that on at least on one occasion, Cypress did adopt a resolution of censure against one of its members which included a fine and salary suspension. It must be noted that the Ordinance adopted by Cypress was expressly limited to violations of the City’s rules of decorum and policies it had set as opposed to general acts of misconduct.

Through our research of this matter, we have been unable to find any other cities that have adopted similar ordinances or policies. However, we did learn that in 2016 the California State Legislature submitted a ballot measure to the voters (Proposition 50) to amend the California Constitution to permit the members of each house to suspend a member and deem the salary and benefits of that member to be forfeited for all or part of such suspension. Prior to the passage of Proposition 50, the Legislature had the power to suspend members for misconduct but lacked the ability to suspend pay or benefits of members, even when such misconduct included allegations of a criminal nature.

Arguably, an elected official has some claim that his or her government salary is an entitlement. As such, to the extent there is any deprivation of such an entitlement, at a minimum, a pre-deprivation due process hearing would likely be required.

Moreover, since the salary of Councilmembers is established in the Victorville Municipal Code (“**VMC**”), any attempt to modify salary provisions would require an amendment of the VMC by ordinance.

Furthermore, if the circumstances surrounding a violation involve an allegation of suppression of protected speech, it is also conceivable that any action to reduce or suspend a Councilmember’s stipend/salary or benefits could be challenged on the grounds that such action constitutes a First Amendment retaliation claim. There appears to be some case law to support such a theory.

The law in this area is unsettled at best. Given (1) that the rules regarding salaries in the Government Code and the VMC control the setting and changing of councilmember salaries; (2) the absence of any specific statute or constitutional provision authorizing suspension of pay of local elected officials who violate the rules of the body; (3) the limiting language in Government Code Section 36813 which restricts the ability to punish to a member to “disorderly behavior at a meeting”; and (4) the lack of legal precedent interpreting the scope of punishments that can lawfully be imposed under Section 36813, there is a colorable argument that suspension of salary/stipend is not a permissible punishment.

Notwithstanding the foregoing, to the extent the City Council wishes to pursue the adoption of an Ordinance to provide for the suspension of stipends/salaries, it would need to be very narrowly drafted and be specific as to which type and what level of misconduct it is seeking to restrain.

Attachments: None