



Councilmember Lori Droste, District 8
Mayor Jesse Arreguín
Vice Mayor Kate Harrison
Councilmember Susan Wengraf, District 6

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: May 10, 2022

Item Number: 28

Item Description: Refer \$120,000 to the budget process to procure professional services from a qualified consultant to assist the City Council in establishing a collaborative review process for performing regular evaluations of the City Attorney and Police Accountability Board Director's performance and direct the City Manager to issue a Request for Proposal (RFP) to contract with an experienced firm that will engage the City Council and the City Attorney and Police Accountability Board Director in performance evaluation similar to the City Manager's evaluation process...

Submitted by: Councilmember Lori Droste, Mayor Jesse Arreguín, Vice Mayor Kate Harrison, and Councilmember Susan Wengraf

The attached revised Item 28 Budget Referral for Charter Officer Performance Review amends the item and funding request to not include the Police Accountability Board (PAB) Director because, in the time since the original item was submitted, the PAB Interim Director submitted a budget request for a performance evaluation. The original Item 28 would thus now be duplicative of this request from the PAB Interim Director. The amended item therefore now requests \$60,000 instead of \$120,000. The revised item also includes a greater degree of specificity with respect to how the performance criteria will be determined in collaboration among the City Council, direct reports, and the selected consultant.



Councilmember Lori Droste, District 8
Mayor Jesse Arreguín
Vice Mayor Kate Harrison
Councilmember Susan Wengraf, District 6

CONSENT CALENDAR

May 10, 2022

TO: Members of the City Council

FROM: Councilmember Lori Droste, Mayor Jesse Arreguín, Vice Mayor Kate Harrison,
and Councilmember Susan Wengraf

SUBJECT: Budget Referral for Charter Officer Performance Review

RECOMMENDATION

Refer \$120,000 60,000 to the budget process to procure professional services from a qualified consultant to assist the City Council in establishing a collaborative review process for performing regular evaluations of the City Attorney ~~and Police Accountability Board Director's~~ performance and direct the City Manager to issue a Request for Proposal (RFP) to contract with an experienced firm that will engage the City Council and the City Attorney ~~and Police Accountability Board Director~~ in a performance evaluation similar to the City Manager's evaluation process.

Prior to the issuance of the RFP, the City Attorney should work with City Council to establish mutually-agreed upon performance metrics and criteria for evaluation, which shall include components of ICMA best practices¹. As part of the RFP and the performance evaluation process, there shall be active roles for peer municipally-focused attorneys (e.g., qualified employees of other City Attorney offices) to serve on a review panel contributing directly to the evaluation of the Berkeley City Attorney along with a 360 review with the leadership team. The RFP shall be reviewed by the City Council Agenda and Rules Committee prior to issuance. The Agenda and Rules will make a recommendation to the entire City Council, for approval, prior to entering into any contract.

¹ <https://icma.org/documents/city-attorney-performance-evaluation-form>

The performance evaluation process should (1) begin after a reasonable amount of time following the scheduled approval of the Biennial Budget in June of 2022 to facilitate opportunities to set and convey expectations and mutually-agreed upon evaluation criteria consistent with the City Manager's recent evaluation, and (2) establish an annual evaluation schedule that includes interim updates on a quarterly basis—similar to the City Manager's evaluation process described in the May 14, 2019 Council referral for performance evaluations.

BACKGROUND

In 2019, Mayor Jesse Arreguin and Councilmember Kate Harrison cited the various benefits for regular independent annual evaluations for charter officers, including opportunities to improve communications, establish goals and objectives, set expectations, and improve organizational function, resulting in a more effective City government.

The City Charter gives the City Council explicit authority to appoint and potentially remove charter officers who directly report to City Council; it also provides a basis for the Council conducting reviews of individuals serving in this position, and outlines a number of performance considerations that could be part of this process.

~~Article XVIII of the City Charter, which governs the Police Accountability Board and Director of Police Accountability, contains multiple provisions which reflect the City Council's authority over the Director of Police Accountability. Section 14(a) reads, in part: "The City Council shall appoint the Director of Police Accountability at a noticed public meeting." Section 14(e) reads in part: "The City Council may remove the Director of Police Accountability by a two-thirds vote either on its own motion or based on the recommendation of the Police Accountability Board." And Section 14(b) reads: "The Director of Police Accountability shall carry out the work of the Board as described herein, which may include the day-to-day operations of the Board office and staff, and performance appraisals and discipline of all subordinate employees of the Board. All such individuals, to the extent that they are employees of the City of Berkeley, shall be subject to the personnel rules governing City of Berkeley employees."~~

~~Taken together, the sections referenced above make clear that the City Council bears authority and responsibility to appoint and remove the Director of Police Accountability, and that as an employee of the City of Berkeley under the authority of the Council, the Director of Police Accountability is subject to regular evaluation/review by the same.~~

~~In 2020, Berkeley voters approved Measure KK with 75 percent in support. Per the City Charter amendments adopted under Measure KK, Article XVI Section 113 now reads in part: "The City Attorney shall be an officer of the City of Berkeley, appointed by a vote of five members of the Council, serving at the will of the Council for an indefinite period, and removed only by a vote of five members of the Council..."~~

Additionally, ~~t~~Ihe contract for the current City Attorney includes the following provisions:

“Within three months of appointment, the City Council shall jointly establish objective, verifiable measures of her performance to be completed during the first year and the City Council shall provide Ms. Brown with a performance evaluation at the end of the first year. During the initial performance evaluation, Ms. Brown shall present to the City Council on her goals and priorities for the City Attorney Department. An assessment of salary increase shall be part of the evaluation process. For each subsequent year during the term of this Agreement, the parties shall endeavor to establish prospective objective, verifiable measures of performance for the ensuing year. As part of the annual performance evaluation, Ms. Brown shall present on goals and priorities for the City Attorney Department and key accomplishments over the past year.”

Therefore both the City Charter and the contract for the current City Attorney provide clear authority for the Council to evaluate the performance of the City Attorney and to make retention/hiring decisions based on these considerations.

Due to staffing demands and other exigencies of the COVID-19 pandemic, the City Council and City Attorney were unable to engage in the evaluation processes established in the City Attorney’s contract. Abrupt shifts to remote work, a large and unexpected budget shortfall, maintenance of an Emergency Operations Center, and other factors converged to make an evaluation process impracticable at its originally anticipated time. It is now critical that the City Council resume evaluation procedures for the City Attorney and other Charter officers.

In collaboration with the City Attorney, ~~the Police Accountability Board~~, and the selected consultant, the City Council can develop criteria for evaluation and recommendations for operational improvements using best practices from other municipalities, similar to approaches from the International City/County Management Association (ICMA) used for evaluation of the City Manager.

FINANCIAL IMPLICATIONS

~~\$120,000~~

\$60,000

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

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