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GOVERNMENT CODE - GOV

TITLE 4. GOVERNMENT OF CITIES [34000 - 45345] (Title 4 added by Stats. 1949, Ch. 79.)

DIVISION 3. OFFICERS [36501 - 41805] (Division 3 added by Stats. 1949, Ch. 79.)

PART 1. GENERAL [36501 - 36525] (Part 1 added by Stats. 1949, Ch. 79.)

36501. The government of a general law city is vested in:

- (a) A city council of at least five members.
- (b) A city clerk.
- (c) A city treasurer.
- (d) A chief of police.
- (e) A fire chief.
- (f) Any subordinate officers or employees provided by law.

(Amended by Stats. 2000, Ch. 506, Sec. 20. Effective January 1, 2001.)

36501.5. Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code
(Added by Stats. 2000, Ch. 886, Sec. 8. Effective January 1, 2001.)

36502. (a) A person is not eligible to hold office as councilmember, city clerk, or city treasurer unless he or she is at the time of assuming the office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

If, during his or her term of office, he or she moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office shall immediately become vacant.

(b) Notwithstanding any other provision of law, the city council of a general law or charter city may adopt or the residents of the city may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve. Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only and shall not become operative unless it is submitted to the electors of the city at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal. Notwithstanding the provisions of this subdivision, the provisions of any city charter that, on January 1, 1996, impose limitations on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall remain in effect. Unless otherwise prohibited by a city charter, any city charter may be amended pursuant to this section or pursuant to the procedures specified in the charter, to include the limitation authorized in this subdivision.

(Amended by Stats. 1995, Ch. 432, Sec. 5. Effective January 1, 1996.)

36502.5. Notwithstanding the provisions of Section 36502, the city council of the City of Tustin may adopt by ordinance a proposal to limit the number of terms a member of the city council may serve on the city council without submitting the proposal to the electors of the city for approval, provided that a proposal containing those same provisions was submitted to the electors of the City of Tustin at a regularly scheduled election and a majority of the votes cast on the question favored the adoption of the proposal.

Any ordinance adopted pursuant to this section shall apply prospectively from the effective date of this section.

(Added by Stats. 1996, Ch. 310, Sec. 1. Effective January 1, 1997.)

36503. Unless otherwise required by Section 57379, a general municipal election shall be held on a date prescribed by Section 1301 of the Elections Code. Except as otherwise provided in this title, all elective city offices shall be filled by the city electorate at a general municipal election. City officers holding elective city office shall hold office for their prescribed terms from the date of the installation of officers following adoption by the council of the official canvass of their election and until their successors are elected and qualified.

(Amended by Stats. 1996, Ch. 1143, Sec. 70. Effective September 30, 1996.)

36503.5. Notwithstanding any other provision of law, during the period commencing the day of a recall election pursuant to Division 11 (commencing with Section 11000) of the Elections Code, of an elective officer of a city, and ending upon certification of the election results pursuant to Division 15 (commencing with Section 15000) of the Elections Code, or, if the recall prevails, upon qualification of the successor declared elected pursuant to Section 11385 of the Elections Code, an elective officer sought to be recalled shall not expend, or participate in any action that would commit to expend, city funds.

(Added by Stats. 2006, Ch. 193, Sec. 1. Effective January 1, 2007.)

36505. The city council shall appoint the chief of police. It may appoint a city attorney, a superintendent of streets, a civil engineer, and such other subordinate officers or employees as it deems necessary.

(Amended by Stats. 1951, Ch. 1553.)

36506. By resolution or ordinance, the city council shall fix the compensation of all appointive officers and employees. Such officers and employees hold office during the pleasure of the city council.

(Added by Stats. 1949, Ch. 79.)

36507. Before entering upon his or her duties, each city officer shall take and file with the city clerk the constitutional oath of office, except that the councilmember elected at the incorporation election shall deposit his or her oath with the county elections official of the county wherein the city is located, to be held by him or her for delivery to the city clerk at the time as the city clerk officially assumes office.

(Amended by Stats. 2002, Ch. 221, Sec. 39. Effective January 1, 2003.)

36508. At any municipal election, or a special election held for that purpose, the city council may submit to the electors the question whether the elective officers, or any of them except council members, shall be appointed by the city council; provided, however, that the city council shall not submit such question to the electors more often than once in an 11-month period.

(Amended by Stats. 2010, Ch. 699, Sec. 11. (SB 894) Effective January 1, 2011.)

36509. The question shall be printed on the ballots used at the election substantially in one of the following forms:

- (a) "Shall the offices of city clerk and city treasurer be appointive?"; or
- (b) "Shall the office of city clerk be appointive?"; or
- (c) "Shall the office of city treasurer be appointive?"

The words "yes" and "no" shall be so printed on the ballots that the voters may express their choice.

(Amended by Stats. 1957, Ch. 765.)

36510. If a majority of the votes cast on the proposition is for it, the city council shall appoint such officers at the expiration of the terms of the officers then in office, and on a vacancy in any such office. Such officers shall hold office during the pleasure of the city council and, notwithstanding Section 36502 to the contrary, are not required to be residents or electors in the city. The city council may by ordinance vest in the city manager its authority to appoint such officers.

(Amended by Stats. 1963, Ch. 509.)

36511. The petition for incorporation of a city may provide for the appointment of the elective officers, or any of them except council members. If it does, a separate election upon the question need not be held, and upon incorporation the city council shall appoint those officers.

(Amended by Stats. 2010, Ch. 699, Sec. 12. (SB 894) Effective January 1, 2011.)

36512. (a) If a vacancy occurs in an appointive office provided for in this chapter, the council shall fill the vacancy by appointment. A person appointed to fill a vacancy holds office for the unexpired term of the former incumbent.

(b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy.

(1) If the council calls a special election, the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person elected to fill a vacancy holds office for the unexpired term of the former incumbent.

(2) If the council fills the vacancy by appointment, the person appointed to fill the vacancy shall hold office pursuant to one of the following:

(A) If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general municipal election, the person appointed to fill the vacancy shall hold office until the next general municipal election that is scheduled 130 or more days after the date the council is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.

(B) If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general municipal election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent.

(c) Notwithstanding subdivision (b) and Section 34902, a city may enact an ordinance that does any of the following:

(1) Requires that a special election be called immediately to fill every city council vacancy and the office of mayor designated pursuant to Section 34902. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election.

(2) Requires that a special election be held to fill a city council vacancy and the office of mayor designated pursuant to Section 34902 when petitions bearing a specified number of verified signatures are filed. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the filing of the petition. A governing body that has enacted such an ordinance may also call a special election pursuant to subdivision (b) without waiting for the filing of a petition.

(3) Provides that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.

(d) (1) Notwithstanding subdivision (b) and Section 34902, an appointment shall not be made to fill a vacancy on a city council if the appointment would result in a majority of the members serving on the council having been appointed. The vacancy shall be filled in the manner provided by this subdivision.

(2) The city council may call an election to fill the vacancy, to be held on the next regularly established election date not less than 114 days after the call.

(3) If the city council does not call an election pursuant to paragraph (2), the vacancy shall be filled at the next regularly established election date.

(e) (1) If the city council of a city that elects city council members by or from districts elects to fill a vacancy on the city council by appointment as a result of a city council member resigning from office, the resigning city council member may cast a vote on the appointment if the resignation will go into effect upon the appointment of a successor. A city council member shall not cast a vote for a family member or any other person with whom the city council member has a relationship that may create a potential conflict of interest.

(2) If a city council member elects to cast a vote under this subdivision, the city council member shall be prohibited from the following actions for a period of two years after the appointment of a successor:

(A) Advocating on any measure or issue coming before the city council in which the city council member may have a personal benefit.

(B) Entering into a contract of any kind with the city or a city vendor.

(C) Accepting a position of employment with the city or a city vendor.

(D) Applying for a permit that is subject to the approval of the city council.

(3) This subdivision shall not apply to any city council member who is resigning from the city council due to charges of, or conviction for, corruption or criminal behavior, or who is subject to a recall election.

(Amended by Stats. 2015, Ch. 185, Sec. 1. (AB 952) Effective January 1, 2016.)

36513. (a) If a city councilmember is absent without permission from all regular city council meetings for 60 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy.

(b) Notwithstanding subdivision (a), if a city council meets monthly or less frequently than monthly and a city councilmember is absent without permission from all regular city council meetings for 70 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy.

(Amended by Stats. 1990, Ch. 1558, Sec. 2.)

36514.5. City council members may be reimbursed for actual and necessary expenses incurred in the performance of official duties. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3.

(Amended by Stats. 2005, Ch. 700, Sec. 2. Effective January 1, 2006.)

36515. The compensation of a city council member appointed or elected to fill a vacancy is the same as that payable to the member whose office was vacated.

(Amended by Stats. 2010, Ch. 699, Sec. 13. (SB 894) Effective January 1, 2011.)

36516. (a) (1) A city council may enact an ordinance providing that each member of the city council shall receive a salary based on the population of the city as set forth in paragraph (2).

(2) The salaries approved by ordinance under paragraph (1) shall be as follows:

(A) In cities up to and including 35,000 in population, up to and including nine hundred fifty dollars (\$950) per month.

(B) In cities over 35,000 up to and including 50,000 in population, up to and including one thousand two hundred seventy-five dollars (\$1,275) per month.

(C) In cities over 50,000 up to and including 75,000 in population, up to and including one thousand six hundred dollars (\$1,600) per month.

(D) In cities over 75,000 up to and including 150,000 in population, up to and including one thousand nine hundred dollars (\$1,900) per month.

(E) In cities over 150,000 up to and including 250,000 in population, up to and including two thousand five hundred fifty dollars (\$2,550) per month.

(F) In cities over 250,000 population, up to and including three thousand two hundred dollars (\$3,200) per month.

(3) For the purposes of this subdivision, the population of a city shall be determined by the last preceding federal census, or a subsequent census, or estimate validated by the Department of Finance.

(4) The salary of council members may be increased beyond the amount provided in this subdivision by an ordinance or by an amendment to an ordinance, but the amount of the increase shall not exceed the greater of either of the following:

(A) An amount equal to 5 percent for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted.

(B) An amount equal to inflation since January 1, 2024, based upon the California Consumer Price Index, which shall not exceed 10 percent for each calendar year.

(5) No ordinance shall be enacted or amended to provide automatic future increases in salary.

(b) Notwithstanding subdivision (a), at any municipal election, the question of whether city council members shall receive a salary for services, and the amount of that salary, may be submitted to the electors. If a majority of the electors voting at the election favor it, all of the council members shall receive the salary specified in the election call. The salary of council members may be increased beyond the amount provided in this section or decreased below the amount in the same manner.

(c) Unless specifically authorized by another statute, a city council may not enact an ordinance providing for compensation to city council members in excess of that authorized by the procedures described in subdivisions (a) and (b). For the purposes of this section, compensation includes payment for service by a city council member on a commission, committee, board, authority, or similar body on which the city council member serves. If the other statute that authorizes the compensation does not specify the amount of compensation, the maximum amount shall be one hundred fifty dollars (\$150) per month for each commission, committee, board, authority, or similar body.

(d) Any amounts paid by a city for retirement, health and welfare, and federal social security benefits shall not be included for purposes of determining salary under this section, provided that the same benefits are available and paid by the city for its employees.

(e) Any amounts paid by a city to reimburse a council member for actual and necessary expenses pursuant to Section 36514.5 shall not be included for purposes of determining salary pursuant to this section.

(f) A city council member may waive any or all of the compensation permitted by this section.

(g) (1) For the purposes of this section, a city council shall consider the adoption of an ordinance to increase compensation in open session during at least two regular meetings of the city council.

(2) At the first meeting, the city council shall present the proposed ordinance, which shall include findings demonstrating the need for the increased compensation. The ordinance shall not be adopted at the first meeting.

(3) At least seven days after the first meeting, the city council shall hold a second meeting to consider whether to adopt the ordinance.

(Amended by Stats. 2023, Ch. 27, Sec. 2. (SB 329) Effective January 1, 2024.)

36516.1. A mayor elected pursuant to Sections 34900 to 34904, inclusive, may be provided with compensation in addition to that which he or she receives as a council member. That additional compensation may be provided by an ordinance adopted by the city council or by a majority vote of the electors voting on the proposition at a municipal election.

(Amended by Stats. 2010, Ch. 699, Sec. 14. (SB 894) Effective January 1, 2011.)

36516.5. A change in compensation does not apply to a council member during the council member's term of office. This prohibition shall not prevent the adjustment of the compensation of all members of a council serving staggered terms whenever one or more members of the city council becomes eligible for a salary increase by virtue of the council member beginning a new term of office.

(Amended by Stats. 2010, Ch. 699, Sec. 15. (SB 894) Effective January 1, 2011.)

36517. The city clerk and the city treasurer shall receive, at stated times, a compensation fixed by ordinance or resolution.

(Amended by Stats. 1971, Ch. 275.)

36518. Before entering upon the duties of their offices, the city clerk and city treasurer shall each execute a bond to the city. Except as otherwise provided, the bonds shall conform to the provisions of this code relating to bonds of public officers. The penal sum of the bond shall be in a reasonable amount recommended by the city attorney and fixed by the city council, by resolution, and may be changed during their terms of office.

(Amended by Stats. 1965, Ch. 457.)

36519. The city council may require bonds of any other officer or employee of the city.

(Added by Stats. 1949, Ch. 79.)

36520. The city council shall approve all bonds. When approved, the clerk's bond shall be filed with the mayor, and other bonds shall be filed with the city clerk.

(Added by Stats. 1949, Ch. 79.)

36521. Except as otherwise provided, all laws relating to the official bonds of officers apply to bonds required by this chapter.

(Added by Stats. 1949, Ch. 79.)

36522. Any officer or employee collecting or receiving any money belonging to, or for the use of, the city shall deposit it immediately in the treasury in the manner prescribed by ordinance for the benefit of the funds to which it belongs. The officer or employee shall report any deposits to, and settle with, the city clerk, or director of finance if that office has been established by ordinance, on the first Monday in each month or at shorter intervals as are prescribed by ordinance.

(Amended by Stats. 2018, Ch. 467, Sec. 20. (SB 1498) Effective January 1, 2019.)

36523. By ordinance or resolution, the city council may provide for a treasurer's departmental trust fund into which collections of the police department and other officers authorized to make collections may be deposited at frequent intervals during each month. Officers or employees shall advise the city treasurer upon making each deposit.

(Amended by Stats. 1951, Ch. 1553.)

36524. The city treasurer shall make withdrawals from such a fund only on order signed by the proper department head and for the following purposes:

- (a) Making a refund of bail, which has been exonerated, or other refundable deposits.
- (b) Revolving fund advances authorized by the city council.
- (c) Correction of clerical or ministerial errors in the receipt of payments to the city.
- (d) Making settlements with city funds at the end of each calendar month for collections accumulated during the month.

(Added by Stats. 1949, Ch. 79.)

36525. (a) As used in this section "city auditor" includes an elected or appointed officer or full-time employee of the city who is compensated, but does not include an independent contractor.

(b) All books, papers, records, and correspondence of the city auditor pertaining to the auditor's work are public records subject to Division 10 (commencing with Section 7920.000) of Title 1 and shall be filed at any of the regularly maintained offices of the city auditor. However, none of the following items or papers of which these items are a part may be released to the public by the city auditor, or the auditor's employees:

- (1) Personal papers and correspondence of any person providing assistance to the city auditor when that person has requested in writing that the person's papers and correspondence be kept private and confidential. Those papers and that correspondence shall become public records if the written request is withdrawn or upon the order of the city auditor.
- (2) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed.
- (3) Papers, correspondence, or memoranda pertaining to any audit that has been completed, which papers, correspondence, or memoranda are not used in support of any report resulting from the audit.

(Amended by Stats. 2021, Ch. 615, Sec. 191. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)