

MEMORANDUM FROM CITY ATTORNEY

DATE: March 19, 2025

TO: Mayor and City Council
City of Kerman

CC: John Jansons, City Manager

RE: Health Insurance for City Council

This memo has been prepared in conjunction with the agenda item the City Manager is preparing in response to a request from Mayor Pro Tem regarding health insurance for the Council. The purpose of this memorandum is to provide the underlying framework for which City Council members may receive health benefits should the City Council desire to explore making changes in the future.

I. EXECUTIVE SUMMARY

The City currently provides health insurance benefits to City employees. Health insurance benefits to Council Members are permissible provided they are not different or greater than the benefits provided to City employees. Health insurance benefits will not be considered part of the Council Members' salary.

Should the City Council desire to explore changing the health benefit structure to allow health insurance for the City Council, the matter can be placed on a future agenda for discussion and direction.

II. LEGAL DISCUSSION**A. Health Benefits for Council Members Are Permitted.**

A city council "may provide for any health and welfare benefits for the benefit of its officers, employees, retired employees and retired members of the legislative body" in accordance with State law. (California Government Code ("Gov. Code") § 53201(a).) The legislative body may further "authorize payment of all, or such portion as it may elect, of the premiums, dues, or other charges for health and welfare benefits of officers, employees, retired employees, former elective members . . . and retired members of the legislative body subject to its jurisdiction." (Gov. Code § 53205.)

Government Code section 53208 further provides that, "any member of a legislative body may participate in any plan of health and welfare benefits permitted by this article." Consequently,

there is clear authority for cities to provide healthcare coverage for council members as well as employees.

B. Health Benefits to Council Members Are Not Considered “Salary,” Provided the Same Benefits Are Available and Paid by the City for Its Employees.

California Government Code section 36516 provides that a city council may enact an ordinance providing a salary for each council member based on the population of the city. California Government Code section 36516(a)(2)(A) provides that, for cities “up to and including 35,000 in population. In accordance with this state provision, Kerman recently amended its ordinance to increase compensation. See Kerman Municipal Code §2.40.010.

Certain benefits and expenses are not included as part of a council member’s salary. One category of benefits that is not included in a council member’s salary is provided by Government Code section 36516(d), which states:

"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.**"
(Emphasis added)

While the definitions of “retirement benefits” and “social security benefits” are fairly clear, the definition of “health and welfare benefits” is not. Under statutory law, “health and welfare benefits” include hospital, medical, surgical, disability, dental, life, and income protection insurance or benefits, including group life insurance.” (Gov. Code § 53200(d).)

Government Code Sections 53200 -53210 regulate the provision of health and welfare benefits to officers and employees of local agencies including cities. One limit set out in Government Code Section 53202.3 requires that when local legislators craft a benefit plan for themselves, they must share the same benefit plan widely with others: “All plans ... shall provide benefits for large number of employees. A second limit set out in Government Code section 53208.5 (b) states that the health and welfare benefits shall be no greater that that received by nonsafety employees of that public agency.

Any payments that are not considered retirement benefits, health and welfare benefits, social security benefits, or expenses will be counted as part of a council member’s compensation. Such payments and compensation, combined, cannot exceed the cap allowed under the City’s ordinance approving compensation (currently \$300 per month).

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C. State Law Establishes Three Constraints on the Amount and Level of Benefits Received by Council Members.

Three statutes place constraints on the amount and level of benefits that city council members may receive.

1. The benefits provided for council members must be the “same benefits” that the City pays for “its employees” (Gov. Code §36516(d).)
2. The “medical plan” must provide benefits for “large number of employees”. (Gov. Code §53202.3.)
3. Where different benefit structures are provided for different sets of employees, the maximum benefits received by the Council can be no greater than the most generous “schedule of benefits” provided to any category of non-safety employees. (Gov. Code §53208.5.)

D. “Cashing Out” Healthcare Benefits Is Not Permissible.

Some cities have explored the concept of “cashing out” health care benefits, i.e. instead of receiving health care benefits, a council member receives cash instead. This structure is not permissible for two reasons.

First, in-lieu pay is considered part of salary when it is paid in cash. (89 Ops.Cal.Atty. Gen. 107 (2006).) If in-lieu payments are provided in cash, those payments must be accounted for in the salary ordinance and cannot exceed the salary cap established by the ordinance. (Id.)

Second, in 2000, the California Attorney General concluded such a benefit was illegal when considering a similar situation involving members of the governing board of a school district. (83 Ops. Cal. Atty. Gen. 124 (2000).) In that situation, as is the case with council members, the amount of salary paid to school board members was limited by statute. (Id., see also California Education Code § 35120.) With regard to school board members, similar to the situation with council members, there is a statutory provision excluding “health and welfare” benefits from the meaning of “salary.” The Attorney General concluded that, while “health and welfare benefits” could be provided without regard to the salary limitation, cash payments were not “health and welfare benefits” for purposes of the statute.

Since there was no provision in State law for cash in lieu of health benefit, the Attorney General concluded that such cash payments would not be a true health benefit. Although we could not find a similar Attorney General opinion specifically addressing city council members' benefits, the same conclusion would likely apply for council members so that cash in lieu of healthcare benefits would not be treated as a health benefit.

E. Deferred Compensation In Lieu of Health Care Coverage May Be Permissible for City Council Members, if Offered to All Employees.

The California Attorney General has also considered whether a city may allow council members to be provided an in-lieu payment as part of a deferred compensation retirement program without the payment counting as salary. (89 Ops. Cal. Atty.Gen., 107 (2006).) Under the plan at issue in that opinion, employees could elect to forgo health insurance if they already had health insurance coverage and redirected the cash value of the benefit to a deferred compensation retirement plan or other specified benefit.

A deferred compensation benefit is a retirement-related plan organized under federal law for employees of government agencies, allowing them to deposit pre-tax earnings into a retirement account. Funds set aside in a deferred compensation account earn interest and are tax-deferred until the owner withdraws funds upon retirement.

The Attorney General concluded such a benefit plan was *permissible* because it allowed a council member to shift one exempt benefit (healthcare coverage) to another exempt benefit (retirement). This is different from receiving cash in lieu of health benefit because the funds are not immediately accessible except upon retirement, severance from employment, in an unforeseen emergency, or when the employee dies.

Consistent with this recent Attorney General opinion, we advise the City Council that while a program allowing council members to receive cash in lieu of health benefit is not permissible, payments in lieu of health insurance benefits may be option that could be considered if the funds were to be set aside in another exempt benefit, such as a deferred compensation account. However, the City would first need to make this benefit available to all employees.

Please let me know if you have any questions.

Respectfully submitted,



Hilda Cantu Montoya