



REPORT
FROM

THE PERSONNEL
DEPARTMENT

TO: Personnel and Animal Welfare Committee

DATE

REFERENCE: Budgetary Report #R-143

July 31, 2014
COUNCIL FILE

SUBJECT:
INCREASE IN EXEMPTIONS UNDER CHARTER SECTION 1001 (b)(4)

RECOMMENDATION: That the Council consider the information in this report when discussing the possibility of creating and approving an ordinance to increase the maximum number of exempt positions in accordance with Charter Section 1001(b)(4).

DISCUSSION:

In the adopted 2014-15 Budget, item #R-143, the Personnel Department was instructed to report to the Personnel and Animal Welfare Committee with an analysis, impacts, recommendations, and actions necessary to increase the maximum number of exempt positions as allowed in Charter Section 1001 (b)(4) to a total of 250 exemptions.

The City Charter Section 1001 (Attachment 1) provides for the use of exempt positions throughout the City. Charter Section 1001(b) establishes, with approval by the Mayor and review by the Council, up to 150 positions that may be exempted from the civil service provisions of the Charter for the purpose of "providing management or professional, scientific, or expert services of an exceptional character."

Charter Section 1001(b)(4) states in part that "Council may, by ordinance adopted by two-thirds vote, increase the maximum number of exempt positions as provided in subsection (b) to no more than one percent (1%) of the regular authorized positions in the City workforce, provided that if the maximum number of exempt positions is increased pursuant to this subsection, the number of positions created by subsections (a) (4), (5) and (c) of this section shall be counted toward the maximum allowable exemptions...."

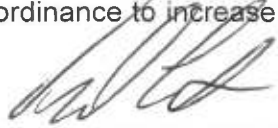
The subsections referred to in this provision are:

- 1001(a)(4) - "Two positions in the class of Assistant General Manager or Deputy Director in each City office or department, and two positions in the class of Assistant Director in each of the Public Works Bureaus of Contract Administration, Engineering, Sanitation, Street Lighting and Street Services, and two positions in the class of Deputy Controller in the Office of Controller."

- 1001(a)(5) - "All Deputy Chiefs of Police."

- 1001(c) - "...up to 15 positions in the Department of Water and Power and up to ten positions to be allocated between the Harbor Department and the Department of Airports...."

The following table displays the City's current exemption numbers in the categories noted above. It also notes the maximum number of additional exempt positions if the Council approves an ordinance to increase to one percent (1%) of the City workforce.



DAVID LUTHER,
INTERIM GENERAL MANAGER

Charter Section 1001(a)(4)	Charter Section 1001(a)(5)	Charter Section 1001(b)	Charter Section 1001(c)	Total current exempt	City Workforce as of 7/1/14	One Percent of City Workforce	Total additional exempt positions available
78	12	139 out of 150	25	254	44,823	448	448-254 = 194

As noted above, given the current level of exemptions and the current size of the City's workforce at the time of writing this report, there is the possibility to add 194 exemptions for a total of 344 exemptions under Charter Section 1001(b). As the maximum number of exemptions noted in the City Charter is a percentage rather than a fixed number, if the Council determines that the maximum number of positions that would otherwise be exempted under Charter Section 1001(b) would not exceed 250, the ordinance would require specific wording to address that direction.

CONCLUSION:

The adoption of an ordinance providing for exempt positions in excess of the current maximum number of 150 under Charter Section 1001(b) would not have an effect of an immediate increase in exemptions. The approval criterion remains the same for any new exempted positions as set forth in Charter Section 1001(b). Departments would submit a request to the Mayor's Office, and if approved, a recommendation is forwarded from the Mayor to the Council for its review and approval. The Council would continue to have ten meeting days to either disapprove by a two-thirds majority or not act on the Mayor's recommendation.

If the Council determines that it is appropriate to go forward with increasing the number of exempt positions in accordance with Charter Section 1001(b)(4), it is recommended that the Council instruct the City Attorney to prepare appropriate language for the proposed ordinance. If the proposed ordinance is adopted, it is also recommended that the Council instruct the Office of the City Administrative Officer to meet and confer with the appropriate employee organizations on the practical impact of the ordinance.

Attachment

CITY CHARTER

Sec. 1001. Exemptions.

Each of the following positions shall be exempt from this Article:

(a) Exempt Positions.

- (1) All officers elected by the people.
- (2) All members of the boards of commissioners.
- (3) All chief administrative officers of the City's departments and offices and the Directors of the Public Works' Bureaus of Contract Administration, Engineering, Sanitation, Street Lighting and Street Services.
- (4) Two positions in the class of Assistant General Manager or Deputy Director in each City office or department, and two positions in the class of Assistant Director in each of the Public Works Bureaus of Contract Administration, Engineering, Sanitation, Street Lighting and Street Services, and two positions in the class of Deputy Controller in the Office of Controller.
- (5) All Deputy Chiefs of Police.
- (6) All Deputy Chiefs of Fire.
- (7) Positions in the Office of the Mayor.
- (8) Positions established by the Council for the purpose of assisting the members of the Council in the performance of their duties, except for clerical personnel.
- (9) All positions in the office of the City Attorney.
- (10) The Chief Financial Officer of the Department of Water and Power.
- (11) The Executive Director of the Board of Police Commissioners.
- (12) The Inspector General of the Police Department.
- (13) The Executive Director and all non-clerical personnel of the City Ethics Commission.
- (14) All Assistant Directors in the Office of Administrative and Research Services.
- (15) The Traffic Manager and the Port Warden of the Harbor Department.
- (16) Crossing Guards.
- (17) All physicians and psychologists subject to Section 1040.

(18) All officers of election.

(19) Persons specially employed by the City Clerk, as authorized by the provisions of Section 405 of the Charter, to assist in the conduct of any election.

(20) Positions elsewhere specifically exempted by the Charter.

(b) Management, Professional, Scientific or Expert Services. In addition to those positions described in subsections (a), (c) and (d) of this section, up to 150 persons to provide management services or to render professional, scientific or expert services of an exceptional character to offices or departments including the Proprietary Departments. Appointments under this subsection shall be subject to the following:

(1) As to each position to be exempted under this subsection, and prior to the initiation of the selection process to fill the position, the Mayor shall forward to the Council a recommendation for an exempt position which sets forth the educational, experience and other professional requirements of the position and describes the circumstances presented by the department seeking the appointment that preclude filling the position through the civil service system. Within ten Council meeting days from receipt of the recommendation, the Council may by two-thirds vote disapprove the Mayor's recommendation for the exemption. If the Council does not act on the recommendation within the specified time period, the recommendation shall be deemed approved. When the position is vacated, the exemption shall terminate unless re-authorized in accordance with this subsection.

(2) No person may be employed under this subsection if he or she has served in an exempt position in the office of an elected City official in the prior two years unless he or she meets the professional experience requirements established for the position.

(3) Persons who have been exempted or who have been appointed to an exempt position prior to the effective date of this Charter, will retain their exemption. Exemptions under this subsection shall be prospective and shall be made only at the time of filling a vacant position.

(4) Council may, by ordinance adopted by two-thirds vote, increase the maximum number of exempt positions as provided in subsection (b) to no more than one percent (1%) of the regular authorized positions in the City workforce, provided that if the maximum number of exempt positions is increased pursuant to this subsection, the number of positions created by subsections (a) (4), (5) and (c) of this section shall be counted toward the maximum allowable exemptions. If Council provides for a maximum number of exemptions based on a percentage of the workforce, and a reduction in the workforce results in more filled exempt positions than permissible, each incumbent shall retain the exemption, but when vacated, such excess exemptions shall terminate.

(c) Proprietary Department Positions. In addition to the exempt positions in the Proprietary Departments created by subsections (a), (b)(1), (2), (3) and (d) of this section, up to 15 positions in the Department of Water and Power and up to ten positions to be allocated between the Harbor Department and the Department of Airports for employment of persons to provide management services or to render professional, scientific or expert services of an exceptional character. Exemption of these positions shall be subject to the following:

(1) Upon receipt of a request for an exempt position by the department which sets forth the educational, experience and other professional requirements of the position and describes the circumstances that preclude filling the position through the civil service system, the Mayor shall forward to the Council a recommendation for the exempt position. Within ten Council meeting days from receipt of the recommendation, the Council may by two-thirds vote disapprove the Mayor's recommendation for the exemption. If the Council does not act on the recommendation within the specified time period, the recommendation shall be deemed approved.

(2) No person may be employed under this subsection if he or she has served in an exempt position in the office of an elected City official in the prior two years unless he or she meets the professional experience requirements established for the position.

(3) Persons who have been exempted or who have been appointed to an exempt position prior to the effective date of this Charter, shall retain their exemption. Exemptions under this subsection shall be prospective and shall be made only at the time of filling a vacant position.

(d) Positions Approved by Council. In addition to the exempt positions created in subsections (a), (b) and (c) of this section, any of the following may be exempted from the provisions of this Article upon the request of the head of the department or office in which they are employed, by order of the Board of Civil Service Commissioners, approved by the Council by resolution:

- (1) positions of unskilled laborers, including drivers;
- (2) positions for workers, mechanics or craftspersons (including crew leaders) employed exclusively in that position on the construction of public works, improvements or buildings;
- (3) any position requiring the services of one individual for not more than half time and paying a salary not to exceed three-fourths of the monthly rate established by the salary fixing authority of the department, division or office for entering-level clerical positions;
- (4) grant-funded positions for a term of no more than two years which, by application of the procedures described in this subsection, may be extended for one additional year for a maximum exemption period of three years.

Any exemption made under the provisions of (1) through (4) may be terminated at any time by resolution of the Board of Civil Service Commissioners.

(e) Leave of Absence from Civil Service. Each person exempted or appointed to an exempt position under this section shall, during the period of exempt employment, be considered as being on leave of absence from the classified civil service if at the time of exemption he or she holds a position in the classified civil service, or is entitled to hold a position therein, and shall continue, during such period, to accrue seniority credit the same as though serving in such position.