FILE 2753 – December 6, 2019

ANTI-NEPOTISM

CITY COUNCIL MEMBER'S WIFE RECEIVING SALARY INCREASE

To: Nancy Stuparich, Attorney for City (Brooksville)

SUMMARY:

A city councilmember will not transgress Section 112.3135(2)(a), Florida Statutes, the State's anti-nepotism law, were the city council to approve a budgetary appropriation and direct it be used to increase the salary of the city clerk, a position held by his wife, so long as the pay increase will not exceed the salary range authorized for that position. Referenced are CEO 18-17, CEO 13-7, CEO 06-13, CEO 00-17, CEO 98-7, CEO 96-5, CEO 95-12, CEO 94-30, and CEO 93-15.

QUESTION:

Would a city councilmember be in violation of Section 112.3135, Florida Statutes, were the city council to approve an appropriation to the city manager's budget and direct the city manager to use the appropriation to increase the salary of the city clerk, who is the councilmember's wife?

Under the circumstances presented, your question is answered in the negative, provided the salary increase to the councilmember's wife does not exceed the salary range for her position.

In your letter of inquiry and additional written information provided to our staff, you
indicate you are bringing this inquiry on behalf of a member of the Brooksville City Council. You indicate the Councilmember questions whether he will be in violation of Section 112.3135(2), Florida Statutes, the anti-nepotism law, were the City Council to approve an appropriation intended to increase the salary of the City Clerk, a position currently held by his wife.

You relate the City Council does not have the direct authority to increase the salary of the City Clerk position, as the City Manager alone is responsible for managing City employees and their salaries. As support, you cite to provisions in the City Charter that clarify that the City Manager, as the chief administrative officer of the City, is responsible for directing and supervising all City offices and positions, with the exception of employees directly retained by the City Council such as the City Attorney and certain municipal consultants. You emphasize that, as part of the managerial responsibilities commensurate with the position, the City Manager—not the City Council—technically has the authority to offer City employees, such as the City Clerk, a salary increase.

However, from the materials you submit, it seems the City Council remains involved in decisions regarding salary increases—albeit indirectly—as you indicate an increase can only come from a budgetary appropriation requested by the City Manager and approved by the City Council. Moreover, you indicate that the City Manager must identify a particular reason for the

---

1 You state the City Council (as a body) also has asked you to seek our opinion concerning the question addressed herein.
2 In particular, Section 3.04(4) of the City Charter states the City Manager shall "[d]irect and supervise the administration of all departments, offices, and agencies of the city" while Section 3.05 of the Charter states the City Manager is "responsible for the supervision and direction of all departments, agencies, and offices of the [C]ity." Section 4.02 of the Charter carves out a narrow exception inasmuch as it states the City Attorney, any assistants to the City Attorney, and consultants retained by the City Council "serve under, and at the pleasure of, the [Council]."
3 Section 3.04(7) of the City Charter indicates the City Manager must prepare and submit the
appropriation when bringing the request. Accordingly, considering that a salary increase can only occur if the City Council approves a specific appropriation request, it seems, at the very least, that a pay increase requires the Council's tacit approval.

Here, you relate that a motion to increase the City Clerk's salary was raised in an unorthodox way, inasmuch as it was proposed not by the City Manager but by a City Councilmember—other than the requestor (i.e., other than the husband of the Clerk)—at a recent City Council meeting. The specific motion was to increase the City Clerk's salary by $10,000. You indicate the motion was not voted upon and, ultimately, the motion was withdrawn until an opinion could be obtained on whether the proposed increase would place the requestor in violation of Section 112.3135(2). You anticipate that a measure to appropriate a $10,000 salary increase to the position may arise again—presumably in the form of an appropriation request by the City Manager—and you inquire whether the City Councilmember related to the City Clerk will be in violation of Section 112.3135(2) if the request is approved. From what you indicate, the salary increase will not be connected to any increase or change in the City Clerk's responsibilities.

Section 112.3135(2)(a), Florida Statutes, the portion of anti-nepotism law relevant here, provides:

A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or

budget—presumably including all appropriations—to the City Council for approval.
advancement is made by a collegial body of which a relative of the individual is a member . . .

The provision prohibits a public official from appointing, employing, promoting, or advancing, or advocating for the appointment, employment, promotion, or advancement of a "relative." See CEO 13-7. Importantly, the statute, by its very language, also is triggered if the collegial body on which a public official serves appoints, employs, promotes, or advances the relative of a member, or advocates for such an appointment, employment, promotion, or advancement, even if the public official abstains from the decision. See CEO 18-17. Considering that the City Councilman's wife is already employed as City Clerk, the question here is whether a decision to appropriate money to increase the City Clerk's salary—in particular a $10,000 increase—constitutes a promotion or advancement, such as to place him in violation of the prohibition.

The meaning of the terms "promotion" and "advancement," as used in Section 112.3135(2)(a), was clarified in *Slaughter v. City of Jacksonville*, 338 So. 2d 902 (Fla. 1st DCA 1976), which concerned whether a merit pay increase should be considered a "promotion" or "advancement" under the statute. In *Slaughter*, the Court stated:

It is our view that it is only an increase in grade which elevates an

---

4 The term "relative" is defined in Section 112.3135(1)(d), Florida Statutes, and includes one's wife.

5 In your inquiry, you assert it is "fundamentally unfair" and constitutes "an undue hardship" to find a member of a collegial body in violation of Section 112.3135(2)(a) when he or she abstains from a vote concerning the appointment, employment, promotion, or advancement of a relative. However, the Legislature in 1994 amended the statute to clarify there is no exception for situations in which a collegial body member whose relative is appointed abstains from voting. See CEO 96-5 and CEO 95-12. The express language inserted into the statute—namely that the prohibition is triggered simply when the appointment, employment, promotion, or advancement is made by a public official's collegial body—was in response to *Galbut v. City of Miami Beach*, 605 So. 2d 466 (Fla. 3d DCA 1992), affirmed 626 So. 2d 192 (Fla. 1993), which held the statute inapplicable when the official abstained from voting and in no way advocated for the appointment. See CEO 96-5.
employee to a higher rank or position of greater personal dignity or importance [that] is an advancement or promotion.

Id. at 904. Ultimately, the Court concluded that a merit-based pay increase that did not move an employee into a higher civil service grade—and stayed within the maximum and minimum limits for his or her current service grade—would not constitute an "advancement" or a "promotion" and, accordingly, would not trigger Section 112.3135(2)(a).

The Commission has consistently applied this reasoning. For example, in CEO 93-15, it found the brother of a hospital district board member would not receive a "promotion" or "advancement" for the purpose of the anti-nepotism law were the board to approve a bonus for the brother that would not increase his grade or elevate him to a higher rank. Similarly, in CEO 98-7, we found no "promotion" or "advancement" under Section 112.3135(2)(a) would occur if the son-in-law of a city's police chief received an across-the-board cost-of-living increase or merit-based pay increase, provided the increase did not change his pay grade or elevate him to a higher rank.

However, in CEO 94-30, the Commission found Section 112.3135(2)(a) would be triggered were a county property appraiser to designate the position of chief deputy property appraiser—a position held by his wife—for inclusion in the Florida Retirement System's Senior Management Service Class, thereby increasing his wife's retirement benefits. Applying the reasoning in Slaughter, the Commission found such a designation would elevate his wife to a position of greater dignity or importance because the retirement benefits to which she would then be entitled would not correspond to those of her pay grade but instead those of a higher pay grade. Accordingly, the Commission found the designation would constitute a "promotion" or "advancement" and would place the property appraiser in violation of Section 112.3135(2)(a).

Here, so long as an appropriation approved by the City Council for the City Clerk position
stays within the maximum and minimum amount approved for her pay grade, we find that it will not constitute a "promotion" or "advancement" under the reasoning in Slaughter. From what you indicate, the $10,000 increase likely to be proposed will slightly exceed the high end of the Clerk's salary range.\(^6\) If the City Council were to approve that amount of an increase and direct that it be given to the City Clerk, she will be receiving a benefit not commensurate with her position, similar to the deputy county property appraiser in CEO 94-30, and the City Councilmember requesting this opinion, assuming he is still serving on the Council, will be in violation of Section 112.3135(2)(a). In short, any appropriation intended by the City Council to increase the salary of the City Clerk must be carefully calculated to stay within the salary range for the position or else Section 112.3135(2)(a) will be triggered as to the City Councilmember.\(^7\)

To the extent you assert Section 112.3135(2)(a) is inapplicable to this situation as the City Manager alone exercises "jurisdiction and control" over the City Clerk—having been vested with the authority to make salary decisions—we find your argument unpersuasive. Section 112.3135(2)(a), in part, prohibits a public official from promoting or advancing a relative, or for advocating for the promotion or advancement of a relative, "in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control[.]." Here, the position of City Clerk is unquestionably "a position in the agency in which the [City

\(^6\) You relate the City, in the past, has considered pay increases exceeding an employee's salary range to be merit-based bonuses that do not alter the employee's pay grade. However, as previously discussed, we have found bonuses or merit-based increases not to be "promotions" or "advancements" under Section 112.3135(2)(a) only when they fall within the salary range authorized for the position in question.

\(^7\) Even if the appropriation will not increase the City Clerk's pay beyond her salary range, the City Councilmember will have a voting conflict concerning any measure to approve the appropriation and he should respond in accordance with Section 112.3143(3)(a), Florida Statutes, which is the voting conflict statute. See CE Form 8B.
Councilmember] is serving." Accordingly, the statute will be triggered if the City Councilmember or the City Council is involved in promoting or advancing his wife. See CEO 96-5 (finding Section 112.3135(2)(a) can be triggered when the relative's position is in an agency where the public official is serving as well as when the position is one over which the public official exercises jurisdiction or control). We also note, under the facts presented here, that the City Council arguably has some degree of jurisdiction or control over aspects of the City Clerk position, inasmuch as your inquiry indicates the Council may—in the future—specifically direct the City Manager to appropriate funds to increase the City Clerk's salary. Finally, to find the anti-nepotism law inapplicable here would contravene the purpose of the statute, which is that persons not be placed in or advanced to public positions by their relatives or by the actions of the collegial body on which their relatives sit. See CEO 06-13 and CEO 00-17.

Your question is answered accordingly.

KBR/gps/vlk

cc: Nancy Stuparich, Esq.
September 13, 2019

VIA EMAIL: SCHAFER.GRAYDEN@LEG.STATE.FL.US

Gray Schafer, Esquire
Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

RE: Ethics Inquiry on behalf of City of Brooksville City Council
   re Council Member Robert Battista

Dear Mr. Schafer:

This letter is a follow-up to your earlier correspondence dated May 24, 2018 to Wade Vose regarding whether Section 112.3135(2), Florida Statutes would be violated if the wife of a City of Brooksville Council Member were hired by the City Manager to serve as the City Clerk. In your letter, you asked that we contact you if the Council Member’s wife were hired into that position and the City Council subsequently considered including an allocation in the budget or an amendment to increase the salary of the City Clerk’s position.

At the first public hearing for their FY 2019-2020 budget on September 4, 2019, the City Council, with the husband of the City Clerk abstaining, authorized me to seek an opinion from the Florida Commission on Ethics regarding whether the Council Member, whose wife is the City Clerk, would be in violation of Section 112.3135, Florida Statutes, if the City Council, with the Council Member who is the husband of the City Clerk abstaining from the vote, 1) approves a $10,000 appropriation to the City Manager’s Office budget; and 2) directs the City Manager to use the appropriation to substantially increase the salary of the City Clerk’s position.

I am not aware of any changes to the facts stated in your May 24, 2018 letter. Neither the Council Member nor his wife have in any way, or at any time, advocated for the salary increase proposed by the other Council Members. The City Manager did not include a salary increase for the City Clerk in his budget for the City Manager’s Office. The Council Member’s wife was employed by the City on and off for approximately 15 years in several different positions before the Council Member was elected by the voters to the City Council in 2014. The population of the City of Brooksville is slightly over 8,000 residents.

Discussion:

Section 112.31135(2) provides:

(a) A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in
the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member. However, this subsection shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population. This subsection does not apply to persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services. Such persons may receive, without losing their volunteer status, reimbursements for the costs of any training they get relating to the provision of volunteer emergency medical, firefighting, or police services and payment for any incidental expenses relating to those services that they provide.

(b) Mere approval of budgets shall not be sufficient to constitute “jurisdiction or control” for the purposes of this section.

A. A Change in the City Clerk’s Salary Would Not Place Her in a Higher Pay Grade or Rank. If the City Clerk received a salary increase it would not place her in a higher pay grade or rank. The City Manager’s Office includes a City Clerk and a Deputy City Clerk. The City Clerk’s pay grade is and has always been greater than the pay grade for the Deputy City Clerk. Since the City Clerk already occupies a higher pay grade than the Deputy City Clerk, a salary increase would not cause any increase in pay grade or rank for the City Clerk. As stated by the First District Court’s decision in Slaughter v. City of Jacksonville, 338 So.2d 902, 904 (Fla. 1st DCA 1976) “it is only an increase in grade which elevates an employee to a higher rank or position or personal dignity or importance [that] is an advancement or promotion.” The Florida Attorney General has agreed with this interpretation of Section 112.3135, Florida Statutes in several Attorney General Opinions, to wit: AGO 70-76, 83-81, 98-7, and 98-23. A change in salary alone was not enough to be an “advancement” or “promotion” prohibited by Section 112.3135(2), Florida Statutes.

B. The City Charter Vests Authority in the City Manager, not the City Council, to Increase Employee Salaries. No change has been made to the City Charter to eliminate the City Manager’s responsibility to supervise and direct all department, agencies and offices of the city. Brooksville City Charter Sections 3.04(4) and 3.05. A decision to give the City Clerk, or any other city employee, a raise would be made by the City Manager as part of his management responsibilities, not the City Council. The City Council approves budget appropriations, a portion of which may include funding for employee salary raises for a particular fiscal year included as part of the City Manager’s budget request. The City Manager’s budget may include a request for funding to increase the salary of an existing position when needed to recruit or retain qualified individuals for a specific position. The City Manager did not include a request for an
appropriation to increase the salary for the City Clerk position as part of his budget request for FY 2019-2020.

C. The City Council Does Not have Jurisdiction & Control Over the City Clerk. In CEO 94-39 the Commission on Ethics concluded that an increase in salary in addition to a change in title, and job responsibilities would be a “promotion” or “advancement.” In CEO 94-39, the employee was given a salary increase as part of his transfer to a different department and a change in job title by his father-in-law, who was the Supervisor of Elections and responsible for control and supervision of his son-in-law. Unlike the employment relationship in CEO 94-39, the City Council Member whose spouse is the City Clerk, does not have “jurisdiction and control” over his wife’s salary as she performs the role of City Clerk in contrast to the “jurisdiction and control” exercised by the Supervisor of Elections over his son-in-law in CEO 94-39. Direct “jurisdiction and control” of the City Clerk and all city employees is vested in the City Manager by virtue of the City Charter. Brooksville City Charter Sections 3.04(4) and 3.05.

Similarly, the facts in CEO 94-30 are distinguishable from the facts in the Brooksville situation for the same reason. In CEO 94-30, the property appraiser had direct control and supervision over his wife who was personally hired by the property appraiser and the only employee who received greater benefits in comparison to other employees under the Florida Retirement System. Direct “jurisdiction and control” of the City Clerk and all city employees is vested in the City Manager by virtue of the City Charter. Brooksville City Charter Sections 3.04(4) and 3.05.

In CEO 93-15, the issue addressed by the Commission was whether a Hospital District Board’s ratification of its Chief Executive Officer’s bonus recommendation for 25 employees, which included the brother of a Board Member would violate Section 112.3135(2)(a), Florida Statutes. Even though the Board retained ultimate authority for personnel decisions, the Commission concluded that the award of the recommended bonus was not an “advancement” or “promotion” of the Board Member’s brother for several reasons, including the fact that the recommended bonus would not result in an increase in grade or rank and the recommended bonus was based on the independent recommendation of the Hospital’s Chief Executive Officer.

Again, the ultimate decision for a salary increase for the City Clerk or other city employee lies with the City Manager, who has “jurisdiction and control” over the City Clerk. Unlike the Hospital District Board, the City Council does not retain control over personnel decisions. The City Manager is not required by either the City of Brooksville Charter or ordinances to seek approval of proposed salary increases to individual city employees to the City Council for ratification. The City Council only exercises “jurisdiction and control” over the City Manager, City Attorney, and any consultants it may retain. Brooksville City Charter Sections 3.01 and 4.02.

D. The City Council May Not Interfere with the City Manager’s Management of the City. Although the City Council may give direction to the City Manager regarding implementation of adopted policies and ordinances, the City Council cannot interfere with the City Manager’s management of the City’s departments and employees. Section 3.04(13) of the City Charter prohibits the City Council or an individual Council Member from interfering with any department officer or an employee in the discharge of his or her duty. Thus, the City
Council cannot interfere with the City Manager’s implementation of any appropriated employee salary increase.

E. A Council Decision Should Not Place One of its Members in Jeopardy of Violating Chapter 112. Lastly, it is fundamentally unfair for an interpretation of Section 112.3135(2) to allow an action by elected members of a city council to cause one of its members to violate Section 112.3135(2) and incur financial or other penalties for its violation 112. If such an interpretation is correct, even if the Brooksville Council Member who is related to the City Clerk abstained from voting due to a conflict of interest, he would still be at risk for violation of Section 112.3135(2) if the City Council wanted to give the City Clerk a raise for whatever reason, despite the fact the Council Member took no part whatsoever in the decision-making process and did not in any way or at any time advocate for an increase to his wife’s salary. Such an interpretation of Section 112.3135(2) would create an undue hardship on other small municipalities, which may have difficulty in finding qualified individuals not related to a local elected official, to serve in a municipal position. Moreover, qualified individuals in a small city may be discouraged from seeking public office in a small city to avoid any alleged violation of Chapter 112 if a relative is employed or would like to be employed by the city.

I thank you again for your assistance with this issue. If you have any further questions or wish to discuss this matter further, please do not hesitate to contact me at 407-645-3735.

Sincerely,

Nancy Stuparich, Esquire

Attachments:
May 24, 2018 Letter from Schafer to Vose
Copy of Sections 3.04 and 3.05, City of Brooksville Charter
Copy of Section 3.01 and 4.02, City of Brooksville Charter

Cc: Council Member Robert Battista
    Mark Kutney, City Manager
May 24, 2018

Mr. Wade Vose
Brooksville City Attorney's Office

Transmitted via email to: wvose@voselaw.com

Re: Ethics inquiry on behalf of Robert Battista

Dear Mr. Vose:

This is in response to your above-referenced inquiry, which you have brought on behalf of Robert Battista, a member of the City Council for the City of Brooksville. You indicate the Councilmember's wife currently is serving as a City employee in the Community Development Department and has applied for the position of City Clerk, which is vacant. You inquire whether the anti-nepotism law found in Section 112.3135, Florida Statutes, would be transgressed were his wife to be appointed to the position of City Clerk.

Essential to the analysis is your statement that the City Charter vests sole authority to appoint the City Clerk with the City Manager. You emphasize the City Manager's ability to appoint the City Clerk is not subject to the approval or ratification of the City Council under the City Charter, the City Code of Ordinances, or any other controlling law. You also indicate the Councilmember has not advocated for the appointment of his wife to the City Clerk position.

1 Section 3.04(1) of the Brooksville City Charter states the City Manager has the authority to "appoint, suspend, or remove all city employees and appoint administrative officers provided for by and under this charter, except as otherwise provided by law." A review of the charter indicates the City Council can appoint the City Manager (Section 3.02(a)) and the City Attorney (Section 4.02(a)), but does not indicate the City Council is involved in selecting the City Clerk.
Section 112.3135(2), Florida Statutes, provides, in part, the following:

(a) A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member. However, this subsection shall not apply to appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population . . .

(b) Mere approval of budgets shall not be sufficient to constitute "jurisdiction or control" for the purposes of this section.

The provision essentially prohibits a "public official" from appointing, employing, promoting, or advancing a relative, or advocating for the appointment, employment, promotion, or advancement of a relative. The term "relative" is defined in Section 112.3135(2)(d) and expressly includes a public official's "wife." Importantly, the statute applies even if the public officer does not participate in the decision to appoint his relative; so long the appointment is made by the collegial body on which the officer serves, the prohibition will apply, even if the officer did not participate in the decision. See CEO 09-15.2

However, from what you indicate, the City Council does not have the authority to appoint the City Clerk. Rather, it appears the City Charter vests that authority in the City Manager, and the City Council is not involved in approving or ratifying the City Manager's selection. In situations such as this, when the authority to place a relative in a position does not reside with the board of which the public officer is a member, but, instead, is vested, pursuant to general law or agency charter, in another, Section 112.3135(2)(a) is not triggered. See CEO 02-11, fn.7 and CEO 93-1. In other words, so long as the appointment authority is vested solely in the City Manager, and so long as the Councilmember does not advocate for his wife's appointment, it does not appear that the prohibition of Section 112.3135(2)(a) will apply to the appointment of the Councilmember's wife to the City Clerk position.

You also inquire whether the anti-nepotism law will apply regarding Council approval of any budgets or budget amendments relating to the salary or benefits of the Councilmember's wife, so

---

2 The Commission opinions cited herein are available at www.ethics.state.fl.us.
long as any increases in salary or benefits extended to the Councilmember's wife are "equally available" to all City employees in the same or similar classifications.3 Because there does not appear to be a pending budget or budget amendment affecting the salary or benefits of the Councilmember's wife—or any other relative of the Councilmember—this question is not ripe for review. However, the opinions discussed below appear relevant and may provide guidance in the event that such a measure arises in the future.4

Section 112.3135(2)(a) is triggered when a public official appoints, employs, promotes, or advances a relative, or advocates for the appointment, employment, promotion, or advancement of a relative. Receiving an increase in salary or benefits does not constitute appointment or employment. The question thus becomes whether an increase in salary or benefits can constitute a promotion or advancement.

In Slaughter v. City of Jacksonville, 338 So. 2d 902, 904 (Fla. 1st DCA 1976), the First District found the terms "promotion" or "advancement" corresponded to "an increase in grade which elevates an employee to a higher rank or position of greater personal dignity or importance." The court went on to analyze whether a mere increase in salary, within limits fixed for the pay grade in which a position was classified, would constitute a "promotion" or "advancement" under this definition. It concluded that an increase in salary—without more—was not enough to show a "promotion" or "advancement," stating:

had the legislature intended for the term 'advancement' to include a salary increase without an increase in grade, it could very easily have said so. It is our view that it is only an increase in grade which elevates an employee to a higher rank or position or greater personal dignity or importance [that] is an advancement or promotion.

Id. This reasoning was emphasized in several opinions issued by the Attorney General's Office.AGO 70-76 states "that a routine salary increase given across the board to all employees could include a relative without doing violence to either the letter or the spirit of the anti-nepotism statute." Similarly AGO 83-81 contains a detailed analysis of Slaughter and concludes that an

3 It is unclear from your inquiry whether your question concerns an increase in salary or benefits to the Councilmember's wife in her current position or in the event that she is appointed to become City Clerk.

4 Prior to the 1989 transfer of the anti-nepotism law to the Code of Ethics for Public Officers and Employees, the provision (which at the time was codified in Section 116.111, Florida Statutes) was interpreted by a number of opinions by the Attorney General whose reasoning—in large degree—has been adopted by the Commission on Ethics. See CEO 98-7. Accordingly, in addition to advisory opinions issued by the Commission, this analysis also cites to opinions of the Attorney General's Office, which are available at myfloridallegal.com/opinions.
"advancement" or "promotion" contemplates an elevation in station or rank, rather than merely an increase in salary in the same position.

Subsequent opinions from the Commission reflect this reasoning as well. In CEO 98-7 the Commission considered whether a municipal police chief would be in violation of Section 112.3135(2)(a) were his son-in-law, a police department employee, to receive a cost-of-living or "merit-based" pay increase. The Commission concluded that an across the board cost-of-living increase or merit pay increase would not constitute an "advancement" or "promotion," so long as any such increase would not constitute an increase in grade or elevation to a higher rank for the son-in-law. Similarly, CEO 98-23 found Section 112.3135(2)(a) would not be triggered were a sheriff's brother-in-law, a deputy within the sheriff's office, to receive an across the board salary increase offered to similarly situated employees.

These opinions focus upon situations where the only change in status is an increase in pay to the employee. However, in situations where the pay increase is coupled with other factors, such as a change in title or the assignment of additional responsibilities, the Commission has found an "advancement" or "promotion" sufficient to trigger the statute. See, generally, CEO 94-39. In addition, the anti-nepotism law may apply if the relative is the only individual receiving the change in salary or benefits. For example, in CEO 94-30 the Commission addressed whether a county property appraiser would be in violation of Section 112.3135(2)(a) were he to designate a position held by his wife for inclusion into the Florida Retirement System's Senior Management Class, which would entitle her to greater benefits under the Florida Retirement System. The Commission found that the substantial increase in benefits, which apparently was being extended to the wife alone, would constitute a prohibited "advancement" or "promotion" under the statute.

Accordingly, here, if the City Council is presented with a vote on a budget or a budget amendment affecting the salary of the Councilmember's wife, please contact me for further guidance. The analysis, then, will depend on several factors unique to that budget item or amendment, including how many employees will be affected, whether the measure will pertain to everyone in her classification, whether she will experience a proportionately greater benefit than other employees, and whether there will be any change in her title and/or responsibilities.5

Also, your inquiry asserts that under Section 112.3135(2)(b), the anti-nepotism statute is inapplicable when a City Councilmember votes to approve a budget or budget amendment increasing the salary or benefits of a City employee who happens to be a relative, provided that others similarly situated to the relative receive the increase as well. However, the language of the provision does not support such an interpretation. Section 112.3135(2)(b) states "[m]ere approval of budgets shall not be sufficient to constitute 'jurisdiction and control' for the purposes of this section." The provision does not exempt budgetary votes from the reach of the anti-

5 The analysis, if undertaken, also will need to consider whether the measure will create a voting conflict for the Councilmember, as the voting conflict statute (Section 112.3143, Florida Statutes) operates separately and independently from the anti-nepotism statute.
nepotism law. It rather means that just because a public official has the ability to fund a relative's position by approving an agency's budget, that ability—by itself—does not demonstrate the "jurisdiction and control" over the position needed to trigger the anti-nepotism law. While this provision has not been the focus of an advisory opinion from the Commission, an Attorney General's opinion citing this language supports this interpretation. It concerned whether a county commissioner's ability to approve the county budget, in itself, gave the commissioner "jurisdiction and control" over all positions funded by the budget, and concluded it did not. See AGO 73-75.

In sum, based on what you describe, it does not appear the Councilmember will be in violation of Section 112.3135(2)(a) if the City Manager selects the Councilmember's wife to become City Clerk, provided he does not advocate for his wife's appointment to the position. However, if the City's budget or a budget amendment calls for increasing the salary or benefits available to the Councilmember's wife and/or others in her classification, please contact me for further guidance.

Sincerely,

Gray Schafer
Gray Schafer
Senior Attorney
Florida Commission on Ethics
(850)-488-7864
Sec. 3.04. - Powers and duties of the city manager.

The city manager shall:

(1) Appoint, suspend or remove all city employees and appoint administrative officers provided for by and under this charter, except as otherwise provided by law.

(2) Administer and enforce all laws, ordinances, contracts and franchises.

(3) Negotiate all contracts, franchises, acquisition and disposition of property either in proper person or through agents designated by him or her and, upon approval thereof by the council, implement on behalf of the city all agreements, leases, deeds and other instruments in connection therewith.

(4) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law.

(5) Attend all council meetings and have the right to take part in discussion but not vote.

(6) See that all laws, provisions of this charter and acts of the council, subject to enforcement by him or her or by officers subject to his or her direction and supervision, are faithfully executed.

(7) Prepare and submit the annual budget, budget message and capital program to the council in a form provided by ordinance.

(8) Submit to the council and make available to the public a complete report of the finances and administrative activities of the city as of the end of each quarter and fiscal year.

(9) Make such other reports as the council may require concerning the operation of the city departments, offices and agencies subject to his or her direction and supervision.

(10) Keep the council fully advised as to the financial condition and future needs of the city and make recommendations to the council concerning the affairs of the city.

(11) Sign contracts on behalf of the city pursuant to the provisions of appropriations ordinances.

(12) Perform such other duties as are specified in this charter or as may be required by the council.

(13) Make such recommendations as the manager deems necessary or expedient in the interest of the city to the council relating to the adoption of ordinances and resolutions; provided, however, that nothing herein contained shall prevent the city council in the exercise of its legislative functions and powers from calling into consultation the boards or departments and other officers and employees of the city wherever in the judgment of the council it may be necessary, but neither the council nor any member shall interfere with the conduct of any department officer or an employee in the discharge of his or her duty.

Sec. 3.05. - Supervision of departments.

Except as otherwise provided in this charter or by general law, the city manager shall be responsible for the supervision and direction of all departments, agencies and offices of the city. All departments, offices and agencies under the direction and supervision of the manager shall be administered by an officer appointed by and subject to the direction and supervision of the manager. With the consent of council the manager may serve as the temporary head (six-month maximum without further approval of council) of one (1) or more departments, offices or agencies or may appoint one (1) person as the temporary head (six-month maximum without further approval of council) of two (2) or more of them.

(Ord. No. 287-B, 9-11-1995; Ord. No. 287-F, § 1, 8-21-2006)
Sec. 3.01. - City manager.

There shall be a city manager who shall be the chief administrative officer of the city. He or she shall be responsible to the council for the administration of all city affairs placed in his or her charge by, or under this charter.

(Res. No. 90-13, § 1, 10-15-1990)
Sec. 4.02. - Professionals, consultants.

(a)  *City attorney:* There shall be a city attorney, and as many assistants as the council may, from time to time, deem necessary. The city attorney and assistants may be part-time or full-time, and shall serve under and at the pleasure of, the city council.

(b)  *Consultants:* The city council may retain consultants, without limitations, as the council deems necessary, and as may be required by general law or governmental rule and regulation. Said consultants may include, but not be limited to, engineers, architects, accountants, auditors and surveyors. Said consultants shall serve under, and at the pleasure, of the city council.

(Ord. No. 287-F, § 1, 8-21-2006)
October 22, 2019

Gray Schafer, Esquire
Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709

Re: Ethics inquiry – Council Member Robert Battista, City of Brooksville

Dear Mr. Schafer,

This letter is in response to your email of September 24, 2019 in which you asked several questions related to the prior request for a formal ethics opinion. I have discussed your questions with the City Manager and others as well as searched for any other documents, which may be useful to you. Answers to your questions follow:

1. Am I correct in understanding you are bringing this inquiry at the request of Councilmember Battista? I want to make sure there is no standing issue here and that Councilmember Battista has requested you to bring the inquiry on his behalf.

The inquiry is being requested by both Council Member Battista and the City Council. At the August 26, 2019 public meeting, Council Members asked about giving the City Clerk a raise. Council Member Battista brought up the May 24, 2018 letter and asked me to contact you as requested in the May 24, 2018 letter. At the September 4, 2019 meeting, the City Council, with Council Battista declaring a conflict of interest and abstaining from the vote, directed me to seek a formal opinion from the Commission on Ethics.

2. You inquire about a possible appropriation to the City Manager’s Office of $10,000. If the appropriation is approved, do you anticipate the entire $10,000 will be used to increase the salary of the City Clerk’s position?

The $10,000 appropriation was suggested by Council Member Bernadini and he specifically directed the money to be used to fund an increase in the City Clerk’s salary. He did not propose that the $10,000 to be used by the City Manager for other purposes. His motion was not voted upon and withdrawn following concerns raised regarding Chapter 112.

The City Manager did not request a $10,000 budget appropriation for his office. Even if he did, he would not request an appropriation for a specific employee. The City Manager did not propose or intend to increase the salary for the City Clerk or others in his Office other than a cost
of living raise, which was proposed for all city employees. If the City Council were allowed to
propose the increase as suggested by Council Member Bernadini, such direction from the City
Council could be viewed as interference with the City Manager’s management of the city.
Lastly, I add that at no time did the City Clerk ask the City Manager for a raise prior to or after
his budget preparation and submission to the City Council.

3. Am I correct in understanding Councilmember Battista did not initially propose increasing the
salary for the City Clerk position?

Yes, it was brought up by other Council Members, who appeared to be very satisfied with the
City Clerk’s job performance. The Council Members also expressed concern over her workload
in comparison to workloads of other employees since she was also recently assigned
responsibility for cemetery matters by the City Manager.

4. Am I correct in understanding that only the City Manager—not the City Council—has vested
authority to offer the City Clerk a salary increase?

In my opinion, yes based on the language in the City Charter and Code of Ordinances, referenced
in the request for an opinion. In addition, the City Manager’s Employment Agreement states:

Section 2: Duties and Authority in the City Manager’s agreement states:
The Employer agrees to employ Employee as City Manager to perform the
functions and duties specified in the Charter and Municipal Code of the City of
Brooksville, and to perform other legally permissible and proper duties and
functions as the Employer shall from time to time assign.

The City Manager’s job description does not specifically address his authority to provide raises
to employees nor was any personnel policy found that specifically addressed this issue. A copy
of the City Manager’s job description is attached. Section 3 of the City of Brooksville Personnel
Manual addresses Salary Administration for city employees. A copy of the Salary
Administration in the personnel manual is attached. Paragraph F (page 13) states “the City”
determines pay increases and does not otherwise define “City.” Section 3.01 defines pay grade
and pay range as well as other definitions. The Salary Administration Plan establishes systemic
practices for setting salaries for employees. Once the methodology established for the Salary
Administration Plan is approved by the City Council, it is administratively implemented and
maintained. Part of the salary administration plan requires the City Council to approve salary
ranges.

5. Besides the provisions cited in the inquiry, are there any additional provisions in the City
Charter—or any other local ordinances—clarifying that the City Manager alone makes decisions
concerning employees’ salaries? If so, would you provide citations to them?

Neither the City Manager or I am aware of any other than as stated above.
6. Am I correct in understanding that the contemplated salary increase will not increase the City Clerk’s pay grade or rank? Relatedly, will the proposed salary increase stay within the salary range approved for the City Clerk position?

The salary increase suggested by the City Council would not change the City Clerk’s pay grade, rank, or title. If the City Manager gave the City Clerk a $10,000 increase, she would slightly exceed the high end of her salary range and receive the excess as a lump sum payment. (See Response #7 below.) In view of the City Manager’s discretion in providing salary raises, there is no prohibition to prevent him from providing a salary increase less than $10,000 in his discretion.

7. What is the salary range for the City Clerk’s pay grade?

There is currently no “step-plan” in place for a salary increase for the City Clerk’s position. Similar to other city employees, the salary for the City Clerk’s position has a high and low range, which was approved by the City Council before the Council Member’s wife was appointed to the position of City Clerk. The current range is $39,998.40 to $59,009.60. Currently the City Clerk makes $49,358.40. A $10,000 salary increase and a 3% city-wide salary increase would put the City Clerk over the top of her pay range. In 2006, the City Council adopted a compensation and classified study prepared by The Mercer Group. A copy of The Mercer Group plan is attached. Page 22 allows a merit pay increase to be provided to employees who are at the maximum of their salary range as a lump sum. Several employees are currently earning the high end salary of their job title. In other words, an employee’s base salary would never exceed or “top out” at the high end of the salary range. The City Manager and the City Council will be re-evaluating salary ranges for several employees in the near future since the level of the current salary ranges for several positions does not attract enough qualified applicants. The decision to increase the salary range is made by the City Manager, with the approval of the City Council.

8. When the City Manager requests a budget appropriation for a particular office—like the City Clerk’s Office—does he or she have to specify why the appropriation is necessary or how it will be used? If so, how specific must the City Manager be?

I am trying to ascertain here whether the City Manager must inform the City Council, at the time of the request, that the appropriation, if approved, will be used to increase the City Clerk’s salary.

Yes. It depends on the request. The City Manager may request an appropriation for his office for an additional employee, office equipment, a lump sum for merit increases, etc. During discussion of the budget, the City Manager would identify the reason for the appropriation request. Even when an appropriation is made, the City Manager may request permission to re-allocate appropriate funds during the fiscal year in his discretion.
It is my understanding that this matter will be reviewed by the Commission on Ethics at their December meeting. In the meantime, should you need any additional information, please do not hesitate to contact me.

Sincerely,

[Signature]

Nancy Stuparich
City of Brooksville
JOB DESCRIPTION

POSITION TITLE: CITY MANAGER
DEPARTMENT: CITY MANAGER’S OFFICE
SUPERVISED BY: COUNCIL

POSITION SUMMARY: The City Manager reports to the City Council and is responsible for the day-to-day business operation of the City pursuant to City Charter, Section 3.01 and directions and policies established by City Council or as prescribed by ordinance, resolution or law. Shall be responsible to the City Council, which is five (5) members, for the administration of all City affairs placed in his or her charge by or under the Charter.

ESSENTIAL JOB FUNCTIONS:

* Appoint, suspend or remove City employees and appointive administrative officers provided for by and under the Charter, except as otherwise provided by law, the Charter or personnel rules adopted pursuant to the Charter. May authorize any administrative officer who is subject to his or her direction and supervision to exercise these powers with respect to subordinates in that officer’s department, office or agency.

* Administer and enforce all laws, ordinances, contracts and franchises.

* Negotiate all contracts, franchises, acquisition and disposition of property either in proper person or through agents designated by him or her and, upon approval thereof by the Council, the implementation on behalf of the City of all agreements, leases, deeds and other instruments in connection therewith.

* Direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by the Charter or by law.

* Attend all Council Meetings and have the right to take part in discussion but may not vote.

* See that all laws, provisions of the Charter and acts of the Council, subject to enforcement by him or her or by officers subject to his or her direction and supervision, are faithfully executed.

* Prepare and submit the annual budget, budget message and capital program to the Council in a form provided by ordinance.

* Submit to the Council and make available to the public a complete report of the finances and administrative activities of the City as of the end of each fiscal year.

* Make such other reports as the Council may require concerning the operation of the City departments, offices and agencies subject to his or her direction and supervision.

* Keep the Council fully advised as to the financial condition and future needs of the City and make such recommendations to the Council concerning the affairs of the City as he or she deems desirable.

* Sign contracts on behalf of the City pursuant to the provisions of appropriation ordinances.

* Perform such other duties as are specified in the Charter or may be required by the Council.

* Make such recommendations as the Manager deems necessary or expedient in the interest of the City to the Council relating to the adoption of ordinances and resolutions; provided, however, that nothing herein contained shall prevent that City Council in the exercise of its legislative functions and powers from calling into consultation the boards or departments and other officers and employees of the City wherever in the judgment of the Council it may be necessary, but neither the Council nor any member shall interfere with the conduct of any department officer or any employee in the discharge of their duties.
JOB STANDARDS:

Education and Experience
Any combination equivalent to the education and experience likely to provide knowledge and abilities would be qualifying. A typical way to gain such knowledge and abilities would be:

Education: Bachelor's Degree in Public, Business Administration, Organizational Management or other directly related field from a regionally accredited college or university. Masters degree in Public Administration from a regionally accredited college or university preferred.

Experience: Five (5) years of executive experience as a City Manager, Assistant City Manager or other equivalent governmental executive experience. Experience in Florida required. Must be skilled in leadership, public relations, communication, planning and economic development, finance/budgeting.

Ten (10) years of experience as a City Manager, Assistant City Manager or other equivalent governmental executive experience or five (5) years of local government service and five years proven senior level experience in business environment preferred.

Equivalent combination of experience and education in a municipality of comparable size or larger preferred.

Licenses, Certification or Registrations: Valid Florida driver's license and must be insurable by the City's insurance carrier. Bondable.

CRITICAL SKILLS, ABILITIES, & EXPERTISE:

Physical Requirements: Use of both hands with majority of fingers in each hand, 20/40 vision (in at least one eye), and be able to hear and understand and verbally communicate in English at normal conversational levels in a typical governmental office (corrective devices acceptable). Ability to access file cabinets for filing and retrieval of data. Reasonable accommodation will be made for otherwise qualified individuals with a disability.

Equipment: Office equipment such as personal computer, calculator, telephone, copier, fax, etc.

Skills & Expertise:

* Considerable knowledge of principles, procedures and practices of government operations.

* Considerable knowledge of principles, procedures and practices of business and public administration.

* Considerable knowledge and skill in negotiating techniques with a proven record of successful contract negotiations and administration.

* Knowledge of state and local laws and regulations preferable.

* Skill in personnel administration, budgeting, accounting, grants, grants administration, intergovernmental relationships, growth management issues, public safety, public works and enterprise operations.

* Strong skills in communication, organization and public relations.

* Ability to organize, direct and coordinate the activities of the departments and divisions of municipal government.

* Ability to manage his/her time and the time of others.

* Ability to effectively and timely communicate with council, staff and the community.

* Ability to recruit, develop and retain a diverse high performing staff.
* Ability to respond to a changing environment.
* Ability to maintain composure, keeping emotions in check, controlling anger, and avoiding aggressive behavior, even in very difficult situations.
* Ability to give full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.
* Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for service, and evaluation of customer satisfaction.
* Knowledge of human behavior and performance; individual differences in ability, personality, and interests; learning and motivation.
* Knowledge of business and management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique, production methods, and coordination of people and resources.
* Knowledge of media production, communication, and dissemination techniques and methods. This includes alternative ways to inform and entertain via written, oral, and visual media.

**ESSENTIAL ATTRIBUTES:**

* Commitment to absolute honesty, integrity and ethical conduct.
* Dedicated to public service.
* Visible presence in the community.
* Exhibits initiative and is a self-starter.
* Committed to transparency and accountability in local government.

**ENVIRONMENTAL FACTORS:**

* **Job Location:** Primary location is within the City of Brooksville’s City Hall.

**SECONDARY JOB FUNCTIONS:**

* Performs other reasonably related duties as assigned/directed by City Council.

Reasonable accommodations will be made for otherwise qualified individuals with a disability.

Employee Signature ___________________________ Date __________

Supervisor Signature ___________________________ Date __________

City Manager
Section 3
Salary Administration
& Compensation
SECTION 3.00 HOURS AND PAY

I. POLICY

The City will compensate its Employees for services provided in accordance with the established compensation plan, pay agreements and applicable law. The established Compensation Plan provides a systemic and structured method for payment of City Employees and outlines a uniform system of administration for compensation decisions.

II. DEFINITIONS

A. Exempt Employee means an Employee within a position where the job duties and functions qualify for either an executive, administrative, or professional exemption under the tests and standards established within the Fair Labor Standards Act (FLSA). Exempt Employees are compensated on a salary basis and are exempt from overtime pay provisions.

B. Non-exempt Employee means an Employee within a position where the job duties and functions are such that an exemption under the tests and standards of the FLSA does not qualify for an exemption. Non-exempt Employees are compensated for all Hours Worked at a regular rate of pay for hours up to and including 40 hours per workweek. Any Hours Worked more than 40 hours per week will be compensated at an Overtime rate of pay; except for those Non-exempt Employees employed in certain firefighter and law enforcement occupations which may have different requirements under the FLSA.

C. Full-time Employee means an Employee that is regularly scheduled to work 30 hours or more per week.

D. Part-time Employee means an Employee that is regularly scheduled to work less than 30 hours per week.

E. New Employee means an Employee that has not completed a period of sixty (60) days of continuous service with City.

F. Regular Employee means an Employee that has worked for the City for a continuous period of employment of sixty days or more. The status of Regular Employee is utilized for the determination of benefits with the City.

G. Hours Worked means all hours that an Employee is necessarily required to be on the City’s premises, on duty or at a prescribed work place. Hours compensated as Regular Hours and Overtime Hours are considered Hours Worked. Hours inclusive of time-off periods inclusive of paid time off for holidays, jury duty, vacation, sick leave or any leave of absence are not Hours Worked.

Approved by City Council 11/15/2010
As Amended by City Council 10/17/2016
H. Regular Hours means Hours Worked up to and including 40 hours per workweek; except for those Non-exempt Employees employed in certain firefighter and law enforcement occupations which may have different requirements under the FLSA. Regular Hours will be compensated at an Employee’s regular rate of pay.

I. Overtime Hours means Hours Worked by a Non-exempt Employee in excess of 40 hours per workweek; except for those Non-exempt Employees employed in certain firefighter and law enforcement occupations which may have different requirements under the FLSA. Overtime Hours will be compensated at a rate of time-and-one-half the Employee’s regular rate of pay.

J. Section 7(K) is Section 7(K) of the Fair Labor Standards Act allowing certain Non-exempt Employees in Fire and Law Enforcement Occupations to be paid Overtime Hours based on a schedule other than after forty (40) hours in a seven (7) day period.

K. Flexible Scheduling means a method of scheduling typically used for adjusting a Non-exempt Employee’s work hours (start and stop times) within an Employee’s regularly scheduled workday or workweek within so as not to incur Overtime Hours whenever possible.

L. Merit Pay Increase means an increase in compensation which may be established in conjunction with the budget process which may be granted to an Employee based on merit or performance evaluation.

M. Pay Period means a two workweek period for which Employee’s are paid for Hours Worked and paid-time off.

N. Workweek means that period of time that begins at 12:00 A.M. on Wednesday and continues through Tuesday at 11:59 P.M.

III. PROCEDURE

A. Employment Classification. The City maintains standard definitions of employment status and classifies Employees for purposes of personnel administration and related payroll transactions according to the definitions herein.

1. Each job is classified as either Exempt or Non-exempt.

2. Positions may be periodically re-evaluated to properly classify positions.

Approved by City Council 11/15/2010
As Amended by City Council 10/17/2016
3. Classifications are determined by the City Manager, or designee, and decisions of the City Manager, or designee, as to classification status shall be final.

B. **Breaks.** Breaks are not legally required to be provided; however, Employees may be allowed to take a break as work permits and in conjunction with Departmental procedures and approvals.

   1. Breaks less than ten (10) minutes will be considered Hours Worked and are compensated accordingly.

   2. Employee break privileges may be revoked by the City if in the sole and absolute discretion of the City it is determined that an Employee abuses and/or misuses the Break privilege.

C. **Meal Periods.** Employees are typically provided with a regular Meal Period of at least 30 minutes within an eight (8) hour workday. Meal Periods are scheduled by the Department Director, or designee.

   1. Meal Periods should be observed away from the Employee's normal work area.

   2. Employees must utilize his or her Meal Period; it may not be saved for purposes of leaving work early and will not be accumulated.

   3. Meal Periods are generally not considered Hours Worked and Employees are not compensated for Meal Period time; however, if the Employee's work schedule requires that the Employee be "on-duty" during the Meal Period, the time will be considered as Hours Worked and the Employee will be compensated for the Meal Period.

D. **Authorizing and Calculating Overtime.** Overtime compensation is paid for Overtime Hours and provided to Non-Exempt Employees only.

   1. No Overtime Hours are to be worked without prior authorization from the Employee's Department Director, or designee.

   2. Compensating time-off in lieu of Overtime payments will not be granted after the close of a work week.

E. **Payroll Recordkeeping.** General information and records are kept for Employees for payroll recordkeeping and compensation requirements.

   1. Information will be provided and/or reported by the Employee and include the following:

Approved by City Council 11/15/2010
As Amended by City Council 10/17/2016
a. The Employee’s full name, as used for Social Security recordkeeping;
b. The Employee’s home address, including zip code;
c. Date of birth;
d. Gender;
e. Hours Worked each workday; and
f. Total Hours worked each workweek.

2. Compensation records are maintained by the City on Employees in accordance with the Fair Labor Standards Act. Records include a regular hourly rate of pay or salary, total wages, regular wages, overtime compensation, etc.

3. Non-exempt Employees are required to track and report all Hours Worked utilizing the established time recording method. These records may include paper or electronic timesheets, timecards or other methods.

4. Employees are required to track and report all Leave Time including Holidays, Vacation, Sick, and other paid time off, etc.

5. Employees are solely responsible for the accuracy of the time reported as Hours Worked. An Employee must sign, either electronically or otherwise, his or her time record attesting to the accuracy of the Hours Worked as recorded on the time record. A Department Director’s, or designee’s, review or signature does not attest to or confirm the accuracy of the time reported by the Employee.

6. Failure of the employee to submit a timesheet when required or submitting a fraudulent timesheet may result in disciplinary action.

F. Pay Increases. An Employee may become eligible for pay increases at such time as the City determines a pay increase is warranted and when funding is available.
SECTION 3.01 SALARY ADMINISTRATION

I. POLICY

The City maintains a salary administration plan to be used in compensation decisions that provides for standard pay grades, pay ranges, and position classification. The plan provides a systemic procedure for setting, adjusting or changing salaries for new hires, promotions, transfers, and any other pay practice related to position classification. The salary administration plan shall comply with the provisions of this policy, and it is the City's intent to maintain and update the plan periodically.

II. DEFINITIONS

A. Salary Administration Plan means a written plan providing for a systemic approach to administering and implementing pay and salary practices.

B. Pay Grade means a grade or number assigned to a particular pay range that is used in categorizing or classify positions.

C. Pay Range means a range of salaries assigned a pay grade for a particular group of jobs with equivalent market or job value.

D. Position Classification means the process of evaluating a job based on identified factors to determine an appropriate pay grade and pay or salary level.

E. Job Description is a written description listing the essential and secondary functions, duties, and responsibilities of a job.

F. Reclassification is movement of a job or job classification from one pay grade to another based on significant changes in the job duties, responsibilities, job market and/or other work-related factors.

III. PROCEDURE

A. The Salary Administration Plan. The salary administration plan will establish systemic practices for setting salaries for:

1. New Hires
2. Transfers
3. Promotions
4. Temporary Position Assignments
5. Educational, Certification or License Achievements
6. Changes or Updates in Position Classification, Pay Grades or Pay Ranges; and
7. Other pay practices as needed or required.

Approved by City Council 11/15/2010
B. **Pay Grades and Ranges.** The Salary Administration Plan may include pay grades and salary ranges and a set of parameters for compensation decisions.

1. A schedule of pay grades for each title in the classification plan consisting of minimum and maximum rates of pay is maintained.

2. Each Employee is paid within the rates set forth in the pay plan for the class of position in which he or she is employed.

3. Pay grades are linked directly to the position classification plan and are determined with due regard to the following conditions.
   
a. Relative difficulty and responsibility of position in the class.

b. Payment for the same or similar work in the community.

c. Availability of employees and applicants in particular occupational categories.

d. Cost of Living factors, the financial policies of the City, and other economic conditions.

4. **Rating Positions and Evaluating Classification.** New and/or existing positions may be rated or re-rated, periodically, utilizing the systemic methodology established in the Salary Administration Plan in order to place positions within the established pay grades and ranges to achieve internal and external equity or parity.

5. **Adjustments of Pay Grades and Ranges.** Periodically the City evaluates the need and feasibility of making market to the Salary Administration Plan based on a review of the Consumer Price Index (CPI) for All Urban Consumers, wage indices, comparative wage studies and other compensation trend indicators and the City’s financial and budget conditions.

C. **Maintenance of the Plan.** The methodology established for the Salary Administration Plan, once approved by City Council, will be used to administratively maintain the Salary Administration Plan to include rating positions, classification of positions and adjustment of pay grades and ranges.

D. **Position Titles.** Position titles are assigned for the convenience of the City and its organizational structure.

1. Position titles do not in any manner imply duties and responsibilities of a position. Employees should refer to the job description for his/her position for duties, functions and responsibilities.

Approved by City Council 11/15/2010
2. All position titles will be assigned by and approved by Human Resources. Position titles may be revised and changed, as needed within the overall organization.
Upon recommendation from the Department Head and approval of the City Manager, the employee will receive a 6% increase in base pay during the period for which the employee is performing the duties of the higher classified position.

When the employee is going to be performing the duties of a higher classified position due to a recession or absence lasting no less than three consecutive calendar days, upon recommendation from the Department Head and approval of the City Manager, the employee will receive a 6% increase in base pay.

If no recommendations are made by the City, the employee will receive a 3% increase in base pay during the period for which the employee is performing the duties of a higher classified position.

H. Step II Pay

In the times when employees are at the maximum of their salary range and desiring merit pay, spread the merit pay in a lump.

In the times when employees are at the midpoint of their salary range and desiring merit pay, spread the merit pay in a lump.

E. Performance Evaluation System

Valued works and (4) is comprised of salary of the base.

Executive-Professional (1) Advanced knowledge acquired by proving course of specialized instructional instruction and study (not general academic instruction of��念性解法), and (2) less discretion and judgment; and (3) professional, technical, and supervisorial knowledge and skills.

Executive-Professional: (1) Management and (2) Direction of more employees, and (3) Demonstrates employee skills; and (4)