

ORDINANCE 2021-###

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN PABLO AMENDING CHAPTERS 2.04 AND 2.40 OF THE SAN PABLO MUNICIPAL CODE TO ELIMINATE GENDER-SPECIFIC REFERENCES, TO CLARIFY THE APPOINTMENT OF AN ACTING CITY MANAGER, AND TO REFERENCE MANDATORY RETIREMENT ENROLLMENT REQUIREMENTS FOR THE ELECTED CITY CLERK AND CITY TREASURER; AND AMENDING MUNICIPAL CODE SECTION 3.16.110 TO CLARIFY THE PROCESS FOR ENGAGING CONSULTANTS

THE CITY COUNCIL OF THE CITY OF SAN PABLO DOES ORDAIN AS FOLLOWS:

SECTION 1. The sections of Chapter 2.04 noted below are amended in their entirety to remove gender-specific references and to read as follows:

2.04.020 Appointment—Term of office.

The city manager shall be appointed by the city council wholly on the basis of his executive and administrative qualifications and ability, and shall hold office at and during the pleasure of the city council.

2.04.090 Official traveling expenses.

The city manager shall be reimbursed for all sums necessarily incurred or paid by ~~him~~ *the city manager* in the performance of his duties or incurred when traveling on business pertaining to the city under direction of the city council. Reimbursement shall only be made, however, in accordance with procedures approved by the city council.

2.04.140 Administrative head of government.

The city manager shall be the administrative head of the government of the city under the direction and control of the city council except as otherwise provided in this chapter. ~~He~~ *The city manager* shall be responsible for the efficient administration of all the affairs of the city which are under ~~his~~ *the City Manager's* control. In addition to his ~~the~~ general powers as administrative head, and not as a limitation thereon, *the City Manager shall have the* ~~it shall be his duty and he shall have the~~ powers set forth in Sections 2.04.140 through 2.04.300.

2.04.160 Authority over employees.

The city manager ~~It shall have be the duty of the city manager and he shall have the~~ authority to control, order and give directions to all heads of departments and to subordinate officers and employees of the city under ~~his~~ *the city manager's* jurisdiction through their department heads.

2.04.180 Recommendations—Reorganization of offices.

It shall be the duty and responsibility of the city manager to recommend to the city council such reorganization of offices, positions, departments or units under ~~his~~ *the city manager's* direction as may be indicated in the interest of efficient, effective and economical conduct of the city's business.

2.04.190 Recommendations—Adoption of ordinances.

~~It shall be the duty of the city manager and he shall~~ *The city manager shall* recommend to the city council for adoption such measures and ordinances as ~~he deems~~ necessary or expedient.

2.04.200 Attendance at council meetings.

It shall be the duty of the city manager to attend all meetings of the city council unless excused therefrom, except when ~~his~~ removal is under consideration.

2.04.230 Purchasing agent.

~~The city manager shall have~~ *It shall be the duty of the city manager and he shall be* responsible for the purchase of all supplies for all of the departments or divisions of the city. No expenditures shall be submitted or recommended to the city council except on report and approval of the city manager.

2.04.260 Supervision—Public buildings and property.

~~The city manager~~ *It shall be* have the duty of the city manager and he shall exercise general supervision over all public buildings, public parks and all other public property which are under the control and jurisdiction of the city council.

2.04.290 Attendance at commission meetings.

The city manager may attend any and all meetings of the planning commission, recreation commission, housing commission, personnel board and any other commissions, boards or committees hereafter created by the city council, upon ~~his~~ *the city manager's* own volition or upon direction of the city council. At such meetings ~~which the city manager attends,~~ *the city manager* he shall be heard by such commissions, boards or committees as to all matters *in the body's jurisdiction as properly noticed in compliance with State law including the* ~~and upon which he wishes to address the members thereof, and he shall inform the members as to the~~ status of any matter being considered by the city council. ~~and he~~ *The city manager* shall cooperate to the fullest extent with the members of all commissions, boards or committees appointed by the city council.

2.04.300 Duty during hours of employment.

It shall be the duty of the city manager to devote ~~his~~ *the* entire time *during hours of employment* to the duties of ~~his~~ *the* office in the interests of the city.

2.04.320 Removal—Notice of council’s intention required.

In case of ~~his~~ *the city manager’s* intended removal by the city council as set out in Section 2.04.310, the city manager shall be furnished with a written notice stating the council’s intention to remove ~~him~~ *the city manager* and the reasons therefor, at least thirty days before the effective date of his removal.

2.04.330 Removal—Hearing.

Within seven days after the delivery to the city manager of the notice required by Section 2.04.320, ~~he~~ *the city manager* may, by written notification to the city clerk, request a hearing before the city council. Thereafter the city council shall fix a time for the hearing, which shall be held at its usual meeting place, but before the expiration of the thirty-day period, at which the city manager shall appear and be heard with or without counsel.

2.04.340 Removal—Suspension—Compensation.

After furnishing the city manager with written notice of ~~his~~ intended removal as required by Section 2.04.320, the city council may suspend ~~him~~ *the city manager* from duty, but ~~his~~ *the city manager’s* compensation shall continue until ~~his~~ removal by resolution of the council passes subsequent to the public hearing allowed by Section 2.04.330.

2.04.350 Removal—Discretion of council—Action of council final.

In removing the city manager, the city council shall use its uncontrolled discretion, and its action shall be final and shall not depend upon any particular showing or degree of proof at the hearing allowed by Section 2.04.330, the purpose of which is to allow the city manager to present to the city council ~~his~~ grounds *opposing* ~~for~~ ~~of~~ ~~opposition to his~~ removal prior to its action.

2.04.360 Removal—Exception following general municipal election.

Notwithstanding the provisions of Sections 2.04.310 through 2.04.360, the city manager shall not be removed from office during or within a period of ninety days next succeeding any general municipal election held in the city at which election a member of the city council is elected. The purpose of this provision is to allow any newly elected member of the city council or a reorganized city council to observe the actions and ability of the city manager in the performance of the powers and duties of ~~his~~ *the* office. After the expiration of the ninety-day period, the provisions of Sections 2.04.310 through 2.04.360 as to the removal of the city manager shall apply and be effective.

SECTION 2. Section 2.04.070, “Appointment of city manager pro tempore,” of the San Pablo Municipal Code is amended in its entirety to read as follows:

2.04.070 Appointment of ~~city manager pro tempore~~ acting city manager

The city manager shall designate, ~~subject to the approval of the city council,~~ one of the other officers or department heads of the city to serve as acting city manager during any temporary absence or disability of the city manager. In case of the absence or disability of the city manager and his failure to so designate an acting city manager *or in the case of a vacancy in the city manager position*, the city council may designate some duly qualified person to perform the duties of the city manager, subject, however, to the person's furnishing a corporate surety bond conditioned upon faithful performance of the duties required to be performed as set forth in Section 2.04.060.

SECTION 3. Section 2.40.030, "City Clerk/treasurer – Retiree medical coverage," of the San Pablo Municipal Code is amended in its entirety to read as follows:

2.40.030 City clerk/treasurer—Retiree medical coverage *and other benefits*

A. Each elected city clerk and elected city treasurer first elected prior to November 2010, who has served at least two complete terms of office, is fifty years of age or older, is a member of the Public Employees' Retirement System (PERS), is considered an "employee" or "annuitant" by PERS under Government Code Section 22574, is eligible to receive service retirement benefits through PERS and is not excluded from PERS membership by Government Code Section 20322, shall upon receipt of PERS service retirement and medical coverage under the Public Employees' Medical and Hospital Care Act (PEMHCA), in addition to the minimum monthly employer contribution as determined by CalPERS, receive a monthly supplemental allowance to a Health Reimbursement Account (HRA), resulting in full payment of medical premiums by the city for so long as PEMHCA coverage is maintained; provided, however, that the elected official shall have applied for PERS medical coverage through the city at least one year prior to retirement, and begun receiving such benefits as soon as possible thereafter. It is not the intent of this section to provide coverage to any former retired elected officials who have not already been receiving such coverage.

B. Other than *mandatory enrollment and contributions in a public retirement system such as CalPERS or PARS (public agency retirement services)*, and any portion of medical coverage that may be required under PEMHCA, no city clerk or city treasurer first elected on or after November 2010 shall be entitled to any city-paid health or welfare benefits during retirement, including but not limited to any city-paid supplement to PEMHCA medical coverage, other medical coverage, life insurance, dental coverage, or any other health and welfare benefit.

SECTION 4. Subsection A of Section 3.16.110, "Exceptions to bid policy" of the San Pablo Municipal Code is amended in its entirety to read as follows:

The bidding procedures may be dispensed with in the following circumstances:

A. Consultants. Contracts involving the acquisition of professional or specialized services, such as but not limited to services rendered by architects, attorneys, engineers, accountants and other classes where the city must depend upon the skill, integrity, judgment and ability of the service, are exempted from the formal and informal contracting requirements of this chapter. All such contracts shall be awarded by the city to the consultant whose proposal is evaluated to be the most responsive to the needs of the city, as determined by the city manager or, in the case of contracts exceeding fifty thousand dollars, the city council.

1. Notwithstanding any other provision of law, contracts for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, and any other profession set forth in Government Code Section 4525, shall be on the basis of demonstrated competence, and on the professional qualifications necessary for the satisfactory performance of services required *and not solely on price, pursuant to Government Code section 4529.10 et seq.*

2. Where the department head for whom such services are to be performed and the city's purchasing officer determine that the services needed are more of a technical nature and involve little professional judgement, they may determine that requiring bids pursuant to this chapter would be in the public interest.

. . . [the remaining subsections remain]

SECTION 5. Severability. If any sections, subsections, sentences, clauses, phrases or portions of this ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause of this ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

SECTION 6. CEQA. This ordinance is not a project under CEQA pursuant to Guidelines Section 15378(b)(5): Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. If a project, then the ordinance is exempt from the provisions of the California Environmental Quality Act, (CEQA), under CEQA Guidelines § 15061(b)(3), in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The City Manager is directed to ensure that a notice of exemption is filed immediately with the County Clerk.

SECTION 7. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 8. Publication. The City Clerk's Office shall publish and post the ordinance in accordance with California Government Code section 36933 to the extent possible given the Federal, State and County Declarations of Emergency due to COVID-19 pandemic, as well as the City Council of the City of San Pablo Resolution 2020-034 adopted on March 16, 2020 proclaiming the existence of a local emergency due to the Novel Coronavirus (COVID-19) pandemic.

SECTION 9. Codification. Sections 1, 2, 3 and 4 shall be codified in the San Pablo Municipal Code.

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First read at a regular meeting of the City Council of the City of San Pablo on _____, 2021 and finally passed and adopted at a regular meeting of said City Council held on _____, 2021, by the following votes:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

ATTEST:

APPROVED:

Dorothy Gantt, City Clerk

Elizabeth Pabon-Alvarado, Mayor