



FAIRFAX TOWN COUNCIL MEETING STAFF REPORT

MEETING DATE February 7, 2024

PREPARED FOR Mayor and Town Council

PREPARED BY Heather Abrams, Town Manager
Janet Coleson, Town Attorney

SUBJECT Adopt Resolution Approving Amendments to the Memorandum of Understanding (MOU) with Fairfax Police Officers' Association (POA) to Approve Revised Side Letter to 2018-2022 Fairfax Police Officers' Association Agreement for CalPERS Compliance

RECOMMENDATION

Adopt Resolution Approving Amendments to the Memorandum of Understanding (MOU) with Fairfax Police Officers' Association (POA) to approve the Revised Side Letter clarifying Peace Officer Standards and Training ("POST") Pay language present in the Fairfax Police Officers' Association ("FPOA") Memorandum of Understanding ("MOU") effective July 1, 2018, and extended through June 30, 2022.

DISCUSSION

In 2015, the Town Council, in response to the Grand Jury report on labor negotiations, stated that the Town would place final tentative employee agreements on two successive Town Council agendas - the first for notice of the agreement, the second for Council vote. The first notice appeared on the January 24, 2024 Regular Council Meeting agenda. This item reflects the second notice for adoption.

The California Public Employees' Retirement System ("CalPERS") identified possible compliance violations during a routine review of compensation reported to CalPERS on behalf of the Town's previous Police Chief. The Police Chief's compensation structure is established by contract and by reference to the FPOA MOU, and as such, any compliance issues present in the FPOA MOU would also impact FPOA employees.

Town Council previously approved a side letter amending the FPOA MOU to address multiple items of special compensation that CalPERS determined were not in compliance with the relevant statutes and regulations of the Public Employees' Retirement Law ("PERL").

Prior to Town Council approval of the side letter, CalPERS had reviewed the amended language, confirming that the language met the appropriate requirements. Despite this, CalPERS is requiring further revisions to the POST Pay language in the side letter for the compensation to comply with the PERL. Specifically, CalPERS has taken the position that the previously approved side letter suggests that the affirmative recommendation, one of the Post Commission requirements for POST certificates, is made by the Police Chief in all cases, including for the Police Chief position. Further,

CalPERS required additional changes reflecting that compensation for POST certificates is explicitly conditioned on obtaining and maintaining a POST certificate, without any additional waiting periods for an employee who loses eligibility for a specific certificate level and subsequently obtains that certificate level again.

The revised side letter incorporates the clarifying POST Pay amendments required by CalPERS, and also includes all other MOU amendments previously approved by Town Council on April 5, 2023.

Failure to approve the revised side letter will have adverse impacts on past and future pension calculations for active and retired employees subject to the FPOA MOU.

FISCAL IMPACT

There is no fiscal impact. Modifications are limited to previously approved and paid compensation. If the revised documents are not approved, there would be a fiscal impact in the form of additional risk and liability placed upon the Town related to pension benefits.

ATTACHMENT

Resolution with Revised Side Letter to 2018-2021 FPOA MOU, as amended by the side letter effective April 1, 2020.

RESOLUTION 24-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
APPROVING A SIDE LETTER TO THE 2018-2022 FPOA MOU ONLY FOR CALPERS
COMPLIANCE PURPOSES**

WHEREAS, compensation provided to employees in addition to base salary must meet the requirements of special compensation as defined in California Government Code Section 20636(c) and California Code of Regulations, Title 2, Section 571; and

WHEREAS, special compensation requirements include identification of intent, conditions of payment, and eligibility criteria of each item of compensation within a compliant labor policy or agreement, as defined in California Code of Regulations, Title 2, Section 571(b)(1), which must be duly adopted and approved by the Town Council; and

WHEREAS, the Town and the Fairfax Police Officers' Association ("FPOA") identify items of special compensation within the applicable memorandum of understanding; and

WHEREAS, the Town Council wishes to clarify the intent and eligibility criteria for several special compensation items within the memorandum of understanding between the Town and FPOA in effect from July 1, 2018 through June 30, 2022 ("MOU"), in order to meet CalPERS compliance requirements; and

WHEREAS, although the compensation of the Town's employees has been previously approved by the Town Council in accordance with Council policy, in compliance with applicable laws, and the total compensation of employees remains unchanged, it has been determined that it is in the Town's best interest to have language in the referenced memoranda of understanding clarified to ensure CalPERS compliance; and

WHEREAS, the Town Council previously approved a side letter to the MOU at its April 5, 2023, meeting pursuant to Resolution 23-50 for the purpose of the aforementioned compliance; and

WHEREAS, despite its advance written approval of the side letter approved on April 5, 2023, CalPERS is requiring further clarification to the education incentive special compensation item; and

WHEREAS, to avoid confusion and expedite CalPERS acceptance of the clarifications to the MOU, the side letter to the MOU approved by the Council on April 5, 2023, pursuant to Resolution 23-50, the Council wishes to rescind the Side Letter; and

WHEREAS, a revised side letter has been prepared which incorporates the additional changes required by CalPERS alongside the changes reflected in the Initial Side Letter and is hereby presented to the Council for its consideration.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Town Council of Town of Fairfax resolves as follows:

SECTION 1. All facts set forth in the background section of this Resolution are true and correct.

SECTION 2. The side letter to the memorandum of understanding between the Town and Fairfax Police Officers' Association in effect from July 1, 2018, through June 30, 2022, approved by the Town Council on April 5, 2023, is hereby rescinded.

SECTION 3. The Town Council hereby adopts the revised side letter to the Memorandum of Understanding between the Town and the Fairfax Police Officers' Association effective July 1, 2018, as amended by the side letter effective April 1, 2020, attached hereto as Exhibit A, and incorporated herein by this reference, effective July 1, 2018.

The foregoing Resolution was duly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax, held in said Town on the 7th day of February 2024, by the following vote, to wit:

AYES:
NOES:
ABSENT:

Barbara Coler, Mayor

ATTEST:

Christine Foster, Deputy Town Clerk

REVISED SIDE LETTER TO MEMORANDUM OF UNDERSTANDING

BETWEEN TOWN OF FAIRFAX AND FAIRFAX POLICE OFFICERS' ASSOCIATION

Subject to approval by the authorized representatives of the Town of Fairfax and Fairfax Police Officer's Association (collectively, "Parties"), this revised side letter seeks to clarify specified provisions of the July 1, 2018 through June 30, 2021 Memorandum of Understanding between the Parties (the "MOU"), extended through June 30, 2022, and the side letter thereto effective April 15, 2020, to comply with the Public Employees' Retirement Law for use in pension calculations administered by the California Public Employees' Retirement System.

Section 1. The following sections of the MOU, extended through June 30, 2022, are revised to incorporate the clarifications as follows:

"Section II (Salary Compensation) Section B:

B. Department Appointed Positions - Incentive Pay

Appointed positions, as set forth by the Chief of Police, shall consist of the following named positions:

- Administrative Sergeant / Watch Commander (No more than one police sergeant or above)
 - The Administrative Sergeant or Watch Commander will be responsible for routinely and consistently supervising or leading subordinate classifications as necessary during the assignment, including shift assignment.
 - If no eligible employee is available, the Chief of Police will be assigned as Watch Commander.
- Detective/Juvenile Officer (No more than one police officer and one sergeant)
 - The Detective/Juvenile Officers are routinely and consistently assigned to detective duties or to enforce laws that restrict the activities of juveniles.
- Lead Dispatcher (No more than one police dispatcher)
 - The Lead Dispatcher will be responsible for routinely and consistently supervising or leading subordinate classifications as necessary during the assignment

Any employee appointed to one of the above-named positions by the Chief of Police shall receive a 5% salary incentive step increase to their base rate of pay for the duration of their appointment to that position.

Employees appointed to these positions are eligible for additional specialty pay (e.g., Detective or FTO pay) above the 5% salary incentive already received. While these appointments have no time limit, the Chief of Police reserves the right to abolish any of these positions, as specified in § XXI paragraph A, 1 of the Memorandum of Understanding.

In order to retain special appointments or assignments, employees shall be required to adequately perform their assigned duties and meet departmental standards. Failure of an employee to maintain this standard shall have the appointment rescinded.

Section IV (Holidays):

IV. HOLIDAYS

A. The Town agrees to provide employees covered by this agreement eleven (11) paid holidays at 10 hours per holiday for a total of 110 hours per year due to required scheduled staffing without regard to holidays. Holiday Pay hours will be calculated using base salary, inclusive of Longevity Pay, Educational Incentive, Lead Worker/Supervisor Pay, Detective Pay, Juvenile Officer Pay, and other compensation items the Town affirmatively identifies as base salary.

Section XV (Educational Incentive):

XV. EDUCATIONAL INCENTIVE

A. In addition to the base salary established by this agreement, the Town shall pay educational incentive pay in one of the following categories to those employees who meet the criteria set down in the Educational Incentive Pay Program adopted by the Town and agreed to by the Association. Figures listed below at all levels represent an additional 1% effective 7/1/2018.

1. Personnel employed in the Police Department in all job classifications with the exception of the Chief of Police shall be eligible for 6% addition to base pay provided that they meet the following experience and educational requirements set forth below.
 - a. An A.A. Degree in Police Science or an Intermediate POST certificate.
 - b. In order to begin receiving the 6% addition to base pay for POST certificates, police personnel shall be required to meet all requirements identified by the POST Commission, which include attending all mandatory training and classes, unless excused by the applicable department head~~Chief of Police~~, to continue to meet departmental performance standards, and to receive an affirmative recommendation from the applicable department head~~Chief of Police~~. An employee's salary shall only be reduced by the amount of the educational incentive if they~~If an employee fails to meet these provisions and is no longer eligible for the Intermediate POST certificate due to falling short of POST Commission requirements, his or her salary shall be reduced the amount of the educational incentive.~~ An employee shall not be eligible to re-qualify for the incentive pay step for

six months or until they once again meet all requirements of the Intermediate POST certificate .

2. Personnel employed in the Police Department in all job classifications with the exception of Chief of Police shall be eligible for an 8.5% addition to base pay provided that they meet the following experience and educational requirements set forth below.
 - a. A Bachelor's Degree (field of study to be approved by the Chief of Police) or an Advanced POST Certificate.
 - b. In order to begin receiving the 8.5% addition to base pay for POST certificates, police personnel shall be required to meet all requirements identified by the POST Commission, which include attending all mandatory training and classes, unless excused by the applicable department head~~Chief of Police~~, to continue to meet departmental performance standards, and to receive an affirmative recommendation from the applicable department head~~Chief of Police~~. An employee's salary shall only be reduced by the amount of the educational incentive if they~~If an employee fails~~ to meet these provisions and is no longer eligible for the Advanced POST certificate due to falling short of POST Commission requirements; ~~his or her salary shall be reduced by the amount of the educational incentive~~. An employee shall not be eligible to re-qualify for the incentive pay step for six months or until they once again meet all requirements of the Advanced POST certificate .
3. Personnel employed in the Police Department in all job classifications shall be eligible for a 11% addition to base pay provided that they meet the following experience and educational requirements set forth below.
 - a. Possession of a Supervisor Certificate as established and issued by the California Peace Officer Standards and Training or a Master's Degree.
 - b. In order to begin receiving the 11% increase to base pay for POST certificates, police personnel shall be required to meet all requirements identified by the POST Commission, which include attending all mandatory training and classes, unless excused by the applicable department head~~Chief of Police~~, to continue to meet departmental performance standards, and to receive an affirmative recommendation from the applicable department head~~Chief of Police~~. An employee's salary shall only be reduced by the amount of the educational incentive if they~~If an employee fails~~ to meet these provisions and is no longer eligible for the Supervisor POST certificate due to falling short of POST Commission requirements; ~~his or her salary shall be reduced by the amount of the educational incentive~~. An employee shall not be eligible to re-qualify for the incentive pay step for six months or until they once again meet all requirements of the Supervisor POST certificate .
4. Personnel employed in the Police Department in the job classification of Lieutenant of Police or higher shall be eligible for a 13.5% increase to base pay provided that they meet the following experience and educational requirements set forth below.

- a. Possession of a Management Certificate as established and issued by the California Peace Officer Standards and Training.
- b. In order to begin receiving the 13.5% increase to base pay for POST certificates, police personnel shall be required to meet all requirements identified by the POST Commission, which include attending all mandatory training and classes, unless excused by the applicable department head~~Chief of Police~~, to continue to meet departmental performance standards, and to receive an affirmative recommendation from the applicable department head~~Chief of Police~~. An employee's salary shall only be reduced by the amount of the educational incentive if they~~If an employee fails to meet these provisions and is no longer eligible for the Management POST certificate due to falling short of POST Commission requirements, his or her salary shall be reduced by the amount of the educational incentive~~. An employee shall not be eligible to re-qualify for the incentive pay step for six months or until they once again meet all requirements of the Management POST certificate."

Section 2. The following sections of the side letter to the MOU, approved by Resolution 20-05 dated April 15, 2020, are revised to incorporate the clarifications as follows:

"Section II (Salary Compensation) add after Section I:

(J) Officer in Charge pay (OIC): Police Officer classification personnel who cover a minimum of five hours or more of a shift in place of a Sergeant or Corporal of Police shall receive 5% base pay incentive for the time worked in that position with approval of the Chief of Police for routinely and consistently leading or supervising other employees.

(K) Bi-Lingual Pay: Full time employees shall receive a base pay incentive of 2.5% for their ability to speak basic conversational Spanish, and 5% for Spanish fluency, which includes reading and writing. Other languages shall be approved by a supervisor at a maximum rate of \$50 per day of use with a maximum of 5% of base pay in a pay period. To be eligible for "other language" pay, employees are required to submit requests to their supervisor. The requests will include a CAD incident or case number documenting the use was related to a police investigative purpose. Fluency in more than one language does not entitle an employee to multiple pay incentives. Employees who maintain eligibility for bi-lingual or "other language" pay routinely and consistently communicate in languages other than English in the performance of their normal duties.

If a bi-lingual qualified employee is off work for over 15 consecutive calendar days, the employee will not receive the bilingual incentive for the remainder of the leave (unless approved by the Chief of Police). This will not take effect if the employee is out on 4850 disability leave.

The Chief of Police, with approval of the Town Manager will, through use of an outside tester selected by the Town, determine an employee's eligibility for this pay incentive. In order to ensure that employees retain bilingual proficiency, a periodic requalification, by an outside tester selected by the Town, may be required.

Section XVI Longevity Pay (Service)

The Town will pay employees longevity pay based on their full-time service with the Town and any other police agency where they worked full-time as a Police Officer, Police Dispatcher, or Police Services Technician or equivalent. Lateral time serving other police agencies does not apply to the 10, 15 and 20 year levels.

The following percentages will be applied to base pay at the following intervals

- 3 years 2%
- 5 years 3%
- 7 years 4%
- 10 years 5%
- 15 years 7.5%
- 20 years 10%”

Section 3. This revised side letter clarifying items already present in the MOU, and the side letter thereto effective April 15, 2020, is effective July 1, 2018. Except as expressly modified by this revised side letter, the provisions of the MOU, as amended side letter thereto effective April 15, 2020, shall remain unchanged. This revised side letter will expire with the term of the MOU, which terminated on June 30, 2022 pursuant to an extension.

Section 4. The side letter previously approved through Resolution 23-50 approved by Town Council on April 5, 2023 is hereby rescinded and supersede by this revised side letter.

This revised side letter is hereby executed by the authorized representatives of the Parties on the date specified.

Dated: _____

Barbara Coler, Fairfax Mayor

Jonathan Judge, FPOA President

Attest: _____
Christine Foster, Deputy Town Clerk