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LEGAL SERVICES DEPARTMENT

Office of the City Attorney

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TO: Members of the Human Resources Committee

FROM: Christopher R. Behrens, Assistant City Attorney

DATE: August 18, 2014

RE: Aldermanic Compensation Questions

During the Human Resources Committee meeting on August 11, 2014 several questions were raised during the discussion about compensation of alderpersons including whether parking passes are considered compensation and, if they are, whether they're taxable as income. There was also discussion regarding the possibility of adopting an automatic periodic salary adjustment for alderpersons. The following addresses each of those questions.

Are parking passes considered "compensation" as that term is used for establishing compensation for elected alderpersons?

The short answer to this question is yes; parking passes have a monetary value and must be treated as part of the overall compensation when determining how future elected alderpersons will be compensated. Former Deputy City Attorney Totzke prepared a memo for the Council last October that addressed this issue in great detail and a copy of the same is attached.

Are parking passes issued to alderpersons considered TAXABLE compensation?

The parking passes, when issued, will NOT be treated as taxable compensation. Finance Director Saucerman advised that according to IRS publication 15-B, the parking passes issued to alderpersons are treated as a "Qualified Transportation Benefit" which means the passes are a non-taxable fringe benefit.

Can the Common Council adopt a process by which future aldermanic salaries automatically adjust based on a pre-determined variable such as the consumer price index?

Automatic salary schedules are addressed in §66.0507, Wis. Stats. This section permits automatic adjustments "for some or all employees and officers of the city, village or town, other than members of the city council or village or town board ..." In other words, automatic salary adjustments of any sort, whether based upon CPI or some other method or index, are not permitted with regard to aldermanic salaries. Accordingly, as it has done in the past, the Council will need to periodically address the compensation of future elected alderpersons and establish that compensation prior to the earliest time for filing nomination papers for that office.

Please do not hesitate to contact me with any additional questions.

CRB;jls

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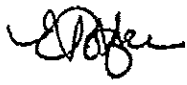


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TO: Mayor Hanna
Members of the Common Council

FROM: Ellen Totzke, Deputy City Attorney 

DATE: October 18, 2013

RE: 2014 Common Council Budget inclusion of parking passes

The 2014 Executive Budget includes line item "6206 Parking Permits - - - - \$5,940" on page 57, and on page 56, the portion of the narrative indicating major changes to the Common Council Budget states: "...The increase in parking permits is due to the inclusion of the cost of Blue (City Center) ramp permits for all alderpersons. . . ."

Alderperson Konetzke asked this office about the inclusion of parking passes in the budget based upon discussion held back in 2005- 2006 regarding that same topic.

I reviewed this budget item by looking at the statutory requirements for payment of salaries to elected officials and the possibility of violations of other state law provisions.

Statutorily, alderpersons' salaries must be set in compliance with Wis. Stat. §62.09(6). That section provides, in pertinent part:

(a) Salaries shall be paid the mayor or alderpersons only when ordered by a vote of three-fourths of all the members of the council.

(am) 1. In this paragraph, "*compensation*" means a salary, a per diem compensation for each day or part of a day necessarily devoted to the service of the city and the discharge of duties, *or a combination of salary and per diem compensation.*

2. Except as provided in subd. 3., and subject to par. (a), the compensation for an elective city office shall be established before the earliest time for filing nomination papers for the office. After that time, no change may be made in the compensation for the office that applies to the term of office for which the deadline applies. The compensation established for an elective office remains in effect for ensuing terms unless changed.

... (Emphasis added.)

James P. Walsh
City Attorney

Ellen Totzke
Deputy City Attorney

Christopher R. Behrens
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Stacy Doucette
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Wisconsin case law defines an expense as “a charge incurred in performing [official duties]” and I can find no indication that the City of Appleton has regularly reimbursed alderpersons for their parking expenses while attending meetings at City Hall in their official capacity. Any reimbursement must be reasonably related to actual expenses incurred otherwise the benefit may be looked at as an attempt to recover additional compensation for performing duties that are part of the function of the office.

This proposal is unlike an attempt to determine the average level of expenses incurred by the alderpersons for purposes of setting an expense allowance at a set figure which approximates what the actual expenses might be, and done to avoid incurring clerical costs necessary to check itemized vouchers each month. The issuance of Blue Ramp parking passes to the members of the Common Council has no documented expense basis, and there is no way to limit the use of said parking passes solely to the performance of city business.

That being said, it is my legal opinion that the issuance of free parking passes to alderpersons constitutes an increase in their compensation pursuant to the terms of Wis. Stat. §62.09(6). While a vote has been taken on the salaries of those alderpersons taking office in April of 2014 has been taken, the “earliest time for filing nomination papers for the office” has not yet passed for those alderpersons, and the inclusion in the 2014 budget for parking passes for those alderpersons would still be permitted. The parking passes would also have to be included in the 2015 budget as part of the duration of the term of office for those alderpersons. Those alderpersons elected in 2013 would not be eligible for an increase in compensation and should not receive parking passes for the year 2014. Since Wis. Stat. §62.09(6)(am)2. indicates that “[t]he compensation established for an elective office remains in effect for ensuing terms unless changed,” a continuing inclusion of parking passes in the Common Council budget would be permitted, with alderpersons elected in 2015 being eligible for them in April 2015. It would, however, be much cleaner to include debate of the parking passes in council discussion of salaries at the time salaries for the 2015-16 term are to be set.

I reviewed Wis. Stats. 19.59, which is the Code of Ethics for Government Officials, Employees and Candidates. The first sentence of that statute says, “No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family or for an organization for which he or she is associated.” I then turned to the findings and rulings of the State Ethics Board for guidance. The Wisconsin Ethics Board notes that local public officials should not accept:

1. Items or services offered because of public position;
2. Items that could influence judgment;
3. Rewards for official action;
4. Transportation or traveling accommodations.

The Ethics Board then promulgates the following test to determine whether a situation would fall under any of those four categories.

With respect to the item or service offered:

1. Is it being offered because of my public position?
2. Is it of more than nominal or significant value?
3. Is it primarily for my personal benefit rather than for the benefit of my local unit of government?

They indicate that if the answer is yes to all of those questions, an item or service may not be accepted. Clearly, free ramp parking permits would be offered to alderpersons solely because of their public position. No private citizen could request a free monthly City ramp parking permit in order to attend Council functions.

In conclusion, while the dollar amount of the pass itself would be minimal per month, the opportunity for an alderperson to have unlimited access to free parking does have monetary value and is not reimbursement for expenses for parking in City ramps during the course of performing City business, nor does it relate to any prior history of reimbursement for parking expenses in Appleton. I believe that the most important consideration is the fact that there is no way to limit the use of those parking permits to City functions only. Any alderperson could use such parking permit for their private benefit. I believe that this supports the opinion that the parking passes must be considered part of a compensation package for alderpersons, thus making those currently holding office ineligible to receive them.