



MEMORANDUM

Austin City Council Agenda – January 30, 2014

Agenda Item No. 7 (Approve a settlement of claims asserted by the United States Department of Justice concerning hiring practices within the Austin Fire Department)

Background and Summary:

In April 2013 the City received written notice from the United States Department of Justice (DOJ) of an investigation by DOJ into the cadet hiring process at the Austin Fire Dept. (AFD). The City was advised that the DOJ investigation had been prompted by an employment discrimination charge filed by an unsuccessful applicant in AFD's 2012 cadet hiring process, and that the DOJ investigation would include the current hiring process then underway at AFD, as well as past hiring practices.

The City cooperated with DOJ's investigation, which occurred over a five-month period. During that time, AFD suspended its current hiring process pending the outcome of the investigation. In late September 2013, DOJ advised the City of its findings. Specifically, DOJ stated that its investigation indicated that both the 2012 and 2013 hiring processes at AFD had an adverse impact on African American candidates as a group and Hispanic candidates as a group. DOJ did not conclude at any time that the City had intentionally discriminated against any candidates, but rather that the statistical result of its neutral hiring practices showed an adverse impact on Hispanic and African American candidates when compared to White candidates.

In accord with its normal procedure in such investigations, DOJ then invited the City to enter into negotiations for an acceptable resolution of the issues identified in its findings. Under DOJ procedures, the successful result of such negotiations is a consent decree, which is a document setting out settlement terms acceptable to DOJ and the City, and which is presented to a federal court for approval. Upon approval by the federal court, the consent decree becomes binding upon all parties.

The City and DOJ conducted extensive negotiations during the remainder of 2013 and early 2014, and have now reached a tentative agreement for a proposed consent decree. The proposed consent decree is subject to review and approval by both DOJ and the City Council. The key terms of the proposed consent decree are:

- Provisions that allow AFD to resume and complete its current cadet hiring process, with some modification to the original design of that process.
- A requirement that any future change to the cadet hiring process during the term of the consent decree must be pre-cleared with DOJ.
- A remedial process for unsuccessful Hispanic and African American candidates in the 2012 hiring process that would provide backpay relief and priority hiring relief to candidates who demonstrate eligibility for such relief. The backpay relief component is capped at a maximum of \$780 thousand for all candidates. The priority hiring component includes thirty positions in future fire cadet academies, divided between twelve African American candidate slots and eighteen Hispanic candidate slots.
- The length of the consent decree would be a minimum of four years, and a maximum of eight years.

The proposed consent decree also includes procedures for determining which 2012 candidates would be eligible for backpay and/or priority hiring relief, requirements for monitoring and reporting to DOJ on the results of future cadet hiring, a process for resolving disputes, and other provisions commonly included in such decrees.

If the City Council and DOJ both approve the proposed consent decree, the decree will be presented to a federal judge through a legal proceeding in federal court. If the federal judge approves the consent decree, it becomes binding on all parties. If the City Council and DOJ do not both approve the proposed consent decree, DOJ has indicated that it will file suit against the City in federal court to address the findings of adverse impact in the AFD hiring process as described above.

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