



M E M O R A N D U M

Austin City Council Agenda – May 15, 2014

Agenda Item No. ____ (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. DOJ advised the City that the scope of its 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 then-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 as compared to White candidates.

Because of those findings, DOJ will file a lawsuit against the City in which it will seek to redress the findings from its investigation. In accord with its normal procedures in such cases, DOJ invited the City to enter into pre-lawsuit negotiations for an acceptable resolution of the issues it identified. The successful result of such negotiations is a consent decree, which is a legal document setting out settlement terms acceptable to DOJ and the City, and which is presented to a federal court for approval after the DOJ files its lawsuit. If approved by the federal court, the consent decree becomes binding on all parties.

The City and DOJ conducted extensive pre-lawsuit negotiations during the latter part of 2013 and early 2014, including a mediation meeting in early March with representatives of DOJ, the U.S. Equal Employment Opportunity Commission, the City, and the Austin Firefighters Association. As a result of those negotiations, DOJ has approved the terms of a proposed consent decree addressing the issues in its investigation. The key terms of the proposed consent decree approved by DOJ 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 the design and administration of any future cadet hiring process during the term of the consent decree is subject to DOJ oversight.
- Backpay and/or priority hiring relief for unsuccessful Hispanic and African American candidates from the 2012 hiring process who can 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, with the possibility of extending the decree for up to an additional four years for good cause shown.

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 approves the proposed consent decree, the decree will be filed with the federal court in Austin after the DOJ files its lawsuit against the City. If the federal judge approves the consent decree, it becomes binding on all parties. If the City Council does not approve the proposed consent decree terms, DOJ has indicated that it will still file suit against the City in federal court to address the findings of adverse impact in the AFD hiring process as described above.

A copy of the proposed consent decree is included in the backup materials along with this memorandum.

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