City Of Woodland
City Council Meeting Agenda Summary Sheet

Agenda Item: Payroll correction for step increases given to Chief Mike Jackson and Chief Rob Stephenson for	**Agenda Item #:** City Attorney Report **For Agenda of:** 01/03/2012 **Department:** City Attorney **Date Submitted:** 12/29/2011

Cost of Item: $3,034.48
Amount Budgeted:
Unexpended Balance:

BARS #:
Description:

Department Supervisor Approval: *William Eling, City Attorney / s /*

Committee Recommendation:

Agenda Item Supporting Narrative (list attachments, supporting documents)**:**

Memo – William Eling re: legal effect of wage overpayment

2011 Step Plan for Admin/Exempts

Memo- calculation of overage

Summary Statement/Department Recommendation:

Ordinance No. 1203 – 2011 Final Budget was adopted on December 6, 2010. It included the salary step plans for 2011 which was a 0% cola and no step increases for exempt employees. This information was transmitted and discussed with the former payroll clerk. During review of the 2012 budget preparation and review of 2011 August payroll it was discovered that a step increase was given to 3 exempt employees (Chief Stephenson, Chief Jackson and former Public Works Director.) I then asked payroll for a report on the overpayments which is in the amount of $3,034.48 (Stephenson $1,456.00 and Jackson $1,578.48).

Comments received from Chief Stephenson: The city has adopted step plan pay scale for exempt personnel. They are not yet at the top of the step plan (Jackson and Stephenson). I suppose it is one thing to withhold cola's to unrepresented employees that really have no recourse but to accept it or quit. But to do the same thing with recognized step increases is beyond being unfair. At least being told you're not getting your step increase because of job deficiencies puts an arguable reason to it. But to just do it smells of "we're gonna do it to you because there is nothing you can do about it!" I understand that being an exempt employee means you don't have recourse or protections that represented employees have. It's the nature of the beast. The other side of that is expectation that the employer is going to treat you fairly..and that's not happening.

The option is to repay the amount in a lump sum or spread it over a few months, or the council can reinstate the step increases for 2011 in the amount of $3,034.48 [subject to the conditions as outlined in the Memo from City Attorney.] This can be paid from the current police and fire department

budgets as they have NOT fully expended their overtime budgets for 2011.

City Attorney will advise the appropriate action if any, after council discussion.]

Timeline:
August EOM, 2011 Payroll prepared the final check for PW Director. CT found that Steve Branz was given a step increase in July, 2011. Asked payroll clerk to verify the status of step increases for all Exempt Admin employees.
Sept/October – review of 2012 budget and proposed salary/benefits and step plans and placement on step plans.
November 28, 2011 – Payroll reports that Chief Jackson received a step increase on 2/16/2011 and Chief Stephenson a step on 4/1/2011. No others had or were eligible for step increases (they are either at the maximum step or not eligible yet.)
Dec 7, 2011 – notified Chief Jackson and Chief Stephenson by email of the pay error and asked for a repayment and plan to do so.
Dec 7, 2011 – email from Chief Stephenson requesting a review. Also spoke to Chief Jackson in person. I referred to discuss at the Council meeting on 12/12/2011, but it was adjourned before it was addressed, so it was continued to the 12/19/2011 council meeting for action.
Dec 8, 2011 – email from Chief Jackson re: pay matter
Dec 2011 – reviewed council minutes of 12/06/2010, 11/22/2010 and 11/08/2010 in which the salary/benefits and 2011 budget was discussed. The Salary Step Plan for 2011 indicates that the council adopted a 0% cola and NO step increases.
Dec 19, 2011 – council meeting. Review of step overpayment. Tabled to 1/3/2012 for City Attorney review.

Law Office of William J. Eling

9401 N.E. Covington Road, No. 102 ***[360] 260-1189***
Vancouver, Washington 98662 ***[360] 213-0770 fax***

TO: City of Woodland

FROM: Bill Eling WJE

RE: Legal Effect of Wage Overpayment

DATE: December 29, 2011

The January 3, 2012, Council Agenda includes a proposed resolution [Action Item "L"] authorizing step increases for both Chief Jackson and Chief Stephenson for the 2011 fiscal year. The purpose of the resolution is to resolve a payroll mistake in which the annual compensation for each individual included previously scheduled step raises. The step raises had been rescinded by the Council and not approved in the 2011 City Budget.

I have corresponded with MRSC regarding this issue. MRSC's analysis mirrors my analysis. Washington state law does not permit the City to retroactively approve the step raises. Furthermore, the City has a statutory legal obligation to collect the overpayment subject to the terms set forth in RCW 49.48.200 and RCW 49.48.210.

Generally stated, the Washington State Constitution prohibits the proposed action. Article 2, Section 25 of the State Constitution prohibits the granting of extra compensation to any public officer or employee after the service has been performed. Article 8, Section 7 prohibits gifts of public funds. Compensation exceeding the approved salary would constitute a "gift" of public funds as legally defined. See *Christie v. Port of Olympia*, 27 Wn.2d 534 (1947), the leading case on the subject. Retroactive pay would result in constitutional violations with consequences to the City, to elected officials and to the recipients of the overpayment. There are several exceptions to this general rule. Based on the facts as explained, those exceptions are inapplicable.

RCW 49.48.200-210 sets forth the process the City must follow regarding overpayment. To avoid legal complications, the matter should be resolved in line with the statutory process. A copy of RCW 49.48.200 and RCW 49.48.210 is attached. RCW 49.48.200(2) appears to allow for an administrative settlement of the issue. Additionally, if recouped from wages, recoupment from wages beginning in 2012 cannot exceed 5%.

RCW 49.48.200
Overpayment of wages — Government employees.

(1) Debts due the state or a county or city for the overpayment of wages to their respective employees may be recovered by the employer by deductions from subsequent wage payments as provided in RCW 49.48.210, or by civil action. If the overpayment is recovered by deduction from the employee's subsequent wages, each deduction shall not exceed: (a) Five percent of the employee's disposable earnings in a pay period other than the final pay period; or (b) the amount still outstanding from the employee's disposable earnings in the final pay period. The deductions from wages shall continue until the overpayment is fully recouped.

(2) Nothing in this section or RCW 49.48.210 or 49.48.220 prevents: (a) An employee from making payments in excess of the amount specified in subsection (1)(a) of this section to an employer; or (b) an employer and employee from agreeing to a different overpayment amount than that specified in the notice in RCW 49.48.210(1) or to a method other than a deduction from wages for repayment of the overpayment amount.

RCW 49.48.210
Overpayment of wages — Notice — Review — Appeal.

(1) Except as provided in subsection (10) of this section, when an employer determines that an employee was overpaid wages, the employer shall provide written notice to the employee. The notice shall include the amount of the overpayment, the basis for the claim, a demand for payment within twenty calendar days of the date on which the employee received the notice, and the rights of the employee under this section.

(2) The notice may be served upon the employee in the manner prescribed for the service of a summons in a civil action, or be mailed by certified mail, return receipt requested, to the employee at his or her last known address.

(3) Within twenty calendar days after receiving the notice from the employer that an overpayment has occurred, the employee may request, in writing, that the employer review its finding that an overpayment has occurred. The employee may choose to have the review conducted through written submission of information challenging the overpayment or through a face-to-face meeting with the employer. If the request is not made within the twenty-day period as provided in this subsection, the employee may not further challenge the overpayment and has no right to further agency review, an adjudicative proceeding, or judicial review.

(4) Upon receipt of an employee's written request for review of the overpayment, the employer shall review the employee's challenge to the overpayment. Upon completion of the review, the employer shall notify the employee in writing of the employer's decision regarding the employee's challenge. The notification must be sent by certified mail, return receipt requested, to the employee at his or her last known address.

(5) If the employee is dissatisfied with the employer's decision regarding the employee's challenge to the overpayment, the employee may request an adjudicative proceeding governed by the administrative procedure act, chapter 34.05 RCW or, in the case of a county or city employee, an adjudicative proceeding provided pursuant to ordinance or resolution of the county or city. The employee's application for an adjudicative proceeding must be in writing, state the basis for contesting the overpayment notice, and include a copy of the employer's notice of overpayment. The application must be served on and received by the employer within twenty-eight calendar days of the employee's receipt of the employer's decision following review of the employee's challenge. Notwithstanding RCW 34.05.413(3), agencies may not vary the requirements of this subsection (5) by rule or otherwise. The employee must serve the employer by certified mail, return receipt requested.

(6) If the employee does not request an adjudicative proceeding within the twenty-eight-day period, the amount of the overpayment provided in the notice shall be deemed final and the employer may proceed to recoup the overpayment as provided in this section and RCW 49.48.200.

(7) Where an adjudicative proceeding has been requested, the presiding or reviewing officer shall determine the amount, if any, of the overpayment received by the employee.

(8) If the employee fails to attend or participate in the adjudicative proceeding, upon a showing of valid service, the presiding or reviewing officer may enter an administrative order declaring the amount claimed in the notice sent to the employee after the employer's review of the employee's challenge to the overpayment to be assessed against the employee and subject to collection action by the employer as provided in RCW 49.48.200.

(9) Failure to make an application for a review by the employer as provided in subsections (3) and (4) of this section or an adjudicative proceeding within twenty-eight calendar days of the date of receiving notice of the employer's decision after review of the overpayment shall result in the establishment of a final debt against the employee in the amount asserted by the employer, which debt shall be collected as provided in RCW 49.48.200.

(10) When an employer determines that an employee covered by a collective bargaining agreement was overpaid wages, the employer shall provide written notice to the employee. The notice shall include the amount of the overpayment, the basis for the claim, and the rights of the employee under the collective bargaining agreement. Any dispute relating to the occurrence or amount of the overpayment shall be resolved using the grievance procedures contained in the collective bargaining agreement.

(11) As used in this section or RCW 49.48.210 [49.48.200] and 49.48.220:

(a) "City" means city or town;

(b) "Employer" means the state of Washington or a county or city, and any of its agencies, institutions, boards, or commissions; and

(c) "Overpayment" means a payment of wages for a pay period that is greater than the amount earned for a pay period.

Admin Salary Schedule 2011

As of: 12/06/2010

CITY OF WOODLAND
ADMINISTRATIVE/EXEMPT SALARIES

2011 Step Plan -- 0.0% COLA FREEZE and NO STEP Increases (FINAL approved 12/06/2

TITLE	2010 Salary	2010 Base	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Anniversary Date	2011 Annual Salary
P/W Director	7,182 Step 7	6,194	6,348	6,507	6,670	6,836	7,007	7,182	7,361	7,546	7/1/2008	86,184
Police Chief*	7,261 Step 8	6,111	6,263	6,420	6,580	6,745	6,912	7,087	7,261	7,443	2/1/1986	87,138
Fire Chief	6,745 Step 5	6,111	6,263	6,420	6,580	6,745	6,912	7,087	7,261	7,443	2/15/2010	80,940
Clerk Treasurer	6,145 Step 9	4,907	5,061	5,217	5,371	5,526	5,681	5,836	5,990	6,145	4/10/1989	73,739
Deputy C/T	5,209 Step 9	4,276	4,384	4,493	4,605	4,720	4,840	4,959	5,083	5,209	6/27/1995	62,514
Comm Dev/Planner NEW	4,720 Step 5	4,276	4,384	4,493	4,605	4,720	4,840	4,959	5,083	5,209	7/2/2007	51,313
Building Official	n/a vacant	3,784	3,878	3,974	4,074	4,176	4,280	4,386	4,497	4,609	1/11/1999	0
COLA factor	100.00%											

STEP PLAN Updated from 2010 to 2011 with 1.5% Cola's

- Indicates 2010 salary
- Indicates placement 1/1/2011 AND FREEZE FOR ALL OF 2011
- FREEZE - WILL NOT APPLY for 2011; (Indicates placement on 2011 anniversary)

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From: Mari Ripp [mailto:rippm@ci.woodland.wa.us]
Sent: Wednesday, December 07, 2011 10:01
To: Chief Rob Stephenson; Michael Jackson
Cc: Chuck Blum; Mary Gleason; Gina Anderson
Subject: 2011 pay and error

It was brought to my attention that there was an error in your pay for 2011. Our former payroll clerk gave and paid you a step increase in 2011 and the council froze all step increases and gave a 0% cola to all exempts. We will need to deduct this from your December payroll or if you prefer, we can set up to have it deducted over a period of months. Please come and see me on this matter so we can discuss your repayment choice. I apologize for the inconvenience this may cause.

Stephenson; 4/1/11 began $7443.00 instead of $7261.00.
April - November = 8 months @ $182.00 = $1456.00

Jackson; 2/16/11 began $6912 instead of $6745.00 February a difference of $75.48, March - November = 9 months @ $167.00 = 1503.00 + 75.48 = Total $1578.48

Total $3,034.48

Mari Ripp, CMC, PFO, Clerk Treasurer

City of Woodland
(360) 225-8281 ext. 14
rippm@ci.woodland.wa.us

"How beautiful a day can be when kindness touches it!"
-George Elliston (1883-1946); news reporter, poet

CONFIDENTIAL EMAIL

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Mari Ripp

From: Michael Jackson
Sent: Thursday, December 08, 2011 3:01 PM
To: R Stephenson; Mari Ripp; Chuck Blum
Cc: Benjamin Fredricks; Marilee McCall; Susan Humbyrd; Al Swindell; Grover B. Laseke
Subject: RE: 2011 pay and error

I don't disagree with Chief Stephenson's concerns. I would certainly agree that perhaps a little more thought on the front end to be fair and equitable across the board would have been a nice gesture. Our Fire Department Staff fortunately know that if they get a cut or reduction because of financial hardship, I will gladly be the first to accept the hit without reservation. In the case last year, I gladly accepted no COLA, like our employees. But, unlike any other city staff, it appears that Chief Stephenson and I were the only ones held back from contractual step increase. I would guess that we are the only City Staff currently, or in the recent past, to lose out on step increases for reasons other than job performance. I will certainly pay a little closer attention in the future to help avoid any future challenges or hardships with incorrect pay for extended periods. I apologize that with automatic deposit, I also did not recognize the issue earlier.

Regardless, I am happy for the opportunity to serve in Woodland and glad to receive decent compensation for my work. I will make financial adjustments and hold my overages out of my next check.

Michael J. Jackson

Fire Department
City of Woodland

From: Chief Rob Stephenson [mailto:StephensonR@woodlandpd.org]
Sent: Wednesday, December 07, 2011 3:10 PM
To: Mari Ripp; Chuck Blum
Cc: Benjamin Fredricks; Marilee McCall; Susan Humbyrd; Al Swindell; Grover B. Laseke
Subject: RE: 2011 pay and error

Well, interesting and Merry Christmas to me. I wonder how this went on for several months. However, admittedly, I did not catch it because, frankly, I don't pay much attention to my pay check. I just always assume it's correct and let it go at that. I look at the automatic deposit amount and if it appears about right, I move on.

Nevertheless, I am going to make the following comment. The City has an adopted step plan pay scale for exempt personnel. I am not yet at the top of my step plan. I suppose it is one thing to withhold COLA's to unrepresented employees that really have no recourse but to accept it, or quit. But to do the same thing with recognized step increases is, in my mind, beyond being unfair. At least being told you're not getting your step increase because of job deficiencies puts an arguable reason to it. But to just do it smells of "we're gonna do it to you because there's nothing you can do about it!" Sorry...but that's crap all the way around. I understand and accept that being an exempt employee means you don't have recourse or protections that represented

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So, whatever I guess. Reduce my pay back to what council says it should be and take the overage out of my next two months pay in equal installments. I gladly accept a $910 a month cut in pay for the next two months.

"Your beliefs are your reality...if you don't like the reality, change your beliefs."
"One person's complaint does not make it a problem...it makes it ONE person's complaint"
"Ignoring the fact will not make the fact go away."

This e-mail and related attachments and any response may be subject to public disclosure under state law.

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