

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511**

December 15, 1999

OPINION 99-014

TO: Mayor Susan J. Bauman
City Comptroller Gale Dushack

FROM: Eunice Gibson, City Attorney

SUBJECT: Management Pay Plan

You have asked my opinion as to the interpretation of Sec. 3.38(6) of Madison General Ordinances (MGO), entitled "Management Pay Plan." You have asked how this ordinance affects the pay increases of managers whose salary has reached the top of the pay range established in the ordinance for their position. Specifically, in 1999, does Sec. 3.38 (6)(e) MGO require the Comptroller to apply those manager's percentage increases to the range maximum indicated in Sec. 3.38 (1)(g) with an asterisk. In my opinion, the ordinance does require that.

Members of Compensation Group 21 do not receive step increases or longevity increments. Instead, their annual pay increases are computed according to the provisions of Sec. 3.38 (6), MGO See Sec. 3.38(6)(d), MGO. Each year, the Comptroller is to calculate an amount of money to be available for pay increases for members of Compensation Group 21. See Sec.3.38(6)(c) 4., MGO. The calculation is based upon salary adjustments provided to other non-represented employees. Sec. 3.38(6)(c)4., MGO.

The Mayor is not required to expend the entire amount calculated by the Comptroller under Sec. 3.38(6)(c)4., MGO. She/he may not expend a greater amount. Sec. 3.38(6)(c)6., MGO. The Mayor may award an increase or a decrease to each member of Compensation Group 21. The increase or decrease is to be expressed "in terms of a percentage of the employee's previous year's compensation." Sec. 3.38(6)(c)5., MGO.

After the Mayor announces the percentage adjustments for members of Compensation Group 21, the Comptroller applies the percentage to determine the employee's new salary. Sec. 3.38(6)(c) 6. MGO, requires that,

“...the adjusted compensation of each employee shall be the basis for the succeeding year's adjustment.”

That requirement is limited, however, by the last unnumbered paragraph of Sec. 3.38 (6)(e), MGO. That paragraph provides:

"Adjustments to compensation shall be cumulative and shall increase base salary until the employee's salary reaches the maximum of the employee's range as adjusted for the subsequent year. Employees whose salaries have reached the maximum may be granted salary adjustments pursuant to these provisions but any such adjustment which exceeds the employee's base range maximum as adjusted shall not be cumulative and shall apply only to the year in which granted." (Emphasis added.)

The minimum and maximum amounts for each range are approved by the Council by ordinance Sec. 3.38(6)(c)4. MGO, provides:

". . . the Common Council shall adopt appropriate ordinances each year amending Sec. 3.38 to advance the applicable salary ranges for each such position in a percentage equal to the adjustment granted the other non-represented employees in order to maintain the relative placement of the ranges. . ." (Emphasis added.)

Although the foregoing ordinance language states that the Council is to do this each year, the Council has customarily done it every two years, by using asterisks to identify the salary minimum and maximum for the second year. This has the same effect as doing it every year would have, so long as the adjustments granted the other non-represented employees remain constant.

In construing this ordinance, we are required to arrive at an interpretation that takes all of the language into account, and does not render any of the provisions surplusage. Johnson v. State, 76 Wis. 2d 672,676, 251 NW 2d, 834 (1977). Every word appearing in a statute or ordinance should contribute to the construction of the statute or ordinance in accordance with its ordinary and customary meaning. Id.

It is clear that the ordinance calls for the salaries of members of Compensation Group 21 to be adjusted every year. Yet the ordinance also requires that, if an adjustment (pay increase) results in an employee's salary exceeding the range maximum, as adjusted every year (or every two years) by the Common Council, that pay increase only lasts until the end of the year in which it was granted. In the following (subsequent) year, that employee's salary reverts to the range maximum established in the ordinance for the following (subsequent) year. Then the employee's pay adjustment for the following (subsequent) year would be calculated as a percentage of that same range maximum.

For 1999, that range maximum amount would be identified with an asterisk, because Ordinance . # 12071A , ID #22952, amending Sec. 3.38 (1)(g), MGO, adopted March 17, 1998,

provides, in relevant part, as follows:

“(g) Commencing effective December 28, 1997, the following managerial and supervisory positions shall be compensated in accordance with the salary schedule, classifications, and salary ranges hereinafter designated; provided, however, that salary designations applicable to individual range steps indicated with a single asterisk (*) shall be effective for persons compensated pursuant to such range steps on and after December 27, 1998. (Emphasis added.)

Thus, at any time after December 27, 1998, and before a new ordinance is adopted, the “maximum of the employee’s range as adjusted for the subsequent year” is the amount indicated with a single asterisk.

Then, when pay adjustments are calculated as set forth above, the Comptroller applies the percentage increase to the employee’s “previous year’s compensation.” Sec. 3.38 (6)(c) 5. MGO. However, if the employee’s “previous year’s compensation” exceeded the 1998 maximum for his/her range, the Comptroller applies the percentage chosen by the Mayor to the “maximum of the employee’s range as adjusted for the subsequent year” “Sec. 3.38 (6) (e) MGO. The “subsequent year” is the year after the “previous year.” Therefore, for those employees, the Comptroller would compute their 1999 pay increase by applying the percentage awarded by the Mayor to the amount indicated with a single asterisk, that is, to the “maximum of the employee’s range as adjusted for the subsequent year.”

/s/

Eunice Gibson
City Attorney

CAPTION: Sec. 3.38 (6)(e), MGO, requires the Comptroller, when the salary of a member of the Compensation Group 21 has reached the maximum of his/her salary range, to apply that manager’s annual pay adjustment to the range maximum established by the Common Council for the year in which the adjustment is granted.

eg/cam/nje

cc: City Clerk