



CITY OF FORT BRAGG

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COUNCIL COMMITTEE ITEM SUMMARY REPORT

MEETING DATE: June 8, 2022
TO: Finance and Administration Committee
FROM: Juli Mortensen, Human Resources Analyst
AGENDA ITEM TITLE: Receive Report Regarding Childcare for City Councilmembers

BACKGROUND AND OVERVIEW:

During the May 9, 2022 City Council meeting, Councilmember Albin-Smith asked City staff to research options for providing assistance for childcare to allow more citizens of Fort Bragg to run for City Council by reducing the barrier of the cost of childcare required to perform the duties of a City Councilperson.

At this time, if one decides to run for City Council and they have dependent children, then they must have the ability to procure and pay for childcare when attending City Council meetings, committee meetings and other activities. If interested parties are unable to fund or arrange for childcare, then they are unable to run for office due to lack of childcare. Currently, the City does not have any childcare benefit for Council.

Childcare Costs

The cost of childcare can be prohibitive. Some preliminary research has provided some information, but there are several parameters that do not allow for a definitive answer. For example, a childcare provider may offer a discounted rate when more than one child is being cared for. Another variable is the age of the child(ren) being cared for. Childcare for a child up to the age of three has different adult-to-child parameters set by law. One adult may only care for four children under the age of two. In contrast, childcare providers may have up to twelve children per adult when the children are of kindergarten or elementary school age. Providing childcare to school age children is much more cost effective due to the differing staff required to perform the care. Another variable is the availability of qualified staff that can vary in terms of the local labor market and the overall economy of the area in question.

Quotes provided by an employee with several children stated the rates two years ago for a younger child (baby/toddler) would run \$14 to \$18 per hour. Putting this in today's dollars, accounting for an 8% inflation this year, would be \$15.12 to \$19.44 hourly. Childcare rates typically decrease by half for school age children. The City has averaged 47 Council meetings per year over the last six years. Meetings typically last between two and four hours. For this calculation, an average of 3 hours per meeting is being used. Using a typical three hour City Council meeting, at the younger child rate of \$15.12 per hour, it would cost \$45.36 per Council meeting and approximately \$2,131.92 annually for a single Councilmember.

Please see the attached document entitled *City Council Salaries and Benefits*, presented at the League of California Cities general session in September 2011, and a summary of the legal considerations for offering childcare assistance to City Councilmembers.

AVAILABLE OPTIONS

As the result of research, there are several options to consider. They are listed below. Each of the options will be discussed separately in the following sections.

- Dependent Care Flexible Spending Account
- Childcare stipend
- Direct Childcare expense reimbursement
- Health plan coverage

Dependent Care Flexible Spending Account option

A flexible spending account (FSA), as defined by Healthcare.gov explains, "A Flexible Spending Account (also known as a flexible spending arrangement) is a special account you put money into that you use to pay for certain out of pocket health care costs (*or dependent care*). The most notable part is that the employers do not pay taxes on the money. In short, an FSA saves on taxes, allocating that money towards medical (dependent care) expenses instead. There are two types of FSAs, healthcare and dependent care. The healthcare FSA is only for eligible medical, dental, and vision expenses as defined by the Internal Revenue Service.

The Health FSA is not relevant to this discussion because a Health FSA is a pre-tax benefit that is used to pay for eligible medical, dental and vision expenses. Essentially those that are not covered by the City's health care plan or elsewhere, that the IRS deems are eligible expenses. Childcare expenses are not considered healthcare and therefore is not relevant to this analysis and will not be discussed further.

Employees are able to participate in the Dependent Child Flexible Spending Account (Dependent Care FSA) program. A Dependent Care FSA allows an employee to contribute up to \$5,000 on a pre-tax basis per plan year (July 1st to June 30th) for qualified daycare expenses for qualified dependents. A qualified dependent is a dependent child

up to age of 13 or dependent adults who live in their homes, including spouses and parents. There is no carryover allowed as per Internal Revenue Service (IRS) regulations. Qualified daycare expenses do not include reimbursing an older child who watches a younger sibling.

Both parents may use a Dependent Care FSA and jointly contribute up to \$5,000 per year. If both spouses have an FSA, they could end up contributing too much for the year. If that happens, one spouse will need to claim the additional amount deferred as taxable income. This additional amount must be added in on IRS Form 2441 as income if one takes advantage of the Dependent Care Tax Credit. There are complex tax rules in regarding Dependent Care FSA and claiming the household and Dependent Care credit on one's federal tax return. The tax implications to the participant should be addressed between the participant and their chosen tax professional.

In conducting research for the Dependent Care FSA option, it is possible for the City to make contributions to the Dependent Care FSA but the combined contribution may not be more than \$5,000. Employer contributions are not a match. Participants will receive the full contribution amount regardless of what their election is, even if they elect \$0. Contribution amounts are set during the City's open enrollment period and cannot be changed outside of open enrollment unless there is a qualifying life event.

As previously stated, Dependent Care FSA rules do not allow for a change mid-year unless there is a qualifying life event. Qualifying life events are marital status changes, a change in number of dependents, employment change and similar events. Once a child reaches the age of 13, they are no longer eligible to be reimbursed. If a child attains age 13, it is considered a qualifying event and would be a reason to terminate participation in the Dependent Care FSA. There is, however, a grace period, for the Dependent Care FSA and the City's plan offers a 60 day grace period after the plan year ends to submit reimbursements for eligible expenses.

Another Dependent Care FSA rule to consider is that one only has access to Dependent Care funds that have been deducted from their pay check each period. There is no early access to funds. Only the amount in the Dependent Care FSA are available, no over dipping. There is no carry over. Amount left in the account at the end of the plan year are forfeited. The unused portion of the Dependent Care FSA may not be paid to the participant in cash or other benefits, including transferring money between FSAs.

A Dependent Care FSA is designed to cover daycare expenses that employees incur because they are working, so a taxpayer must have earned income in order to have a Dependent Care FSA. If the taxpayer is married, the spouse must have an earned income, be actively looking for work or be enrolled as a full-time student. IRS regulation Section 129 Dependent Care Assistance Programs regulates what expenses may be reimbursed. Employment-related means an expense for dependent care that allows an individual or their spouse, if applicable, to be gainfully employed.

Offering the Dependent Care FSA is a viable option, but it should be offered to all employees, which could dramatically increase the cost. Another consideration is that

while the Dependent Care FSA provides a debit card to submit the expenses, many employees have encountered providers that do not accept payment by debit card. Instead, one has to pay with their own non-FSA money and then submit for payment. It has proven to be an obstacle to having more employees participate in the Dependent Care FSA. The assumption would be that the City would provide a contribution towards the Dependent Care FSA based to provide an incentive for more citizens to run for office. The decision could be to just allow Council to participate in the FSA plans.

Councilmembers can join mid-year (basically like a new hire). Changing the plan to have city contributions can be done, but the timing is uncertain. It is possible that a plan change like that would need to wait until the FY 2023-24 plan year. Additionally, the City's FSA vendor has their rules for processing. Therefore, the exact process in accomplishing the chosen option (*choosing whether or not there will be city funds contribution or just do employee only contributions*) will need to be further researched if this is the option chosen to determine the timing of the change

Stipends

Stipends would seem that is an option as a Car Allowance is allowable because the code permits City Councilmembers to contract directly with the city for a vehicle allowance when the Councilmembers' travel expenses by law. However, when this is applied to other types of stipends, the practice would seem to constitute monetary compensation that is not authorized by a salary ordinance or by a statutory provision such as Section 1223 regarding car allowances.

One way to do the stipend is to do a \$150 a month stipend for Councilmembers who have children to care for. Providing the stipend for only Councilmembers and therefore would be considered salary. Based on the fact there has been 10 years since the last salary ordinance, we can increase it no more than \$150 a month. It is \$150 a month because ten years times the 5% is 50%. One takes 1.5 times the current monthly Council salary is \$450 monthly. The difference between the \$450 and \$300 is \$150. Using the \$150 per month, it would be \$1,800 per Councilmember. Again, doing this just for Council would be \$1,800 per Councilmember annually. To implement this program, the City would need to define the eligibility requirements are for the program.

If this benefit were to be extended to employees, then assuming twenty employees use this (about 30% of employee population), then the total cost annually would be \$36,000 annually ($(\$150 \times 12) \times 20$ employees = \$36,000). The benefit to this proposal would be it allows for the perception of equity and provides evidence that the City is a family friendly employer. Again, if the City were to implement this program, the City would need to define eligibility requirements. Using this option allows for greater flexibility.

Direct Childcare Reimbursement

Another possibility is to reimburse Councilmembers directly for their childcare expenses for their attendance at Council meetings. Pursuant to Government Code Section 36514.5, City Councilmembers may be reimbursed for actual and necessary expenses incurred in the performance of official duties. Any amounts paid by a city to reimburse a Councilmember for actual and necessary shall not be included for purposes of determining salary. (§36516(e)).

One question is whether or not childcare is a necessary expense. As per a paper titled "Councilmember Expenditures/Reimbursements" through the League of California Cities, states that general law cities have to go by government code and are more limited on what one can do than charter cities. The City of Fort Bragg is a general law city. In this paper, referring to 65 Ops.Cal.Atty.Gen 517-523, the attorney general opined: "an actual expense refers to a specific sum of money which the Councilmember has either paid or become legally liable to pay." Therefore, a reimbursement payment that is not itemized would not constitute an "actual" expense.

The Attorney General goes on to specify the dictionary definition of necessity ("something that cannot be done without") was not required. Instead, "practical necessity" should be the standard. The Attorney General referred to Albright v. City of South San Francisco by surmising that while it is physically possible to perform official duties at remote points without expenditures for hotel rooms and meals, it may not be practical to do so. An example would be bringing meals from home may not be convenient or practical. In doing this research, there is no mention of whether childcare is considered necessary. The articles have consistently referred to expenses incurred while traveling for official public business such as meals and hotel expenses.

If one goes by the travel expense rules, staying in town to attend a City Council meeting, it would appear childcare expenses will not meet the necessity threshold. It might for the out of town meetings. It should also be noted that if we do this for Councilmembers, then it should also be an reimbursable expense for city staff to ensure equity and comply with regulations. This is probably not the best method because it does not meet the day to day issue of attending an average of 47 Council meetings annually. Having childcare available and at a cost effective rate is imperative to help remove the childcare barrier to allow more citizens to run for City Council. Additionally, in keeping with equity, the cost may be prohibitive to reimburse city staff if they must travel for trainings or city business. Costs will add up quickly.

Health Plan Coverage

This option was researched and childcare is not covered via the City's health plan, nor does any other medical plan. In reaching out to RealCare Inc., the City's benefits broker, they referred to the option of providing a Dependent Care FSA. The Dependent Care FSA option was covered earlier so there is no need to discuss it in this section.

RECOMMENDATION:

Elect to provide a stipend of no more than \$150 per month to Council. This has the drawback of perceived inequity, but complies with the various regulations. Providing a stipend of \$150 per month is \$1,800 annually per Council participant.

A variation of this is to provide a stipend to all eligible employees. Assuming 30% employee population (65/20 employees is 30%) participating, then the annual cost would amount to \$3,600. This is least expensive, even when offering it to employees. The eligibility parameters would need to and enrollment procedures would need to clearly documented.

ALTERNATIVES:

Elect the Dependent Care FSA with no city contribution. This allows the ability to help with childcare without increasing the City's budget, still ensures equity, and shows the City to be a family friendly employer. This should be offered to all employees.

Elect to utilize the Dependent Care FSA with City contribution by having the City contribute money into the Dependent Care FSA and have the same amount contributed to City staff who elect to participate in the program. This also serves as a method of providing equity and shows the City of Fort Bragg as a family friendly employer. Regarding the amount, the City could provide the entire \$5,000, which is expensive because it would be \$130,000 annually (assuming 30% of employees utilize the program or in other terms, 20 employees. The City could elect to contribute a lesser amount, say 50%, \$2,500 annually per participant resulting in an annual cost of \$50,000 assuming 30% participation. This would need to be extended to employees as well to comply with regulations and ensure equity.

Both of the above options can be done with no City contributions to save money. If this is the option chosen, then it is not really providing additional assistance to participants, whether or not is for all City employees and Council or if it is exclusively for Council.

In all options using the Dependent Care FSA, the decision for whether an item is reimbursable is dictated by the IRS and the vendor. In the City's case, the flexible spending account vendor is iSolved Benefit Services. Employees are already familiar with this benefit and has been mostly well received, other than the debit card payment issue. This issue would be applicable with any FSA vendor and not just iSolved.

The main changes with this option are allowing City Councilmembers to participate and to have the City provide monies towards this. The City's open enrollment period is underway for plan year 2022-23. As stated previously, more research is needed to determine the timing if the City elects to contribute money towards the Dependent Care FSA.

ATTACHMENTS:

- *Councilmember Expenditures/Reimbursements white paper*
- *League of California Cities City Council Salaries and Benefits 2011*
- *Legal Considerations for Childcare Benefit for Council 6.3.22*