TO: CITY COUNCIL
ATTN: POLICY AND SERVICES COMMITTEE
FROM: CITY MANAGER DEPARTMENT: HUMAN RESOURCES
DATE: APRIL 13, 2004 CMR: 220:04

SUBJECT: REQUEST FOR APPROVAL TO MAKE EXECUTIVE MANAGERS AT-WILL EMPLOYEES

RECOMMENDATION

Staff recommends that the Policy and Services Committee recommend to City Council that the City adopt a new policy under which all Department Heads hired after July 1, 2004 will be “at will” employees whose terms of employment are specified by an employment contract.

BACKGROUND

Currently the Council Appointed Officers (City Manager, City Attorney, City Clerk and City Auditor) along with the Administrative Services Director and Library Director are at-will employees. At-will employment establishes that certain positions serve at the will of the City Manager, or Council if a Council Appointed Officer, with no expectation of continued employment and with no right to pre or post separation due process or appeal. All the Council Appointed Officers have employment agreements, including a severance provision. The Administrative Services Director and Library Director agreed to be at-will employees in exchange for housing loan assistance. All other department heads and the Assistant City Manager, like other regular City Employees, are presently covered by the City’s Merit Rules and can only be terminated for cause.

DISCUSSION

It is atypical for department heads in City government to have protection from being terminated without cause. The industry standard is for top-level managers to be “at will” employees. Staff is recommending that Council require that newly hired department heads be “at will” employees. Because public employees in general have constitutionally protected property interests in their employment (meaning the right to due process before being “deprived” of their job or salary), it is necessary that each department head sign a written
waiver of due process rights. This should be part of a written employment contract specifying all material terms of the contract. A severance provision would be a standard provision of the contract providing for four months of full salary payments for employees with four years of service or less with a month added for every additional year served up to a maximum of six months. This recommended four to six month severance package is the standard practice for providing severance to at-will employees within the City’s labor market cities. Any existing Department Head or the Assistant City Manager may elect to remain covered by the Merit Rules or to become at-will with an employment agreement including the severance package. Those current executive managers choosing to become at-will would preserve all benefits that they presently have or would have as new executive managers.

RESOURCE IMPACT

Compensation and associated salary-related benefit costs of the proposed severance package would range from $63,000 to $95,000 depending on the length of the package. These costs are based on the average Department Head compensation rate within the 2003-04 compensation plan. A Budget Amendment Ordinance (BAO) may be necessary at the time the severance provision is executed, depending on available resources.

POLICY IMPLICATIONS

Implementation of this policy will require an amendment to the City’s Merit System Rules and Regulations and the Management and Professional Compensation Plan

ENVIRONMENTAL REVIEW

This is not a project under the California Environmental Quality Act (CEQA).

ATTACHMENTS

1. Sample At-Will Employment Agreement
PREPARED BY: Leslie Loomis, Director of Human Resources

DEPARTMENT HEAD: ________________________________
LESLIE LOOMIS
Director of Human Resources

CITY MANAGER APPROVAL: __________________________
EMILY HARRISON
Assistant City Manager