

# Indiana State Board of Accounts

## Salary Ordinances

Newly Elected or Appointed City & Town Fiscal Officer Training Webinar

August 2020

### Salary Ordinances – Statutory Requirements



#### Cities:

- IC 36-4-7-2; 36-4-7-3; 36-4-7-4
- IC 36-8-3-3 (Police)
- IC 8-1.5-3-4 (Utility Service Board)

#### Towns:

- IC 36-5-3-2
- IC 36-8-3-3
- IC 36-1.5-3-4

### Board of Metropolitan Police Commissioners 36-8-9

Why an Ordinance?



### **Cities:**

IC 36-4-7-2(b) states that the legislative body shall, *by ordinance*, fix the annual compensation of all elected city officers.

Why an Ordinance?



### **Towns:**

IC 36-5-3-2(b) states, in part, the legislative body shall, *by ordinance*, fix the compensation of its own members, the town clerk-treasurer, and the town marshal.

## When to Adopt Ordinance



- A new Ordinance should be adopted every year
- For Cities – adoption should be not later than November 1 for the ensuing budget year (IC 36-4-7)
- For Towns – no statutory deadline. We recommend passing at the time budget is passed or by 12/31.

## What is Compensation?



### **Cities – Elected officer:**

IC 36-4-7-2(a) - "compensation" means the total of all money paid to an elected city officer for performing duties as a city officer, regardless of the source of funds from which the money is paid.

The term includes all employee benefits paid to an elected city officer, including life insurance, health insurance, disability insurance, retirement benefits, and pension benefits.

What is Compensation?



### Towns - Elected officer:

IC 36-5-3-2(a) - "compensation" means the total of all money paid to an elected ~~city~~ town officer for performing duties as a ~~city~~ town officer, regardless of the source of funds from which the money is paid.

The term includes all employee benefits paid to an elected ~~city~~ town officer, including life insurance, health insurance, disability insurance, retirement benefits, and pension benefits.

What is Compensation?



### Cities & Towns - new:

For purposes of determining an increase or decrease in compensation of an elected officer, the term does not include any of the following:

- (1) Payment of an insurance premium.
- (2) Payments in recognition of:
  - (A) longevity;
  - (B) professional certifications; or
  - (C) educational advancements;
 that are separately identified on a salary ordinance or resolution.



What is Compensation?

**Cities & Towns – new (continued):**

For purposes of determining an increase or decrease in compensation of an elected officer, the term does not include any of the following:

- (3) Payment of a stipend or per diem allowed by statute.
- (4) A payment authorized under section 4 [cities] or 36-5-3-2(d) [towns]

**EXAMPLE**

|                                      | 2019      | 2020      |
|--------------------------------------|-----------|-----------|
| Clerk-Treasurer                      |           |           |
| Salary                               | \$ 50,000 | \$ 50,000 |
| Insurane Premium                     | 2,500     | 1,500     |
| Total Compensation per               |           |           |
| Cities [36-4-7-2] & Towns [36-5-3-2] | \$ 52,500 | \$ 51,500 |



What is Compensation?

**Cities & Towns – did not change:**

IC 36-4-7-2(c) and 36-5-3-2(c) state compensation of an elected city or town officer may not

- be changed in the year for which it is fixed, nor
- reduced below the amount fixed for the previous year.

|                                      | 2019      | 2020      |
|--------------------------------------|-----------|-----------|
| Clerk-Treasurer                      |           |           |
| Salary                               | \$ 50,000 | \$ 50,000 |
| Insurane Premium                     | 2,500     | 1,500     |
| Total Compensation per               |           |           |
| Cities [36-4-7-2] & Towns [36-5-3-2] | \$ 52,500 | \$ 51,500 |

## Another NEW Consideration



**Cities: IC 36-4-7-2(b)**

**Towns: IC 36-5-3-2(b)**

An elected city/town officer is not required to report hours worked and **may not** be compensated based on the number of hours worked.

## What is Compensation?

**Audit Position:**

- Elected officer's compensation is the total of all monies paid for performing duties as a city/town officer. It also includes insurance, disability, and retirement benefits.
- Compensation may not be changed during the year for which it is fixed.

## What is Compensation?



### **Audit Position (continued):**

- Compensation may not be reduced below the amount fixed for the preceding year.
- Payments for longevity, certifications, educational achievements, stipends, and per diem will not be considered for determining increases or decreases in compensation.
- Consult your attorney with legal questions/concerns.

## Non-elected Employees



### **Cities - IC 36-4-7-3:**

- Subject to the approval of the city legislative body, the city executive shall fix the compensation of each appointive officer, deputy, and other employee of the city.
- The legislative body may reduce but may not increase any compensation fixed by the executive.
- Compensation must be fixed by November 1

## Non-elected Employees

**Cities - IC 36-4-7-3 (continued):**

- Compensation may be increased or decreased by the executive during the budget year for which it is fixed.
- Notwithstanding subsection (b), the city clerk may, with the approval of the legislative body, fix the salaries of deputies and employees appointed under IC 36-4-11-4.
- This section does not apply to city police and fire dept. members.

## Police &amp; Fire Members

**Cities - IC 36-8-3-3(d):**

- Annual compensation of all members and other appointees shall be fixed by ordinance of the legislative body not later than November 1.
- If legislative body fails to adopt, public safety board may fix members' compensation.



## Non-elected Employees

**Towns - IC 36-5-3-2:**

- Compensation is to be fixed in the same salary ordinance that sets the compensation of town elected officials.
- Compensation of town employees can be changed (up or down) by council through ordinance amendment.

**Another Board:** – Utility Service Board (IC 8-1.5-3-3) or Waterworks Board (IC 8-1.5-4-4): these boards set the salaries of utility employees.

## Waving Compensation

**IC 36-5-3-6:**

Allows for an elected town officer to waive their total compensation for any year. Clerk-Treasurer must be notified before January 1 of the year in writing of such a waiver.

Such a waiver includes the officer's benefits: life insurance, health insurance, retirement/pension benefits, disability, etc.

## What to Include in Ordinance



### Include:

- Base salary
- Benefits to be paid
  - Longevity
  - Bonuses
  - Stipends
  - Overtime
- Other items if applicable:
  - Termination (paid out or not)
  - Balances rolled over (or not)
  - How leave is accrued
- Leave benefits
  - Required by IC 5-10-6-1
- Be clear on

## Special Rules & Exceptions



### Park Employees:

Organized under IC 36-10-3, park board can change compensation set for park employees at any time. Our audit position as per 1989 AG opinion.

### New Positions:

Adding a new position during the year is permissible. We recommend amending the ordinance to include the new position and compensation.

## Other Considerations

**Names vs. Positions:**

- Try not to put names in ordinances; lists positions.

**Bi-Weekly Paydays:**

- We recommend using bi-weekly pays in the ordinance and not annualized amounts or ranges.

**Ranges:**

- If using ranges, have documentation or evidence how each person's amount was determined/approved.

## Other Considerations

**City Failure to Adopt by Nov. 1:**

- If your City Attorney will give you a written opinion stating that it is ok, we will not take exception to an ordinance being adopted after November 1<sup>st</sup> and before January. The law is silent on what happens so this is a good place to exercise Home Rule powers.

**No adoption at all:**

- Our audit position is the last one adopted remains in effect.

Questions

