



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Debra Figone

**SUBJECT: REVISED BALLOT
MEASURE**

DATE: February 21, 2012

RECOMMENDATION

1. Discussion and consideration of repeal of Resolution No. 76087 and consideration of a revised Retirement Reform ballot measure for a June 5, 2012 election;
2. If Council wishes to proceed, repeal Resolution No. 76087 and adopt a resolution of the Council:
 - a) calling for a special municipal election to be held on June 5, 2012, and, on its own motion, giving notice of the submission to the electors of the City of San Jose, of the following measure at that election:

PENSION REFORM

To protect essential services: neighborhood police patrols, fire stations, libraries, community centers, streets and parks, shall the Charter be amended to reform retirement benefits of City employees and retirees by: increasing employees' contributions; establishing a voluntary reduced pension plan for current employees and pension cost and benefit limitations for new employees; reforming disability retirements to prevent abuses; temporarily suspending retiree COLAs during emergency; and requiring voter approval for increases in future pension benefits?

- b) directing the City Clerk to take all other actions previously approved on December 6, 2011, necessary to facilitate the Special Municipal Election.

BACKGROUND

The Mayor's March 2011 Budget Message, that was approved by the City Council, directed the City Manager to develop a Fiscal Reform Plan to save \$216 million in General Fund Savings by Fiscal Year 2015-2016, and to reduce retirement costs to the Fiscal Year 2010-2011 level. The Fiscal Reform Plan is available here:

<http://www.sanjoseca.gov/budget/FY1112/05MBA/MBA01-FiscalReformPlan.PDF>.

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At the May 24, 2011, City Council meeting, the City Manager's *Fiscal Reform Plan* was agendaized for discussion as item 3.4. For this agenda item, in a memorandum dated May 13, 2011, Mayor Reed, Vice Mayor Nguyen and Councilmembers Herrera and Liccardo, recommended an amendment to the City Charter in order to limit retirement benefits and to require voter approval of increases in retirement benefits. This was approved by the City Council, which directed staff to return with a proposed ballot measure.

To allow time to meet and confer with the City's bargaining units, this item was deferred and, per a memo submitted by the Mayor on November 18, 2011, consideration of the proposed ballot measure was agendaized for City Council consideration at the Council meeting on December 6, 2011. On December 6, 2011, the City Council adopted Resolution 76087 and approved a ballot measure (Attachment B) for the June 2012, election, but directed staff not to submit the ballot measure language to the Registrar of Voters to allow time for the City Administration to ask the bargaining units to re-engage in mediation on all retirement issues, including the related ballot measure, in an attempt to reach an agreement on the ballot measure language that would be submitted to the Registrar of Voters.

Timeline

When the direction for a ballot measure was first approved in May 2011, it was intended for consideration for the November 2011 election. However, to give additional time for negotiations with the City's bargaining units, it was postponed until the March 2012 election. On December 6, 2011, the City Council voted again to delay the ballot measure to the June 2012 election.

The City Council must approve putting a ballot measure before the voters 88 days in advance of the election. March 9, 2012, is 88 days prior to the June 2012 election. Although the City Council approved ballot measure language on December 6, 2011, the language was not submitted to the Registrar of Voters to allow additional time for mediation. The final ballot measure language must be submitted to the Registrar of Voters by March 9, 2012.

If the revised ballot measure is not approved by the City Council, absent other action by the City Council, the City Clerk has been directed to submit to the Registrar of Voters the ballot measure approved by the City Council on December 6, 2011.

ANALYSIS

Meet and Confer with the City's Bargaining Units

As was explained in a memo (Attachment C) dated November 22, 2011, for the December 6, 2011 meeting, the meet and confer process over a ballot measure is somewhat different than the traditional meet and confer process and is referred to as "Seal Beach Bargaining." "Seal Beach Bargaining" is a labor term that comes from a court case involving the City of Seal Beach, California, and the Seal Beach Police Officers' Association. It refers to bargaining or negotiating over a proposed ballot measure prior to it being placed on a ballot for consideration by voters during an election. This is only done when a proposed ballot measure affects matters within the scope of representation.

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Because the proposed ballot measure affects retirement benefits, the City engaged in “*Seal Beach Bargaining*” with all 11 of its bargaining units, although the level of participation varied by each bargaining unit. In all cases, the City provided advance notice to every bargaining unit and an opportunity to bargain.

Although significant changes were made to the ballot measure based on comments the City received from the bargaining units, no agreement was reached with any bargaining unit during negotiations. Because of this, impasse procedures were invoked. Under the Employer-Employee Relations Resolution 39367, mediation is triggered by a declaration of impasse. The City offered mediation to all bargaining units, even those who had declined or failed to participate in bargaining regarding the ballot measure.

Prior to December 6, 2011, the City and 11 bargaining units engaged in mediation, but those efforts did not result in an agreement. Although the City Council approved moving forward with the ballot measure dated December 5, 2011, for a June 2012 election, they asked that the City negotiators ask the bargaining units to re-engage in mediation in an attempt to reach an agreement.

On December 7, 2011, the City Administration contacted all 11 bargaining units to gauge their interest in re-engaging in mediation in a coalition setting. Although the City asked that the 9 bargaining units that represented employees in the Federated City Employees’ Retirement System meet in a coalition setting, they were not interested in doing so.

The following chart represents the coalitions that were formed for mediation and the numerous mediation sessions and meetings that ensued since December 6, 2011.

| Federated City Employees' Retirement System | | Police and Fire Department Retirement System |
|--|---|---|
| Association of Building, Mechanical and Electrical Inspectors Association of Legal Professionals Confidential Employees' Organization, AFSCME Municipal Employees' Federation, AFSCME Operating Engineers, Local #3 | IFPTE Local 21 Association of Engineers and Architects City Association of Management Personnel Association of Maintenance Supervisory Personnel | San Jose Fire Fighters, IAFF Local 230 San Jose Police Officers' Association |
| Wednesday, December 21st Wednesday, January 4th Friday, January 6th Friday, January 13th Monday, January 30th Monday, February 13th | Friday, January 6th Monday, January 9th Thursday, January 19th Tuesday, January 24th Thursday, January 26th Wednesday, February 8th Thursday, February 9th | Thursday, December 22nd Monday, January 9th Thursday, January 12th Tuesday, January 17th Wednesday, January 18th Monday, February 6th Friday, February 10th |

The mediation process itself is confidential. If an agreement is not reached in mediation, the City may maintain its position prior to mediation, which was the approved December 5, 2011, ballot measure, or it may make additional movement consistent with its positions in mediation. In other words, even without an agreement, the mediation process may result in additional changes to the ballot measure.

Despite a total of approximately 20 meetings, an agreement was not reached with any of the bargaining units.

Ballot Measure

During the last 7 months, the City made numerous and significant changes to the ballot measure and provided the following revised drafts to the bargaining units:

- July 5, 2011 (Original Draft Proposed Ballot Measure)
- September 9, 2011
- October 5, 2011
- October 20, 2011
- October 27, 2011
- December 5, 2011

Although mediation did not yield an agreement with any of the bargaining units, I am recommending additional changes to the ballot measure from the December 5, 2011, version which was approved by the City Council on December 6, 2011. The attached (Attachment A) reflects all of the recommended changes to the previous version of the ballot measure. These changes are a combination of clarifying language and substantive changes after mediation discussions. It is important to note that through the negotiation process, 10 of the City's 11 bargaining units at one time during the process proposed an opt-in program, which is also referred to as a voluntary election program.

The following highlights some of the recommended changes to the ballot measure since the December 5, 2011, version that was approved by the City Council. It is important to read the attached revised ballot measure which clearly identifies all of the proposed changes.

Vesting Language (Sections 2 and 5)

The revised ballot measure includes clarifications to the language regarding the City's ability to modify benefits in the future in Sections 2 and Section 5 to be consistent with the provisions in the City Charter.

Current Employees (Section 6)

The revised ballot measure includes the following changes to the compensation adjustment through additional retirement contributions for those employees who elect to stay in the current level of benefits (Tier 1).

| Provision | December 5, 2011 Ballot Measure | Recommended Revision |
|---|---|---|
| Compensation Adjustment Increments per Fiscal Year | 5% of pensionable pay | 4% of pensionable pay |
| Compensation Adjustment Maximum | 25%, but no more than 50% of the unfunded liability | 16%, but no more than 50% of the unfunded liability |
| Compensation Adjustment Start Date | June 24, 2012 | June 23, 2013 |

The compensation adjustments through additional retirement contributions will be in increments of 4%, with a maximum of 16% of pensionable pay. The unfunded liability serves as a limitation on the compensation adjustment employees would receive through additional retirement contributions. The adjustments are not required to be exactly in increments of 4% because they are dependent on the limitation of 50% of the pension unfunded liability.

Below is an example using the pension unfunded liability contribution rate for Fiscal Year 2012-2013 for an employee in the Federated City Employees' Retirement System. It should be noted that this is only an example and the unfunded liability contribution rate is adjusted every year based on an actuarial valuation completed by the Board's actuary. The pension unfunded

liability contribution rate for Fiscal Year 2012-2013 (which is currently 100% City paid) will be 26.37%. 50% of this contribution rate is 13.185%.

The revised ballot measure reduces the cap on the compensation adjustment through additional retirement contributions to 16% of pensionable pay, but no more than 50% of the unfunded liability to be adjusted in 4% increments rather than 5%. The chart below provides an example of the compensation adjustment for future years if the pension unfunded liability contribution rate remained at 26.37% for an employee who elects to stay in the current level of retirement benefits.¹

| Fiscal Year | Example Compensation Adjustment Increment | Example Total Compensation Adjustment |
|-----------------------|--|--|
| Fiscal Year 2013-2014 | 4% | 4% |
| Fiscal Year 2014-2015 | 4% | 8% |
| Fiscal Year 2015-2016 | 4% | 12% |
| Fiscal Year 2016-2017 | 1.185% | 13.185% |

In any year where the pension unfunded liability contribution rate decreases, the decrease could occur in more or less than 4% increments. For example, after the phase in example above, if the pension unfunded liability contribution rate decreased to 15% (50% of that is 7.5%), an employee's compensation adjustment through additional retirement contributions would decrease to 7.5% for that year.

If the Voluntary Election Program is not implemented for any reason, the compensation adjustment will apply to all employees. When the Voluntary Election Program is implemented, the only employees who will not have the compensation adjustment are those that opt into the Voluntary Election Program defined in the ballot measure.

Voluntary Election Program (Section 7)

In the current level of benefits (Tier 1), an employee can retire at any age after reaching 30 years of service. If an employee elects to opt into the Voluntary Election Program (VEP), in the December 5, 2011 ballot measure, the eligibility to retire at thirty (30) years of service regardless of age would increase by 6 months annually on July 1 of each year. This phase in would start the first July 1 after the Voluntary Election Program was implemented. In the revised ballot measure, this phase in would not start until July 1, 2017.

¹ These numbers are only an example, the actual unfunded liability for each Fiscal Year will be determined by the Boards' actuary.

Future Employees- Limitation on Retirement Benefits- Tier 2 (Section 8)

The ballot measure itself does not define what the retirement benefit will be for new employees, rather, it sets parameters around the Tier 2 benefit. The revised ballot measure increases those parameters as follows:

| Benefit Parameter | December 5, 2011 Ballot Measure | Recommended Revision |
|--|---|--|
| Cost of Living Increase Maximum | 1% maximum based on the Consumer Price Index (CPI) | 1.5% maximum based on CPI |
| Benefit Accrual Rate Maximum | 1.5% per year of service | 2% per year of service with a 65% maximum |

In addition, the December 5, 2011, ballot measure states that all costs for the Tier 2 plan be shared 50/50 between the City and employees, but that the City contributions would not be less than 6.2% nor greater than 9% of base salary.

In the revised ballot measure, the City's cap on costs of 9% would be removed for a defined benefit plan and regardless of the costs of the defined benefit plan, they would be shared 50/50 between employees and the City. Below is a comparison of this cost sharing arrangement:

| Benefit Parameter | December 5, 2011 Ballot Measure | Recommended Revision |
|---|--|--------------------------------------|
| Defined Benefit Plan with a Total Cost of 20% of payroll | City Cost: 9% Employee Cost: 11% | City Cost: 10% Employee Cost: 10% |

However, the revised ballot measure adds that the City may contribute to a defined contribution or other retirement plan only when and to the extent the total City contribution does not exceed 9% and that if the City's share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan. For example, if the City's share of the costs for a defined benefit plan is 10%, no contributions would be allowed into a defined contribution plan. If the City's share of the costs for a defined benefit plan is 8%, the City could, but is not required to, contribute up to 1% (for a total of 9%) towards a defined contribution plan for the employee.

It is important to note that because the ballot measure only sets parameters for a second tier, the actual design of the second tier is subject to the negotiations process with the bargaining units. The City and the bargaining units have also reached impasse on this topic and engaged in mediation, which did not result in an agreement.

Savings (Section 14)

This section was modified to limit the application of the section to the situation in which it is determined that the City is not able to adjust compensation through additional retirement contributions, then the City would, to the extent permitted by law, adjust compensation through pay reductions.

The ballot measure will also include section numbering to be consistent with the City Charter.

CONCLUSION

The proposed ballot measure includes many significant changes and movement from earlier drafts. This movement is the result of many hours of negotiations and mediation with the City's bargaining units and consideration of the many dimensions of the difficult issue of Retirement Reform.

The proposed revised ballot measure is a critical step towards reducing retirement costs "in a manner that protects the City's viability and public safety" and "at the same time allowing for the continuation of fair post-employment benefits for its workers," as stated in the attached Retirement Reform Ballot Measure.

COORDINATION

This memo has been coordinated with the City Attorney's Office.



DEBRA FIGONE
City Manager

Attachments:

A: February 21, 2012, Revised Ballot Measure

B: December 5, 2011, Ballot Measure Approved by the City Council on December 6, 2011

C: November 22, 2011, Council Memorandum (without attachments)



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**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: "*The Employee Fair Pay and Sustainable Retirement Benefits and Compensation Act.*"

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

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Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

Section 2: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

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The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

~~This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503. ; provided, however, nothing in the Act shall be construed to require the forfeiture of any contribution made by an employee toward a pension plan benefit.~~

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Section 3. ~~Measure~~ Act Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ~~as well as all ordinances, resolutions or other enactments.~~

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than ~~June~~ September 30, 2012.

Section 4. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither The City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have ~~no~~ authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 5. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this ~~measure~~ Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees ~~to amend, change or repeal any retirement or other~~

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~~post-employment benefit program subject to the terms of this measure~~Act.

Section 6. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation ~~reduced~~adjusted by sharing through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.

~~(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% every fiscal year until the employee's proportionate share of the cost reaches 50% of the amortized pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.~~

~~(d)~~ (dc) The starting date for an employee's compensation adjustment under this Section shall be June ~~24~~23, 2012~~2013~~, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the

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compensation adjustments shall apply to all Current Employees.

(ed) The compensation adjustment through additional employee contributions for Current Employees' share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(fe) The additional retirement contributions compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

Section 7: One Time Voluntary Election Program ("VEP")

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably

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relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.
- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service

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retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017~~on July 1 of each year.~~
 - (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
 - (vi) “Final compensation” shall mean the average annual pensionable pay of the highest three consecutive years of service.
 - (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).
- (c) The cost sharing for the VEP for current service or current service benefits (“Normal Cost”) shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt

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into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

- (i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.
- (ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

- (i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and

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maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 8: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

- (a) ~~The City contributions shall not be less than 6.2% nor greater than 9% of base salary, excluding premiums or other additional compensation. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities).~~ The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit plan is less than 9%, the

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City may, but shall not be required to, contribute the difference to a defined contribution plan.

- (b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.
- (c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.
- (d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.
- (e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 4.52% per year of service, not to exceed 65% of final compensation.
- (f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours

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of regular time worked (including paid leave, but not including overtime).

- (g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.
- (h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

Section 9: Disability Retirements

- (a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.
- (b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

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(i) An employee cannot do work that they did before; and

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an

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offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

Section 10: Emergency Measures to Contain Retiree Cost of Living Adjustments

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

Section 11: Supplemental Payments to Retirees

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees

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in addition to the benefits authorized herein shall not be funded from plan assets.

Section 12: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 13: Actuarial Soundness (for both pension and retiree healthcare plans)

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans

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must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- 1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
- 2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

- 1) the funding objectives and actuarial assumptions of the plans; and

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- 2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 14: Savings

~~(a) In the event Section 7 or 10 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.~~

~~(b) In the event Section 6 (b) and (c), and/or the employee payment of the unfunded liability referenced in Section 14(a), is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 54% of compensation each year, capped at a maximum of 2516% of pay or the equivalent of what would be 50% of the amortized pension unfunded liability.~~

Section 15: Severability

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this

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amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

December 5, 2011

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: "*The Employee Fair Pay and Sustainable Benefits Act.*"

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

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Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

Section 2: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

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The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority to amend, change or terminate any retirement or other post employment benefit program provided by the City; provided, however, nothing in the Act shall be construed to require the forfeiture of any contribution made by an employee toward a pension plan benefit.

Section 3. Measure Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, as well as all ordinances, resolutions or other enactments.

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The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than June 30, 2012.

Section 4. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. The City Council shall have no authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 5. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this measure, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and to amend, change or repeal any retirement or other post employment benefit program subject to the terms of this measure.

Section 6. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation reduced by sharing 50% of the costs

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to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future.

(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% every fiscal year until the employee's proportionate share of the cost reaches 50% of the amortized pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.

(d) The starting date for an employee's compensation adjustment under this Section shall be June 24, 2012, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(e) Current Employees' share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(f) The additional retirement contributions shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

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Section 7: One Time Voluntary Election Program (“VEP”)

The City Council shall adopt a Voluntary Election Program (“VEP”) for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee’s earned benefit accrual; the change in benefit accrual will apply only to the employee’s future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP’s effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

(i) The accrual rate shall be 2.0% of “final compensation”, hereinafter defined, per year of service for future years of service only.

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- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.
- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year.
- (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.

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- (vi) "Final compensation" shall mean the average annual pensionable pay of the highest three consecutive years of service.
 - (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).
- (c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.
- (d) VEP Survivorship Benefits.
- (i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.
 - (ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.
- (e) VEP Disability Retirement Benefits.

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- (i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 8: Future Employees - Limitation on Retirement Benefits - Tier 2

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program - for new employees - shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

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- (a) The City contributions shall not be less than 6.2% nor greater than 9% of base salary, excluding premiums or other additional compensation. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities). The program may be designed as a “hybrid plan” consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan.
- (b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees’ Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.
- (c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.
- (d) For any defined benefit plan, “final compensation” shall mean the average annual pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

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- (e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.
- (f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).
- (g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.
- (h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan shall create a vested right to any benefit.

Section 9: Disability Retirements

- (a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

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(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a

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disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

Section 10: Emergency Measures to Contain Retiree Cost of Living Adjustments

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1% for employees in Tier 2.

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Section 11: Supplemental Payments to Retirees

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

Section 12: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 13: Actuarial Soundness (for both pension and retiree healthcare plans)

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its

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residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- 1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
- 2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

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- 1) the funding objectives and actuarial assumptions of the plans; and
- 2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 14: Savings

(a) In the event Section 7 or 10 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.

(b) In the event Section 6 (b) and (c), and/or the employee payment of the unfunded liability referenced in Section 14(a), is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 5% of compensation each year, capped at a maximum of 25% of pay or the equivalent of what would be 50% of the amortized pension unfunded liability.

Section 15: Severability

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or

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unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.



COUNCIL AGENDA: 12-06-11
ITEM: 3.4

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Debra Figone

**SUBJECT: PROPOSED BALLOT
MEASURE**

DATE: November 22, 2011

RECOMMENDATION

1. Discussion and consideration of a Retirement Reform ballot measure for a March 6, 2012 election;
2. If Council wishes to proceed, adopt a resolution of the Council calling a special municipal election to be held on March 6, 2012, and, on its own motion, giving notice of the submission to the electors of the City of San Jose, the following measure at that election:

To maintain essential City services, shall the Charter be amended to reform retirement benefits of City employees and retirees by, among others: (1) increasing current employees' contributions; (2) establishing a voluntary reduced pension plan for current employees; (3) establishing pension cost and benefit limitations for new employees; (4) limiting disability retirements; (5) temporarily suspending retiree Cost of Living adjustments; and (6) requiring voter approval to increase future pension benefits?

3. Council discussion and consideration of permitting rebuttal arguments in the March 6, 2012 Voter's Sample Ballot, pursuant to Elections Code Section 9285, to be incorporated in the resolution calling the election.
4. Council discussion and consideration of a resolution authorizing an individual member or members of the City Council to submit an argument in favor of the City measure on the March 6, 2012 Voter's Sample Ballot, pursuant to Elections Code Section 9282, to be incorporated in the resolution calling the election.

BACKGROUND

At the May 24, 2011 City Council meeting, the City Manager's *Fiscal Reform Plan* was agendaized for discussion as item 3.4. For this agenda item, in a memorandum dated May 13, 2011, Mayor Reed, Councilmembers Nguyen, Herrera, and Liccardo, recommended an amendment to the City Charter in order to limit retirement benefits and to require voter approval of increases in retirement benefits. This was approved by the City Council for staff to return with a proposed ballot measure.

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To allow time to meet and confer with the City's bargaining units, this item was deferred and, per a memo submitted by the Mayor on November 18, 2011, consideration of the proposed ballot measure was agendaized for City Council consideration at the Council meeting on December 6, 2011.

Timeline

When this item was first approved, it was intended for consideration for the November 2011 ballot. However, to give additional time for negotiations with the City's bargaining units, it was postponed until the March 2012 ballot.

The City Council must approve putting a ballot measure before the voters 88 days in advance of the election. The first Tuesday in March is March 6, 2012, and 88 days prior to that is December 9, 2011. Therefore, in order to put a ballot measure on for a March 6, 2012, election, the City Council must decide on December 6, 2011.

Meet and Confer

The meet and confer process over a ballot measure is somewhat different than the traditional meet and confer process and is referred to as "*Seal Beach* Bargaining." "*Seal Beach* Bargaining" is a labor term that comes from a court case involving the City of Seal Beach, California, and the Seal Beach Police Officers' Association. It refers to bargaining or negotiating over a proposed ballot measure prior to it being placed on a ballot for consideration by voters during an election. This is only done when a proposed ballot measure affects matters within the scope of representation.

Because the proposed ballot measure affects retirement benefits, the City engaged in "*Seal Beach* Bargaining" with all eleven of its bargaining units, although the level of participation varied by each bargaining unit. In all cases, the City provided advance notice to every bargaining unit and an opportunity to bargain. Although the City does not bargain with retirees or unrepresented employees, the first draft ballot measure and all revisions were sent to both retiree associations and the Executive Management and Professional Employees (Unit 99) forum.

It should be noted that in accordance with City Council direction, the City is also pursuing other changes to retirement benefits outside of the ballot measure.

For the Association of Engineers and Architects (AEA), IFPTE Local 21, Association of Maintenance Supervisory Personnel (AMSP), IFPTE Local 21, the City Association of Management Personnel (CAMP), IFPTE Local 21, San Jose Fire Fighters (IAFF Local 230) and the San Jose Police Officers' Association (SJPOA), the City and the bargaining units reached an agreement on a framework to conduct negotiations regarding the ballot measure and other retirement related issues concurrently, with a deadline date of October 31, 2011. If an agreement was not reached by October 31, 2011, the parties agreed they would be at impasse and would engage in the impasse procedures. The reason for the deadline date of October 31, 2011, was in recognition that the Council, within its discretion, has determined that it wished to hold a special

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election in early March, and that the deadline to place a measure on the ballot is 88 days before the intended election.

The City provided all 11 bargaining units with a draft proposed ballot measure dated July 5, 2011, and requested that the bargaining units commence bargaining. As noted above, the extent of participation varied significantly among the 11 bargaining units, with some bargaining units meeting regularly with the City to discuss the ballot measure drafts and others declining to meet. Regardless of the extent of participation, the City continued to engage the bargaining units in the ballot measure, sending them all drafts of the measure, continuing to request that they meet with the City, and emphasizing the deadlines necessary to meet the election timeline.

Based in part on comments and proposals received from the bargaining units who were engaging in bargaining, the draft ballot measure was revised extensively during the process. The dates of those revisions are as follows:

- July 5, 2011 (Original Draft Proposed Ballot Measure)
- September 9, 2011
- October 5, 2011
- October 20, 2011
- October 27, 2011

Although significant changes were made to the ballot measure based on comments received from the bargaining units, no agreement was reached with any of the bargaining units during negotiations. Because of this, impasse procedures were invoked, which under the Employer-Employee Relations Resolution 39367, is mediation. The City offered mediation to all bargaining units, even those who had declined or failed to participate in bargaining regarding the ballot measure.

The City and 10 bargaining units engaged in mediation, but the efforts to date have not resulted in an agreement. In the event an agreement is reached prior to December 6, 2011, a supplemental memo will be issued.

The bargaining units are being provided a copy of the attached ballot measure. Although we have not reached an agreement with any of the bargaining units thus far, this ballot measure also contains changes based on proposals, comments and feedback received from the bargaining units.

Ballot Measure Rebuttal Arguments

If the City Council wishes to allow rebuttal arguments to the ballot measure, then the resolution calling for the Special Municipal Election will provide for rebuttal arguments pursuant to Elections Code Section 9285. If allowed by the City Council, the City Clerk may accept rebuttal arguments from either the author(s) of a primary argument in support of or opposition to a ballot measure, or any other person(s) authorized in writing by the author(s) to submit a rebuttal argument. Rebuttal arguments may not exceed 250 words and may be signed by no more than 5 persons.

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Councilmember Argument

If the Council wishes to permit an individual Councilmember or group of Councilmembers to submit an argument for or against the City measure, Elections Code Section 9282 requires the City Council provide specific authorization to do so.

COORDINATION

This memo has been coordinated with the City Attorney's Office.



DEBRA FIGONE
City Manager

