CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Manager

SENT VIA EMAIL

July 7, 2014

Gregg McLean Adam
Carroll, Burdick & McDonough LLP
44 Montgomery Street
Suite 400
San Francisco, CA 94104-4606

RE: Questions Related to Ordinances for Sworn Tier 2 Employees Who Do Not Qualify for a Disability Retirement

Dear Gregg:

On April 7, 2014, Jim Unland, President of the San Jose Police Officers' Association, and Joel Phelan, President of the San Jose Fire Fighters, sent a letter to the City Council regarding Item 3.4 on the April 8, 2014, Council agenda. This letter contained a list of 35 questions Mr. Unland and Mr. Phelan had regarding the ordinances for sworn Tier 2 employees who do not qualify for a disability retirement.

As we discussed at our meeting on May 21, 2014, this letter provides a written response to your questions so that it can be shared with your members. We hope this provides the clarification requested. We are also attaching the draft administrative policy developed for standing guidance on how this ordinance fits within the City's overall framework. We had previously sent a draft of this policy to you for feedback and will be finalizing it. Although we will be finalizing this administrative policy, we can make changes to it in the future.

Please note we are repeating the questions as the POA and IAFF worded them. In many questions, you refer to "make-work" employees. We wanted to note that the positions we would be offering are not "make-work." These positions provide very important public services.

1. Charter 1100 requires all classified City jobs be awarded on the basis of merit and fitness demonstrated by examination and other evidence of competence- how will the make-work jobs comply with the Charter requirement?

Pursuant to San Jose Municipal Code Section 3.04.490, an employee placed in position shall be subject to the Civil Service Rules, City policies, applicable Department policies and any applicable Memorandum of Agreement. Thus, the employee must meet position requirements for any position for which they are offered.

2. Will citizens on eligibility lists for employment or promotion be bypassed in favor of disabled safety employees? If so, how does that square with Charter 1100?

Eligibility lists are the traditional Civil Service method where candidates are ranked on a list, like what is done for Police promotions. There are very few classifications that currently still have eligibility lists, but if a position is vacant that has an eligibility list, the disability placement would have priority, as is currently done with disabled civilian employee placements. Under Municipal Code Section 3.04.490, the employee would be placed in the position without having to go through any formal recruitment/competitive process, but, as an example, the employee would still have to meet the minimum qualifications of the position.

3. Will the make-work jobs be exempt from layoffs? If so, then how can the City afford to create these make-work jobs? If not, then how are these disabled police officers and fire fighters guaranteed any benefit from this make-work program?

Under Municipal Code Section 3.04.490, an employee in a new position would be subject to Civil Service Rules, City policies, applicable Department policies and any applicable Memorandum of Agreement. Thus, layoff/bumping procedures would apply as they would with any other position.

4. Will the make-work safety employees continue to earn retirement benefits under the Police and Fire Retirement System? If not, under what system and at what tier of benefits will they participate?

Exempt officer positions under the Consent Decree would have priority and we would look to see if any of those positions are available first. If a disabled employee is placed into a non-sworn position pursuant to Municipal Code Section 3.04.490, the employee would be represented by the bargaining unit that represents that classification and be placed into the Federated City Employees' Retirement System. If there is no break in service, and the employee is hired by the City before September 30, 2012, they should remain a Tier 1 employee in the Federated City Employees' Retirement System. Please be advised that it is ultimately the applicable retirement board that determines a member's status and eligibility

5. Will the make-work safety employees continue to be represented by the POA and Local 230? If not, then by whom?

If the employee accepts a non-sworn position, the employee would be represented by the bargaining unit representing that position.

6. Will the make-work safety employees be eligible to promote?

Yes. The employee would be treated like any other employee for purposes of promotion.

7. At what age will the make-work safety employees be required to retire at?

In general, an employee would be eligible to retire pursuant to the applicable rules for the Tier and Retirement Plan system the employee is in.

8. Will the make-work employees receive all other benefits contained in the SJPOA and IAFF Local 230 labor agreements? If not, why not? And if not, then how will their other employment benefits be determined?

The employee accepting a job offer under Municipal Code Section 3.04.490 would be a member of the bargaining unit that represents the new classification. Police Officers that remain in a classification represented by the POA, such as an exempt officer position, would remain represented by the POA.

9. How will the make-work jobs fit into the employment rules and agreements in place applicable to related city employees? E.g. seniority, vacation bids, promotional opportunities, etc.

Like any other City employee and any other employment, employees will be subject to all Civil Service Rules, Department policies, and City policies. For items applicable to union contracts, they will be subject to the union contract for the bargaining unit that represents their new classification.

10. Will number of make-work safety positions be unlimited? If not, how?

Yes, unless Section 3.04.490 of the San Jose Municipal Code is modified in the future.

11. Will make-work safety employees continue to be covered by the provisions of Charter Section 1111? If not, why?

The employee will continue to be covered by Charter Section 1111 only if they are offered and accept a position in a classification represented by POA or IAFF since Section 1111 only applies to those two sworn bargaining units.

12. Will the City engage in bargaining with the SJPOA and IAFF Local 230 before implementing the make-work program? If so, does the City acknowledge that an impasse in the bargaining is subject to interest arbitration?

We do not believe that offering a disabled employee a position within the City is subject to meet and confer. The City currently explores alternative positions for disabled employees who have work restrictions that preclude them from performing the essential job duties of a position with or without reasonable accommodation. The ordinance (Municipal Code Section 3.04.490) was approved by the City Council on April 8, 2014, second reading occurred on April 22, 2014, and is effective 31 days thereafter. We do, however, believe the City offering to pay a Police Officer the same pay (Y-rating) is subject to meet and confer and we sent letters to the POA and IAFF on April 21, 2014, to schedule meetings to engage in that process.

13. What happens to a make-work employee who becomes disabled from the make-work employment? Will there be an endless number of make-work jobs provided? And if so, how long?

An employee in such a situation could apply for a disability retirement or the employee could choose to explore other potential job placement opportunities in the City.

14. How will determinations be made on what make-work job will be assigned to a particular disabled police officer or fire fighter? If there is a dispute over the assignment, how will that be resolved?

Employees who are in this situation will go through the Interactive Process with the City's Return to Work Coordinator, as is currently done when an employee is injured and has work restrictions, whether permanent or temporary. The Interactive Process would include reviewing the specific limitations of the employee's work restrictions and identifying potential placement opportunities where the employee could perform the position's essential job duties with or without reasonable accommodation. This would include a meeting between the City's Return to Work coordinator, the employee and the employee's current Department to discuss if the employee's work restrictions are able to be reasonably accommodated in a position. During this process, the employee will have an opportunity to provide input as to what positions they believe would be the best fit for them.

15. Will the provision of make-work jobs cost the City more or less than simply providing disability benefits when applicable?

The answer to this question is unknown, as it depends upon a variety of factors.

16. Can any police and fire employee apply for a disability retirement and if denied, obtain a new City position simply as a result of their disability application?

No. An employee must meet the requirements under Municipal Code Section 3.04.490 to be offered a position.

17. What if a doctor determines that an employee is not fully disabled but the employee applies for a disability pension and is denied? Is this still a valid application?

If an employee's application is denied, the employee may be offered a position under Municipal Code Section 3.04.490, if all the requirements of this Section are met.

18. What if the City determines that the request was not valid but the employee insists on the new job claiming they physically cannot do the job of a police officer? What is the appeal process for the employee?

See the City's response to Question No. 17.

19. Isn't this a change to the disability pension process that requires voter approval under Measure B?

No. The ordinances do not provide any increase in pension and/or retiree healthcare benefits, or changes a matter related to pension and other post-employment benefits.

20. Who decides which vacant position a police officer or firefighter is most qualified for?

Employees who are in this situation will go through the Interactive Process with the City's Return to Work Coordinator, as is currently done when an employee is injured and has work restrictions, whether permanent or temporary. The Interactive Process would include reviewing the specific limitations of the employee's work restrictions and identifying potential placement opportunities where the employee could perform the position's essential job duties with or

without reasonable accommodation. This would include a meeting between the City's Return to Work coordinator, the employee and the employee's current Department to discuss if the employee's work restrictions are able to be reasonably accommodated in a position. During this process, the employee will have an opportunity to provide input as to what positions they believe would be the best fit for them.

21. Who determines a job's essential functions and what if there is a dispute about an employee's ability to meet those job qualifications? (Work experience vs. Educational experience)

Employees who are in this situation will go through the Interactive Process with the City's Return to Work Coordinator, as is currently done when an employee is injured and has work restrictions, whether permanent or temporary. The Interactive Process would include reviewing the specific limitations of the employee's work restrictions and identifying potential placement opportunities where the employee could perform the position's essential job duties with or without reasonable accommodation. This would include a meeting between the City's Return to Work coordinator, the employee and the employee's current Department to discuss if the employee's work restrictions are able to be reasonably accommodated in a position. During this process, the employee will have an opportunity to provide input as to what positions they believe would be the best fit for them.

The City determines a position's essential job duties. As with any placement or hiring dispute related to an employee or prospective employees' ability to meet job qualifications, the City is the ultimate decision maker, with input from the employee.

22. What if an officer or firefighter is qualified for several vacant positions and wants the position with the highest wages. If they are denied that position and offered a lower paying position is there an appeal process?

As with any placement or hiring dispute related to an employee or prospective employees' ability to meet job qualifications, the City is the ultimate decision maker, with input from the employee. To the extent that the POA and Local 230 agree to the City's "Y-rating" proposal, it appears this concern would be resolved in most cases.

23. If testing is underway per civil service rules or an eligibility list has already been established, does the injured officer automatically go to the top of that list?

Eligibility lists are the traditional Civil Service method where candidates are ranked on a list, like what is done for Police promotions. There are very few classifications that currently still have eligibility lists, but if a position is vacant that has an eligibility list, the placement would have priority, as is currently done with disabled civilian employee placements. Under Municipal Code Section 3.04.490, the employee would be placed in the position without having to go through any formal recruitment/competitive process, but, as an example, the employee would still have to meet the minimum qualifications of the position.

24. What if an officer and/or firefighter applies for and receives a supervisory position which prevents another employee in their bargaining unit from receiving that position? Does the other affected employee have an appeal process?

Under Municipal Code Section 3.04.490, the employee would be placed in the position without having to go through any formal recruitment/competitive process, but the position would have to be vacant.

25. What if the position available conflicts with a current MOA in effect with another bargaining unit?

We need further clarification on this question in order to respond.

26. What if a more qualified candidate has applied for the same vacant position? Does the safety employee, per the new municipal code, still obtain that position? Can this be claimed as workplace discrimination where police officers and firefighters are being given special treatment thereby causing harm to someone else?

Like any other placement, there is no "application" process. Eligibility lists are the traditional Civil Service method where candidates are ranked on a list, like is done for Police promotions. There are very few classifications that currently still have eligibility lists, but if a position is vacant that has an eligibility list, the Section 3.04.490 placement would have priority, as is done now with placements for disabled non-sworn employees.

27. If a vacancy is created, how will current City bumping rules apply?

We need further clarification on this question. The position an employee is offered and accepts will be treated as any other position for layoff/bumping rules.

28. What if the newly created position is eliminated in the future? Will the former police officer or firefighter be offered another position within the city and will this be guaranteed? How long would this guarantee extend for?

The position an employee is offered and accepts will be treated as any other position for purposes of layoff/bumping.

29. Is the ability to obtain a job a "standing right" until the police officer or firefighter has retired?

We need further clarification on this question. The position offered and accepted by the employee will be treated as any other position for layoff/bumping rules and they will be subject to all other Civil Service Rules, such as discipline and performance expectations. Further, Section 3.04.490 could be modified prospectively by the City Council.

30. What if the disability becomes worse over time and he or she can no longer do the new job? Will they be offered another position? What if this results in a loss of pay below where they were previously, will this be made up as well?

An employee in such a situation could apply for a disability retirement or the employee could choose to explore other potential job placement opportunities in the City.

31. If a position is added to a City Department causing that department to go over budget, will other employees be re-assigned or lose their job as a result? Will this conflict with other bargaining unit MOAs?

If a Department is over budget, there are many different options to address this. Funds could be added, other vacant positions could be eliminated, non-personal services could be cut. We need further clarification on what is meant by conflicting with bargaining unit MOAs in order to respond.

32. Can other bargaining unit MOA's supersede this municipal code in the future to effectively bar this type of activity or job placement status and what protections are offered to the officers against future MOA changes that would affect them?

Any changes to MOAs or Municipal Code would have to be agreed to by the City Council.

33. How will the City address any vested rights issues regarding their position changes? Does the City plan on adding jobs to the current Police Classification Plan to accommodate this municipal code change?

We need further clarification on this question in order to respond.

34. How will medical and other post-employment benefits be determined for those assigned a new position under this proposed ordinance?

If the employee is offered and accepts a non-sworn position, they would be represented by the bargaining unit that represents that classification and be placed into the Federated City Employees' Retirement System. If there is no break in service, and the employee is hired by the City before September 30, 2012, they should remain a Tier 1 employee in the Federated City Employees' Retirement System. Please be advised that it is ultimately the applicable retirement board that determines a member's status and eligibility.

35. How will this affect long term disability insurance policies and terms if an employee is offered a job but declines? Does this eliminate an insurance benefit? (Our current Tier 2 members are currently enrolled in this insurance)

We would need the details of the insurance the Tier 2 members are enrolled in to look into this further.

Please do not hesitate to let us know if you would like to meet to discuss our responses to your questions in further detail.

Sincerely,

Ed Shikada
City Manager

C: Alex Gurza, Deputy City Manager
Jennifer Schembri, Deputy Director of Employee Relations
Larry Esquivel, Chief of Police
Edgardo Garcia, Assistant Chief of Police
Jim Unland, POA President
John Robb, POA Vice President
Franco Vado, POA Chief Financial Officer
Joel Phelan, IAFF President

Work-Related Injuries and Illnesses- Sworn Police Officers in Tier 2 X.X.X

PURPOSE

The purpose of this policy is to provide a summary related to workers' compensation benefits and disability retirement benefits for sworn Police Officers in Tier 2 that suffer a work-related injury or illness.

There are various benefit programs that apply to employees who have been involved in a work-related injury or illness. The benefit programs that employees may be eligible for include:

- Workers' Compensation Benefits
- Long-term Disability Insurance
- Return to Work Program
- Disability Retirement Benefits

WORKERS' COMPENSATION BENEFITS

Workers' Compensation is the primary program for work-related injuries or illnesses. According to the California Department of Industrial Relations[1], Workers' Compensation benefits are state mandated and designed to:

- Provide an employee with the medical treatment needed to recover from a work-related injury or illness
  - Partially replace the wages lost while an employee is recovering (Police Officers and Firefighters receive **full** pay for up to one year for time off work due to work related injuries or illnesses.)
  - Help the employee return to work

The California Department of Industrial Relations[2] lists five basic benefits of Workers' Compensation insurance. <u>There is no difference in workers' compensation benefits between Tier 1 and Tier 2 Police Officers</u>. Those benefits are briefly summarized below:

1. **Medical Care:** Paid for by the City to help the employee recover from an injury or illness caused by work. An employee can be eligible to receive medical, surgical, and hospital services and supplies that would be deemed reasonably necessary to cure or to relieve the sustained injury or illness. This can include supplies, such as crutches, reasonable transportation cost, and medical costs including the costs of any required medications. All medical payments are made pursuant to the State's Official Medical Fee Schedule.

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[1]**Source:** <u>Department of Industrial Relations Website</u>

[2] **Source:** Department of Industrial Relations <u>Frequently Asked Questions</u>

An injured worker can continue to receive treatment for a work-related injury as long as medically necessary, including after leaving employment.

2. **Temporary Disability Benefits:** Payments by the City if the employee loses wages because the work-related injury prevents the employee from doing his or her usual job while recovering. The amounts paid are set by State law. In the case of sworn police and fire personnel, an eligible employee may receive **full salary** in lieu of temporary disability benefits for up to one year. This is codified in the California Labor Code, §4850.

3. **Permanent Disability Benefits:** Payments by the City, based on the State's Permanent Disability Rating Schedule, if the employee does not recover completely. Permanent disability benefits may still be awarded even if the employee returns to his/her usual and customary occupation. These benefits may be paid to former employees who have retired from the City or otherwise are no longer working for the City.

4. **Supplemental Job Displacement Benefits (if the date of injury is in 2004 or later):** Vouchers paid by the City to help pay for retraining or skill enhancement if the employee does not recover completely and cannot perform their usual job due to the disability and the City does not offer other work to the employee.

5. **Death Benefits:** Statutory payments paid by the City to the employee's spouse, children or other dependents if the employee dies from a job injury or illness.

LONG-TERM DISABILITY INSURANCE

The City does not participate in California State Disability Insurance (SDI). However, it is important to note that SDI does not cover work-related injuries[3].

Instead, the City offers voluntary long-term disability (LTD) insurance through Standard Insurance Company. Information about LTD insurance can be found here:

http://sanjoseca.gov/DocumentCenter/View/1239

This benefit is currently 100% employee paid and can cover up to two-thirds of an employee's gross monthly salary. The plan offered by Standard Insurance Company provides a greater benefit than SDI, which includes covering disabilities that occur on or off the job. An employee is considered "disabled" and eligible to receive LTD benefit if the employee is not working in their own occupation and is unable to perform their occupation with any continuity or the employee is working in their own profession but is unable to earn 80% or more of their pre-disability wages as a result of physical disease, injury, pregnancy, or mental disorder.

[3] **Source:** Employment Development Department Workers' Compensation Website

Standard Insurance offers two options to City employees that work 20 or more hours per week: LTD-30 and LTD-60, under which benefits begin after 30 or 60 days of continuous disability, respectively. LTD benefits should be tax-free under current tax law. The amount of Long-term disability payments may be subject to certain deductions, including sick pay, executive leave, temporary workers' compensation benefits, disability or retirement benefits and any income from work activity while the employee is considered disabled. LTD is available to employees for up to two years for not being able to work in their own occupation or until age 65 for not being able to work in any occupation. If an employee becomes disabled after age 61, they would be subject to maximum benefit periods as listed in the Standard Insurance brochure linked above.

NOTE: The City Charter states that the City may provide matching funds for employees who incur long-term reductions in compensation as a result of work related injuries, but who do not qualify for a disability retirement. The City proposed to the San Jose Police Officers' Association paying 50% of the City's current LTD-60 plan or paying the difference between the contribution for the total cost of the LTD-30 plan and the City's contribution for the LTD-60 plan, but no agreement has been reached.

RETURN TO WORK PROCESS

Employees who have on the job injuries are directed through the Return to Work process. A physician may provide the returning employee with work restrictions relating to what the employee can and cannot do. These work restrictions may be temporary while waiting for improvement in an employee's condition or permanent. Upon receipt of the employee's work restrictions, the City will engage in the interactive process to determine what, if any, reasonable accommodations can be provided to allow the employee to perform the essential job duties of the employee's position. Requests for reasonable accommodation are evaluated on a case-by-case basis.

If an employee has temporary work restrictions, the employee's department determines if there is any modified duty available in the employee's regular position. Occasionally, a department is not able to provide a reasonable accommodation in the employee's regular position based on the employee's temporary work restrictions. In such cases, the department notifies the Return to Work coordinator, and the Return to Work coordinator continues the interactive process by working with the employee to determine if there are any other potential modified duty placements in other departments.

If an employee has permanent work restrictions, the Return to Work coordinator reviews the employee's the restrictions as part of the interactive process. The Return to Work coordinator will first meet with the employee and the employee's current department to discuss if the department can provide reasonable accommodation for the employee's work restrictions. In the event that the department cannot provide reasonable accommodation for the employee's permanent restrictions, the Return to Work coordinator will review other potential placement opportunities City-wide that may be able to provide reasonable accommodation for the

employee's restrictions. If no positions are available, then other forms of reasonable accommodations can be explored with the employee.

EXEMPT OFFICER PROGRAM

In 2005, the City implemented the Exempt Officers Equality Program as part of a stipulated agreement to settle a disability discrimination lawsuit in federal court, known as the Consent Decree for police officers in the Police Department. This program is for those officers who are permanently restricted from performing the forcible arrest function or are otherwise permanently physically restricted from a patrol assignment or are so restricted on a long term basis.

At one time, the maximum number of "Tier 1" exempt officer positions was determined to be 30 officers. The Consent Decree held that the 30 positions were to be the maximum number of exempt positions. After five years, the City could make a subsequent determination on the maximum number of exempt officers, subject to meet and confer obligations. The Consent Decree, however, states that "nothing in the consent decree prevents an interim determination should drastic changes in staffing resulting from budgetary cuts, or other economic situations, occur." In October 2011, the City and San Jose Police Officers' Association agreed to reduce the maximum number of exempt positions to ten (10).

The Consent Decree also requires that, in certain situations, when an exempt officer applies for a disability retirement, the Department shall advise the Police and Fire Retirement Board that the Department does not have a position available for the officer because of the officer's physical restrictions and the lack of available exempt officer positions in the Exempt Officers Equality Program. The determination of whether the officer is eligible to retire for disability pursuant to the Police and Fire Retirement Plan is made independently.

DISABILITY RETIREMENTS

A disability retirement is a benefit of the City's pension system. It is separate from the Workers' Compensation benefits provided to injured workers. It is also separate from Long Term Disability Insurance.

A disability retirement is generally a lifetime pension received by an employee who is considered disabled under the definition of the pension plan. A disability retirement normally occurs if all of the other efforts to return the employee to work have failed. Employees who are permanently unable to work can apply for a disability retirement.

It is important to note that workers' compensation benefits and disability retirement benefits may be for the **same** injury or illness. Under CalPERS, the state retirement system, as well as the Federated City Employees' Retirement System, there is a coordination of benefits. This generally results in an offset (or reduction) of one benefit. For Police Officers in Tier 2, the City does not pay workers' compensation benefits and service-connected disability retirement benefits without an offset to the service-connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability.

Disability Retirement Definition and Benefit

If a Tier 2 Police Officer is eligible to retire for a service retirement, they are not eligible for a disability retirement. The disability retirement definition for Tier 2 sworn Police Officers is as follows:

"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." 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.

For police officers in the Police and Fire Department Retirement Plan, the "other jobs described in the City's classification plan" in the Police Department include, but are not limited to, Dispatchers, Police Data Specialists, Community Service Officers, and Crime Prevention Specialists. An employee is not eligible for workers' compensation benefits on top of disability retirements without an offset to the service connected disability retirement.

For Tier 2 Police Officers, the service-connected disability retirement benefit is 50% of the employee's final compensation.

Job Placement for Tier 2 Police Officers Who Do Not Qualify for a Disability Retirement

Under San Jose Municipal Code Section 3.04.490, if an employee in the Police and Fire Department Retirement Plan applies for a disability retirement and does not qualify because he or she does not meet the requirements because they are able to do other work in the Police or Fire Department in accordance with Section 1509-A (b) (ii) (2) of the City Charter:

- The employee will be offered a vacant position in the City for which the employee meets the minimum qualifications and the employee can perform the essential functions of the job with or without reasonable accommodation.

- If no vacant position exists, a position that currently exists in the City's Classification Plan will be added to a City Department.

Under the provisions of Section 3.04.490, the employee will be offered a position. If an employee is unable to work full-time, this will be considered as part of the interactive process and the employee would be offered a part-time position and paid at an hourly rate. The employee and/or position will be subject to all Civil Service Rules under the Municipal Code and City policies, including those related to layoffs and bumping, performance and discipline. If an employee is offered and accepts a position represented by another bargaining unit, they will have the benefits, including retirement benefits, afforded to the bargaining unit that represents their new position. If there is no break in service, and the employee is hired by the City before September 30, 2012, they should remain a Tier 1 employee in the Federated City Employees' Retirement System.

Tier 2 Police Officers subject to Municipal Code Section 3.04.490 will go through the interactive process with the City's Return to Work Coordinator, as is currently done when an employee is injured and has work restrictions, whether permanent or temporary. The interactive process would include reviewing the specific limitations of the employee's work restrictions and identifying potential placement opportunities. Under Municipal Code Section 3.04.490, the employee would be placed in the position without having to go through any formal recruitment/competitive process, but, as an example, the employee would still have to meet the minimum qualifications of the position. This would include a meeting between the City's Return to Work coordinator, the employee and the employee's current Department to discuss if the employee's work restrictions are able to be reasonably accommodated in a position. During this process, the employee will have an opportunity to provide input as to what positions they believe would be the best fit for them. After input from a variety of sources, including the employee, regarding what position would be the best fit, the City makes the final decision as to the position being offered to the employee. There are no limitations to the number of positions available for this opportunity, unless Section 3.04.490 of the San Jose Municipal Code is modified in the future.

NOTE: The City Council has directed the City administration to meet and confer with the San Jose Police Officers' Association to pay the employee the salary rate at which they were earning in their previous classification ("Y-rating"). If the position which the employee is placed is at a lower salary rate than the employee's current position, the employee will continue to be paid the salary rate he/she received in the former class. The employee who is Y-rated will continue to receive this rate from the former class until the maximum salary rate for the new class is raised to an amount higher than the rate received from the former class. At that time, the Y-rating status will end, and the employee will be paid the higher salary rate established for the new class. The POA has been notified of the City's intent to meet and confer and as of the date of this document, no agreement with the POA has been reached.

Work-Related Injuries and Illnesses- Sworn Police Officers in Tier 2 X.X.X

QUESTIONS

For additional questions regarding these benefits, please contact the Office of Employee Relations at (408) 535-8150.

TITLE DATE
Date

Approved:

TITLE DATE
Date

DRAFT