

SENT VIA EMAIL

August 5, 2014

Lamoin Werlein-Jaen
IFPTE Local 21 Senior Staff
4 North Second Street, Suite 430
San Jose, CA 95113

RE: Information Request

Dear Lamoin:

We are in receipt of your letter from Friday, August 1st, following up on your information request dated July 25, 2014, and where you indicated that "receipt of the information in a timely manner is important." As we previously indicated, the information and the manner in which you have requested the information are not readily available but wish to provide you whatever information we currently have. Please note that the numbers referenced below correspond to your information request dated July 25th.

Regarding Item 1, our records show that there are four (4) employees represented by IFPTE bargaining units who were formerly in Tier 1 and who returned to the City under Tier 2.

Regarding Item 2, there is no information readily available that is responsive to this request.

Regarding Item 3, please see the enclosed Supplemental Memo from the City Attorney, which is also publicly available online here: <http://sanjoseca.gov/DocumentCenter/View/33364>

Regarding Item 4, there is no information readily available that is responsive to this request.

Regarding Item 5, we are unclear as to the question whether the City "in formulating this proposal, the City did not review or consider the disability...provisions of retirement plans in other" agencies. There has been no proposal to IFPTE related to disability. Regarding the "return to employment provisions," there is no information readily available that is responsive to this request.

Regarding Item 6, this appears to be a statement by IFPTE rejecting the City's proposed modifications to the City Charter related to retirement benefits and not a request for information which you indicated in your August 1st letter will be addressed by IFPTE.

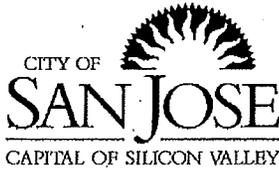
Sincerely,



Marco Mercado
Assistant to the City Manager

c: Alex Gurza, Deputy City Manager
Jennifer Schembri, Deputy Director of Employee Relations
Christopher E. Platten, IFPTE Local 21 Counsel
John Mukhar, AEA President
Steve Contreras, AMSP President
Kara Capaldo, CAMP President

Enclosure



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Potential Pension Modification
Ballot Measure

DATE: July 23, 2014

REASON FOR SUPPLEMENTAL MEMO

On August 5, 2014, the Council will consider modifications to the recent Measure B sections of Charter for the November 4, 2014 election. The proposed Charter language in the City Manager's memo has raised questions from the bargaining groups and the formatting of the proposed modifications may create unintended consequences so it is important to provide the City Council will alternative language should the Council decide to place the proposed Charter amendment on the November ballot.

PROPOSED MEASURE B MODIFICATIONS

1. Returning Employees

Based on direction from the City Council, the City Manager has proposed the following modifications to the first section of paragraph (g) of Section 1508-A:

(g) Employees who leave or have left City service and are subsequently rehired or reinstated before January 1, 2017 shall be placed into the tier of benefits which applied to the employee when he or she left City service second tier of benefits (Tier 2).

There have been questions regarding the application of the language to employees previously in Tier 1 who have already returned to the City and been placed into Tier 2. In addition, the specific statement that rehired or reinstated employees will be placed in Tier 2 has been eliminated. If the intent of the direction from Council was to return employees who have already returned to the City into Tier 1 and to clarify that the provision is temporary we recommend that the language read as follows:

(g) Employees who leave or have left City service and are subsequently rehired or reinstated since the effective date of the second tier of benefits (Tier 2) plan and before January 1, 2017 shall be placed into the tier of benefits which applied to the employee when he or she left City service and any employee rehired or

reinstated on or after January 1, 2017 shall be placed into the second tier of benefits (Tier 2).

Also, we understand that the various bargaining groups have expressed concerns about any proposed change to the Section 1508-A. Consequently, if Council decides to move forward with a modification for employees in only one of the Retirement Plans the language will need to state that the revised language applies only to employees in a specific Retirement Plan.

2. Police and Fire Disability Retirement Definition

Based on direction from the City Council, the City Manager has proposed the following modifications to paragraph (b) of Section 1509-A:

(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-or

~~(iii)~~ 3) An employee in the Police and Fire Department Retirement Plan has suffered a serious bodily injury from a single event and the employee's disability has lasted or is expected to last for at least one year or to result in death.

The formatting of the proposed modification has created an unintended consequence in that the one year period previously applicable to employees in both the Federated Employees Retirement Plan and the Police and Fire Department Retirement Plan is now only applicable to the Police and Fire Department Retirement Plan. If the intent is to retain the one year period for both Retirement Plans we recommend the language read as follows:

(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 (aa) 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 or
(bb) has suffered a serious bodily injury from a single event; and
- (iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

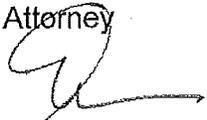
3. Alternative Ballot Measure

If the City Council agrees that the alternative language for Section 1508-A and 1509-A discussed in this memo reflects the intent of the City Council in modifying those Sections of the Charter it should adopt the alternative Ballot Measure attached to this memo and clarify the Ballot Question, if necessary.

COORDINATION

The Memo has been coordinated with the City Manager and the Office of Employee Relations.

RICHARD DOYLE
City Attorney

By: 

Ed Moran
Assistant City Attorney

Attachment

cc: Ed Shikada, City Manager

For questions please contact Ed Moran, Assistant City Attorney, at (408) 535-1920.

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE, AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2014, A BALLOT MEASURE PROPOSAL TO MODIFY RETIREMENT BENEFITS FOR RETURNING CITY EMPLOYEES AND MODIFY THE QUALIFICATIONS FOR CITY POLICE AND FIRE EMPLOYEE DISABILITY RETIREMENTS

WHEREAS, Charter Section 1600 authorizes the City Council to set the date for a Special Municipal Election; and

WHEREAS, the City Council desires to submit to the electors of the City of San José at a Special Municipal Election a ballot measure proposal to amend Sections 1508-A and 1509-A of the San José City Charter to modify retirement benefits for returning City employees and to modify the qualifications for City police and fire employee disability retirements;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. A Special Municipal Election is hereby called and ordered to be held in the City of San José on November 4, 2014, for the purpose of voting on a ballot measure to modify retirement benefits for returning City employees and to modify the qualifications for City police and fire employee disability retirements. The actual language of the proposed charter amendment is attached to this Resolution as Exhibit A.

SECTION 2. The ballot measure will be placed on the ballot for the November 4, 2014 election in the following form:

Employee Pension Modification

Shall the Charter be amended to 1) require employees rehired or reinstated since implementation of the second tier of pension benefits and before January 1, 2017 to be placed in the pension tier of benefits applicable to the employee when the employee left the City and 2) allow an alternative basis for disability retirement for police and fire employees who suffer serious bodily injury from a single event?

YES	
NO	

SECTION 3. The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast.

SECTION 4. The City Council hereby requests that the Registrar of Voters of the County of Santa Clara consolidate the Special Municipal Election called and ordered to be held on November 4, 2014 with any other election that may be held on that date.

SECTION 5. The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

SECTION 6. The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

SECTION 7. The City Council hereby directs the City Clerk to take all actions necessary in order to facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies with regard to the conduct of the Special Municipal Election.

ALTERNATE 1 (FULL TEXT PUBLICATION)

SECTION 8. Pursuant to Section 12111 of the California Elections Code, the City Council hereby directs the City Clerk to (a) cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the San José Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) cause copies of the full text of the proposed measure to be printed in the Voter Information Portion of the Sample Ballot; (d) cause copies of the Sample Ballot to be mailed to each of the qualified electors of the City of San José; and (e) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election.

ALTERNATE 2 (FULL TEXT NOT PUBLISHED)

SECTION 8. Pursuant to Section 12111 of the California Elections Code, the City Council hereby directs the City Clerk to (a) cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the San

José Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) cause the following statement to be printed in the impartial analysis to be prepared by the City Attorney: "If you would like to read the full text of the measure, see www.sanjoseca.gov/clerk/elections/Election.asp or call 408-535-1260 and a copy will be sent at no cost to you."; and (d) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

SECTION 9. Pursuant to Sections 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of direct arguments for and against the ballot measure, if any [and authorizes the City Council or any member or members of the Council to author and submit a ballot measure argument in favor of the ballot measure] [but determines that rebuttal arguments will not be allowed] OR [and approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes the City Council or any member or members of the City Council to author and submit a rebuttal, if any].

SECTION 10. The City Council hereby directs the City Clerk to transmit a copy of the measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis.

RD:EM:CER
7/18/2014

CAO

ADOPTED this _____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A TO RESOLUTION NO. _____
OF THE CITY OF SAN JOSE

That Section 1508-A of the City Charter be amended to read as follows:

SECTION 1508-A. Future Employees – Limitation on Retirement Benefits – Tier 2.

(g) Employees who leave or have left City service and are subsequently rehired or reinstated since the effective date of the second tier of benefits (Tier 2) plan and before January 1, 2017 shall be placed into the tier of benefits which applied to the employee when he or she left City service and any employee rehired or reinstated on or after January 1, 2017 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.

That Section 1509-A of the City Charter be amended to read as follows:

SECTION 1509-A. 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:~~

- (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

(aa) 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/or

(bb) has suffered a serious bodily injury from a single event; 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 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.