RULES COMMITTEE: 07-28-10
ITEM:

# Memorandum

**TO:** RULES AND OPEN GOVERNMENT COMMITTEE

**FROM:** Mayor Chuck Reed
Vice Mayor Judy Chirco
Councilmember Rose Herrera

**SUBJECT:** **SEE BELOW**

**DATE:** July 23, 2010

**APPROVE** Chuck Reed RF **DATE:** 7/23/10

Rose Herrera Judy Chirco PH

**SUBJECT: CHARTER AMENDMENT TO LIMIT THE POWERS OF OUTSIDE ARBITRATORS**

## RECOMMENDATIONS

1. Agendize the following item for Council action on August 3, 2010.

   Direct staff to submit the following ballot language to the Registrar of Voters for the November ballot to seek voter approval of amending the Charter to place limits on the powers of outside arbitrators as follows:

Ballot Question:

**To provide fiscal stability, control costs, and help maintain the level of services being provided to residents, shall the Charter be amended to require outside arbitrators to base awards to City employees primarily on the City's ability to pay and to prohibit creation of unfunded liabilities, increasing police and firefighters' compensation more than the rate granted to other bargaining units or more than the rate of increase in General Fund revenues, and granting retroactive benefits?**

Charter Amendment:

**Amend San José City Charter, SECTION 1111. Compulsory Arbitration for Fire and Police Department Employee Disputes by adding:**

**Notwithstanding any other provision of the Charter to the contrary, the authority, jurisdiction and powers of the Board of Arbitrators are limited by the provisions of this amendment. These limitations are intended to help ensure that City services are not reduced to pay for increases in compensation for employees, that the costs of employee**

**compensation are sustainable, and that good faith bargaining is the primary means of resolving issues.**

**In all arbitration proceedings, the primary factor in decisions regarding compensation shall be the City's ability to pay for employee compensation out of ongoing revenues without reducing services, and the financial condition of the City and its ability to meet the cost of the award with ongoing revenues without reducing services shall outweigh all other factors considered by the arbitrators.**

**Calculation of compensation shall include all costs to the City for all salary and benefits provided to employees, including but not limited to wages, special pay, premium pay, incentive pay, retirement, healthcare, vacation, paid time off and holidays.**

**The Board of Arbitrators is prohibited from making, approving or interpreting any contract, memorandum, agreement, award, grant, decision, resolution or ordinance to allow or require the City to increase employee pay or benefits or make changes in terms and conditions of employment in any way that:**

> **a) increases compensation more than the rate of increase or decreases compensation less than the rate of decrease that has been approved by the City Council by agreement or imposition for any other bargaining unit for the same time period;**
>
> **b) requires a compensation increase greater than the rate of increase in revenues from the sales tax, property tax, utility tax and phone tax averaged over the prior five years;**
>
> **c) grants retroactive compensation increases or creates an unfunded liability;**
>
> **d) conflicts with or interferes with management or operational decisions made by the Police Chief or the Fire Chief.**

**Except as may be specified otherwise by state or federal law, all arbitration proceedings shall be open to the public and all documents presented to the arbitrators for consideration shall be public records.**

**Disputes over the authority, jurisdiction, or powers of arbitrators or interpretation of the meaning of the terms of this Section may be resolved by petition to the Superior Court of Santa Clara County. If the parties do not agree on the selection of an arbitrator, either party may petition the Superior Court for the appointment of an arbitrator who shall be a retired Judge of the Superior Court.**

**If any of the provisions of this amendment are ruled to be invalid or are prohibited from being implemented, the provisions of Charter Section 1111 are suspended until such time as these provisions are implemented.**

**These provisions shall be effective upon approval by the voters but shall not apply to a bargaining unit during the term of a collective bargaining agreement that was reached though negotiations prior to voter approval of this amendment.**

2. Direct staff to prepare resolutions for Council consideration as may be necessary to get the Charter amendment on the November ballot and to provide the Council with a copy of Charter Section 1111 as it would be revised to implement this amendment.

## BACKGROUND

Binding arbitration was made available to police officers and fire fighters at a time when their right to strike was prohibited, and it can be a peaceful and equitable way to resolve disputes. However, after thirty years of experience, it is failing to meet that purpose and has become an obstacle to negotiations and a factor in unsustainable employee compensation increases. It is time to reform San José's system of arbitration, creating one that promotes good faith negotiation and protects the City's fiscal health. The Charter should be amended to limit the powers of arbitrators to help ensure that services are not reduced to pay for increases in employee compensation, that the costs of employee compensation remain sustainable, and that bargaining remains the primary means of resolving issues.

The proposed Charter amendment to place limits on outside arbitrators would do the following:

- Require arbitrators to consider the financial condition of the city first and foremost;
- Prevent the creation of unfunded liabilities; and
- Encourage good faith bargaining instead of arbitration.

We just finished a difficult and painful process to close a budget shortfall of $118.5 million, but we still face a General Fund shortfall in excess of $40 million next year, an infrastructure backlog of $800 million, and unfunded liabilities for retirement benefits in excess of $2 billion.

Expenses have grown faster than revenues for years. The average cost per employee has gone up 64% in nine years while revenues have gone up by only 18 percent, resulting in large reductions in services, elimination of over 1,000 jobs, and substantial risks to the fiscal stability of the city.

Retirement costs have been the fastest-growing part of cost increases. Retirement benefits now cost us three times what they did in 2000, even though our employee count has fallen dramatically. And we still face unfunded liabilities of over $2 billion for pensions and retiree healthcare.

If employee costs had not gone up faster than revenues, we would not have a structural deficit and we would not be faced with having to lay off hundreds of hard-working, dedicated employees and to cut services to our residents.

Due in part to decisions by outside arbitrators, who are not accountable to the people of San José, increases in pay and benefits for City employees have outpaced increases in revenues. In

2010-11, the average cost per police officer and firefighter will be over $180,000 per year. That's a 99% increase over what it was in 2000-01.

This problem will not cure itself when the economy improves. Expenses will continue to grow faster than revenues and services will not be restored unless fundamental changes are made in how compensation decisions are made. Changing the Charter to limit the powers of outside arbitrators is a necessary step to achieve those controls.

The ability of arbitrators to issue orders that cannot be appealed, but are binding on the City without regard to the financial condition of the City, has often been an impediment to good faith bargaining. As noted by an outside arbitrator at the end of arbitration with IAFF, Local 230 in 2007:

> **This has been a long and arduous process. While I know it is redundant, what must be emphasized here is that whereas the collective bargaining process envisions compromise and encourages innovation, the interest arbitration process does neither. The parties in this dispute did not use the bargaining process to their advantage. There was precious little discussion between them about many of the proposals. It is axiomatic that there can be no meeting of the minds if there is no dialogue.** (Summary of the Chair, p. 88)

Modifying binding interest arbitration is a cost-saving strategy identified in our General Fund Structural Deficit Elimination Plan and was recommended by the Neighborhoods Commission in their budget recommendations dated May 26, 2010.

Repealing binding interest arbitration has been recommended by the 2009-2010 Santa Clara County Civil Grand Jury in the report "Cities Must Rein In Unsustainable Employee Costs."

If we fail to modify the binding arbitration provisions, the public's consternation over cost increases will continue to grow and we will probably see a citizens' initiative to eliminate binding arbitration altogether.

Many different actions taken by City Councils or dictated by outside arbitrators over the past 20 years have caused employee compensation to grow much faster than revenues and have become embedded in our system. Arbitration awards and contracts negotiated under the threat of arbitration have been particularly costly. In 2007, an outside arbitrator granted a retroactive benefit to allow firefighters the right to retire at 90% of salary. That arbitrator's decision added $5 million of ongoing expenses per year to the General Fund and created an unfunded liability of $30 million that the City must pay as well.

In addition, the City's non-public safety unions, which do not have binding arbitration rights, have been reluctant to make concessions because they believe money saved from their concessions will be used by arbitrators to grant wage and benefit increases to public safety employees, as was done in the '90s.

We need to keep outside arbitrators from driving unsustainable growth in employee costs. This proposed Charter amendment would do so by:

- Requiring arbitrators to consider the financial condition of the city first and foremost;
- Preventing the creation of unfunded liabilities; and
- Encouraging good faith bargaining instead of arbitration.