



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: SEE BELOW

DATE: February 2, 2022

Approved

Date

2/3/2022

SUBJECT: ORDINANCE AMENDING THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN TO CLARIFY THE DEFINITION OF COMPENSATION

RECOMMENDATION

Approve an ordinance amending Chapter 3.36 of Title 3 of the San José Municipal Code to clarify the meaning of “FLSA premium pay” for Firefighters and memorialize when certain pays were incorporated in base pay for both Firefighters and Police Officers.

OUTCOME

By approving the Municipal Code changes in the attached ordinance, the City Council clarifies the term “FLSA Premium Pay” in the Police and Fire Department Retirement Plan and provides the dates of when certain pays were incorporated into base pay for Firefighters and Police Officers in the Municipal Code.

BACKGROUND

Chapter 3.36 of the City of San Jose’s Municipal Code contains language that defines “Compensation” for the basis of a retired Police or Fire’s employees pension benefits. The 2018 City Auditor’s report titled, “[Pensionable Earnings: Tighter Controls and More Transparency Can Ensure Retirement Contributions Continue to Be Accurate](#)”, contained a recommendation that the City Manager’s Office of Employee Relations and the City Attorney’s Office should clarify the term “Fair Labor Standards Act (FLSA) premium pay” in Municipal Code Section 3.36.020.3 C. The City Council accepted the Auditor’s recommendations on April 3, 2018.

While the FLSA applies to Firefighters, a public sector agency may establish special work periods for sworn employees who are engaged in fire suppression duties. These special work periods can increase overtime thresholds beyond the City’s normal 40-hour work week. The City and IAFF have agreed that sworn Fire employees engaged in Fire suppression duties would

Ordinance Amending the Police and Fire Department Retirement Plan to Clarify the Definition of Compensation

receive FLSA premium pay if they are assigned to work schedule in excess of 212 hours in a 28-day work period.

This recommendation was provided because the Auditor's Office found that while many premium pays were correctly identified in the Municipal Code, the Municipal Code also addresses premium pay paid pursuant to the FLSA, but does not define what the term "FLSA Premium Pay" means with respect to firefighters. The Auditor recommended that the City should ensure that any party reading the Municipal Code would be able to have common understanding of which premium pays are pensionable.

Recommendation #1: The Office of Employee Relations and the City Attorney's Office should clarify the term FLSA premium pay in Municipal Code Section 3.36.020.3 C.

ANALYSIS

The Office of Employee Relations brought forward the proposed ordinance on September 9, 2021 to the Police and Fire Department Retirement Plan Board (Board) for comment and the Board had no comments. The proposed ordinance was also provided the San Jose Police Officers' Association and the International Association of Firefighters, Local 230 on August 28, 2021, and there were no comments.

The Office of Employee Relations is bringing forward the proposed ordinance to clarify FLSA Premium Pay for Firefighters in the definition of compensation in the Police and Fire Department Retirement Plan based on the City Auditor's Recommendation that was accepted by the City Council. The proposed ordinance also memorializes when certain pays were incorporated into base pay for both firefighters and police officers, as means to provide greater clarity to the definition of compensation in the Plan.

CONCLUSION

The proposed ordinance will provide clarity to the definition of compensation in the Police and Fire Plan in the Municipal Code.

EVALUATION AND FOLLOW-UP

There is no evaluation or follow-up needed for this Municipal Code change.

HONORABLE MAYOR AND CITY COUNCIL

February 2, 2022

Ordinance Amending the Police and Fire Department Retirement Plan to Clarify the Definition of Compensation

Page 3

CLIMATE SMART SAN JOSE

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the February 15, 2022 Council Meeting.

COORDINATION

The memo was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

The Municipal Codes changes were discussed during the September 2021 Police and Fire Department Retirement Plan Board of Administration meeting. There were no comments regarding the changes during that meeting.

CEQA

Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (City Manager's Office)



JENNIFER SCHEMBRI
Director of the City Manager's Office of
Employee Relations/Director of Human
Resources

For questions, please contact Cheryl Parkman, Assistant to the City Manager, at (408) 535-8152.