



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer Schembri

**SUBJECT:** SEE BELOW

**DATE:** April 17, 2019

Approved

Date

4-18-19

**SUBJECT: AMENDMENT TO TITLE 3 OF THE SAN JOSE MUNICIPAL CODE FOR LOAN REPAYMENT PLANS IN THE CITY'S DEFERRED COMPENSATION PLAN**

## RECOMMENDATION

Approve an ordinance to amend the Deferred Compensation Plan in Chapter 3.48 of Title 3 of the San José Municipal Code to allow for loan repayment plans after severance from employment.

## OUTCOME

Approval of this recommendation will:

- (a) Retroactively amend the City of San Jose Deferred Compensation Plan to conform to the operation of the Plan, within the context of the Internal Revenue Service Voluntary Compliance Program currently set forth in Revenue Procedure 2018-52, with respect to the terms of plan loans, including a loan repayment plan after severance from employment.
- (b) Allow separated employees with active loans to have an additional repayment option that may prevent loan default and associated tax implications due to separation of service.

## BACKGROUND

The City's 457 Deferred Compensation Plan Administrator recently inquired about the loan repayment provisions in the current Plan, as set forth in Chapter 3.48 of Title 3 of the San Jose Municipal Code. The Plan allows for a participant to take a loan from the balance of his or her account. Human Resources found that the Deferred Compensation Advisory Committee had recommended the Plan be amended to allow for loan repayment plans after severance from

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employment on June 18, 2012; however, the Plan was not amended to reflect that recommendation. The Plan currently requires repayment of a loan after severance from City employment no later than the last day of the month immediately following the month in which the participant receives his or her final compensation from the City.

### **ANALYSIS**

The Plan Administrator has been allowing repayment plans for separated employees since February 4, 2013. After severance from employment, participants have been given the option to enter into a loan repayment plan agreement whereby the loan is to be paid within five years from the date the loan was granted. For loans used to acquire a participant's principal residence, participants have been given the option to enter into a loan repayment plan agreement whereby the loan is to be repaid over a period of up to twenty years.

It is important to amend the Plan to allow loan repayment plans with these terms to conform to the current operation of the Plan. The Internal Revenue Service Voluntary Compliance Program set forth in Revenue Procedure 2018-52 allows for corrections by plan amendment, with respect to the terms of plan loans, including a loan repayment plan after severance from employment.

### **EVALUATION AND FOLLOW-UP**

Approval of the proposed ordinance will result in a retroactive amendment to the City's 457 Deferred Compensation Plan to conform to the Plan's practice of allowing loan repayment plans after severance from City employment.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda Website for the April 30, 2019, Council Meeting.

### **COORDINATION**

This memorandum has been coordinated with the Office of the City Attorney.

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**COST SUMMARY/IMPLICATIONS**

There are no anticipated cost implications to the City or the Plan participants for the implementation of the recommended change to the Plan.

**COMMISSION RECOMMENDATION/INPUT**

The Deferred Compensation Advisory Committee recommended this change on June 18, 2012.

**CEQA**

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

/s/

JENNIFER SCHEMBRI

Director of Human Resources and

Director Employee Relations

For questions, please contact Emily Hendon, Division Manager, at (408) 975-1448.