



COUNCIL AGENDA: 12/10/19  
FILE: 19-1151  
ITEM: 2.12

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer Schembri

**SUBJECT:** SEE BELOW

**DATE:** November 25, 2019

Approved

Date

11-25-19

**SUBJECT: ORDINANCE AMENDING THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN TO ALLOW FOR CONTINUATION OF SURVIVORSHIP BENEFITS FOR ACTIVE POLICE MEMBERS KILLED IN THE LINE OF DUTY.**

## RECOMMENDATION

Approve an ordinance amending Chapter 3.36 of Title 3 of the Municipal Code to allow spouses and domestic partners of active Police members killed in the line of duty to continue their survivorship benefits in the event that they remarry or re-establish a domestic partnership.

## OUTCOME

The ordinance will allow spouses or domestic partners of active Police members of the Police and Fire Department Retirement Plan killed in the line of duty to continue their monthly survivorship allowances should they remarry or re-establish a domestic partnership.

## BACKGROUND

The current Municipal Code does not allow for the continuation of monthly survivorship allowances for the spouses or domestic partners of active Police members killed in the line of duty if the spouse or the domestic partner remarries or establishes a new domestic partnership. Recently, there have been Police Officers killed in the line of duty whose spouses were unaware that their monthly survivorship allowances may change if their marital status changes, and who now wish to remarry. The SJPOA became aware of the spouses' request and asked to meet and confer with the City to change the Police and Fire Department Retirement Plan.

The City and San Jose Police Officers' Association agreed to look into changing this benefit contingent on an actuarial analysis based on City Charter Section 1503-A, which prohibits any enhancements to the defined retirement benefits without voter approval. According to the City Charter, an enhancement "is any change to defined retirement benefits, including any change to

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pension or retiree healthcare benefits or retirement formula that increases the total aggregate cost of the benefit in terms of normal cost and unfunded liability as determined by the Retirement Board's actuary."

### **ANALYSIS**

The Board's actuary, Cheiron, was asked to analyze the proposed change to allow surviving spouses of officers killed in the line of duty to remarry and retain the monthly survivorship allowances to determine if it would increase the total aggregate cost of the benefit in terms of normal cost and unfunded liability. In Cheiron's analysis (Attachment A), Cheiron is currently assuming that the individuals who have spouses or domestic partners killed in the line of duty do not re-marry or establish a new domestic partnership. Cheiron explains that these individuals have a strong financial incentive to not lose the survivorship benefits that they receive. As such, Cheiron determined that "any exemptions to the remarriage penalty would not affect the valuation or the contributions required to fund the Plan based on the current assumptions." This is because Cheiron is already assuming that the monthly survivorship allowance will continue for the duration of the spouse or domestic partner's life. Thus amending the Municipal Code to allow surviving spouses to remarry and retain the monthly survivorship allowances is not an enhancement under City Charter Section 1503-A.

### **CONCLUSION**

The City is recommending an amendment to the Police and Fire Department Retirement Plan to allow for the continuation of the monthly survivorship allowance for the spouses and domestic partners of Police members killed in the line of duty based on the Board's actuary's determination that it will not increase the total aggregate cost of the benefit in terms of normal cost and unfunded liability.

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

If the Council approves the proposed ordinance for publication, the ordinance will be placed on the Council agenda for final approval on December 17, 2019 and become effective 30 days later. The City is requesting a one-week turnaround between the first and second readings of this ordinance.

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### **CLIMATE SMART SAN JOSE**

The recommendation in this memo 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 December 10, 2019 Council Meeting.

### **COORDINATION**

This memo has been coordinated with the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

The proposed amendment to the Police and Fire Department Retirement Plan in the Municipal Codes change was brought before the Police and Fire Department Retirement Board for comment. The Board's counsel, Harvey Leiderman, provided one clarifying change that has been incorporated in the final ordinance.

### **CEQA**

CEQA: Not a Project, File No. PP17-008, General Procedure or Policy Making.



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.

*Via Electronic Mail*

August 27, 2019

Ms. Jennifer Schembri  
Office of Employee Relations  
City of San José  
200 E. Santa Clara Street  
San José, CA 95113-1905

Ms. Monique Alonso  
Messing, Adam & Jasmine LLP  
235 Montgomery Street, Suite 828  
San Francisco, CA 94104

***Re: Potential Exemption to Remarriage Penalty***

Dear Ms. Schembri and Ms. Alonso:

We understand that the bargaining parties have engaged in discussions about providing an exemption to the “remarriage penalty” for spouses of Police Officers who are killed in the line of duty. The purpose of this letter is to provide a preliminary actuarial analysis of the financial impact, if any, of such an exemption. A final analysis can be provided once there is a formal proposal to evaluate.

**Background**

When a Member dies before commencing retirement benefits, Section 3.36.1200.F.3 of the San José Municipal Code provides that

“the monthly allowance payable to the surviving spouse or surviving domestic partner shall be paid until the surviving spouse or surviving domestic partner marries, establishes a domestic partnership or dies, whichever is the earlier date, and no longer.”

We understand that this provision is referred to as the “remarriage penalty.” Section 3.36.1290.A provides an exemption to the “remarriage penalty”

“if the surviving spouse or surviving domestic partner of a deceased member who, at the time of death is not a tier 2 member and is fifty-five years of age and is entitled to credit for twenty years of service, or who is entitled to be credited with thirty years of service regardless of whether such member has attained the age of fifty-five....”

The proposal would add an additional exemption to the “remarriage penalty” in the event an officer is killed in the line of duty.

### **Financial Impact on Valuation**

In the annual actuarial valuation that is used to determine contributions to the Plan, we assume probabilities of death at each age for each member. We also assume that 50% of deaths while a member is an active employee are service-related, and that 85% of members are married at the time of death before retirement. Survivor benefits are calculated in accordance with the terms of the Plan, and we assume that survivor benefits payable to a spouse or domestic partner are payable for the remainder of their life. That is, we assume that they do not re-marry or establish a domestic partnership if the "remarriage penalty" would apply. They have a strong financial incentive not to re-marry and can adapt their personal lives accordingly. Consequently, any exemptions to the remarriage penalty would not affect the valuation or the contributions required to fund the Plan based on the current assumptions.

However, the assumptions used in the valuation are never precisely correct each and every year. As part of the valuation, we calculate a gain or loss compared to the assumptions, and we establish an amortization payment or credit over a 15-year period to pay for the gain or loss. If a surviving spouse or domestic partner subject to the "remarriage penalty" does re-marry or establish a domestic partnership resulting in the termination of survivor benefits, it would create an actuarial gain compared to the current valuation assumptions.

### **Historical Experience**

The Office of Retirement Services identified five Police Officers who were killed in the line of duty since 1985, and survivor benefits continue to be paid to the Officer's spouse in all five cases. The only time a benefit has been forfeited due to remarriage was for the beneficiary of a Fire member.

Three of the survivor benefits commenced more than 30 years ago, and as of July 1, 2019, the value of the remaining benefits based on the assumptions used in the 2018 valuation averages over \$0.5 million per survivor. For the two more recent deaths, the value of the remaining benefits averages about \$1.2 million each. These are strong financial incentives not to re-marry.

### **Conclusions**

Whether or not the re-marriage penalty is eliminated, we will continue to assume that beneficiaries do not re-marry if it would cause them to forfeit their benefits. As a result, there will be no difference in contribution requirements or funded status due to the elimination of the re-marriage penalty until a beneficiary actually re-marries. If a beneficiary re-marries and is subject to the forfeiture of his or her benefits, the Plan would experience a gain at that time that would very marginally reduce contribution requirements and improve funded status. If a beneficiary re-marries, but is no longer subject to the forfeiture of his or her benefits, it will be impossible to know for certain if the re-marriage would have happened if the re-marriage penalty had remained in place.

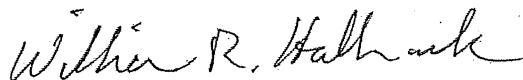
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In preparing this analysis, we relied on information (some oral and some written) supplied by the San José Office of Retirement Services. This information includes, but is not limited to, the plan provisions, employee data, and financial information. We performed an informal examination of the obvious characteristics of the data for reasonableness and consistency in accordance with Actuarial Standard of Practice No. 23.

This letter and its contents have been prepared in accordance with generally recognized and accepted actuarial principles and practices and our understanding of the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board as well as applicable laws and regulations. Furthermore, as credentialed actuaries, we meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this letter. This letter does not address any contractual or legal issues. We are not attorneys and our firm does not provide any legal services or advice.

This letter was prepared exclusively for the City of San José and the Police Officers Association for the purpose described herein. Other users of this letter are not intended users as defined in the Actuarial Standards of Practice, and Cheiron assumes no duty or liability to any other user.

Sincerely,  
Cheiron



William R. Hallmark, ASA, EA, FCA, MAAA  
Consulting Actuary



Anne D. Harper, FSA, EA, MAAA  
Consulting Actuary

cc: Roberto Peña