


City Council Action Request

<p>Richard Doyle City Attorney</p> 	<p>CEQA: Not a Project; PP10-068(b), General Procedure & Policy Making, Municipal Code or Policy.</p>	<p>Coordination: City Manager, Office of Employee Relations</p>	<p>Date: 12/07/2017</p>
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RECOMMENDED ACTION:

Approve an ordinance amending various sections of Chapters 3.28, 3.36, 3.57 and 3.58 of Title 3 of the San José Municipal Code to clarify the effective date of the election by employees out of the defined retiree healthcare benefit plan to the voluntary employee beneficiary association plan.

BASIS FOR RECOMMENDATION:

In 2015, the City and the nine (9) Federated bargaining units and the Police and Fire employee bargaining units agreed to the terms of the two Alternative Pension Reform Settlement Framework Agreements (Federated Frameworks). At that time, the City submitted one Private Letter Ruling (PLR) to the IRS that would cover both the ability to implement and elect a VEBA and allow the transfer of funds from the Section 115 Retiree Healthcare Trust to the VEBA account. It was not until after the PLR was submitted that the IRS indicated to the City that the questions would have to be separated and that the City would have to submit the request related to the VEBA election and that the Retirement Board that administers the Section 115 Trust would have to submit the question related to the transfer of funds from the Section 115 Trust. The City also learned that these two issues would have to be addressed by two separate divisions the IRS Office of Chief Counsel.

Further, we learned that the election between the VEBA and the defined benefit healthcare program needed to be made in the calendar year preceding when the election would become effective. This was not information any of the parties had when the Agreement was reached, but it was information the City relayed to the representatives of the City bargaining units. It was also not information that was known when the City approved the ordinances to implement the Framework Settlements.

The closing agreement with the IRS on the tax issues related to the implementation and election of the VEBA has been received by the City. However, the second Private Letter Ruling request was made by the Retirement Board and asked the IRS to determine whether the transfer of the Section 115 funds to the VEBA would cause the Section 115 Trust to lose its tax-exempt status. This is the remaining ruling we are waiting to receive. While the City waits for this second determination by the IRS, tax counsel stated that the irrevocable election process could proceed before receiving the Private Letter Ruling. Employees have been informed through the group sessions and individual questions that the City will not move the funds from the Section 115 Trust until the second determination is received. We would like to note that the Federated Frameworks agreed to in 2015 contemplated that "the City may transfer funds from the 115 Trust to the members' VEBA plan account...subject to a receipt of a favorable private letter ruling." In consultation with our outside tax counsel, the opt-in form was modified to make sure this condition was clear. The bargaining units were notified of this change. In addition, the rest of informational documents for the VEBA, which have been publicly available online, have been revised to ensure that this information is clear to employees.

Because the opt-out provisions in the Municipal Code were drafted before the City knew the IRS would bifurcate the rulings requested and issue each portion at different times (potentially different tax years) and before we knew the IRS would require the City to offer the opt-out by the end of 2017, the Municipal Code provisions do not directly address a situation where a member would make an irrevocable election before the IRS ruled on whether assets from the 115 Trust could be transferred to a VEBA Trust.

As a result, the City administration is recommending that the Council approve the revisions to the sections in the Municipal Code to clarify that the effective date of the opt in election for the VEBA will occur upon receipt of the second IRS determination regarding the transfer of funds from the 115 Trust. This will ensure that those employees who retire before the VEBA is implemented can enter into the defined benefit retiree healthcare plan while the IRS rules on the transfer of the assets. When the VEBA is implemented, these employees will leave the defined benefit retiree healthcare plan and enter into VEBA membership. They will not be entitled to continue with the defined benefit retiree healthcare plan.

COST AND FUNDING SOURCE:

There is no impact to the General Fund to implement this ordinance.

FOR QUESTIONS CONTACT: ED MORAN, Assistant City Attorney, (408) 535-1920