



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer Schembri

**SUBJECT:** SEE BELOW

**DATE:** July 26, 2018

Approved

Date

7-26-18

**SUBJECT: APPROVE AN ORDINANCE TO AMEND THE DEFINITION OF  
COMPENSATION IN THE UNCLASSIFIED MANAGEMENT DEFINED  
CONTRIBUTION 401(A) PLAN (TIER 3)**

## RECOMMENDATION

Approve an ordinance to amend Chapter 3.49 of Title 3 of the San Jose Municipal Code to clarify the definition of compensation for the unclassified management defined contribution 401(a) plan, known as Tier 3.

## OUTCOME

Approval of an ordinance amending San José Municipal Code Sections 3.49 will align the definition of compensation in the Tier 3 Plan with the City's current practice of including appropriate types of pay when calculating Tier 3 retirement contributions.

## BACKGROUND

Beginning in 2013, newly hired employees into the Executive Management and Professional Employees unit (Unit 99) have an irrevocable election on their first day of employment between the Federated Tier 2 defined benefit retirement plan or the Tier 3 401(a) defined contribution retirement plan. If an employee chooses to enroll in Tier 3, the employee contributes 3.75% of his/her compensation to a 401(a) investment account, currently managed by Voya Retirement Insurance and Annuity Company (Voya). The City makes a matching 3.75% contribution to the employee's 401(a) investment account under the Tier 3 Plan.

The City Auditor's Office completed an audit of the Tier 3 defined contribution plan titled, "San Jose's Tier 3 Defined Contribution Plan: The City Should Clarify How Contributions are Calculated." This report contains information on the Tier 2 and Tier 3 benefits in addition to findings and recommendations regarding the administration of Tier 3 and contributions to the

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plan. While the audit found that contributions have been accurately credited to Tier 3 employees individual accounts, it also found that the contribution base should be clarified in the City's Municipal Code.

### **ANALYSIS**

The current Municipal Code states that the City and the employee will contribute a percentage of the participant's compensation for each payroll period as set forth in the adoption agreement for Tier 3. That contribution percentage is currently 3.75%. It further states that the "participant's compensation is defined as what is "required to be reported as actual wages in Box 1 of Form W-2 for a year for services to the city..." Based on the Auditor's analysis of the definition of compensation in the Tier 3 Plan versus the City's practice of the types of pay it treats as compensation for Tier 3 contribution purposes, there were several types of compensation that fell within the Tier 3 Plan's definition of compensation, but were not included by the City when calculating the Tier 3 compensation base. The City Auditor recommended that the City should clarify how the Tier 3 contribution base should be defined and that the City should propose changes to the Municipal Code, as necessary.

Pursuant to the City Auditor's recommendation, the City proposes an amendment to the definition of compensation in the Tier 3 Plan to align with the City's current practice of only including appropriate types of pay in its calculation of Tier 3 contributions. Based on the proposed amendment, compensation will include the following types of pay: regular salary; executive leave; vacation; holiday; sick leave; jury duty; administrative leave; funeral leave; paid time off; personal leave; witness leave; cancer screening release time; military leave; management performance program retroactive payments; and any compensation that would be considered a non-pensionable compensation increase under 3.28.030.05(E). Compensation will no longer include the following types of pay: bilingual pay; auto allowances; taxable cellular phone and data stipends; medical and dental in lieu payments; higher class management pay; retention payments; management performance program bonuses; premium-related payments; severance pay; and vacation balance payoffs.

### **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 August 21, 2018 and become effective 30 days later.

### **PUBLIC OUTREACH/INTEREST**

This memorandum will be posted on the City's website in advance of the August 7, 2018 City Council Agenda.

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### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office.

### **COMMISSION RECOMMENDATION AND INPUT**

There are no applicable commissions for this memo.

### **COST SUMMARY/IMPLICATIONS**

There are no anticipated costs associated with the adoption of this Ordinance.

### **CEQA**

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

A handwritten signature in cursive script, appearing to read "J Schembri".

JENNIFER SCHEMBRI  
Director of Employee Relations/  
Acting Director of Human Resources

For questions please contact Jennifer Schembri, Director of Employee Relations/Acting Director of Human Resources, at (408) 535-8150 or Cheryl Parkman at (408) 535-8152.