



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: SEE BELOW

DATE: May 22, 2019

Approved

Date

J/23/19

SUBJECT: APPROVE AN ORDINANCE TO AMEND THE DEFINITION OF COMPENSATION TO BE RETROACTIVE TO JANUARY 1, 2013, 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 make the definition of compensation retroactive to January 1, 2013 for the Unclassified Management Defined Contribution 401(a) Plan, known as Tier 3.

OUTCOME

Approval of the ordinance amending San José Municipal Code Section 3.49 will make the current definition of compensation for the calculation of Tier 3 contributions to be retroactive to January 1, 2013.

BACKGROUND

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

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

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findings and recommendations regarding the administration of Tier 3 and contributions to the plan. While the audit found that contributions have been accurately credited to Tier 3 employees' individual accounts, there were several types of compensation that were included in the definition of "compensation" in the Tier 3 Plan, but in practice were not included in the Tier 3 compensation base for purposes of contributions. 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.

The City subsequently changed the definition of "compensation" in Municipal Code Section 3.49 to align with the City's practice of only including certain types of compensation in its calculation of Tier 3 contributions. This change became effective on October 12, 2018 and applied prospectively from that date.

In the meantime, in October 2018, the City requested a compliance statement from the Internal Revenue Service (IRS) to approve a retroactive amendment regarding the definition of compensation under the submission procedures of the Voluntary Compliance Program. On April 29, 2019, the IRS provided the City with a compliance statement that agreed with the City's proposed change to the definition of compensation and to make such change retroactive to January 1, 2013.

ANALYSIS

The current definition of compensation includes 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 does not 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. This definition aligns with the City's practice and was effective October 12, 2018.

The attached ordinance amends the definition of "compensation" in the Municipal Code to make it retroactive to January 1, 2013, which is the date the Tier 3 Plan was established. This will align the Tier 3 Plan with the agreed upon corrective method that the IRS approved for the City. This will not impact the way that the City is currently administering the Tier 3 defined contribution plan.

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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 June 18, 2019 and become effective 30 days later.

PUBLIC OUTREACH

This memorandum will be posted on the City's website in advance of the June 4, 2019 City Council Agenda.

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 and Policy Making resulting in no changes to the physical environment.

/s/

JENNIFER SCHEMBRI

Director of Employee Relations/

Director of Human Resources

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