



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer Schembri

**SUBJECT:** SEE BELOW

**DATE:** May 19, 2020

Approved

Date

5/22/2020

**SUBJECT: AMENDMENT TO THE CONTRACT WITH THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) TO ALLOW EMPLOYEES IN CERTAIN UNIT 99 CLASSIFICATIONS IN THE OFFICE OF RETIREMENT SERVICES TO ENROLL IN CALPERS RETIREMENT BENEFITS AND AN AMENDMENT TO THE DEFINED CONTRIBUTION PLAN TO REMOVE EMPLOYEES IN CERTAIN UNIT 99 CLASSIFICATIONS IN THE OFFICE OF RETIREMENT SERVICES FROM THE PLAN**

## RECOMMENDATION

- (a) Approve an ordinance to amend the City of San Jose's Contract with the California Public Employees' Retirement System (CalPERS) to allow employees hired on or after November 4, 2014 in certain Unit 99 classifications in the Office of Retirement Services to enroll in CalPERS retirement benefits.
- (b) Approve an ordinance to amending Chapter 3.49 of Title 3 of the San José Municipal Code, the California Defined Contribution Plan for Unit 99 Employees, to exclude employees hired on or after November 4, 2014 in certain Unit 99 classifications in the Office of Retirement Services from membership, effective July 26, 2020.

## OUTCOME

This Council item will result in two actions related to certain Office of Retirement Services Staff. The first action amends the City's contract with CalPERS to allow for eligible employees in the Office of Retirement Service to enroll in the defined benefit pension plan with CalPERS. The second action excludes the same eligible employees from membership in the California Defined Contribution Plan for Unit 99 Employees (Tier 3 Plan) effective July 26, 2020. This will allow incumbents in those positions hired after November 4, 2014 to continue to be members of the Tier 3 Plan defined contribution retirement plan through July 25, 2020 and then become enrolled in the CalPERS defined benefit retirement plan effective July 26, 2020.

## **BACKGROUND**

On November 4, 2014, Measure G was passed by the voters of San José. Measure G granted the City's two retirement boards with certain authorities, including the authority to appoint the Chief Executive Officer (Director) of Retirement Services. In addition, Measure G excluded the Chief Executive Officer, the Chief Investment Officer, and investment professional staff in the Office of Retirement Services (ORS) from being members of the City's defined benefit pension or retiree healthcare plans under City Charter Section 1101 (a) (12). This exclusion, however, did not apply to any incumbents filling those positions as of November 4, 2014.

Accordingly, investment staff hired after the implementation of Measure G have been mandatorily placed into the City's Tier 3 Plan. The Tier 3 Plan is a 401(a) defined contribution retirement savings plan in lieu of the City's defined benefit plan. With respect to compensation, the retirement boards can make recommendations to the City Council for the total compensation for the Chief Executive Officer, the Chief Investment Officer, and investment professional staff in the Office of Retirement Services, but compensation for these positions is set by the City Council pursuant to City Charter Section 902.

During the August 8, 2018 Rules and Open Government Committee meeting, City staff was directed to bring to the City Council an amendment to the CalPERS contract to include future professional investment staff in the CalPERS defined benefit pension plan. This amendment would have resulted in the creation of an option for future professional investment staff in the Department to choose between the City's Tier 3 Plan or CalPERS retirement benefit.

Based on discussions with tax counsel, the City was presented with three options for removing current eligible ORS staff from the Tier 3 Plan:

- i. Mandatory participation in CalPERS
- ii. City pays difference in CalPERS employee contribution rate that is more than 3.75%
- iii. Employees make post-tax employee contributions to CalPERS

The [Rules and Open Government Committee Memo dated March 1, 2019](#) contained those three options for the City Council regarding the CalPERS and Tier 3 benefit for ORS staff. The Rules Committee approved placing this memo on the March 19, 2019 Council agenda.

On March 19, 2019, City Council approved mandating incumbent and future eligible ORS staff to move into the CalPERS benefit. These employees would be required to join CalPERS and would no longer participate in the Tier 3 Plan. This would mean that all impacted employees would have to be moved into CalPERS. Additionally, the City Council approved moving these employees into CalPERS on a prospective basis. There are currently five (5) employees in the eligible positions who will be moved into the CalPERS defined benefit pension plan.

During the May 5, 2020 City Council meeting, the City Council approved a Resolution of Intention to Amend the CalPERS contract. CalPERS required this resolution to begin the process of amending the contract to allow for the Office of Retirement Services staff to be eligible for the CalPERS retirement benefits.

## **ANALYSIS**

### **A. Ordinance to Amend to Contract with CalPERS**

The first ordinance sets forth the process for amending the City's contract with CalPERS, including providing the City Clerk with authorization to execute the Amendment to the Contract. The proposed amendment to the City's contract with CalPERS provides, among other things, to add an exception to the exclusions to include employees hired on or after November 4, 2014, into the following positions:

- Director, Retirement Services & Chief Executive Officer
- Assistant Director & Chief Investment Officer
- Retirement Investment Analyst I
- Retirement Investment Analyst II
- Retirement Investment Officer
- Retirement Investment Officer, Senior

In other words, employees hired on or after November 4, 2014 in certain Unit 99 classifications in the Office of Retirement Services would be eligible for membership in CalPERS. If approved by the City Council, the contract amendment with CalPERS will allow for the incumbents in the positions listed above that were hired on or after November 4, 2014 and future employees in those positions to enroll in CalPERS pension benefits. The five (5) current employees who will be eligible to enroll in CalPERS will be subject to the CalPERS second tier of pension benefits for Miscellaneous employees, known as PEPRA benefits. The five current employees that will be eligible for enrollment in CalPERS will accrue benefits on a prospective basis effective July 26, 2020. The Director of Retirement Services was hired before November 4, 2014 and would, therefore, not be eligible for the CalPERS defined benefit plan.

The current retirement accrual formula for PEPRA benefits is the same as the City's Federated Tier 2, which is 2.0% per year of service with a normal retirement at 62 years of age. The Fiscal Year 2020-2021 Employer PEPRA normal cost contribution rate is 7.732% and the PEPRA Employee rate is 6.750%. These rates are paid on a bi-weekly basis.

**B. Ordinance to Amend to Tier 3 Plan to Remove Certain Unit 99 Classifications in the Office of Retirement Services**

The second ordinance amends the City's Tier 3 Plan to exclude the incumbents and future employees from participation in the City's Tier 3 benefit. Specifically, the ordinance amends the Tier 3 Plan's definition of "Employee" to exclude the Unit 99 classifications of Chief Executive Officer, Chief Investment Officer, and investment professional staff in the Office of Retirement Services that were hired on or after November 4, 2014 from membership in Tier 3 effective July 26, 2020. This will enable the five (5) incumbent employees to remain in the Tier 3 Plan through July 25, 2020 and then start in CalPERS on July 26, 2020, in order to avoid dual membership in these retirement plans.

**CONCLUSION**

The actions taken above will result in the five (5) eligible incumbent employees in certain Unit 99 classifications in the Office of Retirement Services, as well as future employees hired in these classifications, to be excluded from participation in the City's Tier 3 defined contribution plan and moved into the CalPERS PEPRA defined benefit pension plan on July 26, 2020. This will conclude the actions necessary to move the eligible retirement staff into a defined benefit retirement plan as directed by the City Council.

**EVALUATION AND FOLLOW-UP**

If the City Council approves the proposed ordinances for publication, the ordinances will be placed on the City Council agenda for final approval on June 16, 2020 and will become effective on July 16, 2020.

**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 website in advance of the June 2, 2020 City Council Agenda.

HONORABLE MAYOR AND CITY COUNCIL

May 19, 2020

**Subject: Amendment to the Contract with the California Public Employees' Retirement System (CalPERS) and Amendment to the Defined Contribution Plan for Unit 99 Classifications in the Office of Retirement Services.**

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### **COORDINATION**

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

### **COMMISSION RECOMMENDATION/INPUT**

There are no applicable commissions for this memo.

### **CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (City Manager)



JENNIFER SCHEMBRI

Director of Employee Relations/

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For questions please contact Cheryl Parkman, Assistant to the City Manager, at (408) 535-8152.