



Memorandum

TO: RULES AND OPEN
GOVERNEMENT
COMMITTEE

FROM: Mayor Sam Liccardo

SUBJECT: Terminate San Jose's Service
Retirement Benefits for
Convicted Felons

DATE: July 15, 2021

APPROVED:

Direction

Revise San Jose Municipal Code Section 3.36.830 to automatically terminate service retirement benefits upon conviction of a felony, barring extremely unusual circumstances meriting an extraordinary exception, such as the vacation or overturning of the conviction on appeal.

- (a) Any such extraordinary circumstances requiring an exceptional consideration of the Retirement Board must be raised in a noticed public hearing, and they require presentation of competent, credible evidence in a manner consistent with the California Rules of Evidence.
- (b) The Board retains discretion to provide benefits for spouse or minor children of the terminated retiree so long as they no longer share living expenses nor a residence with the retiree.

Discussion

In recent days, I've learned from a CNN Senior Writer Melanie Hicken that two retired SJPD officers continue receiving large pensions (between \$70,000 and \$90,000 annually) despite having been convicted of sexual offenses at least a decade ago. To my knowledge, neither this Council nor any other Council in my tenure has previously been made aware of this information. This atrocious waste of taxpayer money violates the foundational principles of public service. It also deprives our Retirement Fund of dollars needed to support our deserving workforce in their retirement, and it constitutes an embarrassment to the City. As I've learned in recent days, many (if not most) other public agency retirement plans continue to provide benefits post-conviction, most famously the Minnesota State Pension System, which provides pension benefits for which Derek Chauvin remains eligible after his criminal conviction for murdering George Floyd. We must not follow the herd.

Astoundingly, neither the Municipal Code nor the Plan's regulations mandate pension forfeiture upon conviction of a felony. The Municipal Code vests all discretion with the Retirement Boards

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to determine whether someone convicted of a felony can continue to receive retirement benefits. San Jose Municipal Code Section 3.36.830 currently provides:

Termination of service retirement benefits for treason or conviction of felony.

Any and all service retirement allowances otherwise payable to a person may be cancelled and terminated by the retirement board, in its sole discretion, if the recipient thereof should commit treason or be convicted of a felony. Such cancellation and termination shall not affect survivors' benefits and death benefits set forth in Part 8 of this chapter if such benefits would otherwise be payable. At any time after cancellation and termination of retirement allowances pursuant to this section, the board may in its sole discretion pay to the spouse and/or minor children under the age of eighteen of the convicted person all or any portion of the retirement allowance which would have been payable to the convicted person, for such periods and subject to such conditions as the board in its sole discretion imposes and subject to the further right and power of the board to cancel such payments to the spouse and/or minor children at any time, in its sole discretion, with or without notice. Such payment to the spouse or minor children shall not be made until and unless application therefor shall have been made and the board shall have determined that the allowance or a portion thereof is required to provide the spouse or minor children with necessities of life.

As a charter city, the City has plenary authority to determine compensation and benefits for its employees. In accordance with City Charter Section 1504(e), which provides that "any retirement allowance may be terminated and cancelled if the person otherwise entitled commits treason or is convicted of a felony," the City should mandate pension forfeiture upon conviction of a felony. Pension forfeiture is appropriate for those that breach the public trust by committing felonies and has symbolic importance for addressing the inevitable public outrage that a wrongdoer will receive his pension despite his wrongdoing.

The Council must revise this ordinance. Concerns regarding "vested rights" should be readily resolved by the fact that the current rules already give the City's Retirement Board the discretion to terminate the benefits post-conviction, so no employee can have any reasonable expectation of the continued receipt of those benefits. *See Allen v. Board of Admin*, 34 Cal. 3d 114, 120 (1984)

Our taxpaying residents, employees, and retirees all deserve better.