COUNCIL AGENDA: 8/11/2026
ITEM: 2.9

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: SUSANA ALCALA WOOD
City Attorney

SUBJECT: AMENDMENT TO DEFERRED COMPENSATION PLAN

DATE: July 27, 2026

RECOMMENDATION

1. Approve an ordinance to amend Section 3.48.070 of Chapter 3.48 of Title 3 of the San José Municipal Code relating to the definition of investment in the Deferred Compensation Plan.
2. Adopt a resolution to approve an amendment to the Basic Plan Document relating to the definition of investment in the Deferred Compensation Plan and authorize the City Manager to execute the amended Basic Plan Document and other documents as necessary to administer the Deferred Compensation Plan set forth in Chapter 3.48 of the San José Municipal Code. This amendment will become effective on the same date as the ordinance to amend Section 3.48.070 of Chapter 3.48 of Title 3 of the San José Municipal Code.

SUMMARY AND OUTCOME

Approval of the ordinance will amend Section 3.48.070 of the San José Municipal Code and adoption of the resolution will amend the Basic Plan Document for the City's Deferred Compensation Plan to correct the definition of investment and incorporate the additional investment types available to deferred compensation funds under California law.

BACKGROUND

The City of San José has established and maintains a deferred compensation plan ("Deferred Compensation Plan") for all employees to contribute retirement savings. The City's Deferred Compensation Plan is available to all City employees on a voluntary basis. An employee who elects to participate must enter into a participation agreement that specifies the amount of the deferral and the investment options selected by the participant. Deferred Compensation Plan participants can choose to make contributions on a pre-tax basis, on an after-tax basis, i.e., Roth elective deferral, or a combination of pre-tax and after-tax contributions to the Plan.

ANALYSIS

During the Deferred Compensation Advisory Committee's ("DCAC") March 16, 2026 meeting, the DCAC sought guidance on expanding the Self-Directed Brokerage Account options available through the current provider, Schwab. Under the Deferred Compensation Plan, Section 3.48.070 addresses the types of investments that may be offered and currently provides:

> **3.48.070 - Deferred compensation fund.**
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> A. The City shall establish a deferred compensation fund to which all deferred compensation shall be credited at such times as the compensation would have been payable to individual employees if not a participant in the Plan, and to which all inter-plan transfer and direct rollover amounts accepted by the Plan shall be credited as received. Separate accounts will be established for each employee participating which will include all amounts of deferred compensation, inter-plan transfer amounts, direct rollover amounts, investments made, shares acquired and earnings and gains on investments. Each account will be valued at least semiannually.
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> B. On executing the participation agreement, the employee shall designate his or her investment choice prospectively only. The Advisory Committee shall select funds and investments to be offered for amounts of deferred compensation in the types of investments set forth in Sections 53601 and 53602 of the Government Code of the State of California. Nothing in this Section shall be construed to permit any type of investment prohibited by the Constitution of the State of California.

Upon review of the language in Section 3.48.070(B), it was discovered that the following italicized language was omitted when the Deferred Compensation Plan was amended in April 2021 to conform with the City Auditor's recommendation to leave the basic provisions of the Deferred Compensation Plan in the San José Municipal Code and put the specifics of the Plan in a stand-alone document, i.e., the Basic Plan Document:

> On executing the participation agreement, the employee shall designate his or her investment choice prospectively only. The Advisory Committee shall select funds and investments to be offered for amounts of deferred compensation in the types of investments set forth in Sections 53601 and 53602 of the Government Code of the State of California. Nothing in this Section shall be construed to permit any type of investment prohibited by the Constitution of the State of California *and in corporate stocks, bonds, and securities, mutual funds, savings and loan accounts, credit union accounts, life insurance policies, variable and fixed annuities, mortgages, deeds of trust, or other security interests in real or personal property, whichever in the City's sole judgment will best achieve the employee's objectives.*

The proposed amendments to San José Municipal Code Section 3.48.070 and Section 4.2 of the Basic Plan Document for the Deferred Compensation Plan will correct the omission and incorporate the additional investment types available to deferred compensation funds under California law. Specifically, the amendments will allow investments in corporate stocks, bonds, and securities, mutual funds, savings and loan accounts, credit union accounts, life insurance policies, variable and fixed annuities, mortgages, deeds of trust, or other security interests in real or personal property, which the Deferred Compensation Advisory Committee determines to be suitable investments under the Deferred Compensation Plan.

EVALUATION AND FOLLOW-UP

If the City Council approves the proposed ordinance for publication, the ordinance will be placed on the City Council agenda for final approval on August 25, 2026 and will become effective thirty (30) days thereafter. If the resolution is adopted, the amendment to the Basic Plan Document relating to the definition of investment in the Deferred Compensation Plan will become effective on the same date as the ordinance to amend Section 3.48.070 of Chapter 3.48 of Title 3 of the San José Municipal Code.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the August 11, 2026 Council meeting.

COMMISSION RECOMMENDATION AND INPUT

Pursuant to Section 3.48.060 of the San José Municipal Code, the Deferred Compensation Advisory Committee has the authority to review and advise on proposed changes to the Deferred Compensation Plan. On June 15, 2026, the Deferred Compensation Advisory Committee advised City staff of the Committee's unanimous support for the proposed amendments to the Deferred Compensation Plan.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy.

SUSANA ALCALA WOOD
City Attorney

For questions, please contact Suzanne Hutchins, Senior Deputy City Attorney (408) 535-1900.