



CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
Facsimile (408) 292-6207

Toni J. Taber, CMC
City Clerk

August 26, 2016

Via EMAIL

Shannon Bushey, Registrar
Santa Clara County Registrar of Voters
1555 Berger Drive, Building 2, 1st Fl.
San Jose, California 95112

Dear Shannon:

Enclosed is a court order modifying the sample ballot title and summary for Measure F (on the November 8, 2016 ballot) as previously adopted by the Council of the City of San José on Tuesday, August 9, 2016.

The revised language shall be:

PENSION MODIFICATION: Shall the Charter be amended to adopt an agreement between the City and police officers, firefighters and City employee bargaining groups that would, among other things, stop funding retiree healthcare for new employees, potentially reduce costs of supplemental pension payments, reinstate disability retirement provisions for injured police officers, firefighters and other City employees, change criteria for determining actuarial soundness, and continue to require voter approval for benefit increases?

Please contact me (Phone: 408-535-1270; e-mail: toni.taber@sanjoseca.gov) if you have any questions or require additional information. We look forward to working with County staff in conducting these elections.

Sincerely,

Toni J. Taber, CMC
City Clerk

Enclosure – Stipulation and Order and Writ, Court Order Case No: 16-CV-298602

1 LOUNSBERY FERGUSON ALTONA & PEAK, LLP
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FILED
2016 AUG 26 A 9:57
David H. Yarnes, Clerk of the Superior Court
County of Santa Clara, California
J. Yarnes

Attorneys for Petitioners Steven Haug and Mark Hinkle.

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SANTA CLARA

13 Petitioners STEVEN HAUG and MARK HINKLE

14 *Petitioners/Plaintiffs,*

15 vs.

16 TONI TABER, the City Clerk of the City of San
17 Jose; SHANNON BUSHEY, Santa Clara County
18 Registrar of Voters; DOES I-V

19 *Respondents/Defendants.*

20 CITY COUNCIL OF THE CITY OF SAN JOSE, a
21 municipal corporation; DOES VI-XV

22 *Real Party in Interest.*

Case No. 16-CV-298602

[STIPULATION] AND ~~PROPOSED~~
ORDER AND WRIT

CALENDAR PREFERENCE REQUIRED
BY STATUTE
(ELEC. CODE § 13314(a)(3))

Date: August 25, 2016

Time: 2:30 p.m.

Dept.: 8

Filed: August 17, 2016

1 Petitioners and Plaintiffs, Steven Haug and Mark Hinkle ("Petitioners"), and
2 Respondents Toni Taber, the City Clerk of the City of San Jose and Shannon Bushey, Santa Clara
3 County Registrar of Voters ("Respondents"), and Real Parties in Interest City Council of the City
4 of San Jose (collectively, "Parties") stipulate to the entry of an Order issuing a Writ of Mandate
5 ordering Respondents and Real Parties to use the following language for the Ballot Title and
6 Ballot Question for City of San Jose Measure F, in the ballot, sample ballot and voter information
7 pamphlet and all other election materials, in lieu of the Ballot Title and Ballot Question adopted
8 on August 9, 2016 by the Mayor and City Council of San Jose, and approved by Resolution No.
9 77897:

11 PENSION MODIFICATION: Shall the Charter be amended to adopt
12 an agreement between the City and police officers, firefighters and City
13 employee bargaining groups that would, among other things, stop
14 funding retiree healthcare for new employees, potentially reduce costs
15 of supplemental pension payments, reinstate disability retirement
16 provisions for injured police officers, firefighters and other City
employees, change criteria for determining actuarial soundness, and
continue to require voter approval for benefit increases.?

17 Parties hereby waive any further public examination period as provided by Cal.
18 Elections Code section 9295, and further waive any and all rights they may have under Cal.
19 Elections Code section 13314 with regard to the Ballot Title and Ballot Question for Measure
20 F.

21 All Counsel represent they have authority from their clients to enter into this
22 Stipulation. This Stipulation may be executed in counterparts.

23 All parties waive costs of suit and any attorneys' fees incurred in this action.

24 **STIPULATED AND AGREED TO:**

26 DATED: 8/25/16

LOUNSBERY FERGUSON ALTONA & PEAK, LLP

27 By: 
KENNETH H. LOUNSBERY

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JAMES P. LOUGH
ALENA SHAMOS
YANA L. RIDGE
Attorneys for Petitioners, STEVEN HAUG
and MARK HINKLE

DATED: 8/25/16

THE SUTTON LAW FIRM

By: James R. Sutton
JIM SUTTON
Attorneys for Respondent City of San Jose
City Clerk

DATED: 8.26.16

Office of the Santa Clara County Counsel

By: [Signature]
DANIELLE GOLDSTEIN
DEPUTY COUNTY COUNSEL
Attorneys for Respondent County of Santa
Clara Registrar of Voters

DATED: 8/25/16

THE SUTTON LAW FIRM

By: James R. Sutton
JIM SUTTON
Attorneys for Real Party in Interest City of
San Jose City Council

~~PROPOSED~~ ORDER

IT IS HEREBY ORDERED THAT:

The foregoing Stipulation is approved and shall become the Order and Writ of this
Court.

IT IS SO ORDERED:

DATED: 8.26.16

Maureen A. Folan
Judge of the Superior Court
Maureen A. Folan

RESOLUTION NO. 77897

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE, AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2016, A BALLOT MEASURE PROPOSAL TO MODIFY RETIREMENT BENEFITS

WHEREAS, Charter Section 1600 authorizes the City Council to set the date for a Special Municipal Election; and

WHEREAS, the City Council desires to submit to the electors of the City of San José at a Special Municipal Election a ballot measure proposal to modify Article XV-A, Retirement, of the San José City Charter to modify retirement benefits;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. A Special Municipal Election is hereby called and ordered to be held in the City of San José on November 8, 2016, for the purpose of voting on a ballot measure to modify retirement benefits. The actual language of the proposed charter amendment is attached to this Resolution as Exhibit A.

SECTION 2. The ballot measure will be placed on the ballot for the November 8, 2016 election in the following form:

MEASURE ____
Pension Agreement

Shall the Charter be amended to minimize financial risk to taxpayers for pensions and retiree healthcare of employees newly hired after dates specified in this measure; reduce costs of supplemental pension payments; safeguard disability retirement protections for injured firefighters and police; ensure pension plans are actuarially sound; require voter approval for benefit increases; among other changes in this measure agreed upon by the Mayor, City Council, police officers, firefighters, and employees?

YES	
NO	

SECTION 3. The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast.

SECTION 4. The City Council hereby requests that the Registrar of Voters of the County of Santa Clara consolidate the Special Municipal Election called and ordered to be held on November 8, 2016 with any other election that may be held on that date.

SECTION 5. The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

SECTION 6. The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

SECTION 7. The City Council hereby directs the City Clerk to take all actions necessary in order to facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies with regard to the conduct of the Special Municipal Election.

SECTION 8. Pursuant to Section 12111 of the California Elections Code, the City Council hereby directs the City Clerk to (a) cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the San José Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) cause the full text of the proposed measure, attached to this Resolution as Exhibit A, to be printed in the Voter Information Portion of the Sample Ballot; (d) cause copies of the Sample Ballot to be mailed to each of the qualified electors of the City of San José; and (e) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

SECTION 10. The City Council hereby transmits a copy of the measure qualifying for placement on the ballot to the City Clerk for preparation of an impartial analysis.

SECTION 11. Acknowledge that the consolidated election will be held and conducted in the manner prescribed in California Elections Code Section 10418.

ADOPTED this 9th day of August, 2016, by the following vote:

AYES: CARRASCO, HERRERA, JONES, KALRA, KHAMIS,
M. NGUYEN, T. NGUYEN, PERALEZ, ROCHA;
LICCARDO.

NOES: OLIVERIO.

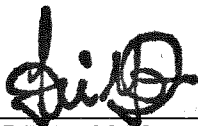
ABSENT: NONE.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk

**EXHIBIT A TO RESOLUTION NO. 77897
OF THE CITY OF SAN JOSE**

[The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: "*Alternative Pension Reform Act.*"]

Section 1501-A. Intent.

The City of San Jose's financial ability to provide basic services is essential to the health, safety, quality of life and well-being of its residents. This Act is intended to strengthen the City's financial ability to ensure the City can provide reasonable and sustainable post-employment benefits while at the same time delivering essential city services to the residents of San Jose. This Act is further designed to ensure that no future defined retirement benefit increases occur without voter approval.

Section 1502-A. Act Supersedes All Conflicting Provisions.

The Sections of Article XV-A enacted by the voters pursuant to the ballot measure known as Measure B in 2012 are hereby replaced in their entirety by the following provisions. The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension, or postemployment benefit provisions in the Charter, ordinances, resolutions, or other enactments.

Notwithstanding any other provisions of this Article, the City Council may, by ordinance, and subject to the provisions of California Government Code Section 3500 et seq., provide for the conformance of any retirement plan or plans established and maintained by the City of San José to Section 415 of the United States Internal Revenue Code or other applicable provisions of the laws of the United States or the State of California.

Section 1503-A. Reservation of Voter Authority.

- (a) There shall be no enhancements to defined retirement benefits in effect as of January 1, 2017, without voter approval. A defined retirement benefit is any defined post-employment benefit program, including defined benefit pension plans and defined benefit retiree healthcare benefits. An enhancement is any change to defined retirement benefits, including any change to pension or retiree healthcare benefits or retirement formula that increases the total aggregate cost of the benefit in terms of normal cost and unfunded liability as determined by the Retirement Board's actuary. This does not include other changes which do not directly modify specific defined retirement benefits, including but not limited to any medical plan design changes, subsequent compensation increases which may increase an

employee's final compensation, or any assumption changes as determined by the Retirement Board.

- (b) If the State Legislature or the voters of the State of California enact a requirement of voter approval for the continuation of defined pension benefits, the voters of the City of San Jose hereby approve the continuation of the pension benefits in existence at the time of passage of the State measure including those established by this measure.

Section 1504-A. Retirement Benefits – Tier 2.

The Tier 2 retirement plan shall include the following benefits listed below. This retirement program shall be referred to as "Tier 2" and shall be effective for employees hired on or after the following dates except as otherwise provided in this section: (1) Sworn Police Officers: August 4, 2013; (2) Sworn Firefighters: January 2, 2015 and (3) Federated: September 30, 2012. Employees initially hired before the effective date of Tier 2 shall be Tier 1 employees, even if subsequently rehired. Employees who qualify as "classic" lateral employees under the Public Employees' Pension Reform Act and are initially hired by the City of San Jose on or after January 1, 2013, are considered Tier 1 employees.

- (a) **Cost Sharing.** The City's cost for the Tier 2 defined benefit plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities), except as provided herein. Normal cost shall always be split 50/50. In the event an unfunded liability is determined to exist, employees will contribute toward the unfunded liability in increasing increments of 0.33% per year, with the City paying the balance of the unfunded liability, until such time that the unfunded liability is shared 50/50 between the employer and employee.
- (b) **Age.** The age of eligibility for service retirement shall be 57 for employees in the Police and Fire Retirement Plans and 62 for employees in the Federated Retirement System. Earlier Retirement may be permitted with a reduction in pension benefit by a factor of 7% per year for employees in the Police and Fire Retirement Plan and a reduction in pension benefit by a factor of 5% per year for employees in the Federated Retirement System. An employee is not eligible for a service retirement earlier than the age of 50 for employees in the Police and Fire Retirement Plan or age 55 for employees in the Federated Retirement System. Tier 2 employees shall be eligible for a service retirement after earning five years of retirement service credit.
- (c) **COLA.** Cost of living adjustments, or COLA, shall be equal to the increase in the Consumer Price Index (CPI), defined as San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-Urban Consumers, December to December, with the following limitations:

1. For Police and Fire Retirement Plan members, cost of living adjustments applicable to the retirement allowance shall be the lesser of the Consumer Price Index (CPI), or 2.0%.
 2. For Federated Retirement System members, cost of living adjustments applicable to the retirement allowance shall be the lesser of CPI or:
 - a. 1-10 total years of City service and hired after the effective date of the implementing ordinances of the revised Tier 2: 1.25%
 - b. 1-10 years total years of City service and hired before the effective date of the implementing ordinances of the revised Tier 2: 1.5%
 - c. 11-20 total years of City service: 1.5%
 - d. 21-25 total years of City service: 1.75%
 - e. 26 or more total years of City service: 2.0%
 3. The first COLA adjustment will be prorated based on the number of months retired in the first calendar year of retirement.
- (d) **Final Compensation.** “Final compensation” shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation, except members of the Police and Fire Plan whose pay shall include the same premium pays as Tier 1 members.
- (e) **Maximum Allowance and Accrual Rate.** For Police and Fire Plan members, service retirement benefits shall be capped at a maximum of 80% of final compensation for an employee who has 30 or more years of service at the accrual rate contained in the Alternative Pension Reform Settlement Framework approved by City Council on August 25, 2015. For Federated Retirement System members, service retirement benefits shall be capped at a maximum of 70% of final compensation for an employee who has 35 or more years of service at the accrual rate contained in the Alternative Pension Reform Settlement Framework approved by City Council on December 15, 2015, and January 12, 2016.
- (f) **Year of Service.** An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

Section 1505-A. Disability Retirements.

- (a) The definition of “disability” shall be that as contained in the San Jose Municipal Code in Sections 3.36.900 and 3.28.1210 as of the date of this measure.

- (b) Each plan member seeking a disability retirement shall have their disability determined by a panel of medical experts appointed by the Retirement Boards.
- (c) The independent panel of medical experts will make their determination based upon majority vote, which may be appealed to an administrative law judge.

Section 1506-A. Supplemental Payments to Retirees.

The Supplemental Retiree Benefit Reserve ("SRBR") has been discontinued, and the assets returned to the appropriate retirement trust fund. In the event assets are required to be retained in the SRBR, no supplemental payments shall be permitted from that fund without voter approval.

The SRBR will be replaced with a Guaranteed Purchasing Power (GPP) benefit for all Tier 1 retirees. The GPP is intended to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power of their original pension benefit effective with the date of the retiree's retirement. The GPP will apply in limited circumstances (for example, when inflation exceeds the COLA for Tier 1 retirees for an extended period of time). Any calculated benefit will be paid annually in February.

Section 1507-A. Retiree Healthcare.

The defined benefit retiree healthcare plan will be closed to new employees as defined by the San Jose Municipal Code in Chapter 3.36, Part 1 and Chapter 3.28, Part 1.

Section 1508-A. Actuarial Soundness (for both pension and retiree healthcare plans).

- (a) In recognition of the interests of the taxpayers and the responsibilities to the plan beneficiaries, all pension and retiree healthcare plans shall be operated in conformance with Article XVI, Section 17 of the California Constitution. This includes but is not limited to:
 - 1. All plans and their trustees shall assure prompt delivery of benefits and related services to participants and their beneficiaries;
 - 2. All plans shall be subject to an annual actuarial analysis that is publicly disclosed in order to assure the plan has sufficient assets;
 - 3. All plan trustees shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system;

4. All plan trustees shall diversify the investments of the system so as to minimize the risk of loss and maximize the rate of return, unless under the circumstances it is not prudent to do so;
5. Determine contribution rates on a stated contribution policy, developed by the retirement system boards and;
6. When investing the assets of the plans, the objective of all plan trustees shall be to maximize the rate of return without undue risk of loss while having proper regard to the funding objectives of the plans and the volatility of the plans' contributions as a percentage of payroll.

Section 1509-A. Retirement Contributions.

There shall be no offset to normal cost contribution rates in the event plan funding exceeds 100%. Both the City and employees shall always make the full annual required plan contributions as calculated by the Retirement Board actuaries which will be in compliance with applicable laws and will ensure the qualified status under the Internal Revenue Code.

Section 1510-A. No Retroactive Defined Retirement Benefit Enhancements.

- (a) Any enhancement to a member's defined retirement benefit adopted on or after January 1, 2017, shall apply only to service performed on or after the operative date of the enhancement and shall not be applied to any service performed prior to the operative date of the enhancement.
- (b) If a change to a member's retirement membership classification or a change in employment results in an enhancement in the retirement formula or defined retirement benefits applicable to that member, except as otherwise provided under the plans as of [effective date of ordinance], that enhancement shall apply only to service performed on or after the effective date of the change and shall not be applied to any service performed prior to the effective date of the change.
- (c) "Operative date" would be the date that any resolution or ordinance implementing the enhancement to a member's defined retirement formula or defined retirement benefit adopted by the City Council becomes effective.

Section 1511-A. Severability.

This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any

portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect.