

July 6, 2011

George Beattie  
President  
San Jose Police Officers' Association  
1151 North Fourth Street  
San Jose, CA 95112

Robert Sapien  
President  
San Jose Fire Fighters, IAFF, Local 230  
425 E. Santa Clara Street, Suite 300  
San Jose, CA 95113

**RE: Draft Proposed Ballot Measure**

Dear George and Robert:

As you know, the City Council approved the memorandum dated May 13, 2011, issued by Mayor Reed, Vice Mayor Nguyen and Councilmembers Herrera and Liccardo. This memo, approved by the City Council on May 24<sup>th</sup>, included direction to staff to prepare a draft ballot measure that would include various proposed changes to the Charter regarding retirement benefits for new employees, current employees and current and future retirees. As you know, the City Council approved other items related to fiscal reform, including the City Manager's Fiscal Reform Plan and other retirement related issues, during the May 24<sup>th</sup> and June 24<sup>th</sup> Council meetings.

We wanted to provide you a copy of the draft proposed ballot measure that incorporates the relevant elements from the May 13<sup>th</sup> memo and City Manager's Fiscal Reform Plan, as approved by the City Council. (Enclosed is the draft proposed ballot measure.) The City is open to discussing any changes to the draft proposed ballot measure. The City expressly reserves the right to propose other charter amendments pertaining to retirement issues, or to make changes to the attached draft in the form of ballot measures.

The City and the POA and Local 230 have a scheduled negotiation session for Wednesday, July 13<sup>th</sup>, and the City is open to designating a portion of the meeting to discuss the draft

POA and IAFF  
RE: Draft Proposed Ballot Measure  
July 6, 2011  
Page 2 of 2

proposed ballot measure, including any proposed changes that you may have. In addition, you are also free to make a proposal on any other retirement issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina Donnelly". The signature is fluid and cursive, with a large initial "G" and "D".

Gina Donnelly  
Deputy Director of Employee Relations

c: John Tennant, POA General Counsel  
Gregg McLean Adam, Carroll, Burdick & McDonough LLP  
Chris Platten, IAFF, Local 230 Legal Counsel

Enclosure

**PUBLIC EMPLOYEE PENSION PLAN  
AMENDMENTS - TO ENSURE FAIR AND  
SUSTAINABLE RETIREMENT BENEFITS WHILE  
PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *“The Employee Fair Pay Act for Fiscal Sustainability.”*

**Section 1: FINDINGS**

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community center (hereafter “Essential City Services”).

The City and its citizens are threatened by climbing costs of employee benefit costs imposed by its current pension and other post employment benefit programs. The employer cost of the City’s retirement plans is expected to increase dramatically in the near future. In addition, the City’s accrued unfunded liability for other post employment benefits – primarily health benefits –

DRAFT- July 5, 2011

is similarly increasing. To adequately fund these costs, the City would be required to cut other services annually.

These costs have created a public service emergency, because they jeopardize the City's ability to provide Essential City Services. In the last year, the City eliminated numerous police officers and firefighter positions. Because the cost of these benefits is rising so rapidly, and because of current economic conditions and legal restrictions that limit revenue growth, these costs are expected to lead to a critical reduction in police and fire services as compared to June 2010. By any measure, such levels are unsustainable, and endanger the residents of San Jose.

These future liabilities associated with the City's adoption and enhancements of its post employment programs were not adequately analyzed or understood at the time the benefits were adopted or enhanced. Although the City exercised due diligence at the time, it was impossible to anticipate the staggering declines in the funded status of the retirement fund or the alarming rate of increase in post-employment health care costs.

Without the reasonable cost containment as provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its citizens always intended that its pension and post employment plans be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its citizens.

By this Act, the voters find and declare that pension and other post-employment benefits must be adjusted in a manner that protects the City's economic stability, at the same time it allows for the continuation of fair post-employment benefits for its workers.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of adoption of the City's post employment benefit programs.

DRAFT- July 5, 2011

The voters hereby find that the facts and circumstances constitute an emergency within the meaning of the Meyers-Milias-Brown Act (“MMBA”), Government Code section 3504.5.

## **Section 2: INTENT**

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly in order to preserve the health, welfare and benefit of its citizens.

This Act is not intended to deprive any current or former employees of benefits earned for prior service as of the time of the Act’s effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the current pension amounts received by any retiree, including any cost of living increases received by retirees to date.

This Act is not intended to grant any vested rights to any post employment benefit, as the City retains its power to amend, change or terminate any retirement or other post employment benefit program provided by the City.

This Act is intended to ensure the City can provide sustainable post employment benefits while at the same time delivering essential services to the citizens of San Jose.

This Act is intended to express the City's management priorities with respect to employee compensation.

### **Section 3. Reservation of Voter Authority**

The voters expressly reserve the right to consider any change in matters related to pension and other post-employment benefits to the extent they exceed the maximums set forth in this measure. The City Council shall have no authority to agree to any matters pertaining to pensions or other post-employment benefits exceeding the maximums set forth in this measure.

#### **Section 4. Reservation of Rights to City Council**

Subject to the limitations set forth in this Act, the City Council retains its authority to amend, change or repeal any retirement or other post employment benefit program under the Charter.

#### **Section 5. Voluntary Election Program**

The City Manager shall propose, and the City Council shall adopt by ordinance, a Voluntary Election Program (“VEP”) that permits current City employees the option to join a new and less costly retirement program.

The VEP benefits will be less costly, and may contain the following features: (a) a slower accrual rate; (b) an increase in the eligibility age; and (c) an increase in the years of service requirement for medical benefits.

Employees’ share of the costs to amortize any unfunded liabilities greater than those existing on June 30, 2010, shall be 50%, unless they have opted into the VEP.



**Section 6: Future Employees – Limitation on Retirement Benefits – Tier 2**

To the extent not already enacted, the City Manager shall propose, and the City Council shall adopt by ordinance, to be effective not later than June 30, 2012, a retirement program for employees hired on or after the effective date of such ordinance. This retirement program – for new employees – may be referred to as “Tier 2.”

The Tier 2 program shall be limited as follows:

(a) The maximum City contributions shall not be less than 6.2% nor greater than 9% of base salary. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan. The program may be designed as a “hybrid plan” consisting of a combination of Social Security, a defined benefit plan or a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement

may be permitted with reduced payments that do not exceed the actuarial value of full retirement.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U), capped at 1% per fiscal year.

(d) For any defined benefit plan, the measuring period for determining “final compensation” shall be the average salary of the three consecutive years preceding the date of retirement.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.

(f) Any plan adopted by the City Council is subject to termination or amendment in the Council’s discretion. No plan shall create a vested right to any benefit.

[DISABILITY RETIREMENT – LANGUAGE TO COME]

**Section 7: Current Employees – Reasonable Modifications to Existing Plans – Modified Tier 1**

The City Manager shall propose, and the City Council shall adopt by ordinance to be effective not later than June 30, 2012, a modified retirement program for all employees eligible to be members of the existing retirement plans of the City as of the effective date of this Act.

The modified programs may be referred to as “Modified Tier 1” and shall have the following limitations:

(a) The plan shall not deprive any current or former employees of benefits earned and accrued for prior service as of the modified plan’s effective date; thus, benefits earned and accrued by individual employees for prior service shall be preserved for payment at the time of retirement.

(b) On and after the effective date of the ordinance, pension benefits shall prospectively accrue based on the following limitations:

(i) benefits shall accrue at a maximum rate of 1.5% per year of service.

(ii) the age of eligibility for service retirement for existing employees shall increase by six months annually on July 1 until the retirement age reaches the age of 60 for police officers and firefighters and 65 for all other employees. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement.

(iii) cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U), capped at 1% per fiscal year.

(iv) The measuring period for determining “final compensation” shall be the average salary of the three consecutive years preceding the date of retirement.

**Section 8: Reasonable Cost of Living  
Adjustments for Current Retirees**

1. The City Manager shall propose, and the City Council shall adopt by ordinance, a program of benefits applicable to all current retirees as follows:

(a) Cost of living adjustments (“COLAs”) shall be adjusted for all retirees, such that the COLAs are limited to the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U), capped at 1% per fiscal year.

2. Any supplemental payments shall not be funded from plan assets.

### **Section 9: Retiree Health Care Insurance Plans**

The City Manager shall propose, and the City Council shall adopt by ordinance, to be effective not later than June 30, 2012, a modified retiree health care program (including medical and dental) with the following limitations:

(a) **Current Employees:** The years of service required to qualify for retiree health care benefits shall increase by six months annually on July 1,

until it reaches 20 years, except for employees who receive such health insurance based on a service disability retirement.

**(b) New Employees:** The years of service required to qualify for retiree health care benefits shall be 20 years, except for employees who receive such health insurance based on a service disability retirement.

**(c) Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare.

**(d) Reservation of Rights.** No retiree health care plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

## **Section 10: Actuarial Soundness**

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent audit using standards set by the Government Accounting Standards Board. The

City Manager shall certify that any plans adopted pursuant to the Act: (i) are actuarially sound; (ii) minimize any risk to the City and its citizens; and (iii) are prudent and reasonable in light of the economic climate.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board.

## **Section 11: Safety Net Provisions**

### **(a) Preservation of Essential City Services:**

At any time that: (1) Essential City Services are not provided at or above the service levels of January 1, 2011; (2) any library, community center, fire station, or police station or substation built or under construction as of January 1, 2011 are not operational; or (3) any of the City's pension plans have unfunded liabilities greater than those liabilities existing as of June 30, 2010, then the Mayor, the City Council, the City Manager and other officers of the City, or any arbitrator or board of arbitrators, shall be prohibited from

making or approving any contract, memorandum, agreement, award, grant, decision, resolution, ordinance or other official act that allows or requires the City to do any of the following, without prior approval by the voters: (i) pay for unused sick leave or unused vacation time, except as required by applicable state or federal law; (ii) increase compensation for members of bargaining units after contracts expire; (iii) give automatic step increases or other raises for time in the job that are not based on performance; (iv) use hours not worked in determining eligibility for overtime or for retirement benefits; (v) pay overtime to executive, professional, or administrative employees or to other employees who are exempt from overtime requirements under the Fair Labor Standards Act ("FLSA"), or who are otherwise exempt from the FLSA; (vi) pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to eliminate duplication of benefits for the same cause of disability; (vii) pay workers' compensation benefits beyond what state or federal laws require; (viii) allow existing or former employees to grant workers' compensation or disability benefits for existing or former employees; (ix) calculate retirement



benefits on any compensation other than actual base salary paid or years (2080 hours) actually worked for the City of San Jose, except as required by applicable state law; (x) make layoff or rehiring decisions without considering individual employee performance; (xi) pay for more than 50% of the increase in the cost of healthcare benefits.

**(b) Unfunded Liabilities in Pension and Other Post Employment Benefit Programs**

The City Manager shall propose, and the City Council shall adopt by ordinance, safety net provisions with the following minimum features:

(1) At any time City pension or retiree health care plans have unfunded liabilities for pension or retiree healthcare greater than those liabilities existing as of June 30, 2010, the following limitations shall be in effect for existing employees who have not opted into the benefits program for new employees, except upon approval by the voters:

(i) Retirement benefits shall not continue to accrue beyond the minimum benefits specified in the Charter, Article XV.

(ii) Calculation of benefit payments shall be based on a three year average as specified in the Charter, Article XV.

(iii) The age of eligibility for payment of service retirement benefits shall not be less than the retirement age specified in the Charter, Article XV.

(iv) Benefits shall not be increased after retirement.

(v) Employees' share of the costs to amortize any unfunded liabilities greater than those existing on June 30, 2010, shall be 50%, unless they have opted into the benefits program for new employees.

(2) At any time City pension or retiree healthcare plans have unfunded liabilities for pension or retiree healthcare greater than those existing on June 30, 2010, bonuses, increases, or supplemental pension payments to retirees shall

not be allowed, except upon prior approval of the voters.

(3) The provisions shall be temporary and shall remain in effect until the unfunded liabilities have remained below the level of June 30, 2010 for three consecutive years.

## **Section 12: Savings and Severability**

(a) This Act shall be harmonized and interpreted to be consistent with all federal and state laws, rules and regulations. If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective. This Act shall be broadly construed to achieve its stated purposes.

(b) In the event any section of this Act is determined to be illegal, invalid or unenforceable as to retirees, then all benefit enhancements or

increases (including pension and other post employment benefits of any kind) granted to retirees since the date of their retirement shall be eliminated.

(c) In the event any section of this Act is determined to be illegal, invalid or unenforceable as to existing employees, then the existing employees' share of the costs to amortize any unfunded liabilities shall be 50% unless the employees have opted into the VEP benefit levels.

(d) The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act.