

TO: DEFERRED COMPENSATION
ADVISORY COMMITTEE

FROM: Emily Hendon

SUBJECT: Proposed Amendments to the
Deferred Compensation Plan and PTC Plan
and Basic Plan Documents

DATE: November 13, 2020

Approved:

B. Chemturi

Date: November 20, 2020

RECOMMENDATION

Review and provide recommendations regarding the proposed amendments to the Deferred Compensation Plan and PTC Plan in the San Jose Municipal Code and corresponding Basic Plan Documents.

BACKGROUND

On April 9, 2013, the City Council accepted the City Auditor's recommendations relating to the Deferred Compensation Program. The City Auditor made the following recommendation relating to the Deferred Compensation Plan and PTC Plan:

The City Attorney's Office and Human Resources should review the Deferred Compensation Plans and draft amendments to the Municipal Code as follows:

- (a) Assign responsibility for administering the Plans to the City Manager or designee, including the operation and interpretation of the Plans in accordance with their terms and contractual authority to enter into contracts for the administration of the Plans.
- (b) Clarify the oversight role and responsibilities of the Deferred Compensation Advisory Committee (DCAC), including reviewing and advising on annual budgets and proposed changes to the Plan document, the Investment Policy, and the investment menu, and reduce the Committee's required meeting frequency to a semiannual or as-needed basis.
- (c) Leave the basic provisions of the Deferred Compensation Plans in the Municipal Code (Name, Purpose, Establishment of Trust, Definitions, Deferral of Compensation, Participation in the Plan, and Administration of the Plan, etc.), and remove the specifics of the Plans so that they can be put in stand-alone Plan documents.

In addition to the City Auditor's recommendations, staff took the opportunity to review the Plans and have outside tax counsel update them to ensure compliance with tax laws and alignment with the City's practices, as discussed in more detail below.

ANALYSIS

A. City Auditor’s Accepted Recommendations

Pursuant to the City Auditor’s accepted recommendations, here are the following proposed amendments to the Plans for consideration by the City Council:

Current language in Chapter 3.48.060 (457 Plan) and Chapter 3.50.060 - Administration of the Plan	Proposed Amendments to Chapter 3.48.060 (457 Plan) and Chapter 3.50.060 -Administration of the Plan
<p>A. The plan and the trust established by this chapter shall be administered by the DCAC which shall be the sole authority to enforce the plan and the trust.</p>	<p>A. The Plan and the Trust established by this Chapter shall be administered by the City Manager which shall be the sole authority to enforce the Plan and the Trust. To the extent reasonably necessary to effectively administer the Plan in accordance with the requirements of the Internal Revenue Code and any other applicable laws, regulations, or pronouncements, the City Manager may adopt amendments to the Basic Plan Document, provided such amendments do not conflict with any provisions of the San José Municipal Code.</p>
<p>B. The DCAC shall be responsible for the operation of the plan in accordance with its terms, and shall determine all the questions arising out of the administration, interpretation, and application of the plan and the trust, including making decisions on behalf of the city as to the choice and nature of investments to be available under the plan. All such determinations shall be conclusive and binding on all persons.</p>	<p>B. The City Manager shall be responsible for the operation of the Plan in accordance with its terms, and shall determine all the questions arising out of the administration, interpretation, and application of the Plan and the Trust. All such determinations shall be conclusive and binding on all persons.</p>
<p>C. The DCAC shall have the authority to enter into agreements on behalf of the city for the administration of the plan, for custodial agreements for funds, and for investments under the plan where the fees to be paid under such an agreement are to be paid by the participants or where there is no amount to be paid by the city under the agreement.</p>	<p>C. The City Manager shall have the authority to enter into agreements on behalf of the City for the administration of the Plan, for custodial agreements for funds, and for investments selected by the DCAC under the Plan where the fees under such an agreement are to be paid by the participants of the Plan or where there is no amount to be paid by the City under the agreement.</p>
	<p>D. The DCAC shall have the authority to make decisions on behalf of the City as to the investment</p>

	policy, the choice and nature of investments to be available under the Plan, and enter into agreements on behalf of the City for investment advice under the Plan where the fees to be paid under such an agreement are to be paid by participants of the Plan or where there is no amount to be paid by the City under the agreement. The DCAC shall have the authority to review and advise the City Manager on annual budgets and proposed changes to the Plan.
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The City Auditor also recommended that the Plans be amended in the San Jose Municipal Code to leave the basic provisions of the Plans in the Municipal Code and remove the specifics of the Plans so that they can be put in stand-alone Plan documents. Based on this recommendation, the basic provisions have been left in the Municipal Code and a stand-alone Basic Plan Document has been created for each Plan.

B. Other Proposed Amendments to the Plans

Staff proposes modifications to the Plans to address some of the issues that have arisen through the course of time. For example, problems have been encountered when a participant does not designate a beneficiary. The Plans have been modified to provide that a beneficiary is not only someone designated by the participant but is also the participant’s estate if no beneficiary has been designated. As another example, the voluntary Deferred Compensation Plan requires execution of a written participant agreement by a participant. Over time, the City has moved away from written agreements and towards online electronic documents. The voluntary Deferred Compensation Plan has been modified to reflect this practice. As to the PTC Plan, it has been modified to reflect that PTC employees become automatic participants of the Plan.

The Plans have also been updated to ensure compliance with tax laws and align with the City’s practices. The definition of includible compensation in the voluntary Deferred Compensation Plan has been updated to be the safe harbor definition provided under the tax laws for purposes of the annual deferral limit and the determination of deferral amounts. The definition of compensation in the PTC Plan has been modified to include the types of compensation appropriate for purposes of deferral amounts. In reviewing the PTC Accumulator, which is used for purposes of calculating contributions, it was found that there were some types of pay that should be removed from the calculation of contributions. The removal of the following types of pay will align the PTC Plan with other defined contribution and defined benefit plans within the City: bilingual pay; auto allowances; taxable cellular phone and data stipends; medical and dental in lieu payments; higher class pay; retention payments; management performance program bonuses; premium-related payments; severance pay; vacation balance payoffs; compensatory time payoffs; sick leave payoffs; reimbursements; allowances for equipment; safety purchases; moving expenses; professional development; education reimbursement; and overtime. On October 15, 2019, the Office of Employee Relations notified the bargaining units of this proposed change to the definition of

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compensation in the PTC Plan and received no comments or concerns from the bargaining units for this modification.

Finally, it is recommended that the Condition of the Plan (SJMC 3.48.110 and SJMC 3.50.100) and Nonassignability (SJMC 3.48.150 and SJMC 3.50.170) sections in both Plans be repealed. The Condition of the Plan sections provide that participants should look to the general assets of the City for the payment of any benefit to which a participant or participant's beneficiary is entitled under the Plans. These sections should be removed because they are outdated and inconsistent with the fact that there is a trust that funds the benefits under each of the Plans. Effective November 10, 1998, both Plans were amended to create trusts to hold each Plan's assets and income based on the Small Business Job Protection Act of 1996, which amended Section 457 of the Internal Revenue Code to require that eligible defined contribution plans maintained by governmental employers hold all plan assets and income in a trust. (*See* City of San Jose Ordinance No. 25707) The Nonassignability sections are also outdated because the "contractual obligation" language is inconsistent with the fact that a trust is funding the benefits. New Nonassignability language has been proposed to reside in the Basic Plan Document for each Plan and provides that the interest of a participant in a plan shall not be assignable in whole or in part, directly or by operation of law or otherwise, in any manner.

After the DCAC reviews and provides recommendations or comments regarding the proposed amendments to the Plans, the Office of Employee Relations will send the proposed amendments to the Plans and draft Basic Plan Documents to the bargaining units for comment. Thereafter, staff will bring the proposed amendments and the draft Basic Plan Documents to the City Council for approval.



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For questions regarding this memo, please contact Emily.Hendon@sanjoseca.gov.