



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Board of Administration for
the Police and Fire
Department Retirement
Plan

SUBJECT: Ordinance to Implement Benefits
for Domestic Partners

DATE: 04-12-06

COUNCIL DISTRICT: City-Wide
SNI AREA:

RECOMMENDATION

- (a) Approval of an ordinance amending Chapter 3.36 of Title 3 of the San Jose Municipal Code (Police and Fire Department Retirement Plan) to implement state law regarding benefits for registered domestic partners, and amending Section 3.44.010 of Chapter 3.44 of Title 3 of the San Jose Municipal Code to implement cost-of-living adjustments for surviving registered domestic partners; and
- (b) Adoption of a resolution amending the Police and Fire Supplemental Retiree Benefit Reserve resolution to include surviving registered domestic partners on the same basis as surviving spouses.

OUTCOME

Approval of the ordinance and adoption of the resolution would implement State law and provide the same benefits to surviving State-registered domestic partners as are provided to surviving spouses under the Police and Fire Department Retirement Plan, to the extent permissible under the tax qualification rules for retirement plans. Additionally, it would implement provisions for division of community property interests in the case of the termination of a registered domestic partnership. This ordinance will also provide a window for those members who retired prior to January 1, 2005, to register their Domestic Partner Relationship with the Secretary of State and obtain the required Declaration of Domestic Partnership under certain conditions.

BACKGROUND

Recent State legislation (AB 205) made substantive changes to the California Family Code provisions regarding registration and termination of domestic partnerships, effective January 1, 2005, and extended to registered domestic partners many of the same rights and responsibilities as are granted to spouses. Following a discussion of the new legislation, the Board of Administration for the Police and Fire Department Retirement Plan requested that an ordinance be prepared that would implement Police and Fire retirement benefits for registered domestic partners on the same basis as benefits are provided for spouses. The Ordinance was approved by the Board and forwarded to the Office of Employee Relations for discussion with the San Jose Police Officers Association and Fire Fighters Local 230.

ANALYSIS

Family Code Section 297(a) defines domestic partners as “two adults who have chosen to share one another’s lives in an intimate and committed relationship of mutual caring.” Under Family Code Section 297(b), a domestic partnership is established when both persons file a Declaration of Domestic Partnership with the Secretary of State and, at the time of filing, certain requirements are met. One of these requirements is that either (a) the partners are members of the same sex, or (b) at least one of the partners is over age 62 and one or both of the partners meets the eligibility criteria of the Social Security Act for old-age insurance benefits or for aged individuals.

Once a domestic partnership is registered with the Secretary of State, Family Code Section 297.5 provides that the partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties under law as are granted to and imposed upon spouses. Following the termination of the domestic partnership, former domestic partners have the same rights and obligations as former spouses. A surviving registered domestic partner, following the death of the other partner, has the same rights and obligations as a surviving spouse.

In addition, Family Code Section 297.5 provides that “[n]o public agency in this state may discriminate against any person or couple on the ground that the person is a registered domestic partner rather than a spouse or that the couple are registered domestic partners rather than spouses”.

The proposed ordinance would amend sections of the Police and Fire Plan to provide survivors’ benefits, health benefits and dental benefits to surviving State-registered domestic partners on the same basis as benefits are provided for surviving spouses. Currently, the Internal Revenue Code and the applicable Treasury Regulations relating to providing health benefits under a qualified retirement plan appear to prohibit providing such benefits to domestic partners unless the

domestic partner qualifies as a “dependent”; therefore, medical benefits will be provided only to the extent permissible to retain the Plan’s tax qualification status.

The proposed ordinance would also amend the Plan to provide for plan-approved domestic relations orders in the case where a domestic partnership is dissolved and the community interest in the retirement benefit is to be divided between the domestic partners.

During the discussion of the proposed ordinance by the Retirement Board, it was pointed out that there may be some retirees who had filed a domestic partnership affidavit with the City but had not registered the domestic partnership with the State. In order for those retirees to obtain benefits for their domestic partners, the proposed ordinance contains a window period for those retirees to add their domestic partners if they meet the following conditions:

- Prior to retirement the member had filed an Affidavit of Domestic Partnership with the City of San José to enroll the member’s domestic partner in the City’s health benefits program.
- The Affidavit of Domestic Partnership was in effect as of the date of retirement.
- Subsequent to retirement, the member and the member’s domestic partner established a registered domestic partnership by filing a Declaration of Domestic Partnership with the Secretary of State pursuant to Division 2.5 of the California Family Code.
- The Declaration of Domestic Partnership is filed with the Secretary of State and evidence of the establishment and registration of the domestic partnership is filed with the Director of Retirement Services on or before January 31, 2007.
- The person who is the retired member’s domestic partner pursuant to the Affidavit of Domestic Partnership is the same person as the retired member’s domestic partner pursuant to the Declaration of Domestic Partnership.

In addition to survivors’ benefits and health and dental benefits, the Police and Fire Plan makes special payments from the Supplemental Retirees Benefit Reserve (the SRBR). The methodology for calculating the amounts to be paid was recommended by the Board and adopted by Council resolution in January 2002. Benefits are paid to eligible retirees and eligible surviving spouses and children. The proposed resolution would add surviving State-registered domestic partners on the same basis as surviving spouses.

PUBLIC OUTREACH

Not applicable.

COORDINATION

04-12-06

Subject: Ordinance to Implement Benefits for Domestic Partners

Page 4

This memorandum has been coordinated with the City Attorney's Office, and the Office of Employee Relations. The Office of Employee Relations forwarded a draft of the amended ordinance to all of the bargaining unit representatives that are covered under the Plan and no concerns were received.

COST IMPLICATIONS

The Plan Actuary estimated that providing the domestic partner benefits in accordance with state law would increase the City's contribution rate to the Police and Fire System by 0.39 percent of covered payroll annually and the employees' contribution rate by 0.13 percent. The Retirement Board has not yet made a determination as to when the rates related to this change will become effective. Depending upon whether the Board decides to implement the change in the current fiscal year or in 2006-2007 will determine if there will be an impact in 2005-2006.

CEQA

Not a project.



EDWARD F. OVERTON
Secretary, Board of Administration
392-6703