

5 May 2008

Honorable Mayor Chuck Reed and Members of the City Council  
City of San José  
c/o City Clerk  
200 East Santa Clara Street, Wing 2<sup>nd</sup> Floor  
San Jose, CA 95113

**Re: Comments from the Board of Administration of the Police and Fire Department Retirement Plan on Office of Employee Relations' Proposed Ordinance to Implement Benefit Enhancements For Fire Department Members of the Police and Fire Retirement Plan – Council Agenda May 6, 2008, Item 3.5**

Honorable Mayor and Members of the Council:

I serve as Chair of the Board of Administration of the Police and Fire Department Retirement Plan. The Council has before it for consideration from the Office of Employee Relations a proposed ordinance to implement benefit enhancements for fire department members of the Plan. The Board has directed me to submit these comments on behalf of the Board on the proposed ordinance. The Board offers these comments to the Council pursuant to section 3.36.485 of the San José Municipal Code.

The Board understands that the proposed ordinance arises generally out of the bargaining process and interest arbitration. The Board, of course, does not play any role in that process. By offering the present comments, the Board does not intend to assist any party in that process but is merely attempting to offer impartial comments aimed at enhancing the Board's ability to fulfill its responsibility to administer the Plan.

The Board believes that the provisions in section 3 of the proposed ordinance concerning service-connected disability benefits for firefighters with twenty or more years of service who retire after July 1, 2008 are phrased in such a manner that all of the benefits will be subject to federal income taxation. The structure of these benefits, as currently set forth in the Municipal Code, is phrased so that the fixed portion of the benefit is exempt from federal income taxation. The Board understands that the applicable bargaining parties are currently discussing this exact issue. The Board respectfully recommends that the Council encourage the completion of these discussions in the near future and the incorporation of the results of the discussions into an ordinance. The Board notes that if the proposed ordinance is adopted and then at some later date this issue is addressed in a separate ordinance, undesirable

administrative difficulties could result. It may be necessary to correct the tax treatment of these payments in benefit payment records. It may be necessary to incur additional expenses with the Board's outside vendor to update the relevant payment software. And, if the subsequent ordinance is sufficiently delayed, it may prove to be necessary to issue amended IRS Form 1099s. The Board hopes that the Council can assist the Board in avoiding these and related administrative complications.

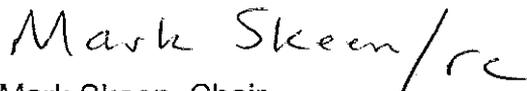
The Board would also remind the Council that, if it turns out not to be possible to enact an ordinance regarding the retirement benefit issue (i.e. taxation) by July 1, 2008, the Council may wish to give consideration to making the effective date of the ordinance July 1, 2008.

The Board further respectfully recommends that the Council exercise its best efforts to insure that the survivorship component of the firefighter arbitration award be reduced to ordinance form and adopted by July 1, 2008, if at all possible. The Board understands that the bargaining parties are currently discussing this issue. Achieving a July 1, 2008 implementation date would measurably simplify administrative issues for the Board. If this does not prove to be possible, the Board may have to incur additional expenses with its outside software provider to implement such a change.

As with the disability issue, the Board would remind the Council that, if it turns out not to be possible to enact an ordinance on the survivorship issue by July 1, 2008, the Council may wish to give consideration to making the effective date of the ordinance July 1, 2008. If that is not done and a firefighter dies in the interim, the firefighter's survivors would not be eligible to receive the increased benefits. The Board respectfully considers such a result to be very undesirable.

The Board thanks the Council for its consideration of these comments.

Sincerely,

Handwritten signature of Mark Skeen in cursive script.

Mark Skeen, Chair  
Board of Administration  
Police & Fire Retirement Plan