

Brian Doyle
Senior Deputy City Attorney

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Honorable Mayor and City Council
City Hall - 200 East Santa Clara St.
San Jose, CA 95113

Re: *Retiree Healthcare - Council Agenda 8/7/07 - Item 3.11*

Hon. Mayor and Councilmembers,

In the memorandum being presented to you on Retiree Healthcare, City management has used a report mandated by the rule makers for government accountants as an opportunity to attack the hard-earned benefits of one of the most outstanding groups of local government employees in the country. Having weathered some of the stormiest seas of ethical misconduct by elected and appointed officials and finding a structural deficit in the aftermath, you are now being asked to attack the very people who held this ship together. Such an action would be unjust, illegal and against the City's own interests.

The original purpose of the report was simply to comply with new accounting rules requiring the identification of the full liabilities of retiree medical benefits for purposes of making the information available to potential investors in City debt issuances. Although no such direction is required, the report recommends attempting to change the statutorily enacted retirement medical benefits of long time City employees who are not yet eligible for retirement. You are asked to embark on this drastic step despite the fact that the report advises you that "there are legal issues with regard to changing the benefits for current employees which require review."

Based upon my own preliminary legal review, unilaterally changing the retirement benefits of public employees, including retirement medical benefits, is an unconstitutional impairment of our employment contract. As staff attorneys for the City, my colleagues and I are in Unit 99, a collection of unrepresented city employees. Therefore our vested rights cannot be negotiated away in conjunction with the collective bargaining process. Any attempt to take those rights from us without any legal support is a breach of your duty to deal with us fairly and in good faith.

I and the other attorneys in our Office have worked long and hard over the many years that we have been here, sacrificing additional salary income and stock options available from private employment, in the belief that were providing a valuable service to the taxpayers of San Jose. We chose to forgo other employment opportunities, fully believing that we had deservedly earned the retirement benefits promised us at our hiring. Having been here almost 17 years, I am now being told that you should consider taking away the medical benefits at retirement that I have already earned. I consider this benefit to already belong to me. I have earned it through reliance on the promises made to me, promises which cannot now be broken.

The recommendation to take away the vested benefits of long time City employees will ultimately backfire. We all know that the Police and Fire unions will never agree to such a scheme. I strongly doubt that the other unions will agree either. The promises that were made were just compensation at the time and they continue to be just. The people of San Jose have gotten excellent services at a tremendous value. The City workforce is hardworking, ethical and incredibly lean in numbers for a city of this size and wealth. Attacking that workforce by implying that they have not earned their benefits will demoralize them and unnecessarily distract them from enthusiastically delivering services to the taxpayers. It will also make it very difficult for you to hire individuals of similar caliber in the future.

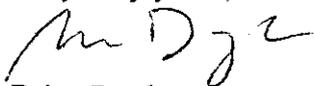
I respectfully ask you to eliminate from any direction to staff the attempt to take retirement medical benefits from existing employees.

The report upon which that recommendation is flawed in that it does not answer many questions that one would want answers to before engaging in such a drastic action:

1. **At what level of reported non-funding of future medical benefits would the City's bond rating be affected?** The City of San Jose already has a better bond rating than many other cities that have worse liabilities. If, as reported, many cities are in the same boat, would investors downgrade us just because we have not achieved 100% funding?
2. **What are the legal rights of current City employees?** How can you recommend taking the benefits of current City employees before you know whether or not it is legal to do so? It would seem like such an action would be a breach of the duty of good faith and fair dealing.
3. **What are the City's intentions with regard to members of Unit 99?** So far City management has treated us to unilateral announcements of changes in position with regard to our retirement benefits. Must we now act as if we cannot trust our benefits statements and plan our careers accordingly? Can we have a little sunshine with respect to what our legal position is in this discussion?
4. **What options for reducing waste have been explored?** Every day we come across instances of what appears to be a waste of tax dollars on projects that seem to have no value, consultants that appear to be costing too much, and decisions that result in long term economic burdens to the City. Has anyone looked at cutting these types of costs before asking the City employees to bear the burden of losing their medical benefits?

It was with great difficulty that I sat down to write this letter. I take my role as your attorney very seriously and recognize my duty of loyalty to you, the elected City officials, as our ultimate clients. But I would also not be true to myself and to my family if I did not object to what I perceive as injustice toward me. I have given 17 of the best years of my life in faithful service to the successive mayors and City councils, and ultimately the citizens of the City of San Jose. I can do no less than demand that you show me good faith in return and end this attack on us.

Very truly yours,



Brian Doyle
Senior Deputy City Attorney
408-535-1908
Brian.Doyle@sanjoseca.gov