



# REPLACEMENT

COUNCIL AGENDA: 02-24-09  
ITEM: 3.6

## Memorandum

TO: HONORABLE MAYOR AND  
CITY COUNCIL

FROM: Alex Gurza  
Jennifer Maguire

SUBJECT: SEE BELOW

DATE: February 23, 2009

Approved

*Diana Fujita*

Date

*2/23/09*

COUNCIL DISTRICT: N/A  
SNI AREA: N/A

SUBJECT: AGREEMENT WITH THE SAN JOSE POLICE OFFICERS' ASSOCIATION AND  
ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS IN THE GENERAL  
FUND

### REPLACEMENT

#### REASON FOR REPLACEMENT

The Council Memorandum includes an amendment to an appropriation in the General Fund. The reason for this replacement memorandum is to include the Budget Director's signature, which was inadvertently left off.

#### RECOMMENDATION

1. Adoption of a resolution to approve the terms of a Memorandum of Agreement with the San Jose Police Officers' Association (SJPOA) and authorizing the City Manager to execute the agreement with a term of July 1, 2008 to June 30, 2010.
2. Adoption of the following 2008-2009 Appropriation Ordinance amendments in the General Fund:
  - a. Increase the Police Department's Personal Services appropriation by \$10,822,874;
  - b. Decrease the Salaries and Benefits Earmarked Reserve by \$10,822,874.

#### OUTCOME

Adoption of the resolution and authorization to execute the successor agreement would implement a collective bargaining unit agreement between the City and the San Jose Police Officers' Association ("SJPOA").

## **BACKGROUND**

The City of San Jose has a labor agreement with the bargaining unit, SJPOA. SJPOA represents approximately 1393 full time positions including employees in the classifications of Police Officer, Police Sergeant, Police Captain, Police Lieutenant, and Deputy Chief of Police.

The prior agreement expired on June 30, 2008. A complete copy of the prior agreement can be found at [http://www.sanjoseca.gov/employeeRelations/moas/moa\\_poa.pdf](http://www.sanjoseca.gov/employeeRelations/moas/moa_poa.pdf).

On January 24, 2009, the City and SJPOA reached a Tentative Agreement on a two-year agreement. The Tentative Agreement was ratified by the SJPOA membership on February 5, 2009. A complete copy of the Tentative Agreement can be found at [http://www.sanjoseca.gov/employeeRelations/moas/ta\\_poa.pdf](http://www.sanjoseca.gov/employeeRelations/moas/ta_poa.pdf).

## **ANALYSIS**

The following is a summary of the key provisions of the Tentative Agreement:

<b>Term</b>	July 1, 2008 to June 30, 2010.
<b>Wages</b>	3.75% general wage increase effective June 29, 2008.  1.50% general wage increase effective June 28, 2009.
<b>Retirement</b>	Effective June 29, 2008, all classifications represented by the POA shall receive a 1.75% base pay increase in-lieu of an enhancement to the current retirement formula (2.5% of final compensation per year for up to 20 years and 4% of final compensation per year for 21-30 years of service).
<b>Health Insurance Premium</b>	Currently, the City pays 90% of the cost of the lowest priced plan and the employee pays the remaining 10% of the premium. However, the employees' 10% is currently limited to a maximum of \$150 per month. Effective the first pay period of payroll calendar year 2009, employees' contribution for the lowest-priced medical insurance plan will be 10% of the premium with no cap.
<b>Health Insurance Co-Pays</b>	Effective April 1, 2009, co-pays for all available HMO plans shall be as follows:  a. Office Visit Co-pay: \$10 b. Prescription Co-pay: \$5 for generic and \$10 for brand name (The Blue Shield HMO will continue to include \$15 non-formulary drug co-pay.) c. Emergency Room Co-pay: \$50  This will result in Kaiser Office Visit Co-pays being increased from \$0 to \$10 and Blue Shield HMO Office Co-pays being increased from \$5 to \$10. In addition, Kaiser's Emergency Room Co-pay will increase from \$0 to \$50.
<b>Vacation Accrual</b>	Effective the first pay period of payroll calendar year 2010, employees' paychecks will reflect actual accrued vacation and employees will not accrue more than two times their annual vacation accrual rate.

**Civilianization of Functions**

During the term of the new agreement, the City may civilianize up to fifteen sworn positions in accordance with the existing provisions of the Memorandum of Agreement.

**Retiree Healthcare Funding**

Currently, retirees who meet eligibility requirements receive retiree healthcare benefits that provide for 100% of the premium for the lowest-cost plan available to active City employees. Thus, eligible retirees do not pay for any portion of the premium for the lowest-cost plan.

The San Jose Municipal Code (3.36.575) provides that contributions for retiree medical benefits shall be made by the City and employees in the ratio of one-to-one and contributions for retiree dental benefits shall be made in the ratio of three-to-one. However, the current level of contributions by the City and employees to fund retiree healthcare are substantially less than the Annual Required Contribution (ARC) calculated by the Plan actuary. Based upon the most recent actuarial study, retiree healthcare benefits in the Police and Fire Department Retirement Plan are only 5% funded based on the FY 06-07 Police & Fire Department Retirement Plan Comprehensive Annual Financial Report.

Effective June 28, 2009, the City and SJPOA have agreed to transition from the current partial pre-funding of police retiree healthcare benefits to full pre-funding the Annual Required Contribution (ARC) over a period of five years. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).

The cash contribution rate for plan members shall not have an incremental increase of more than 1.25% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than 1.35% of pensionable pay in each fiscal year.

If at any time the plan member cash contribution rate exceeds 10% of pensionable pay or the City cash contribution rate exceeds 11% of pensionable pay (excluding implicit subsidy), the City and the SJPOA shall meet and confer on how to address any retiree healthcare contributions above 10% of pensionable pay for plan members or 11% of pensionable pay for the City. Such discussions will include alternatives to reduce retiree healthcare costs.

**Labor Management Committee**

The Tentative Agreement includes a provision indicating that on or before September 1, 2009, the City and SJPOA shall establish a labor management committee to research and consider approaches to mitigating the cost of active employee and retiree healthcare benefits. The committee shall study issues of plan design, co-pays and deductibles, a second tier for new employees, and other cost mitigation strategies.

**Anti-Terrorism Training Pay**

Since 2002, employees represented by the SJPOA have received a 5% premium pay for additional training related to Police-Anti-Terrorist Tactics. Effective March 22, 2009, the existing 5% Anti-Terrorist Training Pay will be rolled into base pay. Employees shall continue to complete the

Police Department's annual Police Anti-Terrorist Tactics training each year as a condition of employment.

### **Holiday-In-Lieu**

Most City employees receive 14 paid holidays. For many years, employees represented by the SJPOA have received a premium pay in lieu of holiday benefits. Employees are paid an additional 5.623% of pay as part of the bi-weekly paycheck regardless of whether or not the employee works on a holiday.

Effective June 28, 2009, all classifications represented by the POA shall receive a 5.623% special pay adjustment in place of the existing 5.623% holiday-in-lieu compensation. No additional holiday compensation shall be provided.

### **Commencement of Negotiations**

The current contract provides that the first meeting to commence negotiations for a successor agreement will be held no later than twenty (20) calendar days after the City or the SJPOA receives notice from the other, which may be any date after February 28 of the year in which the current contract terminates.

In order to provide additional time for the negotiations, the tentative agreement includes a change to this provision so that negotiations can begin in January.

### **Cash Payment for Overtime Worked**

Employees receive overtime compensation for hours worked beyond the designated work period. The City has negotiated contract provisions that allow for an employee to receive compensatory time in lieu of cash overtime. Compensatory time is additional time off of work that can be taken at a later time.

Since 1998, the contract between the City and the SJPOA has contained a provision that limits the amount of overtime in a bi-weekly pay period that can be taken in cash to a maximum of three hours. The City has the discretion to make cash overtime payments for any hours worked beyond the maximum of three hours. Further, there are certain programs specified in the contract that are not subject to the maximum three hour cash payment for overtime worked in a pay period. Employees in those programs receive cash payment for all authorized overtime that is worked in a pay period, even if such overtime exceeds three hours in a pay period.

Under the current contract, the outstanding amount of accrued compensatory time owed to an employee shall not exceed 240 hours by the end of each calendar year. In addition, the City may "buy down" compensatory time under the provisions of the contract, and all overtime must be paid in cash once an employee reaches a compensatory time balance of 480 hours.

If compensatory time is not taken as time off or paid in cash before an employee leaves City service, any accrued compensatory time must be paid in cash at the time the employee leaves City service.

Any payment of compensatory time is made at the employee's pay rate at time of payment or separation from City service, which often is higher than the pay rate effective when the overtime was worked. This is due to wage increases, salary step increases and promotions.

The Tentative Agreement provides that, effective June 28, 2009, the amount of overtime for which an employee can elect to be paid in cash shall increase from a maximum of three hours to a maximum of six hours per bi-weekly pay period. The increase in overtime that an employee can elect to have paid in cash is not an entitlement to overtime since any overtime worked must be appropriately authorized.

### Certain Police Management Classifications in Unit 99

The new agreement with the SJPOA includes rolling into base pay the Anti-Terrorism Training Pay and Holiday-In-Lieu Pay. In addition, the new agreement includes a 1.75% general wage increase in-lieu of an enhancement to the current retirement formula.

The incumbents in the Chief of Police and Assistant Chief of Police classifications are not represented by the SJPOA. Those positions are unrepresented and are part of the City's Executive Management (Unit 99). Both of these classifications receive similar premium pays that members represented by the SJPOA receive. An analysis will be conducted of the various premium pays received by the Chief of Police and the Assistant Police Chief. Any changes that are recommended for these two classifications shall be brought forward to the City Council in conjunction with the recommendations related to Unit 99 for 2009-2010.

### EVALUATION AND FOLLOW-UP

The new contract includes a provision that indicates that the City and Union have agreed to research and consider approaches to mitigating the cost to both parties of active employee and retiree healthcare benefits. This Labor-Management Committee shall begin on or before September 1, 2009.

### PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criterion 1. This memorandum will be posted on the City's website for the February 24, 2009 Council Agenda.

### COORDINATION

This memorandum was coordinated with the City Attorney's Office, and the City Manager's Budget Office.

### COST IMPLICATIONS

The ongoing increased annual direct cost of the SJPOA agreement is approximately \$11.2 million for the first full year of implementation and approximately \$4.5 million in the second year. For the 2008-2009 fiscal year, due to the effective implementation dates of the key provisions of the tentative agreement,

the Police Department's personal services appropriation requires an increase of \$10.8 million. These costs do not include the currently unknown cost increases for healthcare for active employees.

It is difficult to estimate the increased cash cost of providing employees the opportunity to elect cash payment for up to three additional hours of overtime per pay period since it is difficult to anticipate the number of employees who will be authorized to work the overtime and elect to be paid in cash for that overtime. The increase in overtime that an employee can elect to have paid in cash is not an entitlement to overtime since any overtime worked must be appropriately authorized. Such authorization for overtime will vary based on public safety needs. Even overtime taken as compensatory time is a liability that must be paid in cash if the employee does not use the compensatory time. The cost of paying employees cash for overtime at the time the overtime is worked is ultimately lower than the cash payments that would result in future payouts of accrued compensatory time. Cash payment of overtime is made at the current rate of pay and not a potentially higher rate of pay that could result because of general wage increases, salary step increases and promotions. Based upon a review of overtime worked in 2008, the cash cost of the increase in the amount of hours that an employee can elect to take as cash versus compensatory time is estimated to be in the range of \$3 to \$4 million in 2009-2010. Regular management of overtime costs is necessary and expected at any time. However, given the City's fiscal situation, the Police Department will need to enhance its management of overtime in a strategic and closely monitored manner and authorize overtime only in limited and necessary circumstances. For budgetary planning purposes, the 2009-2010 General Fund Forecast will include a \$2 million increase in the Police Department's overtime allocation. The actual overtime expenditures will be closely monitored.

The City and employees represented by the SJPOA will phase-in to fully fund the full Annual Required Contribution (ARC) over a five year period. This will result in an incremental increase of up to a 1.25% of pensionable pay in each fiscal year for employees, and an incremental increase of up to 1.35% of pensionable pay in each fiscal year for the City. This is approximately a \$2.1 million cost to the City in 2009-2010. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).



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