



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Ordinance Amending SJMC
§3.36.020.3 to Clarify the
Treatment of Disability Leave
Payments for Police and Fire
Pension Calculations

DATE: October 7, 2010

RECOMMENDATION

Approve an ordinance amending Section 3.36.020.3 of Part 1 of Chapter 3.36 of Title 3 of the San José Municipal Code to clarify the treatment of disability leave payment as for the calculation of Police and Fire Department Retirement Plan pension contributions and benefits.

BACKGROUND

The definition of compensation to be used for the calculation of the 1961 Police and Fire Department Retirement Plan (the "Plan") pension contributions and benefits is codified in San José Municipal Code Section 3.36.020.3. The definition specifically excludes "any worker's compensation benefits" from the definition of compensation, but does not define the term "worker's compensation benefit."

Prior to January 1, 2010, the City paid supplemental disability leave payments to police and firefighter members of the Plan pursuant to Memoranda of Agreements ("MOAs") with the San José Police Officer's Association ("POA") and the International Association of Firefighters, Local 230 ("Local 230"), such that a police officer or a firefighter who was disabled from injury or illness arising out of and in the course of his or her duties received up to a one year leave without loss of salary. The City's pre-January 1, 2010 disability leave payments, were not treated as subject to the worker's compensation exclusion contained in San José Municipal Code Section 3.36.020.3 because a portion of such payments were being made pursuant to the MOAs and not pursuant to the worker's compensation law of the State of California.

Effective January 1, 2010, Labor Code Section 4850 was amended to require that the City provide a leave of absence without loss of salary for up to one year to any police officer or firefighter who is disabled from injury or illness arising out of and in the course of his or her duties, in lieu of temporary disability leave payments that would otherwise be due.

October 7, 2010

Subject: Ordinance re: Pension Treatment of Disability Leave Payments

Page 2

As a result of the change in State law on August 16, 2010 the City provided written notice to all active employee members of the Police & Fire Department Retirement Plan that under San José Municipal Code Section 3.36.020.3, the disability payments paid under Labor Code Section 4850 could not be treated as pensionable, and that the City would therefore discontinue deducting retirement contributions from these payments and discontinue reporting these payments as pensionable income to the Police and Fire Retirement Plan. In addition, the memo indicated that the City would return contributions that were withheld between January 1, 2010 and July 25, 2010. After this notice was distributed to employees, the POA, Local 230 and others raised concerns regarding the discontinuation of retirement contributions, and retirement service credit to employees receiving payments under Labor Code Section 4850.

On September 9, 2010, representatives of the City Attorney's Office and the Office of Employee Relations met with representatives from the POA and Local 230, to discuss the impact of the recent changes to Labor Code Section 4850 on the pension treatment of disability leave payments under the San José Code. During the September 9, 2010 meeting, representatives of the POA and Local 230 indicated that it was their understanding that the amendment of Labor Code Section 4850 was only intended to make the required full salary payments for up to the first 12 months tax-free; and that they interpreted the new legislation as not having any effect on the pension treatment of payments made during periods of disability leave of absence due to a work related illness or injury. The POA and Local 230 representatives also acknowledged that workers' compensation temporary disability payments received after the first 12 months would continue to properly be treated as not pensionable; so that retirement contributions would continue not to be made, and employees would continue to not receive retirement service credit after 12 months, as was the case before the amendment of Labor Code Section 4850.

ANALYSIS

Municipal Code Section 3.36.020.3 needs to be amended to clarify that the payments made to eligible employees under Labor Code Section 4850 are pensionable, so that the City and employees can continue to make retirement contributions based on these payments, and employees can continue to receive retirement service credit during this period of time. The Code amendment should also clarify that the City was correctly treating the supplemental disability leave payments that were made prior to January 1, 2010 as pensionable.

This Office has prepared the attached draft ordinance to amend the Municipal Code to include this clarification to be applicable to all past contributions and service credit during the first 12 months of combined Worker's Compensation Temporary Disability payments and supplemental payments made to eligible employees as well as the contributions and service credit of disability payments paid under Labor Code Section 4850 prior to the effective date of the ordinance. The ordinance includes a retroactivity provision, so that the City will not be required to return retirement contributions as

HONORABLE MAYOR AND CITY COUNCIL

October 7, 2010

Subject: Ordinance re: Pension Treatment of Disability Leave Payments

Page 3

indicated in the notice dated August 16, 2010, and to allow the City to restart the employee retirement contributions as soon as possible.

PUBLIC OUTREACH/INTEREST

The proposed ordinance was posted on the City's website for the October 7, 2010 agenda of the Board of Administration for the Police and Fire Department Retirement Plan, and this memorandum and the proposed ordinance were posted on the City's website for the October 19, 2010 City Council agenda.

COORDINATION

Preparation of this memorandum and the draft ordinance was coordinated with the Department of Retirement Services, Office of Employee Relations, POA and IAFF, Local 230 and the City Clerk's Office. The draft ordinance has been recommended for approval by the Board of Administration of the Police and Fire Department Retirement Plan.

CEQA:

Not a Project; File No. PP10-068(b) (Municipal Code or Policy, new or revised)

RICHARD DOYLE
City Attorney

By 
Mollie Dent
Sr. Deputy City Attorney

cc: Debra Figone
Lee Price

For questions please contact MOLLIE DENT, Senior Deputy City Attorney,
at (408)535-1905