

Memorandum

TO: HONORABLE MAYOR
CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Proposed Ordinance and
Resolution Related to
Suspension of Distribution of
Supplemental Retiree Benefit
Payments

DATE: November 5, 2010

RECOMMENDATION

- (a) Approve an ordinance amending Section 3.36.580 of Part 4 of Chapter 3.36 of Title 3 of the San José Municipal Code to provide that there shall be no supplemental retiree benefit reserve distribution from the Police and Fire Department Retirement Plan during fiscal year 2010-11, upon a finding that is need to adopt the ordinance within a time period which does not allow for a sixty day review period by Board of Administration of the Police and Fire Department Retirement Plan under San José Municipal Code Section 3.36.485.A.; and refer the ordinance to the Board for study and consideration pursuant to San José Municipal Code Section 3.36.485.B; and
- (b) Direction to staff to forward for review by the Board of Administration of the Federated City Employees Retirement Plan a draft resolution amending and restating Resolution No. 72859 to provide that there shall be no supplemental retiree benefit reserve distribution from the Federated City Employees Retirement Plan during fiscal year 2010-11.

BACKGROUND

On October 26, 2010, the City Council discussed actions related to payments from the retirement plans' Supplemental Retiree Benefit Reserves (SRBR), and directed the City Attorney's Office to draft ordinances to amend the Municipal Code to temporarily suspend distributions from the SRBRs during fiscal year 2010-11. As will be discussed in this memo, because the SRBR payments are disbursed under different procedures for the two retirement plans, the recommendations require the approval of an ordinance for the Police and Fire Retirement Plan and direction to forward a resolution to the Board of Administration of the Federated City Employees Retirement Plan.

ANALYSIS

Federated City Employees Retirement Plan

Under the section of the Municipal Code governing the Federated City Employees Retirement Plan (SJMC§3.28.340), Council can make recommendations to the Board of Administration of the Federated City Employees Retirement Plan (Board) regarding the distribution, if any from the Federated SRBR, and upon consideration of the recommendation of the Board, Council can determine the amount, if any, of the distribution to be made from the Federated SRBR. The current Council direction concerning distribution of the Federated SRBR is set forth in Council Resolution No. 72859, which provides the total annual distribution for each calendar year beginning calendar year 2004 shall be the sum of the amount if any in excess of specified minimum balance and the annual interest earned in the SRBR as June 30 in the year of the distribution.

The Municipal Code does not need to be amended to permit council to implement a suspension of Federated SRBR payments. However, the Code does require Council to refer the recommendation for such suspension to the Board of Administration of the Federated City Employees Retirement Plan, and to act after receipt of the Federated Board recommendation on such change in the distribution. It is therefore recommended that the draft resolution amending and restating Resolution No. 72859 be referred to the Board for its consideration at November 10 board meeting and that Council action on the resolution be deferred to November 16, 2010. At that time the Council can consider the recommendation of the Federated Board and decide whether or not to suspend the distribution.

Police and Fire Department Retirement Plan

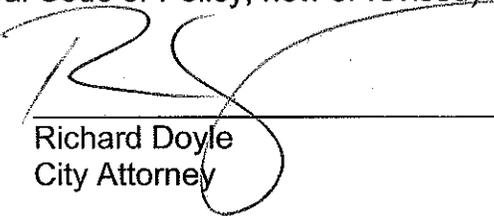
Under the section of the Municipal Code governing the Police and Fire Department Retirement Plan (SJMC§3.36.580), the Board of Administration for the Police and Fire Department Retirement Plan is charged with developing the methodology for distribution from the Police and Fire SRBR, and upon Council approval of the methodology the Police and Fire Board is charged with making distribution in accordance with the methodology. The current Council direction concerning distribution of the Police and Fire SRBR is set forth in Council Resolution No. 72859. Unlike the Federated SRBR Resolution, the Police and Fire SRBR resolution does not state the amount to be distributed each year and simply set forth how the distribution is to be divided among the payees.

The Municipal Code also does not specify how much should be distributed from the Police and Fire SRBR each year, but instead specifies limits on the amount that can be distributed.

In order to implement Council direction that there be no distribution from the Police and Fire SRBR during fiscal year 2010-11, it is recommended that the Municipal Code be amended to suspend distribution until after June 30, 2011. Under Municipal Code Section 3.36.485, prior to the Council adoption of any ordinance amending the Police and Fire Department Retirement Plan, the Board of Administration for the Police and Fire Department Retirement Plan is to be provided with sixty (60) days for review and comment on the proposed ordinance, unless the Council finds that there is need to adopt the ordinance within a time period which does not allow for a sixty day review period, in which case Council can adopt the ordinance an urgency ordinance or when the ordinance is passed for publication of title, Council refers the ordinance to the Board for study and consideration and upon the recommendation, if any, from the Board, the implements or disapproves the Board recommendation. Because distribution of the SRBRs normally would occur before the sixty day review period could occur, if Council wishes to ensure that no distribution occur during fiscal year 2010-11, a finding that there is need to adopt the ordinance within a time period which does not allow for a sixty day review period should be made and the ordinance referred to the Board of Administration for the Police and Fire Department Retirement Plan for study and recommendation. If the Council receives a recommendation if any, from the Board, it could decide to reconsider the matter taking the Boards comments at such time.

CEQA:

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



Richard Doyle
City Attorney