



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Mark Danaj

**SUBJECT:** SEE BELOW

**DATE:** November 4, 2010

Approved

Date

11/4/10

**SUBJECT: ORDINANCE TO RETROACTIVELY AMEND CHAPTER 3.48 OF THE SAN JOSE MUNICIPAL CODE TO ALLOW CITY'S DEFERRED COMPENSATION PLAN TO ACCEPT ROLLOVERS FROM THE CITY'S PENSION PLANS**

## RECOMMENDATION

Approve an Ordinance to retroactively amend Chapter 3.48 of the San José Municipal Code (SJMC) to allow rollovers from the City's Police and Fire Department Retirement Plan and Federated City Employees Retirement System into the City's Deferred Compensation Plan.

## OUTCOME

Approval of the recommendation will allow a Deferred Compensation Plan participant who has recently been laid off or otherwise terminated to rollover their City of San José pension plan contributions into their existing Deferred Compensation Plan account.

## BACKGROUND

The City's Deferred Compensation Plan has recently received requests from terminated employees to rollover eligible distributions from the City's pension plans into their existing Deferred Compensation Plan accounts. Because Chapter 3.48 of the SJMC does not provide for such rollovers, staff requested advice from the City Attorney's Office regarding whether such rollovers are permissible under the Internal Revenue Code ("IRC"). Such rollovers are not prohibited under the IRC or other relevant law.

For the reasons described below, staff asked the Deferred Compensation Advisory Committee ("Committee") to consider making a recommendation to amend Chapter 3.48 of the SJMC to allow such rollovers to the Deferred Compensation Plan.

On August 26, 2010, the Committee recommended amending Chapter 3.48, retroactive to January 1, 2009, to allow for such rollovers.

## **ANALYSIS**

### **Benefits to the Deferred Compensation Plan and Plan Participants**

The Committee's recommendation to amend Chapter 3.48 is based on the following potential benefits to account-holders and the Deferred Compensation Plan if the Plan accepts eligible rollovers from the City's pension plans for terminated employees:

1. It would provide a convenient vehicle for rollover of City pension distributions into an eligible tax-deferred retirement plan for terminated employees – particularly terminated employees who do not have sufficient years of service to vest in the pension plans.
2. It may encourage terminated employees to retain balances in the Deferred Compensation Plan trust, which would thereby benefit all Plan participants.
3. For terminated employees who are reinstated to City service, future buy-back of service credit in the City's pension plans will be simplified if those dollars are available in the Deferred Compensation Plan.

### **SJMC Chapter 3.48 Limits on Rollover from City Pension Plans**

As currently written, the Deferred Compensation Plan's "plan document," which is set forth in Chapter 3.48 of the San Jose Municipal Code, does not allow for such rollovers.

In 2001, following federal enactment of Economic Growth and Tax Relief Reconciliation Act (EGTRRA), which eased restrictions on certain types of plan rollovers, the City Council adopted an amendment to SJMC Chapter 3.48 (Ordinance 26540) to permit rollovers between eligible retirement plans, including rollover from the Deferred Compensation Plan to the City's pension plans for buy-back of service credit.

The City's pension plans meet the definition of "eligible retirement plans" within EGTRRA and the IRC. Relevant tax law does not preclude a Section 457 Deferred Compensation Plan from accepting rollovers from other eligible City plans into Deferred Compensation Plan accounts held by former employees.

As currently written, SJMC Section 3.48.058 subsection A provides that, "Beginning January 1, 2002, this plan may accept an eligible rollover distribution from an eligible retirement plan maintained by *another* employer and credit such rolled-over amounts to a participant's account under this plan." (Emphasis added.)

Section 3.48.030 subsection C defines "participant" as "any eligible employee who fulfills the requirements of enrollment into the plan." This language tracks the definition of "participant" under IRC Section 457(e)(3).

Together, Sections 3.48.058 subsection A and 3.48.030 subsection C of the San Jose Municipal Code operate to exclude terminated City employees from rolling over eligible distributions from the City's pension plans into Deferred Compensation Plan accounts that those individuals established while active City employees.

### **Allowing Rollovers from City's Pension Plans into the Deferred Compensation Plan**

The proposed amendment to SJMC Section 3.48.058 will allow the Plan to meet the objectives described above while continuing to meet all federally mandated requirements for a Section 457 deferred compensation plan and without changing the definition of "participant" under SJMC Section 3.48.030.

Active City employees with existing Deferred Compensation accounts – "participants" as defined in SJMC Section 3.48.030 – would still be limited to rollovers from eligible retirement plans of employers other than the City.

For terminated employees, the proposed amendment will allow the Deferred Compensation Plan to accept rollovers from City pension funds. However, the proposed amendment would limit such rollovers to the twelve (12) month period following the date of termination. This time-frame will accommodate the six (6) month period for the buy-back of service credit for Federated employees and the six (6) month period for deposit into eligible pension plans of other reciprocal agencies.

Because only an active employee can become a "participant" for the purposes of contributing deferred compensation into the Plan, only those terminated employees who established an account in the Plan while still active City employees will be able to rollover City pension distributions into the Deferred Compensation Plan.

### **Review by Collective Bargaining Units**

The Office of Employee Relations (OER) notified each of the City's collective bargaining units on October 20, 2010, to provide an opportunity to discuss any questions or concerns regarding the proposed Municipal Code change. As of the date of this memo OER has not received any responses to the notification provided.

### **Benefits Review Forum**

Human Resources staff met with the Benefits Review Forum on the proposed benefit enhancement on October 26, 2010. The Benefits Review Forum expressed support of the proposed change.

### **EVALUATION AND FOLLOW-UP**

An Ordinance amending SJMC Section 3.48.058 will allow terminated or terminating City employees who already have existing Deferred Compensation Plan accounts to rollover the eligible funds in their City pension accounts into their Deferred Compensation Plan accounts.

This will provide terminated City employees with the ability to retain tax-deferral on pension contributions and earnings, and facilitate future pension service credit purchases for those terminated employees who are later reinstated to City service. These benefits enhance a terminated employee's ability to plan and save for a secure retirement.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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 does not meet any of the criteria above. This memorandum will be posted to the City's website for the November 16, 2010, City Council Agenda. This recommendation was reviewed and unanimously supported by the Deferred Compensation Advisory Committee, on August 26, 2010.

### **COORDINATION**

This memorandum has been coordinated with the Deferred Compensation Advisory Committee, the Office of Employee Relations, the Benefits Review Forum, and the Office of the City Attorney.

### **COST SUMMARY/IMPLICATIONS**

There are no cost implications to the City or the Plan participants for the implementation of the recommended changes.

HONORABLE MAYOR AND CITY COUNCIL

November 4, 2010

**Subject: Approval to Retroactively Amend Chapter 3.48 of Municipal Code**

Page 5

**CEQA**

Not a project, File No. PP10-068 (b), Municipal Code, Title 3.

/s/

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Director, Human Resources Department

For questions please contact Jeanne Groen, Benefits Manager, at (408) 975-1428.