

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: SEE BELOW

DATE: November 3, 2011

SUBJECT: ORDINANCES TO AMEND VARIOUS SECTIONS OF CHAPTERS 3.48 AND 3.50 OF THE SAN JOSE MUNICIPAL CODE TO COMPLY WITH THE PENSION PROTECTION ACT OF 2006 AND MISCELLANEOUS TREASURY REGULATIONS

RECOMMENDATION

Approve the following:

- (a) An Ordinance to amend the Deferred Compensation Plan under Chapter 3.48 of Title 3 of the San José Municipal Code (SJMC) to comply with the federal Pension Protection Act of 2006 and miscellaneous United States Treasury regulations; and
- (b) An Ordinance to amend the PTC Plan under Chapter 3.50 of Title 3 of the San José Municipal Code (SJMC) to comply with the federal Pension Protection Act of 2006 and miscellaneous United States Treasury regulations.

OUTCOME

Approval of the proposed amendments to the Deferred Compensation Plan and PTC Plan will ensure the plans comply with the Pension Protection Act of 2006 and various Treasury regulations.

BACKGROUND

The Pension Protection Act of 2006 ("PPA") made some changes to governmental 457(b) deferred compensation plans, like the City's Deferred Compensation Plan and PTC Plan, which reside under San José Municipal Code Chapters 3.48 and 3.50, respectively. The deadline for amending the Deferred Compensation Plan and PTC Plan to reflect the changes under the PPA is December 31, 2011. It is important to note that while this deadline applies to when the City must amend its governmental 457(b) deferred compensation plans to reflect the mandatory requirements under the PPA, the

City has already been operating under the PPA's mandates as required within the timeframes provided herein.

ANALYSIS

In order to have the City's governmental 457(b) deferred compensation plans reflect the requirements under the PPA and miscellaneous Treasury regulations, the City must amend San Jose Municipal Code Chapters 3.48 and 3.50 as follows:

The Pension Protection Act

The PPA was signed into law in August 2006. Although the primary focus of the PPA is the funding of private sector retirement plans, it includes provisions that affect government plans, including the City's Deferred Compensation Plan and PTC Plan.

The PPA requires that, effective December 31, 2007, a taxable distribution must be permitted to be rolled over to a Roth individual retirement account described in Internal Revenue Code Section 408A. Accordingly, the definition of "Eligible Retirement Plan" under Section 3.48.058 in the Deferred Compensation Plan and under Section 3.50.116 in the PTC Plan have been amended to include Roth individual retirement accounts.

The PPA and subsequent IRS guidance also require that the plans provide that an eligible rollover distribution received by a non-spouse beneficiary may be directly rolled over into an individual retirement account that will be treated as an "inherited" individual retirement account under Internal Revenue Code Section 402. This provision was optional until December 31, 2009, but mandatory after that date. Chapter 3.48.058 in the Deferred Compensation Plan and Chapter 3.50.116 in the PTC Plan have been amended to include this requirement.

Other amendments to comply with Treasury Regulations

Section 3.48.055 in the Deferred Compensation Plan and Section 3.50.115 in the PTC Plan relates to inter-plan transfers and have been amended to remove the reference to "tax exempt organizations" because transfers between Internal Revenue Code section 457(b) plans of tax exempt organizations and 457(b) plans of governmental employers are no longer allowed.

Section 3.48.135 in the Deferred Compensation Plan provides for emergency withdrawals for unforeseeable emergencies, including severe financial hardship resulting from a sudden and unexpected illness or accident of the participant or of a dependent. The Internal Revenue Service has narrowed the definition of "dependent" under Internal Revenue Code Section 152 (e.g., placing certain gross income limitations on dependents), but Treasury regulations indicate that a plan may define dependent as it was defined under Code Section 152 before the IRS changes. By amending this

November 3, 2011

Subject: Amendments to Deferred Compensation Plan and PTC Plan

Page 3

provision in Chapter 3.48.135 of the Deferred Compensation Plan as allowed under Treasury regulations, the City will maintain the same flexibility in the definition of dependent as previously provided under the plan when determining an application for an emergency withdrawal.

PUBLIC OUTREACH/INTEREST

This memorandum and associated ordinances have been posted to the City's website for the November 15, 2011, City Council Agenda.

COORDINATION

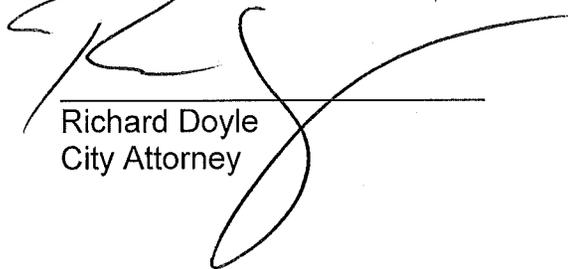
This memorandum has been coordinated with the Human Resources Department.

COST SUMMARY/IMPLICATIONS

There are no anticipated cost implications to the City for the implementation of the recommended changes to the Deferred Compensation Plan and PTC Plan for compliance under the PPA and Treasury regulations.

CEQA

Not a project; File No. PP10-068(b), ~~Municipal Code~~ or Policy.



Richard Doyle
City Attorney

For questions please contact Suzanne Hutchins, Senior Deputy City Attorney at 535-1915.