



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: 2nd Reading of Ordinance
Amending the Municipal Code
Related to the Federated
Employees' Retirement System

DATE: November 29, 2012

SUPPLEMENTAL

SUBJECT

An Ordinance of the City of San Jose amending various sections of Chapter 3.28 of Title 3 of the San José Municipal Code to clarify the City Charter supersedes the Federated City Employees' Retirement System in event of conflict, clarify the definition of Tier 2 member, discontinue the Supplemental Retiree Benefit Reserve, clarify actuarial soundness is determined consistent with the California constitution, and make additional requirements for mandatory Medicare enrollment, to be effective January 4, 2013.

REASON FOR SUPPLEMENTAL

Since the publication of title of the proposed ordinance the City has received comments which the administration has considered and determined that additional clarifying language should be included in the proposed ordinance.

BACKGROUND

On November 1, 2012, pursuant to Municipal Code Section 3.28.275, the City Administration forwarded the proposed ordinance to the Federated City Employees Retirement Board for its review and recommendation and informed the Board that the City Council would be considering the proposed ordinance on November 6, 2012.

On November 6, 2012, the City Council approved for publication of title an ordinance amending various sections of Chapter 3.28 of Title 3 of the San José Municipal Code to implement certain employee retirement provisions approved by the voters and the City Council for the City of San José Federated City Employees' Retirement System.

ANALYSIS

In order to address certain comments received regarding the consistency of subsections Sections 3.28.010 F and Section 3.28.350 B the administration recommends adopting the Ordinance with the following clarification to Section 3.28.010 F:

3.28.010 F. Under the City Council's authority pursuant to Article XV, Section 1500 of the City Charter, the provisions of Article XV-A of the City Charter are hereby implemented into the San José Municipal Code. To the extent there is any conflict between Article XV-A of the City of San José's Charter and the provisions of the Federated City Employees' Retirement System, Article XV-A will supersede any conflicting provision in the Federated City Employees' Retirement System, except as provided in Section 3.28.350.B.

3.28.350 B. The board shall discharge its duties with respect to the plan solely in the interest of, and for the exclusive purposes of providing benefits to, members of the plan and their beneficiaries, maintaining the actuarial soundness of the plan in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act"), and defraying reasonable expenses of administering the plan. The board's duty to the members and their beneficiaries shall take precedence over any other duty.

In addition, the administration has received comments requesting clarification regarding members who may not be eligible for Medicare under Section 3.28.1970.

Consequently, the administration recommends adopting the Ordinance with the following clarifications to subsection 3.28.1970 I:

3.28.1970 I. Effective September 30, 2012 for Tier 2 members and effective January 4, 2013 for non-Tier 2 members, a member and/or dependent and/or survivor who is eligible for retiree healthcare benefits in the Federated City Employees' Retirement System and who is eligible for Medicare coverage shall be required to enroll in Medicare Part A and B within 6 months of reaching the age of 65. However, if a member is already retired and age 65 or older on the date this Section of the Ordinance becomes effective for such member and is eligible for Medicare coverage then the member shall be required to enroll in Medicare Part A and B by July 1, 2013. Additionally, the Plan member and/or dependent and/or survivor who is eligible for Medicare coverage shall be required to enroll in a Medicare Plan provided by the Federated City Employees' Retirement System and assign Medicare Part A and B benefits to the Medicare Plan if required by the healthcare provider.

If a Plan member was hired before March 1986 and is not eligible for Medicare Part A at no cost or a Plan member for any reason is not eligible for Medicare, the Plan member shall be required to provide such verification from the U.S.

Social Security Administration to the Department of Retirement Services within 6 months from the date the Plan member becomes age 65, or if the member is already retired and age 65 or older on January 4, 2013 then by July 1, 2013. Unless such verification is provided, Plan members shall be required to enroll in a Medicare Plan provided by the Federated City Employees' Retirement System within 6 months from the date the Plan member is age 65 or if the member is retired and age 65.

If a Plan member fails to meet the requirements set forth above within 6 months from the date the member becomes age 65, or if the member is retired and age 65 or older on the effective date this Section of the Ordinance becomes applicable to such member, by July 1, 2013, the Plan shall cease to provide retiree healthcare benefits until the Plan member completes such requirements. This means that the member and any qualifying dependents shall not receive retiree healthcare benefits. The Plan member and qualifying dependents shall be re-enrolled in retiree healthcare benefits beginning the first day of the following month after such requirements have been completed.

If the Plan member dies during the period which the Plan member failed to complete the requirements set forth above, the eligible spouse or domestic partner and any qualifying child(ren) shall be re-enrolled in a health insurance plan. The spouse or domestic partner shall be enrolled upon attaining age 65, or if the spouse or domestic partner is age 65 or older on the effective date, by July 1, 2013. The requirements described above regarding enrollment in Medicare Parts A and B and enrollment in a Medicare Plan provided for city retirees and dependents, and assignment of Medicare Parts A and B benefits to the Medicare Plan must be fulfilled, unless verification is provided that the spouse or domestic partner is not eligible for Medicare coverage as described in this Section. If such requirements are not met, retiree healthcare coverage will cease until such requirements are completed, in the same manner set forth above with respect to members.

In addition, due to the deferral of the second reading of the ordinance, the effective date of the ordinance will be January 4, 2013.

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COORDINATION

This supplemental memorandum has been coordinated with the City Manager and the Office of Employee Relations.

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By 

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cc: Debra Figone

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