

RESOLUTION NO. 75380

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE PROGRAM FOR THE PROVISION OF RELOCATION AND HOUSING ASSISTANCE TO NEWLY APPOINTED CITY OF SAN JOSE COUNCIL APPOINTED OFFICERS AND SENIOR STAFF OFFICIALS, AND REPEALING RESOLUTION NO. 69478

WHEREAS, the recruitment and hiring of top quality high level management employees is essential to the efficient operation of the government of the City of San José; and

WHEREAS, housing costs, particularly in the City of San José, tend to act as a disincentive to persons relocating to this area, and therefore, as an obstacle to the recruitment and hiring of such top quality personnel; and

WHEREAS, said conditions act not only as an obstacle to the recruitment and hiring of such personnel, but also in the event of the hiring of such personnel, tend to discourage such persons from residing within the City of San José; and

WHEREAS, the City Council believes and appreciates the fact that the interests of the City of San José ("City") would best be served by encouraging such Council appointed officers and members of the City Manager's Senior Staff to live within the San José corporate limits to ensure their ready availability and familiarity with the community; and

WHEREAS, the City regularly invests its funds in a variety of financial securities at varying earning rates, some of which are substantially below current mortgage rates; and

WHEREAS, a portion of these reserves may be utilized to accomplish the intent of the City Council to promote the recruitment and hiring of the best available personnel and

to encourage such personnel to reside within the boundaries of the City of San José, and still produce substantially equivalent investment income; and

WHEREAS, in order to promote said objectives the City Council desires to institute a policy under which the City, in appropriate cases, may provide financing assistance and other relocation assistance to newly appointed City Council appointed officers and members of the City Manager's Senior Staff for the purpose of assisting such persons to relocate to San José and purchase a residence within the City of San José; and

WHEREAS, on April 4, 2000, the City Council adopted Resolution No. 69478, which established a program to provide for relocation and housing assistance to newly appointed City of San José appointed officers and senior staff officials; and

WHEREAS, the City Manager has proposed and the City Council has approved certain amendments to the relocation and housing assistance program as set forth in this Resolution, and desire to supersede the program for relocation and housing assistance set forth in Resolution No. 69478;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. The City Council finds that the recruitment and hiring of personnel to fill the positions of Council appointed officers and the City Manager's Senior Staff is of key importance to the functioning of the City government, that it is in the interest of the City to encourage such officers to live within the corporate boundaries of the City of San José, that the provision of housing and other relocation assistance may, in certain cases, enhance the ability of the City to accomplish the two aforementioned purposes, and that such assistance can be provided without significantly affecting the financial status of the City.

SECTION 2. The City Council hereby declares that it shall be the policy of the City, in appropriate cases, where necessary to secure the services of such persons, to assist newly appointed Council appointed officers and the City Manager's Senior Staff to reside within the City of San José by making available, as an additional benefit of employment, a secured loan of City funds to acquire local housing. The need for such assistance shall be reviewed on an individual basis and shall not be deemed available as a matter of right to such newly appointed employees. For purposes of this program, Senior Staff members are those employees serving in the positions of Assistant City Manager, Deputy City Manager, Department Director, and other senior members of the City Manager's Office as designated by the City Manager. In addition, the terms of each such loan shall be negotiated based upon the circumstances surrounding the appointment of each such employee, provided that the terms of any such loan shall not be inconsistent with the provisions of this Resolution.

SECTION 3. The need of a loan shall be reviewed on an individual basis and shall not be deemed available as a matter of right. The loan, if made, shall be made available only upon the following terms and conditions, and upon such other terms and conditions, not inconsistent with the following, which may be deemed reasonable by the City Council or the City Manager, in consultation with the City Attorney:

(a) Any acceptance of an offer of a loan under this Resolution shall be received by the Director of Finance within 2 years of the employee start date.

(b) Any such loan shall constitute a benefit of employment in consideration for the employee's services, to be evidenced by separate written loan documents approved by the Director of Finance and the City Attorney.

(c) The City loan shall not be construed to provide a contract of employment. The City continues to maintain its sole discretion to terminate an employee's employment at any time. The exercise of termination authority by the City shall not

establish a cause of action for any money damages due to a loss of mortgage loan assistance authorized by a mortgage assistance agreement.

(d) The City loan may be offered to an employee subject to this Resolution whose driving distance from the employee's former principal residence to the location of the City employment is at least fifty (50) miles longer when compared to the driving distance between the employee's former principal residence and employee's former place of employment.

(e) The cost differential in median home prices between the Metropolitan Statistical Area (MSA) of the last primary residence of the employee and the San José MSA is not less than thirty percent (30%) using statistics published by the National Association of Realtors.

(f) The City loan shall not exceed an amount of \$250,000.00 and in no event shall any such loan be for a term exceeding 30 years.

(g) The loan to value ratio of the City loan shall not exceed ninety-five percent (95%) at the close of escrow and the City loan shall not exceed fifty percent (50%) of the total purchase price of the home and in no event shall the City loan exceed the amount of any senior loan for the home or \$250,000, whichever is lower.

(h) The loan shall be available only to acquire residential property within the City of San José which, in fact, is the principal residence of the employee as interpreted under the Treasury Regulations 1.121-1 (b) (2).

(i) Any such loan shall be due and payable in full upon any default of the loan documents except that the loan shall be due and payable in full within six months of any termination of the employee's employment with the City.

(j) Any such loan shall provide for an interest rate not less than the City's current average annual earnings rate on its idle funds in investment portfolio 1.

(k) The loan shall only be made from available funds in the appropriate City Operating Fund(s) subject to City Council appropriation.

(l) Any such loan shall be secured to the satisfaction of the City Manager, City Attorney, and Director of Finance and evidenced by a promissory note secured by a Deed of Trust.

(m) The employee shall be responsible for all costs associated with the purchase and sale of the residence including, but not limited to, any costs of a title insurance policy naming the City as beneficiary. In addition, the City may assess loan origination costs not to exceed one half percent (.50%) of the principal amount of the City loan, due at closing, loan servicing costs not to exceed one quarter percent (.25%) of each loan payment, and any costs associated with any refinancing of the City loan or any other loan on the property approved by the City.

(n) The employee shall repay the amounts due on the promissory note by making interest only payments through payroll deductions.

(o) Other relocation assistance including, but not limited to, interim housing assistance, moving expenses and other reasonable and customary expenses associated with relocation may be provided by the City to the employee as deemed appropriate by the City Council for Council appointed officers and by the City Manager for Senior Staff members.

SECTION 4. With respect to Senior Staff members appointed by the City Manager, the City Manager is hereby authorized to act in accordance with the policy set forth in this resolution and to implement said policies through administrative guidelines as deemed

necessary in order to fulfill the recruitment and hiring needs for such positions. The City Manager is authorized to determine in each case whether housing assistance shall be offered as an element of compensation and, if so, the terms upon which such assistance shall be offered. Any loan issued shall be consistent with the provisions of this Resolution; but the City Manager is authorized to impose conditions more restrictive than or in addition to those in Section 3 as long as they are consistent with this Resolution.

SECTION 5. In the event of a default under the terms of the City loan documents, the City Manager is authorized to exercise all remedies available under the City loan documents, in consultation with the City Attorney. Further, in the event of a default, the City Manager is authorized to modify the terms of the City loan, in consultation with the City Attorney, including, but not limited to, a change in the repayment term, the interest rate of the loan (in this circumstance, in no event shall the interest rate be modified lower than the applicable federal rate set forth in Section 7278 (f) (2) of Title 26 of the Internal Revenue Service and the reset shall be at the rate in effect as of the date of the City loan funding), and the principal residence requirement if any such modification would be in the best interest of the City.

SECTION 6. Resolution No. 69478 is hereby repealed.

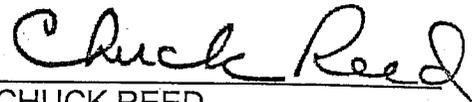
ADOPTED this 25th day of May, 2010, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: CAMPOS.

ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk