

**SENT VIA EMAIL**

November 22, 2011

William H. Pope  
Business Representative  
International Union of Operating Engineers, Local Union No. 3 (OE#3)  
1654 The Alameda, Suite 110  
San Jose, CA 95126

**RE: Revised Ballot Measure**

Dear Bill:

The City and OE#3 participated in mediation on November 22<sup>nd</sup>, regarding retirement reform, including but not limited to, the proposed ballot measure. Unfortunately, the parties were unable to reach an agreement.

Please find enclosed a revised ballot measure that has been transmitted to the City Council. The revised ballot measure will be considered by the City Council during the December 6, 2011, City Council meeting for a March 2012 election.

Sincerely,



Gina Donnelly  
Deputy Director of Employee Relations

c: Alex Gurza, Deputy City Manager

Enclosure

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**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO  
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS  
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *“The Employee Fair Pay and Sustainable Benefits Act.”*

**Section 1: FINDINGS**

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter “Essential City Services”).

The City’s ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City’s retirement plans is expected to continue to increase dramatically in the near future. In addition, the City’s costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make dramatic cuts to Essential City Services.

These cuts to Essential City Services have already created a service level emergency in the current fiscal year, an emergency that is projected to worsen significantly in Fiscal Year 2012-2013 and beyond. Because the cost of retirement benefits is rising so rapidly, and current economic conditions

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and legal restrictions severely limit revenue growth, there is no reasonable prospect that further critical reductions in Essential City Services can be avoided. By any measure, projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

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The voters hereby find that the facts and circumstances constitute an emergency within the meaning of the Meyers-Milias-Brown Act (“MMBA”), Government Code section 3504.5, and pursuant to the City’s authority as a charter city under the California Constitution. *E.g.*, Cal. Const., Art XI.

## **Section 2: INTENT**

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act’s effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority to amend, change or terminate any retirement or other post

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employment benefit program provided by the City; provided, however, nothing in the Act shall be construed to require the forfeiture of any contribution made by an employee toward a pension plan benefit.

### **Section 3. Measure Supersedes All Conflicting Provisions**

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, as well as all ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than June 30, 2012.

### **Section 4. Reservation of Voter Authority**

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. The City Council shall have no authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

### **Section 5. Reservation of Rights to City Council**

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this measure, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and to amend, change or repeal any

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retirement or other post employment benefit program subject to the terms of this measure.

## **Section 6. Current Employees**

(a) “Current Employees” means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program (“VEP,” described herein), Current Employees shall have their compensation reduced by sharing 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future.

(c) A Current Employee’s share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% every fiscal year until the employee’s proportionate share of the cost reaches 50% of the amortized pension unfunded liabilities, with each employee’s share capped at 25% of the employee’s pensionable pay.

(d) The starting date for an employee’s compensation adjustment under this Section shall be June 24, 2012, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(e) Current Employees’ share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan

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and employees in the Federated City Employees' Retirement System.

(f) The additional retirement contributions shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

### **Section 7: One Time Voluntary Election Program ("VEP")**

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%)

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earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.
- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.



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- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year.
  - (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
  - (vi) “Final compensation” shall mean the average annual pensionable pay of the highest three consecutive years of service.
  - (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).
- (c) The cost sharing for the VEP for current service or current service benefits (“Normal Cost”) shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

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(d) VEP Survivorship Benefits.

- (i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.
- (ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

- (i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for

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a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment (“COLA”) provisions will be the same as for the service retirement benefit in the VEP.

### **Section 8: Future Employees – Limitation on Retirement Benefits – Tier 2**

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as “Tier 2.”

The Tier 2 program shall be limited as follows:

- (a) The City contributions shall not be less than 6.2% nor greater than 9% of base salary, excluding premiums or other additional compensation. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities). The program may be designed as a “hybrid plan” consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan.
- (b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City

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Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

- (c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.
- (d) For any defined benefit plan, “final compensation” shall mean the average annual pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.
- (e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.
- (f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).
- (g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

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- (h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan shall create a vested right to any benefit.

## **Section 9: Disability Retirements**

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

- (i) An employee cannot do work that they did before; and

- (ii) It is determined that

- 1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

- 2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's

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department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

### **Section 10: Emergency Measures to Contain Retiree Cost of Living Adjustments**

The City shall adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees from July 1, 2012 until at least January 1, 2018.

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After January 1, 2018, the City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1% for employees in Tier 2.

### **Section 11: Supplemental Payments to Retirees**

The Supplemental Retiree Benefit Reserve (“SRBR”) shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

### **Section 12: Retiree Healthcare**

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, “low cost plan” shall be defined as the medical plan which has the lowest monthly premium available to any active

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employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

**Section 13: Actuarial Soundness (for both pension and retiree healthcare plans)**

- (a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.
- (b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.
- (c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:



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- 1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
  - 2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.
- (d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:
- 1) the funding objectives and actuarial assumptions of the plans; and
  - 2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

#### **Section 14: Savings**

(a) In the event Section 7 or 10 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.

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(b) In the event Section 6 (b) and (c), and/or the employee payment of the unfunded liability referenced in Section 14(a), is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 5% of compensation each year, capped at a maximum of 25% of pay or the equivalent of what would be 50% of the amortized pension unfunded liability.

### **Section 15: Severability**

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause (“portion”) of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

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(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.