

**Council Meeting: December 18, 2012**

SUBJECT: Introduction and Adoption of an Emergency Ordinance to Amend the CalPERS Contract to Provide 20475 (Different Level of Benefits) and Section 21353 (2% @ 60 Full Formula).

BACKGROUND

On November 20, 2012, the City Council adopted a Resolution of Intention to amend the California Public Employees' Retirement System (CalPERS) contract to implement a second tier of coverage for the miscellaneous group with a benefit formula of 2% @ 60 full formula with the Single Highest Year calculation. The Resolution of Intention was approved by Council in anticipation of the membership ratification of the Sunnyvale Employees' Association (SEA) successor Memorandum of Understanding (MOU). The MOU was approved by SEA membership on November 30, 2012 and a separate report with the revised MOU is being presented to Council during this meeting.

The procedures for implementing the contract amendment are established by state statute. The next step in the contract amendment process is the introduction and adoption of the ordinance. Adoption as an emergency ordinance permits the ordinance to go into effect immediately. This will enable the City to meet the December 31, 2012 deadline resulting from the recently passed Public Employees' Pension Reform Act (PEPRA). The effective date of the contract amendment will be December 23, 2012 to coincide with the beginning of a payroll period as agreed upon in the successor MOU.

EXISTING POLICY**Council Policy 7.3.1 – Legislative Management**

Goal 7.3D: Maintain a quality workforce, consistent with state and federal laws, City Charter, and adopted policies in order to assure that City services are provided in an effective, efficient and high quality manner.

Policy 7.3D.1: Maintain a recruitment and selection process that ensures a highly competent workforce.

Action Statement 7.3D.1a: Maintain a competitive pay and benefit package for employees.

DISCUSSION

The City of Sunnyvale and SEA have reached an agreement for a new Memorandum of Understanding. The Tentative Agreement was presented to the full membership and the membership voted to accept the Tentative Agreement as presented. The Agreements between the City, SEA, Communication Officers Association (COA), Service Employees International Union (SEIU), and Sunnyvale Managers Association (SMA) provide for implementation of a two-tier retirement plan for miscellaneous employees. Under the amendment, newly hired employees that are current members of CalPERS or a reciprocal retirement system will be provided with a 2% @ 60 full formula Single Highest Year calculation retirement benefit. The new benefit formula will apply to all miscellaneous employees hired after the contract amendment effective date.

The recently adopted Public Employee Pension Reform Act becomes effective January 1, 2013. Under the act, in order for the City to apply the two-tier system to newly hired City employees who are existing members of the CalPERS system, it must amend its CalPERS contract no later than December 31, 2012. In order to meet that time frame, the ordinance must be adopted as an emergency in accordance with the charter section 701, so that it can be effective immediately upon adoption. If it fails to do so, it will be precluded by state law from changing the pension formula for newly hired miscellaneous employees that are currently CalPERS members. The effective date of the contract amendment will be December 23, 2012.

FISCAL IMPACT

Establishing a two-tier retirement plan at the miscellaneous 2% @ 60 formula will affect an unknown number of future hires. As noted previously in this report, this formula will only be applicable to people hired by the City of Sunnyvale after December 23, 2012 who are coming from another CalPERS agency. While it is not possible to quantify the exact fiscal impact of this action, as the City does not know how many future hires will be current CalPERS members, this formula change will provide cost savings to the City for each applicable new hire. The normal cost difference between the current miscellaneous 2.7% @ 55 formula and the proposed miscellaneous 2% @ 60 formula is approximately 4.5% of pay. Based on current average miscellaneous salary, each applicable hire brought in under the 2% @ 60 formula as opposed to the 2.7% @ 55 will yield approximately \$3,800 in annual savings. If no action is taken, future hires that are current CalPERS members will receive the 2.7% @ 55 enhanced benefit formula that current miscellaneous City employees receive. Taking this action will ensure that new hires that are existing members of CalPERS will have a pension formula that is closer to the 2.0% @ 62 formula that new members to CalPERS hired after January 1, 2013 will receive.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

Adopt an Emergency Ordinance to Amend the CalPERS Contract to Provide 20475 (Different Level of Benefits) and Section 21353 (2% @ 60 Full formula Single Highest Year calculation) applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this contract amendment.

Reviewed by:

Teri Silva, Director of Human Resources
Prepared by: Lisa Velasco, Human Resources Manager

Reviewed by:

Grace Leung, Director, Department of Finance

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Emergency Ordinance of the City Council of the City of Sunnyvale Authorizing an Amendment to the Contract Between the City of Sunnyvale and the Board of Administration of the California Public Employees' Retirement System to Provide Section 21353 (2% @ 60 Full Formula) for Local Miscellaneous Members.

ORDINANCE NO. _____

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF SUNNYVALE AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO PROVIDE SECTION 20475 (DIFFERENT LEVEL OF BENEFITS) AND SECTION 21353 (2% @ 60 FULL FORMULA SINGLE HIGHEST YEAR CALCULATION) FOR LOCAL MISCELLANEOUS MEMBERS ENTERING MEMBERSHIP FOR THE FIRST TIME IN THE MISCELLANEOUS CLASSIFICATION AFTER THE EFFECTIVE DATE OF THIS CONTRACT AMENDMENT

THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT TO CONTRACT. That an amendment to the contract between the City Council of the City of Sunnyvale and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked as "Exhibit A", and by such reference made a part hereof as though herein set out in full.

SECTION 2. EXECUTION OF AMENDMENT. The Mayor of the City of Sunnyvale is hereby authorized, empowered, and directed to execute the amendment for and on behalf of the City of Sunnyvale.

SECTION 3. REASON FOR URGENCY. Section 701 of the City Charter provides that any ordinance declared by the City Council to be necessary as an emergency measure for preserving the public peace, health or safety, and containing a statement of the reasons for its urgency, may be introduced and adopted at one and the same meeting if passed by at least five affirmative votes. The reason for urgency in adopting this ordinance as an emergency measure is that the City recently concluded bargaining negotiations with all represented miscellaneous groups to provide for a reduced retirement benefit formula (2% @ 60) for newly hired CalPERS miscellaneous members. Under recently adopted state law, in order to amend the CalPERS contract to implement the two tier structure, this ordinance must be adopted and effective prior to December 31, 2012. The City has been concerned about the rising pension costs required by its agreements, past, present and future with public employee groups and this concern is part of a statewide interest and mandate to attempt to reduce rising pension costs. Failure to adopt the ordinance at this time will preclude the City from doing so in the future.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption, and prior to the expiration of fifteen (15) days from the passage thereof shall be published at least once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, and thenceforth and thereafter the same shall be in full force and effect.

Introduced and adopted at a regular meeting of the City Council held on _____, 2012,
by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

Joan A. Borger, City Attorney



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Sunnyvale

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1951, and witnessed May 18, 1951, and as amended effective December 17, 1965, April 1, 1966, January 1, 1974, August 25, 1974, February 14, 1975, December 26, 1976, February 1, 1981, January 3, 1982, November 16, 1990, January 15, 1994, January 17, 1997, October 15, 1999, July 7, 2000, June 10, 2001, July 8, 2001, July 1, 2007 and February 19, 2012 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 16 are hereby stricken from said contract as executed effective February 19, 2012, and hereby replaced by the following paragraphs numbered 1 through 17 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members entering membership in the miscellaneous classification on or prior to the effective date of this amendment to contract, age 60 for local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract, age 50 for local safety members entering membership in the safety classification on or prior to February 19, 2012 and age 55 for local safety members entering membership for the first time in the safety classification February 19, 2012.

2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1951 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
 - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
 - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.
 - (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.
 - (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.

4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Public Safety Officers (acknowledged by Board and Public Agency to constitute both local firemen and local policemen within the meaning of the Public Employees' Retirement Law, herein referred to as local safety members);
 - b. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

NO ADDITIONAL EXCLUSIONS

6. After January 1, 1994 and prior to January 1, 1975, those members who were hired by Public Agency on a temporary and/or seasonal basis not to exceed 6 months were excluded from PERS membership by contract. Government Code Section 20336 superseded this contract provision by providing that any such temporary and/or seasonal employees are excluded from PERS membership subsequent to January 1, 1975. Legislation repealed and replaced said Section with Government Code Section 20305 effective July 1, 1994.
7. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment before and not on or after July 1, 2007 shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment on or after July 1, 2007 and not entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract shall be determined in accordance with Section 21354.5 of said Retirement Law (2.7% at age 55 Full).
9. The percentage of final compensation to be provided for each year of credited current service as a local miscellaneous member entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).

10. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member entering membership in the safety classification on or prior February 19, 2012 shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
11. The percentage of final compensation to be provided for each year of credited current service as a local safety member entering membership for the first time in the safety classification after February 19, 2012 shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
12. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21573 (Third Level of 1959 Survivor Benefits).
 - b. Section 20425 ("Local Safety Member" as that term is used in subparagraph (a) of paragraph (3) hereof, shall include persons assigned to identification and communication duties in the Department of Public Safety who were not local safety members but who were in such employment on August 4, 1972, who elected safety membership on or before April 5, 1975).
 - c. Sections 21624 and 21626 (Post-Retirement Survivor Allowance) for local safety members only.
 - d. Section 20516 (Public Agency and its employees have agreed to share the cost of the following benefit): Section 20042 (One-Year Final Compensation).

From and after January 3, 1982 and until June 10, 2001 the miscellaneous employees of Public Agency shall be assessed an additional 1.000% of their compensation for a total contribution rate of 8.000% pursuant to Government Code Section 20516.

From and after January 3, 1982, the safety employees of Public Agency shall be assessed an additional 2.250% of their compensation for a total contribution rate of 11.250% pursuant to Government Code Section 20516.

- e. Section 21024 (Military Service Credit as Public Service).
- f. Section 20475 (Different Level of Benefits). Section 21363.1 (3% @ 55 Full formula) is applicable to local safety members entering membership for the first time in the safety classification after February 19, 2012.

Section 21353 (2% @ 60 Full formula) is applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment.

- 13. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on February 1, 1981. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
- 14. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
- 15. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

16. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
17. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF SUNNYVALE

BY _____
KAREN DE FRANK, CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk