

CITY COUNCIL MEETING AGENDA OF NOVEMBER 29, 2011

**PUBLIC HEARING/GENERAL BUSINESS
ITEM #2, RTC 11-255**

The attached RTC 11-255 was deferred from the November 15, 2011 Council meeting to the Council meeting of November 29.



Council Meeting: November 15, 2011

SUBJECT: Notice of Intention to Amend the CalPERS Contract to Provide 20475 (Different Level of Benefits), and 21363.1 (3% @ 55 Full Formula) Applicable to Local Safety Members Entering Membership for the First Time in a Safety Classification.

BACKGROUND

The City of Sunnyvale and the Public Safety Officers Association (PSOA) negotiated a new Memorandum of Understanding (MOU) and contract extension last Spring. PSOA ratified the agreement and the City Council approved the MOU on April 26, 2011. The MOU included an agreement by the City and Association to implement a second tier retirement plan, Public Safety 3% @ 55, for all newly hired sworn/safety employees. It was further agreed that the employee's payment of their required employee contribution shall be made on a pre-tax basis by payroll deductions pursuant to IRC Section 414(h)(2).

Additionally, on May 1, 2009, the City Council approved a four-year contract (expires June 30, 2013) with employees represented by the Public Safety Managers Association (PSMA). The PSMA agreement supported the concept of a two-tiered retirement plan for future Safety employees and indicated if a future MOU with the PSOA included the adoption of a two-tier retirement plan, that plan will also include PSMA.

Prior to implementing a second tier retirement plan, CalPERS contract amendment procedures require the City to request an actuarial report to determine the impact upon future annual costs. Once that is received we move forward with Council action to approve the resolutions and ordinance amendment.

Finally, the prior PSOA Memorandum of Understanding dated July 1, 2006 to June 30, 2010 contains an agreement for the City to proceed with a PERS contract amendment to shift the 2.25% cost of the single highest year option (allows safety employees to choose the highest 12 consecutive months of earnings for purposes of calculating their retirement benefit) to the employer rate and to reduce the total employee contribution rate from 11.25% to 9%. Although the additional 2.25% cost is currently included in the employee rate, the City has paid the entire cost of this option since its implementation, therefore, it is appropriate to correctly allocate the cost to the employer rate.

This action, to accurately reflect the funding of the 2.25%, was not taken in 2006, therefore, we are asking the City Council for approval to correctly reflect what was negotiated in 2006. A PERS resolution to provide Section 20516 (0% Employee Sharing Cost of Additional Benefits) applicable to Section 20042 (One-Year Final Compensation) for Local Safety Members is attached to memorialize this prior agreement.

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 procedures for implementing the contract amendment are established by state statute. The first step in the process is for the City Council to adopt a Resolution of Intention and conduct the first reading of the Ordinance amending the contract. Once the final Ordinance is adopted, scheduled for November 29, 2011, and becomes effective, the contract amendment will go into effect, and based on the current schedule, the effective date of the contract amendment will be January 1, 2012.

FISCAL IMPACT

The City is already realizing savings in FY 2011/12 resulting from the July increase to the employee contribution that the City Council approved on April 26, 2011. Savings of approximately \$1.3 million are expected in FY 2013/14, which includes the one percent (1%) contribution in FY 2011/12 and the additional employee contribution increases from one percent (1%) to three percent (3%), as well as the first year of savings from the implementation of the two-tier pension plan. Additionally, based on current projections, which consider attrition rates and salary increase assumptions, moving new Safety employees to the 3% @ 55 formula will result in approximately \$10 million in savings over the 20-Year Long-Term Financial Plan. Approximately \$2 million savings will occur over the first ten years, and the remaining \$8 million will occur in the final ten years. The budgeted savings resulting from new Safety employees being on a lower-tier pension benefit is significant, especially in the latter years of the 20-year plan.

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.

ALTERNATIVES

1. Adopt the Resolution of Intention to amend the contract between the Board of Administration of the California Public Employees' Retirement System (CalPERS) and the City of Sunnyvale to provide Section 21363.1 (3% @ 55 Full formula) applicable to Local Safety members entering membership for the first time in the safety classification after the effective date of this contract amendment; Section 414(h)(2) of the Internal Revenue code, whereby employee-paid contributions are made on a pre-tax basis; and adopt the resolution to provide Section 20516 (0% Employee Sharing Cost of Additional Benefits) applicable to Section 20042 (One-Year Final Compensation) for Local Safety Members. Provide the introduction and first reading of an Ordinance of the City Council authorizing such amendment to the contract; and adopt the related resolutions.
2. There are no other alternatives as the City is contractually obligated to provide this change in retirement formula.

RECOMMENDATION

Staff recommends approval of Alternative #1. Adopt the Resolution of Intention to amend the contract between the Board of Administration of the California Public Employees' Retirement System (CalPERS) and the City of Sunnyvale to provide Section 21363.1 (3% @ 55 Full formula) applicable to Local Safety Members entering membership for the first time in the safety classification after the effective date of this contract amendment; Section 414(h)(2) of the Internal Revenue code, whereby employee-paid contributions are made on a pre-tax basis; and adopt the resolution to provide Section 20516 (0% Employee Sharing Cost of Additional Benefits) applicable to Section 20042 (One-Year Final Compensation) for Local Safety Members. Provide the introduction and first reading of an Ordinance of the City Council authorizing such amendment to the contract; and adopt the related resolutions.

Reviewed by:

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

Approved by:

Gary M. Luebbbers
City Manager

Attachments

- A. Resolution of Intention to Approve an Amendment to Contract Between the Board of Administration California Public Employees' Retirement System and the City Council City of Sunnyvale to provide Section 20516 (0% Employee Sharing Cost of Additional Benefits) applicable to Section 20042 (One-Year Final Compensation) for Local Safety Members, and 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 the effective date of this amendment to contract.

- B. 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 21363.1 (3% @ 55 Full Formula) for Local Safety Members).

- C. Resolution to Tax Defer Member Paid Contributions – IRC 414(h)(2) Employer Pick-Up for Local Safety Members.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE GIVING NOTICE INTENTION TO APPROVE AN AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY COUNCIL CITY OF SUNNYVALE

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

“To provide Section 20516 (0% Employee Sharing Cost of Additional Benefits) applicable to Section 20042 (One-Year Final Compensation) for local safety members;” and

“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 the effective date of this amendment to contract.”

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as "Exhibit A" and by this reference made a part hereof.

Adopted by the City Council at a regular meeting held _____, 2011, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, 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 and July 1, 2007 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 14 are hereby stricken from said contract as executed effective July 1, 2007, and hereby replaced by the following paragraphs numbered 1 through 16 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, age 50 for local safety members entering membership in the safety classification on or prior to the effective date of this amendment to contract and age 55 for local safety members entering membership for the first time in the safety classification after the effective date of this amendment to contract.

PLEASE DO NOT SIGN "DONBIT ON"

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.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

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 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 prior and current service as a local safety member entering membership in the safety classification on or prior to the effective date of this amendment to contract shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).

PLEASE DO NOT SIGN "EXHIBIT ONLY"

10. 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 the effective date of this amendment to contract shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
11. 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 and until the effective date of this amendment to contract 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 the effective date of this amendment to contract.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

12. 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.
13. 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.
14. 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.
15. 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.

16. 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 _____
DARRYL WATSON, CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

ORDINANCE NO. _____

AN 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 21363.1 (3% @ 55 FULL FORMULA) FOR LOCAL MISCELLANEOUS MEMBERS)

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

SECTION 1. AMENDMENT TO CONTRACT. That an amendment to the contract between City Council of the City of Sunnyvale and the Board of Administration of the 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. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 4. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2011, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2011, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE TO TAX DEFER MEMBER PAID
CONTRIBUTIONS IRC 414(h)(2) EMPLOYER PICKUP**

WHEREAS, the governing body of the City of Sunnyvale has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

WHEREAS, the City of Sunnyvale has determined that even though the implementation of the provisions of section 414(h)(2) IRC is not required by law, the tax benefit offered by section 414(h)(2) IRC should be provided to Local Safety Members who are members of the California Public Employees' Retirement System:

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City of Sunnyvale will implement the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code Section 20691 to the California Public Employees' Retirement System on behalf of all its employees or all its employees in a recognized group or class of employment who are members of the California Public Employees Retirement System. "Employee contributions" shall mean those contributions to the Public Employees' Retirement System which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.
2. The contributions made by the City of Sunnyvale to the California Public Employees' Retirement System, although designated as employee contributions, are being paid by the City of Sunnyvale in lieu of contributions by the employees who are members of the California Public Employees' Retirement System.
3. Employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the City of Sunnyvale to the California Public Employees' Retirement System.
4. The City of Sunnyvale shall pay to the California Public Employees' Retirement System the contributions designated as employee contributions from the same source of funds as used in paying salary.
5. The amount of the contributions designated as employee contributions and paid by the City of Sunnyvale to the California Public Employees' Retirement System on behalf of an employee shall be the entire contribution required of the employee by the California Public Employees' Retirement Law (California Government Code Sections 20000, et seq.).
6. The contributions designated as employee contributions made by City of Sunnyvale to the California Public Employees' Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the California Public Employees' Retirement System.

Adopted by the City Council at a regular meeting held _____, 2011, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Actuarial and Employer Services Branch

Public Agency Contract Services

P.O. Box 942709

Sacramento, CA 94229-2709

(888) CalPERS (225-7377)

**CERTIFICATION OF COMPLIANCE WITH
GOVERNMENT CODE SECTION 20475**

I hereby certify that the _____ of the
(governing body)

(public agency)

has fully discharged all of the obligation imposed by Chapter 10 (commencing with
Section 3500) of Division 4 of Title 1, Government Code.

By _____

Title

Witness

Date

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Actuarial and Employer Services Branch

Public Agency Contract Services

P.O. Box 942709

Sacramento, CA 94229-2709

(888) CalPERS (225-7377)

CERTIFICATION OF GOVERNING BODY'S ACTION

I hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the

_____ of the
(governing body)

(public agency)

on _____
(date)

Clerk/Secretary

Title

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Actuarial and Employer Services Branch

Public Agency Contract Services

P.O. Box 942709

Sacramento, CA 94229-2709

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**CERTIFICATION OF COMPLIANCE WITH
GOVERNMENT CODE SECTION 7507**

I hereby certify that in accordance with Section 7507 of the Government Code the future annual costs as determined by the System Actuary for the increase/change in retirement benefit(s) have been made public at a public meeting of the

_____ of the
(governing body)

_____ of
(public agency)

on _____ which is at least two weeks prior to the adoption of the
(date)

Resolution / Ordinance.

Adoption of the retirement benefit increase/change will not be placed on the consent calendar.

Clerk/Secretary

Title

Date _____