



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Councilmember
Donald Rocha

SUBJECT: RETIREMENT/PENSION REFORM **DATE:** October 24, 2011

Approved Don Rocha Date 10/24/11

Over my eleven months as a Councilmember I have proposed and supported pension and compensation reductions for current and future employees as one strategy to promote a sustainable organization. In the interest of continuing that effort to promote successful reform, and given the significant proposals for retirement reform that have been submitted from almost every City bargaining unit, it is my opinion that it is in the best interest of the City of San Jose that we consider a counter proposal and defer the date for a decision on any proposed ballot measure and subsequent election date. I therefore submit the following recommendations for Council consideration:

RECOMMENDATIONS

1. Direct staff to proceed with the following actions:
 - a. Bring forward a revised version of the October 20, 2011 draft pension reform ballot measure language for Council consideration as potential revised negotiation direction with the following modifications:

Issue	Section	Revision
Reservation of Voter Authority	4	Eliminate
Voluntary Election Program	7(b)(i)	Revise accrual rate to 2% for Federated and 2.33% for Police and Fire
	7(b)(ii)	Revise retirement age to 62 for Federated and 57 for Police and Fire
	7(b)(iv)	Revise COLA cap to 1.5% per year
Tier 2	8(a)	Eliminate
	8(b)	Revise retirement age to 62 for Federated and 57 for Police and Fire
	8(c)	Revise COLA cap to 1.5% per year
	8(e)	Revise accrual rate to 2% for Federated and 2.33% for Police and Fire
	8(g)	Eliminate
"Safety Net" provisions	14	Eliminate

- b. At the same time that the revised ballot language is brought to Council (in either open or closed session), also bring forward for Council consideration any proposals relating to retirement reform that have been made by retiree groups.
2. In order to provide more time to reach a negotiated settlement, establish a new negotiation timeline that targets a retirement reform ballot measure for the June 2012 election. Such timeline should set January 31, 2012 as the new deadline for completion of negotiations in order to meet the timeline for a Council decision by March 6, 2012 for any potential ballot measure language.
3. Direct staff to bring forward a detailed written legal risk analysis of the current City negotiating position for Council consideration in closed session. To the extent the Council changes its position before making a final decision on ballot language, legal analysis should consider the revised position. The analysis should include the best estimate possible for any potential costs associated with legal fees for court challenges and potential damages and/or reimbursements should the City face a judgment that is not in our favor.
4. As we explore the revised proposal I outlined above and continue to negotiate with our bargaining units, direct staff to also explore the option of moving to CalPERS. Staff should formally work with CalPERS to determine what process steps are necessary before the City can establish a CalPERS-based opt-in program, and present that process in written form to the Council.

ANALYSIS

Pension reform is likely one the most difficult issues any of us will face in our time on the Council. It is a significant decision with implications beyond the initial policy decision: it will shape San Jose's fiscal future and in part determine the service delivery levels our residents will enjoy. Each and every employee of the City of San Jose – past, current and future – also has an interest in this issue due to its potential impact on their income or retirement circumstances.

Finding a path to fair, equitable, and legal retirement reform isn't just an incredibly complex policy challenge; it's a highly polarized issue that triggers strong feelings on all sides. It's a truism in politics that the more complicated and politically loaded the issue, the more important it is to think carefully about how to structure a decision making process that will assist in developing a good solution. Sometimes our natural reaction is to start addressing a problem by immediately trying to come up with the right answer, when a more effective approach is to figure out what kind of public process is needed to reveal the information, provide the analysis, and generate the discussion that will help us come to an informed understanding of the issue.

In my opinion, full information and analysis haven't been priorities in our pension reform decision-making thus far. Our approach has been to take positions before we have full

analysis, and then revise them later on when we discover flaws in our proposal—as we did with the position adopted on June 24, 2011. At this point, I think we have made some improvement over our initial proposals and I credit the Mayor and the Office of Employee Relations staff for their willingness to work towards a proposal that has less legal risk to the City and provides our employees with more options. However, I still think there's room for improvement if we can recognize the value of evaluating all alternatives before making a final decision.

With this memo, I am again suggesting that we prioritize process and analysis and make an effort to work with the proposals we have been provided by our bargaining units. It is in the best interest of all parties involved that we fully vet the proposals and pursue opportunities for a negotiated settlement before irrevocably committing ourselves to a pension reform path that could have huge costs and consequences for the City and its residents for years to come.

Timeline

My first recommendation is that we target our ballot measure for the June 2012 election to give additional time for retirement reform negotiations. At the very least, the recent union proposals demonstrate that we have bargaining units willing to talk with us on this issue. I believe that we have a responsibility to pursue a negotiated settlement in good faith until we have exhausted all possibilities of an agreement. I understand that some believe the sides are too far apart for an agreement to be possible, but I don't think any of us can know that for sure until we have made a genuine attempt to find common ground at the bargaining table. It may also mean we have to wait a few months longer before implementing reform, but in my opinion the implementation timeline for a negotiated agreement without legal challenge will almost certainly be faster than a unilateral ballot measure, even if the former happens in June and the latter in March.

As an added bonus, a June election could potentially save City of San Jose taxpayers over \$2 million which could be put towards next year's estimated deficit of approximately \$78 million. It will also put the question before the voters at an election that will likely have much higher turnout than a special election in March, giving more residents an opportunity to participate in the decision.

Legal Risk Analysis

In my mind, the most important factor to evaluate in any pension reform proposal is the likelihood that it will survive legal challenge. Whether or not the Council supports the revisions to the City's negotiating position recommended in this memorandum, the legality of our approach could be the difference between successful reform that delivers significant cost savings and continued fiscal struggles. Before proceeding any further with any proposal, the Council should seek detailed legal risk analysis that evaluates all legal risks suggested so far, along with any other issues our counsel may identify.

Modified Proposal

Realizing budget savings is the purpose of pension reform, but as leaders we have to do more than just simply calculate budget numbers. Our organization is made up of people: people with skills, experience, and commitment who do the real work of serving the public. Since we have begun working on pension reform, the very people who make our organization a success have been leaving in significant numbers – we are already beginning to see an effect on our ability to accomplish Council-identified priorities. Whatever retirement system we put in place, it must be one that talented individuals with many career options will find attractive. If hitting the latest cost saving target means emptying the City of qualified staff we will have failed in the broader goal of running a sustainable organization – I don't believe that the only solution is burning the village in order to save it.

My suggested modifications to the Voluntary Election Program and Tier 2 are intended to be a reasonable middle ground that give us an alternative to the benefits in the current City proposal. Whatever level of benefit we settle on, it should be one that can sustain an individual who has given 30 to 40 years of their life as a public servant. I also suggest eliminating Section 14 in its entirety. If we are serious about negotiating a solution, we have to focus on addressing the core issue - pension reform – not restrictions that limit future Council authority because we feel as though we are wiser and know better than those who will follow us.

CONCLUSION

I don't think it's ever wrong to explore all viable alternatives before making a final decision that could be with us for decades, and I can't say in all honesty that I feel we have done that at this point. During the October 17th special meeting, there seemed to be a concern about the free flow of information. I believe that information, analysis and public discussion, are the whole point of democratic decision-making. It is not too late for us to choose a full decision-making process that will give us certainty that we have offered the right solution – or at the very least, the best decision we could under the circumstances.