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May 23, 2011

Via Hand Delivery

Honorable Mayor and City Council
City of San Jose
200 E. Santa Clara St.
San Jose, California 95113

Re: Assoc. of Retired San Jose Police Officers & Fire Fighters

Dear Mayor Reed and Members of the City Council:

Our firm represents the Association of Retired San Jose Police Officers and Firefighters (“the Association”). I understand that the Council is considering several measures relating to retiree benefits. While the Council has every right – indeed the obligation – to get its fiscal house in order, it cannot legally or morally do so by reducing benefits of those persons who have fully performed their end of the employment contracts they had with the City: Retirees.

Over time, the City has expressly agreed to provide employees, upon retirement, with certain ongoing benefits. California law (and common sense) recognizes that retirement benefits are part of an employee’s compensation package, and this compensation package cannot be reduced *once it has been earned*. After all, the City uses the compensation package (including pensions and other post-employment benefits) to attract and retain its employees. It is therefore fundamentally unfair – and unlawful – to diminish that package once an employee has provided years of labor to the City and retired.

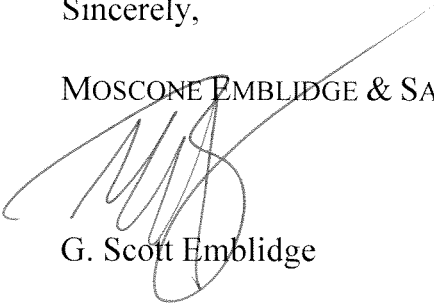
For example, the City has expressly promised that retirees’ pensions would not be dramatically eaten away by inflation because retirees would be entitled to cost-of-living adjustments to their pensions, capped at three percent. Apparently, some City policy makers believe this protection is too generous in the current financial climate. Regardless of whether reducing the cost-of-living adjustment makes sense for new employees, the three-percent cap is an important, vested element of the compensation package to which current retirees are entitled. A reduction in that three-percent cap as to current retirees would trigger litigation that the City would lose. The City would then owe the retirees the financial losses they suffered from the City’s unlawful reduction of the COLA plus interest, and

would be required to pay the retirees for the attorneys' fees the retirees incurred in righting this wrong.

The same principal applies to other retirement benefits. If the City promised employees that they would have certain retirement benefits, then those employees who retired while those benefits were in effect have a vested right in those benefits. We ask that the City recognize this fundamental difference between retirees on the one hand, and current and future employees on the other. If the City ignores this fundamental distinction, it is certain to face costly litigation in which the retirees will prevail.

Sincerely,

MOSCONE EMBLIDGE & SATER LLP



G. Scott Emblidge