

April 29, 2008

Bruce DeMers  
President, Association of Retired  
Police Officers and Firefighters  
PO Box 28041 Parkmoore Station  
San Jose, CA 95159

Re: Retiree Healthcare Benefits and Vested Rights

Dear Mr. DeMers:


You asked us to research whether the City of San Jose may make changes to City retiree healthcare benefits that impair the benefits or shift some of the cost of the benefits to retirees. In preparation of this letter, we researched applicable case and statutory law and reviewed the San Jose City Manager's Memorandum of March 4, 2008 (titled "Retiree Healthcare Developments") and the February 7, 2008 advice memorandum to the City prepared by Jones Day.

The City Manager's memorandum states that the City "will not be recommending changes to retiree healthcare benefits" at this time, based on the conclusion that these benefits are legally "vested" and therefore protected from impairment. The Jones Day advice letter provides the underlying analysis for this conclusion. Based on our research, this conclusion and analysis are correct: In general, retiree healthcare benefits, including the level of benefits, are Constitutionally protected, contractual rights that vest upon accepting employment in the same way pension benefits do. The vested status of San Jose retirees' healthcare benefits is bolstered by the fact that San Jose Municipal Code provisions establish retiree healthcare benefits as part of the City's overall retirement plans. Therefore, the City cannot take actions that impair the healthcare benefits enjoyed by existing retirees, and the Association would have a strong basis for challenging any such actions in court.

If you have questions or need any assistance in the future with respect to this issues, please do not hesitate to call.

Sincerely,

MOSCONE, EMBLIDGE & QUADRA, LLP

  
G. Scott Emblidge