

MEMORANDUM

TO: Honorable Mayor and Council of the City of San Jose
FROM: Board of Administration of the Police and Fire Department Retirement Plan
DATE: January 14, 2008
RE: Board Comments on the Proposed Ordinance Providing for an Alternative Allocation of Costs of Providing Medical Insurance Coverage for Calendar Year 2008

Pursuant to section 3.36.485 of the San Jose Municipal Code, the Board of Administration of the Police and Fire Department Retirement Plan hereby respectfully offers to the Council the following comments on the proposed ordinance providing for an alternative allocation of costs of providing medical insurance coverage for calendar year 2008. The Board received the proposed ordinance on January 8, 2008 and convened a special meeting on January 9, 2008 to consider it. On behalf of retirees and dependants, the Board of Administration wishes to express its gratitude to the Council for the speed with which it has addressed this issue and the manner in which it is addressing this issue. The Board agrees with the Council that the concepts underlying the pending ordinance provide an appropriate short-term solution to the issue.

Looking to the longer term, the Board of Administration wishes to acknowledge its understanding of its responsibility to interpret the provisions of the Municipal Code applicable to the Police and Fire Department Retirement Plan, including sections 3.36.1930 and 1940. The Board also wishes to affirm its commitment to fulfilling this obligation in a collaborative manner, respectful of the views of all interested stakeholders. As to the current issue, the Board at its December 2007 meeting was confronted with interpreting the term “lowest cost medical plan” as used in these sections and concluded that the Municipal Code provisions were ambiguous and not self-defining.

In furtherance of its commitment to engage in collaborative decision-making, the Board of Administration has reviewed the proposed ordinance, and has concluded that two changes need to be made to the ordinance. For ease of Council review of these comments, attached is a copy of the proposed ordinance as submitted to the Board.

First, the Board of Administration considers it appropriate to delete from the fourth “whereas” provision of the proposed ordinance the phrase “in order that retirees and survivors have sufficient time to plan for these changes”. It appears to the Board that the issue as to the meaning of the term “lowest cost medical plan” remains in flux. It is not clear now what the status of this issue will be in calendar year 2009. For example, there perhaps may be a legislative modification in 2008 of the current Municipal Code language. The Council will be maintaining a maximum degree of flexibility concerning this issue by deleting this language.

Second, the Board of Administration considers it appropriate to delete the introductory “notwithstanding” phrase from section 2 of the proposed ordinance. The current wording suggests an interpretation of sections 3.36.1930 and 1940 which the Board does not believe is appropriate. The Board agrees that a rule of priority is appropriate and so suggests the replacement of the current “notwithstanding” phrase in section 2 with the following language: “notwithstanding anything in the Municipal Code to the contrary,”.

The Board of Administration would like to remind the Council that the traditional open enrollment month for the next healthcare year is the month of November. Accordingly, the open enrollment period for calendar year 2009, absent change, will be November 2008. So the vexing issue of interpreting the term “lowest cost medical plan” for purposes of calendar year 2009 will soon be back before us. The Board wishes the Council to know that it will do all it can to help achieve a resolution of this issue.

As a final comment, the Board of Administration believes that some of the comments you may have previously heard about the financial implications of this issue may require clarification. First, the projected cost of the proposed ordinance will be borne by the retirement fund, not the general fund. Second, the investment earnings on the retirement fund in 2008 will offset to some degree the projected cost. Third, with respect to the overall issue of funding retiree medical benefits, the City is responsible for only half of the actuarially determined contribution rate calculated to fund these benefits.

The Board of Administration thanks the Council for its consideration of these comments.