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8 Attorneys for Defendants and
Cross Complainants City of San José
9 and Debra Figone, in her official capacity

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 SAN JOSÉ POLICE OFFICERS
ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSÉ, BOARD OF
16 ADMINISTRATION FOR POLICE AND
FIRE RETIREMENT PLAN OF CITY OF
17 SAN JOSÉ, and DOES 1-10 inclusive.,

18 Defendants.

19 AND RELATED CROSS-COMPLAINT
20 AND CONSOLIDATED ACTIONS.

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FILED
(ENDORSED)
FEB - 7 2013
BY DAVID H. YAMAGAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara DEPUTY
L. Barajas

Case No. 1-12-CV-225926

[Consolidated with Case Nos. 112CV225928,
112CV226570, 112CV226574, 112CV227864]

**DEFENDANTS' AND CROSS-
COMPLAINANT'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION FOR SUMMARY
ADJUDICATION OF ISSUES**

VOLUME 3

EXHIBITS E TO P

Date: April 23, 2013
Time: 9:00 a.m.
Dept.: 8

Complaint Filed: June 6, 2012
Trial Date: None Set

1 Defendant City of San José hereby requests that the Court take judicial notice pursuant to
2 California Evidence Code Sections 450 *et seq.*, and in accordance with California Rules of Court
3 3.1113(l), 3.1306(c), and 3.1350(c)(5) of the following material, true and correct copies of which
4 are attached hereto:

5 **VOLUME 1**

6 Exh. A San José City Charter: In effect May, 1965, As Amended through
7 November 2012.

8 Exh. B Full Text of Measure B: Article XV-A Retirement: Public Employee
9 Pension Plan Amendments – To Ensure Fair and Sustainable Retirement
10 Benefits While Preserving Essential City Services (As Placed on the Ballot
11 Pursuant to City Council Resolution No. 76158).

12 Exh. C San José Municipal Code, Chapter 3.28, “1975 Federated Employees
13 Retirement Plan,” Sections 3.28.010 to 3.28.2770 [Current to June 30,
14 2012].

15 **VOLUME 2**

16 Exh. D San José Municipal Code, Chapter 3.36 “1961 Police and Fire Department
17 Retirement Plan,” Sections 3.36.010 to 3.36.3760 [Current to June 30,
18 2012].

19 **VOLUME 3**

20 Exh. E California Assembly Concurrent Resolution No. 17, adopted in Assembly
21 January 18, 1961 and in Senate January 18, 1961, approving amendment to
22 the charter of City of San José to include Section 78b (“Discretionary
23 Powers of Council Respecting Retirement”) of Article X, filed with the
24 Secretary of State on January 24, 1961.

25 Exh. F Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted
26 to the Electors of the City of San José, April 12, 1960, including
27 “Argument in Favor of Proposition A.”

28 Exh. G California Assembly Concurrent Resolution No. 104, adopted in Assembly
April 26, 1965 and in Senate April 28, 1965, approving Charter of the City
of San José, voted for and ratified by the qualified voters of said city at a
general municipal election held therein on the 13th day of April 1965, filed
with the Secretary of State on May 4, 1965 (Containing Full Text of 1965
Charter).

- 1 Exh. H Memorandum from Director of Personnel Fran Galloni to Honorable Mayor
and City Council, dated May 6, 1986. "Retirement Benefit Increase."
- 2
- 3 Exh. I Memorandum from City Attorney Joan Gallo to Mayor and City Council,
dated March 21, 1988, "Benefit Increases – Federated Retirement System."
- 4 Exh. J Memorandum from Frances Galloni to Mayor and City Council, dated
February 24, 1988, "Administration's Report on Federated Retirement
5 Benefit Increases."
- 6 Exh. K Memorandum to Mayor and City Council from Federated Board of
Administration, dated February 24, 1988, "Federated Retirement Benefit
7 Increases."
- 8 Exh. L City of San José Resolution No. 75635, "A Resolution of the Council of
the City of San José Amending and Restating Resolution No. 72859
9 Regarding the Supplemental Retiree Benefit Reserve of the Federated City
Employees Retirement Fund, To Suspend the Distribution of Funds from
10 the Reserve During Fiscal Year 2010-2011."
- 11 Exh. M City of San José Resolution No. 76204, "A Resolution of the Council of
the City of San José Amending and Restating Resolution No. 75635
12 Regarding the Supplemental Retiree Benefit Reserve of the Federated City
Employees Retirement Fund, To Suspend the Distribution of Funds from
13 the Reserve Through Fiscal Year 2012-2013."
- 14 Exh. N City of San José Resolution No. 70822, "A Resolution of the Council of
the City of San José Approving the Methodology for the Distribution of
15 Moneys in the Supplemental Retiree Benefit Reserve of the Police and Fire
Department Retirement Fund," adopted January 29, 2002."
- 16
- 17 Exh. O Letter from Coats Herfuth & England to Retirement Boards Benefits
Administrator Edward F. Overton, dated November 22, 1985, "SB650
18 Study."
- 19 Exh. P Memorandum from Federated Board to Honorable Mayor and City Council,
dated April 25, 1986, "Supplemental Retiree Benefits Reserve".

20 Exhibits A, B, E, and G are properly subject to judicial notice pursuant to California
21 Evidence Code Section 451(a) (providing that courts may take judicial notice of "any charter
22 described in Section 3, 4, or 5 of Article XI of the California Constitution").

23 Exhibits C, D, L, M, and N are properly subject to judicial notice under California
24 Evidence Code sections 453 and 452(b) (providing that courts may take judicial notice of
25 "legislative enactments issued by or under the authority of the United States or any public entity in
26 the United States"). *See Trinity Park, L.P. v. City of Sunnyvale*, 193 Cal. App. 4th 1014, 1027
27 (2011) ("The Evidence Code also expressly provides for judicial notice of a public entity's
28 legislative enactments and official acts. Thus, we may take notice of local ordinances and the

1 official resolutions, reports, and other official acts of a city.”).

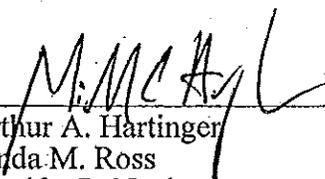
2 Exhibits F, H, I, J, K, O and P are properly subject to judicial notice as legislative history
3 and governmental acts and records. Cal. Evid. Code §452(b), (c), & (h); *Kaufman & Broad*
4 *Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 31 (2005).

5 For these reasons, the City respectfully requests that the Court take judicial notice of the
6 above-listed documents.

7 DATED: February 7, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

9 By: _____

10 
11 Arthur A. Hartinger
12 Linda M. Ross
13 Jennifer L. Nock
14 Michael C. Hughes
15 Attorneys for Defendants and Cross-Complainant
16 City of San José and Debra Figone, in her official
17 capacity

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2046184.1

Exhibit E

STATE OF CALIFORNIA



DEPARTMENT OF STATE

The foregoing instrument is
a correct copy of the original
on file in this office.

Attest:

DENNIS HAWKINS

City Clerk

City of San Jose

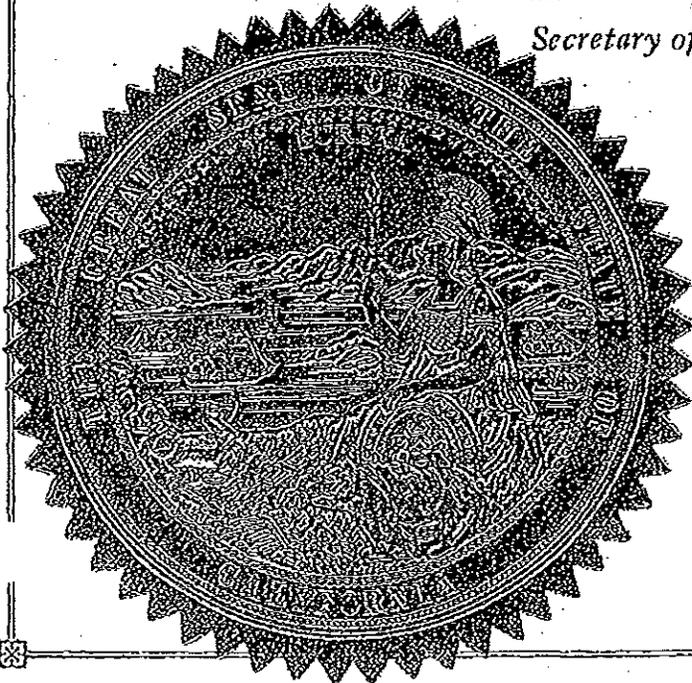
County of Santa Clara, State of California
By [Signature], Deputy
Date 1/21/61

To all whom these presents shall come, Greetings:

I, FRANK M. JORDAN, Secretary of State of the State of California, hereby
certify:

That the annexed transcript has been compared with the RECORD on file in
my office, of which it purports to be a copy, and that the same is full, true and
correct.

In testimony whereof, I, FRANK M. JORDAN,
Secretary of State, have hereunto caused the Great
Seal of the State of California to be
affixed and my name subscribed, at
the City of Sacramento, in the State
of California,
this JAN 24 1961



[Signature]
Secretary of State

By [Signature]
Assistant Secretary of State

SJR.JN000376

Assembly Concurrent Resolution No. 17

Adopted in Assembly January 18, 1961

Arthur A. Ohnimus
Chief Clerk of the Assembly

Adopted in Senate January 18, 1961

J. A. Beek
Secretary of the Senate

This resolution was received by the Secretary of State this

24th day of January, 1961, at 11 o'clock A.M.

Walter G. Stutler
Assistant Secretary of State

CHAPTER 20

Assembly Concurrent Resolution No. 17—Approving a certain amendment to the charter of the City of San Jose, a municipal corporation, in the County of Santa Clara, State of California, voted for and ratified by the electors of said city at a general municipal election held therein on the 12th day of April, 1960.

WHEREAS, Proceedings have been taken and had for the proposal, adoption and ratification of a certain amendment, hereinafter set forth, to the charter of the City of San Jose, a municipal corporation, in the County of Santa Clara, State of California, as set out in the certificate of the mayor and of the city clerk of said city, as follows, to wit:

CERTIFICATE OF AMENDMENT TO THE CHARTER OF THE CITY OF SAN JOSE, CALIFORNIA

State of California }
County of Santa Clara } ss.
City of San Jose }

We, the undersigned, Paul Moore, Mayor of the City of San Jose, State of California, and Francis L. Greiner, City Clerk of said City, do hereby certify and declare as follows:

That the City of San Jose, a municipal corporation, in the County of Santa Clara, State of California, is now, and was at all times herein mentioned: (a) a city containing a population of more than two hundred four thousand inhabitants as ascertained by the last preceding census taken under the authority of the Congress of the United States; (b) a city organized, existing and acting under a freeholders' charter, adopted under the provisions of Section 8 of Article XI of the Constitution of the State of California, which charter was heretofore duly ratified by a majority of the qualified electors of said City at a municipal election held for that purpose on the 19th day of April, 1915, and approved by the Legislature of the State of California by concurrent resolution filed with the Secretary of State on the 12th day of May, 1915 (Senate Concurrent Resolution No. 21, Chapter 49, Statutes 1915, p. 1869).

That in accordance with the provisions of Section 8 of Article XI of the Constitution of the State of California, the Council of the City of San Jose, being the legislative body of said City, on its own motion, duly and regularly proposed and submitted to the qualified electors of said City of San Jose

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FRANK M.
By
Assist

- 4 -

a certain proposal for the amendment of the Charter of said City to be voted upon by the said qualified electors at a certain general municipal election held in said City on the twelfth day of April, 1960, all as required by law, which said proposal was designated as "Charter Amendment Proposition A".

That the said proposed amendment was published and advertised in accordance with Section 8 of Article XI of the Constitution of the State of California, on the twenty-sixth day of February, 1960 in the "San Jose News", a daily newspaper of general circulation published, printed and circulated in said City, and being the official newspaper of said City for said purpose, and in each edition thereof during the day of publication.

That copies of said proposed charter amendment were printed in convenient pamphlet form, in type of not less than ten-point, and were mailed to each of the qualified electors of said City in accordance with the Constitution of the State of California; and an advertisement that copies thereof could be had upon application therefor at the office of the City Clerk of the City of San Jose was published in said "San Jose News", being a daily newspaper of general circulation published, printed and circulated in said City, on the first day of March, 1960, and on each day thereafter to and including the eleventh day of April, 1960, all as required by Section 8 of Article XI of the Constitution of the State of California; that copies of said pamphlet containing said proposed charter amendment could be had upon application therefor at the office of the City Clerk of said City on and after the first day of March, 1960, to and including the twelfth day of April, 1960, the date fixed for said election.

That such proposed charter amendment was submitted to the electors of said City for adoption and ratification at a general municipal election duly and regularly held in said City of San Jose on the twelfth day of April, 1960, which said date was not less than forty, nor more than sixty, days after the completion of the advertising in the above-mentioned official paper of the proposed charter amendment aforesaid.

That in accordance with the law in such cases made and provided, the Council of the City of San Jose, on the nineteenth day of May, 1960, at a meeting duly and regularly held at its usual place of meeting, duly canvassed the returns of said election as certified by the election boards, and duly found, determined and declared that said proposed amendment to the Charter of the City of San Jose, hereinafter set forth, was ratified and adopted by a majority of the electors of said City voting thereon.

That the said amendment to the Charter of the City of San Jose, so adopted and ratified by the qualified electors of said

SJRJN000379

City, and which shall be submitted to the Legislature for approval or rejection, are in words and figures as follows, to wit:

CHARTER AMENDMENT PROPOSITION A

That Article X of the Charter of the City of San Jose be amended by adopting and adding thereto a new section, said new section to be numbered and to read as follows:

DISCRETIONARY POWERS OF COUNCIL
RESPECTING RETIREMENT

78b. Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire departments of the City of San Jose, for the purpose of providing benefits for members of any such plan or plans in excess of those benefits authorized or required by the provisions of said Section 78a, including service retirement allowances, disability retirement allowances and death, survivorship and other such benefits payable to deceased members' surviving spouses, dependents or estates, all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:

(1) The Council shall not decrease any of said benefits below those which Section 78a makes mandatory, nor otherwise deprive any member of any such plan of any rights to which he would be entitled under Section 78a.

(2) Each and every such plan, as adopted or amended, and its retirement fund, shall be actuarially sound. Provision shall be made for the payment of monthly contributions into a retirement fund by both members of the plan and by the City of San Jose. The amount of monthly contribution required of members and of the City, respectively, shall be fixed, and from time to time changed, by the administering board of the plan, so that the same will be sufficient to make or keep the plan and fund at all times actuarially sound. Monthly contributions required of members, as compared to monthly contributions required of the City, shall at all times be in the ratio of three to eight provided and excepting, however, that if provision should be made for the payment of any benefits on account of service rendered by members prior to the effective

date of the ordinance which provides such prior service benefits, then in that event the Council, subject to the provisions of the above sub-paragraph (1), may in its discretion provide for the payment by the City of San Jose of all of such amounts as must be contributed to the retirement fund on account of such prior service benefits to render the plan and fund actuarially sound to the extent that such amounts are not provided by members' accumulated prior service contributions, or may require contributions for such purpose by both City and members provided that contributions required of members for such purpose shall never exceed \$3 for each \$8 contributed for such purpose by the City.

(3) Anything hereinabove in this section or in Section 78a to the contrary notwithstanding, the Council in its discretion may at any time or times, or from time to time, restrict or limit membership in all or any of said plans, and may restrict or limit the right to or eligibility for all or any benefits provided for in all or any of such plans, to members of the police or fire departments of the City of San Jose other than and excepting all or any of the following persons, to wit: (a) Persons in City service principally for training or educational purposes, whether or not they receive any compensation; (b) auxiliary or volunteer policemen or firemen, whether or not they receive any compensation; (c) persons serving or employed on a part-time basis, or on a per-diem, per-hour or any other basis other than a monthly basis; and (d) officers or employees whose principal duties are those of a telephone operator, clerk, stenographer, secretary, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active law enforcement or active fire fighting and prevention service even though such an officer or employee is subject to occasional call or is occasionally called upon to perform duties within the scope of active law enforcement service or active fire fighting or prevention service, excepting persons employed and qualifying as patrolmen or equal or higher rank in the police department irrespective of the duties to which they are assigned, or persons employed and qualifying as firemen, firefighters, hosemen or equal or higher rank in the fire department irrespective of the duties to which they are assigned.

(4) Nothing herein contained shall be deemed to deprive any person who is a member of any such plan immediately prior to the effective date of this section, or who has been retired prior to the effective date of this section pursuant to the provisions of any such plan, of any rights or benefits to which he has become entitled prior to the effective date of this section.

We further certify that we have compared the text of the foregoing amendment with the original proposal submitting the same to the electors of said City and find that the foregoing is a full, true, correct, complete and exact copy thereof. That as to all of said amendment, this certificate shall be taken as a full and complete certification of the regularity of all proceedings had and done in connection therewith.

In witness whereof, we have hereunto set our hands and have caused the corporate seal of the City of San Jose to be affixed hereto this 27th day of December, 1960.

(SEAL)

PAUL MOORE
Mayor of the City of San Jose
FRANCIS L. GREINER
City Clerk of the City of San Jose

and

WHEREAS, The said proposed amendment as ratified as hereinbefore set forth has been and is now duly presented and submitted to the Legislature of the State of California for approval or rejection as a whole without the power of alteration in accordance with Section 8 of Article XI of the Constitution of the State of California; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate concurring, a majority of all of the members elected to each house voting therefor and concurring therein, That said amendment to the charter of the City of San Jose as proposed to and adopted and ratified by the electors of said city, and as hereinbefore fully set forth, be and the same is hereby approved as a whole, without amendment or alteration, for and as an amendment to and as a part of the charter of the said City of San Jose.

**ENDORSED
FILED**

In the office of the Secretary of State
of the State of California

JAN 24 1961

FRANK M. JORDAN, Secretary of State
By **WALTER C. STUTLER**
Assistant Secretary of State

— 8 —

Ralph M. Brown

Speaker of the Assembly

Hugh M. Burns

*President of the Senate
pro Tempore*

Attest:

Frank M. Jordan

Secretary of State

By **Walter C. Stutler**
Assistant Secretary of State

SJRJN000383

Exhibit F

FULL TEXT

of

~~PROPOSED~~ AMENDMENT

TO CHARTER OF THE CITY OF SAN JOSE

~~To Be~~ Submitted to the Electors of the City of San Jose

APRIL 12, 1960

CHARTER AMENDMENT — PROPOSITION A

That Article X of the Charter of the City of San Jose be amended by adopting and adding thereto a new section, said new section to be numbered and to read as follows:

DISCRETIONARY POWERS OF COUNCIL
RESPECTING RETIREMENT

78b. Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire departments of the City of San Jose, for the purpose of providing benefits for members of any such plan or plans in excess of those benefits authorized or required by the provisions of said Section 78a, including service retirement allowances, disability retirement allowances and death, survivorship and other such benefits payable to deceased members, surviving spouses, dependents or estates, all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper; provided, however, that:

(1) The Council shall not decrease any of said benefits below those which Section 78a makes mandatory, nor otherwise deprive any member of any such plan of any rights to which he would be entitled under Section 78a.

(2) Each and every such plan, as adopted or amended, and its retirement fund, shall be actuarially sound. Provision shall be made for the payment of monthly contributions into a retirement fund by both members of the plan.

The foregoing instrument is
a correct copy of the original
on file in this office.

Attest:

DENNIS HAWKINS

City Clerk

City of San Jose

County of Santa Clara, State of California

By [Signature] Deputy

DMS 9/18/13

SJRJN000384

and by the City of San Jose. The amount of monthly contribution required of members and of the City, respectively, shall be fixed, and from time to time changed, by the administering board of the plan, so that the same will be sufficient to make or keep the plan and fund at all times actuarially sound. Monthly contributions required of members, as compared to monthly contributions required of the City, shall at all times be in the ratio of three to eight provided and excepting, however, that if provision should be made for the payment of any benefits on account of service rendered by members prior to the effective date of the ordinance which provides such prior service benefits, then in that event the Council, subject to the provisions of the above sub-paragraph (1), may in its discretion provide for the payment by the City of San Jose of all of such amounts as must be contributed to the retirement fund on account of such prior service benefits to render the plan and fund actuarially sound to the extent that such amounts are not provided by members' accumulated prior service contributions, or may require contributions for such purpose by both City and members provided that contributions required of members for such purpose shall never exceed \$3 for each \$8 contributed for such purpose by the City.

(3) Anything hereinabove in this section or in Section 78a to the contrary notwithstanding, the Council in its discretion may at any time or times, or from time to time, restrict or limit membership in all or any of said plans, and may restrict or limit the right to or eligibility for all or any benefits provided for in all or any of such plans, to members of the police or fire departments of the City of San Jose other than and excepting all or any of the following persons, to wit: (a) Persons in City service principally for training or educational purposes, whether or not they receive any compensation; (b) auxiliary or volunteer policemen or firemen, whether or not they receive any compensation; (c) persons serving or employed on a part-time basis, or on a per-diem, per-hour or any other basis other than a monthly basis; and (d) officers or employees whose principal duties are those of a telephone operator, clerk, stenographer, secretary, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active law enforcement or active fire fighting and prevention service even though such an officer or employee is subject to occasional call or is occasionally called upon to perform duties within the scope of active law enforcement service or active fire fighting or prevention service, excepting persons employed and qualifying as patrolmen or equal or higher rank in the police department irrespective of the duties to which they are assigned, or persons employed and qualifying as firemen, firefighters, hosemen or equal or higher rank in the fire department irrespective of the duties to which they are assigned.

(4) Nothing herein contained shall be deemed to deprive any person who is a member of any such plan immediately prior to the effective date of this section, or who has been retired prior to the effective date of this section pursuant to the provisions of any such plan, of any rights or benefits to which he has become entitled prior to the effective date of this section.

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ARGUMENT IN FAVOR OF PROPOSITION A

YOUR POLICEMEN AND FIREMEN NEED PROPOSITION A! Proposition A was placed on the ballot by the City Council at the request of the members of your police and fire departments. The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for your policemen's and firemen's families. San Jose Policemen and Firemen do not have Social Security or any other survivor benefits of any kind. Almost all other cities provide survivor benefits.

SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! In order to allow the City Council to adopt reasonable survivor benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council.

-NO SPECIFIC PLAN IS PROPOSED IN THIS AMENDMENT! One reason is that the City Council should have broad powers to investigate and decide on matters just like this. A second reason is that the policemen and firemen have confidence that the City Council will enact fair and reasonable provisions.

Two years ago, a very long, detailed plan was presented and defeated. Opponents of this plan argued that this matter should be referred to the City Council for action and not included as mandatory provisions of the City Charter. This amendment will do just that. This amendment will allow the City Council to have legal authority to act on survivor benefits by ordinance and thereby provide protection for widows and orphans.

THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them.

THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.

The foregoing argument was submitted by Ray Blackmore, Chief of Police, SFPD; Barton Collins, Chief of Detectives, SFPD; Lawrence Campbell, Battalion Chief, SFPD; and Leonard Marks, Captain, SFPD.

No argument against PROPOSITION A was submitted.

FRANCIS L. GREINER
City Clerk

SJRJN000386

Exhibit G

Assembly Concurrent Resolution No. 104

Adopted in Assembly April 26, 1965

James A. Driscoll
Chief Clerk of the Assembly

Adopted in Senate April 28, 1965

J. A. Beck
Secretary of the Senate

This resolution was received by the Secretary of State this

4th day of May, 1965, at 10:00 o'clock A.M.

Walter C. Studden
Assistant Secretary of State

The foregoing instrument is
a correct copy of the original
on file in this office.

Attest:

TONI J. TABER

Acting City Clerk

Acting City Clerk of the City of San Jose
County of Santa Clara, State of California

By [Signature] 2/4/13, Deputy

STATE OF CALIFORNIA



DEPARTMENT OF STATE

To all whom these presents shall come, Greetings:

I, FRANK M. JORDAN, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the RECORD on file in my office, of which it purports to be a copy, and that the same is full, true and correct.

In testimony whereof, I, FRANK M. JORDAN, Secretary of State, have hereunto caused the Great Seal of the State of California to be affixed and my name subscribed, at the City of Sacramento, in the State of California, this MAY 4 - 1965



Frank M. Jordan
Secretary of State

By *Walter C. Stutcher*
Assistant Secretary of State

SJRJN000388

CHAPTER 26

Assembly Concurrent Resolution No. 104—Approving the Charter of the City of San Jose, a municipal corporation of the State of California, voted for and ratified by the qualified voters of said city at a general municipal election held therein on the 13th day of April, 1965.

WHEREAS, The City of San Jose, in the County of Santa Clara, State of California, now is, and was at all times herein referred to, a city containing a population of more than 204,000 inhabitants, as ascertained by the last preceding census, taken under the authority of the Congress of the United States; and

WHEREAS, Said City of San Jose at all times mentioned herein was and now is organized and existing under a freeholders' charter, adopted under and in pursuance of the provisions of Section 8 of Article XI of the Constitution of the State of California, which charter was duly adopted and ratified by a majority of the qualified electors of said city at a special municipal election held for that purpose on the 19th day of April, 1915, and approved by the Legislature of the State of California by concurrent resolution filed with the Secretary of State on the 12th day of May, 1915 (Senate Concurrent Resolution No. 21, Chapter 49, Statutes 1915, page 1869; and

WHEREAS, Proceedings have been taken and had for the proposal, adoption and ratification of a new charter for said City of San Jose as hereinafter set out in the certificate of the Mayor and City Clerk of the City of San Jose; and

WHEREAS, The Mayor and City Clerk of said City of San Jose have certified as follows:

State of California, }
County of Santa Clara, } ss.
City of San Jose

We, the undersigned, Joseph L. Pace, Mayor of the City of San Jose, State of California, and Francis L. Greiner, City Clerk of said city, do hereby certify and declare as follows:

That the City of San Jose, in the County of Santa Clara, State of California, now is and was at all times herein referred to a city containing a population of more than two hundred four thousand inhabitants as ascertained by the last preceding

census taken under the authority of the Congress of the United States.

That said City of San Jose at all times herein mentioned was and now is organized and existing under a freeholders' charter adopted under and in accordance with the provisions of Section eight of Article eleven of the Constitution of the State of California, which charter was duly adopted and ratified by the majority of the qualified electors of said city at a special municipal election held for that purpose on the nineteenth day of April, 1915, and approved by the legislature of the State of California by concurrent resolution filed with the Secretary of State on the 12th day of May, 1915 (Senate Concurrent Resolution No. 21, Chapter 49, Statutes 1915, page 1869).

That pursuant to the provisions of Section eight of Article eleven of the Constitution of the State of California, the Council of the City of San Jose, said Council being the legislative body of said city, on its own motion, duly and regularly caused to be framed a proposed new charter for the government of the City of San Jose; that said proposed charter, so framed, was filed with said Council of the City of San Jose and in the office of the City Clerk of said City on the fifteenth day of February, 1965. That on said fifteenth day of February, 1965, said Council, on its own motion, did order and direct, by resolution, that the proposal for the adoption of said proposed charter be submitted to the electors of said city, for their ratification or rejection, at the general municipal election to be held in said city on Tuesday, the thirteenth day of April, 1965. That said resolution of said Council further ordered and directed the City Clerk of the City of San Jose to publish said proposed new charter in the San Jose News, a daily newspaper of general circulation in the City of San Jose, printed and published in said city, said newspaper being the official newspaper of said city for such purpose, and in all editions of said newspaper issued during the day of publication; also to print said proposed charter in convenient pamphlet form and in type of not less than 10-point and to cause copies thereof to be mailed to each of the qualified electors of the City of San Jose; also to publish in said newspaper, until the day fixed for the election upon said proposed charter, a notice that copies thereof could be had upon application therefor; and also to complete the above mentioned advertising in the above mentioned newspaper not less than forty (40) nor more than sixty (60) days prior to the date fixed for said election, all as required by Section 8 of Article 11 of the Constitution of the State of California.

That on the second day of March, 1965, within fifteen days after the filing of said proposed charter in the office of said City Clerk and with said Council of the City of San Jose, pur-

suant to said order and pursuant to the provisions of Section eight of Article eleven of the Constitution of the State of California, said proposed charter was published in the San Jose News, a daily newspaper of general circulation in the City of San Jose, printed and published in said city, said newspaper being the official newspaper of said city for said purpose, and in all editions thereof issued during said day of publication.

That, pursuant to said order and pursuant to the provisions of Section eight of Article eleven of the Constitution of the State of California, copies of said proposed charter were printed in convenient pamphlet form, in type of not less than 10-point, and were mailed to each of the qualified electors of said city; that, on the second day of March, 1965, and on each day thereafter until the day fixed for the election on said charter, an advertisement that copies of said charter could be had upon application therefor at the office of the City Clerk of said city was published in said San Jose News, a daily newspaper of general circulation in said city, printed and published in said city, said newspaper being the official newspaper of said city for said purpose; that copies of said pamphlet containing said proposed charter were available, and could be had upon application therefor, at the office of said City Clerk on and after the second day of March, 1965 to and including the thirteenth day of April, 1965, the date fixed for the election on said charter.

That the date fixed for submission of said charter to the electors of the City of San Jose, to wit: the thirteenth day of April, 1965, was not less than forty days, nor more than sixty days, after the completion of the advertising in the above mentioned newspaper as aforesaid.

That said election on said proposed charter was duly and regularly held and conducted at and in the time, form and manner required by the Constitution of the State of California, the Charter of the City of San Jose and all applicable election laws, on said thirteenth day of April, 1965.

That at said election so held on Tuesday, the thirteenth day of April, 1965, a majority of the qualified electors voting on the proposal for the adoption of said proposed charter voted in favor of and did ratify said proposed charter; and that the Council of the City of San Jose, after the returns of said election were duly canvassed as required by law, did find, determine and declare that a majority of the qualified voters voting on the proposal for the adoption of said charter voted in favor of the adoption of and ratified said proposed charter.

That said charter so adopted and ratified by the majority of the qualified electors of the City of San Jose voting thereon at

said general municipal election is in words and figures as follows, to wit:

CHARTER OF THE CITY OF SAN JOSE

ARTICLE I
Incorporation and Succession

Section 100. Name. The City of San Jose, in the County of Santa Clara, State of California, shall continue to be a municipal corporation under its present name of "City of San Jose."

Section 101. Boundaries. The boundaries of the City of San Jose shall continue as now established until changed in the manner authorized by law.

Section 102. Succession, Rights, Powers and Liabilities. The City of San Jose shall remain vested with and shall continue to own, have, possess, control and enjoy all property, rights of property and rights of action of every nature and description (including but not limited to all pueblo lands and pueblo rights) owned, had, possessed, controlled or enjoyed by it at the time this Charter takes effect, and is hereby declared to be the successor of the same. It shall be subject to all debts, obligations and liabilities which exist against the municipality at the time this Charter takes effect.

ARTICLE II
Powers of the City

Section 200. General Powers. The City of San Jose shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter and in the Constitution of the State of California. The City shall also have all other rights, powers and privileges which are not prohibited by, or in conflict with, the State Constitution or the Charter and which it would be proper to specifically set forth in this Charter even though such are not herein set forth. It shall also have the power to exercise any and all rights, powers and privileges heretofore or hereafter established, granted or prescribed by any law of the State, by this Charter or by other lawful authority, or which a municipal corporation might or could exercise under the Constitution and laws of the State of California.

The enumeration or specification in this Charter of any particular power shall not be held to be exclusive of or any limitation upon the generality of the foregoing provisions.

Section 201. Special Powers. The City shall have the following special power: To acquire any property outside the

City limits by eminent domain, or otherwise, for municipal purposes.

Section 202. Procedures. The City shall have the power to act and may act pursuant to any procedure established by any law of the State unless a different procedure is established by this Charter or by ordinance.

Section 203. Continuity of Government in Event of Disaster. In order to provide for continuity of City government during any emergency resulting from war, enemy-caused calamity or other disasters of whatever nature, and in order to otherwise handle any such emergency, the Council is hereby empowered, anything elsewhere in this Charter to the contrary notwithstanding, to:

(a) Provide for the appointment or designation of persons to exercise the powers and discharge the duties of any City offices, whether elective or appointive, during any such emergency, in the event the regularly elected or appointed incumbents of said offices are killed, missing, disabled or for some other cause unable or unavailable to perform the functions and duties of their respective offices, until said incumbent officers perform or resume performance of their functions and duties or until, where an actual vacancy exists, a successor is elected or appointed, pursuant to other provisions of this Charter, to fill such vacancy;

(b) Provide for the preservation of essential records needed to protect the rights of individuals and to conduct emergency operations;

(c) Provide for the establishment of emergency locations for City government so that the City could continue to operate;

(d) Provide for the formulation of plans to use all personnel, facilities and equipment of government for emergency action;

(e) Do such other things as may be authorized by the laws of the State of California for such purposes.

ARTICLE III Form of Government

Section 300. Form of Government. The municipal government established by this Charter shall be known as the "Council-Manager" form of government.

ARTICLE IV The Council

Section 400. Powers Vested in Council. All powers of the City and the determination of all matters of policy shall be

vested in the Council, subject to the provisions of this Charter and the Constitution of the State of California.

Section 401. Composition of Council. The Council shall consist of seven (7) members, one of whom shall be the Mayor, each of whom shall have the right to vote on all matters coming before the Council. Except as otherwise provided elsewhere in this Charter, the members of the Council, including the member who is also to be Mayor, shall be elected, as hereinafter provided, at General Municipal Elections from the City at large. The office of each member of the Council, including the office of the member who is to be Mayor, is and shall be deemed to be a separate office to be separately filled. No person shall be a candidate for more than one such office; and, except as otherwise provided elsewhere in this Charter, no incumbent member of the Council shall be a candidate for any Council seat other than the one which he holds. The person receiving the majority of the votes cast for each designated office shall be declared elected; and, except as may be otherwise provided elsewhere in this Charter, no person shall be deemed or declared elected to any such designated office unless he receives a majority of the votes cast for such office.

Section 402. Terms of Office. Except as otherwise provided elsewhere in this Charter, each member of the Council, including the Mayor, elected to such office at a general municipal election held after the effective date of this Charter shall be elected for a term of four (4) years from and after the first day of July next following his election.

The three (3) members of the Council in office at the time this Charter takes effect whose terms under the preceding Charter would expire in 1967 shall continue to hold office as members of the Council until the end of the 30th day of June, 1967. The four (4) members of the Council in office at the time this Charter takes effect whose terms under the preceding Charter would expire in 1969 shall continue to hold office as members of the Council until the end of the 30th day of June, 1969. The person holding the office of Mayor at the time this Charter takes effect shall continue to serve as Mayor until the end of the 30th day of June, 1966; and, at the first regular meeting of the Council in July, 1966, the Council shall elect one of its members to serve as Mayor until the end of the 30th day of June, 1967.

Section 403. Elections; Designation of Seats. The first election at which a Mayor and members of the Council shall be elected shall be the general municipal election held in the year 1967. At such election persons shall be elected to fill the seats of those three (3) members of the Council whose terms expire at the end of the 30th day of June, 1967, and to fill such other vacancies in the Council, if any, as are required by

other provisions of this Charter to be filled at such election. At the general municipal election held in 1969 persons shall be elected to fill the seats of those four (4) members of the Council whose terms expire at the end of the 30th day of June, 1969, and to fill such vacancies in the Council, if any, as are required by other provisions of this Charter to be filled at such election. Thereafter, at each general municipal election, successors shall be elected to fill the seats of those members of the Council, including the member of the Council who is also Mayor, whose terms expire at the end of the 30th day of June in the year of such election.

For purposes of said elections and prior to the holding of the general municipal election in 1967, the City Clerk shall designate each Council office by an appropriate descriptive designation, as follows: One of the seats of those members of the Council whose terms expire at the end of the 30th day of June, 1967 shall be designated as "Mayor"; the other six (6) seats shall be designated as "Councilman, Seat No. 2," "Councilman, Seat No. 3," "Councilman, Seat No. 4," "Councilman, Seat No. 5," "Councilman, Seat No. 6," and "Councilman, Seat No. 7," respectively. The designation so given to each such office shall thereafter be used in all elections, nomination papers, certificates of election and all other election papers pertaining or referring to such office, and to designate incumbency of such office.

The person elected at any election to the office designated "Mayor" shall be deemed elected both as Mayor and as a member of the Council.

Section 404. Eligibility. No person shall be eligible to be a candidate for or to take or hold office as Mayor or as a member of the Council unless he is a resident and qualified registered elector of the City of San Jose.

Section 405. Judge of Qualifications. The Council shall be the judge of the election and qualification of its members, including the Mayor, and of any other elective officer, and of the grounds for forfeiture or loss of their respective offices, and for that purpose shall have the power to subpoena witnesses, administer oaths and require the production of evidence. A member, or the Mayor, or the holder of any other elective office, charged with conduct constituting grounds for forfeiture or loss of his office shall be given, if he so demands, an opportunity to be heard in his own defense at a public hearing after reasonable notice to such member.

Section 406. Holding Other Office. Except as authorized by this Charter, no member of the Council shall hold any other City office or City employment, other than Mayor, during the term for which he was elected to the Council; provided and excepting, however, that a member of the Council may become

a member of any advisory, administrative or governing body of any special purpose district, entity, organization or committee when such is authorized by State law or where the offices are not incompatible.

Section 407. Compensation. From and after July 1, 1967, the Mayor shall receive, as compensation for his services as Mayor and as a member of the Council for each calendar month during which he is both Mayor and a member of the Council, the sum of Six Hundred Dollars (\$600) without any deduction because of his failure to attend any Council meetings.

From and after July 1, 1967, each member of the Council, except the Mayor, shall receive, as compensation for each calendar month during which he is a member of said Council, the sum of Four Hundred Dollars (\$400), less the sum of Fifty Dollars (\$50) per each regular meeting of the Council, other than regular adjourned meetings, and other than meetings during which he is away on authorized City business, which he fails to attend in each such calendar month.

Until July 1, 1967, each member of the Council including the Mayor shall receive as compensation the sum of Five Dollars (\$5) for each Council meeting attended, provided that the total compensation of each member of the Council shall not exceed Twenty-five Dollars in any one month. Also, until July 1, 1967, the Mayor shall receive no compensation other than such compensation as he may be entitled to as a member of the Council.

Section 408. Reimbursement. The members of the Council and the Mayor shall receive reimbursement, if and to the extent such is authorized by the Council, for expenses incurred in the performance of their duties or functions of office.

Section 409. When Office Becomes Vacant. The office of a member of the Council or of the Mayor becomes vacant on the happening of any of the following events before the expiration of such officer's term:

- (a) The death of the incumbent;
- (b) Insanity of the incumbent, when determined by a final judgment or final order of a court of competent jurisdiction;
- (c) Resignation of the incumbent;
- (d) The incumbent ceases to be a registered and qualified elector of the City of San Jose;
- (e) Removal of the incumbent from office;
- (f) Absence of the incumbent from the State of California for more than sixty (60) days, unless either upon business of the City or with the consent of the Council. In the case of illness or other urgent necessity, and upon a proper showing thereof, the time limited for absence from the State shall be extended by the Council;

(g) The incumbent ceases to discharge the duties of his office for a period of three (3) consecutive months except when prevented by sickness or when absent from the State with permission required by this Charter;

(h) The incumbent being convicted of a felony or of any offense involving a violation of his official duties;

(i) The refusal or neglect of the incumbent to file his official oath or bond, if such is required by law, within the time prescribed by law;

(j) The decision of a competent tribunal declaring void the incumbent's election or appointment;

(k) The making of an order vacating the incumbent's office or declaring his office vacant when he fails to furnish an additional or supplemental bond if such is required of him by law;

(l) The commitment of the incumbent to a hospital or sanitarium, by a court of competent jurisdiction, as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in such event the office shall not be deemed vacant until the order of commitment has become final;

(m) The incumbent's absence from five (5) consecutive regular meetings of the Council, unless excused by written resolution of the Council. No such excuse shall operate retroactively. No resolution shall excuse an incumbent's absence from more than five (5) consecutive regular meetings immediately following the date of adoption of such resolution, although additional resolutions may be adopted excusing an incumbent's absence from not more than five (5) additional regular meetings immediately following the date of each such resolution. For purposes of this subsection, regular meetings from which an incumbent has been absent shall not be deemed consecutive if separated by one or more regular meetings at which such incumbent has been present or his absence from which has been excused by the Council. Also, for purposes of this sub-section, "regular meetings" shall not be deemed to mean or include "regular adjourned meetings," "special meetings," or any committee meetings.

Section 410. Filling of Vacancies. A vacancy in any elective office, from whatever cause arising, shall be filled by the Council, by majority vote of its remaining members, until the end of the 30th day immediately following the next general municipal election, and at such election a successor shall be chosen by the electors of the City for the remainder, if any, of the unexpired term; provided, however, that if such vacancy occurs within the ninety (90) days immediately preceding the next general municipal election the vacancy shall be filled by the Council, by majority vote of its remaining members, for the entire unexpired term.

If the Council should fail to fill a vacancy by appointment within sixty (60) days after occurrence of such vacancy, it shall forthwith cause an election to be held to fill such vacancy for the unexpired term.

If all the offices of members of the Council and of the Mayor should become vacant and no member of the Council remains to fill any of said vacancies, successors may be appointed pursuant to the general laws of the State of California to fill such vacancies until qualified persons are elected to fill such offices. In such cases the City Clerk, as soon as reasonably possible, shall call and conduct a special municipal election to fill such offices for the remainder, if any, of the unexpired terms.

Section 411. Interference with Administrative Matters. Neither the Council nor any of its members nor the Mayor shall interfere with the execution by the City Manager of his powers and duties, nor in any manner dictate the appointment or removal of any City officers or employees whom the City Manager is empowered to appoint, but the Council may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of such officers and employees.

Except for the purpose of inquiries and investigations under Section 416, the Council, its members and the Mayor shall deal with City officers and employees who are subject to the direction and supervision of the City Manager, the City Attorney, City Auditor or City Clerk, solely through the City Manager, City Attorney, City Auditor, or City Clerk, respectively, and neither the Council nor its members nor the Mayor shall give orders to any subordinate officer or employee, either publicly or privately.

Section 412. Meetings of the Council. The Council shall provide, by ordinance or resolution, not inconsistent with other provisions of this Section, for the time, place, and manner of holding its meetings. Copies of such ordinances or resolutions shall be kept on file in the office of the City Clerk where they shall be available for public inspection. To the extent that they are not inconsistent with other sections of this Charter, the provisions of Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code, as they now exist or may hereafter be amended, insofar as they relate to the right of the public to attend meetings of the Council, the adjournment of regular or adjourned regular meetings, the calling of special meetings and the holding of executive sessions, shall govern meetings of the Council. No business shall be considered at any special meeting other than such as is specified in the notice of such meeting.

Section 413. Citizen Participation. Within the established rules for the conduct of its official proceedings, no person shall

be denied the right personally, or through authorized representatives, to present grievances or offer suggestions for the betterment of municipal affairs at any regular meeting of the Council.

Section 414. Quorum. Except as otherwise specifically provided elsewhere in this Charter, a majority of the entire membership of the Council shall be necessary to constitute a quorum to do business, but a lesser number may adjourn from time to time.

Section 415. Rules and Procedure. The Council shall establish rules for the conduct of its proceedings and to preserve order at its meetings. It shall cause a record of its meetings to be maintained and this record shall be open to public inspection.

Section 416. Investigations. The Council may make investigations into the affairs of the City and the conduct of any City department, office, or agency, and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Disobedience of any subpoena or the refusal to testify upon other than constitutional grounds shall be punishable by contempt proceedings.

ARTICLE V The Mayor

Section 500. Election and Term. There shall be a Mayor of the City of San Jose. Except as otherwise provided elsewhere in the Charter, he shall be elected at a General Municipal Election as provided in Article IV of this Charter, from the City at large, for a term of four (4) years from and after the first day of July following his election. Any incumbent member of the Council may run for the seat of Mayor, and the Mayor may run for the seat of Mayor or for any other seat on the Council; however, no member of the Council shall hold more than one seat thereof.

No person who has been elected to the office of Mayor for two (2) successive four-year terms shall be eligible to run for election to the office of Mayor, nor to serve as such, for any additional successive term; but the above shall not disqualify any person from running for election to the office of Mayor, nor from further service as Mayor, for any term or terms which are not successive, nor for any parts of terms which are not successive.

Section 501. Political Position. It is the intent of this Article that the Mayor shall be the political leader within the community by providing guidance and leadership to the Council, by expressing and explaining to the community the City's policies and programs and by assisting the Council in the in-

formed, vigorous and effective exercise of its powers. Political leadership shall be concerned with the general development of the community and the general level of City services and activity programs.

Section 502. Powers and Duties. The Mayor shall have the following powers and duties:

(a) The Mayor shall have the power to make recommendations to the Council on matters of policy and program which require Council decision; provided, that if he recommends any increases in the City budget, he shall recommend the method of financing such expenditures; and provided, further, that if he proposes curtailment of service, such recommendations and his reasons therefor shall be specific. He may also, on his own account, inform the community on matters of policy or program which he believes the welfare of the community makes necessary;

(b) The Mayor shall preside at meetings of the Council and shall have a vote as a member of the Council. He shall have no veto powers.

(c) The Mayor shall have authority to preserve order at all Council meetings, to remove or cause the removal of any person from any meeting of the Council for disorderly conduct, to enforce the rules of the Council and to determine the order of business under the rules of the Council;

(d) The Mayor shall exercise such other powers and perform such other duties as may be prescribed by the Council, provided the same are not inconsistent with this Charter.

Nothing in this Section shall be construed in any way as an infringement or limitation on the powers and duties of the City Manager as Chief Administrative Officer and head of the administrative branch of the City government as prescribed in other sections of this Charter. Except as otherwise herein provided, the Mayor shall possess only such authority over the City Manager and the administrative branch as he possesses as one member of the Council.

Section 503. Vice Mayor. At the second meeting of the Council following the first day of July in each general municipal election year, and also at the second meeting of the Council following the appointment of a person to the Council to fill a vacancy, the Council shall elect one of its members as Vice Mayor who, until a person is appointed to succeed him or until his office otherwise becomes vacant, shall serve as Mayor during the temporary absence or inability of the Mayor to discharge the duties of such office. In case of the temporary absence or disability of both the Mayor and the Vice Mayor, the Council shall elect one of its members to act as Mayor Pro Tempore.

Section 504. Vacancy. The office of Mayor shall become and be deemed vacant immediately upon the incumbent's ceasing to be a member of the Council.

ARTICLE VI
Legislation

Section 600. Council Action; Method. The Council shall act only by ordinance, by resolution or by motion made, seconded and adopted. The vote on all ordinances, resolutions and motions shall be by "ayes" and "noes." The individual vote of each member of the Council shall be entered in the minutes of the Council, except that where a vote is unanimous it may be so recorded. Upon request of any member, a roll-call vote shall be taken and recorded on any vote. Whenever a roll-call vote of the Council is in order, the City Clerk shall call the names of members in alphabetical order except that the name of the presiding officer shall be called last. All members present shall be required to vote unless disqualified from doing so by law. All written ordinances and resolutions shall be signed by the Mayor and attested by the City Clerk.

Section 601. Council Action, Vote Required. Except as otherwise provided elsewhere in this Charter, no ordinance, resolution or motion shall be passed, adopted, or become effective unless it receives the affirmative vote of at least four (4) members of the Council.

Section 602. Ordinances, When Required. The following acts of the Council shall be by ordinance:

- (a) Those acts required by specific provision of this Charter to be by ordinance;
- (b) Each act the violation of which will constitute a misdemeanor punishable by a fine or other penalty;
- (c) Each act imposing a new or additional tax, other than the annual property tax;
- (d) Each act granting a franchise.

Section 603. Ordinances, Requisites Of. Every proposed ordinance shall be introduced in writing. The enacting clause shall be "Be it Ordained by the Council of the City of San Jose." Each ordinance shall contain a title which shall state in general terms the subject or subjects contained in the ordinance. No section of any ordinance or of any code shall be amended unless the whole section to be amended is set forth as amended.

Section 604. Ordinances, Procedure for Adoption. Except as otherwise provided elsewhere in this Charter, and with the exception of ordinances which take effect immediately upon adoption, hereinafter referred to in this Article, no ordinance shall be adopted unless (a) it is first passed for publication;

(b) it is "published" prior to adoption as hereinafter provided in this Article, and (c) at least six (6) days have elapsed between the date it was passed for publication and the date it is adopted.

Ordinances which take effect immediately upon adoption, hereinafter referred to in this Article, may be adopted without compliance with the above provisions of this section.

Section 605. Ordinances; Effective Date. Except as otherwise provided in this Charter, each adopted ordinance shall become effective at the expiration of thirty (30) days after adoption or at any later date specified therein.

The following ordinances shall take effect immediately upon adoption:

(a) An ordinance calling for or otherwise relating to an election;

(b) An ordinance declaring the amount of money necessary to be raised by taxation, or fixing a rate of ad valorem taxation or levying the annual tax on property;

(c) An ordinance providing for a tax levy or appropriation for the usual current expenses of the City;

(d) An ordinance adopted as and declared by the Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety, containing a statement of the facts constituting such urgency, if adopted by the affirmative votes of at least five (5) members of the Council;

(e) An ordinance relating to a bond issue;

(f) An ordinance adopted pursuant to a State law by virtue of which such ordinance shall be effective immediately.

Nothing contained in this section shall be deemed to require an ordinance when an ordinance is not otherwise required.

Section 606. Codification. To the extent that it has not already so done, the Council shall cause to be codified all general ordinances in force, and cause the same to be printed in book, pamphlet or looseleaf form for the use of the City, its officers and the public.

Section 607. "Published" Defined. Any ordinance which is required by other provisions of this Charter to be "published" prior to its adoption shall be deemed to have been so "published," as said term is used in this Charter, if either the entire ordinance as passed for publication or the part thereof which is required by the following provisions of this section to be published, is printed in a newspaper of general circulation in the City no later than the third day immediately preceding the date of its adoption.

(a) Ordinances Less Than 5,000 Words Long. If any such ordinance, including its title, enacting clause and body but excepting anything which it adopts or incorporates by reference pursuant to the provisions of Section 608, is less than

five thousand (5,000) words in length, the entire ordinance, excepting such things as it adopts or incorporates by reference pursuant to the provisions of Section 608, shall be published as above provided;

(b) Ordinances 5,000 or More Words in Length. If any such ordinance, including its title, enacting clause and body but excepting anything which it adopts or incorporates by reference pursuant to the provisions of Section 608, is five thousand (5,000) words, or more, in length, only the title of the ordinance, together with a statement that a copy of such ordinance is on file and available for public inspection in the office of the City Clerk, need be published as above provided.

Section 608. Adoption or Incorporation by Reference. Subject to the conditions hereinafter specified in this Section, the Council is hereby authorized to enact ordinances which adopt or incorporate by reference, in whole or in part, directly or indirectly, any of the following things without publishing all or any part of the things so adopted or incorporated by reference, to wit:

(a) Any statutes, laws or codes or compilations of laws adopted by the legislative body of the federal government or the State of California;

(b) Any maps, sketches, diagrams, drawings, plans or other pictorial representations of any things, together with any explanatory or identifying material written thereon, provided a copy thereof is on file in the office of the City Clerk, available for public inspection, and reference is made to said copy in the adopting or incorporating ordinance;

(c) Any other things, including but not limited to any codes or compilations of any existing or proposed rules, regulations, standards or ordinances, or of any existing or proposed revisions thereof, provided the adopting or incorporating ordinance plus the things which it adopts or incorporates by reference pursuant to the provisions of this sub-section, are not less than five thousand (5,000) words long, and provided, further, that a copy of the things adopted or incorporated by reference is on file in the office of the City Clerk, available for public inspection, and reference is made to such copy in the adopting or incorporating ordinance.

Section 609. Violation and Penalty. The Council may make the violation of its ordinances a misdemeanor for which a violator may be prosecuted in the name of the People of the State of California, and may prescribe punishment for each violation by a fine not to exceed Five Hundred Dollars (\$500) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment. Such violations may also be redressed by civil action.

ARTICLE VII
City Manager

Section 700. Appointment, Term and Compensation. There shall be a City Manager. He shall be appointed by the Council for an indefinite term. The Council shall fix his compensation.

Section 701. Powers and Duties. The City Manager shall be the chief administrative officer of the City. He shall be responsible to the Council for the administration of City affairs placed in his charge by or under this Charter. Without limiting the foregoing general grant of powers, responsibilities and duties, he shall have the following powers and duties:

(a) Subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, and except as otherwise provided elsewhere in this Charter, he shall appoint all City officers and employees of the City; and, when he deems it necessary for the good of the service, he may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any City officer or employee who under this Charter is appointed by the City Manager.

(b) Except as otherwise provided elsewhere by this Charter, he shall direct and supervise the administration of all departments, offices and agencies of the City;

(c) He shall have the right to attend all meetings of the Council, other than closed executive sessions where he is the subject of discussion, and to take part in its discussions, but not to vote. He shall attend all regular and special meetings of the Council unless prevented by illness or physical incapacity or unless his absence has been authorized by the Council;

(d) He shall be responsible for the faithful execution of all laws, provisions of this Charter, and acts of the Council which are subject to enforcement by him or by officers who are under his direction and supervision;

(e) He shall prepare and submit the annual budget to the Council;

(f) He shall submit to the Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year;

(g) He shall make such other reports as the Council from time to time may request concerning the operations of City departments, offices and agencies subject to his direction and supervision; shall keep the Council fully advised as to the financial condition and future needs of the City; and make such recommendations to the Council concerning the affairs of the City as he deems desirable;

(h) He shall exercise such other powers, and shall perform such other duties, as are specified in this Charter or may be authorized or required by the Council.

Section 702. Removal By Council. The Council may remove the City Manager from office at any time.

Section 703. Removal By People. The City Manager may be removed from office by the People of the City pursuant and subject to the provisions of Section 1604 of this Charter.

Section 704. Acting City Manager. The City Manager may appoint, subject to approval of the Council, or if he fails to do so the Council may appoint, an officer of the City as Acting City Manager to exercise and perform the powers and duties of the City Manager during the temporary absence or disability of the City Manager.

ARTICLE VIII Administrative Organization

Section 800. General Provisions. Subject to the limitations hereinafter specified in this section, the Council shall have the following powers and duties:

(a) The Council, in its discretion, may at any time establish such City offices, departments and agencies, in addition to those established by this Charter, as it may desire; and shall prescribe the respective functions, powers and duties of such additional offices, departments and agencies. The Council shall also prescribe the respective functions, powers and duties of those departments which are established by Section 807 of this Charter. The Council may at any time add to, take away, reduce or otherwise change the respective functions, powers and duties of any of the above mentioned offices, departments and agencies. The Council may at any time abolish or discontinue any office, department or agency other than those established by this Charter. The Council may also, at any time, prescribe additional functions, powers or duties for those offices and departments specified in Sections 803 to 807, inclusive, and may at any time take away, reduce or otherwise change all or any of such additional functions, powers or duties;

(b) Subject to the limitations hereinafter specified in this sub-section, the Council may transfer to any "public agency", or consolidate with the functions of any "public agency", all or any of the powers, duties or functions of any office, department or agency established by or pursuant to the provisions of this Article, or contract with any "public agency" or any "private agency" for the performance or exercise by such public or private agency for or on behalf of the City, or for the joint performance or exercise by the City and any such "public agency" or "private agency", of any of said powers,

duties or functions. As used in this sub-section, "public agency" means the United States of America, the State of California, any division, department, office, agency or political subdivision of the United States or of the State of California, or any county, municipal corporation (other than the City of San Jose), district, authority or other governmental body or organization; and, as used in this sub-section, "private agency" means any private corporation, firm, association, organization or person. No such transfer, consolidation or contract shall be made or authorized except by ordinance. In case of, and during the term of, any such transfer, consolidation or contract, any provisions of this Charter, or of any ordinance or resolution, providing for the exercise or performance of such powers, duties or functions by a City office, department or agency shall be deemed suspended. Each such transfer, consolidation or contract, excepting contracts for specific improvements or projects, and excepting contracts for specific studies or reports to be completed within five or less years, shall be terminable by ordinance at any time following the expiration of one (1) year from and after the effective date of such transfer, consolidation or contract, or at any time following the expiration of such shorter period of time as may be specified in the ordinance or contract providing for such transfer or consolidation or in the contract providing for the performance of said powers, duties or functions.

Anything hereinabove in this section to the contrary notwithstanding, however, unless authorized by other sections of this Charter, no function assigned by this Charter to the office of City Clerk, City Attorney, or City Auditor, or to the Finance Department, shall be discontinued, nor assigned or transferred to or consolidated with any functions of or be permitted to be performed by any other office, department or agency of the City nor any "public agency" or "private agency" as said terms are hereinabove defined; excepting, however, that the Council may, by contract, provide for the furnishing or performance of special services by a "public agency" or "private agency" to assist the office of the City Clerk, City Attorney, or City Auditor or the Department of Finance in the performance of those functions, powers and duties assigned to them by this Charter if and when such contractual service or assistance is requested by the head of such office or department.

Section 801. Direction by City Manager. Except as otherwise provided elsewhere in this Charter, all offices, departments and agencies established by or pursuant to the provisions of this Article shall be administered by an officer appointed by and subject to the direction and supervision of the City Manager.

Section 802. Organization, Conduct and Operation of Departments. By action not inconsistent with other provisions of this Charter, the Council shall provide for the organization, conduct and operation of the several offices, departments and agencies of the City.

Section 803. Office of City Attorney. The office of City Attorney is hereby established. The City Attorney shall be an attorney at law, and shall be licensed to practice law in the State of California. In addition, he shall have had at least five (5) years of experience in the practice of law prior to his appointment. Except as otherwise provided in this Charter, the City Attorney shall have the following powers and duties:

(a) Represent and appear for the City, its Council, boards and commissions, in any or all legal actions or proceedings in which they or any of them are concerned or are a part;

(b) Upon request of an officer or employee or former officer or employee of the City, defend such officer or employee or former officer or employee in any action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an officer or employee of the City, whenever the City is required by the general laws of the State of California to provide such defense or whenever the Council elects to provide such defense even though not required to do so; provided and excepting, however, that the City Attorney may refuse to provide such defense whenever, in his opinion, his providing such defense would conflict with his other duties or responsibilities, in which event the City, if required by the general laws of the State to provide such defense or if it elects to provide such defense though not required by the general laws to do so, shall provide other legal counsel for such purpose;

(c) Advise the Council and all City boards, commissions and officers in all matters of law pertaining to their offices or their powers and duties;

(d) Perform other legal services required by the Council.

The Council may retain or employ, by contract or otherwise, other attorneys to take charge of any litigation or legal matter or to assist the City Attorney therein, or may purchase insurance which requires the insurer to provide for the defense of the City and/or of its officers and employees in connection with any matter covered by such insurance.

Except as may be otherwise provided by the Council, the City Attorney shall be under the direction and supervision of the Council.

Section 804. Office of City Clerk. The office of City Clerk is hereby established. The City Clerk shall have the following powers and duties:

(a) Attend all regular and special meetings of the Council, unless prevented by illness or physical incapacity or unless his absence has been authorized by the Council; and keep an accurate record of the proceedings of the Council;

(b) Keep a record of all ordinances of the City, and of all written resolutions adopted by the Council, in such manner that the information contained therein will be readily accessible to the public. To each ordinance contained in such record he shall annex or attach his certificate stating (1) that it is the original copy of such ordinance or, if the ordinance contained in his record is not the original copy, that it is a true and correct copy of the ordinance, and (2) if the ordinance was one required by law to be published, that it has been published pursuant to law;

(c) Keep all other records of Council proceedings and of his office in such manner that the information contained therein will be readily accessible to the public until such time as any of them are destroyed in accordance with State law;

(d) Be custodian of the seal of the City;

(e) Administer oaths or affirmations and take affidavits and depositions in connection with or pertaining to City affairs or business; and certify copies of official records of his office;

(f) Have charge of all City elections;

(g) Be responsible for the publication of all official advertising of the City; and

(h) Perform such other duties consistent with this Charter as may be required of him by the Council.

Except as may be otherwise provided by the Council, the City Clerk shall be under the direction and supervision of the Council.

Section 805. Office of City Auditor. The office of City Auditor is hereby established. The first City Auditor under this Charter shall be the person last elected to the office of City Auditor under the immediately preceding Charter provided he hold such office at the time this Charter takes effect, or, if he does not hold such office at such time, a person to be appointed by the Council to such office as soon as such can reasonably be done after this Charter takes effect. He shall hold such office for a term extending to and ending on the 30th day of June, 1969. Thereafter, the City Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's term, the Council shall

appoint a successor to serve only for the remainder of said former incumbent's term.

The office of City Auditor shall become vacant upon the happening before the expiration of his term of any of the events set forth in sub-sections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than six (6) members of the Council, may remove an incumbent from the office of City Auditor, before the expiration of his term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his term.

The City Auditor shall have the following powers and duties:

(a) Conduct a continuing post audit of all the fiscal transactions of the City including but not limited to the examination and analysis of fiscal procedures and the examination, checking and verification of accounts and expenditures;

(b) Prepare and submit to the City Council, in each calendar month, a written report of his activities and findings in the immediately preceding calendar month, together with such recommendations, if any, as he may have to improve the administration of the fiscal affairs of the City;

(c) Perform such other auditing functions, consistent with other provisions of this Charter, and prepare and submit such other reports, as may be required of him by the Council.

Section 806. Finance Department. A Finance Department is hereby established. A Director of Finance shall be the head of such department. The functions of such department and the powers and duties of the Director of Finance shall be as follows:

(a) Regularly, at least once each month, and at the end of each fiscal year, prepare and submit to the City Manager a monthly statement indicating the financial condition of the City;

(h) Except as otherwise provided in Article XII of this Charter, receive or collect all monies or revenues due the City; maintain custody of all public funds and securities belonging to or under the control of the City, and deposit and invest funds in accordance with principles of sound treasury management and in accordance with the applicable laws or ordinances;

(c) Maintain a general accounting system for the City; and supervise and control disbursements and expenditures to assure that unexhausted and unencumbered appropriations

exist therefor or that payment has been otherwise legally authorized, and that money is available therefor in the City Treasury with which to make payment;

(d) Verify cash receipts, the distribution of revenues to the appropriate funds, and certify as to the legality and correctness of all bills, invoices, payrolls, demands and charges against the City, and sign warrants or checks in payment of such claims;

(e) Unless and except as may be otherwise provided by the Council, procure materials, supplies and general services for the City, and prepare and maintain a current inventory of all materials and supplies and an inventory of general assets belonging to the City;

(f) Unless and except as may be otherwise provided by the Council, provide general services to other departments of the City as may be determined appropriate;

(g) Perform such other functions, consistent with this Charter, as may be required by the Council.

Subject to the direction and supervision of the City Manager, the Director of Finance shall be responsible for the conduct of all of the functions of the Finance Department and, except as otherwise provided elsewhere in this Charter, shall have for such purpose the duties and powers imposed by the general laws of the State of California upon City Treasurers, City Assessors and City Tax Collectors.

Section 807. Other Departments. The following departments are hereby established: A Police Department, a Fire Department, a Public Works Department, a Parks and Recreation Department, a Personnel Department, a Planning Department, a Health Department, a Building Department, an Airport Department and a Library Department. They each shall have such functions, powers and duties as the Council may from time to time prescribe.

ARTICLE IX. Officers and Employees

Section 900. Enumeration. The officers of the City shall consist of the Mayor, members of the Council, the City Manager, the City Attorney, the City Clerk, the City Auditor, the directors or heads of the various City offices or departments, the members of various boards and commissions and such other officers as may be provided for by this Charter or by action of the Council.

Section 901. Appointment and Removal. The City Attorney and City Clerk shall be appointed and may at any time be removed by the affirmative vote of at least four (4) members of the Council. Except as otherwise provided by this Charter,

all other officers, department heads and employees of the City, except members of boards and commissions, shall be appointed by the City Manager and, except as otherwise provided elsewhere in this Charter, shall serve at his pleasure.

The Council shall appoint, and may at any time remove, an Acting City Attorney, Acting City Clerk and Acting City Auditor to perform the functions and duties of the respective offices in the case of the absence or disability of the City Attorney, City Clerk, or City Auditor.

The City Manager shall appoint a person to act as the head of a department or office, other than the office of City Clerk, City Attorney, and City Auditor, in the case of absence or disability of the head of such department or office.

Section 902. Compensation. The compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council. All officers and employees shall be entitled to be reimbursed for actual and necessary expenses incurred while performing official business of the City when said expenses have been authorized or approved by the proper authority.

Section 903. Oath of Office. Each officer of the City, before entering upon the duties of his office, shall take the oath of office as provided for in the Constitution of this State and shall file the same with the City Clerk.

Section 904. Administering Oaths. Each department head and his deputies shall have the power to administer oaths and affirmations in connection with any official business pertaining to his department.

Section 905. Official Bonds. The Council shall fix the nature, amount and terms of the official bonds of all officials or employees who are required by the Council to qualify for such bonds; provided, however, that all officers and employees having custody or control of public funds shall be required to be bonded. All bonds shall be executed by a responsible corporate surety, shall be approved as to form by the City Attorney and shall be filed with the City Clerk. Premiums on official bonds shall be paid by the City.

Section 906. Prohibited Interests. The provisions of Article 4, Chapter 1, Division 4, Title 1 of the Government Code of the State of California as the same now exist or may hereafter be amended, relating to prohibitions applicable to specified officers, shall apply in the City.

Section 907. Nepotism. The Council shall not appoint to a salaried position under the City government any person who, at the time of his appointment, is related by blood or marriage, within the second degree, to any member of such Council; nor shall the City Manager or any other appointing authority appoint to any salaried position under City government any

person who, at the time of his appointment, is related by blood or marriage, within the second degree, to such appointing authority.

Section 908. Discrimination. Except as otherwise provided by the general laws of this State heretofore or hereafter enacted, no person employed by the City or seeking employment therewith shall be employed, refused employment, promoted, demoted, disciplined or discharged or in any way favored or discriminated against because of political opinion or affiliations, or membership in a lawful employees association, or because of race, color or creed.

ARTICLE X Boards and Commissions

Section 1000. Planning Commission. There shall be, and there is hereby established, a Planning Commission consisting of five (5) members appointed by the Council for terms of four (4) years. Members must be qualified electors of the City at all times during their terms of office. The City Manager, the City Attorney and such other officers as the Council may designate, or their representatives, may meet with the Planning Commission and may participate in its discussions but shall not have a vote.

Those persons who on the effective date of this Charter are members of the City Planning Commission established under the immediately preceding Charter shall be members of this Planning Commission and, subject to other provisions of this Charter, shall hold such offices until the expiration of the terms for which they were appointed, to wit: The two (2) members whose terms under the preceding Charter would expire on June 30, 1966 shall continue in office until June 30, 1966, and the three (3) members whose terms under the preceding Charter would expire on June 30, 1968 shall continue in office until June 30, 1968. At the first meeting of the Council on or after July first of each even-numbered year, beginning in 1966, the Council shall alternately appoint two (2) and three (3) commissioners for four-year terms commencing on July first of such year, to fill the offices of those members whose terms expire on June 30 of such year.

The office of a member shall become vacant upon the happening before the expiration of his term of any of the events set forth in sub-sections (a), (b), (c), (d), (e), (g), (h), (i), (j), (k) and (l) of Section 409 of this Charter, or upon such member's absence from five (5) consecutive regular meetings, other than adjourned regular meetings, of the Commission unless excused by resolution of Council. Also, the Council may remove a member from office at any time for misconduct, in-

efficiency or willful neglect in the performance of the duties of his office providing it first states in writing the reasons for such removal and gives such member an opportunity to be heard before the Council in his own defense. If a vacancy occurs before the expiration of a member's term, the Council shall appoint a qualified person to fill such vacancy for the remainder of the unexpired term of such member.

The Planning Commission shall have the following powers and duties:

(a) Make recommendations to the Council respecting the adoption, amendment, or repeal of master, general, comprehensive, precise or specific plans for the future physical development of the City or any part thereof, and periodically review the same.

(b) Make recommendations to the Council respecting the adoption, amendment or repeal of land use and development regulations, including but not limited to zoning and subdivision regulations;

(c) Make recommendations to the Council respecting the adoption, amendment or repeal of plans or programs for the redevelopment, rehabilitation or renewal of any areas of the City;

(d) Make recommendations to the Council respecting capital improvement programs; and

(e) Exercise such other powers and perform such other functions and duties as may be expressly given to it by other provisions of this Charter, or exercise such other powers or perform such other functions as may be prescribed by the Council not inconsistent with the provisions of this Charter.

Section 1001. Civil Service Commission. There shall be, and there is hereby established, a Civil Service Commission. The following provisions shall be applicable thereto:

(a) Membership. The Civil Service Commission shall consist of five (5) members, appointed by the Council for terms of six (6) years. Members must be qualified electors of the City at all times during their terms of office; not more than four (4) shall be of the same sex; and one (1) shall be an attorney-at-law, licensed to practice law in the State of California, who shall have practiced law in said State for at least five (5) years.

(b) Terms of Office. Those persons who on the effective date of this Charter are members of the Civil Service Commission established under the immediately preceding Charter shall be members of this Civil Service Commission and, subject to other provisions of this Charter, shall hold such offices until the expiration of the terms for which they were appointed, to wit: The one (1) member whose term under the preceding Charter would expire at noon on December 1, 1965 shall con-

tinue in office until noon, December 1, 1965; the two (2) members whose terms under the preceding Charter would expire at noon on December 1, 1967 shall continue in office until noon, December 1, 1967; and the two (2) members whose terms under the preceding Charter would expire at noon on December 1, 1969 shall continue in office until noon, December 1, 1969. At the first meeting of the Council on or after December first of each odd-numbered year, beginning in 1965, the Council shall alternately appoint one (1), two (2) and two (2) commissioners for six-(6)-year terms commencing at noon of December first of such year, to fill the offices of those members whose terms expire at noon of December 1 of such year.

The person who is appointed to fill the one (1) office of the member whose term expires at noon December 1, 1965, and each person who is thereafter appointed to fill such one (1) office whenever it becomes vacant, regardless of whether it becomes vacant during or at the end of an incumbent's term of office, shall be appointed by the Council from a list of three (3) persons to be nominated in each case by all full-time officers and employees in the Civil Service of the City (other than members of the Council and members of boards and commissions) at elections to be held for such purpose. Only full-time officers and employees shall be eligible to vote at such elections, and no officer or employee shall be permitted to vote for more than one person at any one election. The names of three (3) persons receiving the highest number of votes at any such election shall be referred to the Council, and the Council, without consideration of the number of votes received by each, shall appoint to such office the one of the three whom it believes is best qualified for such office. Said nomination elections shall be conducted by the City Clerk in accordance with an election procedure prepared by the City Clerk and approved by the Council.

(c) Vacancies. The office of a member shall become vacant upon the happening before the expiration of his term of any of the events set forth in sub-sections (a), (b), (c), (d), (e), (g), (h), (i), (j), (k), and (l) of Section 409 of this Charter, or upon such member's absence from five (5) consecutive regular meetings, other than adjourned regular meetings, of the Commission unless excused by resolution of Council. Also, the Council may remove a member from office at any time for misconduct, inefficiency or willful neglect in the performance of the duties of his office providing it first states in writing the reasons for such removal and gives such member an opportunity to be heard before the Council in his own defense. If a vacancy occurs before the expiration of a member's term, the Council shall appoint a qualified person to fill such vacancy for the remainder of the unexpired term of such member.

(d) Oath and Declaration. The members of the Civil Service Commission, in addition to the oath of office required by law, shall make under oath and file in the office of the City Clerk the following declaration: "I am opposed to appointment to public service as a reward for political activity and will execute and perform the powers and duties of the office of Civil Service Commissioner in the spirit of this declaration."

(e) Secretary. The Council shall provide the Commission with a secretary satisfactory to the Commission; provided, however, that the head of any personnel department of the City shall not hold any secretarial, executive or administrative position under the direct jurisdiction of the Civil Service Commission.

(f) Powers and Duties. The Civil Service Commission shall have the following powers and duties:

(1) To recommend to the Council the adoption, amendment or repeal of Civil Service Rules relating to the matters specified in Section 1102 of Article XI of this Charter;

(2) To make any investigation which it may consider desirable concerning the administration of personnel in the Classified Service;

(3) To make recommendations to the Council, the City Manager or to any other appointive power on matters relating to the administration of personnel in the Classified Service;

(4) To exercise and perform such other powers and duties as are expressly given to it by other provisions of this Charter; and to exercise such other powers and perform such other functions and duties as may be prescribed by the Council not inconsistent with the provisions of this Charter.

Section 1002. Other Boards and Commissions. In addition to those specific boards and commissions which are established by other provisions of this Article, the Council may create such other boards and commissions as in its judgment are required, and may grant them such functions, powers and duties as are consistent with the provisions of this Charter. In addition, the Council may create such temporary committees as it may deem advisable to render counsel and advice to the Council, the City Manager or any board or commission on any specified matter within the jurisdiction of such authorities. All boards, commissions and committees created by the Council shall be subject to such direction and supervision, if any, as the Council may specify, and the members thereof shall be appointed by the Council, or by the Mayor if such is authorized by the Council, for such terms as the Council may deem advisable.

Section 1003. Reimbursement for Expenses. Members of boards, commissions and committees shall receive reimbursement, if and to the extent such is authorized by the Council,

for expenses incurred in the performance of their duties or functions of office.

ARTICLE XI
Civil Service System

Section 1100. Merit Principle. All appointments and promotions to positions in the Classified Service shall be made on the basis of merit and fitness, demonstrated by examination and other evidence of competence, in accordance with Civil Service Rules adopted in the manner provided in this Charter.

Section 1101. Classified and Unclassified Service. The Civil Service of the City shall be divided into the Classified Service and the Unclassified Service, as follows:

(a) The Unclassified Service shall comprise and include all of the following officers and employees:

- (1) The Mayor and the members of the Council;
- (2) All members of boards and commissions, and, if so desired by the Civil Service Commission, the Secretary of the Civil Service Commission;
- (3) The City Manager and all his assistants, deputies and secretaries; the City Attorney and one assistant; the City Clerk and one assistant; the City Auditor and one assistant; the head of each department and one assistant in each department;

(4) Persons temporarily employed to make or conduct a special inquiry, investigation, examination or installation, or to render professional, scientific or technical services of an occasional or exceptional character; provided that no person employed in the Unclassified Service pursuant to this sub-section for any such purpose shall continue in such employment pursuant to this sub-section for a period in excess of six (6) months for each special inquiry, investigation, examination, installation or particular service unless an extension is approved by the Civil Service Commission;

(5) Persons employed in the event of an emergency to perform services required because of and during such emergency for a period of time not to exceed six (6) months unless an extension is approved by the Civil Service Commission;

(6) Persons employed to temporarily fill positions in the classified service when no eligible lists of applicants for such positions exist, until such time as eligible lists are created and persons can be hired therefrom to fill such positions;

(7) Volunteer members of the police, fire or civil defense departments or of any police, fire or civil defense force or organization.

(b) The Classified Service shall consist of all persons employed in positions in the City Civil Service which are not in the Unclassified Service;

(c) Nothing herein shall be construed as precluding the appointing authority from filling any position in the manner in which positions in the Classified Service are filled.

Section 1102. Civil Service Rules; Contents. The Council shall adopt Civil Service Rules for the Classified Service relating to the following matters: Creation of positions; applications for employment; examinations; eligibility and qualifications; duration of eligible lists; certification of eligible lists; appointments; promotions; demotions; transfers; resignations; layoffs; temporary reductions due to retrenchment or completion of work; performance ratings; factors and weights to be considered in efficiency rating; filling of positions; classification of positions; specifications for positions; separation from service; dismissals; suspensions; disciplinary action; such other things, consistent with this Charter, as the Council may deem proper and necessary.

Section 1103. Civil Service Rules; Manner of Adoption. Civil Service Rules for the Classified Service shall be adopted, and may from time to time be repealed or amended, by ordinance of the Council. Upon adoption, Civil Service Rules shall have the force and effect of law.

The Council may adopt, repeal or amend any Civil Service Rule for the Classified Service, provided it first receives from the Civil Service Commission a report or recommendation with respect to the proposed new Rule, if a new Rule is proposed to be adopted, or with respect to the proposed repeal or amendment of an existing Rule if an existing Rule is proposed to be repealed or amended; provided, however, that if the Civil Service Commission refuses or fails to submit to the Council a report or recommendation on any proposed new Rule, or proposed repeal or amendment of any existing Rule, within ninety (90) days from and after the date the Council requests such a report or recommendation, the Council may adopt such new Rule or repeal or amend such existing Rule, without first receiving a report or recommendation thereon from the Civil Service Commission.

Section 1104. Suspension, Demotion and Dismissal. No officer or employee of the City holding a regular position in the Classified Service, other than persons holding such positions by virtue of emergency or provisional appointments, may be suspended without pay, demoted or dismissed from his position in the Classified Service after satisfactorily serving his probationary period of service in such position, except for cause, such as, but not limited to, malfeasance, misconduct, incompetence, insubordination, inefficiency or for failure to satisfactorily perform the duties of his position, to observe appli-

cable rules and regulations or to cooperate reasonably with his superior or fellow officers or employees.

Any such officer or employee, excepting persons holding such positions by virtue of emergency or provisional appointments, who is suspended without pay, demoted or dismissed from his position in the Classified Service after satisfactorily completing his probationary period of service shall be given, in the manner and within the time specified in the Civil Service Rules, not to exceed seventy-two (72) hours from and after the time of such suspension, demotion or dismissal, a written notice of his suspension, demotion or dismissal. Within the term specified in the Civil Service Rules, not to exceed thirty (30) days from and after date said notice is given to him, said officer or employee may file with the appointing authority a written request that he be given the specific reason or reasons for his suspension, demotion or dismissal. In the manner and within the time specified in the Civil Service Rules, not to exceed three (3) days from and after date of filing of said request, the appointing authority shall give to said officer or employee a written statement of the specific reason or reasons for his suspension, demotion or dismissal. Within the time specified in the Civil Service Rules, not to exceed thirty (30) days from and after the date he is given said written statement, said officer or employee may appeal to the Civil Service Commission for a review of said suspension, demotion or dismissal by filing a written notice of appeal with the Secretary of said Commission. Such notice of appeal shall contain such answer as such officer or employee may have to the charges made against him. The Secretary of said Commission shall immediately transmit a copy of said notice of appeal, containing said answer, to the appointing authority. Within thirty (30) days from and after date of filing of the notice of appeal, or at such later time as may be agreed to by said officer or employee and the Civil Service Commission, the Commission shall hold a public hearing at which it shall review the action of suspension, demotion or dismissal. At such public hearing both the appealing officer or employee and the authority whose action is being reviewed, or their respective representatives, shall have the right to be heard publicly and to present evidence. Such hearing shall be held in accordance with procedures established therefor.

If, after such hearing, the Civil Service Commission concludes that the suspension, demotion or dismissal was without cause, it shall order reinstatement without loss of pay, and such order shall be binding upon the appointing authority who shall forthwith comply with the same. In the event that the Civil Service Commission, after such hearing, concludes that there was cause for disciplinary action but that the type of

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penalty was not warranted under the circumstances, it may, in its discretion, order reinstatement with loss or partial loss of pay, and such order shall be binding upon the appointing authority who shall forthwith comply with the same. In the event the Civil Service Commission concludes that the officer or employee is unqualified for or unable for other reasons to satisfactorily perform the duties of his office or position, but is qualified for and can perform the duties and functions of a lower position, it may, in its discretion, order demotion and employment of such officer or employee to and in a lower class of position or employment or may order that such person's name be placed on an eligible list for employment in a lower class of position or employment if and when a vacancy occurs therein, and such order shall be binding upon the appointing authority who shall comply with the same. If, after such hearing, the Civil Service Commission concludes that such suspension, demotion or dismissal was for adequate cause and that the action taken by the appointing authority was warranted, it shall affirm the action of the appointing authority.

All decisions of the Civil Service Commission made in connection with the above matters shall be in writing, and copies thereof shall be transmitted as soon as reasonably possible to both the appointing authority and the appealing officer or employee. Subject to such reasonable limitations and restrictions as may be set forth in the Civil Service Rules, the Civil Service Commission may grant a rehearing if good cause is shown therefor.

Section 1105. Appointments from Classified Service to Unclassified Service. In the event an officer or employee of the City who heretofore held or now holds a position in the Classified Service was thereafter or is hereafter appointed to a position in the Unclassified Service, and should subsequently be removed or resign from the Unclassified Service, he shall have the right, if he has not been guilty of infamous, disgraceful or dishonest conduct, to be employed forthwith in a position consonant with his former classification in the Classified Service without loss of any rights or privileges and upon the same terms and conditions as if he had remained in said classification.

Section 1106. Employees of Consolidated Cities. All officers and employees of any city heretofore or hereafter consolidated with the City of San Jose, when such officers or employees would be included in the Classified Service, shall from the effective date of such consolidation or consolidations, be deemed to have their names upon eligible lists for respective types of positions held by them, and to be qualified for appointment to such respective positions.

Section 1107. Employees of Annexed Agencies. In the event of the annexation of all or a portion of the area of any governmental agency to the City, it shall be discretionary with the Council as to whether all or any of the officers or employees of such agency shall be entitled to have their names placed upon eligible lists for respective types of positions held by them and to be qualified for appointment to such respective positions.

Section 1108. Mandatory Separation from Service. Any person who holds any position in the Civil Service of the City, excepting members of the Police and Fire Departments who are also members of any Police and/or Fire Department retirement plan or system of the City, and excepting members of the Council, members of boards or commissions and persons holding elective offices, must be separated from any position in the Civil Service upon his attaining the age of seventy (70) years, such separation to be effective no later than the last day of the calendar month within which he attains such age.

Any member of the Police or Fire Department of the City who is also a member of any Police and/or Fire Department retirement plan or system of the City must be separated from any position in the Police or Fire Department of the City upon his attaining the age of sixty-five (65) years, such separation to be effective no later than the last day of the calendar month within which he attains such age.

Subject to the provisions of other sections of this Charter, the Council may at any time provide for mandatory separation of officers or employees, other than persons holding elective offices, from specified positions in the Civil Service at an earlier age if and when the Council deems such to be for the good of the Civil Service.

Section 1109. Exclusions and Exceptions. The provisions of this Article shall not be deemed to apply to, nor in any way limit the Council in, the Council's exercise of any of the powers granted to it by the provisions of sub-section (b) of Section 800, or by the provisions of Section 803, of the Charter. All transfers or consolidations of functions, and all contracts, resulting from the exercise by the Council of such powers shall be deemed exempt from the Civil Service provisions of this Charter, and all persons employed or whose services are contracted for, pursuant to any such transfer, consolidation or contract shall be deemed, for Civil Service purposes, to be independent contractors and not officers or employees within the Civil Service of the City, regardless of the extent, if any, of any supervision or control which may be exercised over such persons or their activities by any officer or employee of the City. Also, the Council may at any time, or from time to time, authorize or direct the execution of con-

tracts between the City and any public or private body, entity, firm, organization, association or person, for the conduct or making of any special study, inquiry, investigation or examination, or for the preparing or doing of any special or particular services or work, for or on behalf of the City or any office, department or agency thereof, unless such is prohibited by the provisions of any other Article of this Charter, without complying with the provisions of this Article; and all persons with whom such contracts are made shall be deemed, for Civil Service purposes, to be independent contractors and not officers or employees within the Civil Service of the City, regardless of the extent, if any, of any supervision or control which may be exercised over such persons or their activities by any officer or employee of the City. In addition, the appointment by the Council of any person to any office, pursuant to authority granted to the Council by this Charter, shall not be subject to the Civil Service provisions of this Charter.

Section 1110. *Exceptions: War or National Emergency.* Notwithstanding any other provisions of this Charter to the contrary, in time of war or national emergency the Council may provide for the emergency employment of any person to fill any office or position in the City. Such person shall not be subject to the requirements, regulations and qualifications of the personnel, merit or civil service system adopted by the City. An emergency appointee shall not acquire civil service or other permanent status because of the emergency appointment. The Council may, however, provide that an emergency appointee selected from an eligible list who is otherwise eligible for permanent appointment may acquire such rights as are expressly provided for under Civil Service Rules.

ARTICLE XII Fiscal Administration

Section 1200. *Fiscal Year.* Unless otherwise provided by ordinance, the fiscal year of the City shall begin on the first day of July of each year and end on the 30th day of June of the following year.

Section 1201. *Use of County Tax System.* Unless otherwise provided by or pursuant to ordinance adopted or approved by the qualified electors of the City, the Council shall continue to use for the purpose of municipal ad valorem property taxation the Santa Clara County system of property assessment and property tax collection as said system is now provided by law or may hereafter be amended and insofar as such provision is not in conflict with this Charter.

Should there arise any reason whatsoever that prevents the City from using said County system for said purpose or if the

use of the County system should be discontinued by or pursuant to ordinance adopted or approved by the qualified electors of the City, the Council shall provide a system for the assessment of property and the collection of property taxes in the City.

Section 1202. Submission of Capital Improvement Program; Contents. After the commencement of each fiscal year, but prior to the one hundred fiftieth (150th) day immediately preceding the end of such fiscal year, the City Manager shall prepare and shall submit to the Council a capital improvement program for the five (5) fiscal years immediately following the fiscal year within which such program is submitted to the Council. On or before the day that he submits such program to the Council, the City Manager shall also file a copy of the program with the Planning Commission of the City. Such capital program shall include:

- (a) A clear summary of its contents;
- (b) A list of all capital improvements which are proposed to be undertaken during the five fiscal years immediately following the ensuing fiscal year with appropriate supporting information as to the necessity of such improvements;
- (c) Cost estimates, method of financing and recommended time schedules for each such improvement; and
- (d) Such other information as the City Manager may deem desirable.

Section 1203. Action on Capital Program. Upon receipt of the copy of the capital improvement program prepared by the City Manager, the Planning Commission shall consider the program and, within ninety (90) days from and after the date a copy of such program was filed with the Commission, shall submit to the Council a written report setting forth its findings and recommendations respecting such program. The Planning Commission, in its report may recommend such additions, deletions or other amendments as it deems desirable. If it should recommend any capital improvements different from or additional to those proposed by the City Manager, it shall set forth, in its report, the estimated cost thereof and the manner in which it proposes that the same shall be financed.

Upon receipt of said report from the Planning Commission, or upon expiration of said ninety (90) days if said Commission should fail to submit its report within said time, the Council shall fix a time and place for a public hearing on the capital program as submitted by the City Manager and upon such amendments or changes, if any, as shall have been submitted as aforesaid by the Planning Commission within said ninety (90) days. The Council shall cause a notice of such public hearing to be published not less than ten (10) days prior to said hearing by at least one insertion in a newspaper of general

circulation in the City. Copies of the capital program as submitted by the City Manager, and copies of such report as may have been submitted by the Commission, shall be filed and available for inspection by the public in the office of the City Clerk for at least ten (10) days prior to said public hearing. The notice of such public hearing shall state the time and place of hearing and the times and place when and where copies of the capital program as submitted by the City Manager and the report of the Planning Commission will be available for inspection by the public. At the time and place so advertised or at any time or place to which such public hearing shall from time to time be adjourned, the Council shall hold a public hearing on the capital program as submitted by the City Manager, and on the written report of the Planning Commission, at which interested persons desiring to be heard shall be given reasonable opportunity to be heard.

Upon conclusion of such hearing, the Council shall adopt such a capital program, for the five (5) fiscal years covered by the City Manager's proposed capital program with such amendments as it may deem desirable. Upon its adoption and until adoption of a new budget and a new five-(5)-year capital program, such capital program, as adopted by the Council, shall serve as a general guide to the Council and to the City administration in the planning and scheduling of capital improvements. From time to time, however, the Council may authorize such departures therefrom as it may deem necessary or desirable.

Section 1204. Submission of Budget and Budget Message. At least thirty (30) days prior to the beginning of each fiscal year or at such earlier time prior to the beginning of each fiscal year that the Council may specify, the City Manager shall submit to the Council each of the following:

- (a) A budget for the ensuing fiscal year;
- (b) An accompanying message.

Section 1205. Budget, Contents. The budget shall provide a complete financial plan of all City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the Council may require or, in the absence of Council requirements, in such form as the City Manager deems desirable. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, including the amount proposed to be raised by property taxation, estimated unencumbered balances of funds to be carried over from the preceding year; estimated unencumbered available reserves, and all proposed expenditures, including debt service, for the ensuing year. The total of proposed expenditures shall not exceed the total of estimated income, estimated unencumbered balances of funds to be carried

over from the preceding year and unencumbered available reserves.

Section 1206. Council Action on Budget. Upon receipt of the proposed budget from the City Manager, the Council shall proceed to consider the same and may make such revisions and changes as it may deem advisable; but it shall not adopt such budget, either as proposed by the Manager or as revised or changed by the Council, until after it shall have held a public hearing in accordance with the following provisions of this Section.

The Council shall fix a time and place for a public hearing on the budget, and shall cause a notice of such public hearing to be published not less than ten (10) days prior to said hearing by at least one insertion in a newspaper of general circulation within the City. Copies of the proposed budget as submitted by the City Manager shall be filed and available for inspection by the public in the office of the City Clerk for at least ten (10) days prior to said hearing. Statements, or copies, of such revisions or changes as the Council shall have made in the proposed budget prior to said public hearing shall be available for public inspection at the public hearing. The notice of said public hearing shall state the time and place of public hearing and the times and place where copies of the budget as submitted by the City Manager will be available for public inspection, and shall further state that statements, or copies, of such revisions or changes as the Council shall have made in the proposed budget before the public hearing will be available for public inspection at the time and place of said public hearing.

At the time and place advertised for said public hearing or at any time or place to which said public hearing shall from time to time be adjourned, the Council shall hold a public hearing on the proposed budget, and upon such revisions or changes as may have been made by the Council, at which interested persons desiring to be heard shall be given reasonable opportunity to be heard. Upon conclusion of such public hearing, the Council may adopt the proposed budget with such amendments, if any, as it may deem desirable. Such amendments may add or increase programs or amounts or may delete or decrease any programs or amounts except expenditures required by law or for debt service, provided that no amendment to the budget shall increase proposed expenditures to an amount greater than the total estimated income plus unencumbered available reserves and estimated unencumbered balances of funds carried over from the preceding fiscal year.

Section 1207. Appropriations. After adoption of the budget and on or prior to the beginning of the budget year, the

Council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with the provisions of sub-section (e) of Section 605 of this Charter.

(e) Reduction of Appropriations. If at any time during the budget year it appears probable to the City Manager that the revenues available will be insufficient to meet the amounts appropriated, he shall report to the Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him, and his recommendations as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit, and for that purpose it may by ordinance or resolution reduce one or more appropriations.

Also, at any time during the budget year, the Council may repeal or reduce, for any other reason, by ordinance or resolution, any appropriation theretofore made; and, at any time during the budget year, may reappropriate by ordinance all or part of the amount of such reduction for the same or any other class or category of expenditure.

(d) Transfer of Appropriations by Council. At any time during the budget year, the Council may, by ordinance or resolution, transfer part or all of any unencumbered balance of any appropriation from any department, office or agency to another or from any class or category of expenditure to another class or category of expenditure.

Ordinances or resolutions adopted by the Council pursuant to the provisions of this Section shall be effective immediately upon adoption.

Section 1209. Lapse of Appropriations. Except as otherwise provided elsewhere in this Charter, every appropriation shall lapse at the close of the fiscal year to the extent that they shall not have been expended or encumbered.

Section 1210. Control of Expenditures by City Manager. The several items of expenditure appropriated each fiscal year being based on estimated receipts, income or revenues which may not be fully realized, it shall be incumbent upon the City Manager to establish a schedule of allotments, monthly or quarterly or as he may otherwise determine, under which the sums appropriated to the several departments, offices and agencies shall be expended. The City Manager shall revise revenue estimates from time to time, and may revise allotments at any time.

No officer, department or agency of the City, during any budget year, shall expend or incur any obligation to expend money for any class or category of expenditure not authorized by or in excess of the amounts appropriated by the Council, or in excess of any allotments made by the City Manager.

Section 1211. Funds: General Fund. All monies paid into the City Treasury shall be credited to and kept in separate funds in accordance with provisions of this Charter or ordinance. A fund to be known as the "General Fund," is hereby created as a medium of control and accounting for all City activities, excepting activities for which special funds are established and maintained. All revenues and receipts which are not required by this Charter, State law or ordinances to be placed in special funds shall be credited to the General Fund.

Section 1212. Cash Reserve Fund. A revolving fund, to be known as the "Cash Reserve Fund," is hereby created for the payment of any authorized expenditures of the City for any fiscal year in anticipation of and before the collection of taxes and other revenues of the City for such fiscal year, and for the payment of authorized expenses of the City for any fiscal year which became due and payable and must be paid prior to the receipt of tax payments and other revenues for such fiscal year. A reserve shall be built up in said fund from any available sources other than restricted sources in an amount which the Council deems sufficient for said purposes. If necessary, money may be borrowed on tax anticipation notes, subject and pursuant to State law, for the purpose of establishing and maintaining said funds until monies from other available sources are adequate for such purpose. Transfers may be made by the Council from such fund to any other fund or funds of such sum or sums of money that may be required to place or keep such other fund or funds on a cash basis. All monies so transferred from the Cash Reserve Fund to any other fund or funds shall be returned to the Cash Reserve Fund before the end of the fiscal year. The balance in said fund at the end of any fiscal year shall be carried forward in said fund; provided, however, that, to the extent that the amount of money in such fund should exceed such amount as the Council deems desirable for purposes of such fund, the Council may transfer such excess to any other fund or funds for any other purpose or purposes.

Section 1213. Emergency Reserve Fund. A fund, to be known as the "Emergency Reserve Fund," is hereby created for the purpose of meeting any public emergency involving or threatening the lives, property or welfare of the people of the City or property of the City. A reserve shall be built up in said fund from any available sources, other than restricted sources, in an amount which the Council deems desirable. Except as otherwise hereinafter provided, money in said fund shall be expended pursuant to appropriations made therefrom by ordinance.

In case of a public emergency involving or threatening the lives, property or welfare of the people of the City or the property of the City, the City Manager shall have the power, until the next meeting of the Council, subject to the availability of funds therefor and, subject to such conditions, restrictions and limitations as the Council may impose, to summon, organize and direct the forces of any department of the City in any needed service, to summon, marshal, deputize or otherwise employ other persons, or to do whatever else he may deem necessary for the purpose of meeting the emergency; and for such purpose, to the extent that other monies have not been appropriated or are otherwise unavailable therefor, he may expend any unencumbered monies in the Emergency Reserve Fund notwithstanding the fact that such monies may not have been appropriated for such purpose. At the first meeting of the Council following any such action, the City Manager shall present to the Council a full report of what he has done to meet the emergency.

Section 1214. Other Funds. The Council may provide, by ordinance, for the establishment and maintenance of other special funds.

Section 1215. Independent Audit. The Council shall employ at the beginning of each fiscal year a certified public accountant who shall audit the municipal books, records, accounts and fiscal procedures of all officers and employees of the City who receive, administer or disburse public funds on behalf of the City, and such other officers, employees, departments and agencies as the Council may direct. The Council may order a special audit of any particular department or division of the City government at any time. Such accountant shall at all times abide by the current and most accepted standards of municipal accounting. As soon as practicable after completion of a special audit, if such an audit should be ordered by the Council, said independent accountant shall submit a special report to the Council setting forth his findings and recommendations with respect to the matters covered by such special audit. Also, as soon as practicable at the end of the fiscal year, a final report shall be submitted by such independent accountant to the Council setting forth his findings and recommendations respecting the records, accounts and fiscal procedures covered by his general audit. Three (3) copies of each report shall be placed on file in the office of the City Clerk where they shall be available for public inspection.

Section 1216. Bonded Debt Limit. The City shall not incur any indebtedness evidenced by general obligation bonds which shall in the aggregate exceed the sum of fifteen percent (15%) of the total assessed valuation of all the real and personal property within the City.

Section 1217. Bid Requirements. Except as hereinafter otherwise provided, each purchase of supplies and materials the expenditure for which exceeds One Thousand Dollars (\$1,000), each purchase of equipment the expenditure for which exceeds Two Thousand Dollars (\$2,000) and each specific "public works project," hereinafter defined, the expenditure for which (excluding the cost of any materials which the City may have already lawfully acquired therefor) exceeds the amount which a general law City of the State of California may legally expend for a public project (as defined by State law) without a contract let to a lowest responsible bidder after notice, shall be contracted for and let to the lowest responsible bidder after notice; provided, however, that in no event shall the above apply to any specific "public works project" the expenditure for which (excluding the cost of any materials which the City may have already lawfully acquired therefor) does not exceed Two Thousand Five Hundred Dollars (\$2,500).

The notice inviting bids shall set a date for the opening of bids, and shall be published at least once, at least ten (10) days before the date set for opening of bids, in a newspaper of general circulation in the City. All bids shall be presented under sealed cover and accompanied by one of the following forms of bidder's security: (a) cash, (b) cashier's check made payable to the City, (c) certified check made payable to the City, or (d) bidder's bond executed by a corporate surety insurer authorized to engage in such business in California, made payable to City. The security shall be not less than ten percent (10%) of the aggregate amount bid; however, the Council may require a larger amount by specifying such larger amount in the notice inviting bids or in the specifications referred to therein. If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the amount of the security may be declared forfeited to the City and may be collected and paid into its General Fund and all bonds so forfeited may be prosecuted and the amount thereof collected and paid into such fund. All bids shall be publicly opened, and the aggregate bid of each bidder declared, at a time and place specified in the notice inviting bids. The Council shall have the right to waive any informalities or minor irregularities in bids or bidding.

In its discretion, the Council may reject any or all bids presented. If it rejects all bids, the Council may, in its discretion, readvertise. If two or more bids are the same and the lowest, the Council may accept the one it chooses. If no bids are received, the Council may readvertise, or may acquire the

materials, supplies or equipment for which no bids are received, or have the "public works project" for which no bids are received done, without further complying with this Section. If, after rejecting all bids for any supplies, materials or equipment, the Council finds and declares that the bids were excessive, it may have such supplies, materials or equipment purchased at a lower price without further complying with this Section. If, after rejecting all bids for any "public works project" and after re-advertising for bids, the Council finds and declares that the bids were excessive, it may have such "public works project" done by City employees without further complying with this Section.

For purposes of this Section, "public works project" shall be deemed to mean and is hereby defined as a project for the construction, erection, improvement or demolition of any public building, street, bridge, drain, ditch, canal, dam, tunnel, sewer, water system, fire alarm system, electrical traffic control system, street lighting system, parking lot, park or playground; provided and excepting that "public works project" shall not be deemed to mean or include the maintenance of any of said things, or any repairs incidental to such maintenance, or the planting, care or maintenance of trees, shrubbery or flowers. Also, the provisions of this Section shall not apply to any of the following: (a) the purchase or acquisition of any supplies, materials or equipment from any public or governmental body or agency or from any public utility which is either publicly owned or is regulated by the Public Utilities Commission of the State of California; (b) the purchase of any supplies, materials or equipment which can be obtained from only one vendor or manufacturer; (c) any public work done for the City by any public or governmental body or agency; (d) any public work done by any public utility which is either publicly owned or is registered by the Public Utilities Commission of the State of California where such work involves any property of such public utility or is otherwise of direct concern to both the City and such public utility; (e) any public work done by a subdivider, developer or owner of real property in connection with the subdivision or development by him of any real property, notwithstanding the fact that such may be subject to entire or partial reimbursement from the City; (f) work involving highly technical or professional skill where the peculiar technical or professional skill or ability of the person selected to do such work is an important factor in his selection; (g) expenditures deemed by the Council to be of urgent necessity for the preservation of life, health or property, provided the same are authorized by resolution of the Council adopted by the affirmative vote of at least five (5) members of the Council and containing a declaration of the facts constituting

the urgency; and (h) situations where solicitation of bids would for any reason be an idle act.

Section 1218. Claims Against City. Except as otherwise required by the provisions of State law applicable to chartered cities, claims against the City shall be presented and audited as prescribed by ordinance.

Section 1219. Property Tax Limit. Except as otherwise provided in this Section, the Council shall not levy an ad valorem property tax for any fiscal year in excess of One and 40/100 Dollars (\$1.40) on each One Hundred Dollars (\$100) of assessed value of taxable property in the City unless authorized by the affirmative votes of a majority of the electors voting on a proposition to increase such levy at any election at which the question of such additional levy is submitted to the electors of the City. The number of years that such additional levy is to be made shall be specified in any such proposition. Notwithstanding the foregoing provisions of this Section, there shall be levied and collected at the same time and in the same manner as other ad valorem property taxes of the City are levied and collected, as additional taxes not subject to the foregoing tax limit, if no other provision for the payment thereof is made, a tax sufficient to meet all obligations of the City for principal and interest on all bonds or judgments due and unpaid or to become due during the fiscal year which constitute general obligations of the City.

Section 1220. Revenue Bonds for Off-Street Parking or Airport Facilities. The Council shall have power to issue revenue bonds to finance the acquisition, construction, establishment, expansion, improvement, maintenance, operation and administration of off-street vehicular parking facilities within the City (hereinafter in this section referred to as "the project"). The Council shall also have the power to issue revenue bonds to finance the acquisition, construction, establishment, expansion, improvement, maintenance, operation and administration of municipal airport facilities (hereinafter in this Section also referred to as "the project"). Such revenue bonds may be issued in such manner and upon such terms and conditions as may be fixed and established by ordinance of the Council. In the alternative, the Council may issue such revenue bonds under the general laws of the State of California applicable thereto, provided that no election shall be required for the issuance of such revenue bonds. The authorization granted to the Council by this section to issue revenue bonds for any of said purposes is complete, and no additional authorization shall be required for their issuance. Neither such revenue bonds nor the interest accruing thereon shall constitute indebtedness of the City, nor shall be taken into consideration

in determining the limit of general obligation bonded indebtedness of the City. Such revenue bonds, the interest accruing thereon and any reserve, sinking fund or special fund created to secure the payment of such bonds shall be a charge solely upon the revenues, or upon such portion thereof as may be fixed by the Council, of the project on account of which such bonds were issued. Such revenue bonds shall not be a charge, lien or encumbrance, legal or equitable, on any funds or property of the City, other than the revenues of the project on account of which they were issued, excepting that on-street parking meter revenues may be pledged as additional security for the payment of revenue bonds issued for any automotive parking facilities pursuant to the Constitution of this State. Neither the credit nor the taxing power of the City shall be deemed to be pledged to or charged with the payment of the principal or interest of any such revenue bonds, nor shall the holders of such revenue bonds have any right to compel the exercise of the taxing power of the City or the forfeiture of any of its properties. The provisions herein contained for the issuance of revenue bonds shall constitute an alternative method of financing said municipal projects.

Nothing contained in this Charter shall preclude the issuance of general obligation bonds of the City for all or any of the above mentioned purposes pursuant to proceedings taken therefor in accordance with the Constitution and General Laws of the State.

Section 1221. Revenue Bonds for Public Utilities. No revenue bonds shall be issued by the City for the purpose of supplying its inhabitants, or any portion thereof, with water, light, heat, power, railroad or motor vehicle transportation service (other than airport service), or telephone, telegraph or wireless communication service unless authorized by the affirmative vote of a majority of the electors voting on such a proposition in each case.

Nothing herein contained, however, shall be deemed to apply to any of the facilities mentioned in Section 1220. Also, nothing herein contained shall be deemed to deprive the City or its Council of any power which it may have under other Sections of this Charter or under the laws of the State to reimburse, or agree to reimburse, in whole or in part, from any special fund or special revenues, without the affirmative vote of any electors, any subdivider, developer or owner of any real property for any public improvements constructed, installed or furnished by any such person, or for any property dedicated or conveyed to the City by any such person, for or in connection with the subdivision, development or improvement of any real property of any such person.

Also, nothing herein contained shall preclude the issuance of general obligation bonds of the City for any purpose pursuant to proceedings taken therefor in accordance with the Constitution and general laws of the State.

Section 1222. Revenue Bonds for Other Purposes. Revenue bonds may be issued by the City for any purposes other than those specified in Sections 1220 and ~~and~~ 1221 only under and pursuant to the laws of the State of California.

Nothing herein contained, however, shall be deemed to deprive the City or its Council of any power which it may have under other Sections of this Charter or under the laws of the State to reimburse, or agree to reimburse, in whole or in part, from any special fund or special revenues, without the affirmative vote of any electors, any subdivider, developer or owner of any real property for any public improvements constructed, installed or furnished by any such person, or for any property dedicated or conveyed to the City by any such person, for or in connection with the subdivision, development or improvement of any real property of any such person.

Also, nothing herein contained shall preclude the issuance of general obligation bonds of the City for any purpose pursuant to proceedings taken therefor in accordance with the Constitution and general laws of the State.

ARTICLE XIII Franchises

Section 1300. Power to Require Franchises. Any person, firm or corporation furnishing or proposing to furnish the City or its inhabitants, or any portion thereof, with water, light, heat, gas, electricity, power, transportation, telephone, telegraph, communication, refrigeration, storage, or any other public utility or service, or traversing or proposing to traverse any part of the City for the transmitting or conveying of any such utility or service elsewhere, or using or proposing to use any public street, way, alley or place in the City for any of such purposes or for the operation of any plants, works or equipment for the furnishing thereof, or exercising or proposing to exercise any public utility franchise right or privilege in the City, may be required by ordinance to have a valid and existing franchise from the City therefor, excepting insofar as the City is prohibited by the Constitution or other applicable laws of the State of California or of the United States of America from requiring such franchise.

Section 1301. Authority to Grant Franchises. The Council is empowered to grant by ordinance a franchise to any person, firm or corporation, whether operating under an existing franchise or not, to furnish the City and its inhabitants,

or any portion thereof, with any of the public utilities or services, or to do any of the things, mentioned in Section 1300 of this Charter.

Section 1302. Franchise Terms, Conditions and Procedures. Subject to the provisions of this Charter, the Council may grant a franchise pursuant to a procedure prescribed by ordinance or pursuant to a procedure provided by State law. Any ordinance which prescribes a franchise-granting procedure different from that provided by State law shall make reasonable provision for a public hearing, after public notice, on any requested or proposed grant of a franchise. The Council may grant a franchise without calling for bids or may, in its discretion, advertise for bids for sale of a franchise upon such basis, not in conflict with the terms of this Article, as in its judgment is in the public interest. The Council may prescribe, in any procedural ordinance adopted pursuant to this Section, the terms and conditions under which any franchise or franchises will be granted.

The Council, in granting any franchise, shall prescribe the terms and conditions of such franchise in accordance with the applicable provisions of this Charter and any ordinance adopted pursuant thereto, and may in such franchise impose such other and additional terms and conditions not in conflict with said Charter or ordinances, whether governmental or contractual in character, as in the judgment of the Council are in the public interest or as the people, by initiative, indicate they desire to have so imposed.

Section 1303. Term of Franchise. Every franchise shall be for either a fixed term or for an indeterminate period. If for a fixed term, the franchise shall state the term for which it is granted; if indeterminate, it shall set forth the terms and conditions under which it may be terminated.

Section 1304. Purchase or Condemnation by City. No franchise grant shall in any way or to any extent impair or affect the right of the City now or hereafter conferred upon it by law to acquire property of the grantees thereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge either for a term or in perpetuity the City's right of eminent domain with respect to any public utility.

Section 1305. Exercising Right Without Franchise. The exercise by any person, firm or corporation of any privilege for which a franchise is required without procuring such franchise shall be a misdemeanor and each day that such continues shall constitute a separate violation.

Section 1306. Article Not Applicable to City. Nothing in this Article shall be construed to apply to the City, or any

department thereof, when furnishing any public utility or service.

Section 1307. Preservation of Rights. Nothing contained in this Article shall be construed to affect or impair any rights, powers or privileges vested in, possessed by or available to the City by virtue of previous Charter provisions relating to franchises.

ARTICLE XIV
School System

Section 1400. Effect of Charter. The organization, government and administration of the public school system in the City of San Jose shall not be affected by the adoption of this Charter, but shall continue in existence as is now or hereafter prescribed by the Education Code of the State of California.

ARTICLE XV
Retirement

Section 1500. Duty to Provide Retirement System. Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.

Section 1501. Exclusions. The Council in its discretion may exclude all or any of the following persons from any or all retirement plans, to wit: Persons mentioned in sub-paragraphs (1), (2), (4), (5), (6), and (7) of sub-section (a) of Section 1101 of this Charter; all persons employed or whose services are contracted for pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of this Charter; persons employed pursuant to Section 1110 of this Charter; persons in City service primarily for training, study or educational purposes; persons employed or paid on a part-time, per diem, per hour or any basis other than a monthly basis; temporary employees; persons employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons. Also, persons who are members of any other retirement or pension system, other than the federal social security system or any other federal retirement or pension system, and who are receiving credit

in such other system for service rendered to the City may be excluded, as to such service, from any such plan or plans.

Section 1502. Authority to Join Other Systems. Subject to other provisions of this Article, the City, by and through its Council, is hereby empowered, but not required, to join or continue as a contracting agency in any retirement or pension system or systems existing or hereafter created under the laws of the State of California or of the United States of America to which municipalities and municipal officers or employees are eligible.

Section 1503. Continuance of Existing Retirement Systems. Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2, and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. The foregoing provisions of this Section shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City at the time of adoption or amendment of any such retirement system or systems. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.

Section 1504. Minimum Benefits for Certain Members of Police and Fire Departments. The Council, by ordinance, shall provide the following minimum benefits for the following members of the Police and Fire Departments of the City excepting those members who are hereinafter excluded from the application of this Section.

(a) Retirement. An officer or employee of the Police Department or Fire Department of the City shall be entitled, upon his request, to be retired from City service and to receive during such retirement until his death a monthly retirement allowance equal to fifty percent (50%) of his "final compensation," hereinafter defined, if he:

(1) Completes twenty (20) years of "service," hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or

(2) Completes twenty (20) years of "service," hereinafter defined, is "disabled," as such term is hereinafter de-

ned, while holding such office or employment, and applies for such retirement while holding such office or employment.

(b) Contributions. Contributions required to be made by officers and employees of the Police Department or Fire Department of the City to any retirement fund, plan or system for or because of current service or current service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or because of benefits provided by any such program.

(c) Actuarial Soundness. Any retirement plan or system established for officers or employees of the Police or Fire Departments shall be actuarially sound; and an actuarial report thereon shall be obtained at intervals not exceeding five (5) years.

(d) Definitions. As used in this Section, "service" means service as defined on the effective date of this Charter in Topic 5 of Part 3A of Chapter 9 of Article II of the San Jose Municipal Code; and "final compensation" means final compensation as defined on the effective date of this Charter in Topic 1 of Part 3A of Chapter 9 of Article II of the San Jose Municipal Code, except that with respect to officers and employees who on the effective date of this Charter are members of the Police and Fire Department Retirement Plan established by Part 3 of Chapter 9 of Article II of the San Jose Municipal Code "final compensation" shall be deemed to mean the average monthly pay received by any such officer or employee during the three (3) years immediately preceding his request for retirement. Also, as used in this Section, "disabled" means the incurrence of a disability, short of death, of permanent duration, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him; provided, however, that such a disability shall be deemed to be of permanent duration if the City or any of its authorized agencies finds that such disability will continue at least until the disabled person attains the age of fifty-five (55) years.

(e) Miscellaneous. The benefits hereinabove specified are minimum only; and the Council, in its discretion, may grant

greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.

(f) Persons Excluded. The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions; to wit: Any and all persons hereinabove mentioned or referred to in Section 1501; officers or employees whose principal duties are those of a telephone operator, clerk, stenographer, secretary, machinist or mechanic; and any and all other officers or employees whose principal duties or functions do not fall clearly within the scope of active law enforcement or active fire fighting and prevention service even though such an officer or employee is subject to occasional call or is occasionally called upon to perform duties or functions within the scope of active law enforcement service or active fire fighting or prevention service, excepting persons employed and qualifying as police patrolmen or in equal or higher rank in the police department irrespective of the duties to which they are assigned, or persons employed and qualifying as firemen, fire fighters, hosemen or in equal or higher rank in the fire department irrespective of the duties to which they are assigned. Also, the provisions of this Section shall not apply to any person or persons who have been retired from the service of the City prior to the effective date of this Charter.

Section 1505. Minimum Benefits for Officers and Employees Other than Members of the Police or Fire Departments. The Council, by ordinance, shall provide the following minimum benefits for all officers and employees of the City excepting those who are hereinafter excluded from the application of this Section.

(a) Service Retirement. An officer or employee of the City, other than those hereinafter excluded, shall be entitled, upon his request, to be retired from City service and to receive during such retirement until his death an annual retirement allowance equal to two percent (2%) of his "final compensation," hereinafter defined, per each year of his first twenty-five (25) years of service, hereinafter defined, plus one percent (1%) of such final compensation per each year of his service in excess of twenty-five (25) years, subject to a maximum of eighty-five percent (85%) of such final compensation, if he:

(1) Completes twenty-five (25) years or more of "service," hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or

(2) Attains, while holding such office or employment, the age of seventy (70) years or more regardless of his years of service.

(b) Disability Retirement. An officer or employee of the City, other than those hereinafter excluded, who has completed ten (10) years of "service," hereinafter defined, and is "disabled," as such term is hereinafter defined, while holding such office or employment, and applies for a disability retirement while holding such office or employment, shall be entitled, upon his request, to be retired from City service because of such disability, and to thereafter receive, during the period of such disability a monthly disability retirement allowance equal in amount to the monthly disability retirement allowance provided for in Topic 16 of Part 4 of Chapter 9 of Article II of the San Jose Municipal Code as said Topic and Chapter read on the effective date of this Charter.

(c) Contributions. Contributions required to be made by officers and employees of the City, other than those hereinafter excluded, to any retirement fund, system or plan for or because of current service or current service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or for or because of any benefits provided by any such program.

(d) Definitions. As used in this Section, "service" means all service for which an officer or employee is entitled to credit under the provisions of the retirement system established by Part 4 of Chapter 9 of Article II of the San Jose Municipal Code as such Part 4 reads on the effective date of this Charter; and "final compensation" means final compensation as defined on the effective date of this Charter in Topic 1 of Part 4 of Chapter 9 of Article II of the San Jose Municipal Code. Also, as used in this Section, "disabled" means the inurrence of a disability, short of death, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him.

(e) Miscellaneous. The benefits hereinabove specified are minimum only; and the Council in its discretion, may grant

greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any service or disability retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.

(f) Persons Excluded. The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions, to wit: Any and all persons mentioned or referred to in Section 1501; and any and all officers and employees in the Police Department and Fire Department of the City; any person or persons who have been retired from the service of the City prior to the effective date of this Charter; and any and all persons to whom, on the effective date of this Charter, the provisions of Topic 15A of Part 4 of Chapter 9 of Article II of the San Jose Municipal Code, as it reads on the effective date of this Charter, do not apply.

ARTICLE XVI Elections

Section 1600. General Municipal Elections. A general municipal election shall be held on the second Tuesday of April of each odd-numbered year, commencing with the year 1967, for the election of officers and for such other purposes as the Council may prescribe.

If any office required to be filled at any such election remains unfilled after the election because of the failure of any person to receive a majority of all votes cast for such office at such election, then as to such office such election shall be considered to have been a primary election, and a general municipal election shall be held on the last Tuesday of May immediately following such primary election for the purpose of filling such office. The two persons who polled the greatest numbers of votes for such office in the primary election shall be the only persons whose names shall appear on the ballot as candidates for such office at such May election. All ties in either election shall be decided by lot, during open meeting of the Council, under the direction of the Council.

Section 1601. Special Municipal Elections. All municipal elections, other than those specified in Section 1600, shall be deemed to be special municipal elections. Except as otherwise provided elsewhere in this Charter, special municipal elections shall be held at such times and for such purposes as the Council may prescribe.

Section 1602. Election Procedure. Except as otherwise provided by ordinance hereafter enacted, all municipal elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, for the holding of elections in cities, insofar as the same are not in conflict with this Charter.

Section 1603. Initiative, Referendum and Recall. The powers of the initiative, referendum and the recall of elected municipal officers are hereby reserved to the electors of the City. The provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, governing the initiative and referendum and the recall of municipal officers in cities shall be applicable insofar as the same are not in conflict with this Charter; provided, however, that the number of signatures which shall be required for the exercise of said reserved powers shall be as follows:

(a) Initiative. To initiate proceedings for the exercise of the power of initiative, either of the following provisions shall apply as is applicable:

(1) If the petition is signed by duly qualified electors of the City equal in number to at least eight percent (8%) of the number of persons eligible to vote at the general municipal election next preceding the filing of the petition, and contains a request that the proposed ordinance be submitted immediately to a vote of the people at a special election, the Council shall either pass the proposed ordinance for publication, without alteration, at the regular meeting at which it is presented by the City Clerk and adopt said ordinance within ten (10) days after it is so presented, or immediately call a special election at which the ordinance, without alteration, shall be submitted to a vote of the voters of the City.

(2) If the petition is signed by duly qualified electors of the City equal in number to at least five percent (5%) of the number of persons eligible to vote at the general municipal election next preceding the filing of the petition, and the ordinance petitioned for is not required to be, or for any reason is not, submitted to the voters at a special election, and is not adopted without alteration by the Council, then the proposed ordinance, without alteration, shall be submitted by the Council to the voters at the next general municipal election.

In the event that a petition is submitted in accordance with the provisions of either sub-paragraphs (1) or (2) of this sub-section (a), and the Council submits said proposed ordinance to a vote of the voters of the City, the Council may at the same time submit an alternative ordinance.

(b) Referendum. To initiate proceedings for the exercise of the power of referendum, the petition shall be signed by

duly qualified electors of the City equal in number to at least eight percent (8%) of the number of persons eligible to vote at the general municipal election next preceding the filing of the petition.

(c) Recall. To initiate proceedings for the exercise of the power of recall, the petition shall be signed by duly qualified electors of the City equal in number to at least twelve percent (12%) of the number of persons eligible to vote at the general municipal election next preceding the filing of the petition.

Section 1604. Removal of City Manager. The electors of the City do hereby reserve the power to remove from his office the person holding the position of City Manager. The provisions of the Elections Code of the State of California governing the recall of holders of elective offices of cities, as they now exist or may hereafter be amended, shall be applicable, insofar as the same are not in conflict with this Charter, to the removal from his office of the person holding the position of City Manager, the same as if the position of City Manager were an elective office; provided, however, that:

(a) To initiate proceedings for the exercise of said power, the petition shall be signed by duly qualified electors of the City equal in number to at least the same percentage of the number of persons eligible to vote at the general municipal election next preceding the filing of the petition as is required for recall petitions under the provisions of sub-section (c) of Section 1603 of this Charter.

(h) If a vacancy occurs in the office of City Manager after a removal petition has been filed, no election need be held;

(c) There shall be no nomination of candidates to succeed the incumbent in the event the incumbent is removed from office. If the incumbent is removed from his office pursuant to the provisions of this Section, a successor shall be appointed by the Council.

No person who has been removed from the office of City Manager pursuant to the provisions of this Section shall be reappointed thereto within a period of four (4) years from and after date of such removal.

ARTICLE XVII General Provisions

Section 1700. Parks. Except as otherwise provided elsewhere in this Charter, the public parks of the City shall be inalienable unless otherwise authorized by the affirmative votes of the majority of the electors voting on such a proposition in each case; provided and excepting, however, that the same or any interest therein, or any concessions or privileges therein or in any building or structure situate therein, may be leased by the Council, or the Council may grant permits or licenses

for the same, without any vote of any electors, if the term of each such lease or permit does not exceed three (3) years. As used herein "public parks" means any and all lands of the City which have been or are dedicated, improved and opened to the public for public park purposes.

Section 1701. Underground Parking Stations in Parks. Whenever the Council finds with respect to any public park, plaza, or square that the construction, when completed, in the sub-surface space thereunder of a public parking station (including all entrance and exit approaches, openings, and ramps, ventilators, elevator shafts and other appurtenances to such parking station) and/or the operation in the sub-surface space thereunder of a public parking station (including services incidental to such operations such as sale of gasoline, oil and accessories and lubrication and oiling of vehicles) will not be in any material respect or degree detrimental to public park, plaza or square purposes or in contravention of any conditions under which such public park, plaza or square was received, the City, without the affirmative vote of any electors, may construct and/or operate such public parking station in the sub-surface space under such public park, plaza or square, or said Council may lease to the highest responsible bidder for a term not to exceed fifty (50) years, and upon such other terms and conditions as it may determine, sub-surface space under such public park, plaza or square for the purpose of constructing and/or operating therein such public automobile parking station. Nothing contained in this Section shall be deemed to deprive the City or its Council of any powers, nor limit or restrict any powers which the City or its Council may have, with respect to public parks, under or by virtue of other provisions of this Charter.

Section 1702. Streets in Parks. The Council, by ordinance, without the affirmative vote of any electors, may authorize the opening, establishment and/or maintenance of streets or other public ways in or through any of the public parks, public places or other public property of the City. Nothing contained in this Section shall be deemed to deprive the City or its Council of any powers, nor limit or restrict any powers which the City or the Council may have, with respect to public parks, under or by virtue of other provisions of this Charter.

Section 1703. Validity of Charter; Severability. If any provision of this Charter, or the application thereof to any person or circumstances is held invalid, the remainder of the Charter and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 1704. Definitions. Unless the provisions or the context otherwise require, as used in this Charter:

- (a) "Shall" is mandatory and "may" is permissive;
- (b) "City" is the City of San Jose and "department," "board," "commission," "agency," "officer," or "employee" is a department, board, commission, agency, officer or employee, as the case may be, of the City of San Jose;
- (c) "Council" is the Council of the City of San Jose;
- (d) A "member of the Council" means any one of the seven (7) members of the Council, including the Mayor;
- (e) "County" is the County of Santa Clara;
- (f) "State" is the State of California;
- (g) "Newspaper of general circulation within the City" is defined by Section 6000 of the Government Code of the State of California;
- (h) The masculine gender includes the feminine and neuter.

Section 1705. Effective Date. This Charter shall be effective from the time of its approval by the State legislature.

ARTICLE XVIII Transitional Provisions

Section 1800. Existing Laws, Ordinances, Regulations, Etc. All City ordinances, resolutions, orders and regulations which are in force when this Charter becomes effective are repealed to the extent that they conflict or are inconsistent with, or interfere with the effective operation of, this Charter or of any ordinances or resolutions adopted pursuant thereto. To the extent that the Constitution of the State of California permits, all State laws relating to or affecting this City or its agencies, officers or employees which are in force when this Charter becomes effective are superseded to the extent that they conflict or are inconsistent with, or interfere with the operation of, this Charter or of ordinances or resolutions adopted pursuant thereto.

All City ordinances, resolutions, orders and regulations which are in force when this Charter becomes effective, if and to the extent that they are not repealed by the provisions of the immediately preceding paragraph, shall remain in full force and effect until amended or repealed pursuant to the provisions of this Charter.

Without limitation of the general operation of the above provisions of this Section, or of the number or nature of the provisions to which it applies, the Council is hereby empowered to amend or repeal any City ordinance, resolution, rule or regulation which is in force when this Charter becomes effective notwithstanding the fact that such ordinance, rule or regulation may have been adopted or approved by the

people of the City prior to the time this Charter becomes effective.

Section 1801. Pending Matters. All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue except as modified, terminated or otherwise disposed of pursuant to the provisions of this Charter, and in each case shall be maintained, carried on or dealt with by the City department, office or agency appropriate under this Charter.

Section 1802. Continuity of Agencies. Any office, department or agency provided for in this Charter with powers and duties the same or substantially the same as those of an office, department, or agency heretofore existing shall be deemed to be a continuation of such office, department or agency and shall exercise such powers and duties as it has under this Charter in continuation of their exercise by the office, department or agency by which the same were heretofore exercised and shall have the power to continue any business, proceedings or other matter within the scope of its powers and duties under this Charter commenced by an office, department or agency by which such powers and duties were heretofore exercised.

Section 1803. Existing Members of Boards and Commissions. Until otherwise provided by the Council, all persons who at the time this Charter takes effect are members of any City boards and commissions, excepting the Planning Commission, the Civil Service Commission and the Board of Library Trustees, shall continue to hold their respective offices and perform the duties thereof, to the extent that such duties are not in conflict with other provisions of this Charter, until the expiration of their respective terms or until sooner removed therefrom by the Council. Membership in the Planning Commission and in the Civil Service Commission shall be governed by other applicable provisions of this Charter. The Board of Library Trustees is hereby abolished, and membership therein vacated, as of the effective date of this Charter; provided, however, that the Council may, in its discretion, establish a new library board and grant it such powers and duties, consistent with other provisions of this Charter, as the Council may deem appropriate.

Section 1804. Existing Officers and Employees. Subject to the provisions of Section 1604, the persons holding the offices of City Manager, City Clerk and City Attorney, respectively, at the time this Charter takes effect shall continue to hold such offices and perform the respective duties thereof, as established by or pursuant to this Charter, until removed by Council. Subject to such removal, change and control as is required, provided or authorized in or by other provisions

of this Charter, all other persons holding other appointive offices or positions in the Civil Service of the City at the time this Charter takes effect, excepting members of boards and commissions, shall continue to perform the duties of their respective offices or positions until persons are appointed, pursuant to this Charter; to succeed to or take over their duties or until relieved pursuant to this Charter, of their duties.

Section 1805. *Transfers, Etc.* If because of this Charter all or substantially all of the duties or work of any position or employment which was in the Classified Service under the provisions of the immediately preceding Charter are transferred from one department or office to another department or office, then in that event, unless otherwise provided by the Council, such Classified positions or employments shall be deemed transferred to the new department or office and the persons holding such positions or employments on the effective date of this Charter shall continue to hold such positions or employments and perform the duties and work thereof in the new department or office, subject to such removal, supervision and control as is provided for elsewhere in this Charter. If, upon or after the transfer by this Charter of such duties or work of such Classified positions or employments to another department or office, said positions are discontinued and new or revised Classified positions are created, the persons holding the original positions shall be deemed qualified for transfer or appointment to, and may be transferred or appointed to, the new or revised positions, without examination or further compliance with any Civil Service regulations governing transfers or appointments, if the duties or work thereof are substantially similar to or were substantially included within the duties or work of their prior positions or employments.

If because of this Charter any of the duties or work of any position or employment which was in the Unclassified Service under the provisions of the immediately preceding Charter are transferred from one department or office to another and thereafter assigned in such new department or office to a Classified position in the new department or office, then in that event, unless otherwise provided by the Council, the person holding the original Unclassified position or employment shall be deemed qualified for transfer or appointment to, and may be transferred or appointed to, the new Classified position to which any of his former duties or work have been transferred or assigned, without examination or further compliance with any Civil Service regulations governing transfers or appointments, if the duties or work of the new Classified position are substantially similar to or were substantially included within the duties or work of his prior position or employment.

Any person who is transferred pursuant to the preceding provisions of this Section from a Classified or Unclassified position or employment in one department or office to a Classified position or employment in another department or office shall acquire a non-probationary status in the classification within which such new position or employment is included pursuant to this Charter if such person has been performing the duties of such position, employment or classification for a period of at least six (6) months immediately prior to the effective date of this Charter; but if such person on the effective date of this Charter has been performing such duties for a period of less than six (6) months, he shall have a probationary status in the new classification and will acquire non-probationary status only if and when he completes six (6) months of such service in such position, employment or classification.

And we and each of us further certify that we have compared the foregoing proposed, adopted, and ratified charter of the City of San Jose with the original proposal submitting the same to the electors of said city and find that the foregoing is a full, true, and correct and exact copy of said charter.

The foregoing proposed, adopted, and ratified charter of the City of San Jose is hereby submitted to the Legislature of the State of California for approval or rejection as a whole without power of alteration or amendment in accordance with the provisions of Section 8 of Article XI of the Constitution of the State of California.

As to said Charter, this certificate shall be taken as a full and complete certification of the regularity of all proceedings had and done in connection therewith.

In witness whereof, we have hereunto set our hands and caused the seal of the City of San Jose to be affixed hereto on this 22nd day of April, 1965.

(SEAL)

JOSEPH L. PACE
Mayor of the City of San Jose
FRANCIS L. GREINER
City Clerk of the City of San Jose

and

WHEREAS, Said proposed charter, as adopted and ratified, as hereinabove set forth, has been and now is duly presented and submitted to the Legislature of the State of California for approval or rejection as a whole without power of alteration or amendment, in accordance with Section 8 of Article XI of the Constitution of the State of California; now, therefore, be it
Resolved by the Assembly of the State of California, the Senate concurring, a majority of all the members of each

house voting therefor and concurring therein, That said proposed Charter of the City of San Jose, hereinbefore set forth, as presented and submitted to and adopted and ratified by the qualified electors of the City of San Jose, be and the same is hereby approved as a whole, without alteration or amendment, as the Charter of the said. City of San Jose.

SJRJN000449

Carlos Bee
Speaker of the Assembly
pro Tempore

Glen M. Anderson
President of the Senate

Attest:

**ENDORSED
FILED**

In the office of the Secretary of State
of the State of California

MAY 4 - 1965

FRANK M. JORDAN, Secretary of State
By WALTER C. STUTLER
Assistant Secretary of State

Frank M. Jordan
Secretary of State

By Walter C. Stutler
Assistant Secretary of State

Exhibit H

~~5-20-86~~

CITY OF SAN JOSE—MEMORANDUM

TO HONORABLE MAYOR AND CITY COUNCIL FROM FRAN GALLONI
SUBJECT RETIREMENT BENEFIT INCREASE DATE DIRECTOR OF PERSONNEL
MAY 6, 1986

APPROVED

DATE

[Signature]
5-13-86

BACKGROUND

As you are aware, both retirement Boards recently reviewed actuarial reports covering the study and costing of increased retirement benefits. The benefits reviewed by the Police and Fire Board were as follows:

1. Ad Hoc Cost-of-Living Increase
2. Permanent changes in Cost-of-Living Provision
3. Dental Plan
4. Remarriage of Widows
5. Contributions Stop at Thirty Years

The benefits reviewed by the Federated Board were as follows:

1. Dental Plan
2. Supplemental Retiree Benefit Reserve
3. Redeposit of Withdrawn Contributions
4. Medical Coverage for Members with:
 - a) 5-9 years service at 1/3 of full premium
 - b) 10-14 years service at 2/3 of full premium
5. Medical Coverage for Vested Deferred Members with 15 Years Service

Of the five items that were reviewed by the Police and Fire Board, only two: ad hoc cost-of-living increase and the Dental Plan were recommended by the Board to the Council. On April 15, 1986, the Council approved, in concept, the cost-of-living adjustment and the Dental Plan as recommended by the Board.

ANALYSIS

The Federated Board has forwarded two separate reports to the Council. One report describes and recommends the adoption of the Supplemental Retiree Benefit Reserve (SRBR). The other report recommends the Dental Plan, Redeposit of Withdrawn Contributions, Medical Coverage for short service retiree and medical coverage for Vested Deferred Members with 15 years service. The Dental Plan is straight forward and is the same benefit recommended by the Police and Fire.

The Supplemental Retiree Benefit Reserve (SRBR) would provide an avenue for the Board to give ad hoc Cost-of-Living Allowance increases, when in the judgement of the Board such was warranted. The redeposit of withdrawn contribution benefit would allow employees who leave the City and withdraw their retirement contributions to redeposit them if they returned to City employment. Under the proposed medical coverage benefits, retirees with 5 to 9 years of service would receive one third of the amount

which is paid for 15 year retirees, and those with 10 to 14 years of service would receive two thirds of that amount. The final benefit recommendation is to provide fully paid medical coverage to deferred vested members with 15 years of service.

Given that the Council has already approved the Police and Fire benefit request, it seems appropriate that we recommend something for the Federated retirees. However, it is still my recommendation that any medical and dental benefits be restricted to career employees i.e., retirees with 15 or more years of service, who leave City service by way of retirement. For Federated disability retirees, coverage will be provided for individuals who are receiving a benefit of at least 37 1/2% of final compensation. In my opinion, we have no justification for providing a benefit of the magnitude recommended by the Board - 20% to 30% - for individuals with only five years of City service.

RECOMMENDATION

I am recommending two benefits - Dental and SRBR - increases for Federated retirees. These two are very similar to the ones already approved by Council for Police and Fire retirees. The SRBR is comparable to the one percent per year that was granted to the Police and Fire. The benefit level is much lower, but it is what the Federated Board requested. Even though the benefit level is lower, it is a program which will be a permanent part of the Federated Retirement System. The problem with the SRBR, as approved by the Board, is that the benefit distribution decisions rests entirely with the Board. It would be more appropriate to have the Board make recommendations to the Council concerning whether retirement benefits should be increased.

The last benefit which I would recommend, which affects active employees, is the redeposit of withdrawn contributions. This benefit would give the employee the right to repay their contributions and get credit for prior service upon return to City employment. This benefit would give the Federated employees a benefit which is already included in the Police and Fire Plan.

In summary, the recommended benefit structure would be as follows:

	<u>Benefit</u>	<u>Cost</u>	<u>Dollar Value</u>
1.	S. R. B. R.	.17% of payroll	\$127,500
2.	Dental	.61% " "	\$457,500
3.	Redeposit	.20% " "	\$150,000

The total package would cost an estimated .98% (\$735,000) of payroll. Of the total saving recommended by the actuary for the City of 1.54%, the City would still save .56% of payroll (\$420,000) with our proposal. In addition, we would have a compensation package that makes sense.

Fran Galloni
Fran Galloni
Director of Personnel

Exhibit I

3/22/88

CITY OF SAN JOSE--MEMORANDUM

TO	HONORABLE MAYOR AND CITY COUNCIL	FROM	JOAN R. GALLO CITY ATTORNEY
SUBJECT	BENEFIT INCREASES - FEDERATED RETIREMENT SYSTEM	DATE	MARCH 21, 1988
APPROVED		DATE	

COUNCIL AGENDA 3-22-88-10a

SUPPLEMENTAL MEMORANDUM

BACKGROUND

The Federated Retirement Board has recommended implementation of three benefits in the Federated Retirement System. The Board has recommended that the costs of these benefits be paid from the Supplemental Retiree Benefit Reserve (SRBR), which is part of the Retirement Fund, for two years.

The Administration has recommended that these benefits be implemented but that the SRBR be eliminated from the Retirement System if at any time in the future there are insufficient moneys in the SRBR to cover the costs of the benefits.

ANALYSIS

The SRBR was established in 1986 through an amendment to the Municipal Code following the receipt of meet and confer waivers from the affected employee organizations. Moneys in the SRBR can be used only for the benefit of retirees and survivors. Under the Code, the City Council, after consideration of the recommendation of the Retirement Board, determines the distribution, if any, of the SRBR.

The Municipal Code does not provide for a continuation of benefits funded from the SRBR in the event there are insufficient moneys in the SRBR to continue payment of the costs associated with such benefits.

PROCEDURES

A. Board Recommendation.

1. Funding for two years from the SRBR.

If the Council desires to approve the Retirement Board recommendation to implement the benefits and fund them from the SRBR for two years, the appropriate action is:

- a. Adopt a resolution implementing the benefits for a two-year period only.

Honorable Mayor and City Council
Benefit Increases - Federated Retirement System
Supplemental Memorandum
March 21, 1988
Page Two

B. Administration Recommendation.

1. Funding through contribution rates.

If the Council desires to approve the benefits and provide funding for them, either at this time or in the future, through adjustments in the contribution rates of the City and the current employees, the appropriate actions are:

- a. Meet and confer with the affected employee organizations.
- b. Approve an ordinance amending the Municipal Code to implement the benefits.

2. Elimination of the SRBR.

If the Council desires to approve the Administration's recommendation to implement the benefits and fund them from the SRBR but eliminate the SRBR if at any time there are insufficient moneys in the SRBR to continue funding the benefits, the appropriate actions are:

- a. Meet and confer with the affected employee organizations.
- b. Approve an ordinance amending the Municipal Code.

JOAN R. GALLO
City Attorney

By Susan Devencenzi
SUSAN DEVENCENZI
Deputy City Attorney

SJRJN000454

Exhibit J

CITY OF SAN JOSE - MEMORANDUM

TO Honorable Mayor and
City Council

FROM Frances A. Galloni

SUBJECT ADMINISTRATION'S REPORT
ON FEDERATED RETIREMENT
BENEFIT INCREASES

DATE February 24, 1988

APPROVED

DATE

BACKGROUND

In June of 1986, based upon a recommendation of the Federated Retirement Board, the City Council approved a change to Chapter 3.28 of the San Jose Municipal Code which added a Supplemental Retiree Benefit Reserve (SRBR). The purpose of this reserve was to fund additional benefits as approved by the City Council, based upon the recommendation of the Retirement Board. The SRBR is funded by allocating 10% of the excess earnings which are generated by the Federated Retirement System each year. Excess earnings are determined on the basis of monies which are in excess of the assumed interest rate minus operating expenses. As of June 30, 1987, the SRBR fund balance was approximately \$983,000. As a part of the Federated Retirement System's bi-annual actuarial review, the Board requested that the Actuary study seven new benefits. At the Federated Board Meeting of February 22, 1988, the Board agreed to recommend to the Council the implementation of three new benefits. These benefits were recommended as follows:

- 1) Health coverage for deferred vested members;
- 2) 1% increase for each year of retirement for retirees who have been retired at least one year on July 1, 1987; and
- 3) Unbroken continuation of cost of living to survivors.

ANALYSIS

The Council has received a detailed report from the Retirement Board with justification for their recommendations. We concur with the Board's recommendation and, therefore, the justification for those recommendations will not be repeated in this memo. We do, however, have a concern that has not been completely dealt with by the Retirement Board. The Board has requested that the benefit enhancements be funded from the funds that have been accumulated in the SRBR. The current SRBR balance is approximately \$983,000. This amount could fund the benefits

SJRJN000455

Honorable Mayor and City Council
February 24, 1988

Page 2

for two years, if no additional monies were added to the SRBR. If the SRBR is subsequently unable to fund these new benefits, the contribution rates for both the City and members would have to be increased to cover the costs of the proposed new benefits.

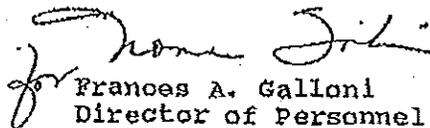
If the SRBR is unable to fund these new benefits and their cost must be added to the regular contribution rate, the SRBR should be eliminated as a provision of the Federated Retirement System. The elimination of SRBR would properly prohibit the addition of new benefits on the basis of new SRBR funding which would later have to be funded from the regular contribution structure. Since the SRBR funding is based on the performance of the Retirement Fund's investment portfolio, the possibility for wide swings in available funds will always exist. Therefore, the SRBR should not have the potential to fund benefit increases in periods of high investment earnings, and then continuously shift the funding responsibility to the regular contribution rate when investment earnings decline.

COST IMPLICATION

Cost of the program will be paid entirely by the Federated Retirement System's Supplemental Retiree Benefit Reserve. This funding is guaranteed for two years. At the end of two years the cost may have to be shifted to the regular contribution rate.

RECOMMENDATION

It is recommended that the City Council approve the Board's recommendation to add the benefits, as heretofore mentioned, to the Federated City Employees' Retirement System, and that the Administration be authorized to meet and confer with the affected employee groups to implement these new benefits. It is also recommended that if at any time in the future the SRBR is unable to fund these new benefits that the SRBR be eliminated as a provision of the Federated Retirement System.


for Frances A. Galloni
Director of Personnel

FG:mmb

SJRJN000456

Exhibit K

CITY OF SAN JOSE - MEMORANDUM

TO Honorable Mayor and
City Council

FROM Federated Board of
Administration

SUBJECT FEDERATED RETIREMENT
BENEFIT INCREASES

DATE February 24, 1988

APPROVED

DATE

BACKGROUND

The Federated City Employees' Retirement System has had its normal bi-annual actuarial study completed effective June 30, 1987. As a part of that study, we requested that the actuary cost out seven new benefit proposals.

Special Study #1 -

Provide partial health insurance payment as follows:

- a. 5 - 9 years of service 1/3 of premium
- b. 10 - 14 years of service 2/3 of premium

Special Study #2 -

Provide retiree health and dental insurances for deferred vested members with 15 years of city service.

Special Study #3 -

Provide a 1% increase to retirees for each year of retirement for those members retired at least a year on July 1, 1987.

Special Study #4 -

Provide unbroken continuation of cost of living benefits to survivors.

Special Study #5 -

Provide 100% continuation of retirement benefits to survivors upon death of retiree.

Special Study #6 -

Provide 75% continuation of retirement benefits to survivors upon death of retiree.

Special Study #7 -

Provide a final average salary based on the highest one year.

Based upon a review of all the special studies, the Retirement Board at its February 22, 1988 meeting recommended to Council that we implement:

1. The health portion of Study #2.
2. The 1% increase for each year of retirement.
3. The unbroken continuation of cost of living to survivors.

ANALYSIS

Recommendation #1

The Board concluded that two employees with 15 years of City service should be given equal treatment with regard to post-retirement health benefits. Currently, an employee who works 15 years for the City, vests his/her retirement benefits, and later returns at age 55 to retire does not get paid health insurance. The Municipal Code, which governs the administration of this particular benefit, provides that a employee can only enroll and receive plan premiums in one of the City's medical plans if they leave the City by way of retirement. The recommendation is to change this and provide all City retirees, with 15 years of service, after the date of this amendment coverage under the City's medical plans.

Recommendation #2

The second recommendation is to increase the retirement base pay by 1% per year retired for each retiree who has been retired at least one year on July 1, 1987. This is essentially the same benefit which was granted to the members of the Police and Fire Department Plan on June 17, 1986.

Recommendation #3

The final benefit recommended is the unbroken continuation of cost of living to survivors. Under the current provisions of the retirement plan, a member who retires is granted an initial cost of living increase in the month following the month in which they have been retired for one year. All other cost of living increases are granted on April 1 of a particular year for the one-year period ending the previous December. Currently, provisions of the Plan also provide that if a retired member dies, time served toward accumulation of a cost

of living increase does not count toward increasing the survivors benefit. Therefore, the survivor must start accumulating their own time toward cost of living increases. This amendment would provide that the survivor would get credit for the time accumulated by a deceased retiree toward granting a cost of living increase.

The cost of the above-mentioned benefits is listed below:
(Based on current payroll)

		<u>City</u>		<u>Employee</u>
1.	<u>Deferred Vested Medical</u>	.07%	\$ 66,000	.07% \$ 66,000
2.	<u>1% Increase for Each Year of Retirement</u>			
	Basic	.11%	\$103,000	.05% \$ 47,000
	Cost of Living	.06%	\$ 56,000	.04% \$ 37,000
3.	<u>Unbroken Continuation of C.O.L. to Survivor</u>	.03%	\$ 28,000	.01% \$ 9,000
	TOTAL		\$253,000	\$159,000

The Board recommends paying the cost of these benefits from the Supplemental Retiree Benefit Reserve (S.R.B.R.). As of June 30, 1987 the balance of the S.R.B.R. was approximately \$983,000. It is anticipated that the balance of the S.R.B.R. will cover the cost of these benefits for two years. Of course, if the S.R.B.R. Fund grows, we will be able to cover these benefits for longer than two years. The Board does anticipate that this fund will continue to grow. However, we caution that if the earnings level of the retirement fund is not sufficiently high to continue to add to the S.R.B.R. balance, then the rates of contribution would have to be increased.

In order to implement the deferred vested medical benefit, Part 16 of Chapter 3.28 must be amended; and, the unbroken continuation of the cost of living benefit requires that we amend Chapter 3.44 of the San Jose Municipal Code. The City Attorney's Office has been requested to prepare the necessary ordinances. It is anticipated that these benefits will become effective July 1, 1988.

In addition to recommending new benefits, the Board set rates of contribution for the City and members of the Federated System. Effective February 22, 1988, pay period five, the rates of contribution are as follows:

	<u>City</u>		<u>Employees</u>	
	<u>Old</u>	<u>New</u>	<u>Old</u>	<u>New</u>
Regular	11.82%	10.99%	5.62%	4.90%
Cost of Living	3.34%	3.23%	1.61%	1.49%
Total	<u>15.16%</u>	<u>14.22%</u>	<u>7.23%</u>	<u>6.39%</u>

The Board decided to review cost effective ways of equalizing the survivorship benefits for members who die before retirement and those who die after retirement. Finally, the future use of the Supplemental Retiree Benefit Reserve is a topic which will be agendized for continued discussion. Both of these items will be brought back to the Board in the next couple of months.

RECOMMENDATION

It is recommended that the Council approve the amendments to the Federated City Employees' Retirement System which would provide for benefit enhancements as mentioned above. The cost of these enhancements is initially to be paid by the Federated City Employees' Retirement System Supplemental Retiree Benefit Reserve.

Board of Administration
Federated City Employees'
Retirement System

By:


EDWARD F. OVERTON, SECRETARY
BOARD OF ADMINISTRATION

BFO:mmb

Exhibit L

RESOLUTION NO. 75635

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING AND RESTATING RESOLUTION NO. 72859 REGARDING THE SUPPLEMENTAL RETIREE BENEFIT RESERVE OF THE FEDERATED CITY EMPLOYEES RETIREMENT FUND, TO SUSPEND THE DISTRIBUTION OF FUNDS FROM THE RESERVE DURING FISCAL YEAR 2010-2011

WHEREAS, pursuant to Section 3.28.340 D of the San José Municipal Code, the Board of Administration for the Federated City Employees Retirement System (the "Board") has established the Supplemental Retiree Benefit Reserve (the "SRBR") in the Federated City Employees Retirement Fund; and

WHEREAS, Section 3.28.340 D 1. provides that distributions from the SRBR shall be made only for the benefit of retired members, survivors of members, and survivors of retired members of the Federated City Employees Retirement System (the "System"); and

WHEREAS, Section 3.28.340 D 3. further provides that the Board shall make distributions in accordance with a methodology recommended by the Board and approved by the City Council; and

WHEREAS, pursuant to a recommendation by the Board, on December 16, 2003, the City Council adopted Resolution No. 71870 approving a methodology for calculating the amount of distributions from the SRBR; and

WHEREAS, on August 23, 2005, the City Council adopted Resolution No. 72859 which restated the provisions of Resolution 71780 to include surviving registered domestic partners in the SRBR distribution on the same basis as surviving spouses; and

WHEREAS, the City Council desires to amend and restate Resolution 72859 so that the distribution of funds from the SRBR be suspended during Fiscal Year 2010-2011;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The City Council hereby approves the methodology for the distribution of moneys from the Supplemental Retiree Benefits Reserve of the Federated City Employees Retirement Fund recommended by the Board and described in this Resolution, except for fiscal year 2009-10, when there shall be no distribution of moneys from the Supplemental Retiree Benefits Reserve of the Federated City Employees Retirement Fund.

SECTION 2. This approval shall remain in effect until such time as the Board recommends a subsequent methodology and the Council adopts a resolution approving the subsequent methodology.

SECTION 3. Total Annual Distribution.

- A. The Total Annual Distribution for calendar year 2003 shall be One Million Dollars (\$1,000,000).
- B. The Total Annual Distribution for each calendar year beginning calendar year 2004 shall be the sum of (a) the amount, if any, in excess of the Minimum Balance, and (b) the annual interest earned in the SRBR as of June 30 in the year of distribution. For any year in which the actual balance in the SRBR as of June 30 in the year of distribution is less than or equal to the Minimum Balance, the total distribution for that year shall be limited to the annual interest earned in the SRBR.

SECTION 4. Eligible Distribution Points.

A. For the purposed of calculating the distribution to be made to each eligible recipient, distribution points shall be assigned for Years of Service and for Years Retired as follows:

1. Years Of Service (YOS) Points:

- a. For each Retiree, there shall be assigned one (1) point for each year of the Retiree's Federated City service.
- b. For each Surviving Spouse or Surviving Domestic Partner of a Retiree, there shall be assigned one (1) point for each year of the Retiree's Federated City service.
- c. For each Surviving Spouse or Surviving Domestic Partner of an Active Member, there shall be assigned one (1) point for each year of the Active Member's Federated City service.
- d. For each Surviving Children's Unit, there shall be assigned one (1) point for each year of the deceased person's Federated City service.
- e. For each Optional Settlement Beneficiary, there shall be assigned one (1) point for each year of the deceased person's Federated City service.

2. Years Retired (YR) Points:

- a. For each Retiree, there shall be assigned the number of points equivalent to the number of years from the effective date of the

Retiree's retirement to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree receives as a retirement benefit under the System's benefit formula.

- b. For each Surviving Spouse or Surviving Domestic Partner of a Retiree, there shall be assigned the number of points equivalent to the sum of:
 - i. The number of years from the effective date of the Retiree's retirement to the date of the Retiree's death multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula, and
 - ii. The number of years from the date of the Retiree's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula.
- c. For each Surviving Spouse or Surviving Domestic Partner of an Active Member, there shall be assigned the number of points equivalent to the number of years from the date of the Active Member's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary earned by the Active Member as of the date of death. For the purposes of this paragraph, the percent of Final Average Salary shall not be less than forty percent (40%).
- d. For each Surviving Children's Unit:

- i. In the case where the deceased parent was a Retiree, there shall be assigned the number of points equivalent to the sum of:
 - (1) The number of years from the effective date of the Retiree's retirement to the date of the Retiree's death multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula, and
 - (2) The number of years from the date of the Retiree's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree receives as a retirement benefit under the System's benefit formula.
- ii. In the case where the deceased parent was an Active Member, there shall be assigned the number of points equivalent to the number of years from the date of the Active Member's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary earned by the Active Member as of the date of death. For the purposes of this paragraph, the percent of Final Average Salary shall not be less than forty percent (40%).
- e. For each Optional Settlement Beneficiary, there shall be assigned the number of points equivalent to the sum of:

- i. The number of years from the effective date of the Retiree's retirement to the date of the Retiree's death multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula, and
- ii. The number of years from the date of the Retiree's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula.

B. Eligible Distribution Points shall be calculated for each eligible recipient as follows:

1. For each Retiree, the Eligible Distribution Points are the sum of the YOS points and the YR points.
2. For each Surviving Spouse or Surviving Domestic Partner of a Retiree, the Eligible Distribution Points are:
 - a. The sum of the YOS points and the YR points, multiplied by
 - b. The percent of the Retiree's benefit that is being received by the Surviving Spouse or the Surviving Domestic Partner as a monthly benefit.
3. For each Surviving Spouse or Surviving Domestic Partner of an Active Member, the Eligible Distribution Points are the sum of the YOS points and the YR points.
4. For the Surviving Children's Unit, the Eligible Distribution Points are:

- a. The sum of the YOS points and the YR points, multiplied by
 - b. The percent of the Retiree's or Active Member's benefit that would be received by the Surviving Spouse or Surviving Domestic Partner if there were a Surviving Spouse or Surviving Domestic Partner, and further multiplied by
 - c. Twenty-five percent (25%) if there is only one child in the Surviving Children's Unit or fifty percent (50%) if there are two children in the Surviving Children's Unit or seventy-five percent (75%) if there are three or more children in the Surviving Children's Unit.
5. For the Optional Settlement Beneficiary, the Eligible Distribution Points are:
- a. The sum of the YOS points and the YR points, multiplied by
 - b. The percent of the Retiree's benefit that is being received by the Optional Settlement Beneficiary as monthly benefit.
- C. For the purposes of the calculation of Eligible Distribution Points, the number of years in each calculation shall be the actual number of years rounded to the nearest five decimal places.

SECTION 5. Distribution Point Value.

The Distribution Point Value shall be determined by dividing the Total Annual Distribution (as determined pursuant to SECTION 3 above) by the total number of Eligible Distribution Points for all eligible recipients.

SECTION 6. Allocation of Total Annual Distribution.

- A. The distribution to be made to each eligible Retiree, Surviving Spouse of a Retiree, Surviving Domestic Partner of a Retiree, Surviving Spouse of an Active Member, Surviving Domestic Partner of an Active Member, and Optional Settlement Beneficiary shall be the eligible recipient's Eligible Distribution Points multiplied by the Distribution Point Value.

- B. The distribution to be made to each eligible surviving child shall be the Surviving Children's Unit's Eligible Distribution Points multiplied by the Distribution Point Value and divided by the number of children in the Unit.

SECTION 7. For the purposes of this Resolution, the following definitions shall apply:

- A. "Retiree" means a person who has retired from the Federated City Employees Retirement System under the provisions of the System. "Retiree" does not include any person who has separated from City service but is not receiving a benefit from the Plan.

- B. "Surviving Spouse of a Retiree" means the person who meets the eligibility requirements for a surviving spouse benefit under Part 12 of Chapter 3.28 of the San José Municipal Code. "Surviving Spouse of a Retiree" does not include any person who is receiving a payment from the Retirement Fund solely because of a domestic relations order dividing the community interest in the retirement benefits.

- C. "Surviving Domestic Partner of a Retiree" means the person who meets the eligibility requirements for a surviving domestic partner benefit under Part 12 of Chapter 3.28 of the San José Municipal Code. "Surviving Domestic Partner of a

Retiree" does not include any person who is receiving a payment from the Retirement Fund solely because of a domestic relations order dividing the community interest in the retirement benefits.

- D. "Surviving Spouse of an Active Member" means the person who meets the eligibility requirements for a surviving spouse benefit under Part 11 of Chapter 3.28 of the San José Municipal Code. "Surviving Spouse of an Active Member" does not include any person who would receive a payment from the Retirement Fund upon the retirement of the Active Member solely because of a domestic relations order dividing the community interest in the retirement benefits.
- E. "Surviving Domestic Partner of an Active Member" means the person who meets the eligibility requirements for a surviving domestic partner benefit under Part 11 of Chapter 3.28 of the San José Municipal Code. "Surviving Domestic Partner of an Active Member" does not include any person who would receive a payment from the Retirement Fund upon the retirement of the Active Member solely because of a domestic relations order dividing the community interest in the retirement benefits.
- F. "Surviving Children's Unit" means all eligible surviving children who are receiving surviving children's benefits under the applicable provisions of the Federated City Employees Retirement System.
- G. "Optional Settlement Beneficiary" means a person who is receiving a monthly payment from the System because of an election made pursuant to Part 13 of Chapter 3.28 of the San José Municipal Code.
- H. "Minimum Balance" means the dollar amount determined by multiplying Seven Thousand Dollars (\$7,000) by the total number of eligible recipients in existence on June 30 in the year for which the Total Annual Distribution is calculated.

SECTION 8. In the event a person is a Retiree, a Surviving Spouse of a Retiree, a Surviving Domestic Partner of a Retiree, a Surviving Spouse of an Active Member, a Surviving Domestic Partner of an Active Member, a member of a Surviving Children's Unit, or an Optional Settlement Beneficiary on June 30 in the year for which the Total Annual Distribution is calculated, but dies before the distribution for that year is made:

- A. The amount that would have been paid to the Retiree shall be paid:
1. To the deceased's person's eligible survivor(s), or
 2. If there is no eligible survivor, to the deceased person's named beneficiary, or
 3. If there is no eligible survivor and no living named beneficiary, to the deceased person's estate.
- B. The amount that would have been paid to the Surviving Spouse of a Retiree, the Surviving Domestic Partner of a Retiree, the Surviving Spouse of an Active Member, or the Surviving Domestic Partner of an Active Member shall be paid:
1. To the Surviving Children's Unit, or
 2. If there is no Surviving Children's Unit, to the estate of the Surviving Spouse or the Surviving Domestic Partner, whichever is applicable.
- C. The amount that would have been paid to a member of the Surviving Children's Unit shall be paid to the remaining members of the Surviving Children's Unit in equal shares. If there is no member of the Survivor Unit surviving, the amount that would have been paid shall revert to the SRBR balance to be carried over to the next distribution year.

D. The amount that would have been paid to an Optional Settlement Beneficiary shall be paid to the Optional Settlement Beneficiary's estate.

SECTION 9. All calculations made pursuant to this Resolution shall be made as of June 30 in the year for which the Total Annual Distribution is calculated. In the event an adjustment is made in the Years of Service, Years Retired, or percent of Final Average Salary for any eligible recipient and such adjustment is made after June 30 in the year for which the Total Annual Distribution is calculated, there shall be no adjustment to any calculation made pursuant to this Resolution.

SECTION 10. This resolution amends, restates and supersedes Resolution No. 72859.

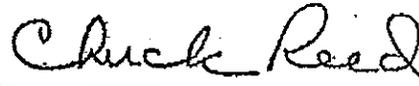
ADOPTED this 16th day of November, 2010, by the following vote:

AYES: CHIRCO, CONSTANT, HERRERA, LICCARDO,
NGUYEN, OLIVERIO, PYLE; REED.

NOES: CAMPOS, CHU, KALRA.

ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk

The foregoing instrument is
a correct copy of the original
on file in this office.

Attest:

TONI J. TABER
Acting City Clerk

Acting City Clerk of the City of San Jose
County of Santa Clara, State of California

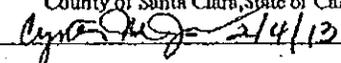
By  2/4/12, Deputy

Exhibit M

RESOLUTION NO. 76204

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING AND RESTATING RESOLUTION NO. 75635 REGARDING THE SUPPLEMENTAL RETIREE BENEFIT RESERVE OF THE FEDERATED CITY EMPLOYEES RETIREMENT FUND, TO SUSPEND THE DISTRIBUTION OF FUNDS FROM THE RESERVE THROUGH FISCAL YEAR 2012-2013

WHEREAS, pursuant to Section 3.28.340 D of the San José Municipal Code, the Board of Administration for the Federated City Employees Retirement System (the "Board") has established the Supplemental Retiree Benefit Reserve (the "SRBR") in the Federated City Employees Retirement Fund; and

WHEREAS, Section 3.28.340 D 1. provides that distributions from the SRBR shall be made only for the benefit of retired members, survivors of members, and survivors of retired members of the Federated City Employees Retirement System (the "System"); and

WHEREAS, Section 3.28.340 D 3. further provides that the Board shall make distributions in accordance with a methodology recommended by the Board and approved by the City Council; and

WHEREAS, pursuant to a recommendation by the Board, on December 16, 2003, the City Council adopted Resolution No. 71870 approving a methodology for calculating the amount of distributions from the SRBR; and

WHEREAS, on August 23, 2005, the City Council adopted Resolution No. 72859 which restated the provisions of Resolution 71780 to include surviving registered domestic partners in the SRBR distribution on the same basis as surviving spouses; and

WHEREAS, on November 16, 2010, the City Council adopted Resolution 75635 which amended and restated the provisions of Resolution 72859 so that the distribution of funds from the SRBR be suspended during Fiscal Year 2010-2011; and

WHEREAS, on May 17, 2011 the City Council approved forwarding a resolution for review by the Board of the Federated City Employees Retirement Plan to amend and restate Resolution 75635 so that the distribution of funds from the SRBR be suspended during the Fiscal Year 2011-2012; and

WHEREAS, the City Council desire to further amend and restate Resolution 75635 so that the distribution of funds from the SRBR be suspended through the Fiscal Year 2012-2013;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The City Council hereby approves the methodology for the distribution of moneys from the Supplemental Retiree Benefits Reserve of the Federated City Employees Retirement Fund recommended by the Board and described in this Resolution, except for fiscal years 2009-10, 2010-2011, 2011-2012 and 2012-2013 when there shall be no distribution of moneys from the Supplemental Retiree Benefits Reserve of the Federated City Employees Retirement Fund.

SECTION 2. This approval shall remain in effect until such time as the Board recommends a subsequent methodology and the Council adopts a resolution approving the subsequent methodology.

SECTION 3. Total Annual Distribution.

- A. The Total Annual Distribution for calendar year 2003 shall be One Million Dollars (\$1,000,000).
- B. The Total Annual Distribution for each calendar year beginning calendar year 2004 shall be the sum of (a) the amount, if any, in excess of the Minimum Balance, and (b) the annual interest earned in the SRBR as of June 30 in the year of distribution. For any year in which the actual balance in the SRBR as of June 30 in the year of distribution is less than or equal to the Minimum Balance, the total distribution for that year shall be limited to the annual interest earned in the SRBR.

SECTION 4. Eligible Distribution Points.

- A. For the purpose of calculating the distribution to be made to each eligible recipient, distribution points shall be assigned for Years of Service and for Years Retired as follows:

1. Years Of Service (YOS) Points:

- a. For each Retiree, there shall be assigned one (1) point for each year of the Retiree's Federated City service.
- b. For each Surviving Spouse or Surviving Domestic Partner of a Retiree, there shall be assigned one (1) point for each year of the Retiree's Federated City service.
- c. For each Surviving Spouse or Surviving Domestic Partner of an Active Member, there shall be assigned one (1) point for each year of the Active Member's Federated City service.

- d. For each Surviving Children's Unit, there shall be assigned one (1) point for each year of the deceased person's Federated City service.
- e. For each Optional Settlement Beneficiary, there shall be assigned one (1) point for each year of the deceased person's Federated City service.

2. Years Retired (YR) Points:

- a. For each Retiree, there shall be assigned the number of points equivalent to the number of years from the effective date of the Retiree's retirement to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree receives as a retirement benefit under the System's benefit formula.
- b. For each Surviving Spouse or Surviving Domestic Partner of a Retiree, there shall be assigned the number of points equivalent to the sum of:
 - i. The number of years from the effective date of the Retiree's retirement to the date of the Retiree's death multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula, and
 - ii. The number of years from the date of the Retiree's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final

Average Salary the Retiree received as a retirement benefit under the System's benefit formula.

- c. For each Surviving Spouse or Surviving Domestic Partner of an Active Member, there shall be assigned the number of points equivalent to the number of years from the date of the Active Member's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary earned by the Active Member as of the date of death. For the purposes of this paragraph, the percent of Final Average Salary shall not be less than forty percent (40%).

- d. For each Surviving Children's Unit:
 - i. In the case where the deceased parent was a Retiree, there shall be assigned the number of points equivalent to the sum of:
 - (1) The number of years from the effective date of the Retiree's retirement to the date of the Retiree's death multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula, and
 - (2) The number of years from the date of the Retiree's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree receives as a retirement benefit under the System's benefit formula.

2. For each Surviving Spouse or Surviving Domestic Partner of a Retiree, the Eligible Distribution Points are:
 - a. The sum of the YOS points and the YR points, multiplied by
 - b. The percent of the Retiree's benefit that is being received by the Surviving Spouse or the Surviving Domestic Partner as a monthly benefit.
3. For each Surviving Spouse or Surviving Domestic Partner of an Active Member, the Eligible Distribution Points are the sum of the YOS points and the YR points.
4. For the Surviving Children's Unit, the Eligible Distribution Points are:
 - a. The sum of the YOS points and the YR points, multiplied by
 - b. The percent of the Retiree's or Active Member's benefit that would be received by the Surviving Spouse or Surviving Domestic Partner if there were a Surviving Spouse or Surviving Domestic Partner, and further multiplied by
 - c. Twenty-five percent (25%) if there is only one child in the Surviving Children's Unit or fifty percent (50%) if there are two children in the Surviving Children's Unit or seventy-five percent (75%) if there are three or more children in the Surviving Children's Unit.
5. For the Optional Settlement Beneficiary, the Eligible Distribution Points are:

- a. The sum of the YOS points and the YR points, multiplied by
 - b. The percent of the Retiree's benefit that is being received by the Optional Settlement Beneficiary as monthly benefit.
- C. For the purposes of the calculation of Eligible Distribution Points, the number of years in each calculation shall be the actual number of years rounded to the nearest five decimal places.

SECTION 5. Distribution Point Value.

The Distribution Point Value shall be determined by dividing the Total Annual Distribution (as determined pursuant to SECTION 3 above) by the total number of Eligible Distribution Points for all eligible recipients.

SECTION 6. Allocation of Total Annual Distribution.

- A. The distribution to be made to each eligible Retiree, Surviving Spouse of a Retiree, Surviving Domestic Partner of a Retiree, Surviving Spouse of an Active Member, Surviving Domestic Partner of an Active Member, and Optional Settlement Beneficiary shall be the eligible recipient's Eligible Distribution Points multiplied by the Distribution Point Value.
- B. The distribution to be made to each eligible surviving child shall be the Surviving Children's Unit's Eligible Distribution Points multiplied by the Distribution Point Value and divided by the number of children in the Unit.

SECTION 7. For the purposes of this Resolution, the following definitions shall apply:

- A. "Retiree" means a person who has retired from the Federated City Employees Retirement System under the provisions of the System. "Retiree" does not include any person who has separated from City service but is not receiving a benefit from the Plan.

- B. "Surviving Spouse of a Retiree" means the person who meets the eligibility requirements for a surviving spouse benefit under Part 12 of Chapter 3.28 of the San José Municipal Code. "Surviving Spouse of a Retiree" does not include any person who is receiving a payment from the Retirement Fund solely because of a domestic relations order dividing the community interest in the retirement benefits.

- C. "Surviving Domestic Partner of a Retiree" means the person who meets the eligibility requirements for a surviving domestic partner benefit under Part 12 of Chapter 3.28 of the San José Municipal Code. "Surviving Domestic Partner of a Retiree" does not include any person who is receiving a payment from the Retirement Fund solely because of a domestic relations order dividing the community interest in the retirement benefits.

- D. "Surviving Spouse of an Active Member" means the person who meets the eligibility requirements for a surviving spouse benefit under Part 11 of Chapter 3.28 of the San José Municipal Code. "Surviving Spouse of an Active Member" does not include any person who would receive a payment from the Retirement Fund upon the retirement of the Active Member solely because of a domestic relations order dividing the community interest in the retirement benefits.

- E. "Surviving Domestic Partner of an Active Member" means the person who meets the eligibility requirements for a surviving domestic partner benefit under Part 11 of Chapter 3.28 of the San José Municipal Code. "Surviving Domestic Partner of an Active Member" does not include any person who would receive a payment from the Retirement Fund upon the retirement of the Active Member solely

because of a domestic relations order dividing the community interest in the retirement benefits.

- F. "Surviving Children's Unit" means all eligible surviving children who are receiving surviving children's benefits under the applicable provisions of the Federated City Employees Retirement System.
- G. "Optional Settlement Beneficiary" means a person who is receiving a monthly payment from the System because of an election made pursuant to Part 13 of Chapter 3.28 of the San José Municipal Code.
- H. "Minimum Balance" means the dollar amount determined by multiplying Seven Thousand Dollars (\$7,000) by the total number of eligible recipients in existence on June 30 in the year for which the Total Annual Distribution is calculated.

SECTION 8. In the event a person is a Retiree, a Surviving Spouse of a Retiree, a Surviving Domestic Partner of a Retiree, a Surviving Spouse of an Active Member, a Surviving Domestic Partner of an Active Member, a member of a Surviving Children's Unit, or an Optional Settlement Beneficiary on June 30 in the year for which the Total Annual Distribution is calculated, but dies before the distribution for that year is made:

- A. The amount that would have been paid to the Retiree shall be paid:
 - 1. To the deceased's person's eligible survivor(s), or
 - 2. If there is no eligible survivor, to the deceased person's named beneficiary, or
 - 3. If there is no eligible survivor and no living named beneficiary, to the deceased person's estate.

- B. The amount that would have been paid to the Surviving Spouse of a Retiree, the Surviving Domestic Partner of a Retiree, the Surviving Spouse of an Active Member, or the Surviving Domestic Partner of an Active Member shall be paid:
1. To the Surviving Children's Unit, or
 2. If there is no Surviving Children's Unit, to the estate of the Surviving Spouse or the Surviving Domestic Partner, whichever is applicable.
- C. The amount that would have been paid to a member of the Surviving Children's Unit shall be paid to the remaining members of the Surviving Children's Unit in equal shares. If there is no member of the Survivor Unit surviving, the amount that would have been paid shall revert to the SRBR balance to be carried over to the next distribution year.
- D. The amount that would have been paid to an Optional Settlement Beneficiary shall be paid to the Optional Settlement Beneficiary's estate.

SECTION 9. All calculations made pursuant to this Resolution shall be made as of June 30 in the year for which the Total Annual Distribution is calculated. In the event an adjustment is made in the Years of Service, Years Retired, or percent of Final Average Salary for any eligible recipient and such adjustment is made after June 30 in the year for which the Total Annual Distribution is calculated, there shall be no adjustment to any calculation made pursuant to this Resolution.

SECTION 10. This resolution amends, restates and supersedes Resolution No. 75635.

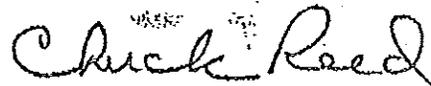
ADOPTED this 24th day of April, 2012, by the following vote:

AYES: CONSTANT, HERRERA, LICCARDO, NGUYEN,
OLIVERIO, PYLE, ROCHA; REED.

NOES: CAMPOS, CHU, KALRA.

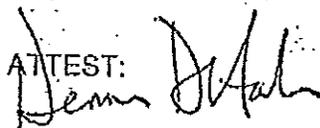
ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



DENNIS D. HAWKINS, CMC
City Clerk

The foregoing instrument is
a correct copy of the original
on file in this office.

Attest:

TONI J. TABER
Acting City Clerk

Acting City Clerk of the City of San Jose
County of Santa Clara, State of California

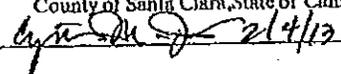
By  2/4/12, Deputy

Exhibit N

RESOLUTION NO. 70822

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ APPROVING THE METHODOLOGY FOR THE DISTRIBUTION OF MONEYS IN THE SUPPLEMENTAL RETIREE BENEFIT RESERVE OF THE POLICE AND FIRE DEPARTMENT RETIREMENT FUND

WHEREAS, pursuant to Section 3.36.580 A of the San José Municipal Code, the Board of Administration for the Police and Fire Department Retirement Plan (the "Board") has established the Supplemental Retiree Benefit Reserve (the "SRBR") in the Police and Fire Department Retirement Fund; and

WHEREAS, Section 3.36.580 D provides that distributions from the SRBR shall be made only to retired members, survivors of members and survivors of retired members of the Police and Fire Department Retirement Plan (the "Plan"); and

WHEREAS, Section 3.36.580 D further provides that the Board shall make distributions in accordance with a methodology developed by the Board and approved by the City Council; and

WHEREAS, the Board has developed a methodology for calculating the amount of distributions from the SRBR and has recommended City Council approval of said methodology;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

SECTION 1. The City Council hereby approves the methodology for the distribution of moneys from the Supplemental Retiree Benefits Reserve of the Police and Fire Department Retirement Fund recommended by the Board and described in this Resolution.

SECTION 2. This approval shall remain in effect until such time as the Board recommends a subsequent methodology and the Council adopts a resolution approving the subsequent methodology.

SECTION 3. Base Distribution.

- A. Eighty percent (80%) of the annual amount available for distribution from the SRBR shall be distributed as the "Base Distribution". The amount of the Base Distribution to be paid to each Retired Member or Survivor Unit shall be determined by multiplying the total Base Distribution by the applicable Distribution Fraction.
- B. For the purposes of calculating the Distribution Fraction, points shall be assigned for Years of Service and for Years Retired as follows:
1. Years Of Service (YOS) Points:
 - a. For each Retired Member, there shall be assigned one (1) point for each year of the Retired Member's Police and Fire Plan service for each of the first twenty (20) years plus two (2) points for each year in excess of twenty (20) years.
 - b. For each Survivor Unit, there shall be assigned one (1) point for each year of the deceased person's Police and Fire Plan service for each of the first twenty (20) years plus two (2) points for each year in excess of twenty (20) years. In the case where the deceased person died before separating from City service, the Survivor Unit shall be credited with the greater of (i) the actual number of years of the deceased person's Police and Fire Plan service or (ii) thirty years.
 2. Years Retired (YR) Points: There shall be assigned two (2) points for each year retired where:
 - a. For each Retired Member, Years Retired means the number of years from the effective date of the Retired Member's retirement to the June 30 immediately preceding the date the Base Distribution is made.
 - b. For each Survivor Unit, Years Retired means the number of years from the Survivor Unit's effective date to the June 30 immediately preceding the date the Base Distribution is made where "effective date" means:

- i. The effective date of the deceased person's retirement where the deceased died after retirement under this Plan; or
 - ii. The date of the deceased person's death in the case where the deceased died prior to separation from City service or died after separation from City service but before receiving any benefits from this Plan.
- c. Notwithstanding paragraph b above, in the case where a surviving spouse's benefits ceased because of remarriage but were reinstated pursuant to Section 3.36.1295, Years Retired for the Survivor Unit means the actual number of years during which survivorship benefits were paid from this Plan to any member of the Survivor Unit.
- C. The Distribution Fraction shall be determined as follows:
- $$\frac{\text{Years Of Service Points} + \text{Years Retired Points}}{\text{Total Points for Base Distribution}}$$
- D. The amount payable to each member of the Survivor Unit shall be the total Base Distribution payable to the Survivor Unit divided among the persons in the Survivor Unit in the same proportion as the survivorship benefits are paid.
- E. For the purposes of distributions from the SRBR, the number of years in each calculation shall be the actual number of years rounded to the nearest year.

SECTION 4. Bonus Payment.

- A. Twenty percent (20%) of the annual amount available for distribution from the SRBR shall be distributed as the "Bonus Payment". Bonus Payments shall be made only to Retired Members and Survivor Units who meet the following eligibility requirements:
1. The Years Retired is at least ten (10) years; and
 2. The Retired Member or Survivor Unit is receiving a monthly benefit from the Plan that is less than two-thirds of the average monthly retirement benefit paid during the twelve months ending on the June 30 immediately preceding the date the Base Distribution is made.

- B. The amount of the Bonus Payment to be paid to each eligible Retired Member or eligible Survivor Unit shall be determined by multiplying the total Bonus Payment by the applicable Distribution Fraction.
- C. For the purposes of calculating the Distribution Fraction, points shall be assigned for Years Of Service and for Years Retired as described in SECTION 3 of this Resolution.
- D. The Distribution Fraction shall be determined as follows:
$$\frac{\text{Years Of Service Points} + \text{Years Retired Points}}{\text{Total Points for Bonus Payment}}$$
- F. The amount payable to each member of the Survivor Unit shall be the total Bonus Payment payable to the Survivor Unit divided among the persons in the Survivor Unit in the same proportion as the survivorship benefits are paid.

SECTION 5. For the purposes of this Resolution, the following definitions shall apply:

- A. "Retired Member" means a person who has retired from the Police and Fire Department Retirement Plan under the provisions of the Plan. "Retired Member" does not include any person who has separated from City service but is not receiving a benefit from the Plan.
- B. "Survivor Unit" means all eligible survivors (eligible surviving spouse and eligible surviving children) who are receiving a survivor's benefit under the provisions of the Police and Fire Department Retirement Plan. "Eligible survivor" does not include any person who is receiving a payment from the Retirement Fund solely because of a domestic relations order dividing the community interest in the retirement benefits.
- C. "Total Points for Base Distribution" means the sum of the numerators of all Distribution Fractions for all Retired Members and all Survivor Units.
- D. "Total Points for Bonus Payment Years" means the sum of the numerators of all Distribution Fractions for the Retired Members and Survivor Units who are eligible to receive a Bonus Payment.

SECTION 6. In the event a person is a Retired Member or is a member of a Survivor Unit on the June 30 immediately preceding the date the Base Distribution is made, but dies before the distribution for that year is made:

- A. The amount that would have been paid to the Retired Member shall be paid to the deceased's Survivor Unit or, if there is no eligible survivor, to the deceased person's named beneficiary. If there is no eligible survivor and no living named beneficiary, the amount that would have been paid shall become available for distribution to the remaining eligible Retirement Members and Survivor Units.
- B. The amount that would have been paid to a member of the Survivor Unit shall be paid to the remaining members of the Survivor Unit in the same proportion as the survivorship benefits are paid. If there is no member of the Survivor Unit surviving, the amount that would have been paid shall become available for distribution to the remaining eligible Retirement Members and Survivor Units.

ADOPTED this 29th day of January, 2002, by the following vote:

AYES: CAMPOS, CHAVEZ, CORTESE, DANDO, LEZOTTE,
REED, SHIRAKAWA, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: DIQUISTO

Ron Gonzales

RON GONZALES
Mayor

ATTEST:
Patricia L. O'Hearn

PATRICIA L. O' HEARN
City Clerk

The foregoing instrument is
a correct copy of the original
on file in this office.
Attest:
TONI J. TABER
Acting City Clerk
Acting City Clerk of the City of San Jose
County of Santa Clara, State of California
By *[Signature]* 2/4/13, Deputy

Exhibit O



COATES
HERFURTH &
ENGLAND, INC.
ACTUARIES AND CONSULTANTS

November 22, 1985

CONFIDENTIAL

Mr. Edward F. Overton
Retirement and Benefits Administrator
Federated City Employees' Retirement System
801 North First Street
San Jose, California 95110

Re: SB650 Study

Dear Ed:

We have completed our projections in connection with the SB650 Study as of July 1, 1985 for the Federated System. The attached schedules show the estimated financial effect on the Federated Retirement System over the next five years as if the City were to adopt SB650 type provisions immediately.

Our calculations were based on the July 1, 1985 statistical and financial information available to us from your office. We have assumed two different levels of interest earnings during the next five years along with a 10% allocation going into the new Supplemental Retiree Benefits Reserve Account (S.R.B.R.): In all cases the Contingency Reserve Account level is held at 3% of (Assets less Contingency Reserve). The study is based on the Retirement Fund activity only. The Cost of Living Fund does not enter the calculations.

Each schedule shows the development of the following information over the five year projection period: assets, net earnings, allocations, contingency reserve, and S.R.B.R. account. The S.R.B.R. account would be the new account under SB650 which provides the source of paying additional benefits to present and future retirees.

The attached two schedules assume the following:

Schedule Number	Assumes
1	9½% interest all years; \$4,390,088 Contingency Reserve; no initial S.R.B.R. Account; future S.R.B.R. allocations at 10% of excess.
2	10% interest all years; \$4,390,088 Contingency Reserve; no initial S.R.B.R. Account; future S.R.B.R. allocations at 10% of excess.

On July 1, 1985 the total amount recorded as Retirement Fund assets was \$159,246,738. Of this amount, \$107,839 is to be set aside for accounts payable and \$397,459 is estimated to be the assets available for health insurance premiums for retired members. This, in effect, leaves \$154,351,352 of assets available to pay for retirement benefits and \$4,390,088 as the initial Contingency Reserve. In our SB650 projections, the starting assets are, therefore, \$154,351,352 plus \$4,390,088 or \$158,741,440.

Mr. Edward F. Overton

-2-

November 22, 1985

The other assumptions used in making the projections were:

- a. Actuarial interest rate of 9% per year.
- b. Total annual salary on July 1, 1985 of \$74,845,000.
- c. Total salary increases of 7½% per year (the actuarial inflation assumption).
- d. Basic Pension roll increases of 15% per year.
- e. Employer contributions to the Retirement Fund at the newly calculated rate of 9.82% of salary.
- f. Employee Retirement Fund contribution rates are on a net basis (to eliminate the effect of refunds).
- g. The Contingency Reserve is held at the level of 3% of (Assets less Contingency Reserve) for each projection.
- h. Net investment earnings are net after all expenses (for example, Investment Counselors' expense).
- i. All interest allocations are generally as set forth under SB650 of the 1937 County Retirement Act except that the future allocations to the S.R.B.R. Account are at the level of 10% rather than 50% of excess earnings above the actuarial rate.
- j. Both the health insurance contributions and the health insurance payments have been excluded from these calculations.

We will be discussing these results when we meet with the Board to discuss the final report of the July 1, 1985 Actuarial Study.

Yours very truly,

COATES, HERFURTH & ENGLAND, INC.
Actuaries and Consultants

By Robert D. Drisko
Robert D. Drisko

RDD:jhg

Enclosures

SCHEDULE 1

SAN JOSE
 FEDERATED CITY EMPLOYEES' RETIREMENT ASSOCIATION
 Estimated Effect of S.B. 650

	Year Ending June 30:			
	1986	1987	1988	1989
1. Assets @ Beginning of Year	\$ 158,741,440	\$ 177,853,693	\$ 198,410,673	\$ 220,428,274
2. Contingency Reserve @ Beginning of Year	\$ 4,390,088	\$ 5,180,165	\$ 5,778,909	\$ 6,420,194
3. Net Investment Earnings @ 9.50%	\$ 15,263,262	\$ 17,062,105	\$ 18,992,697	\$ 21,055,507
4. Interest Credited to All Accounts @ 9.00%	\$ 14,238,027	\$ 15,855,156	\$ 17,609,100	\$ 19,478,232
5. Undistributed Earnings (3) - (4)	\$ 1,025,235	\$ 1,206,949	\$ 1,383,597	\$ 1,577,225
6. Amount Needed for Contingency Reserve Build-up and Other Commitments	\$ 790,077	\$ 598,744	\$ 641,285	\$ 683,668
7. Net "Excess Earnings" (5) - (6)	\$ 235,188	\$ 608,209	\$ 742,312	\$ 893,557
8. SRER @ Beginning of Year with Interest to End of Year	\$ C	\$ 23,632	\$ 94,234	\$ 183,628
9. Additions to SRER from "Excess Earnings" (10 % of item 7)	\$ 23,516	\$ 60,821	\$ 74,232	\$ 89,356
10. SRER @ End of Year	\$ 23,516	\$ 86,453	\$ 168,466	\$ 272,984
11. Excess Amount Credited to All Other Accounts (90 % of item 7)	\$ 211,652	\$ 547,384	\$ 668,080	\$ 804,201
12. Total Assets @ End of Year	\$ 177,853,553	\$ 198,410,673	\$ 220,428,274	\$ 243,901,061
13. Contingency Reserve @ End of Year	\$ 5,180,165	\$ 5,778,909	\$ 6,420,194	\$ 7,103,862

CRATES, HERFURTH & ENGLAND, INC., ACTUARIES AND CONSULTANTS

SCHEDULE 2

SAN JOSE
 FEDERATED CITY EMPLOYEES' RETIREMENT ASSOCIATION
 Estimated Effect of S. B. 630

	Year Ending June 30:			
	1984	1987	1988	1989
1. Assets @ Beginning of Year	\$ 158,741,440	\$ 178,656,983	\$ 200,192,342	\$ 223,387,725
2. Contingency Reserve @ Beginning of Year	\$ 4,370,088	\$ 5,203,563	\$ 5,830,802	\$ 6,506,391
3. Net Investment Earnings @ 10.00%	\$ 16,066,592	\$ 18,040,444	\$ 20,170,479	\$ 22,459,637
4. Interest Credited to All Accounts @ 9.00%	\$ 14,238,027	\$ 15,925,380	\$ 17,764,780	\$ 19,736,875
5. Undistributed Earnings (3) - (4)	\$ 1,828,565	\$ 2,115,094	\$ 2,405,699	\$ 2,722,762
6. Amount Needed for Contingency Reserve Build-up and Other Commitments	\$ 813,475	\$ 627,239	\$ 675,589	\$ 724,565
7. Net "Excess Earnings" (5) - (6)	\$ 1,015,090	\$ 1,487,855	\$ 1,730,110	\$ 1,998,197
8. SRER @ Beginning of Year with Interest to End of Year	\$ 0	\$ 110,645	\$ 282,783	\$ 496,812
9. Additions to SRER from "Excess Earnings" (10 % of item 7)	\$ 101,509	\$ 148,786	\$ 173,011	\$ 199,820
10. SRER @ End of Year	\$ 101,509	\$ 259,431	\$ 455,791	\$ 656,632
11. Excess Amount Credited to All Other Accounts (90 % of item 7)	\$ 913,581	\$ 1,339,069	\$ 1,557,099	\$ 1,798,377
12. Total Assets @ End of Year	\$ 178,656,983	\$ 200,192,342	\$ 223,387,725	\$ 248,264,642
13. Contingency Reserve @ End of Year	\$ 5,203,563	\$ 5,830,802	\$ 6,506,391	\$ 7,230,956

COATES, HERFURTH & ENGLAND, INC., ACTUARIES AND CONSULTANTS

Exhibit P

SRBR

CITY OF SAN JOSE—MEMORANDUM

TO	Honorable Mayor and City Council	FROM	Federated Retirement Board
SUBJECT	SUPPLEMENTAL RETIREE BENEFITS RESERVE	DATE	April 25, 1986
APPROVED		DATE	

Background

For the past eighteen months, the Board of Administration for the Federated Retirement System has been studying a method of providing ad hoc cost of living adjustments to federated City retirees. The basis of the program that we have been reviewing is Chapter 3, part 3, article 5.5 section 31610 et seq of the California Government Code.

Article 5.5 was added to the Government Code in 1983 by the passage of Senate Bill 65D. The significant provision of the article provides for the establishment of a Supplemental Retiree Benefit Reserve (SRBR). The SRBR was initially funded by transferring funds from the 1937 Retirement Act reserve against deficiencies. On going funding will be provided by allocating 50% of the earnings that are available after crediting all other reserve accounts with the actuarially assumed interest rate.

Similar provisions have been added to the Public Employees' Retirement Systems (PERS) and the State Teachers' Retirement System (STRS). Those two systems have adopted a concept which is known as the Individual Dividend Disbursement Account (IDDA). The IDDA is designed to keep a retiree's purchasing power at 70% of it's value at retirement.

Analysis

The Federated Retirement Board has determined that it is appropriate to propose a cost of living adjustment which is similar to SRBR and IDDA. By doing so, the Board will have the capacity to grant ad hoc adjustments based on the increase in the consumer price index and the availability of funds in the retirement system. This means that the retirees will benefit when the money in the fund grows because of superior investment performance. This is appropriate because the retirees contributed some of the principal which is being invested.

The Board proposes that we establish a Supplemental Retiree Benefit Reserve (SRBR), and that the SRBR be funded at the rate of 10% of the excess earnings of the fund. The excess earnings of the fund is the amount that remains after all reserve accounts have been credited with the actuarially assumed interest rate and the administrative expenses have been paid. The remaining 90% would be transferred to a benefits payable account which would be used to help offset any future rate increases.

SUPPLEMENTAL RETIREE BENEFITS RESERVE
page 2

The structure of the Federated Retirement Plan is very similar to that of the twenty one counties that are covered by the 1937 Retirement Act. Therefore, the provisions of Article 5.5 would fit well in our system. After the reserve accounts:

- Employee contributions
- Employer contributions
- Retired employee's annuity
- Benefits Payable

are credited with 9% interest, any amount over 9% would be split; 10% to the new account, Supplemental Retiree Benefits Reserve, and 90% to the Benefits Payable Reserve. If this program had been in effect July 1, 1985, approximately \$320,000 would have gone to the SRBR.

Coates, Herfurth & England, the Board's actuary, has reviewed the SRBR proposal and they have estimated the cost at .23% of payroll on a ten year funding basis. Based on the payroll at July 1, 1985, .23% represents \$172,500 of cash contributions. On the basis of an 8:3 split between the City and the employees, the cost breakdown would be \$127,500 for the City and \$45,000 for employees.

The City Attorney has drafted a proposed ordinance which provides for the establishment and funding of an SRBR. The ordinance provides that the funds will accumulate until such time as the Federated Retirement Board votes to make benefit distributions.

Recommendation

It is the Federated Retirement Board's recommendation that the Council approve the draft ordinance establishing an SRBR as prepared by the City Attorney.

Rennie J. Wine
Rennie J. Wine, Chairperson
Board of Administration
Federated Retirement System