



**City of  
Santa Clara**  
The Center of What's Possible

January 19, 2017

Tamara L. Davis, Deputy Manager of Jury Services  
Santa Clara County Civil Grand Jury  
Superior Court  
191 North First Street  
San Jose, California 95113

**RECEIVED**

FEB 21 2017

**CIVIL GRAND JURY**

Mayor

Lisa M. Gillmor

**Council Members**

Dominic J. Caserta  
Debi Davis  
Patrick Kolstad  
Patricia M. Mahan  
Teresa O'Neill  
Kathy Watanabe

Dear Ms. Davis,

Per your request to Mayor Lisa Gillmor on December 21, 2016, please find our responses to the following three (3) questions: (1) how the town [sic] views the various recommendations, (2) whether the recommendations were accepted, and (3) if there is a plan for future action.

Please note the City's responses are in red at the end of each of the seven (7) findings.

**Finding 1:**

**Public sector employees are eligible for retirement at least 10 years earlier than is common for private sector employees.**

The respondent agrees with the finding (understanding that the finding is a general statement about the timing of eligibility for retirement or retirement benefits).

**Recommendation 1:**

**The Cities should adopt pension plans to extend the retirement age beyond current retirement plan ages.**

The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

The State of California and CalPERS control the pension plans available from CalPERS for City employees. As such, the City does not control and is not presently able to offer a pension plan with a retirement age eligibility requirement different than what is offered.

The City of Santa Clara does support moving employees to pension plans that are more sustainable, including requiring employees to retire at a higher age to receive particular pension benefits. Consistent with this view, the City already has discussed with all ten (10) of the City's bargaining units the possibility of implementing a two-tier pension plan, with a lesser and more fiscally sustainable pension plan applicable for new City hires.

The City already formally negotiated on the subject of a less costly pension plan with one of its bargaining units in December 2011 – the Public Safety Non Sworn Employees

Association (PSNSEA). The condition of employment applicable to pension that resulted from these negotiations was as follows:

*“Future hires” represented by PSNSEA shall receive the 2.0% at 60 with three year average retirement formula. “Future hires” shall refer to employees hired after (1) an appropriate amendment to the City’s contract with CalPERS can be made effective and (2) 2.0% at 60 with three year average retirement formula applies to all other miscellaneous bargaining units and employees after the City has satisfied the applicable meet and confer obligations. Should the City reach agreement with or impose on other miscellaneous bargaining groups and employees a pension formula for new hires different than 2.0% at 60 with three year average, such formula shall automatically also apply to new hires represented by PSNSWEA and no further meet and confer to effectuate this change for future PSNSEA hires shall be required.*

The City is preparing to begin similar negotiations with seven additional bargaining units in the next two months, with similar negotiations with its other two bargaining units in the Fall of 2012. The City plans for these negotiations to include discussion of less costly pension plans as well as options such as calculating final compensation for pension purposes based on the average of an employee’s final three years and other options that may be available.

**(1) How the town [sic] views the various recommendations**

**Answer: Agree. The recommendation above states “The Cities should adopt pension plans to extend the retirement age beyond current retirement plan ages.”**

The California Public Employees’ Pension Reform Act (PEPRA) created a new retirement age minimum beyond the current Classic CalPERS employee retirement age.

The benefit formulas for current employees under the Classic definition were unchanged by the law and are as follows:

Classic Safety Employees: 3% @ 50 and  
Classic Miscellaneous Employees: 2.7 @ 55

The above retirement formulas have been changed for new PEPRA employees, hired on or after January 1 2013, to the following:

PEPRA Safety Employees: 2.7% @ 55 and  
PEPRA Miscellaneous Employees: 2% at 62

**(2) Whether the recommendations were accepted**

**Answer: Yes**

**(3) If there is a plan for future action**

**Answer:** Recommendation Met

**Finding 2:**

**Campbell, Gilroy, Los Altos Hills, Los Gatos, Milpitas and Palo Alto have adopted second tier plans that offer reduced benefits, which help reduce future costs, but further changes are needed to address today's unfunded liability. Santa Clara County and the cities of Cupertino, Los Altos, Monte Sereno, Morgan Hill, Mountain View, San Jose, Santa Clara, Saratoga and Sunnyvale have not adopted second tier plans.**

Agree with finding

**Recommendation 2A:**

**Santa Clara County and the cities of Cupertino, Los Altos, Monte Sereno, Morgan Hill, Mountain View, San Jose, Santa Clara, Saratoga and Sunnyvale should work to implement second tier plans.**

The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

The State of California and CalPERS control the pension plans available from CalPERS for City employees. As such, the City does not control and is not presently able to offer a pension plan with a retirement age eligibility requirement different than what is offered.

The City of Santa Clara does support moving employees to pension plans that are more sustainable, including requiring employees to retire at a higher age to receive particular pension benefits. Consistent with this view, the City already has discussed with all ten (10) of the City's bargaining units the possibility of implementing a two-tier pension plan, with a lesser and more fiscally sustainable pension plan applicable for new City hires.

The City already formally negotiated on the subject of a less costly pension plan with one of its bargaining units in December 2011 – the Public Safety Non Sworn Employees Association (PSNSEA). The condition of employment applicable to pension that resulted from these negotiations was as follows:

*“Future hires” represented by PSNSEA shall receive the 2.0% at 60 with three year average retirement formula.*

*“Future hires” shall refer to employees hired after (1) an appropriate amendment to the City's contract with CalPERS can be made effective and (2) 2.0% at 60 with three year average retirement formula applies to all other miscellaneous bargaining units and employees after the*

*City has satisfied the applicable meet and confer obligations. Should the City reach agreement with or impose on other miscellaneous bargaining groups and employees a pension formula for new hires different than 2.0% at 60 with three year average, such formula shall automatically also apply to new hires represented by PSNSWEA and no further meet and confer to effectuate this change for future PSNSEA hires shall be required.*

The City is preparing to begin similar negotiations with seven additional bargaining units, with similar negotiations with its other two bargaining units in the Fall of 2012. The City plans for these negotiations to include discussion of less costly pension plans as well as options such as calculating final compensation for pension purposes based on the average of an employee's final three years and other options that may be available.

**(1) How the town [sic] views the various recommendations**

**Answer:** Agree. The recommendation above states “*Santa Clara County and the cities of Cupertino, Los Altos, Monte Sereno, Morgan Hill, Mountain View, San Jose, Santa Clara, Saratoga and Sunnyvale should work to implement second tier plans.*”

The City of Santa Clara was negotiating with bargaining units for a 2<sup>nd</sup> tier, however, PEPRA came into place and mandated a 2<sup>nd</sup> tier plan.

**(2) Whether the recommendations were accepted**

**Answer:** Yes, through PEPRA

**(3) If there is a plan for future action**

**Answer:** Recommendation Met.

**Recommendation 2B:**

**For Gilroy, Los Gatos, Milpitas and Palo Alto, which have not implemented second tier plans for MISC and Public Safety second tier plans should be implemented for both plans.**

Recommendation 2B is not applicable to the City of Santa Clara.

**N/A**

**Recommendation 2C:**

**All Cities' new tier of plans should close the unfunded liability burden they have pushed to future generations. The new tier should include raising the retirement age, increasing employee contributions, and adopting pension plan caps that ensure pensions do not exceed salary at retirement.**

The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation. The State of California and CalPERS control the pension plans available from CalPERS for City employees. As such, the City does not control and is not presently able to offer a pension plan with a retirement age eligibility requirement or pension plan cap or maximum pension benefit different than what is offered. The City does support the type of legislative changes described in the Grand Jury's Recommendation 2C.

**(1) How the town [sic] views the various recommendations**

**Answer: Agree** The recommendation above states "All Cities' new tier of plans should close the unfunded liability burden they have pushed to future generations. The new tier should include raising the retirement age, increasing employee contributions, and adopting pension plan caps that ensure pensions do not exceed salary at retirement."

The City of Santa Clara has a desire to reduce its unfunded pension liability. PEPRRA did raise the retirement age, and new employees split the normal cost. The CalPERS Board has taken several actions since the Civil Grand Jury Report which require Cities to make significantly higher contributions designed to pay off their unfunded liabilities quicker than under the prior policies. While there is still an unfunded liability, the City Council has recently set aside \$5 million from the 2015-16 General Fund budget surplus to establish a separate irrevocable Pension Trust Fund. Additional contributions will be made as funds are available

**(2) Whether the recommendations were accepted**

**Answer:** Yes

**(3) If there is a plan for future action**

**Answer:** PEPRRA accomplished this plan, with the exception of closing the unfunded liability gap. However the City is attempting to close the gap by transferring money into a Pension Trust Fund.

**Finding 3:**

**Retroactive Benefit enhancements were enacted by Cities using overly optimistic ROI and actuarial assumptions without adequate funding in place to pay for them.**

The City agrees with the finding, although the overly optimistic ROI and actuarial assumptions generally were not determined or decided by "the Cities;" rather, they were decided by the pension systems and their related actuarials.

### **Recommendation 3:**

**The Cities should adopt policies that do not permit Benefit enhancements unless sufficient monies are deposited, such as in an irrevocable trust, concurrent with enacting the enhancement, to prevent an increase in unfunded liability.**

The recommendation has not yet been implemented but will be implemented in the future, with a time frame for implementation. That said, the City does not presently intend to enhance employees' pension benefits.

As a CalPERS member, we do not set the parameters for plan enhancements. The Governor has proposed pension reform that includes the Civil Grand Jury's recommendation and the City of Santa Clara is supportive of this change.

#### **(1) How the town [sic] views the various recommendations**

**Answer:** The City supports the recommendation. Benefit formulas are established by CalPERS rather than the City. Under PEPRA, the pension formulas reduced the benefit levels as compared to the Classic benefit formulas.

#### **(2) Whether the recommendations were accepted**

**Answer:** Yes, under PEPRA, Cities can no longer make plan enhancements without the approval of the voters.

#### **(3) If there is a plan for future action**

**Answer:** Already implemented the changes in State law.

### **Finding 4:**

**The Cities are making an overly generous contribution toward the cost of providing Benefits.**

The City agrees with the finding as it applies to "the Cities" generally, but disagrees in part as applies to the City of Santa Clara. While many cities pay both the employer share and either the entire employee share or a portion of the employee share of pension, City of Santa Clara employees rather than the City pay the employee share or contribution of their CalPERS pensions.

### **Recommendation 4A:**

**The Cities should require all employees to pay the maximum employee contribution rate of a given plan.**

The recommendation has been implemented. City of Santa Clara employees rather than the City pay the employee share or contribution of their CalPERS pensions.

**(1) How the town [sic] views the various recommendations**

**Answer:** Agree with the recommendation “The Cities should require all employees to pay the maximum employee contribution rate of a given plan.”

All City of Santa Clara employees pay the employee contribution.

**(2) Whether the recommendations were accepted**

**Answer:** Employees already pay the employee contribution towards the employee share.

**(3) If there is a plan for future action**

**Answer:** Already met recommendation.

**Recommendation 4B:**

**The Cities should require employees to pay some portion of the Past service Cost associated with the unfunded liability, in proportion to the Benefits being offered.**

The recommendation has not yet been implemented as employees already pay the employee share or contribution of their CalPERS pension, and the City is discussing and negotiating a second tier pension for future hires, and is analyzing all options for addressing the costs of pension benefits and making sure they are fiscally sustainable in the future.

**(1) How the town [sic]views the various recommendations**

**Answer:** Under PEPPRA, new employees hired on or after January 1, 2013 are now paying 50% of the normal cost of their benefit formula. PEPPRA did not change employee contributions for “Classic” members.

**(2) Whether the recommendations were accepted**

**Answer:** Yes, however, the City participates in the CalPERS pension system and does not control employee contribution rates.

**(3) If there is a plan for future action**

**Answer:** The City is subject to changes as may be enacted by the CalPERS Board.

**Finding 5:**

**The Cities are not fully funding OPEB benefits as evidenced by large unfunded liabilities and small funded ratios.**

The City agrees with the finding as it applies to “the Cities” generally. (See below as it applies to the City of Santa Clara.)

**Recommendation 5:**

**The Cities, should immediately work toward implementing policy changes and adopting measures aimed at making full OPEB ARC payments as soon as possible.**

The recommendation has been implemented. The City of Santa Clara implemented Governmental Accounting Standards Board (GASB) Statement No. 45 dealing with Other Post-Employment Benefits or OPEB in a timely manner. Since implementation, the City has made the full Annual Required Contribution (ARC) each year and has budgeted sufficient funds in its 2012-13 Budget to continue to pay the ARC.

**(1) How the town [sic] views the various recommendations**

**Answer:** The City's position has not changed. It implemented an irrevocable OPEB Trust fund several years before the Civil Grand Jury Report.

**(2) Whether the recommendations were accepted**

**Answer:** Yes, the City has been fully funding its Annual Required Contribution (ARC) each year

**(3) If there is a plan for future action**

**Answer:** Continue to pay at least the ARC each year.

**Finding 6:**

**The City of San Jose permits the transfer of pension trust fund money, when ROI exceeds expectations, to the SRBR, despite the fact that the pension trust funds are underfunded.**

Finding 6 is not applicable to the City of Santa Clara.

**Recommendation 6:**

**The City of San Jose should eliminate the SRBR program or amend the SRBR program to prevent withdrawal of pension trust money whenever the pension-funded ratios is less than 100%.**

Recommendation 6 is not applicable to the City of Santa Clara.

**Finding 7:**

**The Cities' defined benefit pension plan costs are volatile. Defined contribution plan costs are predictable and therefore more manageable by the Cities.**



The City agrees with the finding that defined contribution plans are less volatile and easier to manage than defined benefit pension plans.

**Recommendation 7:**

**The Cities should transition from defined benefit plans to defined contribution plans as the new tier plans are implemented.**

The City does not currently intend to implement this recommendation because, as a CalPERS member, the City does not control the plans that are offered and/or what changes may be made to pension benefit plans. Currently, CalPERS does not offer a defined contribution plan for new tiers.

**(1) How the town [sic] views the various recommendations**

**Answer:** The City agrees that defined contribution retirement plans are less volatile for the employer. However, CalPERS does not currently offer either a hybrid defined benefit/defined contribution plan or a straight defined contribution plan.

**(2) Whether the recommendations were accepted**

**Answer:** The City has no control over the pension formulas offered by the State.

**(3) If there is a plan for future action**

**Answer:** Any future actions depend on whether the State changes its pension offerings.

If there are any questions in regards to the City's response to the above, please contact City Manager, Rajeev Batra at 408/615-2211 or Liz Brown, Director of Human Resources at 408/615-2150.

Sincerely,



Lisa Gillmor,  
Mayor

Cc: City Council  
Rajeev Batra, Interim City Manager  
Liz Brown, Director of Human Resources