Santa Clara
All-America City
2001

Mayor

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September 12, 2012

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DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY D. ALDYCKI

Federal Express Delivery

Honorable Richard J. Loftus, Jr.
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Dear Judge Loftus:

Per California Penal Code section 933 (c), please find below the City of Santa Clara's responses to the findings and recommendations found in the 2011-2012 Santa Clara County Civil Grand Jury Final Report, "An Analysis of Pension and Other Post Employment Benefits."

Finding 1:
Public sector employees are eligible for retirement at least 10 years earlier than is common for private sector employees.

City Response to Finding 1:
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.

City Response to Recommendation 1:
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.

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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.

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.

City Response to Finding 2:
The respondent agrees 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.

City Response to Recommendation 2A:
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.

<u>Recommendation 2B</u>:
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.

<u>City Response to Recommendation 2B</u>:
Recommendation 2B is not applicable to the City of Santa Clara.

<u>Recommendation 2C</u>:
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.

<u>City Response to Recommendation 2C</u>:
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.

<u>Finding 3</u>:
Retroactive Benefit enhancements were enacted by Cities using overly optimistic ROI and actuarial assumptions without adequate funding in place to pay for them.

<u>City Response to Finding 3</u>:
The respondent 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.

<u>**Recommendation 3**</u>**:**
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.

<u>**City Response to Recommendation 3**</u>**:**
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.

<u>**Finding 4**</u>**:**
The Cities are making an overly generous contribution toward the cost of providing Benefits.

<u>**City Response to Finding 4**</u>**:**
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.

<u>**Recommendation 4A**</u>**:**
The Cities should require all employees to pay the maximum employee contribution rate of a given plan.

<u>**City Response to Recommendation 4A**</u>**:**
The recommendation has been implemented. City of Santa Clara employees rather than the City pay the employee share or contribution of their CalPERS pensions.

<u>**Recommendation 4B**</u>**:**
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.

<u>**City Response to Recommendation 4B**</u>**:**
The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

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.

Finding 5:
The Cities are not fully funding OPEB benefits as evidenced by large unfunded liabilities and small funded ratios.

City Response to Finding 5:
The respondent 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.

City Response to Recommendation 5:
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.

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.

City Response to Finding 6:
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%.

City Response to Recommendation 6:
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.

City Response to Finding 7:
The respondent 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.

City Response to Recommendation 7:
The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

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.

If there are any questions in regards to the City's response to the Grand Jury's findings and recommendations, please contact City Manager Jennifer Sparacino at (408) 615-2210. Thank you for the opportunity to comment on the report.

Sincerely,

Jamie L. Matthews
Mayor

Ronald E. Garratt
Interim City Manager

JLM:REG:yfg

cc: City Council
Liz Brown, Director of Human Resources