



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: CARES Act and SECURE
Act Amendments to
Deferred Compensation,
PTC, and 401(a) Plans

DATE: July 22, 2024

Approved

Date:

7/30/24

COUNCIL DISTRICT: Citywide

RECOMMENDATION

- (a) Approve an ordinance amending Chapter 3.48 of Title 3 of the Deferred Compensation Plan to comply with the CARES Act and SECURE Act.
- (b) Adopt a resolution approving an amendment to the Basic Plan Document for the Deferred Compensation Plan to comply with the CARES Act and SECURE Act and authorize the City Manager or her designee to execute the amended Basic Plan Document and other documents as necessary to administer the Deferred Compensation Plan set forth in Chapter 3.48 of the San José Municipal Code. This amendment will become effective on the same date as the ordinance to amend Chapter 3.48 of Title 3 of the Deferred Compensation Plan to comply with the CARES Act and SECURE Act.
- (c) Approve an ordinance amending Chapter 3.49 of Title 3 of the Defined Contribution Plan for Unit 99 Employees to comply with the CARES Act and SECURE Act.
- (d) Adopt a resolution approving an amendment to the Basic Plan Document for the Defined Contribution Plan for Unit 99 Employees to comply with the CARES Act and SECURE Act and authorize the City Manager or her designee to execute the amended Basic Plan Document and other documents as necessary to administer the Defined Contribution Plan for Unit 99 Employees set forth in Chapter 3.49 of the San José Municipal Code. This amendment will become effective on the same date as the ordinance to amend Chapter 3.49 of Title 3 of the Defined Contribution Plan for Unit 99 Employees to comply with the CARES Act and SECURE Act.
- (e) Approve an ordinance amending Chapter 3.50 of Title 3 of the Part-time Temporary Contract (PTC) Plan to comply with the CARES Act and SECURE Act.

- (f) Adopt a resolution approving an amendment to the Basic Plan Document for the PTC Plan to comply with the CARES Act and SECURE Act and authorize the City Manager or her designee to execute the amended Basic Plan Document and other documents as necessary to administer the PTC Plan set forth in Chapter 3.50 of the San José Municipal Code. This amendment will become effective on the same date as the ordinance to amend Chapter 3.50 of Title 3 of the PTC Plan to comply with the CARES Act and SECURE Act.

SUMMARY AND OUTCOME

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted by Congress on March 27, 2020, with the primary objective to help ease some of the financial burdens facing Americans in the wake of the COVID-19 pandemic. The Setting Every Community Up for Retirement Enhancement Act (SECURE Act) was enacted by Congress, on December 20, 2019, with the primary objective to increase access to and encourage retirement savings.

The CARES Act and SECURE Act require amendments to the City's 457 Deferred Compensation Plan, Defined Contribution Plan for Unit 99 Employees Plan, and PTC Plan in the San José Municipal Code and their respective basic plan documents. In addition to the required provisions, the CARES Act and SECURE Act provide for optional changes that have been implemented by the City. Both acts require the amendments to the three plans no later than December 31, 2025.

BACKGROUND

The City of San José established and maintains the following deferred compensation and defined contribution plans:

- 457 Deferred Compensation Plan for all employees to voluntarily contribute retirement savings.
- The City of San José, California Defined Contribution Plan for Unit 99 Employees (known as the "Tier 3 Plan") for executive management and professional employees hired on or after January 20, 2013. Effective October 3, 2021, City Councilmembers who are not members of CalPERS shall also become members of this plan.
- PTC Deferred Compensation Plan for employees who are not eligible to participate in the City's Police and Fire Department Retirement Plan and Federated City Employees Retirement Plan and City Councilmembers who did not elect membership in CalPERS prior to October 3, 2021.

The City's 457 Deferred Compensation Plan is available to all City employees on a voluntary basis. An employee who elects to participate must enter into a participation

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agreement that specifies the amount of the deferral and the investment options selected by the participant. Plan participants can choose to make contributions on a pre-tax basis to the traditional 457 plan, on an after-tax basis to the Roth 457 plan, or a combination of the two contributions basis. Plan participants can adjust deferral amounts and investments. As of May 9, 2024, this plan had 8,930 members and \$1,407,096,208 in assets.

In 2013, the City began offering a 401(a) defined contribution plan, known as the Tier 3 Plan for Executive Management and Professional Employees (Unit 99), to all new executive management or professional employees in Unit 99 who elect to opt out of the City's defined benefit Federated Employees Retirement Plan. As of October 3, 2021, City Councilmembers who are not members of CalPERS became members of the Tier 3 plan. Similar to the PTC Plan, participants in the Tier 3 Plan are required to contribute 3.75% of their salary and the City matches their contribution. City Councilmembers in the Tier 3 Plan are required to contribute 3.75% of their salary and the City makes a 6.55% contribution into the plan. As of May 9, 2024, this plan had 173 members and \$4,533,174 in assets.

The City's PTC Plan is a mandatory plan in lieu of social security for certain classifications of employees and City Councilmembers that did not select membership in CalPERS defined benefit plan prior to October 3, 2021. Current participants of the PTC Plan are required to contribute 3.75% of their salary into the plan and the City makes a matching contribution of 3.75%. As of May 9, 2024, this plan had 7,058 members and \$32,579,178 in assets.

Prior to March 9, 2021, the Deferred Compensation Advisory Committee (DCAC) had the authority and was responsible for the operation of the 457 Deferred Compensation Plan and PTC Plan in accordance with their terms, including determining all the questions arising out of the administration, interpretation, and application of the Deferred Compensation Plan and PTC Deferred Compensation Plan documents.

The San José Municipal Code was amended, effective March 9, 2021, to change the DCAC as the administrator of the 457 Deferred Compensation Plan and PTC Plan, and assign those duties to the City Manager or her designee. The San José Municipal Code was also amended to provide the DCAC with the authority to make decisions on behalf of the City as to the investment policy, the choice and nature of investments to be available under the two plans, and enter into agreements on behalf of the City for investment advice under the plans where the fees to be paid under such an agreement are to be paid by participants of the plans or where there is no amount to be paid by the City under the agreement.

Currently, for each of these three plans, the City Manager or her designee is the administrator of the plans and is responsible for the operation of each plan in accordance with its terms, including determining all the questions arising out of the

administration, interpretation, and application of each plan. The adoption of the optional provisions noted below were approved by the plans' administrators at the time.

ANALYSIS

The Human Resources Department worked closely with the plans' consultant, plans' providers, the City Manager's Office, and the DCAC to understand and implement all required provisions of the CARES Act and SECURE Act, as well as to review the optional provisions.

The charts below outline the mandatory and optional provisions that one or more of the City's plans have adopted.

MANDATORY PROVISIONS

CARES Act- Required minimum distribution (RMD) waiver for 2020, Sec. 2203		
<u>Description</u>	<u>City Plans Impacted</u>	<u>Effective</u>
<ul style="list-style-type: none"> • RMDs from defined contribution plans and individual retirement accounts were waived for calendar year 2020. • Applies to 2019 RMDs required to be paid by April 1, 2020, and to 2020 RMDs required to be paid by April 1, 2021. • Applies to inherited individual retirement accounts. • Applies to those who were due to take an RMD in 2020 or whose RMD beginning date occurs within the calendar year 2020 and those who attained age 70½ in 2019 but had not yet received their 2019 RMD. 	<ul style="list-style-type: none"> • 457 Plan • Tier 3 Plan • PTC Plan 	January 1, 2020 through December 31, 2020
SECURE Act - RMD beginning date age increased to age 72 and Beneficiary RMD payment period		
<u>Description</u>	<u>City Plans Impacted</u>	<u>Effective</u>
<ul style="list-style-type: none"> • Increases age in which RMDs are required from ages 70½ to 72. • Establishes a 10-year distribution rule for designated beneficiaries. 	<ul style="list-style-type: none"> • 457 Plan • Tier 3 Plan • PTC Plan 	December 31, 2019

OPTIONAL PROVISIONS

CARES Act- Coronavirus Related Distributions, Sec 2202(a)		
<u>Description</u>	<u>City Plans Impacted</u>	<u>Effective</u>
<ul style="list-style-type: none"> • 10% early withdrawal penalty was waived. • Ordinary income tax may have been applied pro-rata over a three-year period, beginning in tax year 2020. • Participants may have paid back distributions within the three-year period. • Participants must have qualified and plan sponsor relied on an employee’s certification that they satisfied the conditions of qualification. • Must have been diagnosed with SARS-CoV-2 or with Coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention. • Also covered spouse or dependent who was diagnosed with such virus. • Must have experienced adverse financial consequences as a result of being quarantined, furloughed, laid off and/or having work hours reduced, being unable to work due to lack of childcare, closing or reducing hours of a business owned or operated by the individual, or other factors as determined by the Treasury Secretary. 	<ul style="list-style-type: none"> • 457 Plan • Tier 3 Plan • PTC Plan 	<p>For distributions made on or after January 1, 2020 and before December 31, 2020</p>
CARES Act- Loan limit increase and Loan repayment relief, Sec 2202(b)		
<u>Description</u>	<u>City Plans Impacted</u>	<u>Effective</u>
<ul style="list-style-type: none"> • Increased loan limit to \$100,000 or 100% of the participant’s account, whichever was less. • Participants must have qualified and plan sponsor relied on an employee’s certification that they satisfy the conditions of qualification. • Existing loan payments that were due through December 31, 2020 could have been delayed for up to one year and would have been re-amortized. • Same qualifications as the the tax-favored withdrawal provision. 	<ul style="list-style-type: none"> • 457 Plan • PTC Plan 	<p>For loans made during the 180-day period beginning on the date of enactment of the Act, March 27, 2020.</p>

SECURE Act- Age 59 ½ in-service distributions		
<u>Description</u>	<u>City Plans Impacted</u>	<u>Effective</u>
<ul style="list-style-type: none"> Reduced the age of in-service distributions to a minimum of 59½, bringing government 457 plans more in line with 401(k) and 403(b) plans 	<ul style="list-style-type: none"> 457 Plan Tier 3 Plan 	January 1, 2020 through December 31, 2020
SECURE Act- Qualified birth or adoption withdrawals		
<u>Description</u>	<u>City Plans Impacted</u>	<u>Effective</u>
<ul style="list-style-type: none"> Individuals can take a penalty-free withdrawal of up to \$5,000 from retirement plans in the case of a birth or adoption of a child with the ability to pay back the distribution if desired 	<ul style="list-style-type: none"> 457 Plan Tier 3 Plan 	December 31, 2019

The CARES Act provision regarding the RMD waivers for 2020 was implemented to the 457 Deferred Compensation Plan, Tier 3 Plan, and PTC Plan by VOYA on March 27, 2020. The SECURE Act’s mandatory provisions regarding the RMD age increase to 72 and beneficiary RMD payment period changes were implemented for the 457 Deferred Compensation Plan, Tier 3 Plan, and PTC Plan by the plans’ recordkeeper and administrator, VOYA, on January 1, 2020.

On May 1, 2020, during a DCAC Special Meeting, the 457 Deferred Compensation Plan and PTC Plan consultant, Hyas Group, provided and sought feedback on the CARES Act optional provisions. The committee voted unanimously to implement optional provisions regarding coronavirus related distributions and loan limit increase and repayment relief for the 457 Deferred Compensation Plan and PTC Plan.

On December 14, 2020, during a DCAC Special Meeting, the 457 Deferred Compensation Plan and PTC Plan consultant, Hyas Group, provided and sought feedback on the optional SECURE Act provisions. The committee voted unanimously to implement the optional provisions relating to in-service distribution at age 59½ and qualified birth and adoption of children distributions up to \$5,000 to the 457 Deferred Compensation Plan.

For the optional provisions in the CARES Act and SECURE Act applicable to the Tier 3 Plan, the City implemented the CARES Act provision related to coronavirus related distributions in March 2020 and implemented the SECURE Act provisions related to in-service distribution at age 59½ and qualified birth and adoption of children distributions up to \$5,000 to the Tier 3 Plan in July 2021.

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EVALUATION AND FOLLOW-UP

If the City Council approves the proposed ordinances for publication, the ordinances will be placed on the City Council agenda for final approval on August 27, 2024 and will become effective 30 days thereafter.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and City Manager's Budget Office.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the August 13, 2024 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

The DCAC was presented with all required and optional provisions, as provided above.

CEQA

Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.



JENNIFER SCHEMBRI
Director of the City Manager's
Office of Employee Relations
Director of Human Resources

For questions, please contact Amy Morton, Senior Analyst, at Amy.Morton@sanjoseca.gov or (408) 975-1425.