

### **3.6 Potential City Charter Amendment Related to Retirement Board Contracting for Legal Services and Appointing Authority.**

#### **Recommendation:**

Direct the City Manager and City Attorney to draft ballot language and return to City Council at the August 6, 2024 Special Meeting, for consideration of placing on the November 5, 2024 ballot a measure amending the City Charter to change the contracting for legal services by the Retirement Boards and appointing authority of the Chief Executive Officer of the Office of Retirement Services.

CEQA: Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body. (City Attorney/City Manager)



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer A. Maguire  
Nora Frimann

**SUBJECT:** SEE BELOW

**DATE:** June 6, 2024

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**SUBJECT: POTENTIAL CITY CHARTER AMENDMENT RELATED TO  
RETIREMENT BOARD CONTRACTING FOR LEGAL SERVICES AND  
APPOINTING AUTHORITY**

## **RECOMMENDATION**

Direct the City Manager and City Attorney to draft ballot language and return to City Council at the August 6, 2024 Special Meeting, for consideration of placing on the November 5, 2024 ballot a measure amending the City Charter to change the contracting for legal services by the Retirement Boards and appointing authority for the Chief Executive Officer of the Office of Retirement Services.

## **SUMMARY AND OUTCOME**

Directing the City Manager and City Attorney to return to the City Council on August 6, 2024, with a draft ballot measure will result in draft ballot measure language that the City Council will consider for placement on the next statewide general election to be held on November 5, 2024 to amend the City Charter to change the contracting for legal services by the Retirement Boards and change the authority for appointing the Chief Executive Officer of the Office of Retirement Services.

## **BACKGROUND**

The City of San José has two independent retirement boards of administration that provide fiduciary oversight to the defined benefit retirement plans for pensions and other post-employment benefits of City employees. The two retirement boards are the Federated City Employees' Retirement System and the Police and Fire Department Retirement Plan (Retirement Boards). Each board consists of trustees who are appointed by the City Council.

Under San José City Charter Sections 810 and 810.1, the two retirement boards currently have the following powers and duties.

- 810 (e) Each retirement board may retain or employ, by contract, attorneys to assist the retirement board on matters reasonably necessary to carry out their fiduciary duties in the administration of the retirement plan or plans that the retirement board has been designated to administer.
- 810.1 (a) The retirement board or boards may appoint and prescribe the duties of the chief executive officer and the chief investment officer or such equivalent positions of the Office of Retirement Services to assist in the administration of the plan or plans. Such appointed officers shall serve in unclassified positions at the pleasure of the appointing retirement board; if more than one board then the boards shall jointly appoint the chief executive officer and the chief investment officer.

Recently, issues related to the Office of Retirement Services (ORS) use of the City's procurement policy resulted in two audits that were conducted by the City Auditor's Office. These audit reports ([Audit Report #1](#) and [Audit Report #2](#)) found that the City's procurement policies were inconsistently utilized by the ORS staff, and that ORS should develop procedures for following the City's procurement rules or align its policies with the City's procurement policies.

During the audit, there were several other concerns that were brought to the attention of the City Administration related to confidential personnel matters and cybersecurity issues.

During the October 24, 2023, City Council meeting to discuss the City Auditor's Interim Report on the Alignment of Controls Between the City and ORS, the City Council unanimously approved the following action:

“Direct the City Attorney and City Administration to review the City Charter and bring forward any proposed changes to ensure appropriate oversight, while maintaining the independence where necessary of the Retirement Boards.”

In April 2024, the City Manager and City Attorney sent a letter to the trustees of the Retirement Boards informing them of the City Council's intention to pursue a ballot measure that includes changes to City Charter Sections 810 and 810.1.

## **ANALYSIS**

### *Proposed City Charter Changes*

The first proposed change would impact the provision of legal services to the Retirement Boards in City Charter Section 810. Each Retirement Board would continue to retain or employ, by contract, attorneys to assist the Retirement Board on matters relating to the investment of funds. The Office of the City Attorney would provide legal services to assist each Retirement Board on

all other matters, including retaining or employing, by contract, attorneys to assist each Retirement Board on matters reasonably necessary to carry out their fiduciary duties in the administration of the retirement plan or plans.

The second proposed change to City Charter Section 810.1 would result in the City Council being the appointing authority of the ORS Chief Executive Officer (CEO). By changing the appointing authority to the City Council, the ORS CEO would report directly to the City Council, like the other Council Appointees outlined in the City Charter. The City Council would have the authority to hire, terminate, and set compensation for the ORS CEO position.

The remaining balance of City Charter Sections 810 and 810.1 would not be changed by these proposed modifications to the City Charter. This includes, but is not limited to, the Retirement Boards retaining the appointing authority over the Chief Investment Officer (CIO), the CEO retaining appointing authority over the other professional, technical, and clerical staff in ORS, and the Retirement Boards adopting a budget that is approved by City Council. Compensation for the CIO and investment professional staff will continue to be set in accordance with City Charter Section 902, and the Retirement Boards will still be able to recommend to the City Council the total compensation for the positions of CEO, CIO, or their equivalent, and the investment professional staff.

#### *Possible Agreement with Retirement Boards*

The City is currently in discussion with the Retirement Boards on a potential agreement that would address the concerns raised that would negate the need for a ballot measure. The City Administration has also had discussions with several different stakeholder groups, including the City's bargaining units and the Federated and Police and Fire Retirees Associations regarding the reasons for the proposed City Charter amendments. Although those discussions are still occurring as no agreement has yet been reached, the City is bound by the election timeline, which requires the City to submit a resolution calling for a ballot measure election to the County of Santa Clara Registrar of Voters 88 days before the November 5, 2024 general election.

#### **EVALUATION AND FOLLOW-UP**

If approved, the City Manager and City Attorney will return to City Council in August 2024 with a ballot measure to amend the City Charter to change the contracting for legal services by the Retirement Boards and to change the appointing authority of the ORS Chief Executive Officer for the next statewide general election to be held on November 5, 2024.

However, the City Council will continue to hold discussions with the Retirement Boards' representatives to resolve the matter through an agreement, which would negate the need for a ballot measure.

HONORABLE MAYOR AND CITY COUNCIL

June 6, 2024

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### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the June 18, 2024 City Council meeting.

### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

### **COORDINATION**

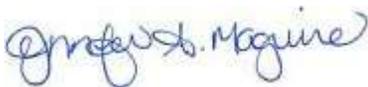
This memorandum was coordinated with the City Attorney's Office.

### **CEQA**

Not a Project, File No PP17-008, General Procedure and Policy Making 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 A. Maguire  
City Manager



Nora Frimann (Jun 7, 2024 14:22 PDT)

Nora Frimann  
City Attorney

For questions, please contact Jennifer Schembri, Director of the City Manager's Office of Employee Relations and Director of Human Resources, at (408) 535-8150.