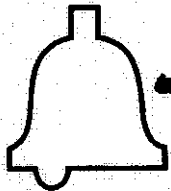


CITY OF



*San Rafael*

*Mayor  
Albert J. Boro*

*Council Members  
Paul M. Cohen  
Barbara Heller  
Cyr N. Miller  
Gary O. Phillips*

July 7, 2005

The Honorable Terrence Boren  
Marin County Superior Court  
P.O. Box 4988  
San Rafael, CA 94913-4988

RE: Grand Jury Report – Retirement Plans

Dear Judge Boren:

Enclosed is the City of San Rafael's official response to the Civil Grand Jury Report regarding retirement plans. As is required under California Penal Code Section 933, we are providing responses to both the findings and recommendations contained in the Grand Jury Report dated May 9, 2005. It should be noted that San Rafael has taken this report seriously. Since the issuance of this document, the City has:

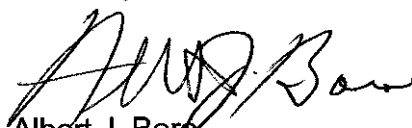
- Met with our various employee bargaining groups to discuss pension reform possibilities that the City is considering.
- Held a public study session with our City Council to discuss the findings of the Grand Jury Report and to receive direction about how to pursue pension reforms.
- Actively worked with the League of California Cities Pension Reform Task Force to suggest statewide changes to existing pension plans that would eliminate abuses, manage volatility and provide proper standard of living benefit levels.
- The San Rafael City Council adopted a resolution calling for statewide pension reforms, serving as the first public agency in Marin County to take such action, and
- Taken positions on a number of legislative bills that would implement reasonable and prudent pension plan reforms, and opposed bills that are not good public pension policy.

Several attachments supporting our efforts to date are included as part of the City's response to the Grand Jury report. We have outlined some areas of agreement, and also pointed out sections where we disagree with the Report findings and recommendations. We were disappointed that no one from the Grand Jury ever called or asked for additional information or clarification prior to publishing this report. Had we been given an opportunity to further explain our pension plans, some errors that were included in the initial report could have been avoided. The City wishes to thank Patrick Burke and the Grand Jury for issuing a timely corrected report once the errors were discovered.

**DUPLICATE**

Should you or the Grand Jury have any questions or need additional information after reviewing the City's response, feel free to contact Ken Nordhoff, Assistant City Manager at 415-485-3055.

Sincerely,



Albert J. Bore  
Mayor

ATTACHMENTS

CC: Rod Gould, City Manager  
San Rafael City Councilmembers  
J. Patrick Burke, Foreman, Marin County Grand Jury  
City Department Directors

W:\City Managers- WorkFile\Correspondence\Nordhoff\Letters\2005\civil grand jury report response-pensions.doc

**Report Title: The Bloated Retirement Plans of Marin County, Its Cities and Towns**

**Report Date: May 9, 2005**

**Response by: Ken Nordhoff, Assistant City Manager**

## **FINDINGS**

- I (we) agree with the findings numbered: 3, 5, 8, and 9, subject, in pertinent part, to the comments which appear below in **RECOMMENDATIONS** section
- I (we) disagree wholly or partially with the findings numbered: 1, 2, 6, 7, 10, and 11, subject, in pertinent part, to the comments which appear below in **RECOMMENDATIONS** section  
(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefore.)

## **RECOMMENDATIONS**

- Recommendations numbered 4, 5 and 7 have been implemented.  
(Attach a summary describing the implemented actions.)
- Recommendations numbered 1, 2, 3, 6, 8, 9 and 10 have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for the implementation.)

Date: 7-8-05

Signed: \_\_\_\_\_

*Ken Nordhoff*

Number of pages attached – 20 (including supporting documents)

*[Signature]*

**DUPLICATE**

Finding 1

This finding is both inaccurate and incomplete. When the initial study was issued, results were skewed since the pension tier currently in place for the San Rafael Firefighter's Association safety members is the 2%@50 plan, not 3%@50 as originally reported. The Civil Grand Jury has since amended its report. The error on the Firefighter's tier skewed the results for the San Rafael employees. Much of what has been used to compare public sector plans to the private sector is based upon an 'average'. This average was a compilation of interviews conducted with actuaries using assumptions about retirement age, final pay and benefit factors. Unfortunately, this comparison produces results which are misleading. Other private sector retirement options include employee stock purchase programs, 401 defined contribution plans and profit sharing (which can be rolled into a series of stock or retirement options). These plans may require employer and employee participation and should have been included in determining the 'average' private sector retirement plan value. In addition, some information should have been set forth to provide a reader of this report some degree of perspective on how much the average retiree receives in retirement (excluding Social Security as noted in Finding #2). Data from the Marin County Employees' Retirement Association (MCERA), dated March of 2005, shows the average annual pay for San Rafael retirees is \$28,787. This sum amounting to less than \$2,500 per month may hardly be considered excessive, and certainly is not significant, given housing prices and the cost of living in Marin and surrounding counties.

Finding 2

San Rafael employees do not participate in Social Security, and therefore do not draw from the Social Security System when they retire. However, employees do contribute to their own retirement. Per the 2004-2005 actuarial report for the MCERA and its member agencies, safety employees contribute from 10.18% up to 14.63% of their annual salaries to their pensions. Miscellaneous (non-safety) employees contribute between 9.49% and 13.19%. With the exception of a few employees in our Child Care operations, 100% of these costs are paid by the employee in accordance with existing labor agreements with our various bargaining groups. The employee rates are based upon age when hired by the City of San Rafael. Employees are contributing significantly more in real dollars to their retirement than those contributing solely to the Social Security system.

Finding 5

We are not aware of unions, representing public sector employees, lobbying the current Legislature to increase pensions. A number of pension reform bills are in process which seek to reduce some of the asserted abuses and excesses in existing pension programs. San Rafael has taken action on a number of these proposed bills, as evidenced by the City Council staff report of July 5<sup>th</sup>, 2005 (included as an attachment to this Civil Grand Jury response).

Finding 6

Negotiated compensation for all public employees is a contractual obligation between the City and the association or union that represents the employees in each respective bargaining group. Under current State law, employees who come to work for the City of San Rafael have a vested right in the salary, benefits and working conditions outlined in the various contracts then in place. Specifically, *benefits in place* are vested once an individual is hired and continue up to and beyond one's retirement date). Pension benefits, like all other benefits, are negotiated in good faith as part of the labor agreement process. If these benefits were to be altered in some way, they would not necessarily require a 'bargained compensatory improvement in some other area of compensation.' As we understand, the private sector can defer or avoid it's obligations to fund social security, pension or other pension requirements. (Example - the recent United Air Lines experience) For unionized companies, this could appear to breach agreed upon pension or retirement obligations. To this end, the Pension Benefit Guaranty Cooperation (PBGC) is able to step in and aid employees and retirees of companies to some extent. Listed is an excerpt from the PBGC website that outlines how private sector employees are protected:

"An employer can voluntarily ask to close its single employer pension plan in either a *standard* or *distress* termination. In a *standard* termination, the plan must have enough money to pay all benefits, whether vested or not, before the plan can end. After workers receive promised benefits, in the form of a lump sum payment or an insurance company annuity, PBGC's guarantee ends. In a *distress* termination, where the plan does not have enough money to pay all benefits, the employer must prove severe financial distress - for instance the likelihood that continuing the plan would force the company to shut down. PBGC will pay guaranteed benefits, usually covering a large part of total earned benefits, and make strong efforts to recover funds from the employer."

It is unlikely in any event that the City would be in a *distressed* situation that would necessitate forgoing our pension payments for any year. We are contractually bound with the Marin County Employee Retirement Association (MCERA) to meet our annual actuarial obligations. We are not in a position to file for bankruptcy or seek some other form of pension contribution bailout. Besides, no entity such as PBGC exists to assist employees and retirees who are vested in our current public pension plans.

Finding 7:

San Rafael's ability to attract and retain top notch employees to provide the services our community demands and deserves is inexorably intertwined with how our employees are compensated (both salaries and benefits). We do not agree that increasing salaries while at the same time decreasing pensions would be harmful to public sector employees. Our City operates in a very competitive work environment and must provide adequate compensation, when compared to our municipal neighbors, to attract and retain the best employees available. We have consistently tried to provide a prudent balance among salaries, pensions and other benefits. This has been done in order to attract a broad range of employees who encompass different lifestyles, family situations, etc.

Many employees, and in particular public safety personnel, are in high demand and routinely consider all forms of compensation, including pensions, when considering initial employment and in determining whether to spend a career working for a City like ours. Some employees spend many years here and retire from our San Rafael. Others choose to serve with us for some time and then look for opportunities elsewhere. For example, San Rafael does not seem to offer the *best* retirement plans to its police officers. This past month, two current Police officers chose to find work located closer to home, in more affordable locations, in other communities that offer a better retirement plan than the one presently in place in San Rafael.

The *trade off* not simply higher salaries vs. lower pensions. Rather, *total compensation* is evaluated by both existing employees and new hires as they consider their personal life circumstances. Any real pension reform would necessarily need to be accomplished on a statewide basis so that our particular City is not taking on pension changes in isolation thereby creating a competitive disadvantage to our recruitment and retention process.

Finding 10

It is true that the City of San Rafael will need to comply with new GASB standards requiring retiree health obligations to be part of our annual audit and financial reports. San Rafael's requirements period commences in fiscal year 2008-2009. San Rafael would disagree with the latter part of this finding regarding the private sector reducing healthcare benefits once they discovered their substantial retiree health obligations. The City does not possess any information or knowledge sufficient to allow it to determine whether applying the new GASB standards in the private sector have resulted in reduction of private sector retiree health benefits.

Finding 11

We disagree with this finding. San Rafael has a full and complete understanding of the annual cost of its retiree health obligations. Some portion of this annual cost is remitted back to the City by MCERA. To this end, the Grand Jury report did not take into account the return of retiree health care reimbursements from MCERA when it made its determination concerning volatile public sector retirement contributions (Finding F3). We are able to calculate the City's contribution, as well as what portion of the retiree health cost is borne by each retiree. We have to and do make assumptions in our annual budget process concerning how these figures may change, using a variety of factors such as deaths, new retiree projections, cost of health insurance, etc. San Rafael is not able to calculate the retiree health obligation under the new GASB reporting requirements at this time. Computations required under GASB for retiree health obligations necessitate the hiring of an actuarial consultant. San Rafael will be looking at various options that limit our costs and complete the required valuations in a timely manner.

Recommendation 1: The City of San Rafael has been an active supporter of pension reforms. Issuance of this report lead to a study session called by the City Council to look at options for reform. We have conducted meetings with our local unions to make them aware of this report and to discuss what reform options the City is considering. San Rafael has been instrumental in developing and supporting reforms put forth by the League of California Cities. We are actively working with the League in its talk about pension reform with the State police and fire unions, as well as with the Fire and Police Chief organizations. San Rafael was the first city in Marin to adopt a resolution seeking pension reforms on a statewide basis (see our Resolution attached). As discussed earlier (and attached to this report), we are taking positions on various reform bills that have and are continuing to seek to improve the public employee pension systems. Since the problems and possible solutions are long term in nature, it is not possible to determine an implementation date for this recommendation.

Recommendation 2: Pensions are part of a total compensation package provided to public employees. In order to implement this recommendation, reforms should be proposed using a State level approach so that San Rafael becomes part of a level pension plan playing field. Just as with Recommendation No. 1, San Rafael is working closely with the League of California Cities in seeking pension reforms. Since the League and State officials are involved in these discussions, the City can not reasonably estimate a timetable for completion.

Recommendation 3: The City will be working alongside MCERA, their actuaries and all other MCERA member agencies to analyze, and where feasible, implement more stable funding models for our current pension programs. Since actuarial processes are completed annually, we have an expectation that some actions may be taken and may be put into place prior to establishing the member contributions rates for fiscal year 2006-2007.

Recommendation 4: The City of San Rafael has a series of adopted Financial Management Policies. One of these policies specifically addresses the use of spending found money on recurring obligations. The Financial Management Policy states:

'Cost must be matched with revenues. Ongoing costs shall only be funded with ongoing revenues. One-time costs can be funded with one-time revenues. However, one-time revenues cannot fund ongoing costs.'

Recommendation 5: As stated earlier, the City is taking positions on Legislative bills that either support prudent pension reforms or oppose actions that further enhance benefits or potentially undermine retirement systems. Please see the attached staff report from July 5<sup>th</sup>, 2005.

Recommendation 6: As pointed out previously San Rafael is taking an active part in working with the League of California Cities in developing reasonable, sustainable pension reform legislation. Since the League and State officials are involved in these discussions, the City can not estimate a timetable for completion.

Recommendation 7: MCERA has conducted retirement workshops on behalf of San Rafael employees. It is our expectation that we will continue to ask MCERA staff to make presentations to our employees in the future. MCERA staff are also available for *one on one* consulting. In addition, the City offers two IRC 457 deferred compensation plans. Company representatives are on site regularly to assist employees with a host of retirement planning options.

Recommendation 8: The City will endeavor to ask the MCERA actuaries to provide better explanations and more analysis of how changes in assumptions, market conditions and other factors impact pension and retiree health care obligations. We will work with MCERA to include additional analysis where appropriate, including the impacts of level funding alternatives as suggested in Recommendation No. 3. The first opportunity for such efforts will be the actuarial analysis performed next spring. Data from the MCERA actuarial report will be an integral part of discussions with the community and City Council held prior to adopting our 2006-2007 fiscal year budget.

Recommendation 9: As stated in our response to Finding 11, we believe we can project fairly accurately the City's annual retiree healthcare obligations. We do recognize that our projections do not satisfy GASB actuarial standards and reporting requirements required of us in the future. The City will be investigating the option of an early GASB implementation this coming year, which would include completing retire health obligation calculations as outlined in GASB Statement No. 45.

Recommendation 10: San Rafael has been monitoring retiree health care costs, and their related financial impacts to our City budget, for many years. As a change in benefits has occurred through the labor negotiations process, the City has been fully knowledgeable about the financial ramifications of offering such benefits.

**PENSION REFORM IN CALIFORNIA**  
**League of California Cities**  
**March 1, 2005**

For close to 60 years California state and local governments have offered "defined benefit" retirement plans to their employees which provide a guaranteed annual pension based upon retirement age, years of service, and some period of highest salary (typically the last one or three years of work). These plans generally provide an annual cost-of-living adjustment and additional inflation protection that maintains the purchasing power over time at a specified minimum level. The Public Employee's Retirement System (PERS), the State Teachers' Retirement System (STRS), and a variety of individual cities and counties administer these retirement plans.

Over the years local and state government retirement costs have risen and fallen based on two principal factors: (1) the investment returns of the various systems; and (2) the level of benefit payments provided to employees. In the late 1990s the California legislature enacted dramatic benefit enhancements for public employees in the PERS system that were optional for participating local governments. Some local governments adopted these benefit enhancement plans—for a variety of reasons, typically to retain employees and at times at a shared cost with the employees. When the retirement systems suffered serious investment losses in the early part of this decade, these losses combined with the benefit enhancements to cause dramatic increases in employer contribution rates.

**Defined Contribution Mandate Proposed**

In the fall of 2004 a proposed constitutional and statutory initiative (File No. SA2005RF0007) was filed that would close all state and local public sector defined benefit plans (including locally administered plans) to new entrants effective July 1, 2007. Employees hired after that date could only enroll in defined contribution retirement plans. Defined contribution plans provide fixed annual employer contributions to employee accounts that are invested, along with employee contributions. Unlike defined benefit plans, the employee has no guaranteed pension benefit and employers never incur any unfunded liabilities.

The initiative (which has a legislative counterpart by Assembly Member Richman) would establish maximum employer contributions of 9 percent for police officers and firefighters and 6 percent for other employees, assuming participation in federal Social Security (3 percent higher if no Social Security). Local agencies could exceed these limits with a two-thirds vote of their electorate. The state could do so with a three-fourths vote of both houses of the Legislature in two consecutive sessions. Mr. Richman has informed the League in a letter dated February 17 that he is willing to enter into negotiations to avoid the need for the initiative.

In his 2005 State of the State message, Governor Schwarzenegger recommended a defined contribution pension mandate for new state and local employees. In a presentation to the League board of directors on February 25, 2005 Tom Campbell,

Director of Finance, explained the Governor's proposal contains no caps on employer contribution and would not require lower state or local contributions. It would simply remove the risk of increased costs to the taxpayer due to future stock market declines by requiring that all new state and local employees be provided a defined contribution plan in place of the traditional defined benefit plan. Mr. Campbell indicated that in all other respects (e.g., PERS administration, employer contributions, employer contributions, etc.) the plans would be identical.

#### **League Pension Reform Task Force**

In late 2004 the Executive Director asked the City Manager's Department's standing task force on PERS to undertake a study of the defined contribution proposal and potential other defined benefit reforms. A group of other appointed and elected officials were subsequently added to the task force to provide broader input, and since early December it has met regularly to study the problems with the existing defined benefit retirement systems and to evaluate the defined contribution proposal. The task force is chaired by Bob LaSala, Lancaster City Manager.

The League also retained the services of a retirement actuary, John Bartel of Bartel Associates, LLC, who worked with the Task Force to ensure its recommendations for reform of the defined benefit system were actuarially sound. He assisted the Board in its discussions. His report to the Pension Reform Task Force, dated February 26, 2005 and entitled *Replacement Ratio Study: Preliminary Results*, is available from the League.

#### **Review and Comment on Discussion Draft Sought**

The task force report was reviewed by subcommittee of the Public Employee Relations Policy Committee on Wednesday, February 23, 2005 and forwarded to the League board of directors with a favorable recommendation. On Saturday, February 26, 2005 the board accepted the report, with modifications, and authorized staff to circulate the report as a discussion draft for review and comment. It is important to note the ideas contained in this report represent an initial assessment by the League on pension reform. It is offered for discussion and consideration in the pension reform debate. Comments are requested from League member cities, other local government associations, local government labor organizations, state legislators and the Administration. Comments should be sent to the League of California Cities, c/o Anthony Thomas, Legislative Representative, 1400 K St., Sacramento, CA 95814 [athomas@cacities.org](mailto:athomas@cacities.org).

**A Framework for Public Pension Reform<sup>1</sup>**  
**March 1, 2005**

**General Pension Reform Principles**

Any serious discussion of public pension reform must begin with a set of principles/goals to guide any following recommendations. Until questions about the appropriate role and purpose of public pension benefits in local government compensation packages are answered, it would be at least premature and perhaps self-defeating to make any specific benefit recommendations. In keeping with this philosophy, it is recommended that the following principles precede any benefit recommendations:

- The primary goal of a public pension program should be to provide a full-career employee with pension benefits that maintain the employees' standard of living in retirement.
- The proper level of public pension benefits should be set with the goal of providing a fair and adequate benefit for employees and fiscally sustainable contributions for employers and the taxpayers.
- Public pension benefits should be supported with proper actuarial work to justify pension levels. The Legislature should reject any and all attempts to establish pension benefits that bear no relation to proper actuarial assumptions and work.
- Pension benefits should be viewed in the context of an overall compensation structure whose goal is the recruitment and retention of employees in public sector jobs. In recognition of competitive market forces, any change in the structure of retirement benefits must be evaluated in concert with other adjustments in compensation necessary to continue to attract and retain an experienced and qualified workforce.
- The reciprocity of pension benefits within the public sector should be maintained to ensure recruitment and retention of skilled public employees - particularly in light of the retirement of the post World War II "Baby Boom" generation which will result in unprecedented demand for public sector employees.
- Perceived abuses of the current defined benefit retirement programs need to be addressed. Benefit plans which result in retirement benefits which exceed the levels established as appropriate to maintain employees' standard of living should be reformed. It is in the interest of all public employees, employers and taxpayers that retirement programs are fair, economically sustainable and provide for adequate benefits for all career public employees, *without providing excessive benefits for a select few.*

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<sup>1</sup> This report constitutes the recommendations of the League Pension Reform Task Force that was accepted by the League of California Cities Board of Directors for distribution as a discussion draft.

- The obligation to properly manage public pension systems is a fiduciary responsibility that is shared by PERS, employers and employees. This joint responsibility is necessary to provide quality services while ensuring long-term fiscal stability. These parties need to be held responsible to ensure a high level of protection against mismanagement of public resources that could jeopardize a community's ability to maintain services and provide fair compensation for its workforce.
- Charter cities with independent pension systems should retain the constitutional discretion to manage and fund such pension plans.

### Reform Recommendations

Public employee defined benefit programs have been appropriately criticized in a number of areas. The following reform recommendations address short-comings within some defined benefit retirement programs, while preserving the aspects of the program that have served the employees, employers and taxpayers of California well for over 60 years.

#### **Pension Benefit Levels**

*Principles:* Public pension benefit plans should:

- Allow career-employees to maintain standard of living post-retirement.
- Be designed with consideration of age at retirement, length of service, compensation level and applicability of Social Security.
- Be supported with proper actuarial work to justify pension levels. The Legislature should reject any and all attempts to establish pension benefits that bear no relation to proper actuarial assumptions and work.
- Promote career public service without creating incentives to work past retirement age, nor disincentive to early retirement. Employees who voluntarily choose to either work beyond retirement age or retire early should not be penalized or rewarded.

#### *Recommendations*

- Maintain the defined benefit plan as the central pension plan for public employees in California.
- Rollback/repeal public retirement plans that provide benefits in excess of levels required to maintain a fair, standard of living<sup>2</sup> that are not financially sustainable and may have no actuarial justification. The new and exclusive benefit formulas to achieve these goals should be:

<sup>2</sup> This should be determined in accordance with a Cal PERS 2001 target replacement benefit study and/or the Aon Georgia State Replacement Ration Study (6<sup>th</sup> update since 1988).

1. **Safety Employees:** 3% @ 55 formula, offset by 50% of anticipated social security benefit for safety employees with social security coverage. Safety employees retain the current cap on retirement at 90% of final compensation.
  2. **Miscellaneous Employees(Non-safety):** 2% @ 55 formula, offset by 50% of anticipated social security benefit for miscellaneous employees with social security coverage. A cap of 100% of final compensation is placed on newly-hired, miscellaneous(non-safety) employees.
- The above formulas would incorporate "Three-Year-Average" for "final compensation" calculation. All "Highest Final Year" compensation calculations would be repealed for newly-hired employees.
  - Provide alternatives to a defined benefit plan for job classifications not intended for career public service employment.
  - Give employers greater flexibility to determine when a part-time employee is entitled to public pension benefits. The current hourly threshold in PERS is too low.

## **Rate Volatility**

### *Principles*

- Responsible fiscal planning suggests the need to "manage" volatility in defined benefit plan contribution rates.
- Rates have historically been relatively constant and comparable to rates currently paid by most public agency employers.
- Recent rate volatility is primarily due to large fluctuations in annual investment returns for the retirement plan investment portfolios, causing significant changes in plan funding status.
- Normal Costs for defined benefit plans have remained relatively constant over time.

### *Recommendations*

- Public Agency retirement contribution rates, over time, should be constructed to stay within reasonable ranges around the historical "normal cost" of public pension plans in California. Sound actuarial methods should be adopted to limit contribution volatility while maintaining a sound funding policy.
- Establish "reserve" funding for public pension systems that will help smooth the volatility of pension benefit costs. Plan surpluses are to be retained within plan

assets, but should be reserved for amortization of future unfunded liabilities, and should not be used to offset plans' normal cost contribution rates.

## **Shared Risk**

### *Principles*

- Currently, in most local jurisdictions, employers shoulder the burden of rate volatility risk – both positive and negative. This principle should be carefully examined with the intent of better spreading the risk of rate volatility among both employers and employees.
- Negotiated labor agreements containing language whereby employers “pick-up” employees’ retirement contributions are assumed to be part and parcel of a “total compensation” package; this implies that agencies with Employer Paid Member Contributions would also typically reflect correspondingly lower base salaries.

### *Recommendations*

- When employer contribution rates exceed the “normal costs” threshold, employees should be expected to take some of the financial responsibility for those excessive increases.

## **Disability Retirement**

### *Principles*

- Retirement-eligible employees who are injured in the workplace should be entitled to full disability retirement benefits; disability retirement benefits should, however, be tied to individual’s employability and be structured so as to encourage return to work, where applicable.
- Larger disability reform measures should be considered outside of the scope of general pension reform.

### *Recommendations*

- Full tax-exempt disability retirement should be retained for employees who are injured and can not work in any capacity
- Reform the disability pension provisions of public retirement systems to restrict benefits when a public employee can continue to work at the same or similar job after sustaining a work-related injury.

- Employees eligible for disability retirement should be first afforded applicable service retirement benefits, and THEN provided disability retirement benefits up to applicable "cap" on total retirement benefits.

### **Portability of Plan Benefits**

#### *Principles*

- Reciprocity of public agency retirement benefits is critical to recruitment of qualified, experienced public sector employees.
- Limiting portability of retirement plan benefits to non-public sector employment helps in the retention of senior and management level employees.

#### *Recommendation*

- Any pension reform package should retain transferability of retirement benefits across public sector employers. No employee currently in a defined benefit plan should be required to involuntarily give up a defined benefit formula before retirement.

### **Tiered Plans**

#### *Principles*

- Agencies should strive to avoid multi-tiered compensation structures where there are large discrepancies in benefits accruing to employees. In addition to having adverse impacts on recruitment and employee morale, multi-tiered approaches can raise issues of comparable worth and equity.

#### *Recommendations*

- Any pension reform measures should seek to minimize disparity between current and prospective public agency employees.
- Any reduction(s) or change(s) to current Defined Benefit plans should be considered in context of other compensation issues that will tend, over time, to "equate" compensation plans within and across public agency employers.

### **Management Oversight**

#### *Principles*

- The obligation to properly manage public pension systems is a fiduciary responsibility that is shared by PERS, employers and employees. This joint responsibility is necessary to provide quality services while ensuring long-term fiscal stability. These parties need to be held responsible to ensure a high level of protection

against mismanagement of public resources that could jeopardize a community's ability to maintain services and provide fair compensation for its workforce.

#### *Recommendations*

- Public agencies that do not make the Annual Required Contribution under GASB 27 should be made subject to appropriate oversight.
- The membership of the Public Employees and Retirement System Board should be changed to achieve both a better balance of employer and employee representatives as well as a better balance of public agency representatives.

#### **Conclusion**

Defined benefit retirement plans have been the traditional approach for close to 60 years in California and have produced fair and sustainable retirement benefits that have been central to recruiting and retaining quality public employees. Defined benefit plans should be retained as the central component of public pension systems in California.

*Jeanne M. Leoncini*  
JEANNE M. LEONCINI, City Clerk

RESOLUTION #11783

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL SUPPORTING REFORM OF THE PUBLIC PENSION SYSTEMS IN CALIFORNIA**

**WHEREAS**, public pension systems for most California governmental entities have been experiencing a period of great cost volatility; and

**WHEREAS**, the primary factor contributing to these volatile pension costs, which have risen sharply over a short period of time, has been the recent and dramatic downturn in investment earnings from pension funds; and

**WHEREAS**, a secondary contributing factor to rising pension costs has been the adoption of new and higher public employee pension benefits; and

**WHEREAS**, some state legislators and the Governor's office have put forward proposals to address rising pension costs by eliminating defined benefit plans for public employees and only permitting the adoption of defined contribution plans for public employees, similar to pension models found more commonly in the private sector; and

**WHEREAS**, defined benefit plans have been the centerpiece for public pension systems in California, and have been a key factor in recruiting and retaining quality public servants; and

**WHEREAS**, public pension benefits should be set with a sound actuarial foundation that achieves the goals of providing a: 1) fair retirement benefits; 2) designed for a 30-year career employee; 3) that maintains the employee's standard of living in retirement; and

**WHEREAS**, some of the pension benefits adopted in recent years exceed the above stated pension goals.

**NOW, THEREFORE, BE IT RESOLVED**, that the City of San Rafael does support the retention of the defined benefit retirement plan model as the central means to provide retirement benefits for public employees in California; and

**BE IT FURTHER RESOLVED**, that the City of San Rafael supports the League of California Cities efforts to continue discussions among legislative leadership, the Administration, public employee organizations, and public employers to develop pension retirement benefit plans that meet actuarial-based goals of providing public employees with fair retirement benefits for career employees that maintain their standard of living in retirement; and

**BE IT FURTHER RESOLVED**, that the City of San Rafael supports public pension benefit levels that can be rationally defended to the taxpayers of our local communities.

I, JEANNE M. LEONCINI, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City held on Monday, June 20, by the following vote, to wit:

AYES: COUNCIL MEMBERS: Cohen, Heller, Miller, Phillips and Mayor Boro

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

*Jeanne M. Leoncini*  
JEANNE M. LEONCINI, City Clerk

**COPY**

11783



*San Rafael*

Agenda Item No: 4

Meeting Date: July 5, 2005

**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: City Manager

Prepared by: Lydia Romero  
Assistant to the City Manager

City Manager Approval: RS

SUBJECT: LEGISLATION AFFECTING SAN RAFAEL

**RECOMMENDATION:**

- SBX1-2. Public Employees' Retirement Employer Contribution Rates. – Dunn - SUPPORT
- ABX1-4. Public Employees' Retirement Employer Contribution Rates. Torrico - SUPPORT
- ABX1-6. Public Employees' Retirement: Pension Spiking and Disability Retirement Abuse. – Evans and Torrico - OPPOSE
- SBX1-5. Public Employees' Retirement.- Ducheny - SUPPORT
- ABX1-5. Public Employees' Retirement: Fraud.- Torrico - SUPPORT

**BACKGROUND:**

Attached is a summary of legislation that is pending this legislative session that may have an effect on San Rafael.

The summary includes background information, what the bill does, the position of the League of California Cities and the recommended city position.

Should the Council take a position on any of the legislation presented, staff will prepare correspondence for the Mayor's signature to be sent to the relevant legislators.

**ANALYSIS AND FISCAL IMPACT:**

See attachment

**OPTIONS:**

- Adopt the recommendation as reflected in the staff report.
- Modify the positions as reflected in the staff report and approve.
- Request further information.
- Reject the staff recommendation and chose not to take a position on any on any of the above-mentioned legislative items.

**ACTION REQUIRED:**

If Council concurs, the appropriate action would be a motion to accept this report and approve staff recommendation on the above listed legislation

attachments

**FOR CITY CLERK ONLY**

File No.: \_\_\_\_\_

Council Meeting: 7/5/05

Disposition: \_\_\_\_\_

Approved staff recommendation:

SBX1-2. Public Employees' Retirement Employer Contribution Rates. – Dunn – SUPPORT  
 ABX1-4. Public Employees' Retirement Employer Contribution Rates. Torrico – SUPPORT  
 ABX1-6. Public Employees' Retirement: Pension Spiking and Disability Retirement Abuse – Evans and Torrico – OPPOSE  
 SBX 1-5. Public Employees' Retirement. – Ducheny – SUPPORT  
 ABX 1-5. Public Employees' Retirement: Fraud. – Torrico - SUPPORT  
 (Councilmember Phillips absent from meeting)

# LEGISLATIVE SUMMARY

Bill Number, Title, Author, Summary, Status	Background, Analysis and Fiscal Effect	Recommender City Position	League Position
<p><b>Measures:</b>            SBX1 -2 -Public Employees' Retirement Employer Contribution Rates.            ABX1 - 4 - Public Employees' Retirement Employer Contribution Rates</p> <p><b>Introduced by:</b>            Senator Dunn            Assembly Member Torrico</p> <p><b>Summary:</b>            Both bills requires the establishment of Taxpayer Risk Reduction (TRR) Accounts in both the California Public Employees' Retirement System (CalPERS) and in retirement systems established under the County Employees Retirement Act of 1937 ('37 Act) for the purpose of stabilizing public employer contributions to the retirement systems.</p> <p><b>Status:</b>            SBX1 -2 -Senate Appropriations Committee             ABX1 - 4 - Assembly Ways and Means Committee</p>	<p><b>Background:</b>            Retirement benefits are funded through contributions paid by employers, member contributions, and earnings from investments. Employee contribution rates are usually a fixed percentage of salary while employer contribution rates are determined by periodic "actuarial valuations" making the employer contribution subject to fluctuation. The actuarial valuations are based on the benefit formulas the employer provides and the employee groups covered.</p> <p>Existing CalPERS and '37 Act laws provide for small reserves against deficiencies; the CalPERS law permits the reserve to be 0.20% of assets, and the '37 Act law permits the reserve to be not more than 1% of assets. The systems are permitted to use the reserves against deficiencies in interest earned, losses under investments, court-mandated costs and specified actuarial losses.</p> <p><b>Analysis:</b>            These measures would require that PERS and the '37 Act retirement systems establish a risk account that would mitigate sudden increases in contribution rates that employer's pay towards employee retirements.</p> <p>These risk accounts would be part of the employer's account, but could not be considered an asset by retirement system boards of administration in the process of determining employer contribution rates. In times of high investment earnings when employer contributions are usually reduced, under these measures employers would be required to make retirement contributions at specified levels until the risk account has reached 50% of that employer's assets in the system. In times of low investment earnings when employer contributions usually increase, the risk account would be drawn from to pay for that portion of the employer contribution rate that exceeds specified levels.</p> <p>In the Assembly Bill this risk account is called Taxpayer Risk Reduction Act. In the Senate version of this bill the account is called Taxpayer Adverse Rick Prevention Account.</p> <p><b>Fiscal Effect:</b> Unknown</p>	<p>SUPPORT</p>	<p>SUPPORT</p>

Bill Number, Title, Author, Summary Status	Background, Analysis and Fiscal Effect	Recommendation City Position	League Position
<p><b>Measure:</b> ABX1 – 6 – Public Employees' Retirement: Pension Spiking and Disability Retirement Abuse.</p> <p><b>Introduced by:</b> Assembly Member Evans and Torrico</p> <p><b>Summary:</b> This measure would make various changes to PERS, STRS and '37 Act retirement laws governing public employee retirement in an effort to eliminate or reduce pension spiking and disability retirement abuse.</p> <p><b>Status:</b> Assembly Ways and Means Committee</p>	<p><b>Background:</b> The PERS law and the '37 Act law prescribe the rights and benefits of its respective members. The amount of final compensation for retirees' is a specific formula set by the retirement boards. In addition, disability retirement is provided to public safety (police and fire) should they be injured as a result of their of employment.</p> <p>'37 Retirement Law sets a comprehensive system of retirement benefits for employees. The law defines the terms "compensation" and "compensation earnable" for the purposes of determining contributions and benefits. The law establishes how errors resulting from fraud or overstatement may be corrected in a retired member's allowance, and establishes a 10-year period of limitation of actions in this regard.</p> <p><b>Analysis:</b> This measure makes changes to public employees retirement law, with substantive changes in public safety retirements. First, this measure establishes a limit on the amount of salary that is used to calculate retirement benefits and employees contributions by creating a new formula for determining final compensation.</p> <p>Secondly, this measure establishes a process for creating re-employment plans for public safety employees who are injured on the job but are still capable of performing the duties of a miscellaneous employee. In addition, this measure establishes a requirement for those public safety officers eligible for the maximum service retirement benefit, retiring on a work related injury and subsequently returns to work as a peace officer or firefighter to have their disability retirement converted to a service retirement. The member receiving the disability allowance would be required to notify the respective retirement boards, in writing, of their new employment. Failure could result in suspension of the disability retirement allowance.</p> <p>Lastly, this measure establishes new benefit limits in retirement law for public safety employee's hired on or after January 1, 2006, or current members making an irrevocable election. These new benefits would increase the cap from 90% to 100% of final compensation for service retirement and establishes a cap of 85% of final compensation for disability retirement.</p> <p>Although this measure does establish</p>	<p>OPPOSE – UNLESS AMENDED</p>	<p>OPPOSE – UNLESS AMENDED</p>

	<p>reforms in the area of pension spiking and disability retirement, it also increases benefit levels in final compensation, codifies Ventura for PERS agencies and caps disability retirement compensation. Increasing benefits under the guise of reform is disingenuous on its face. Although pension spiking and disability retirement abuse is in the pension reform spotlight, the increased cost local agencies will face with the increased benefit levels offsets reforms in this bill.</p> <p><b>Fiscal Effect:</b> Unknown</p>		
<p><b>Measure:</b> SBX1 -5 - Public Employees' Retirement.</p> <p><b>Introduced by:</b> Senator Ducheny</p> <p><b>Summary:</b> Would repeal existing provisions and enact new provisions of the '37 Act relating to the determination of final compensation, and enact similar final compensation provisions for independent public retirement systems, providing that all of the above new provisions would be modeled after the final compensation provisions in existing PERS law.</p> <p><b>Status:</b> Senate Floor.</p>	<p><b>Background:</b> Currently retirement benefits are calculated based on the years of service, age and final compensation.</p> <p>In 1993 PERS agencies were subject to legislative measure that specified hat should and should not be included in final compensation for the purpose of calculating retirement benefits. This legislation was in response to "pension spiking" that was reported several PERS audits of local agencies. Anti-spiking legislation affecting the '37 Act law was unsuccessful in 1993 and was never pursued further in a legislative vehicle.</p> <p>The Ventura decision of 1997 and the '37 Act counties is a landmark court decision that affects final compensation in the '37 Act counties. This Court decision required the inclusion of certain types of employee benefits that had previously been excluded from coverage for the purpose of calculating retirement benefits.</p> <p>Because the twenty '37 Act counties administer their own retirement systems, have different benefit levels and include different employee benefits in final compensation for the purpose of calculating retirement benefits, the Ventura decision affected each of these counties differently. Nevertheless, the Ventura case had a major financial impact on all '37 Act counties.</p> <p><b>Analysis:</b> This measure would introduce new language defining final compensation into the '37 Act law to replace existing language that has recently been the subject of litigation in the Ventura case and impose final compensation definitions in '37 Act law where no definitions now exist.</p> <p>These new provisions would be modeled after the final compensation in existing PERS law. This new definition would exclude from final compensation calculation compensation based on overtime, and sets how the service for members rendering service in two or</p>	SUPPORT	SUPPORT

	<p>more categories is calculated.</p> <p>The intent of this legislation is to have a uniform definition of final compensation for retirement in '37 act entities.</p> <p><b>Fiscal Effect: Unknown</b></p>		
<p><b>Measure:</b> ABX1 – 5 – Public Employees' Retirement: Fraud.</p> <p><b>Introduced by:</b> Assembly Member Torrico</p> <p><b>Summary:</b> This measure would add a definition of fraud to PERS, STRS and '37 Act retirement laws and establish civil and criminal penalties for committing such fraud.</p> <p><b>Status:</b> Assembly Ways and Means Committee</p>	<p><b>Background:</b> Existing law states that it is a crime to make a knowingly false material statement or representation for the purpose of obtaining workers' compensation, or supporting or denying a workers' compensation claim. Existing retirement law permits the Board of Administration of the Public Employees' Retirement System to make corrections for errors by adjusting future payments, and permits the board to refrain from collecting underpayments in certain situations.</p> <p><b>Analysis:</b> ABX1 –5 would make it a crime for a person to make or present false statements and representations in connection with retirement benefits and applications or to assist someone in this regard. This measure establishes as a crime to knowingly accept a payment with the knowledge that one was not entitled to the benefit. Sets that a violation of these provisions is punishable by up to one year in a county jail, by a fine of not more than \$5,000, or by both, or by imprisonment in state prison for a term of two to four years, a fine of not more than \$50,000, or both. Requires that criminal prosecution for violations start within three years of the offense, and that a civil action for violations start within three years after discovery of the offense.</p> <p>When PERS investigators uncover cases of fraud there is often little that can be done to prosecute these cases because no statute clearly defines the actions involved as fraud. This measure will add statutory language defining fraud and by establishing civil and criminal penalties for such fraud.</p> <p>The bill language is modeled after a provision of the Insurance Code that prohibits similar fraudulent actions made in connection with workers' compensation benefits. Language is also modeled after Penal Code provisions that prohibits similar fraudulent actions with respect to insurers.</p> <p>This measure applies these fraud definitions and penalties to CalSTRS and the '37 Act retirement systems, in addition to PERS agencies.</p> <p><b>Fiscal Effect: Unknown</b></p>	<p>SUPPORT</p>	<p>WATCH</p>

## Legislative Report - Update

*status of active measures as of June 29, 2005*

The City Council previously took positions on the following legislative measures. This is an update on the status of the measures before the legislature and Congress.

### ACTIVE LEGISLATION

<i>Bill Number; Author; Title; Summary</i>	<i>City Position</i>	<i>Status</i>
<p><b>SB 435 (Hollingsworth) Housing: Density Bonuses</b>            This measure makes a number of technical and substantive amendments to the density bonus law.</p> <p><i>Bill Amendments:</i> The amendments that were recommended by the Chair of the H &amp; CD committee pretty much gut the bill to a truly technical clean up of SB 1818. The League, CSAC and American Planning Association at the end of the day all three entities went neutral on the bill.</p> <p><i>Sponsors</i>            The California Association of Realtors, California Rural Legal Assistant Foundation and Western Center on Law and Poverty sponsor this measure.</p>	OPPOSE	In Assembly Local Government Committee - hearing set for June 29, 2005.

### INACTIVE LEGISLATION

These measures failed to get out of their house of origin by the legislative deadline.

<i>Bill Number; Author; Title; Summary</i>	<i>City Position</i>	<i>Status</i>
<p><b>AB 194 (Dymally) – Brown Act Violations</b>            This bill would remove the requirement that the legislative body be allowed to correct an alleged violation prior to start of a legal action.</p>	OPPOSE	In Assembly Local Government Committee – hearing cancelled at the request of the author.
<p><b>AB 1248 (Umberg) Criminal law. Booking fees</b>            This bill would exempt felonies and certain misdemeanors from booking fees.</p>	SUPPORT	Assembly Local Government - bill died for lack of a motion by committee members.  Assembly Member Nation sits on this Committee.
<p><b>AB 260 (Bermudez) State Fire Marshal: Fire Response Times: Reports</b>            This measure would require statistical information furnished to be compatible with the National Fire Incident Reporting System established by the Federal Emergency Management Agency and include specified information.</p>	OPPOSE	In Assembly Appropriations – held under submission
<p><b>AB 1612 (Pavley) Cigarettes: Litter</b>  <b>SB 942 (Chesbro) Cigarettes: Pollution: Litter</b>            These measures would impose an additional 10-cent fee on every pack of cigarettes distributed for sale in California. Money generated from the fee would fund cigarette pollution, litter prevention and clean up programs.</p>	SUPPORT	AB 1612 - Assembly Appropriations – held under submission.  SB 942 - in Senate Appropriations – held under submission
<p><b>ACA 7 (Nation) Local Governmental Taxation: Special Taxes: Voter Approval</b></p>	SUPPORT	In Assembly Appropriations – held under submission.

