



City of Palo Alto

City Council Staff Report

(ID # 5834)

Report Type: Consent Calendar

Meeting Date: 6/1/2015

Summary Title: Settlement Agreement with Palo Alto Police Officer's Association

Title: Approval of a Settlement Agreement with Palo Alto Police Officers' Association (PAPOA) Regarding Retirement Medical Benefits; Adoption of Resolution Amending the Memorandum of Understanding Between the City and PAPOA; Adoption of Resolution Fixing the Employer Contribution Under the Public Employees Medical and Hospital Care Act

From: City Manager

Lead Department: Human Resources

RECOMMENDATION

Staff recommends that Council:

- 1) Approve and authorize the City Manager to execute the attached Retirement Medical Settlement and Release Agreement (Settlement Agreement) between the City and the Palo Alto Police Officers' Association (PAPOA);
- 2) Adopt a resolution amending Section 20 of the 2012-2014 PAPOA Memorandum of Agreement (MOA) in accordance with the Settlement Agreement; and
- 3) Adopt a resolution fixing the employer contribution under the Public Employees Medical and Hospital Care Act (PEMHCA) with respect to members of PAPOA.

BACKGROUND

In May 2012, the City and PAPOA completed bargaining on a successor MOA with a term lasting from May 14, 2012 through June 30, 2014. The parties had reached agreement on all but one issue – retiree medical benefits for employees hired before January 1, 2006 – and agreed to adopt all agreed-upon provisions of the successor MOA immediately while engaging in a factfinding process with respect to these retiree medical benefits. In July 2014, the factfinding panel issued a final recommendation, rejecting both the City's and the PAPOA's proposals. Following the completion of the fact-finding process, the City was free to impose its last, best, and final offer from the prior negotiations. Over the course of the past several months,

however, staff and PAPOA have negotiated a mutually agreeable settlement that would resolve the long-standing dispute over these retiree medical benefits.

DISCUSSION

The City currently administers a multi-tiered system of retiree medical benefits with different benefits and/or requirements based on hire date and retirement date. Most pertinent to this discussion, employees hired before January 1, 2006 currently receive benefits under section 22892 of the PEMHCA upon retirement, while employees hired on or after January 1, 2006 currently receive benefits under section 22893 of the PEMHCA upon retirement. Section 22892 simply requires employers to provide benefits in an equal amount for both employees and retirees. Section 22893, by contrast, provides benefits to retirees on a graduated scale based on years of service and a statewide average of healthcare costs. Although the City originally shifted new hires to benefits under section 22893 as a cost-saving measure, in recent years, some employees have expressed a preference for the benefit structure under section 22893 (i.e. the post-2006 benefit) rather than the benefit structure of section 22892 (i.e. the pre-2006 benefit).

Shortly after the factfinding recommendation was issued, staff and PAPOA began exploring a settlement framework that would permit the longer-tenured employees currently subject to section 22892 to elect the benefits available upon retirement to the more recently hired employees under section 22893.

Under the proposed Settlement Agreement, active employees hired before January 1, 2006 would have a one-time irrevocable option to elect benefits under section 22893. In exchange for this opportunity, PAPOA would agree not to pursue or support any claim or litigation against the City relating to retiree medical benefits for pre-2006 hires. In addition, PAPOA would secure individual waivers and releases from the almost all of its eligible members. Finally, the parties would agree to MOA language implementing a retiree medical benefit equal to the current active medical benefit for those pre-2006 hires who do not elect the section 22893 benefit, which is the same retiree medical benefit applicable to similarly-situated employees in the City's other employee groups. As of the time of this writing, the Settlement Agreement is pending ratification by PAPOA membership; staff will remove this item from the Council's agenda in the event the Settlement Agreement is not ratified prior to the Council meeting.

The attached resolutions will: (1) amend the 2012-2014 PAPOA MOA to reflect the newly agreed-upon MOA language on retiree medical benefits; and (2) update the City's PEMHCA resolution on file with CalPERS to enable the new health benefit structure.

POLICY IMPLICATIONS

Approval of the proposed settlement and adoption of the associated resolutions is consistent with the Council's policy direction to seek structural changes in employee compensation, including changes in active and retiree medical benefits.

RESOURCE IMPACT

The City's actuarial consultant has advised that allowing employees to opt into the retiree medical benefit provided under Government Code section 22893 is unlikely to have an appreciable impact, positive or negative, on the City's actuarial liability for retiree healthcare benefits.

ENVIRONMENTAL REVIEW

Approval of the Settlement Agreement and adoption of associated resolutions are not projects for purposes of the California Environmental Quality Act and therefore no environmental review is required.

Attachments:

- A: Retirement Medical Settlement Agreement (PDF)
- B: Reso Amending PAPOA MOA and MSRR 1601 (PDF)
- C: Reso Fixing Employers Contribution under PEMHCA (PDF)

Retirement Medical Settlement and Release Agreement

The City of Palo Alto (hereinafter “City”) and the Palo Alto Police Officers’ Association (hereinafter “the Association”) (the City and the Association are hereinafter collectively referred to as “the Parties”) hereby enter into this Settlement and Release Agreement (“Agreement”) based on the following recitals:

WHEREAS the City is and at all relevant times was a municipal corporation constituted and operating as a charter city pursuant to the laws of the State of California, and a “public agency” as defined in Government Code section 3501(c), subject to the mandates of the Meyers-Milius-Brown Act (“MMBA”) and Article I section 9 of the California Constitution;

WHEREAS the Association is and at all relevant times was the recognized employee organization within the meaning of Government Code section 3501(b) representing sworn peace officers employed by the City of Palo Alto Police Department (police trainee, police officer, police agent, and police sergeant), including those hired prior to January 1, 2006 (hereinafter a “Tier 1 Employee”, or collectively “Tier 1 Employees”), in all matters relating to its members’ wages, hours and other terms and conditions of employment;

WHEREAS on or about October 5, 1992, the City took legislative action (City Council Resolution No. 7146) to provide healthcare benefits to active Association members employed by the City and annuitants (i.e., retired Association members) pursuant to the Public Employees Hospital and Medical Care Act (hereinafter “PEMHCA”);

WHEREAS the existing City contribution for retirement health benefits provided to Tier 1 Employees upon their respective retirements is the cost of the applicable single-party, two-party, or family premium, up to a maximum of the second-highest-cost plan offered under the PEMHCA (hereinafter “Tier 1 Benefit”);

WHEREAS in 2011, the Parties commenced negotiations for a successor MOA wherein the City sought to reduce the costs of retirement medical benefits provided to active Tier 1 Employees;

WHEREAS the Parties recognize the existence of competing legal theories relative to the ability of public employees to acquire a vested right to a defined retirement medical benefit;

WHEREAS the Parties recognize that it is in the best interest of the City, the Association, and Tier 1 Employees to settle any questions, claims, disputes, ambiguities, and/or conflicts relative to the retirement medical benefits to be provided to Tier 1 Employees upon their respective retirements.

NOW, THEREFORE, in consideration for the mutual promises and conditions of this Agreement, the Parties agree as follows:

SETTLEMENT TERMS

1. Retirement Medical Benefits for Tier 1 Employees.

Effective upon ratification of this Agreement, the City shall promptly take all necessary legislative and administrative actions to exercise its authority pursuant to Government Code section 22893(a)(6) to allow each Tier 1 Employee to individually elect to be subject to the provisions of Government Code section 22893 as of June 8, 2015.

The Parties have distributed to each Tier 1 Employee a copy of the “Voluntary Retirement Medical Option Form” to exercise their individual right to elect to be subject to the provisions of Government Code section 22893. A copy of the “Voluntary Retirement Medical Option Form” is attached hereto as Exhibit 1.

The Parties mutually acknowledge and agree that by executing the “Voluntary Retirement Medical Option Form”, and submitting a copy to the City’s People, Strategy, and Operations Department (hereinafter “PSOD”) within the timeframe determined by the City, not shorter than 90 days following ratification of this Agreement, participating Tier 1 Employees

shall forfeit any rights and/or claims relative to the Tier 1 Benefit, and acquire an interest in retiree healthcare benefits as provided in Government Code section 22893.

The Parties acknowledge that at the time of ratifying this Agreement, the PAPOA has, at a minimum, submitted Voluntary Retirement Medical Option Forms for all but three (3) Tier 1 Employees, all of whom will receive the benefit individually selected on their respective Voluntary Retirement Medical Option Forms. Once the Voluntary Retirement Medical Option Form is submitted to the PSOD, CalPERS will implement these individual elections the first (1st) day of the following month so long as such Voluntary Retirement Medical Option Forms are submitted within the timeframe designated by the PSOD.

2. Memorandum of Agreement.

The Parties mutually acknowledge and agree to amend Section 20 of the existing MOA to eliminate any reference to Appendix A, and provide the following:

(a) Retiree Medical Coverage - Employees hired before January 1, 2006 who have not voluntarily elected to participate in the Retirement Healthcare Benefits provided in Government Code section 22893:

Monthly City-paid premium contributions for a retiree-selected PEMHCA optional plan will be made in accordance with the Public Employees' Medical and Hospital Care Act Resolution for employees who retire on or before December 31, 2007.

Effective March 1, 2009, for an employee retiring on or after that date, the City will pay up to the monthly medical premium for the second most expensive plan among the existing array of plans during the Agreement term.

Effective April 1, 2015, for an employee retiring on or after that date, the City contribution shall be the same contribution amount it makes for active City employees. The parties mutually agree that the benefits provided in this paragraph for employees retiring on or after April 1, 2015 will fluctuate from time to time based on the City's contributions to health care for active employees. Accordingly, Association members who retire on or after April 1, 2015 and have not elected to participate in the Retirement Healthcare Benefits provided in Government Code section 22893, do not maintain a vested interest in any particular contribution by the City above the amount required under the PEMHCA.

(b) Retiree Medical Coverage - Employees who voluntarily elect to participate in Government Code section 22893, and All Employees hired on or after January 1, 2006:

The CalPERS vesting schedule set forth in California Government Code § 22893 will apply to all Association members hired on or after January 1, 2006, and employees hired prior to January 1, 2006 who voluntarily elect to participate in the Retirement Healthcare Benefits provided in Government Code § 22893. Under this law, an employee is eligible for 50% of the specified employer health premium contribution after ten (10) years of service credit, provided at least five (5) of those years were performed with the City of Palo Alto. After ten (10) years of service credit, each additional year of service credit will increase the employer contribution percentage by 5% until, at twenty (20) years' service credit, the employee will be eligible upon retirement for 100% of the specified employer contribution. However, the maximum contribution for family members will be 90% of the specified employer contribution. Notwithstanding any other term of this section, the City of Palo Alto's health premium contribution for employees hired on or after January 1, 2006, and employees who voluntarily elect to participate in Retirement Healthcare Benefits provided by Government Code § 22893, will be the minimum contribution set by CalPERS under California Government Code § 22893 based on a weighted average of available health plan premiums.

3. Negotiations for a Successor MOA

As the term of the prevailing MOA between the Parties has expired, and the Parties are currently negotiating terms for a successor MOA, by ratifying this Agreement, each Party shall have withdrawn its respective proposal(s) concerning retirement healthcare benefits. Any further negotiations relative to retirement medical benefits shall be contingent upon the approval of the other Party.

4. Release of Claims and Agreement Not to Support Suit.

The Association, on behalf of itself, its corporate officers, representatives, agents, attorneys, executors, and administrators hereby releases the City, including its officers and employees, representatives, agents, attorneys, successors, and assigns, from any and all lawsuits, claims, actions, grievances, demands or other legal responsibilities of any kind which the Association has, or may have, against the City, its officers and employees that exist as of the date of this Agreement related to the dispute regarding retirement medical benefits to be provided to Tier 1 Employees.

The Association further agrees not to finance (directly or indirectly), provide technical assistance for, or otherwise support, any and all lawsuits, claims, actions, grievances, demands, or other legal remedies of any kind initiated by third parties against the City, its officers and employees, representatives, agents, attorneys, successors, and assigns, related to the dispute regarding retirement medical benefits to be provided to Tier 1 Employees.

However, the Parties acknowledge that the Association does not maintain the right to release, waive, modify, or otherwise alter the individual rights its members (past or present).

5. Waiver of Unknown Claims.

The Association agrees that this Agreement shall act as a release of any claims arising from the dispute relative to the retirement medical benefits to be provided to Tier 1 Employees prior to the date of this Agreement, whether such claims are currently known, unknown, foreseen, or unforeseen, and will be in full settlement of every above-described dispute, claim, and cause of action, notwithstanding California Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

For purposes of clarity, the City recognizes that the Association does not maintain the right to release, waive, modify, or otherwise alter the individual rights of its members (past or present).

6. Entire Agreement.

This Agreement is fully integrated and constitutes the entire agreement and understanding between the Parties. There are no oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

7. No Admission of Liability.

This Agreement is a compromise of the differences between the parties concerning the matters set forth in the recitals, above, and it is not and will never be considered to be an admission of any fault, error, wrongdoing, or liability by the City.

8. No Precedent.

The Parties acknowledge and agree that this Agreement is not to be considered precedent setting in any other forum or matter.

9. Voluntary Agreement.

Each of the Parties acknowledges and agrees that they have, prior to the execution of this Agreement, undertaken sufficient investigation and other due diligence through their own sources or legal counsel to exercise their own judgment in deciding to execute this Agreement, and that each Party is entering into this Agreement entirely upon their own volition.

10. Amendment.

This Agreement may be modified or superseded only by a written instrument executed by the Parties, and not by any oral promise, representation, statement, agreement or performance pursuant to such an oral promise, representation, statement, or agreement.

11. Attorneys' Fees and Costs.

Each Party will bear its own attorneys' fees and costs incurred through the effective date of this Agreement.

12. Interpretation.

The language of all parts of this Agreement will, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party.

13. Effective Date.

This Agreement will be deemed effective upon full execution by the Parties. The City, in its sole discretion, may nullify this agreement and reinstate the status quo ante if more than three (3) eligible Association members (active Tier 1 Employees), fail to complete the attached Voluntary Retirement Medical Option Form within the timeframe provided in Section 1.

14. Execution in Counterparts.

This Agreement may be executed in counterparts such that the signature may appear on separate signature pages. A copy or an original with all signatures appended together will be deemed a fully executed Agreement. Signatures transmitted by facsimile or scanned and sent by electronic mail will be deemed original signatures.

CITY:

By: _____
James Keene, City Manager

Dated: _____, 2015

ASSOCIATION:

By: _____
Jeremy Schmidt, Association President

Dated: _____, 2015

APPROVED AS TO FORM:

FOR THE CITY:

By: _____
Molly Stump, City Attorney

Dated: _____, 2015

FOR THE ASSOCIATION:

By: _____
Peter Hoffmann, Rains Lucia Stern, PC

Dated: _____, 2015

CITY OF PALO ALTO

VOLUNTARY RETIREMENT MEDICAL OPTION FORM

I, _____, have been continuously employed by the City of Palo Alto since at least December 31, 2005.

I understand that I am being provided with a one-time, option to become subject to the statutory retiree medical benefit provided in Government Code section 22893. Under section 22893, I will be eligible for 50% of the statutorily determined employer contribution for retiree medical premiums upon completion of 10 years of service (at least five of which must be with the City of Palo Alto), with each additional year of service increasing the employer contribution by five percent (5%) until, at 20 years of service, I will be eligible for 100% of the employer contribution as determined each year by CalPERS.

I understand that by ELECTING to become subject to the provisions of Government Code section 22893, I am forfeiting any right to retirement medical benefits previously offered to me as an employee of the City of Palo Alto and will instead accrue benefits under section 22893.

I understand that by DECLINING to become subject to the provisions of Government Code section 22893, I will receive retiree health benefits equal to the City's contributions to active employees under the PEMHCA. I further understand that by declining to become subject to section 22893, my retirement medical benefit will be subject to change from year-to-year, as my benefit will be the same contribution amount the City makes for active employees pursuant to negotiations between the City and the Palo Alto Police Officers' Association.

I hereby: **ELECT** __ (initials) **DECLINE** __ (initials)

to become subject to the provisions of Government Code section 22893.

I understand that by signing this VOLUNTARY RETIREMENT MEDICAL OPTION FORM, I am entering into a binding agreement with the City, and I will waive any claims, grievances, and/or causes of action against the City with respect to the retirement medical benefits available to me prior to the date of executing this document.

I further agree not to directly or indirectly finance or otherwise support the claims, grievances, and/or causes of action of third parties against the City with respect to retirement medical benefits provided by the City.

I understand that I may not revoke my decision to elect the retirement medical benefits provided in Government Code section 22893, and that I will be entitled only to receive the retirement medical benefit as provided by statute. If any of the provisions herein are determined to be invalid by a Court, arbitrator, or government agency of competent jurisdiction, I agree that such determination shall not affect the enforceability of the other provisions herein.

I enter into this agreement with the City voluntarily, after having been given an opportunity to consult with counsel.

Name (Printed)

Signature

Date

NOT YET ADOPTED

Resolution No. _____
Resolution of the Council of the City of Palo Alto Amending
Section 20 of the 2012-2012 Memorandum of Agreement
with the Palo Alto Police Officers' Association and
Amending Section 1601 of the Merit System Rules and Regulations

The Council of the City of Palo Alto does RESOLVE as follows:

SECTION 1. Findings and declarations:

- A. The Palo Alto Police Officers' Association (PAPOA) is a recognized employee organization representing an employee group consisting solely of Police Officer Trainees, Police Officers, Police Agents, and Police Sergeants who are regularly employed by the City and others who might be amended into the representation unit from time to time under existing law and the Merit System Rules and Regulations.
- B. Representatives of the City and PAPOA engaged in negotiations and reached a tentative agreement to amend Section 20 of the 2012-2014 Memorandum of Agreement (MOA) between the City and PAPOA.

SECTION 2. Section 20 of the 2012-2014 MOA between the City and PAPOA is hereby amended to read as follows:

(a) Retiree Medical Coverage - Employees hired before January 1, 2006 who have not voluntarily elected to participate in the Retirement Healthcare Benefits provided in Government Code section 22893:

Monthly City-paid premium contributions for a retiree-selected PEMHCA optional plan will be made in accordance with the Public Employees' Medical and Hospital Care Act Resolution for employees who retire on or before December 31, 2007.

Effective March 1, 2009, for an employee retiring on or after that date, the City will pay up to the monthly medical premium for the second most expensive plan among the existing array of plans during the Agreement term.

Effective April 1, 2015, for an employee retiring on or after that date, the City contribution shall be the same contribution amount it makes for active City employees. The parties mutually agree that the benefits provided in this paragraph for employees retiring on or after April 1, 2015 will fluctuate from time to time based on the City's contributions to health care for active employees. Accordingly, Association members who retire on or after April 1, 2015 and have not elected to participate in the Retirement Healthcare Benefits provided in Government Code section 22893, do not maintain a vested interest in any particular contribution by the City above the amount required under the PEMHCA.

(b) Retiree Medical Coverage - Employees who voluntarily elect to participate in Government Code section 22893, and All Employees hired on or after January 1, 2006:

NOT YET ADOPTED

The CalPERS vesting schedule set forth in California Government Code § 22893 will apply to all Association members hired on or after January 1, 2006, and employees hired prior to January 1, 2006 who voluntarily elect to participate in the Retirement Healthcare Benefits provided in Government Code § 22893. Under this law, an employee is eligible for 50% of the specified employer health premium contribution after ten (10) years of service credit, provided at least five (5) of those years were performed with the City of Palo Alto. After ten (10) years of service credit, each additional year of service credit will increase the employer contribution percentage by 5% until, at twenty (20) years' service credit, the employee will be eligible upon retirement for 100% of the specified employer contribution. However, the maximum contribution for family members will be 90% of the specified employer contribution. Notwithstanding any other term of this section, the City of Palo Alto's health premium contribution for employees hired on or after January 1, 2006, and employees who voluntarily elect to participate in Retirement Healthcare Benefits provided by Government Code § 22893, will be the minimum contribution set by CalPERS under California Government Code § 22893 based on a weighted average of available health plan premiums.

SECTION 3. Section 1601 of the Merit System Rules and Regulations is hereby amended to read as follows:

Upon adoption by the Palo Alto City Council and for the duration of its effective term, the Memorandum of Agreement by and between the City of Palo Alto and the Palo Alto Police Officers' Association (PAPOA) for represented employees is hereby incorporated into these Merit System Rules and Regulations by reference as though fully set forth herein. Said memorandum shall apply to all employees in classifications represented by PAPOA, except where specifically provided otherwise herein.

In the case of conflict with this chapter and any other provisions of the Merit System Rules and Regulations, this chapter will prevail over such other provisions as to employees represented by said PAPOA.

SECTION 4. Resolution 9249 is hereby rescinded.

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NOT YET ADOPTED

SECTION 5. The Council finds that this is not a project under the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Deputy City Attorney

City Manager

Chief People Officer

Director of Administrative Services

NOT YET ADOPTED

Resolution No. _____

Resolution of the Council of the City of Palo Alto Fixing the Employer’s
Contribution under the Public Employees’ Medical and Hospital Care Act
for the Palo Alto Police Officers’ Association

The Council of the City of Palo Alto does RESOLVE as follows:

SECTION 1. Findings and declarations:

- A. Government Code Section 22892(a) provides that a local agency contracting under the Public Employees' Medical and Hospital Care Act shall fix the amount of the employer's contribution at an amount not less than the amount required under Section 22892(b)(1) of the Act
- B. City of Palo Alto, hereinafter referred to as Public Agency is local agency contracting under the Act for participation by members of the City of Palo Alto.

SECTION 2. The employer's contribution for each employee or annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of his/her family members in a health benefits plan up to a maximum of the minimum employer contributions per month as prescribed in Section 22892(b)(1) of the Government Code.

SECTION 3. That the City of Palo Alto has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above.

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NOT YET ADOPTED

SECTION 4. The Council finds that this is not a project under the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Deputy City Attorney

City Manager

Director of Human Resources

Director of Administrative Services