

Agenda Report

October 29, 2012

TO: Honorable Mayor and City Council

THROUGH: City Manager

FROM: Fire & Police Retirement System Board (FPRS)

**SUBJECT: PROPOSED AMENDMENT TO PASADENA MUNICIPAL CODE
CHAPTER 2.250 (FIRE & POLICE RETIREMENT SYSTEM
ORDINANCE) TO COMPLY WITH CERTAIN PROVISIONS OF THE
INTERNAL REVENUE CODE**

RECOMMENDATION:

It is recommended that the City Council direct the City Attorney to prepare and return on November 19, 2012 with an amendment to Pasadena Municipal Code Chapter 2.250 (Fire and Police Retirement System Ordinance) to comply with certain provisions of the U.S. Internal Revenue Code.

BACKGROUND:

The Fire and Police Retirement System (System) provides benefits to former Pasadena police and firefighters hired before 1977, when the System was closed to new entrants. Those hired since that time, as well as those who elected to transfer, are part of the California Public Employee Retirement System (CalPERS). The System operates pursuant to Article XV of the City Charter as well as Chapter 2.250 of the Municipal Code. The System has a total of 262 participants, all of whom are either retirees or beneficiaries. The System is overseen by a five member board.

Pursuant to Section 401(a) of the Internal Revenue Code, the System and other public sector retirement plans like it are exempt from federal taxation provided they remain in conformance with current law. If a plan is not in conformance with current law it may be "disqualified" by the IRS, subjecting participants to tax on contributions made to the plan on their behalf, and subjecting the plan to tax on investment earnings.

Retirement plans may request a "determination" letter from the IRS stating that the terms of the plan satisfy IRS requirements. The chief benefits from receiving a determination letter are that it minimizes the risk that the plan would be disqualified on

audit by the IRS because the form of the plan fails to satisfy applicable requirements, and it allows the plan to avail itself of certain voluntary correction programs established by the IRS. One such program is the Voluntary Compliance Program, under which a plan may voluntarily disclose to the IRS certain types of compliance errors in the plan's language or operation, propose a method for correcting those errors, and pay a fee for compliance. If the proposed correction is accepted, the IRS will issue a compliance statement stating that it will not initiate any enforcement action against the plan for the identified failures.

In January, 2011 the System submitted a request for a determination letter as well as a request for a compliance statement under the Voluntary Compliance Program. On May 11, 2012 the IRS issued a favorable determination letter; however, as a condition of its approval, the IRS is requiring that a number of technical provisions be added to the rules governing the System as set forth in Chapter 2.250 of the Municipal Code. Examples of these additional provisions include crediting of service for members who died while performing qualified military service; limiting the amount of compensation used to determine a member's retirement allowance; specifying the member's benefit is non-forfeitable upon termination of the plan, and specifying certain rules pertaining to distributions. A more detailed summary of the IRS required changes was prepared by System counsel, and is provided for Council consideration.

Although all plan participants are currently retired, System counsel examined the possibility and potential for fiscal impacts from changes to the Municipal Code due to potential participant conflicts with the limits established by Code Section 415(b) or 401(a)17. Counsel determined that no fiscal impact, including a change in the benefits either paid or allowed through the plan, is anticipated by the changes required to comply with certain provisions of the U.S. Internal Revenue Code.

At its meeting on October 18, the Fire & Police Retirement Board reviewed and approved the recommended amendments to Chapter 2.250 of the Municipal Code.

In order to comply with the IRS directive and avoid any negative tax consequences for the Fire and Police Retirement System, its members and, by extension, the City of Pasadena, the System and the City Manager are recommending that the City Council direct the City Attorney to prepare amendments to Chapter 2.250 of the Municipal Code that satisfy IRS requirements.

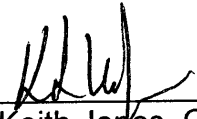
CITY COUNCIL POLICY CONSIDERATION:

The proposed action is consistent with the City Council's strategic plan goal to maintain financial responsibility and stability.

FISCAL IMPACT:


This action will ensure there are no negative financial impacts on the System, or on the retirees and beneficiaries of the System. The proposed amendment will not increase in any way the City's liability related to the System.

Respectfully submitted,



Keith Jones, Chair
Fire & Police Retirement System

Concurrence:



Michael J. Beck
City Manager

ATTACHMENT:

1. Summary of Proposed Ordinance Recommending Changes Required by the IRS

**SUMMARY OF PROPOSED ORDINANCE IMPLEMENTING CHANGES REQUIRED
AS A CONDITION OF THE FAVORABLE DETERMINATION LETTER AND VCP
COMPLIANCE STATEMENT ISSUED TO THE PASADENA FIRE AND POLICE
RETIREMENT SYSTEM**

Section 1 - The IRS requested that the System be amended to define the term “limitation year” to reflect the requirements of Treasury Regulation Section 1.415-2(b). Section 1 sets forth the required language.

Section 2 - This section brings the System into compliance with the requirements of the Uniformed Services Employment and Reemployment Rights Act (“USERRA”). In general, USERRA requires members who are on active military duty to be treated as active employees under the terms of a retirement plan.

Section 3 - This section brings the System into compliance with the requirements of Code Section 401(a)(2), which provides that plan assets will not be diverted for any other purpose than for the exclusive purpose of providing benefits to members and their beneficiaries.

Section 4 - The IRS requested that the System be amended to specify the actuarial factors that were used to calculate the optional form of benefit the last time it was elected. Section 4 specifies these actuarial factors (e.g. mortality table and interest rate).

Section 5 - This section brings the System into compliance with Code Section 401(a)(17), which limits the amount of compensation that is permitted to be taken into account for purposes of determining a member’s retirement allowance.

Section 6 - The IRS requested that the System be amended to specify that a member’s benefit is non-forfeitable upon termination of the plan, to the extent it is funded. Section 6 sets forth the required language.

Section 7 - This section brings the System into compliance with Code Section 401(a)(9), which specifies the rules pertaining to distributions.

Section 8 - This section brings the System into compliance with Code Sections 401(a)(31)(A), 401(a)(31)(C), 402(c)(4), and 402(c)(8). These sections allow certain lump distributions, known as “eligible rollover distributions,” to be rolled over into “eligible retirement plans,” and the applicable requirements must be set forth in the plan. This section sets forth the required language.