



Office of the City Manager

CONSENT CALENDAR
April 30, 2013

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: David Abel, Acting Director of Human Resources
Subject: Supplemental Retirement Plan and Trust Agreement for Sworn Police Employees

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute and implement an amendment to the Berkeley Police Supplemental Retirement Plan, which provides retirement benefits for eligible police officers represented by the Berkeley Police Association (hereinafter Association). The amendment would limit payments from the Plan to retirees and beneficiaries in pay status as of September 19, 2012. A premium reimbursement plan would be established in place of the Supplemental Retirement Plan for eligible employees who retire on and after September 19, 2012 and their eligible beneficiaries. The amendment implements the provisions of the memorandum of understanding between the City and the Association (the "MOU") dated June 26, 2011 – July 5, 2014 pertaining to retiree medical benefits.

FISCAL IMPACTS OF RECOMMENDATION

There are no Fiscal Impacts resulting from this recommendation. The City has provided the retiree medical benefit through the Supplemental Retirement Plan since January 1, 1989. In accordance with the MOU, the retiree medical benefit will be provided under a new premium reimbursement plan. The cost to the City to provide the retiree medical benefits to eligible employees and their beneficiaries is the same under either plan.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Police Supplemental Retirement and Income Plan provides eligible retired police officers and their spouses/domestic partners with a cash benefit equivalent to the 2-party active Kaiser monthly premium rate in effect at the time for the payment. Since benefits were tied to current Kaiser premium rates, there was no limit on the amount the City was required to pay and payments continued at the 2-party Kaiser active rate until the death of the retiree and spouse/domestic partner. In making these cash payments, the City withheld Federal and State Income taxes before making the payments.

In the City Memorandum of Understanding (MOU) with the Association, the City and the Association agreed to end the benefit provided under the Berkeley Police Supplemental Retirement Plan for eligible police officers who retire on and after September 19, 2012.

In exchange, the City and Association agreed to provide retiree health benefits to eligible police officers and their spouses/domestic partners on a pre-tax basis (to the extent allowed by the tax laws) where payments are made to health insurance providers and not directly to the retiree. However, in order to fully implement the provisions of the MOU, the Berkeley Police Supplemental Retirement Plan requires an amendment to memorialize the agreement of the bargaining parties as reflected in the MOU.

BACKGROUND

On February 24, 2004, the City Council adopted Resolution No. 62,393-N.S. that authorized the City Manager to execute and implement the Berkeley Police Supplemental Retirement Plan and Trust Agreement. This resolution implements Section 32.2 of the MOU in effect at that time which required that the City establish an Internal Revenue Code Section 401(a) plan for the purpose of paying for retiree health coverage for eligible police officers who retire on and after January 1, 1989. The benefit provided to eligible retirees under the 401(a) plan is a taxable benefit. The City contracted with the law firm of Hansen Bridgett LLP (hereinafter "Hanson Bridgett") to advise the City on this matter. Hanson Bridgett prepared both the Berkeley Police Supplemental Retirement Plan and the Trust Agreement that provided this taxable benefit to eligible police employees.

On September 11, 2012, the City Council adopted Resolution No. 65,884–N.S. that authorized the City Manager to execute and implement a new MOU between the City and the Association. Sections 32.3, 32.4 and 32.5 et seq. of the MOU require the City to establish a new Police Retiree Health Premium Assistance Plan and Trust Agreement under Internal Revenue Code Section 115 for the purpose of making retiree health premium assistance payments to health care insurance companies on behalf of eligible employees who retire on and after September 19, 2012 and/or their surviving spouses or domestic partners. This new Plan takes the place of the Supplemental Retirement Plan for the affected employees. The City once again contracted with Hansen Bridgett to advise the City on this matter.

Hanson Bridgett prepared both the Berkeley Police Retiree Health Premium Assistance Plan and the Internal Revenue Code Section 115 Trust Agreement that provides retiree health premium assistance plan benefits to eligible retired police officers of the City on a tax-free basis.

The Berkeley Police Supplemental Retirement Plan requires an amendment in order to memorialize and fully implement the terms of the MOU as agreed to by the City and Association. An amendment to the Berkeley Police Supplemental Retirement Plan is attached as Exhibits "A".

Eligible retirees, approximately 124, who retired prior to September 19, 2012, and their eligible beneficiaries will continue to receive benefits under the Berkeley Police Supplemental Retirement Plan and Trust Agreement, which is now a closed group.

RATIONALE FOR RECOMMENDATION

This action is necessary in order for the City to fully comply with the provisions of Sections 32.2; 32.3; 32.4; and 32.5 et seq. of the MOU and with Section 401(a) of the Internal Revenue Code, which requires that a tax qualified plan be operated in accordance with its terms.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

Margarita Zamora, Acting Employee Relations Manager, Human Resources, 981-6821

Attachments:

1: Resolution

Exhibit A: Police Retiree Health Premium Assistance Plan

RESOLUTION NO. ##,###-N.S.

POLICE RETIREE HEALTH PREMIUM ASSISTANCE PLAN

WHEREAS, on November 13, 2001, the City Council adopted Resolution No. 61,330-N.S. that authorized the City Manager to execute and implement a new Memorandum of Understanding between the City and the Berkeley Police Association; and

WHEREAS, Section 32.2 of the Memorandum of Understanding provides that the City will establish an Internal Revenue Code Section 401(a) plan for the purpose of paying for retiree health coverage for eligible police officers; and

WHEREAS, on February 24, 2004, the City Council adopted Resolution No. 62,393-N.S. that authorized the City Manager to execute and implement the Berkeley Police Supplemental Retirement Plan and Trust Agreement, which provides eligible police employees who had retired on and after January 1, 1989 with a benefit for retiree medical coverage as provided in the Memorandum of Understanding between the City and the Berkeley Police Association; and

WHEREAS, on September 11, 2012, the City Council adopted Resolution No. 65,884-N.S. that authorized the City Manager to execute and implement a new Memorandum of Understanding (MOU) between the City of Berkeley and the Berkeley Police Association; and

WHEREAS, Sections 32.3, 32.4 and 32.5 et seq. provide that the City will establish a new Police Retiree Health Premium Assistance Plan and Trust Agreement under Internal Revenue Code Section 115 for eligible police employees who retire on or after September 19, 2012 and they would not receive benefits under the Berkeley Police Supplemental Retirement Plan; and

WHEREAS, the current MOU between the City and the Berkeley Police Association provides that only eligible employees who retired prior to September 19, 2012 will receive benefits for retiree health coverage from the Berkeley Police Supplemental Retirement Plan.

WHEREAS, on January 22, 2013, the City Council adopted Resolution No. 65,987-N.S. that authorized the City Manager to execute and implement the Berkeley Police Retiree Health Premium Assistance Plan and Trust Agreement and any amendments with implementation of the Plan and Trust Agreement to be effective September 19, 2012; and

WHEREAS, in order to memorialize and fully implement the terms of the MOU between the City and the Association it is necessary to amend the Berkeley Police Supplemental Retirement Plan to reflect that only eligible police employees who retired from the City prior to September 19, 2012 will receive benefits under that plan; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Berkeley Police Supplemental Retirement Plan established through adoption of Resolution No. 62,393-N.S. on February 24, 2004 is amended as set forth in Exhibit A and such amendments are made a part hereof as the Berkeley Police Retiree Health Premium Assistance Plan and Trust Agreement.

Exhibit A: Police Retiree Health Premium Assistance Plan.

**AMENDMENT NUMBER ONE
TO
THE BERKELEY POLICE SUPPLEMENTAL RETIREMENT PLAN
(Effective July 1, 2003)**

WHEREAS, the City of Berkeley (the "City") has adopted the Berkeley Police Supplemental Retirement Plan (the "Plan"), which was effective as of July 1, 2003;

WHEREAS, the City Council may amend the Plan pursuant to Section 12(a) of the Plan;

WHEREAS, Section 12(a) of the Plan provides that to the extent that the Plan is modified in accordance with a memorandum of understanding between the City and the Berkeley Police Association such modifications shall supersede and override any "vested rights" that any person may have under California law with respect to benefits under the Plan;

WHEREAS, Section 12(b) of the Plan provides that no employee has any vested right to the continuance of the Plan or to continuance of contributions to the Plan and also provides that the City Council reserves the right at any time to terminate the Plan in accordance with a memorandum of understanding between the City and the Berkeley Police Association and such modifications shall supersede and override any "vested rights" that any person may otherwise have with respect to benefits under the Plan;

WHEREAS, Section 12(b) of the Plan makes clear that termination may be complete or partial and, if partial, a termination will affect some but not all of the Plan participants;

WHEREAS, in a memorandum of understanding dated June 26, 2011 through July 5, 2014 (the "MOU") between the City and the Berkeley Police Association (the "Association"), the City and the Association agreed that Eligible Employees who retire from the City on and after September 19, 2012 will receive comparable benefits under a new City of Berkeley Police Retiree Health Premium Assistance Plan and will not receive any benefits under this Plan;

WHEREAS, the Plan must be amended to fully implement the MOU and such amendment will also constitute a partial termination of the Plan because it will terminate the provision of benefits under the Plan for some of the Plan participants;

WHEREAS, the Plan requires that participants who are affected by such a termination become vested to the extent funded, but the funding in the Plan will not provide for the payment of any benefits to any participant who had not retired prior to September 19, 2012, so no additional vesting of benefits will occur on this partial termination and, in accordance with Section 12(d) of the Plan, the City has no obligation to make any additional contributions to the Plan after its termination; and

WHEREAS, as a consequence, any Plan participants who did not retire prior to September 19, 2012 are not entitled to receive any benefits from the Plan; and

WHEREAS, the City wishes to amend the Plan to reflect the MOU and the terms of the Plan.

NOW THEREFORE BE IT RESOLVED, effective as of September 19, 2012, the City hereby amends the Plan as follows:

1. The definition of "Eligible Employee" in Section 2 of the Plan shall be amended by adding the italicized and boldfaced language to the definition of "Eligible Employee" as follows:

"Eligible Employee means a police officer who is an Employee of the City of Berkeley, who is a sworn member of the Berkeley Police Department and who is represented by the Berkeley Police Association. An individual's status as an Eligible Employee shall be determined solely by the Plan Administrator, and such determination shall be conclusive and binding upon all persons. Eligible Employee also means the Deputy Police Chief of the City of Berkeley and those retired police officers listed on Appendix "A" hereto. ***Notwithstanding the foregoing, no individual shall become an Eligible Employee on or after September 19, 2012.***"

2. Section 3(d) of the Plan is amended to add the italicized and boldfaced language to the end of the existing language in that section as follows:

"(d) Termination of Participation

A person terminates Participation in this Plan on death, or (if earlier) the date of his termination of employment with the City when he has no Vested Percentage under the Plan. ***Effective September 19, 2012, all Eligible Employees will cease to be Participants in the Plan unless he or she began receiving benefits before September 19, 2012.***"

3. Section 6(a) of the Plan is amended to add the following italicized and boldfaced language as a new paragraph thereof:

"No benefits shall be paid from and under this Plan to any person who was not receiving benefits under the Plan before September 19, 2012. Notwithstanding the foregoing, benefits will be paid to the Beneficiary (if any) of a Participant who begins receiving benefits under the Plan before September 19, 2012 in accordance with section 6(d)."

IN WITNESS WHEREOF, this Amendment Number One to the Berkeley Police Supplemental Retirement Plan is adopted by the City of Berkeley on this _____ day of _____, 2013.

CITY OF BERKELEY

By: _____

Name: _____

Title: _____

