

**REPORT TO MAYOR AND COUNCIL**

**TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: July 22, 2014

**SUBJECT: ADOPT A RESOLUTION PROVIDING DIRECTION TO STAFF TO WORK WITH CALPERS TO MODIFY PENSION AND RETIREE MEDICAL BENEFITS FOR ELECTED OFFICIALS**

**Report in Brief**

During the June 3, 2014 City Council meeting, the Mayor established an Ad Hoc Committee to study and review the City's retiree medical program for elected officials. The Ad Hoc Committee thereafter met with staff and gave direction to develop a method to eliminate elected officials retiree health benefits going forward. Unfortunately, staff's subsequent research indicates that this desired outcome is not possible based on the City's contract with the California Public Employees Retirement System (CalPERS) and regulations in the Public Employees' Medical and Hospital Care Act (PEMHCA). However, while the City Council cannot eliminate the benefit entirely, the Committee is recommending an approach that would make it unlikely that any future newly elected city official would qualify for retiree medical benefits.

The Ad Hoc Committee's recommended approach is guided by three principals: (1) achieve the goal of eliminating retiree health benefits for City of Concord elected officials; (2) implement a solution that is in compliance with state law, the affordable care act, and the City's contracts with CalPERS, and (3) avoid exposing the City to legal challenges.

The Ad Hoc Committee's recommendation to the Council is to adopt the attached resolution (Attachment 1). This resolution directs staff to work with CalPERS and bring back to Council in September the necessary documents to: (1) eliminate CalPERS pension benefits for incoming, newly elected officials, and (2) significantly limit eligibility for retiree medical benefits for incoming, newly elected officials by establishing stringent vesting and retirement age criteria.

**Background**

Consistent with their policy of sound fiscal management, the Mayor and the City Councilmembers have publicly voiced their desire to review and address the issue of retiree health care for elected officials; additionally, the Council has already taken steps to address retiree health care costs by requiring existing and retired employees, including elected officials, to pay more of their medical insurance costs. Doing this decreased the City's annual costs and unfunded liabilities significantly.

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Like many California cities, Concord's employees (included elected officials) and retirees receive health and retiree medical benefits through the California Public Employees Retirement System (CalPERS), which is subject to the Public Employees Medical and Hospital Care Act (PEMHCA). The City's participation in the CalPERS health plan for active and retired employees became effective on July 1, 1998. There are certain state-imposed constraints by CalPERS and PEMHCA on the City's options regarding participation in and contributions towards current employee and retiree health benefits. The recently enacted federal Affordable Care Act (ACA) has put further constraints on the level of health benefits as well as imposing health coverage requirements for those employers with over 50 employees. There are many state-wide legal issues involving employee benefits, including the legal interpretation that elected officials are entitled to earn benefits on terms promised, as with any other current City employee. During the June 3 City Council meeting, the Mayor established an Ad Hoc Committee to study and review the City's retiree medical program for elected officials.

**Discussion**

The City Council's Ad Hoc Retiree Medical Benefits Committee for Elected Officials requested that staff develop a method to eliminate retiree health benefits for all future elected officials. Unfortunately, staff's research indicates that this is not possible based on the City's contract with the California Public Employees Retirement System (CalPERS) and regulations in the Public Employees' Medical and Hospital Care Act (PEMHCA). However, while the City Council cannot eliminate the benefit entirely, it can establish a very long vesting schedule—which will make it unlikely any future elected official will ever qualify for the benefit. The recommended approach is very similar to what was done by the City Council in Pismo Beach.

It is important to recognize that there is limited flexibility available to the City to achieve the Committee's desired outcome of eliminating retiree medical benefits for future elected officials since the City is subject to maintaining compliance with the PEMHCA and CalPERS rules and regulations, both of which are very complicated and restrictive. Moreover, in addition to PEMHCA, CalPERS is governed by other applicable California laws, including the California Public Employees Retirement Law (PERL). California law is complex and subject to change. Additionally, there are very few published decisions interpreting either PEMHCA or CalPERS' rules and regulations, making the CalPERS Board the final arbiter of those rules subject to their review and approval/denial. Therefore, it can be very difficult to obtain a definitive answer from CalPERS.

Pursuant to California Government Code Section 36516.5, the City Council may not approve changes to salary and benefits for themselves in their current term, so the effective date of any change in elected officials' benefits would need to be on a prospective basis, meaning the change would be effective following the November 2014 election.

For purposes of this report and Attachment 1, in compliance with the provisions of CalPERS and PEMHCA, "Newly Elected Officials" are defined as individuals who are successfully elected to an office for the City of Concord who have not served in the election term immediately prior to the November 2014 General Election.

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The Committee concurred with staff's recommendation to establish the following parameters:

- **No CalPERS Pension Benefits for Newly Elected Officials –**

Place all future newly elected officials in a new Non-CalPERS employee group. Members of this new group will not be eligible for the CalPERS pension benefit. Based on a recent inquiry, CalPERS staff stated the following: “such exclusions, when granted by CalPERS, are effective only with respect to future entrants into the new group; persons employed in this group prior to the exclusion are not affected by the addition of such exclusion, even if they have not yet qualified for CalPERS membership.”

- **Limit Eligibility for Retiree Medical Benefits for Newly Elected Officials –**

Because Concord provides access to health care through PEMHCA, and our contract with CalPERS for this benefit requires that we make retiree health benefits available to both active and retired employees, the City cannot entirely eliminate the retiree medical benefit for newly elected officials. However, the Council can establish an eligibility schedule that would require any future elected official serve a long, continuous tenure with the City and also reach a minimum retirement age.

The Ad Hoc Committee recommends that Council establish the following eligibility requirements (as further defined in the attached resolution): limit eligibility for retiree medical benefits for future newly elected officials that have been placed in the new Non-CalPERS employee group, to those members who have served a minimum of 30 consecutive years as an elected official with the City of Concord and who retire from the City of Concord as an elected official at the minimum age of 65. Note this change cannot be applied to existing elected officials because they are not eligible to be placed in the new Non-CalPERS group.

It should be noted that based on CalPERS law, existing and prior City of Concord elected officials, and future City of Concord newly elected officials who are members or have been members of CalPERS or a CalPERS reciprocal public agency, are not eligible to be placed in the new Non-CalPERS group

Implementing this strategy requires additional research and coordination with CalPERS. Staff will come back to the City Council in September 2014 with the necessary documents for Council's approval to implement such modifications effective after the November 2014 General Election.

### **Fiscal Impact**

The Mayor and the City Councilmembers have already taken steps to address retiree health care costs by requiring existing employees, including elected officials, and retirees, to pay more of their medical insurance costs through a cost-sharing formula. Doing this decreased the City's annual costs and unfunded liabilities significantly.

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The current cumulative annual cost for retiree health benefits for all former elected officials who have retired from the City of Concord is approximately \$29,000, representing the City's share of annual health care premiums for the four retired elected officials who receive the retiree health care benefit. Due to the new cost sharing formula, the retired elected officials also pay a portion of the cost for this benefit, and bear a percentage share of any future cost increases.

The City's retiree health care costs are further reduced once a retiree reaches eligibility for Federal Medicare benefits (generally at age 65). Upon Medicare eligibility, the City's CalPERS benefit is secondary to the retiree and therefore the City's costs for their health care premiums are significantly reduced.

**Public Contact**

The agenda has been posted in accordance with the legal requirements.

**Recommendation for Action**

The Ad Hoc Committee determined that the recommended approach is the most feasible solution to achieve the Committee's goals without exposing the City to legal challenges.

The Ad Hoc Committee recommends that the City Council approve the attached resolution providing direction to staff to work with CalPERS to modify pension and retiree medical benefits for newly elected officials and bring back the necessary documents in September for Council's approval that will result in (a) eliminating CalPERS pension benefits for incoming, newly elected officials and (b) limit eligibility for retiree medical benefits for incoming, newly elected officials by establishing stringent vesting and retirement age criteria.



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**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Providing Direction to Staff to work  
with CalPERS to Modify Pension and Retiree  
Medical Benefits for Elected Officials**

**Resolution No. 14-65**

**WHEREAS**, under government Code Section 22850.3, on June 9, 1998, the City approved resolutions to enter into a contract with California Public Employees Retirement System (“CalPERS”) for medical plan coverage under the Public Employee Medical and Health Care Act (PEMHCA) for all unrepresented employees, elected officials, City of Concord Retirement System (CCRS) retirees, and professional employees.

**WHEREAS**, the City Council desires to modify retiree medical benefits for the City’s elected officials.

**WHEREAS**, the City must comply with the Public Employees’ Medical and Hospital Care Act (PEMHCA) and Cal PERS rules and regulations, which limits the City’s flexibility to make changes to retirement and health care benefits on a prospective basis

**WHEREAS**, pursuant to California Government Code Section 36516.5, the City Council may not approve changes to salary and benefits for themselves in their current term, so the effective date of any change in the elected officials’ benefits would need to be on a prospective basis, meaning the change would be effective following the General Election in November 2014.

**WHEREAS**, changes in elected officials’ benefits discussed in this Resolution cannot be applied to existing elected officials because, based on CalPERS laws, they are not eligible to be placed in the proposed new Non-CalPERS group

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES  
RESOLVE AS FOLLOWS:**

**Section 1.** The foregoing recitals are true and correct and are hereby incorporated by reference.

**Section 2.** Based on City staff’s research to-date, and considering existing state laws, the City Council directs staff to work with CalPERS with the goal to modify retiree health and retirement

1 benefits for future newly elected officials as outlined below.

- 2 a) “Newly Elected Officials” are defined as individuals who are elected to an office for the  
3 City of Concord who have not served during the term immediately preceding the  
4 November 2014 General Election.
- 5 b) To the extent allowable under CalPERS laws, the City of Concord shall provide no  
6 retirement benefits for newly elected officials by placing all newly elected officials in a  
7 new Non-CalPERS employee group, which shall be created by future resolution. Members  
8 of this group would not be eligible for CalPERS retirement benefits.
- 9 c) Based on CalPERS laws, existing and prior City of Concord elected officials are not  
10 eligible to be placed in the new Non-CalPERS employee group.
- 11 d) Based on CalPERS laws, any existing or prior member of CalPERS (or members of an  
12 agency that has reciprocity with CalPERS) who is elected to office in the City of Concord,  
13 is not eligible to be placed in the new Non-CalPERS group.
- 14 e) CalPERS, through the PEMHCA laws, require that the City make retiree health benefits  
15 available to both active and retired employees. Therefore, the City cannot entirely  
16 eliminate retiree medical benefits for members in the new Non-CalPERS employee group.  
17 The City must establish criteria and eligibility requirement for retirement with respect to  
18 retiree health care for the new Non-CalPERS employee group.

19  
20 Therefore, subject to any CalPERS approval requirements, the Council hereby limits  
21 eligibility for retiree medical benefits for future newly elected officials that have been  
22 placed in the new Non-CalPERS employee group (under Section 2.b. above), to those  
23 elected members that:

- 24 i. have served a minimum of 30 consecutive years as an elected official with the City  
25 of Concord, and  
26  
27 ii. who retire from the City of Concord as an elected official at a minimum age of 65.  
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