

## MEASURE B

### CITY CLERK'S IMPARTIAL ANALYSIS OF MEASURE B

Measure B would add Charter Article XV-A to establish additional controls over employee retirement contributions and benefits.

**Background.** The City administers "defined benefit" retirement plans for its employees. The City and employees each contribute to the plans. Employees who reach retirement age and complete sufficient years of service become eligible for monthly retirement benefit payments using a formula based on years of service and a percentage of salary.

**Contributions.** The Charter requires the City and employees to make contributions towards the "normal cost" of the City's retirement plans in a ratio of 8 (City) to 3 (employee). The City also makes contributions towards the "unfunded liabilities" that result from insufficient plan assets to pay projected retirement costs.

Beginning July 23, 2013, the Measure would require employees to make additional contributions to help pay the City plans' unfunded liabilities. Employees would contribute from 4% of pay, up to a maximum of 16% per year, but no more than half the yearly cost to pay retirement system unfunded liabilities. If a court determines this section to be unenforceable, equivalent savings would be obtained through compensation reductions.

**Alternative Plan.** The Measure would require the City Council to adopt a Voluntary Election Program ("VEP"), subject to IRS approval. Under the VEP, employees who "opt in" would not be required to make the additional contributions towards retirement plan unfunded liabilities. The VEP retains some existing benefits and reduces others. If the VEP has not been implemented, or employees do not elect to participate, employees would make additional contributions.

**New Employees.** The Measure would require the City to adopt a retirement plan for new employees that could include social security, a defined benefit plan and/or a defined contribution plan. The measure would limit City costs and retiree benefits.

**Disability Retirement.** The Measure would limit disability retirements to cases where the employee could not perform the work the employee did before or any other work in the City's classification plan (or in the case of safety employees, in the employee's department).

**COLA.** The Measure would authorize the City Council to temporarily suspend cost of living adjustments paid to retirees for up to five years if the Council adopts a resolution declaring a fiscal and service level emergency.

**Supplemental Payments.** The Measure would discontinue the Supplemental Retiree Benefit Reserve, which permits the allocation of excess plan investment income to fund supplemental benefits for retirees.

**Retiree Healthcare.** The Measure would require employee contributions to fund a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

### CITY CLERK'S IMPARTIAL ANALYSIS OF MEASURE B - Continued

**Oversight.** The Measure reserves to the voters any future change in post employment benefits. Neither the City Council nor any arbitrator under Charter Section 1111 would have authority to provide for increases. The Measure sets retirement plan actuarial and investment standards.

A "yes" vote is a vote to approve the changes described above.

A "no" vote means that no changes would be made to the Charter's retirement provisions.

/s/ Dennis D. Hawkins  
City Clerk  
City of San Jose

The above statement is an impartial analysis of Measure B. If you would like to read the full text of the measure, see <http://www.sanjoseca.gov/clerk/elections/2012Election/measures.pdf> or call 408-535-1252 and a copy will be sent at no cost to you.

## ARGUMENT IN FAVOR OF MEASURE B

Annual retirement costs skyrocketed from \$73 million to \$245 million over the last decade, causing service cuts throughout the city. The City's share of retirement costs exceeds 50% of payroll, far more than the 6.2% of payroll private employers pay for social security. Retirement costs consume more than 20% of the general fund and are projected by independent actuaries to increase for years. This is unsustainable.

Many city retirees receive more than \$100,000 per year, plus healthcare benefits.

Future generations of taxpayers will have to pay billions of dollars for unfunded liabilities created by the retirement plans.

Measure B would protect retirement benefits already earned by current employees but would reduce the cost to the city by making changes going forward. It would not cut current payments to retirees. It would prohibit spiking of pension benefits.

Current city employees will pay a larger share of the cost of retirement benefits, a step already taken by over 200 California cities. New employees and the city would share the cost of retirement benefits with a 50/50 match in a new lower-cost plan. Over 100 California cities have adopted lower-cost plans for new employees.

City employees are presently paying less than 1/4 of the cost of their retirement benefits. Private sector employees usually pay 1/2 of the cost. Measure B will require current city employees to pay more than 1/3 of the cost of their retirement benefits and new city employees to pay 1/2 of the cost of their retirement benefits.

The City Charter gives the voters the right to change retirement benefits. The city will seek judicial review before changes are implemented to minimize legal disputes.

Mayor Reed, Vice Mayor Nguyen, and Councilmembers Constant, Herrera, Liccardo, and Oliverio support Measure B.

Vote yes on Measure B for pension reform.

[www.sanjosefiscalreforms.com](http://www.sanjosefiscalreforms.com)

/s/ Chuck Reed  
Mayor of San Jose

/s/ Matthew Mahood  
President & CEO, San Jose Silicon Valley Chamber of Commerce

/s/ John Roeder  
President, Silicon Valley Taxpayers Association

/s/ Suzanne Salata  
San Jose Small Business Owner

/s/ Fernando R. Zazueta  
Attorney at Law

## REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE B

City politicians distorted San Jose's budget and pension issues and now they've put a pension measure on the ballot that their own attorneys have declared "risky." Measure B won't open a single library, hire a single cop, or pave a single street. San Jose can do better, Vote No on Measure B.

City employees don't receive Social Security and the average federated pension is \$37,885; employees rely on their pension for retirement security. How would you feel if Congress slashed your Social Security? It's just not right.

Recently, city employees took pay cuts of 10% to 18%. They contribute up to 17% of pay toward retirement and Measure B could boost that to 33%. When combined, about half an employee's paycheck evaporates before paying for taxes, groceries, rent, mortgage or gas. That's not fair and that's not what was promised.

City politicians tried to declare a "fiscal emergency" even though there's now a budget surplus and made up pension projections that were inflated by hundreds of millions over actual costs. Politicians continue to recklessly spend on fixing roads near a proposed sports stadium and on supporting the Downtown Association.

The California State Auditor has been ordered to get to the bottom of San Jose's fiscal shenanigans in an attempt to bring sanity to local budgeting.

Tell the City to negotiate legal pension reform - **Vote No on B!**

[www.sanjosecandobetter.com](http://www.sanjosecandobetter.com)

/s/ Helen Chapman  
Former Chair, San Jose Parks Commission

/s/ Pattie Cortese  
San Jose Taxpayer

/s/ James M. Spence  
President, Association of Retired San Jose Police Officers & Firefighters

/s/ John S. DiQuisto  
Retired Captain, San Jose Fire Dept.

/s/ Cay Denise MacKenzie  
San Jose City Analyst

## ARGUMENT AGAINST MEASURE B

Here's what Measure B backers aren't telling you: It could eliminate disability retirements for police and firefighters injured on the job and unable to perform their previous duties, it increases by thousands of dollars the amount widows and seniors pay for promised health care, and the City admitted that Measure B may not be constitutional because it violates employees' vested rights.

Measure B is riddled with legal risks. Read what City Hall told Wall Street bond investors about its pension scheme: "Finally, existing law regarding vested rights and impairment of contracts may limit the City's ability to change retirement benefits for current employees and retirees...". But city officials never even tried to offer taxpayers a way to achieve any savings that would stand up in court.

Legal pension reform is important, but so are facts. City workers recently took 10%-18% pay cuts and don't receive Social Security. The average federated pension is approximately \$37,885.

Employees proposed dozens of legal pension reforms that would have increased retirement ages, reduced benefit levels, and lowered COLA's. Police and fire even proposed to cut pensions back to 1972 levels. Putting politics above policy, politicians said "NO". Now, these same politicians want you to gamble with our City's financial future.

In December, as an excuse for putting this measure on the ballot, politicians unsuccessfully tried to declare a fiscal emergency and described catastrophic cuts to city services. Now, all of a sudden, there's a \$10 million budget surplus and millions to improve roads near a proposed sports stadium and to subsidize the Downtown Association. This pattern of inaccurate financial projections, meant to scare voters, helped convince the State's Joint Legislative Audit Committee to audit the City of San Jose's finances.

Tell the city to negotiate legal pension reform, **Vote No on Measure B!**

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/s/ James M. Spence

President, Association of Retired San Jose Police Officers & Firefighters

/s/ John S. DiQuisto

Retired Captain, San Jose Fire Dept.

/s/ Cay Denise MacKenzie

San Jose City Analyst

## REBUTTAL TO ARGUMENT AGAINST MEASURE B

Measure B follows California law. The California Constitution grants the City authority to change employee compensation. The City Charter gives voters the right to change retirement benefits. The Municipal Code allows the City to require employees to pay more for retirement benefits, which is an element of Governor Brown's pension reforms and was recommended by the Santa Clara County Grand Jury.

Governor's Proposal:

<http://gov.ca.gov/docs/TwelvePointPensionReform10.27.11.pdf>

Grand Jury Report:

[http://www.scsccourt.org/court\\_divisions/civil/cgj/2010/CitiesMustReinInUnsustainableEmployeeCosts.pdf](http://www.scsccourt.org/court_divisions/civil/cgj/2010/CitiesMustReinInUnsustainableEmployeeCosts.pdf)

Measure B would also allow employees who wish to pay less for retirement benefits to choose a lower cost optional plan that saves them and the City money.

Upon voter approval of Measure B, the city will immediately seek a judicial review to minimize the cost of legal disputes. See the legal opinion of outside counsel: <http://www.sanjoseca.gov/mayor/goals/budget/PDF/MeyersNavePublicLegalOpinion.pdf>

A Stanford report found that San Jose public safety retirees' average annual pension benefit (\$90,612) is the highest of any independent pension system in California. <http://siepr.stanford.edu/system/files/shared/pubs/papers/pdf/NationMorePension.pdf>

The City Auditor found that disability retirements among San Jose's sworn employees are considerably higher than other jurisdictions and 67% of fire retirees were receiving disability retirement payments. Some employees granted disability retirements were working full time in their regular job right up to when they separated from the City. The Auditor recommended the City Charter be amended to reform the system. <http://www.sanjoseca.gov/auditor/AuditReports/1102/1102.pdf>

The City engaged in hundreds of hours of negotiations with 11 employee unions, including 20 sessions with state mediators, but was unable to reach agreement on language for Measure B.

Vote yes on Measure B.

[www.sanjosefiscalreforms.com](http://www.sanjosefiscalreforms.com)

/s/ Marcia Fritz

President, California Foundation for Fiscal Responsibility

/s/ Dakin Sloss

Director, California Common Sense

/s/ James Duran

Chair, Hispanic Chamber of Commerce, Silicon Valley

/s/ Brian J. Blach

Pension Consultant

/s/ Donald P. Gagliardi

Attorney at Law