



Office of the City Auditor

**Report to the City Council
City of San José**

**POLICE DISABILITY
RETIREMENT SCENARIOS**

**Report 15-07
June 2015**

June 10, 2015

Honorable Mayor and Members
Of the City Council
200 East Santa Clara Street
San José, CA 95113

Police Disability Retirement Scenarios

Our office was asked to assess differences among disability pension requirements and net monthly take-home pay between San José's Tier I and Tier II Police Retirement Plans as well as those of other local jurisdictions.

Compared to five other large local jurisdictions, a top step police officer in San José has the second highest gross pays, but also the highest retirement and retiree healthcare contributions. In terms of "net pay" (pre-tax¹), our review found that:

- San José offers lower net pay while actively employed but generally higher service retirement and disability retirement benefits for **Tier I** police officers;
- San José offers lower net pay while actively employed but higher net disability retirement payments for **Tier II** Police Officers with 0 to 20 years of service, but requires alternative job placement for employees who can still work other City jobs and caps the benefit at 50 percent; and
- Disabled San José Tier II officers who do not qualify for a disability retirement under San José's revised definition, would continue to work in other positions and likely continue to earn their City salary, which would be more than the disability retirement payments paid by other jurisdictions.

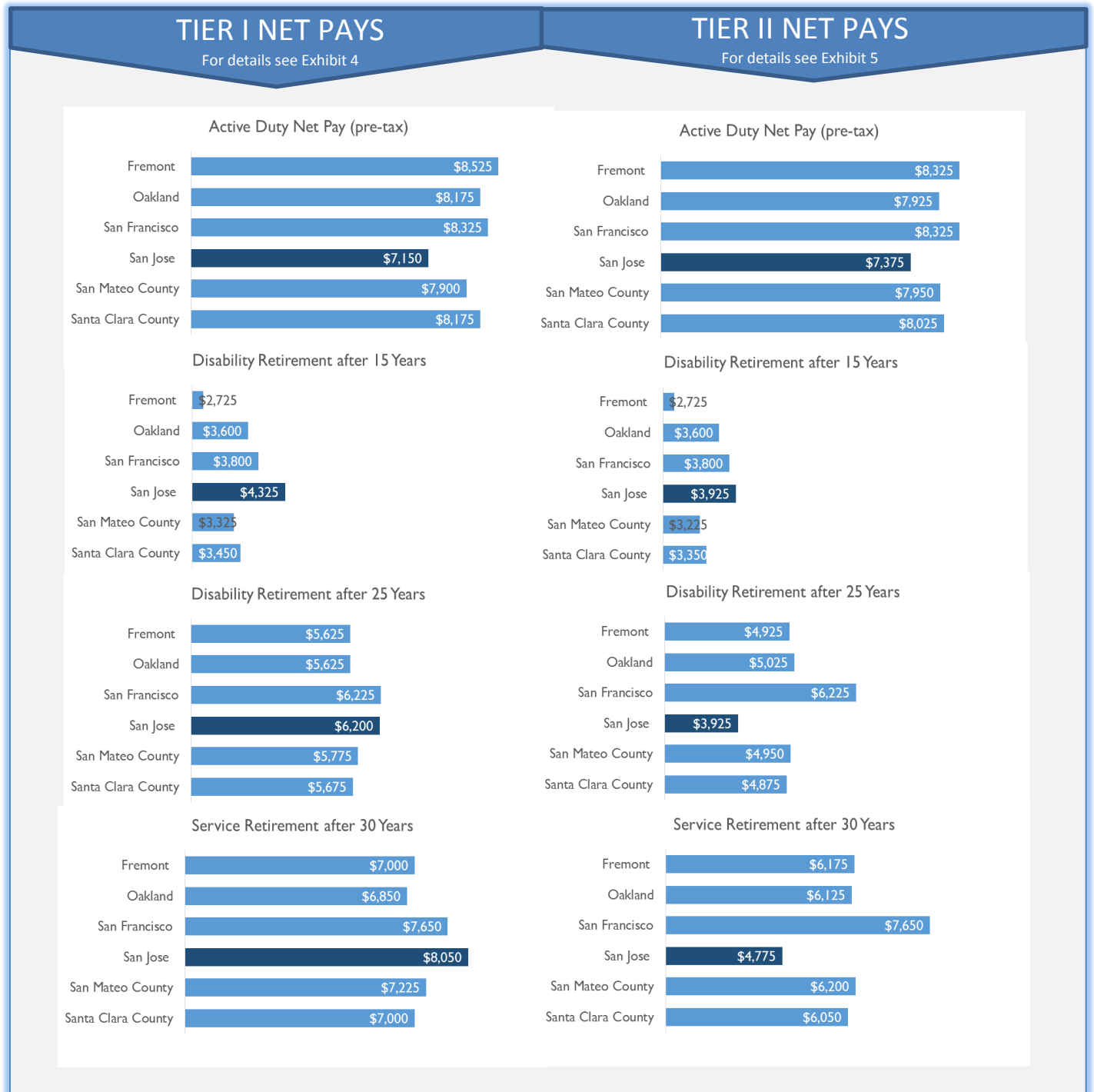
As described in the body of this report, there are significant differences in the disability pension benefits between the Tier I and Tier II retirement plans in San José, as well as across other local jurisdictions. One of the most notable differences is that San José's Tier II employees must be unable to work in **any** job in the Police department to qualify, whereas in other jurisdictions officers typically qualify for disability if they are unable to perform their **own** job. Other differences include the different rates at which employees retire on disability, different offsets for workers' compensation benefits, and different retiree healthcare subsidies.

Finally, to date, no San José Tier II Police employee has applied for or been granted a disability pension. As a result, the actual impact of issues such as the pay in the new position, bargaining unit and retirement plan membership in the new position, and definition of full-time employment have not yet been demonstrated.

¹ This audit frequently uses the term "net pay" which means regular active duty earnings, minus medical retirement contributions made by the employee. It does not account for taxes.

The scenarios we prepared give a sense of where the differences lie with respect to net pay as an active employee and as a retired member, and between the different tiers in San José and other jurisdictions.

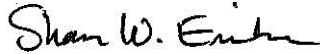
Summary of Active Pay and Retirement Scenarios



We would like to note that the information in this report is current as of June 10, 2015, but subject to change. Changes to police officer compensation or retirement benefits would affect the net pay, pension income, and disability retirement payments shown here.

We will present this report at the June 18, 2015 meeting of the Public Safety, Finance, and Strategic Support Committee. The City Auditor's Office would like to thank the Office of Employee Relations and the departments of Human Resources and Police for their input and cooperation. The Administration has reviewed the information in this report; however, because there are no recommendations, no response has been provided.

Respectfully submitted,



Sharon W. Erickson
City Auditor

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SE:lg

Audit Staff: Jazmin LeBlanc
Ani Antanesyan

| | | | | |
|-----|------------------|----------------|-------------------|-------------|
| cc: | Norberto Dueñas | Edgardo Garcia | Jennifer Schembri | Donna Busse |
| | Jennifer Maguire | Phan Ngo | Suzanne Hutchins | Lesley Lamb |
| | Larry Esquivel | Rick Doyle | Carmen Angeles | |

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Introduction

The mission of the City Auditor's Office is to independently assess and report on City operations and services. The audit function is an essential element of San José's public accountability and our audits provide the City Council, City management, and the general public with independent and objective information regarding the economy, efficiency, and effectiveness of City operations and services.

This audit was a mid-year addition to the City Auditor's Fiscal Year (FY) 2014-15 Work Plan. In January 2015, the Rules and Open Government Committee requested we prepare several simple scenarios showing the impact of Measure B implementation changes in the City's disability retirement system on San José's sworn police officers compared to benefits in other jurisdictions.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We limited our work to those areas specified in the "Audit Objective, Scope, and Methodology" section of this report.

The City Auditor's Office would like to thank the Office of Employee Relations and the departments of Human Resources, Police, and Retirement for their input and cooperation.

Background

San José operates its own pension plans: one for sworn Police and Fire employees, and one for all other City employees. The Plans have been the subject of much discussion and debate in the last ten years as the Plans' unfunded liabilities and annual contribution rates have dramatically increased during this time.

In response to increasing costs of the plans, San José voters passed Measure W in November 2010 which allowed for new pension tiers to be created, and Measure B in June 2012 which modified pension plans for existing and future employees.

Measure B also established a Voluntary Opt-in Program for Tier I employees, and a mandate to increase retirement contribution rates for employees who chose not to "opt-in" through the Pay Deduction Option. Neither of these provisions are currently implemented.

Police Disability Retirement

The basic provisions of the Tier I and Tier II Police Retirement plans **currently in effect** are described in Exhibit I below.

Exhibit I: Summary of Police Tier I and Tier II Retirement Provisions Currently in Effect

| | Tier I | Tier II |
|---|--|---|
| | Sworn Employees Hired, Rehired, or Reinstated before August 4, 2013 | Sworn Employees Hired, Rehired, or Reinstated on or after August 4, 2013 |
| Eligibility | Age 50 with 25 years of service, 55 with 20 years, or any age with 30 years | Age 60 with 10 years of service |
| Benefit Formula | 2.5% of final compensation for each of the first 20 years of service, plus 4% per year of service in excess of 20 years of service | 2% of final compensation for each year of service |
| Maximum Allowable Benefit | 90% of final compensation | 65% of final compensation |
| Cost of Living Adjustments | 3% guaranteed per year | CPI up to 1.5% per year |
| Service-connected Disability Retirement* | <ul style="list-style-type: none"> • 50% of final compensation if less than 20 years of service • 4% per year of service in excess of 20 years of service • No minimum service • Also receives full medical benefit | <ul style="list-style-type: none"> • 50% of final compensation • No minimum service • Also receives full medical benefit |
| Non-service Connected Disability Retirement* | <ul style="list-style-type: none"> • 2 year minimum service • If less than 20 years of service: 32% of final compensation plus 1% for each full year in excess of 2 • If greater than 20 years of service: same formula as service retirement • Receives full medical benefit with at least 7.5 years of service | <ul style="list-style-type: none"> • 5 year minimum • If less than 10 years of service: 20% of final compensation • If greater than 10 years of service: 2% of final compensation per year of service, maximum of 50% • Receives full medical benefit with at least 15 years of service |
| Final Compensation | Highest one-year average | Highest three-year average |
| Employee Contribution Rate as of March 2015** | 21.26% (11.26% pension, 10% retiree healthcare) | 20.8% (10.8% pension, 10% retiree healthcare) |

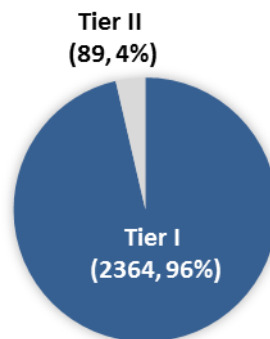
Source: Police and Fire Retirement Plan Benefit Fact Sheets.

* Service-connected disabilities are injuries or illnesses caused or presumed to be caused by a person's job. Non-service connected disabilities are injuries or illnesses not caused or presumed to be caused by a person's job.

**Includes retiree healthcare contribution.

Since August 2013, new Police recruits have entered City service as Tier II employees. However, as of June 2014, the majority of sworn officers in San José were still members of Tier I, as the Exhibit below highlights.

Exhibit 2: Tier I and Tier II Active and Retired Police Members



Source: 2014 Police and Fire Department Retirement Plan Comprehensive Annual Finance Report (CAFR)

In addition to the basic differences between Tier I and Tier II outlined in Exhibit I, there are key differences with regard to the rules around becoming unable to work as a sworn peace officer, but still able to fulfill the job duties of a different position. These differences are the subject of this report.

Audit Objective, Scope, and Methodology

To assess differences among disability pension definitions and payments between San José’s Tier I and Tier II Police Retirement Plans as well as other large local jurisdictions, and prepare hypothetical disability retirement final pay scenarios for sworn police officers, we:

- Reviewed relevant City, State and federal laws and regulations, as well as City policies and procedures related to disability retirement.
- Reviewed the City’s Memorandum of Agreement with the San José Police Officers’ Association and other letters and arbitration awards listed on the Office of Employee Relations’ website.
- Reviewed Measure B and pertinent information regarding Measure B related litigation found on the City Attorney’s website.
- Interviewed staff from Human Resources, Employee Relations, and the Police Department to understand disability provisions as well as staff from benchmarked jurisdictions to ensure that we understood their provisions.
- Benchmarked the City to other large local jurisdictions including the City of Oakland, City of Fremont, City and County of San Francisco, and the Counties of San Mateo and Santa Clara. We selected these jurisdictions

because of their size and proximity to the City of San José, and with the understanding that San José may be competing with these jurisdictions for sworn personnel.

- Documents from the above listed jurisdictions that we reviewed include Memorandums of Agreement/Understanding between said jurisdictions and law enforcement associations, applicable retirement tier information, retiree medical benefits information, Police and Fire CAFRs, job classification and salary tables for FY 2014-15.
- Reviewed CalPERS regulations concerning disability retirement definitions and processes, the constitution of pensionable pay and retiree healthcare benefits for CalPERS agencies.
- Verified sworn officer take-home pay through the City's PeopleSoft system.

Results

Summary

Within Measure B were changes to the process, formula and requirements for granting disability retirements for all current and future City employees. The subject of various lawsuits, these changes have not yet been applied to current City employees in Tier I. However, since August 2013 new Police recruits have entered City service as Tier II employees and are subject to the disability pension changes outlined in Measure B. To date, no Tier II Police employee has applied for or been granted a disability pension.

In terms of net take-home pay, our review found that compared to other large local police departments:

- San José offers lower net pay while actively employed but generally higher service retirement and disability retirement benefits for **Tier I** Police Officers;
- San José offers lower net pay but higher net disability retirement payments for **Tier II** Police Officers with 0 to 20 years of service, but requires alternative job placement for officers who can still work other jobs and caps the benefit at 50 percent; and
- Disabled San José Tier II officers who do not qualify for a disability retirement under San José's revised definition, would continue working in another position and likely continue to earn their City salary, which would be more than the disability retirement payments paid by other jurisdictions.

Changes to the Eligibility Provisions of Disability Retirement

Changes to disability retirement requirements have been an ongoing concern in the Police Department. Our office has heard from sworn Police Department staff that many sworn officers and potential recruits are concerned that they will become disabled on the job at some point in their careers and fear that they will not qualify for disability retirement under Tier II disability changes (or Tier I if Measure B changes are eventually applied to Tier I employees). Although the City has two types of disability retirement it offers: *service-related (on-the-job injuries)* and *non-service-related*, historically nearly all disability retirements have been service-related. The focus of this audit is exclusively on service-related disability retirements. It is our understanding that disability provisions are currently the subject of ongoing settlement discussions.

Police Disability Retirement

Prior to the passage of Measure B (these provisions are currently in effect for Tier I employees), the City Charter outlined the following elements in the qualification of a service-connected disability retirement for sworn personnel as:

*... the incurrance of a disability, short of death, of permanent duration, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions **of his or her office or position and of any other office or position in the same classification of offices or positions** to which the City may offer to transfer him or her; provided, however, that such a disability shall be deemed to be of permanent duration if the City or any of its authorized agencies finds that such disability will continue at least until the disabled person attains the age of fifty-five (55) years. [Emphasis added.]*

With Measure B, the revised qualification for a disability retirement (the provisions currently in effect for Tier II employees) requires that a sworn police officer be incapable of:

*perform[ing] **any other jobs described in the City’s classification plan** in the employee’s department because of his or her medical condition(s)... [Emphasis added]*

The other jurisdictions we benchmarked do not require that an employee be incapable of performing a **different job** to be considered fully disabled. Their qualifications for a disability retirement require that the employee be unable to do their **current job** as shown in Exhibit 3:

Exhibit 3: Qualifications for Disability Retirement in Comparison Jurisdictions

| | |
|--|---|
| <p>City of Oakland, City of Fremont, County of Santa Clara (CalPERS definition)</p> | <p>“... must be incapacitated from performing the usual job duties with...current employer.”</p> |
| <p>City and County of San Francisco</p> | <p>“...is incapacitated for the performance of his duties by reason of any bodily injury received in, or illness caused by, the performance of his duty...”</p> |
| <p>County of San Mateo</p> | <p>“... [must] become permanently incapacitated and...unable to perform...usual job duties.”</p> |

Source: Auditor Review of CalPERS, City and County of San Francisco, and County of San Mateo codes.

The effect of San José's changed criteria is that a disabled employee who is found to be able to work in another position in the Police department, would be denied a disability retirement. Under the Tier I definition, those employees would have been granted a disability retirement.

Other Unique Aspects of San José's Police Pension System

San José police officers historically have retired for disability at high rates. Approximately 40 percent of the retirees and beneficiaries of the Police and Fire Pension plans are members retired for disability, and actuarial projections indicate that San José sworn officers are more than twice as likely to become disabled at age 50 than sworn peers in San Francisco or San Mateo County.

Workers' Compensation Offset

Measure B disallowed the ability to concurrently receive permanent disability worker's compensation benefits¹ and disability retirement benefits for the same injury without an offset to the pension payments. This rule was in effect for Federated employees (non-public safety employees); Measure B extended it to sworn employees as well. The other interviewed jurisdictions in this comparison do not have this provision.

Retiree Healthcare Subsidies

Out of the five comparison jurisdictions, the City of San José has the biggest retiree medical subsidy by providing a 100 percent subsidy towards the lowest cost plan for retirees and their dependents who would like to enroll in San José's medical insurance plans. The City of Oakland is the next biggest subsidizer of retiree medical care, but the subsidy is capped at a fixed dollar contribution towards monthly premiums: currently approximately \$1,300 per month in subsidies. Other jurisdictions provide varying amounts of subsidies that leave a significant burden of medical costs on the retired employee; for instance, the County of San Mateo provides for a limited number of months of medical subsidies post retirement based on the retiree's sick leave balance at time of retirement.

¹ Worker's Compensation is a program run through the State of California to compensate employees for injuries caused on the job. It is intended to replace a portion of lost wages based on formulas set on statewide average wages and cover medical costs to treat the injury.

Comparing Net Monthly Income

Our office was asked to compile several scenarios showing how the disability provisions in San José would actually work, and how they compare to those in other jurisdictions. The scenarios shown in Exhibit 4 and Exhibit 5 (and summarized in the cover letter) illustrate the service-connected disability retirement benefits of law enforcement personnel that meet *all* the criteria of disability in a given jurisdiction.

The scenarios depict not only the pre-tax take-home pay in disability retirement across jurisdictions, but also the net monthly income (pre-tax) in active employment and in service retirement,² to understand how disability retirement compares for the same employee.

The active duty earnings and deductions are simplified³ to model basic pensionable pay in the earnings portion of the scenarios. For the purposes of the scenarios, net pay is limited to only include base pay⁴ and premium pays offered for POST⁵ and longevity⁶. The deductions portion of the scenarios have been simplified to only include healthcare costs⁷ as well as the retirement contribution of an employee.⁸

In order to compare San José's police officer retirement plans (Tier I and Tier II) to other jurisdictions in consistent terms, two possible scenarios were created:

- a case that illustrates active-duty pay and retirement benefits facing a Tier I officer, and

² The hypothetical officer in our scenarios is assumed to retire in April 2015, which means their last salary increase would have taken effect July 1, 2014. The hypothetical Tier I officer started City of San José employment August 3, 2013, which means that, for our scenarios - if s/he left the City of San José, s/he would spend the majority of his/her career elsewhere. For purposes of final annual compensation calculations, the officer is assumed to be receiving an annual 2% salary increases effective July 1st of each year including their final year of employment.

³ The only deductions we show in active employment are medical premiums and retirement contributions as these are generally the largest deductions employees have. The only deduction we show in retirement is the medical premium.

⁴ The officer is assumed to not receive any premium pays for specialties such as canine duty, motorcycle duty or SWAT team. Scenarios do not include any overtime pay in active employment.

⁵ Peace Officers Standards Training. Officers who complete this training are eligible to receive premium pay commonly referred to as POST-Pay; an educational incentive pay. We assumed that after 15 years of service, the officer would be at the top-step in their job classification and receive premium pay for possessing an Advanced POST training certificate.

⁶ Some jurisdictions offer longevity pay, meaning that once employees reach a minimum term of service with their employer, they receive additional pay as a "longevity" line item in their pay stubs.

⁷ The hypothetical officer has elected an "Employee + (2 or more) Dependents" medical plan during active service as well as in retirement. We also assumed that the employee/retiree would choose the least expensive traditional HMO plan (such as San José's Kaiser \$25 Co-payment HMO plan). In many jurisdictions contributions to plans like this are different in active duty in retirement. For example, in San José, this plan costs about \$200/month in active duty but \$300/month in retirement.

⁸ Net pay estimates do not include tax withholding or other deductions like dental insurance, voluntary 457 deferred compensation, supplemental life insurance, etc.

- a case showing the same for a Tier II officer, as well as equivalent tiers in other jurisdictions.

Tier I Members Are Considered “Classic Members”

It is important to note that existing City of San José Tier I members are considered “classic members” under the provisions of CalPERS PEPRA⁹, which allows for reciprocity of retirement plans if a police officer transfers to another jurisdiction. Our first scenario (Exhibit 4) compares San José’s Tier I to the tier that an officer would likely join in another jurisdiction. Our second scenario (Exhibit 5) covers analysis of plans similar to San José’s Tier II across jurisdictions which applies to new recruits as well as officers hired in San José after August 2013.¹⁰

Tier I Disability Retirement Comparison: San José Offers Lower Net Pay but Higher Disability Benefits than Other Jurisdictions

This scenario illustrates the service-connected disability retirement benefits of sworn law enforcement personnel that meet the criteria of permanent service-connected disability in each jurisdiction. It shows what a San José Police top-step Tier I officer could earn as an active employee and as a retired member, as well as what that same officer would earn if s/he were to leave San José to join another jurisdiction.

Although the City of San José offers the lowest net pay of the comparable jurisdictions, it offers higher benefits in cases of service-connected disability for Tier I officers. For a Tier I police officer with 0 to 20 years of service, the San José’s disability retirement benefit is the highest among benchmarked jurisdictions. For a Tier I police officer with 25 years of service, San José has the second highest benefit, with the City and County of San Francisco providing the highest benefit by a slightly higher margin.

⁹ PEPRA is the Public Employees Pension Reform Act of 2013.

¹⁰ In order to compare net pay across the benchmarked jurisdictions, we made the following assumptions:

- San Mateo County and Santa Clara County positions are Deputy Sheriff Positions.
- San Francisco recalculates the Disability Pension formula when retirees reach retirement eligibility age to provide a pension equivalent to what a retiree would have earned had they not become disabled and had service-retired instead.
- Fremont and Santa Clara County include special duty pays (such as canine duty) as pensionable.
- The officer in the County of San Mateo is assumed to use 8-hours of unused sick leave in exchange for \$400 monthly retiree health care compensation, thus, the San Mateo County Retiree Medical Benefit is estimated; the County subsidizes the retiree as long as unused sick leave lasts, which means that the subsidy is temporary.

Police Disability Retirement

Exhibit 4: What Active Duty Pay and Retirement Benefits Could a Tier I Police Officer Receive in San José or if They Left San José to Join a Different Jurisdiction?¹¹

| | Fremont | Oakland | San Francisco | San José | San Mateo County | Santa Clara County |
|--------------------------------------|---------------------|---------|---------------|----------|------------------|-----------------------------------|
| The Equivalent of Tier I in San José | Classic Member Tier | Tier II | Tier III | Tier I | Tier V | Classic Member Tier ¹² |

What is the regular active pay and expected retirement benefit for a current Tier I Officer?

| Active Employee Net Pay and Service Retirement Pay | | | | | | |
|--|--------------|--------------|--------------|--------------|--------------|--------------|
| Earnings (Monthly) | | | | | | |
| Regular (Top Step Police Officer/Deputy Sheriff) | 8,350 | 8,350 | 9,900 | 8,700 | 8,525 | 8,350 |
| POST-Pay Advanced Regular | 625 | 425 | | 650 | 650 | 625 |
| Experience/Longevity Pay (after 15 years) | | 140 | | | 250 | |
| Experience/Longevity Pay (after 25 years) | 400 | 150 | | | 425 | |
| Employee Deductions (Monthly) | | | | | | |
| Lowest Cost HMO Traditional Family Medical Plan | - | - | 275 | 200 | 250 | - |
| Retirement and Retiree Healthcare Contributions (after 15 years) | 800 | 750 | 1,300 | 2,000 | 1,400 | 800 |
| Retirement and Retiree Healthcare Contribution (after 25 years) | 850 | 750 | 1,300 | 2,000 | 1,450 | 800 |
| Net Monthly Income after 15 & 25 years (pre-tax) | 8,175 | 8,165 | 8,325 | 7,150 | 7,775 | 8,175 |
| | 8,525 | 8,175 | 8,325 | 7,150 | 7,900 | 8,175 |
| Net Monthly Maximum Service Retirement Income | 7,000 | 6,850 | 7,650 | 8,050 | 7,225 | 7,000 |
| Minimum Age Eligibility for Retirement | 55 | 55 | 58 | 50 | 55 | 50 |

What could a current Tier I San José officer expect in San José and in other jurisdictions, in case of disability 15 & 25 years in the future?

| Disability Scenarios | | | | | | |
|--|--------------|--------------|--------------|--------------|--------------|--------------|
| Monthly Disability Pension after 15 years | 4,375 | 4,050 | 4,800 | 4,625 | 4,675 | 4,450 |
| Retiree Healthcare Deductions after 15 years | 1,650 | 450 | 1,000 | 300 | 1,350 | 1,000 |
| Taxable Portion of Disability Pension after 15 years | - | - | - | - | - | - |
| Net Monthly Disability Pay after 15 Years | 2,725 | 3,600 | 3,800 | 4,325 | 3,325 | 3,450 |
| Monthly Disability Pension after 25 years | 6,850 | 6,075 | 7,225 | 6,500 | 7,125 | 6,675 |
| Retiree Healthcare Deductions after 25 years | 1,225 | 450 | 1,000 | 300 | 1,350 | 1,000 |
| Taxable Portion of Disability Pension after 25 years | 2,475 | 2,025 | 2,400 | 1,875 | 2,450 | 2,225 |
| Net Monthly Disability Pay after 25 Years | 5,625 | 5,625 | 6,225 | 6,200 | 5,775 | 5,675 |

Source: Auditor's Analysis of MOU's, CalPERS, and Municipal regulations.

¹¹ The numbers in the scenario are rounded to the nearest \$25.

¹²The actual tier that classic members would join is described as the Tier for "not new employee[s]" & "not new member[s]" of PERS.

Tier II Disability Retirement Comparison: San José Offers Higher Net Disability Retirement Payments for Officers with 0 to 20 Years of Service, but Requires Alternative Job Placement and Caps the Benefit at 50 Percent

This scenario compares the Tier II retirement plan of San José to other jurisdictions and would be the scenario facing a brand new hire or officer who joined San José's force after August 2013. This scenario would also apply to San José Tier I officers if Measure B provisions were fully enacted (except that the age of retirement eligibility which is 57 for Tier I officers).

In case of disability retirement for a Tier II officer with 0 to 20 years of service,¹³ the City of San José offers the **highest take-home disability retirement benefit for employees found unable to work in any police department classification**. This is due to the low monthly premium that retirees pay for healthcare. However, **when that officer reaches 25 years of service, San José's Tier II disability benefit is one of the lowest of the benchmarked jurisdictions**, since the Measure B disability pension formula caps the disability pension at 50 percent and does not factor in years of service as do other jurisdictions.

Service retirement benefits are lower in San José's Tier II than in San José's Tier I or other jurisdictions that San José Tier II officers would transfer into. This is due to the lower pension formula accumulator San José offers (San José Tier II pensions are calculated at 2 percent of pay per year of service, whereas the other benchmarked jurisdictions offer a 2.7 percent or 3 percent accumulator) and it is our understanding that POST-Pay (educational incentive pay) is not pensionable for Tier II employees.¹⁴

¹³ We chose a case with an officer who has 15 years of service and a pension benefit that is the same on the first day of service up to the 20th year of service.

¹⁴ POST Pay is pensionable in the City's PeopleSoft payroll system, however Tier II employees are not yet eligible to receive POST Pay and we have been told that POST Pay will not be considered pensionable for Tier II employees under of Measure B.

Police Disability Retirement

Exhibit 5: What Active Duty Pay and Retirement Benefits Could a Tier II Police Officer or New Recruit Receive in San José or if they Left San José to Join a Different Jurisdiction?¹⁵

| | Fremont | Oakland | San Francisco | San José | San Mateo County | Santa Clara County |
|---------------------------------------|----------------------|----------|---------------|----------|------------------|------------------------------------|
| The Equivalent of Tier II in San José | Tier for New Members | Tier III | Tier III | Tier II | Tier VII | Tier for New Members ¹⁶ |

What is the regular active pay and expected retirement benefit for a current Tier II Officer?

| Active Employee Net Pay and Service Retirement Pay | | | | | | |
|--|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| Earnings (Monthly) | | | | | | |
| Regular (Top Step Police Officer/Deputy Sheriff) | 8,350 | 8,350 | 9,900 | 8,700 | 8,525 | 8,350 |
| POST-Pay Advanced Regular | 625 | 425 | | 650 | 650 | 625 |
| Experience/Longevity Pay (after 15 years) | | 150 | | | 250 | |
| Experience/Longevity Pay (after 25 years) | 400 | 150 | | | 425 | |
| Employee Deductions (Monthly) | | | | | | |
| Lowest Cost HMO Traditional Family Medical Plan | - | - | 275 | 200 | 250 | - |
| Retirement and Retiree Healthcare Contributions (after 15 years) | 1,000 | 1,000 | 1,300 | 1,775 | 1,350 | 950 |
| Retirement and Retiree Healthcare Contribution (after 25 years) | 1,050 | 1,000 | 1,300 | 1,775 | 1,375 | 950 |
| Net Monthly Income after 15 & 25 years (pre-tax) | 7,975 8,325 | 7,925 7,925 | 8,325 8,325 | 7,375 7,375 | 7,825 7,950 | 8,025 8,025 |
| Net Monthly Maximum Service Retirement Income | 6,175 | 6,125 | 7,650 | 4,775 | 6,200 | 6,050 |
| Minimum Age Eligibility for Retirement | 57 | 57 | 58 | 60 | 57 | 57 |

What could a current Tier II officer expect in San José and in other jurisdictions, in case of disability 15 and 25 years into the future?

| Disability Scenarios | | | | | | |
|--|--------------|--------------|--------------|---------------------|--------------|--------------|
| Monthly Disability Pension after 15 years | 4,375 | 4,050 | 4,800 | 4,225 ¹⁷ | 4,575 | 4,350 |
| Retiree Healthcare Deductions after 15 years | 1,650 | 450 | 1,000 | 300 | 1,350 | 1,000 |
| Taxable Portion of Disability Pension after 15 years | - | - | - | - | - | - |
| Net Monthly Disability Pay after 15 Years | 2,725 | 3,600 | 3,800 | 3,925 | 3,225 | 3,350 |
| Monthly Disability Pension after 25 years | 6,150 | 5,475 | 7,225 | 4,225 | 6,300 | 5,875 |
| Retiree Healthcare Deductions after 25 years | 1,225 | 450 | 1,000 | 300 | 1,350 | 1,000 |
| Taxable Portion of Disability Pension after 25 years | 1,800 | 1,425 | 2,400 | - | 1,750 | 1,525 |
| Net Monthly Disability Pay after 25 Years | 4,925 | 5,025 | 6,225 | 3,925 | 4,950 | 4,875 |

Source: Auditor's Analysis of MOU's, CalPERS, and Municipal regulations.

¹⁵ The numbers in the scenario are rounded to the nearest \$25.

¹⁶ The actual description of the tier that classic members would join is described as the Tier for "new employees" & "new members" of PERS.

¹⁷ We have been told that Tier II pensionable pay does not include the POST Pay Advanced; however, as noted earlier, the paycode in PeopleSoft is still programmed as pensionable.

Alternative Job Placement

As mentioned previously, Measure B revised the threshold to qualify for a disability retirement. Tier II officers in San José must be unable to work in **any** classification within the Police Department in order to qualify for a disability retirement. This is a higher threshold to meet than under the Tier I definition and the definition used in other jurisdictions we reviewed (which specify that an officer must be unable to work in their **own** occupation).

The issue of whether alternative jobs would be available was addressed by the City Council in 2014 with the adoption of the Guaranteed Job Ordinance which guarantees the availability of a job that meets the officer's work restrictions. However, the actual impact of issues such as the pay in the new position, bargaining unit and retirement plan membership in the new position, and definition of full-time employment (as described below) have not yet been demonstrated.

Pay in the New Position

The City attempted to alleviate some of the concerns around pay for a position that would qualify under the Guaranteed Job Ordinance with its Y-Rating Ordinance introduced by the City in 2014. It is our understanding that the Y-Rating Ordinance has not yet been implemented due to lack of agreement with the San José Police Officers' Association.

The Y-Rating Ordinance stipulates that an officer would receive a salary comparable to his/her previous classification. However, the Ordinance does not specify the details of what would be included in the definition of salary. Subject to negotiations, salary could be defined in various ways. For example, base pay, (hourly rate without premiums), or average hourly rate including premium pays typically earned (the Fair Labor Standards Act definition), or something else.

Bargaining Unit and Retirement Plan Membership

According to City Administrative Policy 4.1.5 "Work-Related Injuries and Illnesses-Sworn Police Officers in Tier 2", if the officer's new classification is not a sworn "exempt officer" position in the Police Department, the officer would be subject to the bargaining unit and retirement provisions of their new position. Thus, if a Tier II disabled officer took a Y-rated job elsewhere in the City, they would likely become a member of a different bargaining unit (with potentially a different benefits package), as well as potentially becoming a member of the Federated Tier II plan (which has a minimum retirement age that is five years greater than the Police Tier II Plan and no retiree medical benefits in Tier IIC).

In the past, San José had special provisions in the Municipal Code for some police employees who were transferred to other departments to allow them to elect to maintain membership in the Police Retirement Plan.¹⁸

Full-time Employment

Finally, for a disabled officer who can work, but not full-time, neither Measure B nor the implementing ordinances specify whether officers need to be able to work any particular minimum number of hours. The Guaranteed Job Ordinance states that the officer will be offered a job they can perform and the Y-rating ordinance states it may be at the same hourly rate, but neither addresses the outcome for an officer is unable to work full-time as a result of their injury.

Other programs that provide payments in case of disability address this issue. For example, the City's voluntary Long Term Disability Insurance program defines an employee as disabled if they are unable to earn at least 80 percent of their pre-disability earnings.

Net Pay Impact of Alternative Job Placement

Thus, in the case where an officer is denied a disability retirement but guaranteed a job in the Police Department, his/her net pay would be impacted by how the Y-Rating and Guaranteed Job Ordinances are implemented. Finally, to date, no San José Tier II Police employee has applied for or been granted a disability pension.

As a result, the actual impact of issues such as the pay in the new position, bargaining unit and retirement plan membership in the new position, and definition of full-time employment have not yet been demonstrated.

¹⁸ For example, in Municipal Code section 3.36.260 of the 1961 Police and Fire Retirement Plan, certain radio-telephone operations employees within the Police and Fire Departments that were transferred to the (no longer existing) Communications Department were given the opportunity to elect to remain in the Police and Fire Retirement Plan.

Conclusion

There are significant differences in the disability pension benefits between San José's Retirement Plans Tier I and Tier II, as well as across other local jurisdictions. The scenarios we included in this report give a sense of where the differences are with respect to net pay as an active and as a retired member. Through the information we've presented, we aim to give readers the opportunity to understand the differences between San José and other jurisdictions.

There are no recommendations in this report.

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