



## Item No. 29 Town of Atherton

### **CITY COUNCIL STAFF REPORT – REGULAR AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
GEORGE RODERICKS, CITY MANAGER**

**THROUGH: GEORGE RODERICKS, CITY MANAGER**

**FROM: THERESA N. DELLASANTA, DEPUTY CITY MANAGER**

**DATE: SEPTEMBER 19, 2018**

**SUBJECT: INTRODUCTION OF ORDINANCE OF THE COUNCIL OF THE TOWN OF ATHERTON AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE TOWN OF ATHERTON AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY COUNCIL OF THE TOWN OF ATHERTON**

### **RECOMMENDATION**

Introduce the Ordinance of the City Council of the Town of Atherton authorizing an Amendment to the contract between the Town and the Board of Administration of the California Public Employees' Retirement System. Waiver further reading.

Adopt the Resolution of Intention to approve an amendment to the contract between the Board of Administration California Public Employees' Retirement System (CalPERS) and the City Council of the Town of Atherton.

### **BACKGROUND**

During recent salary and benefit negotiations with the Atherton Police Officers' Association (APOA), employees offered to pick up a portion of the Town's employer pension obligation in exchange for an adjustment in salary. Over the course of the 3-year APOA Memorandum of Understanding (MOU), Public Safety staff pick up an additional 3% of the employer share and non-safety will pick up an additional 1%. These are the maximums allowed under CalPERS law. The APOA MOU solidifies the agreement.

CalPERS requires these changes to be done by CalPERS contract amendment in order for the increased member contributions to be credited to each member's account as normal contributions.

### **ANALYSIS**

The Resolution of Intention and Exhibit Amendment to Contract to provide Section 20516 (Employee Sharing Additional Cost) of 1% for local safety members and 1% for miscellaneous members in the APOA is included. Indemnification language was added in paragraph 3 of the Amendment to Contract.

The Council approved 2 % for local safety members in the APOA in April. The additional 1% for local safety members reaches the additional 3% agreed to in the MOU.

Government Code Section 20474 requires a secret ballot election by the employees affected whenever the contract is amended to provide a benefit which changes the employees' rate of contribution, pursuant to Government Code Section 20469. The contract will not be amended if a majority of the affected members vote to disapprove the proposed plan. The secret ballot election will be conducted after approval of the resolution of intention.

The classic local safety member contribution rate for impacted members will be 12% of reportable earnings as of the effective date of the amendment to the contract. The new local safety member contribution rate for impacted members will be 15.25% of reportable earnings as of the effective date of the amendment to the contract.

The classic miscellaneous member contribution rate for impacted members will be 8% of reportable earnings as of the effective date of the amendment to the contract. The new miscellaneous member contribution rate for impacted members will be 7.5% of reportable earnings as of the effective date of the amendment to the contract.

Both groups have already agreed to contribute and are contributing these rates respectively, through the Memorandum of Understanding with the Town.

Government Code Section 7505 requires that the future annual costs or benefit change of the proposed contract amendment be made public at a public meeting at least two weeks prior to the adoption of the final ordinance. An ordinance for final adoption of the contract amendment will return to Council at the October 17 meeting.

### **POLICY FOCUS**

Members of the APOA have already agreed to contribute additional percentages of the employer share. If the ballot that is provided to the APOA following this meeting is not approved by a majority of members it will not affect their contribution rate. The members must approve the ballot in order for the contributions to be credited to each members account as normal contributions.

### **FISCAL IMPACT**

None.

**PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service provides (water, power, and sewer), and regional elected officials.

**COMMISSION/COMMITTEE FEEDBACK/REFERRAL**

This item \_\_\_\_ has or  X  has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month)
- Rail Committee (meets every other month)
- Transportation Committee (meets every other month)

**ATTACHMENT**

Resolution of Intention  
Draft Ordinance  
Contract Amendment

**ORDINANCE XXX**

**ORDINANCE OF THE COUNCIL OF THE TOWN OF ATHERTON  
AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE TOWN OF  
ATHERTON AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**WHEREAS**, the Town entered into a contract with the California Public Employees' Retirement System (CalPERS) in 1945 and numerous amendments since that date; and

**WHEREAS**, as a result of labor negotiations with the Atherton Police Officers' Association (APOA), the APOA agreed that the safety employees would make an additional employee contribution towards the Employers' portion of the PERS Rate of 1.0% for Classic PERS members and New PERS members; and

**WHEREAS**, as a result of labor negotiations with the Atherton Police Officers' Association (APOA), the APOA agreed that the miscellaneous employees would make an additional employee contribution towards the Employers' portion of the PERS Rate of 1.0% for Classic PERS members and New PERS members; and

**WHEREAS**, an amendment to the CalPERS contract is needed in order to implement this new benefit.

**NOW, THEREFORE, THE CITY COUNCIL OF THE TOWN OF ATHERTON  
DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council of the Town of Atherton hereby authorizes entering into the Amendment to Contract between the Board of Administration, California Public Employees' Retirement System and the Town of Atherton (Amendment), a copy of which is attached hereto, marked as "Exhibit 1," and incorporated herein by reference as though set out in full.

**SECTION 2.** The City Manager of the Town of Atherton is hereby authorized, empowered, and directed to execute the Amendment for and on behalf of the City.

**SECTION 3.** The City Clerk has prepared and published, at least ten days before the date of adoption, a summary of this ordinance once in a newspaper of general circulation printed and published in Atherton and circulated in the Town of Atherton. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least ten days before this date of adoption.

Introduced this 19<sup>th</sup> day of March, 2018.

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the October 17, 2018, by the following vote:

Ayes:	Council Members:	Noes:	Council Members:
Abstain:	Council Members:		
Absent:	Council Members:		

---

Cary Wiest, Mayor  
Town of Atherton

ATTEST:

---

Theresa N. DellaSanta, City Clerk

APPROVED AS TO FORM:

---

Bill Conners, City Attorney



**EXHIBIT**

California  
Public Employees' Retirement System

---



---

# AMENDMENT TO CONTRACT

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
Town of Atherton

---



---

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1945, and witnessed June 29, 1945, and as amended effective July 1, 1956, January 1, 1972, May 19, 1984, July 29, 1984, December 13, 1987, January 8, 1989, January 1, 1993, July 1, 1999, July 1, 2002, May 19, 2003 and June 17, 2018 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 15 are hereby stricken from said contract as executed effective June 17, 2018, and hereby replaced by the following paragraphs numbered 1 through 15 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for classic local miscellaneous members, age 62 for new local miscellaneous members, age 50 for classic local safety members and age 57 for new local safety members

## PLEASE DO NOT SIGN "EXHIBIT ONLY"

2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1945 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
  - a. Local Police Officers (herein referred to as local safety members);
  - b. Employees other than local safety members (herein referred to as local miscellaneous members).

PLEASE DO NOT SIGN "EXHIBIT ONLY"

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
  - a. **FIRE FIGHTERS HIRED ON OR AFTER JULY 1, 1945; AND**
  - b. **RESERVE POLICE OFFICERS HIRED ON OR AFTER MAY 19, 1984.**
6. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).
7. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
9. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
10. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Sections 21624 and 21626 (Post-Retirement Survivor Allowance).
  - b. Section 21573 (Third Level of 1959 Survivor Benefits).
  - c. Section 20042 (One-Year Final Compensation) for classic local safety members only.
  - d. Section 21024 (Military Service Credit as Public Service) for local miscellaneous members only.
  - e. Section 20516 (Employees Sharing Additional Cost):

From and after June 17, 2018 and until the effective date of this amendment to contract, 2% for local safety members in the Atherton Police Officers' Association.

From and after the effective date of this amendment to contract, 3% for local safety members in the Atherton Police Officers' Association.

## PLEASE DO NOT SIGN "EXHIBIT ONLY"

From and after the effective date of this amendment to contract, 1% for local miscellaneous members in the Atherton Police Officers' Association).

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

11. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on December 13, 1987. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
12. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
13. Public Agency shall also contribute to said Retirement System as follows:
  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.
  - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
  - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

14. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
15. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
TOWN OF ATHERTON

BY \_\_\_\_\_  
ARNITA PAIGE, CHIEF  
PENSION CONTRACTS AND PREFUNDING  
PROGRAMS DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk

PLEASE DO NOT SIGN "EXHIBIT ONLY"

PLEASE DO NOT SIGN "EXHIBIT ONLY"

**RESOLUTION OF INTENTION  
TO APPROVE AN AMENDMENT TO CONTRACT  
BETWEEN THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
AND THE  
CITY COUNCIL  
CITY OF ATHERTON**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 20516 (Employees Sharing Additional Cost) of 1% for local miscellaneous members and an additional 1% for local safety members in the Atherton Police Officers' Association.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By: \_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date adopted and approved