

**POLICIES AND PROCEDURES
GOVERNING THE
OVERPAYMENT OR UNDERPAYMENT
OF MEMBER CONTRIBUTIONS**

The Board of Administration ("Board") has a fiduciary obligation to conserve retirement fund assets and protect the integrity of the fund, for the benefit of the members and beneficiaries of the members of the San José Police and Fire Department Retirement Plan ("Plan").

The Board determines the required member contributions in accordance with law and in consultation with its actuary. Subject to all applicable laws, it shall be Board's policy that the Plan should make every reasonable effort to recover from a member the amount of any underpayment of contributions, and remit to a member the amount of any overpayment of contributions, consistent with these Policies and Procedures established by the Board.

Accordingly, after discovery of an overpayment or underpayment of member contributions, the Plan will (1) take all reasonable steps to ensure that it collects future member contributions from the member in the correct amounts, and (2) within a reasonable period of time after written notification to the affected member, make appropriate adjustments to correct any overpayment or underpayment of past member contributions, as indicated below.

These policies and procedures are designed for use when errors affect an individual member's contributions. In the event of a system-wide error that affects multiple members' contributions, the Board may implement a system-wide correction process that it determines is appropriate under all the circumstances.

Time card adjustments are common and inherent within the City's payroll system. The fact that a time card adjustment is made does not mean that prior contributions were overpaid or underpaid. Accordingly, when there is a time card adjustment, appropriate adjustments to member contributions will be made as soon as practicable after the time card adjustment, but the notice and interest provisions of this policy will not apply to time card adjustments, absent specific Board action.

In the event of any inconsistency between applicable law and these Policies and Procedures, the law shall take precedence.

Underpayment Of Contributions By Members

1. Whenever an underpayment of contributions is discovered, the Plan shall make a prospective adjustment to the member's contributions and take all reasonable steps to recover the full amount of all past underpayments, with "appropriate interest," subject to the provisions of this policy and applicable law. If the underpayment was due to fraud or dishonest conduct by the member, or to the

member providing inaccurate information to the Plan or the City, appropriate interest shall be the Plan's actuarially assumed rate(s) of return throughout the applicable period of underpayment, applied to the outstanding amount due until such amount is fully repaid. If the underpayment was the result of an error by Plan or the City, appropriate interest shall be 3% per annum for the period in which the underpayments were made, applied to the outstanding amount due until such amount is fully repaid.

2. The Plan will recover underpayments either by (a) a lump sum payment from the member, (b) additional amounts added to the member's future contributions, over a period of time as determined by the Chief Executive Officer ("CEO"), or (c) pre-tax offsets to future benefit payments to the member, over a period of time as determined by the CEO, unless the Board, in its discretion and because of legal or practical considerations, determines that another process is warranted.
3. The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of underpayments only where the cumulative total amount underpaid by the member is \$50 or more. Accordingly, the CEO is authorized to not seek recovery of any underpayments where the total amount underpaid by the member is less than \$50.
4. The CEO shall have authority, on the advice of legal counsel, to compromise recovery of underpayments when the total amount of underpayment, not including interest, is less than \$5,000. Only the Board may compromise claims in which the total amount of underpayment, not including interest, is \$5,000 or more. Among other things, the likelihood of collection, the cost of collection, the amount of possible recovery and extreme hardship to the member will be considered by the CEO and/or the Board when determining whether to compromise a claim. Compromising claims may include a different method of repayment than is otherwise provided by this policy and/or a partial forgiveness of the amounts underpaid.
5. In cases where there is no evidence that the underpayment resulted from the fraud or dishonest conduct by the member, or from the member providing inaccurate information to Plan or the City, the Plan will only seek recovery of amounts underpaid by the member for the three years immediately before the error was corrected. Considering all relevant factors (including collection issues and principles of equity), the Board finds that seeking only three years of underpayments under those circumstances constitutes "reasonable steps" to recover the full amount of the underpayments. In cases where there is evidence that the underpayment resulted from fraud or dishonest conduct by the member, or from the member providing inaccurate information to Plan or the City, the Board reserves all rights to seek all amounts underpaid, plus the maximum amount of recoverable interest under law. The CEO shall determine whether the member engaged in fraud or dishonest conduct, or provided the Plan or the City

with inaccurate information, based on all of the facts available to the CEO, subject to review by the Board upon a member's request.

6. The Board adopts the following procedures for accomplishing the recovery of underpaid contributions:

A. Upon discovery of an underpayment, the Plan shall send a letter by certified mail, return receipt requested, or by express delivery service, to the member advising the member of the underpayment and proposing a repayment schedule, as follows:

- i. The letter will request payment to the Plan of the amount underpaid, subject to the provisions of this Policy.
- ii. The letter will include an agreement to pay the amounts underpaid and a consent form for the spouse or beneficiaries, if applicable.
- iii. The agreement to pay the amounts underpaid will provide two options:
 - o Option 1 – equal installments deducted from the member's pay (in addition to the contributions otherwise required of the member), or benefit payments (if the member is retired), over the same length of time that the underpayments occurred, with appropriate interest (as that phrase is defined in No. 1 above) applied for the underpayment period and the payment period. If the member's employment terminates during the payment period, the member shall be liable for all remaining unpaid amounts, which may be deducted from any amounts Plan owes the member (in retirement benefits or otherwise), if the member does not make a lump sum payment.
 - o Option 2 – lump sum payment to Plan for the full amount underpaid, with appropriate interest (as that phrase is defined in No. 1 above) applied during the underpayment period.
- iv. The letter and agreement to pay underpaid amounts will provide that Option 1 will go into effect by default if a written response from the member is not received within 30 days following the date the letter was delivered.

B. If the amount of the underpayment, not including interest, is \$5,000 or more, the CEO or his or her designee will attempt to contact the member by phone to schedule a meeting to discuss the contents of the letter before the letter is sent out for delivery.

C. The Plan may pursue all legal remedies to collect underpayments, including making a claim on an estate or trust, if appropriate.

D. The Plan will maintain a permanent record of all amounts of underpayments and the payment to Plan of those underpayments.

Overpayments Of Contributions By Members

1. When a member has overpaid contributions, the member shall be entitled to a prospective adjustment to his or her contributions necessary to correct the overpayment, as well as a lump sum payment for all past overpayments, with interest at the Plan's actuarially assumed rate(s) of return throughout the applicable period of overpayment. Interest shall accrue on each overpaid amount from the date of the overpayment to the date of the lump sum corrective payment. The payment shall be made to the member as soon as is reasonably practicable following the Plan's discovery of the overpayment.

2. If a Member who overpaid contributions has died prior to payment of the lump sum amount due, the following procedures will be followed:

A. Member With Designated Beneficiary

- If the Member has named a designated beneficiary, the payment will be made directly to the designated beneficiary.

B. Member Without Designated Beneficiary

- If there is an open estate (i.e., no order for final distribution yet), payment will be made to the estate (through the personal representative).
- If final distribution of the estate has already been made, Plan staff will review the order for final distribution to determine how assets that were unknown at the time of final distribution are to be distributed under the order. Payment will then be made in compliance with the order for final distribution, if possible.
- If an estate was not established, distribution will be made in accordance with any applicable and valid Affidavit for Payment of Personal Property on file with the Plan. See Prob. Code Section 13101.
- Plan staff shall make reasonable efforts to locate the person(s) entitled to payment by sending a letter by certified mail, return receipt requested, to the

last known address of each such person, or by other means of similar intended effect. The letter shall request written confirmation that the person entitled to payment still lives at that address and will accept payment. Upon receipt of such written confirmation, the payment will be mailed to that person at that address.

- If, after taking the above steps, Plan staff has not been able locate a person entitled to payment, the Plan shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds may be transferred into the system's pension reserve fund. If someone later appears to claim the funds, the Board will consider such claims on a case-by-case basis.
- The Plan will maintain a permanent record of all amounts of outstanding refunds of overpaid contributions and any amounts that have been transferred into the pension reserve fund.

In cases where there is no designated beneficiary and the total amount of overpaid contributions is less than \$50, the Plan staff need not take proactive measures to locate the person(s) entitled to such funds. All claims presented to the Plan, however, will be considered regardless of size.

3. Overpayments of \$5 or less will only be refunded at the request of the member.

Policy History

This policy was adopted by the Board on June 4, 2015. The Board shall review this policy at least every three years to ensure that it remains relevant and appropriate.

Secretary's Certificate

I, Roberto L. Peña, the duly appointed Director of the San José Department of Retirement Services and Secretary to the San José Police and Fire Department Retirement Plan, hereby certify the adoption of this Policy.

Dated: June 4, 2015