

**INITIATIVE TO VOID ORDINANCE 02-18 WHICH ILLEGALLY ENACTED A
3% at 50 PENSION BENEFIT INCREASE TO PUBLIC SAFETY EMPLOYEES
CITY OF PACIFIC GROVE**

This initiative measure is submitted to the People of the City of Pacific Grove in accordance with the provisions of Article 16 of the Pacific Grove City Charter.

SECTION 1. Title.

This measure shall be known and cited as "**Initiative to void Ordinance 02-18 which illegally enacted a 3% at 50 pension benefit increase to public safety employees.**"

SECTION 2. Findings and Declarations.

1. On June 5, 2002 the City Council approved urgency Ordinance 02-18 that amended the City's contract with CalPERS to enact a 3% at 50 pension benefit, retroactive to the date of hire, for public safety employees in Pacific Grove.
2. This benefit had been agreed to in a Memorandum of Understanding with public safety employees approved by the City Council in 2001.
3. State law mandates now (and mandated then) that in the event a city proposes to increase a pension benefit, that city shall first obtain an analysis by a certified actuary of the costs of the increase, and that the future annual costs provided by the actuary shall be made public in a noticed public meeting at least 20 days prior to the enactment of the pension benefit increase.
4. At the City Council meeting on April 3, 2002, this 'contract amendment' to the CalPERS contract was first introduced as Item 4C on the Consent Agenda. The 'fiscal impact' of the item was stated to be \$51,500 (1.516% of salary cost). The fact that this was a contract amendment to increase pension benefits to 3% at 50 retroactively to the date of hire was not revealed in the public notice for this meeting or in the title of this item on the Consent Agenda.
5. On June 5, 2002 the 'contract amendment' was formally approved as Ordinance 02-18. The fiscal impact was still stated to be \$51,500.
6. In early 2009, during an investigation of the above, a citizen discovered by a public records request the existence of a seven page "Contract Amendment Cost Analysis" written by Barbara Ware, a CalPERS actuary. This cost analysis report was dated December 17, 2001, and had been received by the City Manager in February, 2002.
7. This report was identified in related documents to be the cost analysis of the 'contract amendment' (Ordinance 02-18), as required by State law (Gov. Code 7507). This report had never been made public.
8. This report clearly showed that the 'future annual costs' of this 'contract amendment' was estimated to exceed \$805,000 (23.7% of salary costs) one year after adoption. The report also revealed that \$51,500 was actually the 'adoption cost' of the amendment. The failure to publicly reveal the future annual costs provided by the actuary's report was a clear violation of State law (Gov. Code 7507).
9. In addition, by failing to properly notice the true purpose of the public meeting on this item, and by failing to reveal the estimated costs of this action, as required by State law, the public's right of Referendum on its approval was also infringed.

10. Citizens reported these findings to the City Council in June, 2009 and requested an investigation and report. After receiving opinions of the City Attorney given in August 2009, the City Council majority took no further action to investigate these facts.
11. In 2012, the City Council approved a subcommittee of the Mayor and two Council members to investigate the facts first discovered in 2009. On August 15, 2012 as Item 15A of the Regular Agenda, the Council subcommittee presented its report affirming that the City had in fact illegally enacted the 3% at 50 pension increase in 2002, and affirming the above and other facts.
12. In spite of the report of the subcommittee, the City Council majority has failed to take any action to reverse the illegal adoption of this pension increase. It is a principle of law that an action taken by a City Council that violates the mandates of a State law is a void act. In effect, if the mandatory requirements of State law were not met, then the City Council did not have the authority to enact Ordinance 02-18. Therefore, the proponents of this initiative have placed this measure before the voters to affirm that Ordinance 02-18, the legislative act that implements the 3% at 50 pension benefit increase retroactively, was null and void.

SECTION 3. Purpose and Intent.

In enacting this measure, the people of Pacific Grove assert and affirm their legal right under State law to know the future costs, as provided by an actuary and revealed at a public meeting, of any increase in pension benefits before any such increase is enacted and also, that any action to do otherwise is legally null and void. They also affirm that their right of Referendum shall not thereby be infringed. The public acknowledges the unfortunate effect of this initiative measure on some current and former employees. However, the protection of the public's basic right to a reliably legal and transparent public decision process and fiscally sound government is paramount.

SECTION 4. Initiative Ordinance.

On the basis of the Declarations and Findings above, **the people of Pacific Grove do ordain as follows:**

Ordinance 02-18, an ordinance passed by the City Council of Pacific Grove on June 5, 2002 to amend a contract (EXHIBIT A below) between the City of Pacific Grove, and the Board of Administration, California Public Employees' Retirement System, and to enact a '3% at 50' pension increase retroactively to the date of hire for public safety employees is hereby rescinded *ab initio* and is therefore null and void from the date of its approval.

EXHIBIT A.

California Public Employees' Retirement System
AMENDMENT TO CONTRACT
Between the Board of Administration
California Public Employees' Retirement System and the
City Council, City of Pacific Grove

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 February 1, 1957. and witnessed January 2, 1957, and as amended effective March 22, 1968, January 1, 1977, September 1, 1983, September 1, 1988, June 6, 1991 and September 15, 2001 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

A. Paragraphs 1 through 12 are hereby stricken from said contract as executed effective September 15, 2001, and hereby replaced by the following paragraphs numbered 1 through 12 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 local miscellaneous members and age 50 for local safety members.
2. Public Agency shall participate in the Public Employees' Retirement System from and after February 1, 1957 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. 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 Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
4. 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:
NO ADDITIONAL EXCLUSIONS.
5. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after December 31, 1976, the effective date of Social Security coverage, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
6. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
7. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 20042 (One-Year Final Compensation).
 - b. Section 20965 (Credit for Unused Sick Leave).
 - c. Section 21574 (Fourth Level of 1959 Survivor Benefits).
 - d. Section 21024 (Military Service Credit as Public Service), Statutes of 1976.
8. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on January 1, 1977. 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.
9. 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.

10. 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 21574 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.
11. 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.
12. 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 23rd day of June 2002.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF PACIFIC GROVE

BY *Kenneth W. Marzion*
KENNETH W. MARZION, CHIEF
ACTUARIAL & EMPLOYER SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY *Robert Hunt*
PRESIDING OFFICER

June 6, 2002
Witness Date

Attest:

Peter Woodruff
Clerk