City of FRESNO REPORT TO THE CITY COUNCIL

Agenda Item No.	1Q
Council Meeting	7/16/09
APPROVED BY	
Department Director	
City Manager	

DATE: June 25, 2009

FROM: COUNCIL PRESIDENT CYNTHIA STERLING

SUBJECT: CONSIDER ORDINANCE AMENDING CODE SECTIONS 3-411, AND 3-553 TO THE FRESNO MUNICIPAL CODE, RELATING TO THE CALCULATION OF COST OF LIVING ADJUSTMENTS UNDER THE CITY'S RETIREMENT SYSTEMS

BACKGROUND

I was recently contacted by several retirees of the City of Fresno and advised that due to the current volatility in the financial markets, it has resulted in unprecedented economic dislocations that will result in a negative .5 percent decrease in retirement allowances for retirees of the Employees Retirement System effective July 1, 2009 for fiscal year 2010.

Because retirees and beneficiaries of the City's Retirement Systems tend to live on fixed incomes and many are not eligible to receive Social Security benefits or have had them offset, retirees often do not possess surplus purchasing power and may suffer some measure of hardship if their retirement allowances are reduced.

Our retirees would like to approach the City Council and request assistance in mitigating the impact of retirement cost of living decreases by the addition of the banking of negative COLAs. This is a concept under which a negative COLA would not be used to reduce retirement allowances, but would instead be banked and used to offset a positive COLA adjustment in the following year, thereby limiting or smoothing the volatility in COLA adjustments.

Since the implementation of a negative COLA bank concept would benefit retirees and beneficiaries with only a negligible interest cost to the City's Retirement Systems, with that cost consisting of the amount of interest foregone on system assets due to not decreasing retirement allowances, it appears practical to consider such a request.
Historically, the Retirement Boards indicated that our Retirement Systems have never had a negative COLA occur, so logically the situation is rare and would seldom reoccur.

The attached proposed ordinances were drafted by the legal counsel for the City's Retirement Systems and have been reviewed as to form by the City Attorney's Office. The Retirement Boards have stated in the attached Resolutions that there would only be negligible interest costs associated with the implementation of a negative COLA bank and it would help avoid any measure of hardship on retirees. The interest costs were estimated at $2,700 to $3,700 to bank the .5 percent negative cost of living adjustment over a two year period.

Presented to City Council
Date 6/25/09
Disposition Bill Nos B-24, & B-25 introduced as amended, & lost 2/3

The City's Retirement Boards, after performing due diligence on the issue are recommending by Resolutions that the City consider the proposed amendments to the Fresno Municipal Code creating a process for the banking of negative cost of living adjustments.

ISSUE

Should the Council consider the request of City of Fresno retirees and introduce at this meeting two ordinances that would amend the Fresno Municipal Code and allow for the banking of negative cost of living adjustments in the Retirement Systems?

RECOMMENDATION

It is my opinion that amending the provisions of the highest funded public Retirement Systems in the State of California would keep our retirees from being impacted by a negative cost of living adjustment and any negative cost of living adjustments would simply be a reduction of a positive cost of living adjustment in the following year with a negligible interest cost.

It is my recommendation that the City Council introduce at this meeting and approve at a following meeting the attached Ordinances which would modify the COLA provisions contained in the Fresno Municipal Code effective July 1, 2009 and allow for the banking of negative cost of living adjustments in the City Retirement Systems. The City Attorney's Office has reviewed and approved the attached ordinances as to form.

FISCAL IMPACT

Given the negligible interest costs associated with the implementation of a negative COLA bank, there would only be an insignificant cost associated with modifications to the Code which would be absorbed by the Retirement Systems.

ATTACHMENTS:

1. Ordinances
2. June 10, 2009, Staff Reports to the Retirement Boards
3. Certified Resolutions of the Retirement Boards

Agenda Item No.	E-1
Board Meeting	6/10/2009
Reviewed by	
Retirement Administrator	

REPORT TO THE EMPLOYEES RETIREMENT BOARD

June 4, 2009

FROM: ADMINISTRATIVE COMMITTEE

BY: STANLEY L. MCDIVITT, Retirement Administrator

RUSSELL RICHEDA, Saltzman & Johnson

SUBJECT: CONSIDER AND ADOPT A RESOLUTION IN SUPPORT OF THE BANKING OF NEGATIVE COST OF LIVING ADJUSTMENTS AS REQUESTED BY SYSTEM RETIREES

BACKGROUND:

At the May Administrative Committee meeting, at the request of several retirees, the Committee directed staff and legal counsel to prepare two Board Resolutions and Ordinances which would amend the FMC sections on Cost of Living Adjustments for both Systems to allow for the banking of any negative cost of living adjustments.

At the meeting, retirees stated that it was their intent to take this issue directly to the City Council and request that the Council consider these amendments to the Code.

ISSUE:

Should the Employees Retirement Board approve the attached resolution in support of the retirees' desire to have the City Council amend the Code to allow for the banking of any negative cost of living adjustments?

RECOMMENDATION:

It is the Administrative Committee's recommendation that the Board adopt the attached Resolution in support of the request from retirees and direct staff to provide certified copies of the Resolution and draft ordinance to the retirees.

COMMITTEE ACTION ☐ APPROVED ☐ LAID OVER ☐ REC REVIEW

RESOLUTION NO. ERS 2009-06

RESOLUTION OF THE RETIREMENT BOARD OF THE CITY OF FRESNO EMPLOYEES RETIREMENT SYSTEM IN SUPPORT OF MODIFICATIONS TO THE COLA PROVISIONS APPLICABLE TO THE EMPLOYEES RETIREMENT SYSTEM

RESOLVED, by the Retirement Board of the City of Fresno Employees Retirement System, that:

WHEREAS, the City of Fresno Employees Retirement Board is mandated to administer the provisions of the Municipal Code pertaining to the Employees Retirement System;

WHEREAS, the Employees Retirement Board through its administration of the retirement system has developed experience and expertise with the cost of living adjustments ("COLA") provisions applicable to the system;

WHEREAS, section 3-553 of the Municipal Code sets forth the COLA provisions applicable to the Retirement System;

WHEREAS, section 3-553 provides for a COLA bank to be used to accumulate COLA increases in excess of 5%;

WHEREAS, section 3-553 provides that decreases in retirement allowances are to occur when there has been a decrease in the cost of living as measured by the COLA index set forth in the section;

WHEREAS, the current volatility in the financial markets has resulted in unprecedented economic dislocations;

WHEREAS, these economic dislocations have resulted in a decrease in the cost of living as measured by the COLA index that will result in a decrease in retirement allowances, effective July 1, 2009 for fiscal year 2010;

WHEREAS, retirees and beneficiaries of the system live on fixed incomes and often do not possess surplus purchasing power;

WHEREAS, many retirees and beneficiaries may suffer some measure of hardship if their retirement allowances are reduced;

WHEREAS, retirees have approached the Retirement Board to request guidance on how to mitigate the impact of retirement decreases;

WHEREAS, the banking of negative COLAs is a concept under which a negative COLA would not be used to reduce retirement allowances, but would instead be banked and used to offset a positive COLA adjustment in future years, thereby limiting the volatility in COLA adjustments;

WHEREAS, the implementation of a negative COLA bank could benefit retirees and beneficiaries;

WHEREAS, the implementation would result in only a negligible cost to the System, with that cost consisting of the amount of interest foregone on system assets due to not decreasing retirement allowances;

WHEREAS, historically negative COLAs have never occurred to our knowledge;

WHEREAS, it appears that the implementation of a negative COLA bank would be in the best interests of retirees and beneficiaries;

WHEREAS, the attached proposed ordinance would implement the concept of a negative COLA bank;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FRESNO EMPLOYEES RETIREMENT BOARD THAT:

Given the negligible interest costs associated with the implementation of a negative COLA bank and to avoid any measure of hardship on retirees, the Employees Retirement Board has expressed support for retirees and beneficiaries in their request of the City Council to consider a modification to the COLA provisions contained in the Fresno Municipal Code to allow for banking of negative cost of living adjustments in the Employees Retirement System.

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CERTIFICATION OF SECRETARY

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, Stanley L. McDivitt, Secretary to the Retirement Board of the Fresno City Employees Retirement System, certify that the foregoing resolution was adopted by said Board, at a regular meeting held on the 10th day of June, 2009.

By: Pattie Layne
Deputy

Agenda Item No.	E-1
Board Meeting	6/10/2009
Reviewed by	
Retirement Administrator	

REPORT TO THE FIRE AND POLICE RETIREMENT BOARD

June 4, 2009

FROM: ADMINISTRATIVE COMMITTEE

BY: STANLEY L. MCDIVITT, Retirement Administrator

RUSSELL RICHEDA, Saltzman & Johnson

SUBJECT: CONSIDER AND ADOPT A RESOLUTION IN SUPPORT OF THE BANKING OF NEGATIVE COST OF LIVING ADJUSTMENTS AS REQUESTED BY SYSTEM RETIREES

BACKGROUND:

At the May Administrative Committee meeting, at the request of several retirees, the Committee directed staff and legal counsel to prepare two Board Resolutions and Ordinances which would amend the FMC sections on Cost of Living Adjustments for both Systems to allow for the banking of any negative cost of living adjustments.

At the meeting, retirees stated that it was their intent to take this issue directly to the City Council and request that the Council consider these amendments to the Code.

ISSUE:

Should the Fire and Police Retirement Board approve the attached resolution in support of the retirees' desire to have the City Council amend the Code to allow for the banking of any negative cost of living adjustments?

RECOMMENDATION:

It is the Administrative Committee's recommendation that the Board adopt the attached Resolution in support of the request from retirees and direct staff to provide certified copies of the Resolution and draft ordinance to the retirees.

COMMITTEE ACTION ☐ APPROVED ☐ LAID OVER ☐ REC REVIEW

RESOLUTION NO. FP 2009-06

RESOLUTION OF THE RETIREMENT BOARD OF THE CITY OF FRESNO FIRE AND POLICE RETIREMENT SYSTEM IN SUPPORT OF MODIFICATIONS TO THE COLA PROVISIONS APPLICABLE TO THE SECOND TIER OF THE FIRE AND POLICE RETIREMENT SYSTEM

RESOLVED, by the Retirement Board of the City of Fresno Fire and Police Retirement System; that

WHEREAS, the City of Fresno Fire and Police Retirement Board are mandated to administer the provisions of the Municipal Code pertaining to the Second Tier of the Fire and Police Retirement System;

WHEREAS, the Fire and Police Retirement Board through its administration of the retirement system has developed experience and expertise with the cost of living adjustments ("COLA") provisions applicable to the system;

WHEREAS, section 3-411 of the Municipal Code sets forth the COLA provisions applicable to the Second Tier of the Fire and Police Retirement System;

WHEREAS, section 3-411 provides for a COLA bank to be used to accumulate COLA increases in excess of 3%;

WHEREAS, section 3-411 provides that decreases in retirement allowances are to occur when there has been a decrease in the cost of living as measured by the COLA index set forth in the section;

WHEREAS, the current volatility in the financial markets has resulted in unprecedented economic dislocations;

WHEREAS, these economic dislocations could result in a future decrease in the cost of living as measured by the COLA index;

WHEREAS, retirees and beneficiaries of the system subsist on fixed incomes and often do not possess surplus purchasing power;

WHEREAS, many retirees and beneficiaries could suffer some measure of hardship if their retirement allowances were to be reduced;

WHEREAS, retirees have approached the Retirement Board to request guidance on how to mitigate the impact of retirement decreases;

WHEREAS, the banking of negative COLAs is a concept under which a negative COLA would not be used to reduce retirement allowances, but would instead be banked and used to offset a positive COLA adjustment in future years, thereby limiting the volatility in COLA adjustments;

WHEREAS, the implementation of a negative COLA bank could benefit retirees and beneficiaries;

WHEREAS, the implementation would result in only a negligible cost to the System, with that cost consisting of the amount of interest foregone on system assets due to not decreasing retirement allowances;

WHEREAS, historically negative COLAs have never occurred to our knowledge;

WHEREAS, it appears that the implementation of a negative COLA bank would be in the best interests of retirees and beneficiaries;

WHEREAS, the attached proposed ordinance would implement the concept of a negative COLA bank;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FRESNO FIRE AND POLICE RETIREMENT BOARD THAT:

Given the negligible interest costs associated with the implementation of a negative COLA bank and to avoid any measure of hardship on retirees, the Fire and Police Retirement Board has expressed support for retirees and beneficiaries in their request of the City Council to consider a modification to the COLA provisions contained in the Fresno Municipal Code to allow for banking of negative cost of living adjustments in the Fire and Police Retirement System.

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CERTIFICATION OF SECRETARY

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, Stanley L. McDivitt, Secretary to the Retirement Board of the Fresno City Fire and Police Retirement System, certify that the foregoing resolution was adopted by said Board, at a regular meeting held on the 10th day of June, 2009.

By: Patrice Lyzal
Deputy

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO PROPOSED AND INITIATED BY _____ MOVED BY _____, SECONDED BY _____

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTION 3-411 OF THE FRESNO MUNICIPAL CODE, RELATING TO THE CALCULATION OF THE COST OF LIVING ADJUSTMENTS UNDER THE SECOND TIER OF THE FIRE AND POLICE RETIREMENT SYSTEM

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 3-411 of the Fresno Municipal Code is amended to read:

SECTION 3-411. ALLOWANCE AT SERVICE RETIREMENT.

A member, upon retirement for service as provided in Section 3-410, shall receive a retirement allowance which shall be a pension derived from the contributions of the City sufficient when added to the service annuity that is derived from the accumulated contributions of the member at the date of his/her retirement to equal the percentage of his/her Average Compensation set forth opposite his/her age in the following table multiplied by the number of his/her years of service at the time of his/her retirement.

If retirement occurs at age:	The percentage for each year of credited service is:
50	2.000
50 1/4	2.035

50 1/2	2.070
50 3/4	2.105
51	2.140
51 1/4	2.175
51 1/2	2.210
51 3/4	2.245
52	2.280
52 1/4	2.315
52 1/2	2.350
52 3/4	2.385
53	2.420
53 1/4	2.455
53 1/2	2.490
53 3/4	2.525
54	2.560
54 1/4	2.595
54 1/2	2.630
54 3/4	2.665
55 and over	2.700

In no event shall the retirement allowance exceed an amount equal to 75% of such member's Average Compensation.

On or before April 1 of each year the Retirement System shall determine the percentage of annual increase or decrease in the cost of living by reference to the Consumer Price Index (United States City Average for urban wage earners and clerical workers--all items), as published by the Bureau of Labor Statistics of the

United States Department of Labor, for each of the two immediately preceding calendar years. The percentage by which such index for the more recent full calendar year shall have increased ~~or decreased~~ over or below such index for the full calendar year immediately prior shall be the percentage of the annual increase ~~or decrease~~ in the cost of living effective January 1 of each year from January 1 of the preceding year. [The percentage by which such index for the more recent full calendar year shall have decreased below such index for the full calendar year immediately prior shall not be used to decrease retirement allowances but shall be carried over and used to decrease cost of living increases as accumulated or as occurring in succeeding years.]

Beginning as of January 1 of the year in which said Retirement Board shall so determine the percentage of increase ~~or decrease~~ in the cost of living, the amounts of certain members' retirement allowances as identified here shall be increased ~~or decreased~~ by reason of such determined percentage of increase ~~or decrease~~ in the cost of living but not to exceed 3% in any given year. Such determined percentage of increase ~~or decrease~~ in the cost of living shall be applied to the amounts of such allowances payable for the preceding month of December, including any previous percentage of increase ~~or decrease~~ in the cost of living. In no event, however, will the amount of allowance of any member be so increased ~~or decreased~~ for cost of living until the January 1 of the second calendar year following such member's service retirement.

The amount of any retirement allowance referred to in this section shall never be reduced, by reason of the cost of living adjustment, to an amount less than the amount the member was originally granted at his/her service retirement.

If the percentage of adjustment in the cost of living in any year were to exceed 3% for that year, the percentage of increase ~~or decrease~~ in the cost of living exceeding 3% shall be carried over and added to or subtracted from the percentage of increase ~~or decrease~~ in the cost of living in ~~the~~ succeeding years, and such procedure shall be followed from year to year.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage and shall apply retroactively to July 1, 2009. This ordinance shall expire on June 30, 2010.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2009.

AYES:

NOES:

ABSTAIN:

Mayor Approval:_____, 2009

Mayor Approval/No Return:_____, 2009

Mayor Veto:_____, 2009

Council Override Vote:_____, 2009

REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:

_____
JAMES SANCHEZ
City Attorney

JCS:skl [49699skl-jcs Ord Amd 3-411] 06/25/09

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO PROPOSED AND INITIATED BY _____ MOVED BY _____, SECONDED BY _____

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTION 3-553 OF THE FRESNO MUNICIPAL CODE, RELATING TO THE CALCULATION OF COST OF LIVING ADJUSTMENTS UNDER THE EMPLOYEES RETIREMENT SYSTEM

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 3-553 of the Fresno Municipal Code is amended to read:

SECTION 3-553. COST OF LIVING ADJUSTMENT.

(a) Notwithstanding any other provision of this article, and subject to the provisions of this section, as of July 1 of each year, commencing with the year 1978, every monthly allowance payable to or on account of any person who has retired or died or who shall retire or die as a member of the Retirement System and whose retirement or death occurred on or before June 30, of the preceding fiscal year, shall be increased ~~or decreased~~ by a percentage of the total allowance then being received which shall approximate, to the nearest one-tenth of one percent, the percentage of annual increase ~~or decrease~~ in the cost of living

during the preceding calendar year, as determined by the Retirement Board in the manner provided in this section; provided, that such increase ~~or decrease~~ shall not exceed five percent of any allowance in any year, regardless of the percentage of change in such cost of living.

(b) Determination of the percentage of annual increase or decrease in the cost of living shall be made by the Retirement Board on or before April 1 of each year by reference to the Consumer Price Index (United States City average for urban wage earners and clerical workers--all items), as published by the Bureau of Labor Statistics of the United States Department of Labor, for each of the two immediately preceding calendar years. The percentage by which such index for the more recent full calendar year shall have increased ~~or decreased~~ over ~~or below~~ such index for the full calendar year immediately prior thereto shall be the percentage used to calculate adjustments in retirement allowances pursuant to subsection (a) of this section. [The percentage by which such index for the more recent full calendar year shall have decreased below such index for the full calendar year immediately prior thereto shall not be used to decrease retirement allowances but shall be carried over and used to

decrease cost of living increases as accumulated or as occurring in succeeding years.]

(c) The amount of any cost of living increase ~~or decrease~~ in any year which is in excess of the maximum annual allowable adjustment of five percent provided in subsection (a) of this section shall be accumulated from year to year and included in the computation of increases ~~or decreases~~ in succeeding years. The provisions of this subsection shall be applied to the allowances of individual beneficiaries by classes based upon the fiscal year in which the member retired or died, so that each allowance shall have applied to it only such increase ~~or decrease~~ as shall have accumulated during or after the fiscal year in which the member retired or died.

(d) No allowance shall be reduced by operation of this section below the amount payable on the effective date of entitlement thereto or July 1, 1966.

(e) Such increases in allowances as shall be payable pursuant to this section shall be funded insofar as possible from moneys in the contingency reserve of the Retirement Fund which are in excess of one per cent of the total assets of the Retirement System on July 1, 1966, and by such moneys from such

contingency reserve as shall be determined by the Retirement Board as of June 30 of each year thereafter. Any additional moneys required for such increases shall be provided by additional contributions to the Retirement Fund, at rates fixed by the Retirement Board as it shall determine to be necessary, to be shared equally between the City and the contributing members, and to be designated "cost of living contributions." The individual members' contributions shall be graded in proportion to the member's normal contributions.

(f) Cost of living contributions of members shall be credited with regular interest and the accumulation of such contributions and interest shall be deemed a part of their accumulated contributions for the purposes of refund and of re-entry into the Retirement System under Section 3-534 and for the purpose of computing the death benefit under Section 3-537. Cost of living contributions of members shall not be refunded after retirement, whether or not any cost of living increases are paid hereunder.

(g) The rates of cost of living contributions of members shall not be combined with the normal rates of contribution, but shall be separately stated. A separate accounting shall be

maintained of the accumulations of such contributions and the interest thereon, and such accumulations shall not be included in the accumulated contributions of the member in the computation of any retirement allowance.

(h) There shall be paid to the Retirement Fund, during each fiscal year, cost of living contributions of the City in a total amount equal to the total of the cost of living contributions of members contributed to the Retirement Fund during that fiscal year. The Controller shall transfer to the Retirement Fund, during each fiscal year, from the budget appropriation therefor, the amount of the City's annual cost of living contribution for that year; provided, however, that any portion of such annual contribution which is payable on account of any member while employed in the operation of any municipally-owned public utility shall be paid from the funds of such public utility.

(i) The payments of the City provided for in this section are hereby made obligations of the City, the funds necessary therefor to be appropriated and provided in the manner specified in Section 3-533 for appropriating and providing other City contributions to the Retirement Fund.

(j) The definition of the term "contributions,"

contained in Section 3-501(8)(iv) shall not apply to this section.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage and shall apply retroactively to July 1, 2009. This ordinance shall expire on June 30, 2010.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2009.

AYES:

NOES:

ABSTAIN:

Mayor Approval:_____, 2009

Mayor Approval/No Return:_____, 2009

Mayor Veto:_____, 2009

Council Override Vote:_____, 2009

REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:

_____
JAMES SANCHEZ
City Attorney

JCS:skl[49698skl-jcs Ord. Amd. 3-553] 06/25/09