

City of Alameda – City Attorney's Office



Date: April 29, 2015

To: Honorable Mayor and Members of the City Council

From: Janet C. Kern, City Attorney

Re: Other Post Employment Benefits (OPEB) Legal Statement,
April 29, 2015 City Council agenda items 3-A,B,C and D

In December 2013 – almost a year and a half ago – the City Attorney's Office obtained legal advice from an independent, outside legal advisor, the pre-eminent California law firm of Liebert Cassidy Whitmore. That law firm specializes in labor relations, public employee benefits law, and labor union pension advice including OPEB (Other Post Employment Benefits). Applicable law and its application to the City's myriad of public safety labor contracts, going back to the 1990's, was analyzed. That legal advice was shared with the City Manager's Office and utilized in negotiations with the public safety unions. The result is the four proposed MOUs (Memorandums of Understanding) which are before the City Council for consideration tonight (April 29, 2015).

At this City Council's request at its meeting on April 16, 2015, the City Attorney's Office obtained an update from Liebert Cassidy Whitmore of their December 2013 advice. That advice was shared with the City Council in Closed Session yesterday (April 28, 2015). Therefore, the City Council is fully apprised of the City's legal position and risks as it considers its vote today (April 29, 2015).

It is not prudent to share confidential legal advice with the public because the City is currently engaged, and will continue to be engaged in the future, in negotiations with its bargaining units. It would be a severe detriment to the City's ability to negotiate if the public and, therefore the bargaining units, had the benefit of the City's risk assessments and strategies.

Regarding the question as to whether establishing the proposed OPEB Trust (which is described in the proposed MOUs) creates additional obligations on behalf of the City and, at the same time, entitlements on behalf of the employees, the answer is "No." The MOUs clearly state the establishment of the OPEB Trust is solely to partially pre-fund the City's future OPEB liabilities which are created elsewhere in the MOUs.