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**How the Rating Agencies View OPEB  
An Issuer's Perspective**

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## OPEBs Just Another Disclosure Issue?

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- Issue of OPEB liability should be viewed in context of disclosing any other financial or legal issue in your organization to the market
- Yes, for most agencies it is a **REALLY BIG** number
- Accounting for Liability  $\neq$  Funding Liability
  - Not required by GASB to set aside funds to pay future retiree medical cost liability
  - Acknowledge could be potential negative consequences if not funded in advance

## **How to Think about OPEB Disclosure Making Good Disclosure**

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- **Primary Disclosure**
  - Development of the Official Statement
  - Providing Financing Team with documents and tools to prepare primary disclosure
  
- **Secondary Market Disclosure**
  - Annual Report pursuant to requirements of Continuing Disclosure Agreement/Certificate
  - Comprehensive Annual Financial Report
  - Material Event Notices

## Primary Disclosure -- Official Statement

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- SEC has made it very clear – ***issuer is primarily liable for contents of its official statement***
  - *“In authorizing the issuance of securities and related disclosure documents, a public official may not authorize disclosure that the official knows to be false; nor may a public official authorize disclosure while recklessly disregarding facts that indicate there is a risk that the disclosure may be misleading”*
  
- Disclose ***all*** material facts
  - Rule 10b-5 Anti-fraud provisions
  - ***Do not omit*** or ***misstate*** any material fact
  
- What is material?
  - Important fact to investor in making a decision to purchase the bonds

## **Secondary Market Disclosure – Key Points**

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- Preparation of Annual Report, Comprehensive Annual Financial Report, Material Event Notices
  
- Same standard of care as in preparation of primary market disclosure
  
- Considerations for Discussion
  - Who prepares and files – centralization generally better
  - Ensure consistency in information disseminated
  - Designate Key City contact for disclosure decisions
  - What makes an event material?
  - Who are the core members of your “disclosure team”?

## San Jose Experience – Disclosure is Evolving Process

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- Appendix A – General City Information prepared and updated by City staff
- Actively engage more members of City staff in primary disclosure process
- Hire separate Disclosure Counsel
  - Engage in attorney-client conversations
- Gather relevant documents and provide to all members of the financing team
- Think beyond the financing schedule



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*San Jose's experience in primary and secondary disclosure has been an evolving process ... things we do differently today*

- **Appendix A** – General City information (included in the presentation materials) is now prepared and updated by my staff
  - Ensures all disclosure documents have the same information and same format
  - Engage more members of City staff in the primary disclosure process – public works staff, budget staff, partner department (i.e. Airport)
  - work to ensure that **ALL parties understand their roles and responsibilities with respect to disclosure** (including those people that need to provide your office with the annual information)
- **Hire separate Disclosure Counsel**, generally another individual in the same firm as bond counsel
  - Assists City in preparing appropriate disclosure and in determining what is material to a potential investor
  - Experienced in disclosure with other issuers in California --- key; we can all learn from what our colleagues are doing or not
- **Engage in attorney-client conversations**
  - You need to know more, to know what to disclose
  - Use of disclosure counsel gives more opportunity to have these conversations
  - Not that we are trying to “hide” anything, we just need a place to have the dialogue/conversation
- **Gather relevant documents and provide to all members of the financing team**
  - Use of electronic distribution systems
  - Keep record of all documents provided to financing team
- **Think beyond the financing schedule**
  - What documents or information are scheduled to be released, for example Budget and Planning
  - Keep entire financing team apprised of the status of new or emerging information
  - We put dates of budget document releases and scheduled information on financing schedule including the end of the underwriting period

## **San Jose Experience – Evolving Pension Disclosure**

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- Growth in sheer volume of pension disclosure
  - September 2003 to August 2007
  - Increased from 2 pages to 14 pages
  - Includes education and definitions in disclosure
  - Inclusion of supplemental actuarial analysis and projections
  
- Extensive review by Retirement staff, City Attorney's Office and Disclosure Counsel



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## **San Jose Experience Evolving OPEB Disclosure**

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- OPEBs all part of the disclosure process
- Most recent Official Statement of the City (August 2007) acknowledged:
  - Unfunded liabilities exist
  - Actuary reports underway
  - City may elect to continue funding under current method
  - City not required to fund to ARC



## San Jose Pension Plans

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- Two retirement plans (sworn and non-sworn staff)
- City Charter and Municipal Code set forth the requirements with respect to pension plan and determination of actuarial soundness
- Boards historically adopted contribution rate set by actuary and City has always paid the annual required contributions (ARC)
  - Biennial contribution rates set to cover current plan benefits
  - If new benefits approved, all parties have required actuarial evaluation of cost impact of benefit changes

## San Jose Pension Funding

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- Two retirement plans (sworn and non-sworn staff) with defined benefits and retiree health care
- If new benefits are approved, all parties have required actuarial evaluation of cost impact of benefit changes
- Funding levels for both plans as of 06/30/07:
  - Police and Fire: 99.7%
  - Federated: 82.8%

## **San Jose OPEB Funding**

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- Both plans provide post employment healthcare and dental benefits
- City has accumulated assets in pension funds to address future OPEB liabilities
  - Health Benefits funded on rolling 10 or 15 year basis depending on Plan
  - San Jose's situation not as severe as other agencies with pay-as-you-go funding
- Actuarial valuations of retiree health benefits completed in February 2007

## San Jose Pension & OPEB Liabilities

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- Actuaries' Calculations for City's Unfunded OPEB liability range from \$1.2 to \$1.65 billion
  - Both Pension Plans
- Contributions for retiree medical benefits made by City and employee on 50%/50% split
- Recent legal opinion on San Jose's retiree health care benefit is a vested benefit

# San Jose Taking Proactive Approach



[www.sanjoseca.gov/retireehealthcare](http://www.sanjoseca.gov/retireehealthcare)

## San Jose Taking Proactive Approach

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- GASB 43/45 Discussion with Council Committees and Full Council
- Stakeholder meetings and outreach
- San Jose website addresses questions concerns and posts reports, studies and educational materials
  - [www.sanjoseca.gov/retireehealthcare/](http://www.sanjoseca.gov/retireehealthcare/)

## City Council Direction to Staff

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- Engage stakeholders in identifying strategies and alternatives in addressing its unfunded liability in retiree health care
- Continue to survey how other cities and counties are addressing their liability
- Engage experts, identified by City and stakeholders, to evaluate strategies and approaches identified by stakeholders or implemented in other organizations
- Study how advance full funding can be accomplished through a phased approach

## Recent Comments from Rating Agencies

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- City has General Obligation ratings from all three rating agencies Moody's/Standard & Poor's/Fitch
- Standard & Poor's Observations - Spring 2007
  - Acknowledgement of pension funding levels and estimated OPEB liability
  - *"city is currently discussing strategies for funding the unfunded OPEB liability"*
- Anticipate similar comments in Spring 2008 – City is working on formulating a plan

**Note: City's General Obligation Rating:  
Aa1/AA+/AA+; highest rated large city in CA**



## Disclosure Challenges – OPEB Just One Piece

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- How do we ensure the right people in the room?
- Are we disclosing enough or too much?
- How do we get other City staff engaged in the conversation?
- How do we avoid/minimize “*Disclosure Creep*”?



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### •*How do we ensure the right people in the room?*

- Involving appropriate and correct City staff
- Retirement, labor relations, budget

### •*Are we disclosing enough or too much?*

- For example, labor negotiations; how to disclose without laying bargaining strategy on the table for unions
- What is the next *Pension Fund* disclosure focus? ... how do we identify and disclose?

### •*How do we get other City staff engaged in the conversation?*

- Disclosure must be a conversation
- Working towards relationship building within the organization
- Sharing information

### •*How do we avoid/minimize “Disclosure Creep”?*

- Once it is in your document, it never comes out
- Every question asked does not need to be new page in your disclosure document

## Key Points in Good Disclosure Process – OPEB Just Part of the Picture

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- Disclosure is the CITY’S responsibility
- Cannot rely on consultants
- Disclosure is hard work and is NEVER done
- Critical to San Jose’s success or failure in marketplace
- Never exciting to anyone else in San Jose
- Must be tenacious and persistent
- Continually looking for ways to streamline process



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- *Continually looking for ways to streamline process*

• Reminded of recent birthday card I received from a colleague in the City who I work closely with in the disclosure process,

*When you’re in jail your **good** friends will come and bail you out. Your **best** friends will be I the cell next to you saying, “Damn, that was fun”!*

*Remember to Surround yourself with **best** friends in the disclosure process and have some fun too ...*

