FOR IMMEDIATE RELEASE
August 30, 2011

CONTACT: Debbie Diaz Williams (916) 319-2022

SACRAMENTO—San Jose Mayor Chuck Reed’s proposed declaration of a fiscal and public safety state of emergency is not permitted by California law according to a new opinion just issued by California’s Legislative Counsel announced Assemblymember Paul Fong (D-Cupertino). In addition, Legislative Council concludes that the Mayor’s proposed ballot measure to cut pension benefits violates the U.S. and California Constitutions.

“… the City of San Jose may not validly declare a local emergency under the California Emergency Services Act based upon a chronic budget deficit caused by rising employee retirement costs,” wrote Legislative Counsel. “Nor may the city amend its charter to validly limit the retirement benefits to which current city employees and retirees are contractually entitled.”

 Legislative Counsel’s conclusions are contained in a detailed legal analysis provided to Assemblymember Paul Fong. On receiving the analysis Assemblymember Fong said, “Mayor Reed’s plans appeared to be illegal on their face. Now we have authoritative analysis that demonstrates that fact conclusively.”

The city is currently negotiating pension changes with its unions after postponing the emergency declaration three times. Mayor Reed has said he intends to put pension changes on the ballot in the spring or fall of 2012.

Legislative Counsel cited California Supreme Court and federal court decisions holding that state and local governments may not use a budget deficit to justify impairing contractual rights of employees such as pension benefits. And he wrote that “the chronic budget deficit caused by retirement-related expenses described in [Mayor Reed’s] memorandum would not qualify as a disaster or a condition of extreme peril as required” under California law.

The San Jose City Council is scheduled to vote on the proposed declaration of a fiscal and public safety state of emergency in September.

Assemblymember Fong serves as Chair of the Elections and Redistricting Committee and is a member of the Higher Education, Utilities and Commerce, and Water, Parks, and Wildlife Committees. In addition, Assemblymember Fong serves as Chair of the Select Committees on High Technology and Climate Change and Coastal Protection and is a member of the Select Committees on Aerospace, Biotechnology, Community Colleges, Domestic Violence, and Innovation and the Bay Area Economy. He represents Cupertino, Mountain View, Sunnyvale, Santa Clara and San Jose.  ###