

PAUL E. COOPER
EXECUTIVE ASSISTANT CITY ATTORNEY

MARY T. NUESCA
ASSISTANT CITY ATTORNEY

ROXANNE STORY PARKS
DEPUTY CITY ATTORNEY

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

JAN I. GOLDSMITH

CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

November 20, 2015

REPORT TO CITY COUNCIL

SUMMARY OF AMENDMENTS TO CITY OF SAN DIEGO 2009 401(a) PLAN

INTRODUCTION

The City of San Diego sponsors four qualified¹ defined contribution retirement plans for the benefit of its officers and employees. In order to ensure the tax advantages enjoyed by these plans, the City must, before January 31, 2016, apply to the Internal Revenue Service (IRS) for updated determination letters for the City's 401(k) Plan, Supplemental Pension Savings Plan (SPSP), and Supplemental Pension Savings Plan – Hourly (SPSP-H) (collectively, Plans). In addition, the City must apply for a first determination letter for its 2009 401(a) Plan.²

This Office has been working on a comprehensive review of all four plans, and is working with outside tax counsel to prepare the applications for IRS determination letters on the updated plans. The 401(k) Plan was reviewed first, and on June 2, 2015, the City Council approved the Amended and Restated 401(k) Plan. The Council approved the Amended and Restated SPSP and SPSP-H Plans on November 17, 2015. The 2009 401(a) Plan (2009 Plan) is the last one to be reviewed, and the Amended and restated 2009 Plan is before the Council at this time.

The proposed amendments to the 2009 Plan are similar to those already made to the 401(k), SPSP, and SPSP-H Plans. The amendments fall into the following three categories:

1. Substantive and Discretionary Amendments: These amendments are advisable but not required to maintain the qualification of the Plans.
2. Legally-Mandated Amendments: These amendments must be made to comply with State or federal law, or to maintain the Plans' tax qualification.

¹ A "qualified" plan is an employer-sponsored plan that meets the requirements set forth in Internal Revenue Code section 401(a). There can be serious adverse tax consequences if a plan is not qualified.

² Qualified plans are not required to get an IRS determination letter to maintain their qualified status. But, a favorable determination letter does provide a definitive analysis of whether a plan is qualified based upon a review of the plan document. But, a determination letter will not protect a plan that is not administered according to its terms. Also, if the plan makes an error, a determination letter is a requirement for applying for certain types of relief, such as the Voluntary Correction Program.

3. Non-Substantive Amendments: These amendments are intended to make the Plans more readable and user friendly, but do not change the Plans in any substantive way.

Copies of the proposed Amended and Restated 2009 Plan, along with a strike-out version and description of the changes, were provided to the employee organizations that represent employees who participate in the Plans. None of the affected employee organizations voiced any objections to the amendments.

ANALYSIS

I. SUMMARIES OF THE PLANS

A. Supplemental Pension Savings Plan

The 2009 Plan is a qualified governmental defined contribution plan. The Plan was established effective July 1, 2009 for employees hired on or after that date who were general members of SDCERS. These employees are not eligible for the City's SPSP Plan. Non-safety employees hired on or after July 20, 2012 are not eligible to participate in the 2009 Plan because they are not eligible for SDCERS. Charter section 140.

Participation in the 2009 Plan is mandatory for eligible employees. Participants make mandatory contributions equal to 1% of compensation on a pre-tax basis, which are matched by

SUMMARY OF PROPOSED AMENDMENTS

A. Substantive, Discretionary Amendments

1. SDCERS as Investment Option (§ 5.02)

The Amended and Restated 2009 Plan will allow the plans' assets to be invested in a group trust. This will allow the City's Defined Contribution Board to offer participants the option of investing in the SDCERS Trust Fund as one investment option (subject to approval by the City Council and the SDCERS Board). This change has already been made to the SPSP, SPSP-H and 401(k) Plans.

2. Increased time for Beneficiaries to take Distributions (§ 7.03)

The Amended and Restated 2009 Plan will give participants' beneficiaries the maximum time allowed by federal tax law to take a distribution of a participant's account after the participant's death. Specifically, the amount of time a non-spouse beneficiary has to take a full distribution of the deceased participant's account will increase from one year to five years. This change has already been made to the SPSP, SPSP-H and 401(k) Plans.

3. Changes to Domestic Relations Order Provisions (§ 12.03)

The Plan is being amended to follow federal law on qualified domestic relations orders. This change has already been made to the SPSP, SPSP-H and 401(k) Plans.

B. Legally-Mandated Amendments**1. Allocation of Investment Earnings and Losses (§ 4.03), Investment of Funds (§ 5.01), and Valuation of Investments (§ 5.03)**

These amendments are required to be included in plans that allow participant-directed investments. Additional changes are needed because the Plans now have daily valuation of accounts.

2. Limitation on Annual Additions (§ 4.04)

This amendment adds required language regarding coordination with other City defined contribution plans when determining whether a participant has reached the aggregate limit on annual additions to all qualified DC plans maintained by an employer.

3. Direct Rollover to an Eligible Retirement Plan (§ 7.09)

This sections, related to rollover distributions from the Plans, must be amended to conform to a change in federal tax law, which no longer distinguishes between 401(k) and non-401(k) hardship withdrawals in defining an eligible rollover distribution. Also, language must be added to subsection (c) regarding non-spouse beneficiaries.

4. Powers and Duties of the Plan Administrator (§ 8.02)

These amendments conform the Plan to changes in California law, which now allows domestic relations orders for dissolution of registered domestic partnerships, and to conform to federal law, which now allows qualified domestic relations orders for child support awards.

C. Examples of Non-Substantive Changes**1. Definitions (Article I)**

A number of defined terms are being deleted from the Plan, either because the terms are not used elsewhere in the Plan or are not applicable to the Plan. In addition, it was necessary to add definitions, such as "Alternate Payee," a term of art in federal law related to qualified domestic relations orders.

2. Correction of Administrative Errors (§ 8.08)

This amendment removes the references to the Department of Labor, which has no jurisdiction over governmental retirement plans.

3. Other Non-Substantive Changes

The 2009 Plan is being amended to be easier to read and understand and to make the language of all City defined contribution plans consistent.

CONCLUSION

Most of the amendments contained in the proposed Amended and Restated 2009 Plan are intended to make the Plan more intelligible and user friendly for employees and City staff. All changes of substance are either legally required or intended to benefit the participants.

Once the Amended and Restated 2009 Plan has been approved by the City Council, it will be submitted to the IRS for a determination letter affirming its tax-qualified status.

JAN I. GOLDSMITH, City Attorney

By /s/Roxanne Story Parks
Roxanne Story Parks
Deputy City Attorney

RSP:ccm
RC-2015-8
Doc. No. 1173904