

ORDINANCE NUMBER O- **18226** (NEW SERIES)

ADOPTED ON OCT 30 1995

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 4, DIVISION 10, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 24.1010 RELATING TO COMPLIANCE WITH CERTAIN INTERNAL REVENUE CODE PROVISIONS.

WHEREAS, The City of San Diego ("City") maintains a number of tax qualified plans such as the San Diego City Employees' Retirement System ("SDCERS"), the Supplemental Pension Savings Plans ("SPSP") and 401(k); and

WHEREAS, Internal Revenue Code ("IRC") § 401(a)(17) provides an annual compensation limit for each employee under a qualified plan; and

WHEREAS, a qualified plan does not satisfy IRC § 401(a)(17) unless it provides that an employee's compensation in excess of the annual limit is not used in determining allocations or accruals for a plan year to which the annual limit applies; and

WHEREAS, IRC § 401(a)(17) also governs the amount of an employee's annual compensation that may be taken into account in applying certain specified nondiscrimination rules under the IRC; and

WHEREAS, The Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") amended IRC § 401(a)(17) to reduce the annual compensation limit from \$200,000 as indexed (\$235,840 in 1993) to \$150,000 in 1994, with limited future indexing; and

WHEREAS, prior to the effective date of the OBRA '93 changes, the annual compensation limit was increased annually based on the IRC § 415 cost of living adjustment; and

WHEREAS, after the effective date of OBRA '93, the annual compensation limit, as adjusted for changes in the cost of living, is rounded down to the next lowest multiple of \$10,000, thus increasing only when the cost of living adjustment would increase the limit by an increment of at least \$10,000; and

WHEREAS, according to OBRA '93, a qualified plan must expressly limit the amount of compensation that it takes into account for purposes of calculating allocations or accruals, even if there are no participants whose compensation presently exceeds the limits mandated by IRC § 401(a)(17); and

WHEREAS, public and private sector plans which do not contain the limitations mandated by IRC § 401(a)(17) are required to amend their plans accordingly; and

WHEREAS, OBRA '93 also permits public sector plans to grandfather the use of compensation limits specified in the plan as of July 1, 1993, for employees participating in the plan prior to January 1, 1996; and

WHEREAS, there is no annual compensation limit for SDCERS because it did not contain an annual compensation limit as of July 1, 1993; and

WHEREAS, in order to take advantage of the grandfather provision, SDCERS must be amended before the plan year beginning in 1996 to incorporate the revised limits mandated by IRC § 401(a)(17) as amended by OBRA '93; and

WHEREAS, the grandfather provision does not apply unless SDCERS is amended to add the new \$150,000 limit for employees who become members of the plans after 1995; and

WHEREAS, failure to adopt this amendment will result in all participants being subject to the new lower limits effective with plan years beginning in 1996; and

WHEREAS, the amendments for the 401(k) and SPSP plans are set forth in a separate resolution; and

WHEREAS, the proposed amendment for SDCERS is not subject to a vote of the active members pursuant to Charter section 143.1 because the required reduction in the annual compensation limit mandated by IRC § 401(a)(17) does not affect the benefits of any current employee under the Retirement system, but rather those future employees who become members of the Retirement System on or after January 1, 1996; and

WHEREAS, it is now necessary and appropriate to amend the Municipal Code to incorporate the annual compensation limit of IRC § 401(a)(17) as amended by OBRA '93, including the grandfather provision for current members; and

WHEREAS, the section of the Municipal Code reflecting the above recited change has been reviewed and approved by the Retirement Board; and

WHEREAS, the Board now recommends approval by the City Council of the amendment contained in this ordinance; NOW, THEREFORE,

BE IT ORDAINED , by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 4, Division 10, of the San Diego Municipal Code be and the same is hereby amended by amending section 24.1010, to read as follows:

Sec. 24.1010 Compliance with Certain Internal Revenue Code Provisions

(a) Internal Revenue Code Section 401(a) (17)

(1) In accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), except as provided herein, the annual compensation taken into account under the Retirement System for any purpose, including but not limited to contributions and/or benefits, shall not exceed \$150,000 or such larger amount as allowed by Internal Revenue Code section 401(a) (17).

(2) The \$150,000 limit referenced in paragraph (a) (1) above shall only apply for years beginning after December 31, 1995, and shall only apply to individuals who first become members of the Retirement system in plan years beginning on and after January 1, 1996.

(3) Individuals who become members of the Retirement system before plan years beginning on and after January 1, 1996, shall not be subject to the limits of Internal Revenue Code section 401(a) (17). Instead, pursuant to Section 13212(d) (3) (A) of OBRA '93, and the regulations issued thereunder, the annual compensation in effect under Internal Revenue Code section 401(a) (17) shall not apply to any such member in any year.

(b) Internal Revenue Code Section 415

(1) Notwithstanding any other provisions of Article IX of the San Diego City Charter or of this article, the benefits payable to any person who becomes a plan member on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code.

(2) The "grandfather" election in Section 415(b)(10) of the Internal Revenue Code is hereby made.

(3) The benefits payable to any person who became a plan member prior to January 1, 1990, shall be subject to the greater of the following:

(A) The limitations set forth in Section 415 of the Internal Revenue Code; or

(B) The accrued benefit of the member (determined without regard to any amendment made after October 14, 1987), as provided in Section 415(b)(10)(A) of the Internal Revenue Code.

(4) If compliance with the provisions of Internal Revenue Code section 415 and related sections would result in a lower level of retirement benefits for members on or after January 1, 1990 than for members prior to that date, then the Council shall provide, by ordinance, an alternative means of maintaining for such members the level of benefits in effect for members as December 31, 1989.

(5) If any of the limitations of Section 415 of the Internal Revenue Code should be repealed, the provisions of

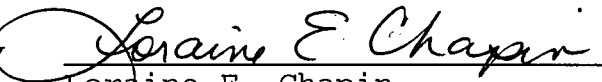
this section shall be deemed repealed to the same extent.

(6) All references to Section 415 of the Internal Revenue Code are to the language in that section in effect when this Municipal Code section is adopted including any amendments thereafter.

(7) Nothing contained in this section shall limit the City Council from modifying benefits to the extent such modifications are permissible by the City Charter and applicable state and federal law.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By 
Loraine E. Chapin
Deputy City Attorney

LEC:mrh
09/21/95
Or.Dept:Retire.
O-96-45
Form=o.code