

(O-2000-182)
(COR. COPY)

ORDINANCE NUMBER O- 18835 (NEW SERIES)

ADOPTED ON AUG 07 2000

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING DIVISION 1 BY AMENDING SECTION 24.0103; BY AMENDING DIVISION 4 BY AMENDING SECTIONS 24.0402 AND 24.0403; BY AMENDING DIVISION 13 BY AMENDING SECTION 24.1302; BY AMENDING DIVISION 14 BY AMENDING SECTION 24.1404; BY AMENDING DIVISION 15 BY AMENDING SECTIONS 24.1502 AND 24.1507; AND BY AMENDING DIVISION 17 BY AMENDING SECTION 24.1704, ALL RELATING TO THE CITY EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, the Board of Administration ("Retirement Board") for the San Diego City Employees' Retirement System ("SDCERS"), the Council for the City of San Diego ("City Council"), the City's four labor unions and the Superior Court have approved the settlement of a class action suit brought by William J. Corbett, Donald B. Allen, Leonard B. Morehead and Gordon L. Wilson regarding the calculation of retirement benefits ("Settlement"); and

WHEREAS, pursuant to the Settlement, Retired Members will receive a one time lump sum payment in November, 2000, which represents a seven percent (7%) retroactive increase to their Base Retirement Benefit for the period covering July 1, 1995 (or the effective date of retirement after July 1, 1995) through June 30, 2000; and

WHEREAS, the Base Retirement Benefit includes the annual two percent (2%) COLA but does not include the 13th check or the Supplemental COLA adjustment; and

WHEREAS, effective July 1, 2000, and each year thereafter, Retired Members will receive a seven percent (7%) increase to their Base Retirement Benefit so long as there are

sufficient Surplus Undistributed Earnings as described in SDMC Section 24.1502 to pay for the increase; and

WHEREAS, the right to receive the 7% increase accrues monthly but is paid annually in November at the time the 13th check is paid; and

WHEREAS, to the extent this increase is not paid in any year because there are insufficient Surplus Undistributed Earnings, the liability for this increase shall be carried forward as a contingent liability which will be paid in future years in which there are sufficient surplus Undistributed Earnings to pay for the increase; and

WHEREAS, liabilities carried forward shall be paid in the order in which they accrued; and

WHEREAS, effective July 1, 2000, active General and Safety Members, as the result of the Settlement, have the opportunity to choose at the time of retirement either the Retirement Calculation Factor in effect on July 1, 2000 with no change in Final Compensation or a ten percent (10%) increase in Final Compensation, with their Base Retirement Benefit calculated using the Retirement Calculation Factors in effect on June 30, 2000; and

WHEREAS, effective July 1, 2001, the employee contribution to SDCERS will increase in the following amounts: General Members + 0.49%, Safety Members + 0.53% and Lifeguards + 1.23%; and

WHEREAS, effective July 1, 2001, the employee contribution to SDCERS will increase by an additional 0.16% to pay for the cost of providing active General and Safety Members the choice of the Retirement Calculation Factors in effect July 1, 2000, with no changes in their Final Compensation OR the Retirement Calculation Factors in effect June 30, 2000, with a ten percent (10%) increase to Final Compensation; and

WHEREAS, the additional 0.16% increase to the employee contribution will be paid from the Employee Benefit Reserve described in SDMC 24.1507 until that Reserve is exhausted; and

WHEREAS, effective July 1, 2000, Legislative Members will receive a ten percent (10%) increase to Final Compensation with their Base Retirement Benefit calculated using the Retirement Calculation Factors in effect as of June 30, 2000; and

WHEREAS, effective July 1, 2001, the Legislative Member's employee contribution to SDCERS will increase by +0.49%; and

WHEREAS, effective July 1, 2000, 0.16% of the employee contribution for Legislative Members will be paid from the Employee Benefit Reserve described in SDMC 24.1507; and

WHEREAS, as part of the Settlement, current DROP participants will receive a one time lump sum payment in November, 2000, to their DROP account which represents a seven percent (7%) increase to their Base Retirement Benefit for the period covering their date of DROP enrollment through June 30, 2000; and

WHEREAS, the Base Retirement Benefit includes the annual 2% COLA but does not include the 13th check; and

WHEREAS, effective July 1, 2000, a current DROP participant's Base Retirement Benefit shall be increased by ten percent (10%);and

WHEREAS, as part of the Settlement, current active and General Members who participate in DROP on or after July 1, 2000 (future DROP participants), shall have the opportunity to irrevocably choose at the time of DROP participation either the Retirement Calculation Factors in effect on July 1, 2000 with no change in Final Compensation or a ten

percent (10%) increase in Final Compensation, with their Base Retirement Benefit calculated using the Retirement Calculation Factors in effect on June 30, 2000; and

WHEREAS, as part of the Settlement, currently vested deferred Members who left City employment prior to July 1, 2000, who were vested when they left City employment, who left their contributions on deposit, and who deferred their retirement until a date on or after July 1, 2000, will receive a seven percent (7%) increase to their Final Compensation; and

WHEREAS, the currently vested deferred Member's right to receive this 7% increase after they retire accrues monthly but is paid annually in November at the time the 13th check is paid; and

WHEREAS, the 7% increase is contingent upon the availability of Surplus Undistributed Earnings as described in SDMC Section 24.1502; and

WHEREAS, to the extent this increase is not paid in any year because there are insufficient Surplus Undistributed Earnings, the liability for this increase the liability for the increase shall be carried forward as a contingent liability which will be paid in future years in which there are sufficient surplus Undistributed Earnings to pay for the increase.; and

WHEREAS, as part of the Settlement, current active General and Safety Members who leave City employment on or after July 1, 2000, who are vested at the time they leave City employment, who leave their contributions on deposit, and who defer their retirement until a future date (future vested deferred Members) have the opportunity to choose at the time of retirement either the Retirement Calculation Factor in effect on July 1, 2000 with no change in Final Compensation or a ten percent (10%) increase in Final Compensation, with their Base Retirement Benefit calculated using the Retirement Calculation Factors in effect on June 30, 2000; and

WHEREAS, effective July 1, 2000, as part of the Settlement, the right to receive the seven percent (7%) increase to the Base Retirement Benefit for Retired Members of SDCERS accrues monthly but is paid annually after the Retirement Board determines there are sufficient Surplus Undistributed Earnings as described in SDMC Section 24.1502 to pay for the increase; and

WHEREAS, SDMC Section 24.1502 sets forth the order of payments which must be made to determine the existence as well as the amount of Surplus Undistributed Earnings for the Retirement System for any given year; and

WHEREAS, SDMC Section 24.1502 currently provides for the following order of payments: 1) An Interest credit (currently 8%) to the contribution accounts of Retirement System Members, the City and the Unified Port District; 2) Budgeted expenses and costs of operating the Retirement System; 3) Reserves recommended by the Board's Actuary; 4) Unified Port District's share of Retirement System earnings; 5) Health Insurance premiums for Post Retirement Health Benefits; 6) The Annual Supplemental Benefit (13th check); and 7) The Reserves for the Supplemental COLA and Employee Contributions; and

WHEREAS, the funds remaining after the payments have been made are the Surplus Undistributed Earnings for the fiscal year; and

WHEREAS, the proposed Settlement would insert the payment of the seven percent (7%) increase in the Base Retirement Benefit for Retired Members of SDCERS after the 13th Check and before the Reserves for the Supplemental COLA and Employee Contributions; and

WHEREAS, to the extent this increase is not paid in any year because there are insufficient Surplus Undistributed Earnings, the liability for this increase shall be carried forward

as a contingent liability which shall be paid in future years when there are sufficient Surplus Undistributed Earnings of SDCERS to pay for the increase; and

WHEREAS, as part of the settlement, an additional 0.16% shall be transferred from the Employer Reserve to the Reserve for employee contributions described in SDMC Section 24.1507, to pay for a portion of the SDCERS employee contribution until the Reserve is exhausted: and

WHEREAS, the settlement of the class action law suit requires changes to the San Diego Municipal Code as described in this Ordinance; and

WHEREAS, a vote of the City's active membership and retirees participating in SDCERS to approve the benefits resulting from this settlement is now required by Section 143.1 of the City Charter; and

WHEREAS, the election will take place from May 26 to June 9, 2000; and

WHEREAS, the General Counsel for the Retirement Board prepared the instant ordinance setting forth the changes to the SDMC required by the settlement of the lawsuit; and

WHEREAS, the Retirement Board reviewed the proposed benefit changes described in instant ordinance and recommends the adoption of the ordinance by the City Council; and

WHEREAS, the ordinance was submitted to the City Attorney for review and finalization of the necessary documents; NOW, THEREFORE,

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

Section 1. That Chapter II, Article 4, Division 1, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0103, to read as follows:

SEC. 24.0103 Definitions

Unless otherwise stated, for purposes of this Article:

[No change in text of other definitions].

“Base Compensation” means and includes the base salary or wages paid (standard hours multiplied by the hourly rate) on a regular bi-weekly basis to an employee for his or her services in any given pay period, including (by way of example) but not limited to such items of compensation as: time during which the employee is excused from work for holidays, annual leave taken, sick leave taken, compensatory time off taken, industrial leave taken, discretionary leave taken, and pay for out-of-class assignments. Base Compensation means salary before pre-tax deductions for such items as participation in a deferred compensation plan, SDCERS, or for authorized dependent health care premiums. A complete listing of included and excluded items of compensation or remuneration is memorialized in a document entitled “Earnings Codes Included in Retirement Base Compensation [the Earnings Codes Document], which is prepared annually and which shall be kept on file in the Office of the City Clerk, and also maintained by the City Manager, the City Auditor, the Retirement Administrator and the Personnel Director. The Earnings Codes Document shall be amended annually, as necessary to reflect any changes or additions made during the City’s budget adoption process.

For purposes of calculating retirement benefits, “Base Compensation” shall not include any item of compensation or remuneration which is identified in the Earnings Codes Document as excluded from Base Compensation, including (by way of example) but not limited to: the Flexible Benefits Plan dollar value available to an employee each fiscal year; the amount of an employee’s retirement

system contribution which the City pays on behalf of the employee [the Retirement Offset]; payments made for overtime work (whether at straight or premium pay, and whether paid directly or by conversion to compensatory time off); payments made by the City to the Supplemental Pension Savings Plan on behalf of an employee; payments made by the City to an employee in lieu of the employee's taking of accrued annual leave; payments made by the City to an employee as a Uniform Allowance or Uniform Reimbursement, or the monetary value of employer-provided uniforms; payments made by the City to an employee as a Tool Allowance; payments made by the City to an employee as an Automobile Allowance or for reimbursement of miles driven while using a personal vehicle for work-related duties; payments made by the City to an employee as a Moving Allowance; payments made by the City to an employee for exceptional performance or pursuant to a "pay for performance" plan, unless such payments are expressly designated in the annual Salary Ordinance for inclusion in **Base Compensation**; payments made to an employee pursuant to the City's Long Term Disability Plan or pursuant to the Worker's Compensation Statute; and cash conversions of accrued, unused annual leave or "old" sick leave, in connection with or in anticipation of separation from employment.

"Base Retirement Benefit" means the monthly retirement benefit for service or disability paid to a Member, or a like amount which is deposited monthly in the account of a DROP Participant, which includes: 1) the Unmodified Service Retirement allowance (which shall be modified if the member selects an

optional retirement as provided in Division 6); 2) the Cost of Living Annuity; 3) the annual Cost of Living Adjustment (COLA) described in Section 24.1505; and 4) the Surviving Spouse Annuity described in Section 24.0521 if selected by the Member. The Base Retirement Benefit does not include the Annual Supplemental Benefit (13th check) described in Section 24.1503 or the Supplemental COLA adjustment described in Section 24.1504.

“Creditable Service Pension” means the pension derived from the contributions of the City, that when added to the Member’s Service Retirement Annuity, is sufficient to equal the Unmodified Service Retirement Allowance.

“Final Compensation” for General Members and Legislative Officers means the Base Compensation based on the highest one year period during membership in the Retirement System for those Members and Officers who are on the active payroll of The City of San Diego on or after June 30, 1989, and who retire on or after July 1, 1989.

“Final Compensation” for Safety Members means the Base Compensation for the highest one year period during membership in the Retirement System, for those Safety Members who are on the active payroll of The City of San Diego on or after January 1, 1988, and who retire on or after July 1, 1988.

“Service Retirement Annuity” means the Annuity which is the Actuarial Equivalent of the Member’s Accumulated Normal Contributions at the time of the Member’s retirement.

“Surviving Spouse Annuity” means an amount to be added to the Member’s Base Retirement Benefit, calculated by computing the Actuarial Equivalent of the Accumulated Contributions in the Member’s Surviving Spouse Annuity account at the time of the Member’s retirement or participation in DROP, if the Member is not married at the effective date of retirement and elects to annuitize.

“Unmodified Service Retirement Allowance” means the monthly allowance paid to a Member based on a formula using the Member’s age at retirement, the Member’s Final Compensation, and the Retirement Calculation Factor selected by the Member for the calculation of the Member’s Base Retirement Benefit, in accordance with Sections 24.0402 and 24.0403.

Section 2. That Chapter II, Article 4, Division 4, of the San Diego Municipal Code be and the same is hereby amended by amending Sections 24.0402 AND 24.1404, to read as follows:

SEC. 24.0402 Retirement Allowance -- General Member

a. The Board shall provide that upon retirement for service, a General Member, is entitled to receive a retirement allowance which shall consist of both:

- (1) A Service Retirement Annuity.
- (2) A Creditable Service Pension.

b. The Service Retirement Annuity is an Annuity which is the Actuarial Equivalent of the Member’s Accumulated Normal Contributions at the time of said Member’s retirement.

c. The Creditable Service Pension is the pension derived from the contributions of the City, that is sufficient, when added to the Service Retirement Annuity, to equal the Unmodified Service Retirement Allowance.

d. The Unmodified Service Retirement Allowance is calculated by multiplying a General Member's years of Creditable Service by the retirement percentage set forth in Table 1 of Section 24.0402, by the General Member's Final Compensation. The factors set forth in Table 1 of Section 24.0402 shall be prorated to reflect quarterly increments in the General Member's attained age.

e. Effective July 1, 2000, a General Member may choose at the time of his or her retirement either: 1) the Retirement Calculation Factor in effect on July 1, 2000 with no change in the General Member's Final Compensation or 2) a ten percent (10%) increase in the General Member's Final Compensation, with the General Member's Unmodified Service Retirement Allowance calculated using the Retirement Calculation Factors in effect on June 30, 2000.

**Table 1 of Section 24.0402
RETIREMENT CALCULATION FACTOR
GENERAL MEMBER**

Retirement Age	Unmodified Factor* Effective 6/30/00	Unmodified Factor * Effective 7/01/00
55	2.00%	2.25%
56	2.00%	2.25%
57	2.00%	2.25%
58	2.00%	2.25%

59	2.08%	2.25%
60	2.16%	2.30%
61	2.24%	2.35%
62	2.31%	2.40%
63	2.39%	2.45%
64	2.47%	2.50%
65+	2.55%	2.55%

* **Unmodified Factor** utilized to calculate the maximum service retirement allowance. The Unmodified Service Retirement allowance is reduced if Member elects any optional retirement settlements pursuant to Division 6 of this Chapter.

SEC. §24.0403 Retirement Allowances - Safety Member

a. The Board shall provide that upon retirement from service a Safety Member is entitled to receive an Unmodified Service Retirement Allowance which shall consist of both:

- (1) A Service Retirement Annuity.
- (2) A Creditable Service Pension.

b. The Service Retirement Annuity is an Annuity which is the Actuarial Equivalent of the Safety Member's Accumulated Normal Contributions at the time of his or her retirement.

c. The Creditable Service Pension for Safety Members is a pension derived from the contributions of the City that is sufficient, when added to the Service Retirement Annuity, to equal the Unmodified Service Retirement Allowance.

d. Subject only to the retirement allowance cap described in Section 24.0403(e), the Unmodified Service Retirement Allowance is calculated by multiplying a Safety Member's years of Creditable Service by the retirement percentage set forth in Table 1 of Section

24.0403 by the Safety Member's Final Compensation. The factors set forth in Table 1 of Section 24.0403 shall be prorated to reflect quarterly increments in the Safety Member's attained age.

e. The unmodified service retirement allowance for a Safety Member shall not exceed 90% of Final Compensation except as provided in Sections 24.0403(f), and 24.0403(h).

f. If the Unmodified Service Retirement Allowance of a Safety Member exceeds 90% of Final Compensation using the Retirement Calculation Factors in effect on December 31, 1996, as shown in Table 1 of Section 24.0403, that Safety Member may elect to continue to accrue benefits under that Table and not be subject to the 90% retirement allowance cap set forth in Section 24.0403(e). A Safety Member making such election shall not be required to pay any additional contributions as recommended by the actuary related to the increase in benefits effective January 1, 1997.

g. If the Unmodified Service Retirement Allowance of a Safety Member exceeds 90% of Final Compensation using the Retirement Calculation Factors in effect on January 1, 1997, as shown in Table 1 of Section 24.0403 on a date after January 1, 1997, but before April 1, 1997, that Safety Member may elect to accrue benefits in excess of the 90% limitation stated in Section 24.0403(e), provided, however, that such accrual shall cease at the level attained on March 31, 1997.

h. Effective July 1, 2000, a Safety Member may choose at the time of his or her retirement either: 1) the Retirement Calculation Factor in effect on July 1, 2000 with no change in the Safety Member's Final Compensation or 2) a ten percent (10%) increase in the Safety Member's Final Compensation, with the Safety Member's Unmodified Service

Retirement Allowance calculated using the Retirement Calculation Factors in effect on June 30, 2000.

**Table 1 of Section 24.0403
RETIREMENT CALCULATION FACTOR
LIFEGUARD, FIRE AND POLICE**

Retirement Age	Unmodified Factor* Effective 1/01/97 - 6/30/00		Unmodified Factor* Effective 7/01/00
	Lifeguard	Police and Fire	
50	2.20%	2.50%	3.00%
51	2.32%	2.60%	3.00%
52	2.44%	2.70%	3.00%
53	2.57%	2.80%	3.00%
54	2.72%	2.90%	3.00%
55	2.77%	2.9999%	3.00%

* Unmodified Factor utilized to calculate the maximum service retirement allowance. The Unmodified Service Retirement Allowance is actuarially reduced if Member elects any optional retirement settlements pursuant to Division 6 of this Chapter.

Section 3. That Chapter II, Article 4, Division 13, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.1302 to read as follows:

§24.1302 Purchase of Probationary Period

Any Member who does not have service credit for any period of eligible City service during his or her probationary period of employment with the City shall have the right to elect to receive credit for such service providing that, prior to retirement, the Member pays a lump sum into the Retirement System in an amount calculated by multiplying the average rate of contribution of General or Safety Members as determined by the Board times the Base

Compensation received by the employee during that portion of the probationary period concerned, rounding the monthly salary off to the nearest \$100, plus an average interest of four and one-half percent (4-1/2%) per year from the date of entrances into the Retirement System until the date of purchase.

Section 4. That Chapter II, Article 4, Division 13, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.1404 to read as follows:

§24.1404 DROP Benefits and Participation Accounts

a. and b. [No change in text.]

c. A Member's DROP Participation Account shall be credited with:

(1) an amount, credited monthly, which is calculated in the same manner as an Unmodified Service Retirement Allowance using the factors for age, service, and Final Compensation in effect on the effective date of DROP participation. This amount shall be increased annually pursuant to the COLA provisions described in Section 24.0531.

(2) [No change in text.]

(3) an amount, credited bi-weekly at the end of each pay period, equal to 3.05% of the Member's Base Compensation .

(4) an amount, deducted from the Member's salary and credited bi-weekly at the end of each pay period, equal to 3.05% of the Member's Base Compensation. This amount shall be picked up and paid by the City for the sole purpose of obtaining tax deferral and in accordance with the requirements of Internal Revenue Code Section 414(h)(2).

(5) [No change in text.]

Section 5. That Chapter II, Article 4, Division 15, of the San Diego Municipal Code be and the same is hereby amended by amending Sections 24.1502 and 24.1507 as follows:

§24.1502 Surplus Undistributed Earnings

a. Surplus Undistributed Earnings shall be comprised of Investment Earnings Received for the previous fiscal year, less:

(1) through (6) [No change in text.]

(7) An amount sufficient to increase the Base Retirement Benefit by seven percent (7%) for all City Retired Members of the Retirement System who are covered by the Corbett Settlement.

(A) The right to receive this increase each year shall accrue monthly. The increase, however, shall be paid annually at the time the Annual Supplemental Benefit (13th check) is normally distributed.

(B) To the extent this increase is not paid in any year because there are insufficient Surplus Undistributed Earnings, the liability for this increase shall be carried forward as a contingent liability which will be paid in future years in which there are sufficient surplus Undistributed Earnings to pay for the increase.

(C) Liabilities carried forward shall be paid in the order in which they accrued.

(8) [No change in text.]

b. [No change in text.]

§24.1507 Adjustments to Employee Contributions

(a) A reserve created by the Board pursuant to Section 24.1502(a)(3) shall be used to pay a portion of employee contributions as follows:

(1) through (4) [No change in text.]

(5) Based upon certification of anticipated payroll, the Auditor shall transfer each July 1 an amount equal to 0.65% of that payroll from the Reserve to the Reserve for Employer Contributions.

(6) [No change in text.]

(b) Transactions described in this section shall take place so long as there are sufficient funds remaining in the reserve.

Section 6. That Chapter II, Article 4, Division 17, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.1704 to read as follows:

§24.1704 Contribution Rate


The City Auditor and Comptroller shall withhold from the wages or salary of a Legislative Officer who becomes a Member of this System 8% of his or her Base Compensation for deposit in the Retirement Fund and placed to the credit of the individual Member's account. The contribution rate shall also be 8% of Base Compensation for the period of time for which a Member is electing to receive prior service credits. Notwithstanding the above, all participating Legislative Members shall contribute an additional four-tenths (4/10) of one percent (1%) in connection with the high one-year basis for Final Compensation, said additional contribution to commence from and after December 30, 1988.

Section 7. This Ordinance clarifies and confirms existing policy and practice in determining the rights and obligations of the City and its employees with respect to certain retirement benefits, and nothing in this Ordinance is intended to, nor shall it, change in any way the vested or non-vested nature of any benefit given by the City to its employees.

Section 8. A full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 9. Any aspect of this ordinance affecting retirement benefits shall take effect only upon approval by the respective classes of membership as required pursuant to Charter Section 143.1, and no earlier than the thirtieth day from and after its passage by the City Council.

APPROVED: CASEY GWINN, City Attorney

By 
Theresa C. McAteer
Deputy City Attorney

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