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(O-2003-76)

ORDINANCE NUMBER O- 19140 (NEW SERIES)

ADOPTED ON JAN 07 2003

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 9 BY ADDING SECTION 24.0912; AND BY ADDING DIVISION 18, ENTITLED "CONTRACTING PUBLIC AGENCIES," AND BY ADDING SECTIONS 24.1801, 24.1802, 24.1803, 24.1804, 24.1805, 24.1806, 24.1807, 24.1808 AND 24.1809, ALL PERTAINING TO THE RETIREMENT SYSTEM.

WHEREAS, the Board of Administration ("Retirement Board" and "Board") for the San Diego City Employees' Retirement System ("System") has the sole authority to manage the System, determine the rights to benefits under the System and invest the System's Trust Fund; and

WHEREAS, on March 5, 2002, the voters of the City of San Diego approved Proposition D, amending the City Charter, Article IX, to add section 149, which allows public agencies to participate in the System's Trust Fund by contract with the Retirement Board, after a finding of eligibility and approval of the contract by the City Council; and

WHEREAS, under Charter section 149, a public agency participating in the Retirement Trust Fund and its employees are responsible for all costs associated with participating in the Fund and administering the agency's benefits; and

WHEREAS, it is now necessary and appropriate to amend the Municipal Code to establish procedures for a public agency to contract with the Retirement Board to participate in

the Retirement Fund and to have the Retirement Board administer its separate retirement plan;
and

WHEREAS, the Retirement Board's Assistant General Counsel prepared this ordinance
to amend the Municipal Code for the above purpose; and

WHEREAS, the City Attorney reviewed and revised this ordinance, and has approved
this ordinance as revised; 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
amended by amending the title of the Division and by amending Section 24.0103 to read as
follows:

Division 1: Creation of System and Definitions

§24.0101 - §24.0102 [No change.]

§24.0103 Definitions

Unless otherwise stated, for purposes of this Article:

"Accumulated Additional Contributions" through *"Investment Earnings Received"* [No
change.]

"Member" means any person employed by the City of San Diego who actively
participates in and contributes to the Retirement System, and who will be entitled, when
eligible, to receive benefits from the Retirement System. There are three classes of
Member: General, Safety, and Elected Officer.

"Normal Contributions" through *"Prior Service"* [No change.]

"Public Agency" means any city or public agency, located or having jurisdiction wholly or partially within the County of San Diego, that has no private sector ownership or control and has only public employees.

"Public Agency Participant" means a Public Agency employee who is: (1) compensated through the Public Agency's payroll system, (2) treated as an employee by the Public Agency for tax-reporting and other purposes, and (3) participates in the Public Agency's retirement plan administered by the Retirement System under Division 18 of this Article.

"Qualified Retiree" means a retiree who is eligible to receive the annual supplemental benefit set forth in Division 15.

"Retirement Fund" [No change.]

"Retirement System" and *"System"* means the City Employees' Retirement System as created by this Article, and the *"1981 Pension System"* means the Employees' Retirement System as created by Chapter II, Article 4, Division 11.

"Safety Member" means any Member who is: (1) a sworn officer of the Police Department of the City of San Diego hired after July 1, 1946, (2) a uniformed member of the Fire Department of the City of San Diego hired after July 1, 1946, or (3) a full-time lifeguard of the City of San Diego. But, police cadets, persons sworn for limited purposes only, and all other employees of the Police Department, Fire Department and lifeguard service are not Safety Members.

"Service Retirement Annuity" through *"Unmodified Service Retirement Allowance"* [No change.]

§24.0104 - §24.0107 [No change.]

Section 2. That Chapter 2, Article 4, Division 9, of the San Diego Municipal Code be amended by adding section 24.0912, to read as follows:

Division 9: Powers and Duties of the Board

§24.0901 - §24.0911 [No change.]

§24.0912 Board's Authority to Contract with Public Agencies

The Board may contract with any Public Agency to administer the Public Agency's retirement plan, pursuant to Division 18 of this Article, after the City Council makes a finding that the Public Agency is eligible to participate in the Retirement Fund and approves the agreement between the Public Agency and the Board. The Board may adopt the rules that it deems necessary or proper to administer these plans.

Section 3. That Chapter 2, Article 4 of the San Diego Municipal Code be amended by adding Division 18, to read as follows:

Division 18: Contracting Public Agencies

§24.1801 Administration by the Retirement Board

The Board may administer a Public Agency's retirement plan under the terms of an agreement between the Public Agency and the Board pursuant to this Division. The Board will invest in the Retirement Fund the assets of any Public Agency retirement plan administered under this Division. A Public Agency employee who participates in a Public Agency's Board-administered retirement plan is a "Public Agency Participant," whose rights and responsibilities are governed by this Division and by the terms of the Public Agency's agreement with the Board and retirement plan. Public Agency Participants are not employees of the City of San Diego and are not Members of the System as defined in this Article. They are not entitled to vote on ordinances affecting the benefits of City

employees under Charter section 143.1. Changes in benefits for Public Agency Participants must be approved according to the rules and procedures governing their respective Public Agency employers, but do not require approval by the City Council.

§24.1802 **Agreements between the Board and Public Agencies**

Before the Board may contract to administer a Public Agency's retirement plan, all of the following must occur:

- (a) The Public Agency must request, in writing, that the Board administer its retirement plan.
- (b) The Public Agency must submit any information the Board requires to administer the Public Agency's plan.
- (c) The Board may provide a proposed retirement plan and agreement to the Public Agency to review and approve.
- (d) The Public Agency must agree, in writing, to meet all of the terms and conditions the Board establishes to administer the Public Agency's retirement plan. These terms and conditions may include rules regarding the terms of the Public Agency's retirement plan (such as classifications of participants, determining Creditable Service, benefit formulas, participant contributions, purchases of Creditable Service, disability benefits and employer contributions), and rules regarding administering the plan (such as providing information to the System, method and time of payment of employee and employer contributions, transfers of assets to the Retirement Fund, valuation of assets and liabilities, terminating the administration of the Public Agency's plan, and indemnification of the System).

- (e) The Board must approve the employee and employer contribution rates for the Public Agency, which will include administrative and investment management fees.
- (f) The Public Agency must assure the Board, in writing, that no vested rights of any of its employees are impaired by its agreement with the Board, and must agree that it is solely responsible for maintaining its employees' vested rights.
- (g) The Public Agency must satisfy the Board that its retirement plan complies with all governing laws and regulations, including the rules governing the tax-qualified status of the retirement plan.
- (h) The Public Agency must agree to pay the System for all costs the System incurs in establishing the agreement to administer the Public Agency's retirement plan, including legal, actuarial, administrative and systems costs. Subject to the Board's approval, the Public Agency may pay these costs in installments over a period of no more than 36 months after the effective date of the agreement for administration, with interest at the Board-established rate.
- (i) The Public Agency's governing board must approve the agreement to administer its retirement plan, which must include an agreement to pay the costs of administering the plan and investment costs, as determined by the Board.

- (j) The City Council must approve, by resolution, the agreement between the Board and the Public Agency.

§24.1803 Adoption of Contribution Rates for Public Agency Participants

Based upon the Actuary's advice, the Board will adopt periodically the contribution rates for each Public Agency and Public Agency Participant, as it deems appropriate to: (1) fund the benefits provided by each Public Agency's retirement plan and (2) pay all costs of administering each retirement plan. The Board will determine the contribution rates for each Public Agency based on each Public Agency's separate experience.

§24.1804 Public Agency Participant Contributions

Each contracting Public Agency must collect the contributions of its Public Agency Participants and transfer these contributions to the System to be credited to the individual account of each of its Participants. The Public Agency must transfer these contributions at the time and in the manner required by the Board.

§24.1805 Contracting Public Agency's Contributions

Each contracting Public Agency must contribute the amount required by the Public Agency's contribution rate adopted by the Board under section 24.1804. The Public Agency must pay these contributions at the time and in the manner required by the Board.

§24.1806 Accounting for Public Agency Contributions

The Board will account separately for all contributions it receives from a contracting Public Agency, and no assets of any Public Agency's retirement plan may be used to pay the benefits or costs of administering any other retirement plan administered by the Board. Each Public Agency's retirement plan assets will be commingled with the Retirement Fund's assets solely for investment purposes. The agreement between the

Board and the Public Agency will provide for an equitable distribution of earnings among the System and all retirement plans administered by the Board, as determined by the Board in its sole discretion.

§24.1807 **Administering Contracting Public Agency's Retirement Plan**

The Board will administer the retirement plan of each contracting Public Agency. Solely in the capacity as administrator – and subject to this Division and its agreement with the Public Agency – the Board will pay retirement benefits to Public Agency Participants as provided in their respective Public Agency employers' retirement plans. The Board may adopt the rules that it deems necessary or proper to administer each Public Agency retirement plan.

§24.1808 **Termination of Agreement between Public Agency and Retirement Board**

(a) Termination by Contracting Public Agency: A contracting Public Agency may terminate its agreement with the Board only by a resolution of the Public Agency's governing body. The Public Agency must give the Board written notice of the termination at least one year before the effective date of the termination.

The termination is effective on the date designated in the Public Agency's resolution terminating the agreement, subject to Board approval.

(b) Termination by Board: The Board may terminate an agreement for administration of a Public Agency retirement plan by resolution, subject to City Council approval. A resolution by the Board terminating an agreement with a contracting Public Agency is effective 60 days after notice of its adoption has been mailed by registered mail to the Public Agency's governing body. The Board may terminate its agreement with a Public Agency, with City Council approval, if:

- (1) the contracting Public Agency fails, for 30 days after demand by the Board, to pay any invoice for services or any contributions required by the agreement,
 - (2) the contracting Public Agency fails, for three months after demand by the Board, to provide any information requested by the Board to administer the Public Agency's retirement plan,
 - (3) the Board determines that the contracting Public Agency is no longer in existence,
 - (4) the Board determines that it is necessary or appropriate to terminate the agreement to avoid adversely affecting the administration of the System or any other Public Agency retirement plan, or
 - (5) the Board determines that termination is a prudent exercise of its fiduciary duties.
- (c) The agreement between the Public Agency and the Board will include terms and conditions for termination of the agreement, including: payment of benefits to Public Agency Participants and retirees, determination of any unfunded liabilities under the Public Agency's retirement plan, payment of unfunded liabilities, determination of the amount of assets held in the Retirement Fund on behalf of the Public Agency's retirement plan, transfer of assets from the Retirement Fund to another trust fund under the Public Agency's retirement plan, transfer of records to a new administrator and indemnification of the Board and the System.

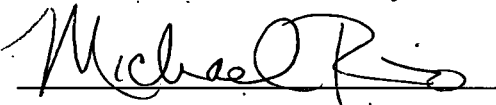
§24.1809 Lien on Assets of Terminating Public Agency

- (a) The Board will have a lien on the assets of a terminating contracting Public Agency, subject only to a prior lien for wages, in an amount equal to the actuarially-determined funding deficit for earned benefits of the Public Agency's Participants. The assets will also be available to pay actual costs, including attorneys' fees, necessarily expended by the Board to collect the lien.
- (b) The Public Agency will timely execute all documents the Board deems necessary or appropriate to perfect this lien. The agreement between the Public Agency and the Board may also authorize the Board to act as agent of the Public Agency solely for the purpose of executing and filing any documents under this section.

Section 4. That a full reading of this ordinance is dispensed with before its final passage, a written or printed copy having been available to the City Council and the public a day before its final passage.

Section 5. This ordinance will take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Michael Rivo
Deputy City Attorney

MR:RSP:ms

12/02/02

Or.Dept: Retire.

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