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1/30/12

ORDINANCE NUMBER O-20127 (NEW SERIES)

DATE OF FINAL PASSAGE **JAN 30 2012**

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL SPECIAL ELECTION CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON JUNE 5, 2012, ONE PROPOSITION AMENDING THE SAN DIEGO CHARTER BY AMENDING ARTICLE VII TO ADD SECTIONS 70.1 AND 70.2; AMENDING ARTICLE IX TO ADD SECTIONS 140, 141.1, 141.2, 141.3, 141.4, 150 AND 151; AND AMENDING ARTICLE IX TO AMEND SECTION 143.1, ALL RELATING TO RETIREMENT BENEFITS.

WHEREAS, on September 30, 2011, proponents timely filed with the City Clerk’s Office a petition to amend the San Diego City Charter by amending Article VII to add sections 70.1 and 70.2; amending Article IX to add sections 140, 141.1, 141.2, 141.3, 141.4, 150 and 151; and amending Article IX to amend section 143.1, all relating to retirement benefits; and

WHEREAS, Charter amendments are governed by the California Constitution, article XI, section 3, and California Elections Code section 9255; and

WHEREAS, California Elections Code section 9255 states that a proposal to amend or repeal a City Charter must be signed by 15 percent of the registered voters of the City in order to be submitted to the voters for consideration; and

WHEREAS, on November 8, 2011, the San Diego County Registrar of Voters completed its legally required verification of the petition signatures, and formally certified that the petitions contained the valid signatures of more than 15 percent of the City’s registered voters, according to the Registrar’s last official report of registration to the Secretary of State; and

WHEREAS, after the Registrar certified that the signatures were sufficient to qualify the measure for direct submission to the voters, the San Diego City Clerk presented the petition and

a certification of the sufficiency of its signatures to the City Council, in compliance with Municipal Code sections 27.1026 and 27.1027; and

WHEREAS, California Elections Code section 9255 requires the City Council to place a qualified Charter amendment petition on the ballot, stating that “. . . city or city and county charter proposals shall be submitted to the voters at either a special election called for that purpose, at any established municipal election date, or at any established election date . . . provided that there are at least 88 days before the election . . .”; and

WHEREAS, the Council adopted a resolution of intention to submit the matter to the voters at a special election, to be held at the same time as the next citywide primary election, and directed the City Attorney to prepare an ordinance calling a special election to place the matter on the ballot; and

WHEREAS, by Ordinance No. O-20125, introduced and adopted on January 30, 2012, the City Council called a Municipal Special Election to be consolidated with the California State Primary Election on June 5, 2012, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council now desires to submit to the voters at the Municipal Special Election the ballot measure referenced herein, which would amend the San Diego City Charter by amending Article VII to add sections 70.1 and 70.2; amending Article IX to add sections 140, 141.1, 141.2, 141.3, 141.4, 150 and 151; and amending Article IX to amend section 143.1, all relating to retirement benefits; and

WHEREAS, pursuant to San Diego Charter sections 275(c), 295(b) and 295(d), this ordinance relating to elections may be passed by the City Council on the date of introduction, which date shall be deemed the date of final passage, and is not subject to veto by the Mayor;

NOW, THEREFORE,

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

Section 1. That one proposition that would amend the San Diego City Charter by amending Article VII to add sections 70.1 and 70.2; amending Article IX to add sections 140, 141.1, 141.2, 141.3, 141.4, 150 and 151; and amending Article IX to amend section 143.1, all relating to retirement benefits, is hereby submitted to the qualified voters at the Municipal Special Election to be held on June 5, 2012, and consolidated with the California State Primary Election to be held on the same date, with the proposition to read as follows:

PROPOSITION

COMPREHENSIVE PENSION REFORM FOR SAN DIEGO

Section 1. PREAMBLE

WE THE PEOPLE of the City of San Diego declare our intent to restore financial stability to city government both in the immediate term and long term, and to return our community to the historic principles of self-governance inherent in the doctrine of home-rule. Sincerely committed to the belief that local government has the closest affinity to the people governed and firm in the conviction that the economic and fiscal independence of our local government, as well as the exercise of the people's right to impose limitations on their local government, will better serve and promote the health, safety and welfare of all of the citizens of this City, we do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this amendment of the Charter for the City of San Diego.

Section 2. FINDINGS

- a) Using the power vested in the Citizens of San Diego by the California Constitution, including Article XI, Section 5(b) of the California Constitution, as well as the Charter of the City of San Diego, this Charter amendment to address an immediate fiscal emergency to control long-term employee pension benefit costs.
- b) The cost of City pensions has become unsustainable and the Citizens find that the City faces a financial emergency that requires immediate controls on pension costs and long-term reforms of pension benefits.
- c) The Citizens are concerned with abusive and wasteful pension payouts to individual city employees. As such, the Citizens of the City of San Diego desire pension reform that addresses individual pension liabilities and reduces collective costs to taxpayers.
- d) The enactment of this Charter amendment is intended to limit the impacts City budgetary decisions have on pension liabilities in the immediate term and the long term as a way to prevent further cuts in important neighborhood services that are mandated by the Charter.
- e) In 1996 and 2002, the San Diego City Council retroactively increased pension benefits for city employees under the defined benefit plan, without identifying adequate funds to cover the cost of those benefits in the future.
- f) As a result of the increased pension benefits and past decisions to improperly fund the pension system, the city's pension fund currently has an unfunded liability of over \$2 billion.
- g) The City's Annual Required Contribution to the defined benefit pension fund has increased dramatically over the last several years, from \$137.6 million in Fiscal Year 2006, to \$231.3 million for Fiscal Year 2012, and is projected to increase to approaching \$500 million by Fiscal Year 2025.

h) This Charter amendment protects the existing rights of City employees and City retirees while curbing the future costs of employee benefits and retirement costs, thereby allowing San Diego to provide services to the public in a more efficient manner.

i) The Citizens seek to limit “pension spiking” by city employees where life-long pensions are calculated using not just base salaries, but a multitude of specialty pays, add-on pays, and other forms of compensation.

j) Retirement benefits for city employees should be no better than, and no worse than, retirement benefits paid in the non-profit and private sectors locally in San Diego. As such, the Citizens desire that the city transition to a defined contribution retirement program modeled after 401(k) programs.

k) City employees should be paying their full and fair share of all costs of pensions. The Citizens desire to achieve an equal, dollar-for-dollar split between taxpayers and city employees for the costs of city pensions.

Section 3. Article VII (Finance) of the San Diego City Charter is hereby amended to add the following sections:

Section 70.1: REFORMING BASE COMPENSATION USED TO ESTABLISH PENSION BENEFITS

“Base Compensation for Calculation of Pension Benefits” or “Base Compensation” shall be defined for this Section and for Section 70.2 as the total amount of annual compensation received by an individual City officer or employee for years of service after the implementation of this section that is used by the Retirement System for the purpose of calculating an individual’s benefits under a Defined Benefit Pension Plan as defined in Section 140 of this Charter.

By January 1, 2013 and to the extent allowed by law, including the legal effect of existing Memorandums of Understanding as of the effective date of this section, no Earning Codes Included in Retirement Base Compensation in any Annual Salary Ordinance shall include any pay components that may be excluded pursuant to any judicially approved legal settlement from the calculation of Base Compensation for Calculation of Pension Benefits.

This Section shall apply prospectively. Nothing in this section shall be interpreted to limit the ability of the City to offer additional compensation for City officers and employees beyond Base Compensation, provided however that such compensation shall not be included in the calculation of Base Compensation. Employees determined to be performing work outside of their job classification may have their “out of class” pay included in the calculation of Base Compensation. Furthermore, nothing herein is intended to prohibit or limit the City Council from having its representatives meet and confer with Recognized Employee Organizations or Bargaining Groups as required by applicable labor relations laws to implement this Section.

Section 70.2: EMERGENCY LIMITATIONS ON BASE COMPENSATION FOR CALCULATION OF PENSION BENEFITS (JULY 1, 2012 TO JUNE 30, 2018)

From the effective date of this Section until June 30, 2018, in the City’s initial bargaining position in negotiations on any Memorandum of Understanding with recognized employee organizations or bargaining groups, the City shall propose terms that are consistent with the following requirements and shall work to achieve the following outcomes:

- (a) No Base Compensation for any classification shall be set at an amount higher than the base compensation for that classification established in Ordinance No. O-19952, adopted on May 4, 2010, (“2011 Fiscal Year Salary Ordinance”).
- (b) The Earning Codes Included in Retirement Base Compensation, as adopted in Ordinance No. O-19952, shall not be amended to add any new types of compensation to the Base Compensation for the Calculation of Pension Benefits during the effective period of this section.
- (c) Any new job classification may only be created, during the effective period of this Section, with specific findings that the creation of the new classification is necessary to achieve efficiencies and/or salary savings by consolidation job duties or the creation of a more efficient service delivery method to the public. No base compensation for any new job classification created during the effective period of this section shall be set at an amount higher than the base compensation for that classification during the Fiscal Year in which it was established.
- (d) No other forms of compensation shall be provided or increased for any applicable fiscal year that has the effect of increasing Base Compensation as defined under this Section and Section 70.1, above, of this Charter.

City bargaining representatives may be authorized to negotiate tentative agreements with employee organizations incorporating changes in employee compensation and other employee benefits provided, however, that no provision of a tentative agreement that fails to meet the conditions established in (a)-(d), above, shall become effective unless and until it is approved by a two-thirds majority of the full City Council.

From the effective date of this Section until June 30, 2018, prior to any City Council action that establishes the initial bargaining position of the City to meet and confer with recognized employee organizations or bargaining groups which include increases to salaries and benefits for any City officer or employee, in any proposed Memorandum of Understanding or other agreement, the Retirement System shall prepare and submit to the Mayor and City Council an actuarial study that identifies and discloses the impact on the City's Defined Benefit Pension Plan of any increases in proposed compensation or benefits contained in the initial Council proposal, and certifies whether the proposed action increases the average or mean Base Compensation, for any job classification. Prior to any submission of a tentative agreement with any recognized employee organization or bargaining group to the City Council for approval of a Memorandum of Understanding, the City shall refer the tentative agreement to the Retirement System's Actuary to update the actuarial study to include any additional fiscal impacts of the tentative agreement. Such analysis shall be made readily available to the public ten days prior to any final action taken by the Council.

Nothing in this section shall be interpreted to limit the ability of the City to offer additional compensation for City officers and employees during the effective period of this section, provided however that such compensation shall not have the effect of increasing the Base Compensation for Establishment of Pension Benefits for that City officer or employee without complying with the requirements of this section.

Nothing in this section shall be interpreted to limit the ability of the City to exercise authority under Charter Section 124 (Promotions). This section shall be implemented in a

manner consistent with the requirements of any applicable labor relations laws. This Charter Section 70.2 shall be automatically repealed and removed from this Charter on July 1, 2018, unless extended, modified or repealed by a vote of the People.

Section 4. The San Diego City Charter is hereby amended to add the following sections in Article IX (Retirement):

Section 140: ESTABLISHMENT OF SEPARATE RETIREMENT PENSION SYSTEMS; DEFINITIONS

As of the election at which this Section becomes operative, the electorate of the City of San Diego has found and declared that the fiscal best interests of the City are served by reforming the retirement system authorized by this Charter to be established for City employees.

“Defined Benefit Pension Plan” or “Defined Benefit Pension System” is a system or plan to provide a specified allowance to a city retiree or a retiree’s spouse after retirement that is based on a set formula based on factors such as age, years of service, and elements of compensation as established in this Article.

The Defined Benefit Pension Plan in place prior to said election, established by the City Council pursuant to Sections 141 through 149 of this Charter, may remain in place until, for any reason, there remain no participants in the Defined Benefit Plan. The City Council may by ordinance utilize any lawful means for terminating the Defined Benefit Plan. Any closure of the Defined Benefit Plan shall be designed and implemented to protect the employees’ vested rights in the Defined Benefit Plan, generate cost savings

for taxpayers, and ensure compliance with applicable laws and regulations, including tax regulations.

At such time as there remain no participants in the Defined Benefit Pension Plan, the City shall take such actions as are necessary and appropriate to promptly wind down and terminate the Defined Benefit Pension Plan.

Notwithstanding the foregoing, and except as expressly provided in this Article IX, all Officers and employees, with the exception of sworn police officers, who are initially hired or assume office on or after the effective date of this Section shall participate only in such Defined Contribution Plans as authorized by Sections 150 and 151 of this Charter.

The provisions of Sections 141 through 149 shall apply only to the Defined Benefit Plan, and those City employees eligible to participate in the Defined Benefit Plan. The provisions of Sections 150 and 151 shall apply only to the Defined Contribution Plan, and those City employees eligible to participate in the Defined Contribution Plan, except as expressly stated.

Notwithstanding the foregoing, and except as provided in this Article IX, the City Council is hereby authorized and empowered by ordinance to enroll sworn police officers hired after the effective date of this section in either the Defined Benefit Plan or the Defined Contribution Plan. This section shall be implemented in a manner consistent with the requirements of applicable labor relations laws.

Section 141.1: REFORM OF SWORN POLICE OFFICER DEFINED BENEFIT PENSION PLAN

Notwithstanding any other provision of this Charter, or any ordinance or other action taken pursuant hereto, the maximum amount of retirement benefit payable to a sworn police officer, who is hired after the effective date of this section and who is a participant under the Defined Benefit Pension Plan, shall be an amount equivalent to 80% at age 55 of the average of the participant's highest consecutive 36 months of Base Compensation as defined by Section 70.1. The maximum set by this provision shall decrease by 3% (three percentage points) for each year that such participant retires before age 55.

Section 141.2: FULL AND FAIR EMPLOYEE CONTRIBUTIONS FOR THE DEFINED BENEFIT PENSION PLAN

For officers and employees who have the legal right to remain in the established Defined Benefit Pension Plan, the City shall contribute annually an amount substantially equal to that required of the employee for a normal retirement allowance, as certified by the Actuary established in Charter Section 142, but shall not contribute in excess of that amount, except in the case of financial liabilities accruing under any new retirement plan or revised retirement plan because of past service of the employee. The City shall not pay, cap the employee contribution rate, or otherwise compensate for any portion of a contribution to the Retirement System by a City Officer or employee.

To the fullest extent permissible by law, in calculating annual contributions for the City and City employees, the Retirement Board shall divide equally between those two parties all costs except those costs explicitly and exclusively reserved to the City in this Section and Section 143. Contributions shall also be governed by Section 143 of this Article. In

the event of a conflict between this Section and Section 143, this Section shall prevail.

This section is not intended to interfere with vested defined rights of any retiree receiving benefits from the Defined Benefit Retirement System or of any employee enrolled in the Defined Benefit Retirement System as of the effective date of this section.

Nothing contained in this Section shall preclude the City from entering into a settlement of *City of San Diego v. San Diego City Employees' Retirement System* Case No. #37-2010-00091207-CU-WM-CTL_ to define responsibilities of the City and employees for unfunded liabilities of the Retirement System even if the settlement includes terms that might otherwise conflict with the above restrictions, as long as the settlement is approved by the court as a good faith settlement and approved by a two-thirds vote of the City Council.

Section 141.3: ELIMINATION OF PENSION BENEFIT FOR FELONY CONVICTIONS

On or before July 1, 2013 and subject to meet and confer requirements with recognized employee organizations or bargaining groups, the City Council shall adopt an ordinance to implement this section that eliminates, to the extent permitted by law, the Defined Benefit Pension Plan for any individual City Officer or employee who is convicted of a felony, as defined in California Government Code Section 1770(h), as amended, related to their employment, duties, or obligations as a City officer or employee. The City Council shall have the authority to reinstate benefits upon a finding that the felony conviction was overturned on appeal.

Section 141.4: TRANSPARENCY AND PUBLIC DISCLOSURE OF CITY PENSION PAYOUTS

Within 30 days of the start of each calendar year, the City shall post online a listing of the total amount paid to each individual city retiree for the preceding calendar year from assets held by or managed by the Retirement System. The City shall redact the name of each individual, but shall provide the final classification held by each individual and the number of creditable years of service worked by the individual. This section shall be implemented in a manner that protects the privacy rights of officers and employees to the extent required by law and consistent with applicable labor relations laws.

Section 150: CREATION OF A DEFINED CONTRIBUTION PLAN

In order to implement the requirements of Section 140, the City Council is hereby authorized to establish by ordinance a Defined Contribution Plan consistent with this Article. This Plan shall meet the legal requirements established under the United States Internal Revenue Code in order to allow the City to retain its Social Security Safe Harbor Status, under the Internal Revenue Code, as amended, unless the City enrolls in the Social Security System under the restrictions established hereunder. Any ordinance adopted under this section shall take effect immediately if the City Council finds that the Ordinance must take immediate effect to meet a legal deadline for compliance with this Charter or any other law or regulation.

The City shall not contribute in excess of 9.2% of an Officer's or employee's compensation, as required by the Internal Revenue Code as amended, to defined contribution retirement accounts for that individual officer or employee. For a Uniformed Public Safety Officer, the City may contribute up to 11% of that Officer's or employee's

compensation to his or her defined contribution retirement account. The City may elect to re-enroll in the Social Security System, provided that the City's total cost for retirement benefits do not exceed 9.2% for each Officer's or employee's compensation, or 11% for Uniformed Public Safety Officers.

To the extent allowed by law, the City may offer plans that allow employees to convert their defined contribution retirement account into an annuity or other City Council approved investment instrument as of their date of retirement. No conversion under this section shall require the City to contribute additional funds to convert the defined contribution retirement account to another approved investment instrument.

Years of service accrued by an Officer or employee participating in the Defined Contribution Plan shall not be credited towards vesting or calculation of years of service in the City's Defined Benefit Plan.

Subject to compliance with applicable laws and regulations, for any individual City employee where the City can demonstrate that cost savings can be achieved, the City shall create a mechanism by which an employee currently enrolled in the Defined Benefit Pension Plan pursuant to Sections 141 through 149 may switch on a prospective basis to the Defined Contribution Plan created in this Section.

The implementation of this section shall be subject to the requirements of applicable law including, but not limited to, applicable labor relations laws and the requirements of the Internal Revenue Code, as amended.

For the purposes of Section 150 and 151, “Uniformed Public Safety Officer” shall have the same meaning as “Safety Member” as defined in Section 24.0103 in the Municipal Code as of January 1, 2011.

Section 151: DISABILITY AND DEATH BENEFITS FOR DEFINED CONTRIBUTION PLAN MEMBERS

For officers and employees enrolled in the Defined Contribution Plan, the City may provide for disability benefits to support an employee who has become physically or mentally disabled by reason of bodily injury or illness caused actions related to the discharge of their duties. Any benefits authorized hereunder may be in addition to any state or federal benefits required by law applicable to a Charter City.

For Uniformed Public Safety Officers, the City shall provide death and disability benefits for officers who are killed or injured in the line of duty. The City may provide greater death or disability benefits than those required by law applicable to Charter Cities.

Section 5. Article IX (Retirement) Section 143.1 of the San Diego City Charter is hereby amended as follows:

- (a) No ordinance amending the retirement system which affects the benefits of any employee under such retirement system shall be adopted without the approval of a majority vote of the members of said system. No ordinance amending the retirement system which increases the benefits of any employee, legislative officer or elected official under such retirement system, with the exception of Cost of Living Adjustments, shall be adopted without the approval of a majority of those qualified electors

voting on the matter. No ordinance amending the retirement system which affects the vested defined benefits of any retiree of such retirement system shall be adopted without the approval of a majority vote of the affected retirees of said retirement system. To the extent allowed by law, the requirement for a majority vote of employees and the requirement for a majority vote of retirees for adoption of an ordinance as described in this section shall sunset and be deemed unenforceable as of the effective date of this section. Unless required under a pre-existing Memorandum of Understanding as of the effective date of this article, any City employee hired after September 1, 2012 shall not have a right to vote in any vote required under this Section.

Section 6. EFFECTIVE DATE

This Charter amendment shall become effective in the manner allowed by law. This Charter amendment addresses the subject of public employee compensation and benefits under the plenary authority granted to the Citizens of San Diego by Article XI, Section 5(b) of the California Constitution. As specified herein, the implementation of various provisions may be delayed in their implementation pursuant to provisions of any Memorandum of Understanding in effect on the effective date of this Charter amendment. Nothing herein is intended to remove legally established rights held by any officer or employee held by virtue of their employment status before the effective date of this Charter Amendment.

Section 7. SEVERABILITY

It is the intent of the People that the provisions of this Charter amendment are severable and that if any section or provision of this act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this Charter amendment which can be given effect without the invalid provision or application.

Section 8. LIBERAL CONSTRUCTION

The provisions of this act shall be liberally construed in order to effectuate its purposes.

Section 9. CONFLICTING BALLOT MEASURES

In the event that this measure and another measure or measures relating to the establishment of compensation and benefit levels of City officers and employees, or both, appear on the same city-wide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail over conflicting provisions in any other measure, and the conflicting provisions of the other measure shall be null and void.

END OF PROPOSITION

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION ____ . Amends City Charter Regarding Retirement Benefits. Should the Charter be amended to: direct City negotiators to seek limits on a City employee’s compensation used to calculate pension benefits; eliminate defined benefit pensions for all new City Officials and employees, except police officers, substituting a defined contribution 401(k)-type plan; require substantially equal pension contributions from the City and employees; and eliminate, if permissible, a vote of employees or retirees to change their benefits?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Special Election.


Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance’s adoption by the City Council.

Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

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

Section 9. That, pursuant to San Diego Charter sections 275(c), 295(b) and 295(d), this ordinance relating to elections may be passed by the City Council on the date of introduction, which date shall be deemed the date of final passage, and is not subject to veto by the Mayor.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Sharon B. Spivak
Deputy City Attorney

SBS:jdf
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