

ORDINANCE NUMBER O- 20182 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 20 2012

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 4, DIVISION 10 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 24.1004, RELATING TO THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, the City of San Diego is the plan sponsor of the defined benefit retirement plan established under San Diego Charter section 141 through 149 (Retirement Plan); and

WHEREAS, the San Diego City Council has the sole authority to establish the retirement benefits available to City officers, employees and elected officials under the Retirement Plan; and

WHEREAS, the Retirement Plan is a qualified governmental plan under sections 401(a) and 414(d) of the Internal Revenue Code of 1986 (Code), as amended; and

WHEREAS, in order to maintain the Retirement Plan's status as a qualified plan, the Retirement Plan must be amended from time to time to conform to relevant tax law changes; and

WHEREAS, the proposed amendments conform the Retirement Plan to relevant provisions of the following federal laws: the Pension Protection Act of 2006, the Heroes Earnings Assistance and Relief Tax Act of 2008, and the Worker, Retiree and Employer Recovery Act of 2008; and

WHEREAS, all of the proposed amendments are mandatory and must be made to maintain the Retirement Plan's qualified status under Code section 401(a); NOW THEREFORE,

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

Section 1. That Chapter 2, Article 4, Division 10 of the San Diego Municipal Code is amended by amending section 24.1004, to read as follows:

§ 24.1004 **Compliance with Certain Internal Revenue Code Provisions**

(a) through (c) [No change in text.]

(d) Internal Revenue Code Section 401(a)(9): The System will pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The System is subject to the following provisions:

(1) through (7) [No change in text.]

(e) through (f) [No change in text.]

(g) Internal Revenue Code Section 401(a)(31):

(1) [No change in text.]

(A) **Eligible rollover distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code

Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or to a qualified plan described in Internal Revenue Code Section 403(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible, or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of

the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(B) through (E) [No change in text.]

(h) Internal Revenue Code Section 415:

(1) through (2) [No change in text.]

(3) For purposes of applying the limits under Code Section 415(b) (Limit), the following will apply:

(A) through (C) [No change in text.]

(D) On and after July 1, 2007, in no event will a Member's annual benefit payable under the System in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations there under. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that takes into account the death benefits under the form of benefit:

- (i) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Section 415(b) limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):
 - (a) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant, or
 - (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption (or the applicable statutory interest assumption) and
 - (i) for years before January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in

Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

- (ii) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) limit applicable at the annuity starting date which is the least of when adjusted in accordance with the following assumptions):

- (a) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
- (b) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years before January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and

(ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

- (c) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to July 1, 2007, using the rate in effect for the month prior to retirement, and on and after July 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years before January 1, 2009, the applicable mortality tables for the distribution under Section 1.417(e)-1(d)(2)

(the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

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

(i) [No change in text.]

(j) Internal Revenue Code Sections 414(u) and 401(a)(37):

(1) Effective December 12, 1994, notwithstanding any other provision of retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.


- (2) To the extent required by Internal Revenue Code Section 401(a)(37), the survivors of a Member who dies on or after January 1, 2007 while performing qualified military service (as defined in chapter 43 of title 38, United States Code), are entitled to any additional benefits that the System would provide if the Member had resumed employment and then died, and the deceased Member's period of qualified military service will be counted for vesting purposes.
- (3) Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Internal Revenue Code) from the City shall be treated as employed by the City, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(k) [No change in text.]

Section 2. That a full reading of this ordinance is dispensed with before its passage, a written or printed copy having been made available to the City Council and the public before the day of its passage.

Section 3. That this ordinance will take effect and be in force on the thirtieth day from and after its final passage.


APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Roxanne Story Parks
Deputy City Attorney

RSP:ccm
4/26/2012
Or.Dept:City Attorney
Doc #361350.docx

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 10 2012.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 7.20.12
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor