

ORDINANCE NUMBER O- 20251 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 02 2013

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

WHEREAS, Internal Revenue Code section 401(a)(17) requires that retirement contributions of Members of the San Diego City Employees' Retirement (SDCERS) be tested annually to ensure that contributions do not exceed the limits set forth in section 401(a)(17); and

WHEREAS, SDCERS, under the San Diego Municipal Code (Municipal Code), currently conducts testing of the annual compensation of each member of SDCERS on a plan-year basis; and

WHEREAS, a plan-year, as referenced in Municipal Code section 24.1004, is based on the City's fiscal year rather than a calendar year; and

WHEREAS, SDCERS' outside tax counsel advises that the plan must be amended to allow 401(a)(17) testing to be conducted on a calendar-year basis; and

WHEREAS, on behalf of the Board of Administration for SDCERS, a request was made by SDCERS to amend the Municipal Code to allow section 401(a)(17) testing on a calendar-year basis rather than a plan-year basis to lessen the likelihood of contribution overages, posting of interest on overages, eliminate the necessity of providing corrective distributions to employees who suffer contribution overages, and lessen administrative expenses for SDCERS; and

WHEREAS, this amendment to Municipal Code section 24.1004 will have no fiscal impact to the City or to Members of SDCERS, and will not affect any benefits to which present Members are entitled; and

WHEREAS, Municipal Code section 24.1004 should be amended to allow calendar-year testing in lieu of plan-year testing; 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)-(d) [No change in text.]

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

- (1) In accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), except as provided in this section, the annual compensation the *System* takes into account for any purpose, including contributions or benefits, may not exceed the amount allowed by Internal Revenue Code section 401(a)(17).
- (2) The annual compensation of each *Member* taken into account in determining benefits or contributions for any plan year beginning on or after July 1, 1996, and prior to July 1, 2002, may not exceed \$150,000, as adjusted for cost of living increases in accordance with Internal Revenue Code section 401(a)(17)(B). Effective only for the 1996 plan year, the rules of Internal Revenue Code section 414(q)(6) will apply in determining the annual compensation limitation, except that a member of the family group will include only the spouse of the *Member* and any lineal descendant of the *Member* who has not attained age nineteen

before the close of the year. If the annual compensation of a *Member* and his family members is so limited, the annual compensation of the *Member* and each such family member will be equal to the compensation of each such individual determined without regard to Internal Revenue Code sections 401(a)(17) and 414(q)(6) divided by such annual compensation for all such individuals as so determined and the quotient multiplied by the applicable Internal Revenue Code section 401(a)(17) limitation amount, as described above.

- (3) The annual compensation of each *Member* taken into account in determining benefits or contributions for any plan year beginning on or after July 1, 2002, or for any calendar year beginning on or after January 1, 2013, may not exceed \$200,000, as adjusted for cost of living increases in accordance with Internal Revenue Code section 401(a)(17)(B). For the period from July 1, 2012, to December 31, 2012, the applicable limit under Internal Revenue Code section 401(a)(17) shall be prorated as described in paragraph (e)(14) below.
- (4) For purposes of paragraphs (e)(1) through (e)(3), “annual compensation” means compensation during the plan year, or, effective on and after January 1, 2013, the calendar year, or such other consecutive twelve-month period over which compensation is otherwise determined under the *System* (the determination

period). The cost of living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve. If the compensation for any prior determination period is taken into account in determining a *Member's* contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

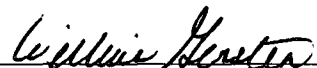
- (5) The limits referenced in paragraphs (e)(1) through (e)(4) above apply only to plan years beginning on or after July 1, 1996, and only to individuals who first become *Members* in plan years beginning on and after July 1, 1996. Individuals who become *Members* before plan years beginning on and after July 1, 1996, are not subject to the limits of Internal Revenue Code section 401(a)(17). Pursuant to section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that section, the annual compensation in effect under Internal Revenue Code section 401(a)(17) does not apply to any such *Member* in any year.

(f)-(k) [No change in text]

Section 2. 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 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.


APPROVED: JAN I. GOLDSMITH, City Attorney

By 
William Gersten
Deputy City Attorney

WG:ccm
01/28/2013
04/04/13 COR.COPY
Or.Dept:SDCERS

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 23 2013.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5/2/13
(date)


BOB FILNER, Mayor

Vetoed: _____
(date)

BOB FILNER, Mayor

Passed by the Council of The City of San Diego on APR 23 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
District 4 (Vacant)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 02 2013

AUTHENTICATED BY: BOB FILNER
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By *Janette D. Santos*, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on APR 09 2013, and on MAY 02 2013

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By *Janette D. Santos*, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 20251