

#50
4/29/14

ORDINANCE NUMBER O- 20369 (NEW SERIES)

#50
5/13/14

DATE OF FINAL PASSAGE MAY 29 2014

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 4, DIVISION 8 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 24.0801 RELATING TO THE CITY EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, the City of San Diego and all of its labor unions agreed in June 2013 to a fiveyear freeze on so-called pensionable pay, as that term is described in Proposition B, approved by the voters in June, 2012. The City estimates that such a freeze will result in a substantial reduction in the City's annual contributions to the pension plan. In light of this freeze, the City Council has decided that it does not want to further increase the burden on employees thereby risking loss of valued employees, including those in public safety. Based thereon, it is the City Council's desire as a policy matter to settle *City of San Diego v. San Diego City Employees' Retirement System*, San Diego County Superior Court Case No. 37-2010-00091207-CU-WM-CTL (the "City Contribution Lawsuit.")

WHEREAS, San Diego City Charter, Article IX, section 143 (Section 143) provides, in part, "The City shall contribute annually an amount substantially equal to that required of the employees for normal retirement allowances, as certified by the actuary, but shall not be required to 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 employees."

WHEREAS, San Diego City Charter, Article IX, section 141.2 (Section 141.2), added by Proposition B passed by the voters on June 5, 2012, provides in part: “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.”

WHEREAS, Section 141.2 further provides: “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.”

WHEREAS, Section 141.2 further provides: “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. “

WHEREAS, Section 141.2 further provides: “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.”

WHEREAS, Section 141.2 finally provides: “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.”

WHEREAS, on May 3, 2010 the City filed the Petition that initiated the City Contribution Lawsuit alleging that the San Diego City Employees’ Retirement System’s (“SDCERS”) continuing allocation of investment gains and losses and other actuarial gains and losses to the City, which are included in the Unfunded Actuarial Accrued Liability (“UAAL,” also referred to as UAL), violates section 143 of the City Charter. Specifically, the City challenged the exclusion by SDCERS of 100% of the UAAL from the “substantially equal” contribution determination described in Section 143.

WHEREAS, throughout the litigation, SDCERS has disputed the City’s interpretation of Section 143 alleged in the Petition and as asserted by the City in the City Contribution Lawsuit. SDCERS contends, *inter alia*, that the language of Section 143, SDCERS’ longstanding practice of allocating UAAL to the City, the plenary authority of SDCERS’ Board of Administration to determine contribution rates, and the practical consequences of the City’s proposed interpretation support its position.

WHEREAS, on November 19, 2010, the trial court in the City Contribution Lawsuit granted the motion of several unions representing employees of the City to intervene in the action. Subsequently, AFSCME, Local 127, AFL-CIO, the San Diego Municipal Employees

Association, the San Diego Police Officers Association and the San Diego City Firefighters, Local 145, IAFF, AFL-CIO (the “Intervenors”) filed complaints in intervention in the City Contribution Lawsuit that are supportive of SDCERS’ position and which also raised numerous affirmative defenses.

WHEREAS, the City, SDCERS, and Intervenors (“Parties”) have entered into a settlement of the City Contribution Lawsuit (“Settlement Agreement”) providing, in pertinent part, that (i) SDCERS may continue its allocation of 100% of the UAAL to the City; (ii) the City agrees to accept all prior allocations by SDCERS of UAAL, including, without limitation, investment and other experience gains or losses occurring prior to the settlement date of the City Contribution Lawsuit, which were raised or could have been raised in the City Contribution Lawsuit, but excluding any portion of the UAAL arising from underpricing of purchase of service credits as addressed in *City of San Diego v. San Diego Employees’ Retirement System* (2010) 186 Cal. App. 4th 69; (iii) the City is adopting this Ordinance accepting SDCERS’s continuing allocation of 100% of the UAAL to the City; (iv) the City agrees that any amendment, revision, repeal or revocation of this Ordinance may affect only the allocation of experience gains or losses occurring after the most recent annual actuarial valuation date preceding the effective date of any such amendment, revocation, repeal or revision, including investment and other experience gains or losses occurring only after such most recent valuation date; (v) the City agrees that any such amendment, revocation, repeal or revision of this Ordinance is subject to the meet and confer obligations of the Meyers-Milias-Brown Act, and in such event, no Party waives any contention regarding the vested nature of the employee rights involved, the validity of Charter section 141.2 or the applicability of Charter sections 141.2, 143 or 143.1 or any other legal principle or argument potentially applicable to the allocation of

experience gains or losses occurring after the most recent annual actuarial valuation date preceding the effective date of any such amendment, revocation, repeal or revision, including investment or other experience gains or losses occurring only after such most recent valuation date; and (vi) the Parties have agreed that this Ordinance may at any time be amended, repealed, revoked or revised subject to the limitations set forth in the Settlement Agreement, and that the adoption of this Ordinance does not by itself create any new vested right.

WHEREAS, Charter Section 141.2 specifically authorizes settlement of the City Contribution Lawsuit so long as the settlement is approved by six affirmative votes of the City Council and by the Court as a good faith settlement. Thus, upon such approval, this Ordinance complies with the City Charter regardless of which Parties' interpretation of the City Charter is correct.

WHEREAS, the City Council, pursuant to Section 141.2, by a two-thirds vote of its members, authorized a settlement of the City Contribution Lawsuit on the above-stated terms, and the Court has approved the settlement as a good faith settlement;

WHEREAS, San Diego Municipal Code ("Municipal Code") section 24.0801 pertains to the City's employer contributions to SDCERS and may be amended in accordance with the settlement of the City Contribution Lawsuit.

WHEREAS, the SDCERS Board has approved the wording of this Ordinance, and the City Attorney's Office has recommended it to the City Council; NOW, THEREFORE,

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

Section 1. That Chapter 2, Article 4, Division 8, of the San Diego Municipal Code is amended by amending section 24.0801, to read as follows:

Article 4: City Employees' Retirement System

Division 8: City's Contribution

§24.0801 City's Contribution

[No change in text.]

All net investment and other actuarial experience gains and losses of the City's Defined Benefit Pension plan shall be included in the calculation of the unfunded actuarial accrued liability (UAAL) and included in the amortized portion of the City's employer contribution to SDCERS.

Section 2. That this ordinance does not require the City to accept any portion of the UAAL arising from underpricing of purchase of service credits as addressed in *City of San Diego v. SDCERS* (2010) 186 Cal. App. 4th 69.

Section 3. That this ordinance may at any time be amended, repealed, revoked or revised subject to the limitations set forth in the Settlement Agreement, and that this Ordinance by itself does not create any vested right.

Section 4. 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 5. 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 Donald R. Worley
Donald R. Worley
Assistant City Attorney

DRW:wcc
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 MAY 13 2014

ELIZABETH S. MALAND
City Clerk

By Karin Christ
Deputy City Clerk

Approved: 5/28/2014
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

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EMPLOYEES' RETIREMENT SYSTEM.

Article 4: City Employees' Retirement System

Division 8: City's Contribution

§24.0801 City's Contribution

[No change in text.]

All net investment and other actuarial experience gains and losses of the City's

Defined Benefit Pension plan shall be included in the calculation of the unfunded

actuarial accrued liability (UAAL) and included in the amortized portion of the

City's employer contribution to SDCERS.

DRW:wcc
03/14/2014
Or.Dept:City Att'y
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Passed by the Council of The City of San Diego on MAY 13 2014, 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"/>
Ed Harris	<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"/>
Myrtle Cole	<input checked="" 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 29 2014.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Karen Crewshaw, 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 29 2014

, and on

MAY 29 2014

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Karen Crewshaw, Deputy

Office of the City Clerk, San Diego, California

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