

ORDINANCE NUMBER O- 20681 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 19 2016

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 3,
DIVISION 8 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 23.0806 RELATING TO
PROVISIONAL APPOINTMENT.

WHEREAS, pursuant to San Diego Municipal Code (Municipal Code) section 24.1001, a retired City of San Diego (City) employee may be employed provisionally for a period not to exceed 90 working days in any one fiscal year; and

WHEREAS, this provisional employment is also set forth under the City of San Diego Civil Service Rules, at Rule VII, section 5, which is codified at Municipal Code section 23.0806; and

WHEREAS, it was recently discovered that some of these provisional employees, when their provisional employment is over, are then applying for and obtaining unemployment insurance benefits as a result of the end of their provisional employment; and

WHEREAS, while permissible under the liberal standards of unemployment insurance law, the Mayor believes this was not the intent of the City, that by providing provisional employment opportunities for retirees who are paid for their provisional work and receive retirement payments, to then also provide a basis for retirees to receive unemployment insurance that as retirees, they are not ordinarily entitled to; and

WHEREAS, while the State of California also provides for provisional employment opportunities for its retirees, the state legislature recognized this unintended consequence of providing retirees with the opportunity to seek unemployment insurance benefits to the financial detriment of the State, and in response promulgated a statutory preclusion of reappointment of

provisional employees, who have obtained unemployment insurance benefits in the preceding 12 months (California Government Code (Government Code) section 21224); and

WHEREAS, the Mayor desires to emulate this state preclusion, and to codify the same within the Municipal Code; and

WHEREAS, by an accompanying ordinance (O-2016-123), Municipal Code section 24.1001 is before the San Diego City Council (City Council) for approval of various amendments, one of which is to prohibit the provisional employment of retirees who have received unemployment insurance benefits as a result of prior provisional employment with the City of San Diego; and

WHEREAS, therefore, Civil Service Rule VII, section 5, as codified in Municipal Code section 23.0806, must be amended to be consistent; and

WHEREAS, San Diego Charter (Charter) section 118 provides that the City's Civil Service Commission shall recommend to the San Diego City Council (City Council) all rules and amendments thereto for the government, supervision, and control of the classified service; and

WHEREAS, Charter section 118 sets forth the procedure for amendment of a Civil Service Rule by the City Council as follows: No rule or amendment shall become effective until it is adopted by ordinance after a noticed public hearing; following such public hearing the City Council may adopt, amend, or reject the rule or amendment as recommended by the Civil Service Commission; and any rule or amendment adopted by ordinance shall have the force and effect of law; and

WHEREAS, the Meyers-Milias-Brown Act (MMBA) requires that the City provide reasonable written notice to the City's recognized employee organizations and an opportunity to negotiate any proposed change within the scope of representation, which includes, under

Government Code section 3504, all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment; and

WHEREAS, as this amendment only pertains to retirees, it is a permissive subject of bargaining; and

WHEREAS, therefore, the City's Management Team has noticed the recognized employee organizations of this proposed amendment; and

WHEREAS, under Charter section 118, the Civil Service Commission must make appropriate recommendations to the City Council; and

WHEREAS, the City's Management Team submitted this amendment in compliance with Charter section 118, for consideration by the Civil Service Commission at its regularly scheduled meeting of April 7, 2016; and

WHEREAS, the Civil Service Commission voted to recommend to the City Council, modification of Rule VII, section 5, as codified in Municipal Code section 23.0806 to conform to the proposed amendment to San Diego Municipal Code section 24.1001, which would prohibit the provisional appointment of a retiree who has received unemployment benefits as a result of prior provisional employment with the City of San Diego; NOW, THEREFORE,

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

Section 1. That Chapter 2, Article 3, Division 8 of the San Diego Municipal Code is amended by amending section 23.0806 to read as follows:

Article 3: Provisional Appointment

Division 8: Provisional Appointment

§23.0806 Provisional Appointment

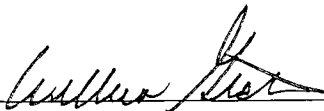
- (a) When it is urgent that an immediate appointment be made to fill a vacant position and less than the appropriate number of names are available for selection from the eligible list, any person approved by the Personnel Director may be appointed provisionally to fill the vacancy until an appropriate eligible list has been established. In no case shall a provisional appointment continue longer than 60 calendar days, nor, shall there be successive provisional appointments of the same person.
- (b) With the approval of the Personnel Director, and subject to limitations set forth in section 23.0806(c), any person who has retired from the City service may be appointed provisionally to a position requiring special skills or knowledge, as determined by the Appointing Authority, for a period not to exceed 720 hours in any one fiscal year.
- (c) The City will not appoint a retired person as a provisional employee under subsection (b) if the retired person received unemployment insurance compensation arising out of prior employment as a provisional employee under subsection (b). The eligibility for provisional employment under subsection (b) will be reviewed on a regular basis.

Section 2. That pursuant to Charter section 116, the Personnel Director shall take any and all necessary action to conform existing Personnel Regulations and any other relevant rules or provisions to this action.

Section 3. 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 4. 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 J. Gersten
Deputy City Attorney

WJG:hm:ccm:jdf
11/17/15
08/15/16 COR. COPY
Or.Dept: Human Resources
Doc. No. 1170246_2

I certify that this Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 12 2016.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

See attached memo and signature page.

Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: August 18, 2016
TO: City Clerk
FROM: William Gersten
SUBJECT: O-20681 (O-2016-42) Provisional Appointment

The clean and strikeout Ordinances O-20681 Amending Chapter 2, Article 3, Division 8, of the San Diego Municipal Code relating to provisional appointment were presented to Council and approved on July 12, 2016. The highlighted wording from the strikeout was inadvertently omitted from the clean copy. Attached is the corrected copy with the added wording. Please ensure that this wording is included in the Municipal Code.

Strikeout

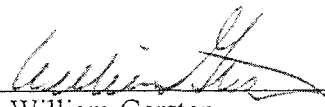
(b) With the approval of the Personnel Director, and subject to

limitations set forth in section 23.0806(c), any person

who has retired from the City service may be appointed provisionally to a position requiring special skills or knowledge, as determined by the Appointing Authority, for a period not to exceed ~~90 working days~~ 720 hours in any one fiscal year.

Sincerely

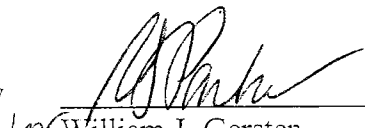
JAN I. GOLDSMITH, CITY ATTORNEY

By 
William Gersten
Deputy City Attorney

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Section 4. 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  _____
for William J. Gersten
Deputy City Attorney

WJG:hm:ccm
November 17, 2015
Or.Dept: Human Resources
Doc. No. 1170246_2

I certify that this Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 12 2016.

ELIZABETH S. MALAND
City Clerk

By  _____
Deputy City Clerk

Approved: 7/19/16

(date)

 _____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck-Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

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DIVISION 8 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 23.0806 RELATING TO
PROVISIONAL APPOINTMENT.

§23.0806 Provisional Appointment

(Rule VII, Section 5 of the Rules of the Civil Service Commission)

- (a) When it is urgent that an immediate appointment be made to fill a vacant position and less than the appropriate number of names are available for selection from the eligible list, any person approved by the Personnel Director may be appointed provisionally to fill the vacancy until an appropriate eligible list has been established. In no case shall a provisional appointment continue longer than 60 calendar days, nor, shall there be successive provisional appointments of the same person.
- (b) With the approval of the Personnel Director, and subject to limitations set forth in section 23.0806(c), any person who has retired from the City service may be appointed provisionally to a position requiring special skills or

knowledge, as determined by the Appointing Authority, for a period not to exceed ~~90 working days~~ 720 hours in any one fiscal year.

- (c) The City will not appoint a retired person as a provisional employee under subsection (b) if the retired person received unemployment insurance compensation arising out of prior employment as a provisional employee under subsection (b). The eligibility for provisional employment under subsection (b) will be reviewed on a regular basis.

WJG:hm:ccm
January 19, 2016
Or.Dept:Human Resources
Doc. No.: 1299568

Passed by the Council of The City of San Diego on JUL 12 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherr Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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"/>
Chris Cate	<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 JUL 19 2016.

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 *Mary Hernandez*, 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

JUN 28 2016

, and on JUL 19 2016.

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 *Mary Hernandez*, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20681