

105
04/11/2023

(R-2023-524)
COR. COPY

RESOLUTION NUMBER R- **314705**

DATE OF FINAL PASSAGE **APR 14 2023**

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE FIRST AMENDMENT TO
THE AGREEMENT BETWEEN THE CITY AND THE
SAN DIEGO CITY FIREFIGHTERS, I.A.F.F. LOCAL 145
REGARDING MAKE-WHOLE COMPLIANCE ISSUES FOR
CURRENT PROP B-AFFECTED EMPLOYEES.

WHEREAS, on June 5, 2012, City of San Diego (City) voters approved Proposition B, a
citizens' initiative to amend the San Diego Charter (Charter), known as "Comprehensive Pension
Reform for San Diego" (Proposition B); and

WHEREAS, the Charter amendments enacted by Proposition B became effective on
July 20, 2012, when the amendments were filed and chaptered by the Secretary of State for the
State of California; and

WHEREAS, Proposition B amended Articles VII (entitled "Finance") and IX (entitled
"The Retirement of Employees") of the Charter related to retirement benefits of City employees;
and

WHEREAS, among other things, Proposition B added sections 140 and 150 to Article IX
of the Charter; and

WHEREAS, Charter section 140 provided that, except for sworn police officers, all
Officers and employees who were initially hired or assumed office on or after the date the
Charter amendment went into effect, July 20, 2012, were ineligible to participate in the City's
defined benefit plan, the San Diego City Employees' Retirement System (SDCERS), and would
participate only in a defined contribution plan; and

WHEREAS, Charter section 150 authorized the Council of the City of San Diego (Council) to establish "by ordinance" a defined contribution plan consistent with the terms of section 150; and

WHEREAS, by San Diego Ordinance O-20376 (June 10, 2014), Council amended various sections of the San Diego Municipal Code to close participation in SDCERS for all Officers and employees initially hired or assuming office on or after July 20, 2012, as mandated by Charter section 140; and

WHEREAS, by San Diego Ordinance O-20196 (October 2, 2012), Council amended and restated the City of San Diego Supplemental Pension Savings Plan (SPSP-H Plan) to provide defined contribution plan retirement benefits for all Officers and employees initially hired or assuming office on or after July 20, 2012, as mandated by Charter section 150; and

WHEREAS, in December 2015, the Public Employment Relations Board (PERB) issued a decision in an unfair labor practice charge filed by certain City recognized employee organizations (REOs), *City of San Diego*, PERB Dec. No. 2464-M (2015) (PERB Order), ruling that the City violated the Meyers-Milias-Brown Act (MMBA) when it failed to meet and confer with the REOs over the language of Proposition B prior to placing it on the June 2012 ballot; and

WHEREAS, between January 2016 and March 2019, the unfair labor practice charge matter was adjudicated at both the California Appellate Court and California Supreme Court levels, with the California Supreme Court in *Boling v. Public Employment Relations Board*, 5 Cal. 5th 898 (2018), ultimately upholding the PERB Order and remanding the matter back to the Court of Appeal for further proceedings to determine the appropriate judicial remedy; and

WHEREAS, in *Boling v. Public Employment Relations Board*, 33 Cal. App. 5th 376 (2019), the Court of Appeal modified the PERB Order to provide, among other things, that for

the time period that ends with the completion of the bargaining process (including exhaustion of impasse measures, if an impasse occurs), the City must pay the affected current and former employees represented by the REOs the difference between the compensation (including retirement benefits) the employees would have received prior to when Proposition B took effect and the compensation those employees received after Proposition B took effect (Make-Whole Remedy), plus seven percent annual interest on the difference, but the Court of Appeal declined to invalidate Proposition B, concluding that the question of Proposition B's validity should be decided in a separate *Quo Warranto* action; and

WHEREAS, on February 5, 2021, judgment was entered in the *Quo Warranto* action, San Diego County Superior Court Case No. 37-2019-00051308-CU-MC-CTL, *The People of the State of California ex rel. San Diego Municipal Employees Association, San Diego City Firefighters Local 145, IAFF, AFL-CIO, AFSCME Local 127, AFL-CIO and Deputy City Attorneys Association of San Diego v. City of San Diego and its City Council*, finding the provisions of the Charter added by Proposition B invalid; and

WHEREAS, on April 9, 2021, the judgment in the *Quo Warranto* action became final when the time for filing an appeal expired; and

WHEREAS, the court in the *Quo Warranto* action also issued a writ commanding the City and Council to comply with the judgment by striking the 2012 Proposition B provisions from the Charter and conforming the San Diego Municipal Code and any other related enactments or regulations accordingly; and

WHEREAS, by San Diego Ordinance O-21333 (June 24, 2021) to comply with the judgment, in part, Council amended San Diego Municipal Code sections 24.0103, 24.0104, and 24.1702, so that Officers and employees initially hired or assuming office on or after July 10,

2021, with the exception of police recruits in the City's Police Academy, may participate in SDCERS, prospectively; and

WHEREAS, by San Diego Ordinance O-21332 (June 24, 2021), Council amended section 1.15 of the SPSP-H Plan to close participation by Officers and employees initially hired or assuming office on or after July 10, 2021, with the exception of police recruits in the City's Police Academy, so that these new Officers and employees could participate in SDCERS, prospectively; and

WHEREAS, from April 26, 2021 until June 6, 2022, the City negotiated with the San Diego City Firefighters, I.A.F.F. Local 145 (Local 145) regarding the unwinding of Proposition B for current Local 145-represented employees initially hired into an eligible standard hour position on or after July 20, 2012, and before July 10, 2021; and

WHEREAS, by San Diego Resolution R-314166 (June 22, 2022), Council approved a tentative agreement with Local 145 concerning the terms of prospective participation in SDCERS for current Local 145-represented employees, the purchase of service credit for the period of time these individuals were City employees but not eligible to participate in SDCERS due to Proposition B (PERB's Make-Whole Remedy), and the seven percent penalty calculation, as memorialized in the "Terms of Settlement of Make-Whole Compliance Issues between the City and Local 145 Regarding Current Prop. B-Affected Employees" (Tentative Agreement); and

WHEREAS, by San Diego Ordinance O-21474 (July 1, 2022) and San Diego Ordinance O-21473, Council approved amendments to the San Diego Municipal Code and the SPSP-H Plan to implement the Tentative Agreement; and

WHEREAS, among other things, the Tentative Agreement provided that the seven percent penalty interest required as part of the PERB Order would be calculated on an employee-by-employee basis, following inclusion of agreed upon adjustments to the Make-Whole amounts, and would be paid to eligible employees as a tax-deferred, mandatory employer contribution to the City's 401(k) plan; and

WHEREAS, Local 145 subsequently requested a change to the allocation of the seven percent penalty for its members such that the penalty would be distributed based on a percentage equal to each employee's total hours worked divided by the total numbers of hours worked by all impacted Local 145 members; and

WHEREAS, the proposed change to the seven percent penalty allocation does not change the dollar amount of the penalty payments to Local 145 members as a whole; and

WHEREAS, the First Amendment to the Tentative Agreement incorporates the proposed changes to the allocation of the seven percent penalty payment and all other provisions of the Tentative Agreement approved by Council on June 22, 2022 remain unchanged; and

WHEREAS, the First Amendment to the Tentative Agreement is subject to approval by the Council, as provided by the MMBA, specifically California Government Code section 3505.1, and San Diego Council Policy 300-06; and

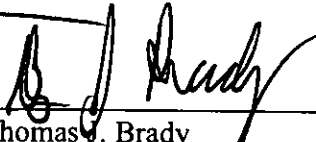
WHEREAS, the Council wishes to approve the terms of the First Amendment to the Tentative Agreement; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that, pursuant to the authority of the MMBA and Council Policy 300-06, the Council approves the First Amendment to the Tentative Agreement between the City and Local 145, which is on file in the Office of the City Clerk as Document No. RR-**314705**.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Thomas W. Brady
Deputy City Attorney

TJB:jvg
February 23, 2023
April 17, 2023 COR. COPY
Or.Dept: Human Resources
CC No. N/A
Doc. No. 3229371_2

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 11 2023.

DIANA J.S. FUENTES
City Clerk

By

Deputy City Clerk

Approved: _____

(date)

TODD GLORIA, Mayor

Vetoed: _____

(date)

TODD GLORIA, Mayor

(See attached memo and signature page.)

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: April 17, 2023

TO: Office of the City Clerk
Gilberto Sanchez, Associate Management Analyst

FROM: Thomas J. Brady, Deputy City Attorney

SUBJECT: Item No. 105 (R-2023-524) COR. COPY for City Council Meeting of
April 11, 2023

This Office is submitting a corrected copy of Resolution No. R-2023-524 COR. COPY for Item No. 105 for the City Council meeting on April 11, 2023, to reflect the following:

Page 6

Original wording:

BE IT RESOLVED, by the Council of the City of San Diego, that, pursuant to the authority of the MMBA and Council Policy 300-06, the Council approves the Tentative Agreement between the City and Local 145, which is on file in the Office of the City Clerk as Document No. RR-_____.

Amended to read:

BE IT RESOLVED, by the Council of the City of San Diego, that, pursuant to the authority of the MMBA and Council Policy 300-06, the Council approves the First Amendment to the Tentative Agreement between the City and Local 145, which is on file in the Office of the City Clerk as Document No. RR-_____.

TJB:jvg

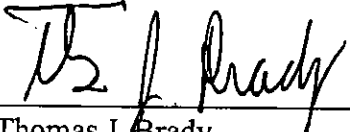
Doc. No.: 3278754

Enclosure

cc: Constance Patterson, Legislative Recorder
Diana Fuentes, City Clerk

BE IT RESOLVED, by the Council of the City of San Diego, that, pursuant to the authority of the MMBA and Council Policy 300-06, the Council approves the Tentative Agreement between the City and Local 145, which is on file in the Office of the City Clerk as Document No. RR- **314705**.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Thomas J. Brady
Deputy City Attorney

TJB:jvg
February 23, 2023
Or.Dept: Human Resources
CC No. N/A
Doc. No. 3229371

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 11 2023.

DIANA J.S. FUENTES
City Clerk

By 
Deputy City Clerk

Approved: 4/14/23
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on APR 11 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 14 2023

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Connie Patterson Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **314705**