

#103  
06/14/2022

(R-2022-533)

RESOLUTION NUMBER R- 314159

DATE OF FINAL PASSAGE JUN 22 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A TENTATIVE AGREEMENT BETWEEN THE CITY AND THE DEPUTY CITY ATTORNEYS ASSOCIATION OF SAN DIEGO REGARDING THE UNWINDING OF PROPOSITION B FOR CURRENT EMPLOYEES HIRED ON OR AFTER JULY 20, 2012 AND BEFORE JULY 10, 2021.

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 January 20, 2022, the City negotiated with the Deputy City Attorneys Association of San Diego (DCAA) regarding the unwinding of Proposition B for current DCAA-represented employees initially hired into an eligible standard hour position on or after July 20, 2012, and before July 10, 2021; and

WHEREAS, the City has reached agreement with DCAA concerning the terms of prospective participation in SDCERS for these DCAA-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 DCAA Regarding Current Prop. B-Affected Employees" (Tentative Agreement); and

WHEREAS, the Tentative Agreement provides all DCAA-represented employees will begin participating in SDCERS, prospectively, on or about July 9, 2022; and

WHEREAS, all DCAA-represented employees will be required to purchase all missed years of service credit for the time they were employed by the City in an eligible standard hour position, but excluded from participation in SDCERS due to Proposition B; and

WHEREAS, all DCAA-represented employees will also be enrolled in the City's 2009 401(a) Plan; and

WHEREAS, the purchases of SDCERS service credit will be accomplished through mandatory transfers of SPSP-H Plan account balances, with the City responsible for any shortfall in funding if the SPSP-H Plan account balances are not sufficient to fully purchase the service credit; and

WHEREAS, DCAA-represented employees will also have their employee contribution rates based on their age at hire into an eligible standard hour position; and

WHEREAS, the seven percent penalty interest required as part of the PERB Order will be calculated on an employee-by-employee basis, following inclusion of agreed upon adjustments to the Make-Whole amounts, and will be paid to eligible employees as a non-pensionable, lump-sum payment; and

WHEREAS, 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 Tentative Agreement; and

WHEREAS, subsequent amendments to the San Diego Municipal Code and SPSP-H Plan will be necessary to implement this Tentative Agreement, and those required amendments will be brought to Council for approval prior to the effective date for prospective participation in SDCERS for DCAA-represented employees; and

WHEREAS, the City's Management Team continues to meet and confer with DCAA representatives regarding the unwinding of Proposition B for affected individuals who have separated from City employment; 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 Tentative Agreement between the City and DCAA, which is on file in the Office of the City Clerk as Document No. RR- **314159**.

BE IT FURTHER RESOLVED that the Council directs the City's Management Team to meet and confer with DCAA representatives regarding the unwinding of Proposition B for affected individuals who have separated from City employment.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/Thomas J. Brady  
Thomas J. Brady  
Deputy City Attorney

TJB:jvg  
5/26/22  
Or.Dept: Human Resources  
CC No. N/A  
Doc. No.: 2861240

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 14 2022

ELIZABETH S. MALAND  
City Clerk

By Connie Patterson  
Deputy City Clerk

Approved: 6/22/22  
(date)

Todd Gloria  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUN 14 2022, 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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 JUN 22 2022.

**(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)

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

By Connie Patterson Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- **314159**