

RESOLUTION NUMBER R- 314627  
DATE OF FINAL PASSAGE MAR 07 2023

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 SEPARATED 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 met and conferred 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, by San Diego Resolution R-314159 (June 22, 2022), Council approved a tentative between the City and DCAA concerning the terms of prospective participation in SDCERS for current DCAA-represented employees initially hired into an eligible standard hour position on or after July 20, 2012, and before July 10, 2021, the purchase of SDCERS 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; and

WHEREAS, by San Diego Ordinance O-21474 (July 1, 2022) and San Diego Ordinance O-21473 (July 1, 2022), Council approved amendments to the San Diego Municipal Code and the SPSP-H Plan to implement the terms of the above-referenced tentative agreement; and

WHEREAS, the City met and conferred with representatives of DCAA from August 2022 through February 2023 regarding the final phase of compliance with the PERB Order, unwinding Proposition B for affected individuals who have separated from City employment; and

WHEREAS, the City has now reached a tentative agreement (Tentative Agreement) with DCAA concerning PERB's Make-Whole Remedy and seven percent penalty calculation for separated employees formerly represented by DCAA; and

WHEREAS, Tentative Agreement provides separated employees who were represented by DCAA with an option to purchase all SDCERS service credit for the time they were employed by the City in an eligible standard hour position, but not eligible to participate in SDCERS due to Proposition B; and

WHEREAS, the purchases of SDCERS service credit are voluntary and those separated employees who decline to make a timely purchase on the terms of the Tentative Agreement are waiving their right to a make-whole remedy and seven percent penalty payment under the PERB Order; and

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

WHEREAS, in situations where separated employees took distributions from their SPSP-H accounts, the separated employees will be responsible for the distributed amounts, plus an assumed rate of return based on the investment performance of the SPSP-H Plan as a whole, when making the purchase; and

WHEREAS, those separated employees who make the service credit purchase will also receive missed contributions to the City's 401(a) Plan; and

WHEREAS, the seven percent interest penalty required by the PERB Order will be calculated and paid based on the separated employee's period of exclusion from SDCERS; and

WHEREAS, a separated employee who does not initially elect to purchase the service credit, but is re-hired into an eligible standard hour position within 2 years of receiving the original purchase of service credit contract, will have another opportunity to avail themselves of the make-whole remedy provided in the Tentative Agreement; 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

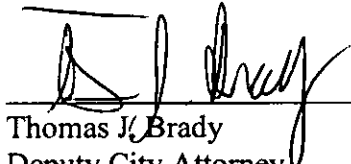
WHEREAS, the Council wishes to approve the terms of the Tentative Agreement; and

WHEREAS, subsequent amendments to the San Diego Municipal Code will be necessary to implement this Tentative Agreement, and those required amendments will be brought to Council for approval prior to the purchases of service credit described above; 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 Tentative Agreement between the City and DCAA, which is on file in the Office of the City Clerk as Document No. RR- 314627 .

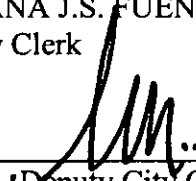
APPROVED: MARA W. ELLIOTT, City Attorney

By  \_\_\_\_\_  
Thomas J. Brady  
Deputy City Attorney

TJB:jvg  
February 9, 2023  
Or.Dept: Human Resources  
CC No. N/A  
Doc. No. 3216915

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of FEB 28 2023

DIANA J.S. FUENTES  
City Clerk

By  \_\_\_\_\_  
Deputy City Clerk

Approved: 3/6/23 \_\_\_\_\_  
(date)

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

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

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

Passed by the Council of The City of San Diego on FEB 28 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 MAR 07 2023.

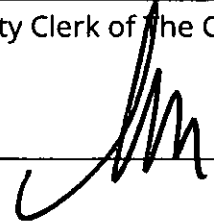
**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:



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

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

By , Deputy

Office of the City Clerk, San Diego, California  
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