

RESOLUTION NUMBER R- 315580

DATE OF FINAL PASSAGE JUN 1 1 2024

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A TENTATIVE AGREEMENT BETWEEN THE CITY AND THE SAN DIEGO POLICE OFFICERS ASSOCIATION REGARDING THE UNWINDING OF PROPOSITION B FOR CURRENT EMPLOYEES HIRED ON OR AFTER JULY 1, 2013, AND NEW EMPLOYEES HIRED ON OR AFTER SEPTEMBER 9, 2024, AND THE EXTENSION OF CERTAIN TERMS OF THE TENTATIVE AGREEMENT TO SIMILARLY SITUATED SWORN UNREPRESENTED 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, 141.1, 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, the City's Supplemental Savings Plan – H (SPSP-H); 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, Charter section 141.1 created a new Tier V SDCERS benefit for sworn police officers; and

WHEREAS, for employees represented by the San Diego Police Officers Association (POA), Proposition B operated to exclude police recruits in the City's police academy from participating in SDCERS and instead placed them in SPSP-H; and

WHEREAS, Proposition B also changed the terms of newly hired sworn officers' participation in SDCERS from Tier IV to a less generous Tier V benefit; and

WHEREAS, because the City and POA were parties to an existing Memorandum of Understanding (MOU) setting forth the terms of retirement benefits at the time Proposition B became effective on July 12, 2012, Proposition B was not implemented for POA-represented employees until the parties entered into a new MOU, effective July 1, 2013; 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, 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, although POA did not participate in the PERB proceeding or in any of the subsequent litigation concerning the validity of Proposition B, POA's current MOU with the City provides the parties will meet and confer over the invalidation of Proposition B; and

WHEREAS, from April 26, 2021 until May 2, 2024, the City met and conferred with POA regarding the unwinding of Proposition B for current POA represented employees; and

WHEREAS, the City has reached a Tentative Agreement with the POA, which provides for prospective participation in SDCERS Tier IV for current sworn officers, retroactive participation in SDCERS Tier IV for current sworn officers, and prospective participation in SDCERS Tier IV for police recruits and lateral sworn officers hired on or after September 9, 2024; 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 Tier IV for POA-represented employees; and

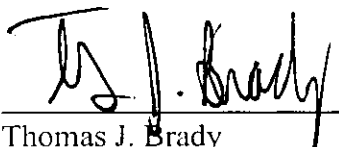
WHEREAS, the Council also wishes to extend the terms of this Tentative Agreement to all sworn unrepresented employees in the Police Department who were initially hired into an eligible standard hour position on or after July 1, 2013; and

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 POA, which is on file in the Office of the City Clerk as Document No. RR- 315580.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that the terms of this Tentative Agreement are also extended to all sworn unrepresented employees in the Police Department who were initially hired into an eligible standard hour position on or after July 1, 2013.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Thomas J. Brady
Deputy City Attorney

TJB:jvg
May 20, 2024
Or.Dept: Human Resources
CC No. N/A
Doc. No. 3657742

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 04 2024.

DIANA J.S. FUENTES
City Clerk

By Krystell Medina
(Deputy City Clerk)

Approved: 6/11/24
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

JUN 04 2024

Passed by the Council of The City of San Diego on _____, 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"/>
Henry L. Foster III	<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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 JUN 11 2024.

(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 Krystel Medina, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- <u>315580</u>