

**CHARTER REVIEW COMMITTEE MEETING  
MUNICIPAL LIBRARY, COMMUNITY ROOM, 2<sup>ND</sup> FLOOR  
41 WEST THURMAN AVENUE  
SEPTEMBER 25, 2013, 5:30 P.M.**

Call to Order  
Roll Call

**ORAL COMMUNICATIONS**

This is the opportunity to address the Charter Review Committee. Unless additional time is authorized by the Committee, all commentary shall be limited to three minutes.

**SCHEDULED MATTERS**

- 1. Minutes of September 11, 2013**  
Re: Approving draft Minutes of the Charter Review Committee Meeting of September 11, 2013.
  
- 2. Review of Recommended Legal and Other Minor Modifications to Charter**  
Re: Review and consideration of potential legal and housekeeping revisions to the existing City Charter.
  
- 3. Review of Porterville Charter Pension Provisions**  
Re: Review and consideration of existing Charter provisions related to the City's pension system.
  
- 4. Scheduling of Future Meetings**

**OTHER MATTERS**

**ADJOURNMENT**

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Office of City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.

Materials related to an item on this Agenda submitted to the Committee after distribution of the Agenda packets are available for public inspection during normal business hours at the Office of City Clerk, 291 North Main Street, Porterville, CA 93257, and on the City's website at [www.ci.porterville.ca.us](http://www.ci.porterville.ca.us).

**CHARTER REVIEW COMMITTEE MINUTES  
HAMAMATSU CONFERENCE ROOM  
CITY HALL, 291 N. MAIN STREET  
PORTERVILLE, CALIFORNIA  
SEPTEMBER 11, 2013, 6:00 P.M.**

Called to Order at 6:05 p.m.

Roll Call: Member Giraudi, Member Salazar, Member Cortez, Member Green, Member Irish, Member Bush, Member Stowe, Member Bailey and Member Hardin

**ORAL COMMUNICATIONS**

- Brock Neeley, thanked the members for their participation in the Charter Review process.
- Barry Caplan, spoke of the significance of the charter review process; and he requested that the committee members carefully consider the future of the community during its deliberations.

**WRITTEN COMMUNICATIONS**

City Manager Lollis distributed written communication received via e-mail from Sam Merlino of Merlino Consulting dated September 3, 2013 and received on September 11, 2013. In the letter Merlino addresses the City's decision to not pay prevailing wage as a charter city, identifies various points of concern, and requests that the committee consider the reinstatement of prevailing wage.

**SCHEDULED MATTERS**

**1. Introductions and Committee Organization**

Committee Member Milt Stowe nominated Member Allan Bailey for Chair; and Committee Member Gary Giraudi nominated Member Milt Stowe for Chair.

Following the nominations Member Teri Irish requested clarification from the City Attorney regarding the Brown Act, FPPC reporting, and methods for appointing a Chair. City Attorney Lew advised of Brown Act requirements; indicated that members were not required to complete a FPPC Form 700; and provided options relative to appointment of a Chair.

The remaining committee members passed on submitting further nominations. In response to a request, both Members Bailey and Stowe spoke briefly about themselves.

**COMMITTEE ACTION:** That the Committee appoint Member Allan Bailey as Committee Chair.

M.O. 01-091113

AYES: Salazar, Irish, Bush, Stowe, Giraudi  
NOES: Green, Cortez  
ABSTAIN: Hardin, Bailey  
ABSENT: None

Chair Bailey assumed the role of Chair, and requested nominations for Vice Chair. Member Giraudi nominated Member Stowe for Vice Chair; and Member Irish nominated Member Giraudi for Vice Chair. The remaining committee members passed on submitting further nominations.

COMMITTEE ACTION: That the Committee appoint Member Stowe as Committee Vice Chair.

M.O. 02-091113

AYES: Bailey, Hardin, Green, Giraudi  
NOES: Stowe, Bush, Irish, Salazar, Cortez  
ABSTAIN: None  
ABSENT: None

COMMITTEE ACTION: That the Committee appoint Member Giraudi as Committee Vice Chair.

M.O. 03-091113

AYES: Stowe, Bush, Irish, Salazar, Cortez  
NOES: Bailey, Hardin, Green, Giraudi  
ABSTAIN: None  
ABSENT: None

Disposition: Bailey appointed as Chair; and Giraudi as Vice Chair.

## **2. Scheduling of Meetings**

Chair Bailey introduced the item, and a discussion ensued regarding meetings days, time, duration and frequency. After review of individual schedules and potential conflicts, the committee identified Wednesdays at 5:30 p.m. as the most accommodating. Chair Bailey noted that he, Vice Chair Giraudi, and Member Stowe would not be available the subsequent Wednesday for a meeting. The committee concurred that the next meeting would take place on September 25, 2013.

## **3. Review of City Charter**

City Manager Lollis introduced the item, and spoke of areas identified by the Council as areas of interest for committee review. They consisted of the following:

- The City's fiscal year calendar (currently July 1 – June 30), and/or election cycle;
- City employee pensions;
- Council Manic Interference (general penalty provision); and
- Leases

The City Manager added that areas had also been identified by staff, most of which could be categorized as "housekeeping" legal issues. City Attorney Lew spoke of previous Charter review efforts, and offered to prepare a memo identifying said items as a jumping off point for the committee. She noted that previous amendments had been presented via separate ballot measures, and added that committee members could also identify areas for consideration.

Member Irish inquired about committee member communication with staff, which triggered a lengthy discussion regarding how committee inquiries and requests for information should be handled. The committee explored a variety of options, which included communications solely with the City Manager; handling of all inquiries through the Chair; and direct contact with department heads. Member Hardin spoke in opposition to restricting committee communications with City staff, and Vice Chair Giraudi spoke in favor.

**COMMITTEE ACTION:** MOVED by Member Irish, SECONDED by Member Stowe that the Committee direct all questions to the City Manager. The motion carried unanimously.  
M.O. 04-091113

City Attorney Lew shared with the committee a substantial list of Charter amendments which had been identified to date. Following Ms. Lew's presentation, Chair Bailey suggested the prioritization of the issues identified. Member Stowe suggested pensions, and the committee concurred that it would be the first area of interest considered. Ms. Lew indicated that she would draft a memo identifying those changes required by law, and identified as "housekeeping" issues for consideration by the committee as well.

Committee e-mail communication was discussed, and a consensus was reached that a committee e-mail address would be created through which committee members could receive agendas and communications from staff and members of the public. City Attorney Lew advised the committee members not to participate in discussions via e-mail which could qualify as a serial meeting.

Committee member introductions took place.

### **ORAL COMMUNICATIONS**

- Brock Neeley, inquired whether information provided by the City Attorney would be made public with the agenda packets.
- Barry Caplan, spoke in favor of the creation of individual city e-mail addresses for committee members in lieu of one committee e-mail address.

### **OTHER MATTERS**

- The committee agreed that one City e-mail address be created which would then route automatically to each member.
- Chair Bailey stressed the importance of being cognizant of the timeline.
- The next meeting was scheduled to take place in two weeks at 5:30 p.m.

### **ADJOURNMENT**

The committee adjourned at 8:30 p.m. to the meeting of September 25, 2013.

---

Luisa M. Zavala, Deputy City Clerk

---

Allan Bailey, Chair

# MEMORANDUM

MCCORMICK KABOT JENNER & LEW  
A Professional Corporation  
1220 West Main Street  
Visalia, California 93291  
Telephone: (559) 734-6729  
Facsimile: (559) 734-8762

September 20, 2013

**TO: Members of the Porterville Charter Review Committee**

**FROM: Julia Lew, Porterville City Attorney**

**SUBJECT: Recommended Legal and Other Minor Modifications to Charter**

---

The following contains a discussion of several legal issues with the existing charter, along with suggested revisions. Suggested additions are underlined, and suggested deletions are presented in ~~strikethrough~~.

## **SECTION 5**

Section 5 contains provisions for holding city elections, but it does not contain any provisions specific to elections related to charter amendments.

AB 1344 (2011) changed the requirements for adopting and amending charters. Charters and charter amendments now must be presented to the voters at a statewide general, statewide primary, or regularly scheduled municipal election date. This changed prior law which allowed for special elections for charter amendments.

Under the existing charter, special elections are to be held substantially in the same manner as general elections – which are to be held at the same time as the statewide primary. Thus, there is no conflict between the existing charter and AB 1344.

The charter could, however, be amended so that it matches the language of AB 1344. Under the language of the existing charter, an amendment could only be approved at the same time as a statewide primary. If the city were to adopt the language of AB 1344, the charter would allow an amendment to be submitted to the voters at the time of a statewide general election as well. If there is a charter provision that becomes outdated or illegal due to changes in state or federal law, or if any charter provision

ITEM 02

becomes the subject of a lawsuit, it may be desirable to present a charter amendment to the voters at the earliest possible time.

### **SECTION 8**

We recommend the following change to Section 8:

¶ 1:

The elective officers of the city of Porterville shall be five ~~councilmen~~ council members, who shall be elected from the city at large at a general municipal election.

### **SECTION 9**

Section 9 contains the provisions for installing newly-elected council members in office. The current version of the charter indicates that council members take office on the Monday next succeeding the election day. This is impractical because the results of the election are not necessarily certified within this time. If the election is consolidated (i.e., done concurrently with the County) then the County canvasses the votes and must present the results to the City within 28 days. The City Council then must declare the results and install the newly elected members at the first regular meeting, or special meeting, following the presentation of the results from the County. (See Elec. Code §§ 10262, 10263; see AB 2790 (2004).) The law governing this area was updated in 2004, after the most recent charter amendment, and so the charter should be updated accordingly.

We recommend the following changes:

¶2:

The members of the council shall be elected by the qualified voters of the city at a general municipal election to be held in the said city at the same time as the primary election for state offices for the state of California. They shall hold office for the period of four (4) years from and after the Monday next succeeding the day of their election date upon which they are installed in office in accordance with this section and until their successors are elected, and qualified, installed in office. ~~provided the respective terms of any council member presently serving or elected at the time of the adoption of this amendment shall be extended one additional year to the even numbered year following the expiration of their respective terms.~~

¶5:

The council shall reorganize at ~~its next~~ the meeting following each municipal election wherein the newly-elected members are installed and shall choose one of ~~their~~ its number to serve as president of the council to be known as mayor.

¶6:

~~The council shall meet at its usual meeting place on the first Monday after any municipal election, duly canvass the returns and declare the result thereof, and install the newly elected officers, if any. Where the canvass of the vote is to be completed by the city elections official, the canvas shall be completed no later than the fourth Friday after the election. Upon completion of the canvass, the elections official shall certify the results to the city council, which shall meet at its usual place of meeting no later than the fourth Friday after the election to declare the results and to install the newly elected officers. For a consolidated election, the city elections official, upon receipt of the results of the election from the elections official conducting the election, shall certify the results to the city council, which shall meet at its usual place of meeting no later than the next regularly scheduled city council meeting following the presentation of the canvass of the returns, or at a special meeting called for this purpose, to declare the results and to install the newly elected officers.~~

Under existing law the County Elections Official has 28 days following the election to canvass the votes and provide the results to the City. I have not included this particular timeframe because it could conceivably change. The rest of the paragraph is essentially verbatim to Elections Code section 10262 and 10263. The first part of ¶ 6 is probably unnecessary because the City will consolidate its elections with the County. However, I see no harm in having the option to have a city-conducted election in the future.

To be clear, the City may adopt different provisions from what is provided above. However, the City will not be able to compel the County to complete its canvas by the following Monday. Thus, as a practical matter, the installation of the new council should be tied to the County's time for canvassing the votes. The committee could recommend a longer period after the County completes its canvassing, or the committee could recommend a specific date that is at least 28 days after election day. The committee could also recommend a shorter (or longer) time period for city-conducted elections.

## **SECTION 12**

We recommend the following changes to Section 12:

¶ 2:

The ayes and noes shall be taken and recorded upon the passage of all ordinances, ~~and resolutions, or other actions~~ and entered upon the record of the proceedings of the council. ~~Upon the request of any member of the council, the ayes and noes shall be taken and recorded upon any vote.~~ All members present at any meeting must vote; provided that no such member of the council shall cast a vote when to do so would be contrary to the applicable provisions of state law, including laws pertaining to conflict of interest.

¶ 7:

No ordinance shall be passed by the council at any time other than at a regular meeting, ~~or~~ and until its publication at least once in the official newspaper of the city at least three days before its final passage.

¶ 9:

Except as otherwise provided by general law, or this charter, no action providing for the granting of any franchise, or for the establishing or changing fire zones, or for the ~~imposing~~ establishing of any penalty, shall be taken except by ordinance.

## **SECTION 18**

Section 18 involves the setting of compensation of city officials and employees. AB 1344 (2011) extends to charter cities an existing provision applicable to general law cities, which prevents any contract with a local agency executive from providing for a cash settlement (i.e., severance pay) that exceeds the amount remaining on the contract for up to 18 months.

The existing charter does not contain any specific limitation relative to contractual severance pay. The existing charter does indicate that officials and employees shall not be entitled to any compensation following resignation or removal from office, but the section does not address, and does not apply to, a negotiated severance. It is therefore advisable to have a limitation on cash settlements that is consistent with AB 1344.

We recommend the following change:

¶ 3:

The salary of any appointive official or employee of the city shall cease forthwith with his/her removal or resignation from office or employment, and he/she shall only be entitled to compensation for that expired proportion of the month or term of service during which he/she shall have performed his/her duties. Nothing in this section shall preclude an employment contract from providing for a cash settlement upon termination of the employment contract, provided that the maximum cash settlement shall not exceed an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract, or if the unexpired term of the contract is greater than 18 months, then the maximum cash settlement shall not exceed an amount equal to the monthly salary of the employee multiplied by 18.

## **SECTION 21**

Section 21 contains a requirement that the city manager become a resident of the city within a reasonable time of taking office.

The California Constitution (Art. XI, § 10.5) expressly states that charter cities may not require employees to be residents of the city, but that employees may be required to reside within a specified distance from the city for purposes of responding to emergencies. The Attorney General has issued a formal opinion indicating that appointed city managers are employees for purposes of this section. (See 59 Ops.Cal.Atty.Gen. 136.) There is some argument that a charter city may identify its city manager as an "officer" and not an "employee", and therefore the constitutional provision would not apply. However, in its opinion, the Attorney General argues that the purpose of the constitutional provision would be defeated if a city could simply refer to its employees as "officers", so as to avoid the requirement. This argument has never been tested in court, but the court would probably consider the Attorney General's opinion. Most likely, a court would find that a residency restriction of an appointed city manager is void and unenforceable.

We therefore recommend the following change:

¶ 1:

The city manager shall be the administrative head of the city government. ~~The city manager shall establish residency in the city of Porterville within a reasonable period of time within the discretion of the council.~~ His/her powers and duties shall be as follows:

#### **SECTION 59**

We recommend the following changes to Section 59:

Heading:

Sec. 59. ~~Employment~~ Hiring of Certified Public Accountant To Audit City Books.

¶ 1:

The city council shall ~~employ~~ contract with a certified public accountant annually to investigate the accounts and transactions of all city officers and employees having the collection, custody or distribution of public money or property, or the power to approve, allow or audit demands on the city treasury.

## **MEMORANDUM**

**MCCORMICK KABOT JENNER & LEW**  
A Professional Corporation  
1220 West Main Street  
Visalia, California 93291  
Telephone: (559) 734-6729  
Facsimile: (559) 734-8762

September 20, 2013

**TO: Members of the Porterville Charter Review Committee**

**FROM: Julia Lew, Porterville City Attorney**

**SUBJECT: Porterville Charter Pension Provisions**

---

This memorandum is provided to assist the Committee with its consideration of the City's current Charter provisions related to its Pension system. Per the direction of the Committee, it wishes to address this item first given its complexity.

The City's current charter provisions related to city employee pensions is located at Section 58 and reads as follows:

"The council shall have and is hereby granted full power and authority to establish, regulate, maintain, revise and amend, a retirement, disability, death benefit and pension system, or either or any of them, for its elective and appointive officers and employees of the city of Porterville and their dependents. Authority and power is hereby vested in the city of Porterville, its council, its officers, agents and employees to do and perform any act or exercise any authority granted, permitted or required whereby the city of Porterville may fully participate in a retirement, disability, death benefit and pension system for its employees.

A system for retirement, disability, death benefit and pension rights for employees and their dependents authorized by this section when established by the council, shall not be terminated without securing the approval of a majority of the electors of the city of Porterville at an election held therefor.

The city shall levy and collect taxes sufficient to pay all costs and expenses required to be paid by the city of Porterville to enable the city of Porterville to participate in any such retirement, disability, death benefit or pension system established, set up or maintained by, for on behalf of the city of Porterville and the limitations of section forty-three of the charter of the city of Porterville, with respect to levying and collecting of municipal taxes, shall not apply to any tax authorized by this article."

ITEM 03

The City participates in the PERS system as its retirement system, but recently negotiated with its labor organizations to utilize a separate program for new employees. City staff can address the city's current system/PERS participation and obligations under its collective bargaining agreements at the Committee's meeting. City staff is also looking into have PERS staff address the Committee concerning the City's current system.

The cost of participating in PERS has increased greatly over the past decade, with the reasons for the increases vigorously debated and a contentious issue. There is growing concern that without continuing substantial increases in costs to the agencies, a substantial portion of money needed to fund promised pensions for PERS participants throughout the State may be unfunded.

Consequently, cities are increasingly looking at alternative systems to PERS, for new and current employees, as well as making extensive reforms to their own (non-PERS) systems. The Porterville City Council has noted this and directed that the Charter Review Committee consider possible alternatives.

Citizens of San Diego and San Jose both submitted ballot measures via their initiative processes providing for extensive amendments to their Charters addressing their pension systems. As noted at the prior Committee Meeting, the legal validity of both of these initiatives/amendments is in question and has not yet been resolved. Both amendments are attached to this memorandum in full and have been summarized below, along with the current legal status:

#### SAN DIEGO

San Diego's "Proposition B" was passed in June 2012 with 65.81% voting for it. San Diego already had a separate pension system (from PERS) prior to the adoption of the Proposition. The initiative was introduced by a group of individuals including the Mayor. The Proposition did the following:

1. Gave new city workers a 401(k) with a city match instead of a guaranteed pension. (Change from defined-benefit to defined-contribution) The city's contribution levels will be capped at 9.2% of final salary for general employees and 11% for public safety employees.
2. Provided that the guaranteed pension for newly-hired public safety workers will max out at 80% of the individual's salary (the current cap had been at 90%).
3. Capped San Diego's overall payroll for 5 years at its 2011 level of less than \$600 million annually. The specific requirement is that the city will commence negotiating this with the unions, but that the bargaining position may be overturned with a 2/3 vote of the council.

4. Employees' base compensation, upon which their pension benefits are calculated, would be limited to exclude supplemental and specialty pay.
5. Eliminated a provision from the Charter that required a majority vote of all city employees to approve any changes to retirement benefits.
6. City officers and employees convicted of a felony related to their positions will lose their pension benefits.
7. The City will be required to annually publish the amounts of pension benefits paid to retirees, with the names redacted to protect privacy.

Voters had already approved in 2006 a measure that required voter approval of future city employee pension benefits increases.

In February 2012, the State PERB Board ruled that the fact that there were two elected city officials on record in favor of the initiative meant that the initiative, though sponsored by public citizens, had run afoul of the city's "meet and confer" requirements, and PERB attempted to keep the initiative off the June ballot. The Judge declined to issue temporary restraining order requested by PERB, but In February 2013, a PERB administrative law judge ruled that the city should have negotiated with the labor unions prior to taking it to the ballot. A separate lawsuit was filed claiming that the proposed amendments amounted to charter "revisions" that were only permitted to be introduced by the city council or a charter review commission, but the Court ruled against this claim as well. Other lawsuits have been filed, and on July 31, 2012, a Judge ruled against a union request for an injunction to postpone the City's implementation of the amendment. However, the lawsuits have not yet been resolved and likely will not be for years.

## SAN JOSE

San Jose's "Measure B" was passed in June 2012 by about 69% of the voters. San Jose also has a separate (non-PERS) retirement system. This initiative was also spear-headed by the City's Mayor. The Measure did the following:

1. Current employees will have to pay a larger portion of their salaries to maintain their existing benefits. This will mean paying up to 16% of their salaries, not to exceed 1/2 the cost of their normal benefits, which does not include unfunded liabilities. (The city had paid almost 3/4 of the normal cost of employee's pensions.) This provision included a clause that directs an equivalent amount of savings to be obtained through salary reductions, should a court find this provision unenforceable.
2. Employees who do not opt to pay the higher contribution rates will be placed in a new, less generous plan.

3. New employees will be placed in more limited pension plans, and the city has the option to enroll employees in Social Security or establish a 401(k) style defined contribution plan.
4. Employees must pay for at least half the normal cost and unfunded liabilities of retiree health care plans.
5. The city will no longer issue extra pension payments when the pension investment funds experience "excess" returns.
6. The automatic annual COLAS paid to retirees is reduced from 3% to 1.5% for new employees and current employees that opt into the newer, less generous plan, and COLAS may be suspended for up to 5 years if the city declares a fiscal emergency.
7. Disability retirements were limited to cases where the employee is incapable of engaging in gainful employment with the city but not yet eligible to retire.
8. All future increases in pension benefits or other post employment benefits must be ratified by the voters.

The approved measure was challenged in court as unconstitutional, and final arguments in the superior court case were made this month. Whatever the decision may be, it will almost certainly be appealed.

**FULL TEXT OF MEASURE B**

**ARTICLE XV-A  
RETIREMENT**

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO  
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS  
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as:  
*"The Sustainable Retirement Benefits and Compensation Act."*

**Section 1501-A: FINDINGS**

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

February 8, 2012

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

**Section 1502-A: INTENT**

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

February 8, 2012

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

**Section 1503-A. Act Supersedes All Conflicting Provisions**

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than September 30, 2012.

February 8, 2012

**Section 1504-A. Reservation of Voter Authority**

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

**Section 1505-A. Reservation of Rights to City Council**

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees subject to the terms of this Act.

**Section 1506-A. Current Employees**

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to

February 8, 2012

amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.

(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

**Section 1507-A: One Time Voluntary Election Program ("VEP")**

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of

February 8, 2012

IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.
- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City

February 8, 2012

Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017.
- (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
- (vi) “Final compensation” shall mean the average annual pensionable pay of the highest three consecutive years of service.
- (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time

February 8, 2012

worked (including paid leave, but not including overtime).

- (c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.
- (d) VEP Survivorship Benefits.
  - (i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.
  - (ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.
- (e) VEP Disability Retirement Benefits.
  - (i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

February 8, 2012

- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

**Section 1508-A: Future Employees - Limitation on Retirement Benefits - Tier 2**

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

- (a) The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent

February 8, 2012

the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation.

February 8, 2012

(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

**Section 1509-A: Disability Retirements**

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

February 8, 2012

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

February 8, 2012

**Section 1510-A: Emergency Measures to Contain Retiree Cost of Living Adjustments**

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

**Section 1511-A: Supplemental Payments to Retirees**

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets:

February 8, 2012

**Section 1512-A: Retiree Healthcare**

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

**Section 1513-A: Actuarial Soundness (for both pension and retiree healthcare plans)**

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually

February 8, 2012

through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- (i) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
- (ii) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

- (i) the funding objectives and actuarial assumptions of the plans; and
- (ii) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

February 8, 2012

**Section 1514-A: Savings**

In the event Section 6 (b) is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 4% of compensation each year, capped at a maximum of 16% of pay.

**Section 1515-A: Severability**

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

February 8, 2012

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

ADOPTED this 6th day of March, 2012, by the following vote:

AYES: CONSTANT, HERRERA, LICCARDO, NGUYEN,  
OLIVERIO, PYLE, ROCHA; REED.

NOES: CAMPOS, CHU, KALRA.

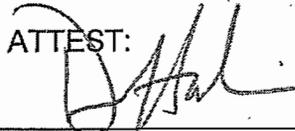
ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED  
Mayor

ATTEST:



DENNIS D. HAWKINS, CMC  
City Clerk

# CITY OF SAN DIEGO

## Proposition B

(This proposition will appear on the ballot in the following form.)

### PROP B

**Amends City Charter Regarding Retirements Benefits.** Should the Charter be amended to: direct City negotiators to seek limits on a City employee's compensation used to calculate pension benefits; eliminate defined benefit pensions for all new City Officials and employees, except police officers, substituting a defined contribution 401(k)-type plan; require substantially equal pension contributions from the City and employees; and eliminate, if permissible, a vote of employees or retirees to change their benefits?

This proposition requires approval by 50%  
of the voters voting on the proposition.

Full text of this proposition follows the arguments.

### OFFICIAL TITLE AND SUMMARY

#### BALLOT TITLE

Amendments to the San Diego City Charter Affecting Retirement Benefits

#### BALLOT SUMMARY

This measure would amend the San Diego City Charter to make changes to retirement benefits. The measure would:

- From its effective date until June 30, 2018:
  1. Limit a City worker's base compensation used to calculate the employee's pension benefits to Fiscal Year 2011 levels.
  2. Require that any new job classification be created only after specific findings are made that the new classification "is necessary to achieve efficiencies and/or salary savings" by consolidating job duties or creating a more efficient service delivery method.
  3. Define the terms the City must use when it begins negotiations with the City's labor unions for their contracts, unless the City Council overrides those terms with a two-thirds vote.
- Provide all new hires at the City, except for sworn police officers, with a defined contribution plan modeled after a 401(k) plan in place of a defined benefit pension plan.
- Provide contributions for employees participating in the new defined contribution plan, in order to compensate for the lack of Social Security provided to City workers. The City's maximum contribution for general City employees would be

## OFFICIAL TITLE AND SUMMARY (CONTINUED)

9.2 percent of an employee's salary; the maximum contribution for uniformed public safety officers would be 11 percent of their salaries.

- Authorize the City Council to enroll police officers in either the defined benefit or the defined contribution plan. The maximum payment to a sworn police officer hired after the measure goes into effect, under the defined benefit pension plan, would be based on the officer's highest three years of pay, and capped at 80 percent of the average of those years.
- Eliminate the defined benefit pension plan prospectively for elected officials (Mayor, City Attorney and City Councilmembers).
- Eliminate, to the extent allowed by law, pension benefits for City officers or employees convicted of a felony related to their employment, duties or obligations as a City officer or employee. This may be reversed if the conviction is overturned.
- Eliminate, unless otherwise allowed by law or agreement, the requirement of a majority vote by employees or retirees in the retirement system for changes that affect their benefits.
- Require the City to contribute annually to the defined benefit pension plan an amount substantially equal to that required of the employee for a normal retirement allowance, but not contribute in excess of that amount.
- Provide disability benefits for defined contribution plan participants who have a work-related disability.
- Require the Retirement System to submit an actuarial study to the Mayor and Council regarding the impact on the pension plan "of any increases in proposed compensation or benefits" in an initial Council proposal.
- Require the City to annually publish the amounts paid to City retirees, but redact their names.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS

This proposition would amend the San Diego Charter regarding retirement benefits for City employees and officials.

The City's existing defined benefit pension plan is a retirement plan that the City and City employees contribute to throughout an employee's career. Upon retirement, an employee receives specified pension payments. The employee's annual pension benefit is presently calculated by a formula that includes the employee's highest one-year salary (or three-year average salary for general and safety employees hired in certain recent years). The proposition refers to "base compensation" as the salary used to calculate pension benefits.

From its effective date until June 30, 2018, this proposition requires the City's initial bargaining position in negotiations with labor organizations to include terms consistent with: limiting employees' base compensation used to calculate pension benefits to no more than Fiscal Year 2011 levels, and other terms as described in the proposition. These proposed terms can be overridden by a vote of six City Councilmembers.

The proposition prohibits most new employees hired on or after the effective date of the proposition from participating in the existing defined benefit pension plan. Instead, new employees, except new sworn police officers, would be offered a defined contribution plan modeled after a 401(k).

The proposition authorizes the City Council to enroll new sworn police officers in either the defined benefit pension plan or defined contribution plan. For new police officers enrolled in the defined benefit pension plan, the maximum pension payment would be capped at 80 percent at age 55 of the average of the officer's highest consecutive three years of base compensation. Pension payments would be decreased if an officer retires before age 55.

The proposition authorizes the City to make contributions for employees participating in the defined contribution plan. The City's maximum contribution for general City employees would be 9.2 percent of an employee's compensation; the maximum contribution for uniformed public safety officers would be 11 percent of their compensation.

Unless required by law or agreement, the proposition eliminates existing requirements to obtain a majority vote of employees or retirees in the retirement system for changes affecting their benefits.

The proposition eliminates the defined benefit pension plan for elected officials (Mayor, City Attorney and Councilmembers) assuming office on or after the effective date. The proposition eliminates, if allowed by law, pension benefits for City officers or employees convicted of a felony related to their employment, duties or obligations as a City officer or employee. This may be reversed if the conviction is overturned.

For those remaining in the defined benefit pension plan, the proposition would require substantially equal pension contributions by the City and employees for a normal retirement allowance, except in certain circumstances.

Charter amendments are not effective until chaptered by the California Secretary of State. If approved, the City will enter "meet and confer" negotiations with labor organizations regarding this proposition's implementation. A defined contribution plan would need to be created.

## FISCAL IMPACT ANALYSIS

There are two major fiscal analysis components for this ballot measure: potential salary freeze savings and pension benefit changes.

### Potential Salary Freeze Savings

Potential savings from freezing salaries for six years (July 1, 2012 through June 30, 2018) are projected to be **\$963 million** over 30 years, or **\$581 million** when adjusted for inflation. However, the ballot measure does allow the City to negotiate salary increases with employees, in lieu of freezing employees' salaries, with a 2/3 vote of the City Council. If this occurs, the projected savings of \$963 million would be reduced or not achieved.

### Pension Benefit Changes

Pension benefit changes are projected to cost a net **\$13 million** over 30 years (**\$56 million** when adjusted for inflation). These changes are outlined in the bullets and table below.

- \$1,324 billion in savings to Defined Benefit (DB) plan Annual Required Contribution (ARC) amounts, due to future employees not being eligible for the DB plan.
- \$1,384 billion in contribution costs to a new Defined Contribution (DC) plan, assuming the maximum employer contribution rates allowed under the ballot measure (9.2% for General employees and 11% for Safety employees) are made. This also assumes the same base compensation as the current DB plan (no overtime included). The actual DC plan structure must be negotiated with labor unions.
- \$215 million in net savings resulting from changing the DB plan's payment schedule for the Unfunded Actuarial Liability (UAL), due to closure of the DB plan to all future employees except police officers.
- \$217 million in costs for a new death/disability program for future employees - assumes death/disability benefits for future City employees will be comparable to benefits for current employees. Program design must be negotiated with labor unions.
- \$49 million in savings from adjusting the retirement benefit cap for future police officers.

Pension Change	Projected Savings/(Costs) Over 30 Years <i>(in millions)</i>	Inflation-Adjusted Savings/(Costs) Over 30 Years <i>(in millions)</i>
DB Plan Savings	\$1,324	\$657
New DC Plan Costs	(\$1,384)	(\$688)
UAL Payment Schedule Savings	\$215	\$58
New Death/Disability Costs	(\$217)	(\$107)
Police Plan Savings	<u>\$49</u>	<u>\$24</u>
<b>Net Pension Costs</b>	<b><u>(\$13)</u></b>	<b><u>(\$56)</u></b>

### Other Issues

Future employees' participation in a new DC plan, as opposed to the current DB plan, would transfer certain risks, most notably investment and longevity risks, from the City to future City employees. While the DB plan's current assumed rate of return is 7.5%, its investment results for the past 20, 10 and 5 years have been 8.5%, 6.4% and 4.4%, respectively.

PR-09L0-11

N SD 109-047

## FISCAL IMPACT ANALYSIS (CONTINUED)

Additional ballot measure costs include: administrative and set-up costs for the new DC plan and new disability program and actuarial analyses, if required.

Note that the ballot measure is estimated to result in increased costs to the City of **\$54.1 million** for fiscal years 2014 through 2016, largely due to the change in the UAL payment schedule. These costs will be greater and could continue over a longer period of time if salary freezes are not implemented.

### ARGUMENT IN FAVOR OF PROPOSITION B

A YES vote for Proposition B, the **Comprehensive Pension Reform** initiative, is the long-term solution to San Diego's pension problems.

The City's pension costs are projected to increase by more than \$100 million over the next 10 years if we don't take action now.

**Proposition B is expected to save nearly \$1 billion**, which means more City money for priorities like:

- Fixing potholes and street repairs
- Maintaining infrastructure
- Restoring library hours
- Re-opening park and recreation facilities

**YES on Proposition B stops "pension spiking."** Proposition B eliminates the use of specialty and supplemental pay when calculating an employee's pension. Proposition B stops the manipulation of the pension system. Just like in the military, only regular salary will count toward a pension.

YES on Proposition B guarantees that government employees pay a **fair share** of their pension costs, and it ends the practice of City taxpayers subsidizing the employees' share of pension costs.

YES on Proposition B will require all new City employees, except police officers, to be enrolled in a 401K-style retirement plan that **caps taxpayer costs**. This ensures that San Diego taxpayers will no longer be on the hook for expensive, unpredictable future pension system payments.

YES on Proposition B also bans pension benefits for City employees convicted of job-related felonies. This prevents convicted government workers and politicians from receiving taxpayer-funded pension benefits.

Proposition B will not prevent the City from enrolling employees in Social Security.

YES on Proposition B:

- Requires City employees pay their fair share
- Caps the cost to San Diego taxpayers
- Stops "pension spiking"

Strongly endorsed by the non-partisan, independent, San Diego County Taxpayers Association.

PR-09L0-12

N SD 109-048

## ARGUMENT IN FAVOR OF PROPOSITION B (CONTINUED)

www. [REDACTED] .com

LANI LUTAR  
President & CEO  
San Diego County Taxpayers Association

APRIL BOLING  
Former Chair, Pension Reform Committee

KEVIN FAULCONER  
Council President Pro Tem

CARL DEMAIO  
Councilmember

MAYOR JERRY SANDERS

## ARGUMENT AGAINST PROPOSITION B

### Vote No on B

#### Proposition B Increases City Retirement Costs by \$54 Million in the First Three Years

That's money that could go to improving public safety, restoring library and recreation center hours, and fixing our crumbling roads. And there's no guarantee that the ballot measure will actually save the City any money. The City's own analysis shows that the Proposition B retirement plan for new employees is more expensive than the existing plan.

#### Proposition B Does Not Freeze Pay

All projected savings from Proposition B are from a pay freeze that may not occur because pay increases are allowed with a two-thirds City Council vote, which the Charter already requires for negotiated pay increases. Employees have not had a pay increase for five years. City employees have made heavy sacrifices while Councilman DeMaio provided his staff with a 20% pay raise and refused to take a 6% pay cut along with everyone else.

#### Retirement Benefits Have Been Substantially Reduced

In 2009, San Diego reduced pension benefits for new employees and increased employee contributions by 6 percent of their pay. Total retirement benefit changes will save the City over \$1 Billion.

#### Unfair to Employees

City workers are excluded from Social Security and for most of them Proposition B will eliminate the pension that serves as a substitute. Proposition B will leave some first responders without either a pension or Social Security, making it harder to recruit and retain public safety professionals. Proposition B will cost the City more, but employees will get less.

#### No Cap on Excessive Pensions

Proposition B does nothing to address \$100,000 pensions. Although city workers' average pension is \$40,000, some highly paid city managers and politicians receive pensions of over \$100,000.

Don't play costly, political games with the City's budget. **Vote No on Proposition B.**

## ARGUMENT AGAINST PROPOSITION B (CONTINUED)

NAN BRASHER  
President, California Alliance  
for Retired Americans

PAT ZAHARAPOLOUS  
President, Middle Class  
Taxpayers Association

FRANK DE CLERCQ  
San Diego City Fire Captain

EDWARD B. HARRIS  
Lifeguard Sergeant

MARY M. ENYEART  
9-1-1 Emergency Dispatcher

### CITY OF SAN DIEGO

### PROPOSITION B

#### COMPREHENSIVE PENSION REFORM FOR SAN DIEGO

##### Section 1. PREAMBLE

WE THE PEOPLE of the City of San Diego declare our intent to restore financial stability to city government both in the immediate term and long term, and to return our community to the historic principles of self-governance inherent in the doctrine of home-rule. Sincerely committed to the belief that local government has the closest affinity to the people governed and firm in the conviction that the economic and fiscal independence of our local government, as well as the exercise of the people's right to impose limitations on their local government, will better serve and promote the health, safety and welfare of all of the citizens of this City, we do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this amendment of the Charter for the City of San Diego.

##### Section 2. FINDINGS

a) Using the power vested in the Citizens of San Diego by the California Constitution, including Article XI, Section 5(b) of the California Constitution, as well as the Charter of the City of San Diego, this Charter amendment to address an immediate fiscal emergency to control long-term employee pension benefit costs.

b) The cost of City pensions has become unsustainable and the Citizens find that the City faces a financial emergency that requires immediate controls on pension costs and long-term reforms of pension benefits.

c) The Citizens are concerned with abusive and wasteful pension payouts to individual city employees. As such, the Citizens of the City of San Diego desire pension reform that addresses individual pension liabilities and reduces collective costs to taxpayers.

d) The enactment of this Charter amendment is intended to limit the impacts City budgetary decisions have on pension liabilities in the immediate term and the long term as a way to prevent further cuts in important neighborhood services that are mandated by the Charter.

e) In 1996 and 2002, the San Diego City Council retroactively increased pension benefits for city employees under the defined benefit plan, without identifying adequate funds to cover the cost of those benefits in the future.

f) As a result of the increased pension benefits and past decisions to improperly fund the pension system, the city's pension fund currently has an unfunded liability of over \$2 billion.

g) The City's Annual Required Contribution to the defined benefit pension fund has increased dramatically over the last several years, from \$137.6 million in Fiscal Year

## PROPOSED CHARTER AMENDMENT (CONTINUED)

2006, to \$231.3 million for Fiscal Year 2012, and is projected to increase to approaching \$500 million by Fiscal Year 2025.

h) This Charter amendment protects the existing rights of City employees and City retirees while curbing the future costs of employee benefits and retirement costs, thereby allowing San Diego to provide services to the public in a more efficient manner.

i) The Citizens seek to limit "pension spiking" by city employees where life-long pensions are calculated using not just base salaries, but a multitude of specialty pays, add-on pays, and other forms of compensation.

j) Retirement benefits for city employees should be no better than, and no worse than, retirement benefits paid in the non-profit and private sectors locally in San Diego. As such, the Citizens desire that the city transition to a defined contribution retirement program modeled after 401(k) programs.

k) City employees should be paying their full and fair share of all costs of pensions. The Citizens desire to achieve an equal, dollar-for-dollar split between taxpayers and city employees for the costs of city pensions.

**Section 3. Article VII (Finance) of the San Diego City Charter is hereby amended to add the following sections:**

### **Section 70.1: REFORMING BASE COMPENSATION USED TO ESTABLISH PENSION BENEFITS**

"Base Compensation for Calculation of Pension Benefits" or "Base Compensation" shall be defined for this Section and for Section 70.2 as the total amount of annual compensation received by an individual City officer or employee for years of service after the implementation of this section that is used by the Retirement System for the purpose of calculating an individual's benefits under a Defined Benefit Pension Plan as defined in Section 140 of this Charter.

By January 1, 2013 and to the extent allowed by law, including the legal effect of existing Memorandums of Understanding as of the effective date of this section, no Earning Codes Included in Retirement Base Compensation in any Annual Salary Ordinance shall include any pay components that may be excluded pursuant to any judicially approved legal settlement from the calculation of Base Compensation for Calculation of Pension Benefits.

This Section shall apply prospectively. Nothing in this section shall be interpreted to limit the ability of the City to offer additional compensation for City officers and employees beyond Base Compensation, provided however that such compensation shall not be included in the calculation of Base Compensation. Employees determined to be performing work outside of their job classification may have their "out of class" pay included in the calculation of Base Compensation. Furthermore, nothing herein is intended to prohibit or limit the City Council from having its representatives meet and confer with Recognized Employee Organizations or Bargaining Groups as required by applicable labor relations laws to implement this Section.

## PROPOSED CHARTER AMENDMENT (CONTINUED)

### Section 70.2: EMERGENCY LIMITATIONS ON BASE COMPENSATION FOR CALCULATION OF PENSION BENEFITS (JULY 1, 2012 TO JUNE 30, 2018)

From the effective date of this Section until June 30, 2018, in the City's initial bargaining position in negotiations on any Memorandum of Understanding with recognized employee organizations or bargaining groups, the City shall propose terms that are consistent with the following requirements and shall work to achieve the following outcomes:

- (a) No Base Compensation for any classification shall be set at an amount higher than the base compensation for that classification established in Ordinance No. O-19952, adopted on May 4, 2010, ("2011 Fiscal Year Salary Ordinance").
- (b) The Earning Codes Included in Retirement Base Compensation, as adopted in Ordinance No. O-19952, shall not be amended to add any new types of compensation to the Base Compensation for the Calculation of Pension Benefits during the effective period of this section.
- (c) Any new job classification may only be created, during the effective period of this Section, with specific findings that the creation of the new classification is necessary to achieve efficiencies and/or salary savings by consolidation job duties or the creation of a more efficient service delivery method to the public. No base compensation for any new job classification created during the effective period of this section shall be set at an amount higher than the base compensation for that classification during the Fiscal Year in which it was established.
- (d) No other forms of compensation shall be provided or increased for any applicable fiscal year that has the effect of increasing Base Compensation as defined under this Section and Section 70.1, above, of this Charter.

City bargaining representatives may be authorized to negotiate tentative agreements with employee organizations incorporating changes in employee compensation and other employee benefits provided, however, that no provision of a tentative agreement that fails to meet the conditions established in (a)-(d), above, shall become effective unless and until it is approved by a two-thirds majority of the full City Council.

From the effective date of this Section until June 30, 2018, prior to any City Council action that establishes the initial bargaining position of the City to meet and confer with recognized employee organizations or bargaining groups which include increases to salaries and benefits for any City officer or employee, in any proposed Memorandum of Understanding or other agreement, the Retirement System shall prepare and submit to the Mayor and City Council an actuarial study that identifies and discloses the impact on the City's Defined Benefit Pension Plan of any increases in proposed compensation or benefits contained in the initial Council proposal, and certifies whether the proposed action increases the average or mean Base Compensation, for any job classification. Prior to any submission of a tentative agreement with any recognized employee organization or bargaining group to the City Council for approval of a Memorandum of Understanding, the City shall refer the tentative agreement to the Retirement System's Actuary to update the actuarial study to include any additional fiscal impacts of the tentative agreement. Such analysis shall be made readily available to the public ten days prior to any final action taken by the Council.

## PROPOSED CHARTER AMENDMENT (CONTINUED)

Nothing in this section shall be interpreted to limit the ability of the City to offer additional compensation for City officers and employees during the effective period of this section, provided however that such compensation shall not have the effect of increasing the Base Compensation for Establishment of Pension Benefits for that City officer or employee without complying with the requirements of this section.

Nothing in this section shall be interpreted to limit the ability of the City to exercise authority under Charter Section 124 (Promotions). This section shall be implemented in a manner consistent with the requirements of any applicable labor relations laws. This Charter Section 70.2 shall be automatically repealed and removed from this Charter on July 1, 2018, unless extended, modified or repealed by a vote of the People.

Section 4. The San Diego City Charter is hereby amended to add the following sections in Article IX (Retirement):

### Section 140: ESTABLISHMENT OF SEPARATE RETIREMENT PENSION SYSTEMS; DEFINITIONS

As of the election at which this Section becomes operative, the electorate of the City of San Diego has found and declared that the fiscal best interests of the City are served by reforming the retirement system authorized by this Charter to be established for City employees.

"Defined Benefit Pension Plan" or "Defined Benefit Pension System" is a system or plan to provide a specified allowance to a city retiree or a retiree's spouse after retirement that is based on a set formula based on factors such as age, years of service, and elements of compensation as established in this Article.

The Defined Benefit Pension Plan in place prior to said election, established by the City Council pursuant to Sections 141 through 149 of this Charter, may remain in place until, for any reason, there remain no participants in the Defined Benefit Plan. The City Council may by ordinance utilize any lawful means for terminating the Defined Benefit Plan. Any closure of the Defined Benefit Plan shall be designed and implemented to protect the employees' vested rights in the Defined Benefit Plan, generate cost savings for taxpayers, and ensure compliance with applicable laws and regulations, including tax regulations.

At such time as there remain no participants in the Defined Benefit Pension Plan, the City shall take such actions as are necessary and appropriate to promptly wind down and terminate the Defined Benefit Pension Plan.

Notwithstanding the foregoing, and except as expressly provided in this Article IX, all Officers and employees, with the exception of sworn police officers, who are initially hired or assume office on or after the effective date of this Section shall participate only in such Defined Contribution Plans as authorized by Sections 150 and 151 of this Charter.

## PROPOSED CHARTER AMENDMENT (CONTINUED)

The provisions of Sections 141 through 149 shall apply only to the Defined Benefit Plan, and those City employees eligible to participate in the Defined Benefit Plan. The provisions of Sections 150 and 151 shall apply only to the Defined Contribution Plan, and those City employees eligible to participate in the Defined Contribution Plan, except as expressly stated.

Notwithstanding the foregoing, and except as provided in this Article IX, the City Council is hereby authorized and empowered by ordinance to enroll sworn police officers hired after the effective date of this section in either the Defined Benefit Plan or the Defined Contribution Plan. This section shall be implemented in a manner consistent with the requirements of applicable labor relations laws.

### **Section 141.1: REFORM OF SWORN POLICE OFFICER DEFINED BENEFIT PENSION PLAN**

Notwithstanding any other provision of this Charter, or any ordinance or other action taken pursuant hereto, the maximum amount of retirement benefit payable to a sworn police officer, who is hired after the effective date of this section and who is a participant under the Defined Benefit Pension Plan, shall be an amount equivalent to 80% at age 55 of the average of the participant's highest consecutive 36 months of Base Compensation as defined by Section 70.1. The maximum set by this provision shall decrease by 3% (three percentage points) for each year that such participant retires before age 55.

### **Section 141.2: FULL AND FAIR EMPLOYEE CONTRIBUTIONS FOR THE DEFINED BENEFIT PENSION PLAN**

For officers and employees who have the legal right to remain in the established Defined Benefit Pension Plan, the City shall contribute annually an amount substantially equal to that required of the employee for a normal retirement allowance, as certified by the Actuary established in Charter Section 142, but shall not contribute in excess of that amount, except in the case of financial liabilities accruing under any new retirement plan or revised retirement plan because of past service of the employee. The City shall not pay, cap the employee contribution rate, or otherwise compensate for any portion of a contribution to the Retirement System by a City Officer or employee.

To the fullest extent permissible by law, in calculating annual contributions for the City and City employees, the Retirement Board shall divide equally between those two parties all costs except those costs explicitly and exclusively reserved to the City in this Section and Section 143. Contributions shall also be governed by Section 143 of this Article. In the event of a conflict between this Section and Section 143, this Section shall prevail. This section is not intended to interfere with vested defined rights of any retiree receiving benefits from the Defined Benefit Retirement System or of any employee enrolled in the Defined Benefit Retirement System as of the effective date of this section.

Nothing contained in this Section shall preclude the City from entering into a settlement of *City of San Diego v. San Diego City Employees' Retirement System* Case No. #37-2010-00091207-CU-WM-CTL to define responsibilities of the City and employees for unfunded liabilities of the Retirement System even if the settlement includes terms that might otherwise conflict with the above restrictions, as long as the settlement is approved by the court as a good faith settlement and approved by a two-thirds vote of the City Council.

## PROPOSED CHARTER AMENDMENT (CONTINUED)

### **Section 141.3: ELIMINATION OF PENSION BENEFIT FOR FELONY CONVICTIONS**

On or before July 1, 2013 and subject to meet and confer requirements with recognized employee organizations or bargaining groups, the City Council shall adopt an ordinance to implement this section that eliminates, to the extent permitted by law, the Defined Benefit Pension Plan for any individual City Officer or employee who is convicted of a felony, as defined in California Government Code Section 1770(h), as amended, related to their employment, duties, or obligations as a City officer or employee. The City Council shall have the authority to reinstate benefits upon a finding that the felony conviction was overturned on appeal.

### **Section 141.4: TRANSPARENCY AND PUBLIC DISCLOSURE OF CITY PENSION PAYOUTS**

Within 30 days of the start of each calendar year, the City shall post online a listing of the total amount paid to each individual city retiree for the preceding calendar year from assets held by or managed by the Retirement System. The City shall redact the name of each individual, but shall provide the final classification held by each individual and the number of creditable years of service worked by the individual. This section shall be implemented in a manner that protects the privacy rights of officers and employees to the extent required by law and consistent with applicable labor relations laws.

### **Section 150: CREATION OF A DEFINED CONTRIBUTION PLAN**

In order to implement the requirements of Section 140, the City Council is hereby authorized to establish by ordinance a Defined Contribution Plan consistent with this Article. This Plan shall meet the legal requirements established under the United States Internal Revenue Code in order to allow the City to retain its Social Security Safe Harbor Status, under the Internal Revenue Code, as amended, unless the City enrolls in the Social Security System under the restrictions established hereunder. Any ordinance adopted under this section shall take effect immediately if the City Council finds that the Ordinance must take immediate effect to meet a legal deadline for compliance with this Charter or any other law or regulation.

The City shall not contribute in excess of 9.2% of an Officer's or employee's compensation, as required by the Internal Revenue Code as amended, to defined contribution retirement accounts for that individual officer or employee. For a Uniformed Public Safety Officer, the City may contribute up to 11% of that Officer's or employee's compensation to his or her defined contribution retirement account. The City may elect to re-enroll in the Social Security System, provided that the City's total cost for retirement benefits do not exceed 9.2% for each Officer's or employee's compensation, or 11% for Uniformed Public Safety Officers.

To the extent allowed by law, the City may offer plans that allow employees to convert their defined contribution retirement account into an annuity or other City Council approved investment instrument as of their date of retirement. No conversion under this section shall require the City to contribute additional funds to convert the defined contribution retirement account to another approved investment instrument.

Years of service accrued by an Officer or employee participating in the Defined Contribution Plan shall not be credited towards vesting or calculation of years of service in the City's Defined Benefit Plan.

## PROPOSED CHARTER AMENDMENT (CONTINUED)

Subject to compliance with applicable laws and regulations, for any individual City employee where the City can demonstrate that cost savings can be achieved, the City shall create a mechanism by which an employee currently enrolled in the Defined Benefit Pension Plan pursuant to Sections 141 through 149 may switch on a prospective basis to the Defined Contribution Plan created in this Section.

The implementation of this section shall be subject to the requirements of applicable law including, but not limited to, applicable labor relations laws and the requirements of the Internal Revenue Code, as amended.

For the purposes of Section 150 and 151, "Uniformed Public Safety Officer" shall have the same meaning as "Safety Member" as defined in Section 24.0103 in the Municipal Code as of January 1, 2011.

### **Section 151: DISABILITY AND DEATH BENEFITS FOR DEFINED CONTRIBUTION PLAN MEMBERS**

For officers and employees enrolled in the Defined Contribution Plan, the City may provide for disability benefits to support an employee who has become physically or mentally disabled by reason of bodily injury or illness caused actions related to the discharge of their duties. Any benefits authorized hereunder may be in addition to any state or federal benefits required by law applicable to a Charter City.

For Uniformed Public Safety Officers, the City shall provide death and disability benefits for officers who are killed or injured in the line of duty. The City may provide greater death or disability benefits than those required by law applicable to Charter Cities.

**Section 5. Article IX (Retirement) Section 143.1 of the San Diego City Charter is hereby amended as follows:**

- (a) No ordinance amending the retirement system which affects the benefits of any employee under such retirement system shall be adopted without the approval of a majority vote of the members of said system. No ordinance amending the retirement system which increases the benefits of any employee, legislative officer or elected official under such retirement system, with the exception of Cost of Living Adjustments, shall be adopted without the approval of a majority of those qualified electors voting on the matter. No ordinance amending the retirement system which affects the vested defined benefits of any retiree of such retirement system shall be adopted without the approval of a majority vote of the affected retirees of said retirement system. To the extent allowed by law, the requirement for a majority vote of employees and the requirement for a majority vote of retirees for adoption of an ordinance as described in this section shall sunset and be deemed unenforceable as of the effective date of this section. Unless required under a pre-existing Memorandum of Understanding as of the effective date of this article, any City employee hired after September 1, 2012 shall not have a right to vote in any vote required under this Section.

## **PROPOSED CHARTER AMENDMENT (CONTINUED)**

### **Section 6. EFFECTIVE DATE**

This Charter amendment shall become effective in the manner allowed by law. This Charter amendment addresses the subject of public employee compensation and benefits under the plenary authority granted to the Citizens of San Diego by Article XI, Section 5(b) of the California Constitution. As specified herein, the implementation of various provisions may be delayed in their implementation pursuant to provisions of any Memorandum of Understanding in effect on the effective date of this Charter amendment. Nothing herein is intended to remove legally established rights held by any officer or employee held by virtue of their employment status before the effective date of this Charter Amendment.

### **Section 7. SEVERABILITY**

It is the intent of the People that the provisions of this Charter amendment are severable and that if any section or provision of this act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this Charter amendment which can be given effect without the invalid provision or application.

### **Section 8. LIBERAL CONSTRUCTION**

The provisions of this act shall be liberally construed in order to effectuate its purposes.

### **Section 9. CONFLICTING BALLOT MEASURES**

In the event that this measure and another measure or measures relating to the establishment of compensation and benefit levels of City officers and employees, or both, appear on the same city-wide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail over conflicting provisions in any other measure, and the conflicting provisions of the other measure shall be null and void.

**END OF PROPOSITION**

---