

CITY OF LOS ANGELES

CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

JUNE LAGMAY
City Clerk

HOLLY L. WOLCOTT
Executive Officer

Office of the
CITY CLERK

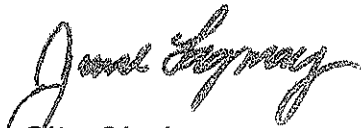
Council and Public Services
Room 395, City Hall
Los Angeles, CA 90012
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December 6, 2010

To All Interested Parties:

The City Council adopted the action(s), as attached, under Council file
No. 11-1100-S7, at its meeting held November 17, 2010.


City Clerk
kw

TIME LIMIT FILES
ORDINANCES

Mayor's Time Stamp
OFFICE OF THE MAYOR
RECEIVED
2010 NOV 19 PM 4:12
CITY OF LOS ANGELES

City Clerk's Time Stamp
CITY CLERK'S OFFICE
2010 NOV 19 PM 4:08
CITY CLERK
BY _____ DEPUTY

COUNCIL FILE NUMBER 11-1100-S7 COUNCIL DISTRICT NOV 29 2010
COUNCIL APPROVAL DATE NOVEMBER 17, 2010 LAST DAY FOR MAYOR TO ACT _____
ORDINANCE TYPE: ☐ Ord of Intent ☐ Zoning ☐ Personnel ☒ General
☐ Improvement ☐ LAMC ☐ LAAC ☐ CU or Var Appeals - CPC No. _____

SUBJECT MATTER: SUBMITTING TO THE VOTERS A PROPOSED CHARTER AMENDMENT TO CREATE
A NEW TIER WITHIN THE FIRE AND POLICE PENSION PLAN AND MAKE RELATED
MODIFICATIONS, AND CALLING A SPECIAL ELECTION AND CONSOLIDATING IT
WITH THE CITY'S PRIMARY NOMINATING ELECTION TO BE HELD ON MARCH 8,
2011

APPROVED DISAPPROVED

PLANNING COMMISSION
DIRECTOR OF PLANNING
CITY ATTORNEY
CITY ADMINISTRATIVE OFFICER
OTHER

X

RECEIVED
CITY CLERK'S OFFICE
2010 NOV 29 PM 3:32
CITY CLERK
BY _____ DEPUTY
NOV 29 2010

DATE OF MAYOR APPROVAL, DEEMED APPROVED OR *VETO _____
(*VETOED ORDINANCES MUST BE ACCOMPANIED WITH OBJECTIONS IN WRITING PURSUANT TO CHARTER SEC. 250(b) (c))

(CITY CLERK USE ONLY PLEASE DO NOT WRITE BELOW THIS LINE)

DATE RECEIVED FROM MAYOR NOV 29 2010 ORDINANCE NO. 181429
DATE PUBLISHED DEC - 9 2010 DATE POSTED _____ EFFECTIVE DATE DEC - 9 2010
ORD OF INTENT: HEARING DATE _____ ASSESSMENT CONFIRMATION _____
ORDINANCE FOR DISTRIBUTION: YES ☐ NO ☐

42

MOTION

I HEREBY MOVE that Council ADOPT the following recommendations of the City Attorney (Item #42, Council file 11-1100-S7) relative to submitting to the voters a proposed charter amendment to create a new tier within the Fire and Police Pension Plan and make related modifications, and calling a Special Election and consolidating it with the City's Primary Nominating Election to be held on March 8, 2011:

1. ADOPT the accompanying RESOLUTION providing that a certain proposal to amend the Charter of the City of Los Angeles be submitted to the qualified electors of the City.
2. ADOPT the accompanying BALLOT TITLE RESOLUTION, as follows:

FIRE AND POLICE PENSION PLAN; NEW TIER 6 FOR SWORN FIRE, POLICE, AND HARBOR DEPARTMENT EMPLOYEES HIRED ON OR AFTER JULY 1, 2011 AND OTHER MODIFICATIONS. CHARTER AMENDMENT _____

Shall the Charter be amended: (1) to provide sworn Fire, Police, and Harbor Department employees, who are hired on or after July 1, 2011, with the pension benefits provided in the Fire and Police Pension Plan-Tier 6; and (2) to modify provisions of the Fire and Police Pension Plan in order to facilitate compliance with state and federal laws, to authorize the Council to establish an Excess Benefit Plan, to allow flexibility in establishing amortization policies, and to make technical changes?

3. PRESENT and ADOPT the accompanying ORDINANCE, SUBJECT TO THE APPROVAL OF THE MAYOR, calling a Special Election to be held on Tuesday, March 8, 2011 for the purpose of submitting to the qualified voters of the City of Los Angeles a certain Charter amendment and consolidating this Special Election with the City's Primary Nominating Election to be held on the same date.

PRESENTED BY _____
BERNARD C. PARKS
Councilmember, 8th District

SECONDED BY _____
GREIG SMITH
Councilmember, 12th District

November 17, 2010

CF 11-1100-S7

ADOPTED

NOV 17 2010

LOS ANGELES CITY COUNCIL

RESOLUTION

WHEREAS, the Council of the City of Los Angeles has adopted a resolution to place a Charter amendment before the qualified voters of the City of Los Angeles at the March 8, 2011 Special Election to be consolidated with the City's Primary Nominating Election to be held on the same date; and

WHEREAS, the City Election Code requires the City Attorney to prepare and present a ballot title and question consisting of an impartial statement of the measure; and

WHEREAS, the City Attorney has presented the following ballot title and question for the proposed measure:

**FIRE AND POLICE PENSION PLAN; NEW TIER 6 FOR
SWORN FIRE, POLICE. AND HARBOR DEPARTMENT
EMPLOYEES HIRED ON OR AFTER JULY 1, 2011 AND
OTHER MODIFICATIONS. CHARTER AMENDMENT ____.**

Shall the Charter be amended: (1) to provide sworn Fire, Police, and Harbor Department employees, who are hired on or after July 1, 2011, with the pension benefits provided in the Fire and Police Pension Plan-Tier 6; and (2) to modify provisions of the Fire and Police Pension Plan in order to facilitate compliance with state and federal laws, to authorize the Council to establish an Excess Benefit Plan, to allow flexibility in establishing amortization policies, and to make technical changes?

NOW, THEREFORE, BE IT RESOLVED that the ballot title and question presented by the City Attorney be adopted by the City Council.

I hereby certify that the foregoing Resolution was adopted by the Council of the City of Los Angeles at its meeting held on NOV 17 2010.



JUNE LAGMAY, City Clerk

By


Deputy

C.F. No. ~~10-1621~~

11-1100-57

RESOLUTION

Resolution providing that a ballot measure be submitted to the qualified voters of the City of Los Angeles.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LOS ANGELES AS FOLLOWS:

Section A. The following amendments to the Charter of the City of Los Angeles are hereby proposed to be submitted to the qualified voters of the City of Los Angeles at a Special Election to be called and consolidated with the City's Primary Nominating Election held on March 8, 2011:

CHARTER AMENDMENT _____

Section 1. A new heading and new Sections 1700 through 1726 are added after Section 1630 of the Charter of the City of Los Angeles to read:

FIRE AND POLICE PENSION PLAN-TIER 6

Sec. 1700. Membership in Tier 6.

(a) **Appointed Chief.** A Chief of Police, a Fire Chief, or a Port Warden (Chief) who is appointed to that position on or after July 1, 2011 and who is neither a Plan Member nor a Retired Plan Member at the time of appointment, shall become a Tier 6 Plan Member upon appointment unless, within seven calendar days of appointment, he or she files a written opt out election with the Department of Fire and Police Pensions to elect to become a member of the Los Angeles City Employees' Retirement System (LACERS) in lieu of membership in Tier 6. A Chief who is appointed to that position on or after July 1, 2011 and is already a Department Member on the day of his or her appointment, shall continue to be a member of the Tier to which he or she belonged prior to appointment as Chief. A Retired Plan Member who is appointed to the position of a Chief on or after July 1, 2011, shall become a member of LACERS at the time of appointment, rather than a Tier 6 Plan Member, and shall continue to receive all benefits to which he or she is entitled as a Retired Plan Member, but shall not accrue any additional right to benefits from the Plan by virtue of his or her employment as a Chief.

(b) **Appointed Members.** Each person, other than a Chief, who shall be appointed as a Department Member on or after July 1, 2011, shall become a Tier 6 Plan Member upon (1) graduation by such person from training at the Police or Fire Academies or equivalent facility imparting basic training as a

firefighter or police officer and maintained as such by the City of Los Angeles, or (2) graduation from academy training required by the Harbor Department. Upon becoming a Tier 6 Plan Member, a member may elect to purchase Years of Service credit for the period of such training in accordance with rules adopted by the Board.

(c) **Persons Who Do Not Become Tier 6 Plan Members.** Notwithstanding the provisions of subsection (b) of this section:

(1) A person who is a Plan Member of another Tier and who is appointed, without a break in service, to a different position that would otherwise qualify him or her for membership in Tier 6, shall not, by virtue of this new appointment, become a member of Tier 6, but shall continue to be a member of the Tier to which he or she belonged prior to his or her new appointment.

(2) A person appointed to a sworn position with the Harbor Department prior to January 8, 2006, who did not elect to transfer into Tier 5 and remained a member of LACERS, if subsequently appointed without a break in Harbor Department service to a different Harbor Department sworn position that would otherwise qualify him or her for membership in Tier 6, shall not become a member of Tier 6 upon appointment, but shall remain a LACERS member.

(3) Any Plan Member who retired on a disability pension from another Tier and is subsequently restored to active duty as a Department Member shall not become a member of Tier 6, but shall return to membership in the Tier from which he or she retired.

(4) Any Plan Member who retired on a service pension from another Tier and is subsequently returned to active duty as a Department Member shall not become a member of Tier 6, but shall return to membership in the Tier from which he or she retired.

(d) **Former Members.** Any former member of any Tier, who ceased to be a member as a result of resignation or discharge and who subsequently is reappointed as a Department Member on or after July 1, 2011, shall become a Tier 6 Member. In the event such person did not receive a refund of contributions for his or her prior service, the definition of "Years of Service" contained in this Tier 6 shall be controlling with respect to such person's entitlement to service credit and such person need not make back contributions on account of such former service. In the event that the member had no right to a refund of contributions from his or her former Tier, then he or she shall not have any right to have contributions formerly made by him or her under the provisions of a former Tier refunded in the event he or she should subsequently terminate as a Plan Member. In the event such person received a refund of his

or her contributions as a result of his or her termination, then such person's entitlement to Years of Service credit for the period of such former service shall be conditioned upon such person electing to repay and having paid to the Fire and Police Pension Plan the amount of previously refunded contributions, with interest thereon in an amount calculated as interest which would have been earned between the date of such termination and the date of entry into service as a Plan Member in accordance with rules adopted by the Board. In the event such member does not elect to so repay, the term Years of Service as elsewhere used in this Tier 6 shall not include any periods prior to his or her reappointment, notwithstanding the definitions contained in Section 1702(p) and (q).

(e) **Council Authority to Allow Transfers to Tier 6.** The Council may by ordinance authorize Plan Members of other Tiers to voluntarily transfer to Tier 6, provided such transfers shall be actuarially cost neutral to the Plan. Ordinances adopted pursuant to this subsection shall be adopted in the same manner as provided in Section 1618(b) of this Charter, but the City Council shall be advised in writing by an enrolled actuary as to the cost of the proposed changes.

Sec. 1702. Definitions.

In addition to the words and phrases defined in the Fire and Police Pension Plan's General Provisions in Part 3, and for the purposes of this Tier 6, the following words or phrases shall have the meaning ascribed to them in this section, unless a different meaning is clearly indicated in the context.

(a) **Member of the Fire Department.** Member of the Fire Department means the Fire Chief and a person duly and regularly appointed in the Fire Department, under civil service rules and regulations or provisions of the Charter, or both, governing the making of original regular and permanent appointments which require the serving of probationary periods but not of original emergency or temporary appointments, to perform duties as a firefighter for the City, under whatever designation such person may be described in any salary or departmental ordinance providing salaries for the members of the department, but such person shall be a member of the department only until his or her status as such shall be terminated by reason of retirement, resignation or discharge or for any other reason.

(b) **Member of the Police Department.** Member of the Police Department means the Chief of Police and a person duly and regularly appointed in the Police Department, under civil service rules and regulations or provisions of the Charter, or both, governing the making of original regular and permanent appointments which require the serving of probationary periods but not of original emergency or temporary appointments therein, and sworn in, as provided by law, to perform duties as a police officer for the City, under whatever designation such person may be described in any salary or departmental ordinance providing

salaries for the members of the department, but such person shall be a member of the department only until his or her status as such shall be terminated by reason of retirement, resignation or discharge or for any other reason.

(c) **Member of the Harbor Department.** Member of the Harbor Department means the Port Warden and a person duly and regularly appointed, under civil service rules and regulations or provisions of the Charter, or both, governing the making of original regular and permanent appointments which require the serving of probationary periods but not of original emergency or temporary appointments therein, and sworn in, as provided by Penal Code Section 830.1, to perform police duties for the Harbor Department, under whatever designation such person may be described in any salary or departmental ordinance providing salaries for members of the department, but such person shall be a member of the department only until his or her status as such shall be terminated by reason of his or her retirement, resignation or discharge or for any other reason.

(d) **Tier 6 Plan Member.** Tier 6 Plan Member means a person who is a Department Member and whose pension rights and benefits are governed by this Tier 6. For purposes of the provisions governing Tier 6, the term Plan Member shall generally refer to a Tier 6 Plan Member, unless the context in which the term is used indicates a usage that refers to or includes members of other Tiers. Status as a Tier 6 Plan Member is limited by the provisions of Section 1700.

(e) **Qualified Surviving Spouse.** Qualified Surviving Spouse means a person who was married to the Tier 6 Plan Member:

- (1) for at least one year prior to the date of his or her nonservice-connected death while a Tier 6 Plan Member, or
- (2) on the date of the Tier 6 Plan Member's service-connected death, or
- (3) for at least one year prior to the effective date of the Tier 6 Plan Member's retirement upon a service pension or a nonservice-connected disability pension, or
- (4) on the effective date of the Tier 6 Plan Member's retirement upon a service-connected disability pension, or
- (5) on the date of the Tier 6 Plan Member's nonservice-connected death while on military leave.

In addition, on the date of the member's death, this person must be either the domestic partner (registered with the state or filed with the Plan) or spouse of such member.

To the extent required by state law, two persons of the same sex whose legal union, other than a marriage, has been validly formed in another jurisdiction and is substantially equivalent to a state registered domestic partnership shall be treated the same as spouses for purposes of this Plan. For these purposes, any reference to the date of a marriage shall be deemed to refer to the date of a legal union in another jurisdiction.

(f) **Qualified Surviving Domestic Partner.** Qualified Surviving Domestic Partner means a person whose Declaration of Domestic Partnership with the Tier 6 Plan Member was on file with the Board of Fire and Police Pension Commissioners, as provided in Section 4.2204 of the Los Angeles Administrative Code, or whose domestic partnership with the Tier 6 Plan Member was registered with the state:

- (1) for at least one year prior to the date of the Tier 6 Plan Member's nonservice-connected death, or
- (2) on the date of the Tier 6 Plan Member's service-connected death, or
- (3) for at least one year prior to the effective date of the Tier 6 Plan Member's retirement upon a service pension or a nonservice-connected disability pension, or
- (4) on the effective date of the Tier 6 Plan Member's retirement upon a service-connected disability pension, or
- (5) on the date of the Tier 6 Plan Member's nonservice-connected death while on military leave.

In addition, on the date of the member's death, this person must be either the domestic partner (registered with the state or filed with the Plan) or spouse of such member.

(g) **Qualified Survivor.** Qualified Survivor means a person who is either a Qualified Surviving Spouse or a Qualified Surviving Domestic Partner.

(h) **Child.** Minor Child means a person who is a child or an adopted child of a deceased Tier 6 Plan Member or Retired Tier 6 Plan Member but such person shall be a Minor Child only until such person shall attain the age of 18 years or shall marry, whichever shall be earlier. A person may further qualify for the benefits provided for a Minor Child under the provisions of this Tier until he or

she reaches the age of 22 years if such person is enrolled in school on a full-time basis as determined by the Board but such person's marriage terminates entitlement to the benefits of a Minor Child.

(i) **Dependent Child.** Dependent Child means a person who is a child of a deceased Tier 6 Plan Member or a deceased Retired Tier 6 Plan Member, who, while under the age of 21 years, had become disabled, either prior to or after the date of death of such member, from earning a livelihood for any cause or reason whatsoever, but such person shall be a Dependent Child only until he or she shall cease to be disabled from earning a livelihood. Should disability cease before the age of 22 years, the limitations set forth in subsection (h) shall be applicable.

(j) **Dependent Parent.** Dependent Parent means a person who is a parent of a deceased Tier 6 Plan Member or a deceased Tier 6 Retired Plan Member and to or for whom such deceased member, during at least one year immediately preceding his or her death, contributed one-half or more of such Dependent Parent's necessary living expenses and who is unable to pay such expenses without the receipt of a pension, but such person shall be a Dependent Parent only until he or she shall be able to pay his or her necessary living expenses.

(k) **Length of Service Pay.** Length of Service Pay means any additional gross monthly pay which, by reason of length of service, shall be provided by ordinance or by Memorandum of Understanding.

(l) **Special Pay.** Special Pay means any additional gross monthly pay which, by reason of assignment to perform special duties other than hazardous duties, shall be provided by ordinance or Memorandum of Understanding.

(m) **Hazard Pay.** Hazard Pay means any additional gross monthly pay which, by reason of assignment to perform helicopter duties, two-wheel motorcycle duties or any other hazardous duties, shall be provided by ordinance or Memorandum of Understanding..

(n) **Assignment Pay.** Assignment Pay means any additional gross monthly pay which, by reason of assignment to perform special duties or hazardous duties, in a higher class, position, grade, code or other title than the lowest thereof within the Tier 6 Plan Member's permanent rank, shall be provided by ordinance or Memorandum of Understanding.

(o) **Year.** Year means a period of 12 months or, in aggregating partial years for purposes of determining Years of Service, means 365 days.

(p) **Years of Service.** Years of Service means and includes only those periods during or for which the Plan Member was a Department Member of the

Fire Department, a Department Member of the Police Department, or a Department Member of the Harbor Department, and whether prior to or after his or her becoming a Tier 6 Plan Member and subject to the limitations contained in Section 1700 of this Tier 6:

(1) did or shall receive salary, whether in full or reduced amounts thereof;

(2) did or shall receive either a service-connected disability pension or a nonservice-connected disability pension from the Plan if he or she was or shall be restored to active duty as a Department Member and did or shall perform his or her duties as such for at least one year prior to again retiring or being retired pursuant to this Tier 6, which year shall not include any time off from work by reason of any injury or illness which had been caused by or contributed to by any injury or illness which had been sustained or suffered by him or her prior to such restoration. The restored Plan Member, upon completing one Year of Service following restoration, shall be eligible for such credit only to the extent that the length of service following restoration matches the period the disability pension was received; but upon completing three years of restored service, the restored Plan Member is eligible for credit for the entire period the disability pension was received; and provided further that a period during which a Plan Member was on a nonservice-connected disability pension may only be counted toward his or her Years of Service if the Plan Member makes contributions therefore as provided in Section 1714 of this Tier 6 in accordance with the rules to be adopted by the Board;

(3) is or shall become entitled, under any provision of general law or ordinance of the City, to credit toward retirement for periods of military service or military leave;

(4) did or shall receive Workers' Compensation benefits for temporary disability as provided by general law on account of any injury or illness arising out of and in the course of employment, but such period shall be made a part of the Plan Member's Years of Service only if the Plan Member has made contributions to the Fire and Police Pension Plan in the manner prescribed by Board rule;

(5) is or shall become entitled to compensation for injury on duty pursuant to any ordinance of the City or any applicable Memorandum of Understanding; and

(6) had served as a member of the Fire and Police Pension System - Tiers 2, 3, 4, or 5, without having become eligible to service retirement benefits.

A person who has previously been a Plan Member of any Tier, who has ceased to be such by virtue of his or her resignation or discharge, and who subsequently becomes a Tier 6 Plan Member, shall be entitled to credit for Years of Service during the prior membership period only if he or she has first redeposited with interest, any contributions previously withdrawn by him or her, in the manner provided by the Board.

A Qualified Survivor of a Tier 6 Plan Member may complete the purchase of Years of Service credit elected by the Plan Member.

(q) **Partial Year of Service.** Partial Year of Service means any period mentioned in subsection (p) of this section which is less than 12 months. Any such Partial Year of Service shall be calculated from the end of the Plan Member's last completed Year of Service to the end of the payroll period immediately prior to the date of his or her retirement and shall be counted as part of a Plan Member's Years of Service for his or her retirement upon a service pension hereafter granted or for a pension hereafter granted to his or her Qualified Survivor, Minor Child or Children, Dependent Child or Children or Dependent Parent or Parents if he or she hereafter shall die while upon a service pension hereafter granted or while eligible for a service pension.

(r) **Final Average Salary.** Final Average Salary means an amount equivalent to a monthly average of salary actually earned during any 24 consecutive months of service as a Plan Member as designated by the Plan Member. In the absence of such designation, the last 24 consecutive months preceding the date upon which retirement would become effective shall be used as the basis for the calculation of Final Average Salary.

For the purposes of determining Final Average Salary for periods during which the Plan Member receives less than full salary on account of injury or illness, pursuant to any applicable ordinance of the City, the Final Average Salary shall be based upon the salary, including any Length of Service Pay, Special Pay, Assignment Pay or Hazard Pay, the Plan Member would have received but for the injury or illness.

Included in the calculation of Final Average Salary shall be Length of Service Pay, Special Pay, Assignment Pay and Hazard Pay actually earned during the 24 consecutive months used to determine Final Average Salary.

For those Tier 6 Plan Members who retire from the Fire Department while holding a rank no higher than Captain or from the Police Department holding a rank no higher than Lieutenant: If Hazard Pay was not earned during all or any part of the 24 consecutive months used to determine Final Average Salary, then an amount equivalent to 10% of the Hazard Pay earned at the time of the termination of the last assignment of hazardous duties for each year in the aggregate of the assignment to hazardous duties shall be added to the Final

Average Salary, not to exceed 10 years in the aggregate. The total amount of Hazard Pay included in Final Average Salary may not exceed 100% of the amount the Plan Member would have earned had he or she been entitled to Hazard Pay during the entire 24 month period utilized in the calculation of Final Average Salary.

Overtime compensation or payments of money to the member not designated as salary by an ordinance or Memorandum of Understanding shall not be considered for purposes of calculating Final Compensation.

Should a Tier 6 Plan Member not have completed 24 consecutive months of service as a Plan Member, then and in that event only shall the Final Average Salary be calculated as a monthly average of all consecutive calendar months completed, and, if the Plan Member has completed less than one month of total service as a Plan Member, the salary actually received shall be used to calculate its monthly equivalent.

Notwithstanding any of the foregoing, if a Retired Tier 6 Plan Member were to be restored to active duty as a Department Member and thereby again were to become a Tier 6 Plan Member and if he or she again were to retire or to be retired without having performed his or her duties for at least one year subsequent to such restoration, which year shall not include any time off from work by reason of any injury or illness which had been caused by or contributed to by any injury or illness which had been sustained or suffered by him or her prior to such restoration, the Final Average Salary which shall be applicable to his or her later retirement shall be the Final Average Salary which had been applicable to his or her previous retirement. Should the Plan Member have performed the requisite one year subsequent to such restoration, but not have completed 24 consecutive months of service since being restored, then in that event Final Average Salary shall be calculated as a monthly average of all consecutive months completed after such restoration.

Sec. 1704. Service Retirement and Vesting.

(a) **Normal Retirement.** Any Tier 6 Member with 20 Years of Service and a minimum age of 50 years, shall be retired by order of the Board from further active duty as a Department Member either upon the filing of his or her written application or upon the filing of a written request by or on behalf of the head of the department in which he or she is a Department Member, if it shall be determined by the Board to be for the good of such department, other than for a cause or reason which would entitle such Tier 6 Plan Member to a disability pension pursuant to Section 1706, and the Board, if it shall so determine, shall state the cause or reason in its order retiring such Plan Member

(b) **Service Pension Benefits for Terminated Employees (Deferred Retirement).** Notwithstanding any provisions of this Tier 6, a former Tier 6 Plan

Member, who became such because of termination of his or her employment for any reason other than death or retirement on account of disability pursuant to the provisions of Section 1706, and who has completed at least 20 Years of Service, may elect to leave his or her contributions in the Fire and Police Tier 6 Service Pension Fund. Upon reaching the age of 50 years, such former Tier 6 Plan Member shall be entitled to receive service retirement benefits identical to those available under Tier 3, in accordance with the formula set forth in Section 1504(d). The election to leave member contributions in the fund shall be irrevocable and must be in writing, filed with the Board within three years from the date of such termination of employment. Upon the execution and filing of the same, the former Tier 6 Plan Member's individual account shall be credited with an amount equal to all of the regular interest which, had he or she otherwise been entitled to the same, would have been credited thereto between the date of such termination of employment and the date of the filing of such election and thereafter, regular interest shall, until he or she be paid a pension, be credited thereto in the same manner as Tier 6 Plan Members' individual accounts shall be credited. In the event that any such person should die before being paid a pension, the only benefit which shall be paid under the provisions of this Tier 6 is the payment of his or her accumulated contributions, including interest credited thereto, to such persons as may be entitled thereto. Failure to file such an election within three years shall constitute an irrevocable decision not to take the service retirement benefits herein provided.

(c) **Pension Amount.** The minimum service pension payable pursuant to the provisions of this section shall be paid monthly for life in an amount which shall be equal to 40% of Final Average Salary at age 50 with 20 Years of Service. For each additional Year of Service after 20 years, 3% of Final Average Salary shall be provided per year for years 21 through 25, 4% of Final Average Salary shall be provided per year for years 26 through 30, and 5% of Final Average Salary shall be provided per year for years 31 through 33, but the maximum percentage of Final Average Salary payable, regardless of length of service, shall be 90% of Final Average Salary.

Sec. 1706. Disability Pensions.

(a) **Service-Connected Disability.** Upon the filing of his or her written application for a disability pension or upon the filing of a written request therefore by or on behalf of the head of the department in which he or she is a Department Member, any Tier 6 Plan Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his or her assigned duties, or those to which he or she would be assigned within the Plan Member's civil service classification if returned to duty, shall be retired by order of the Board from further active duty as a Department Member.

A Tier 6 Plan Member's incapacity is caused by the discharge of his or her duties if there is clear and convincing evidence that the discharge of the Plan Member's duties is the predominant cause of the incapacity.

A Tier 6 Plan Member retired under the provisions of this subsection shall be paid thereafter a monthly service-connected disability pension in an amount which shall be equal to the same percentage of the Plan Member's Final Average Salary as the Board shall determine, from time to time, to be the percentage of his or her disability. Such pension shall be in an amount of not less than 30% and not more than 90% of the Retired Tier 6 Plan Member's Final Average Salary, but in no case shall the pension be less than the equivalent of 2% of Final Average Salary for each Year of Service of the Retired Tier 6 Plan Member.

No Retired Tier 6 Plan Member, while retired pursuant to this subsection, ever shall be paid any pension pursuant to Section 1704 or subsection (b) of this section.

(b) **Nonservice-Connected Disability.** Upon the filing of his or her written application for a disability pension by a Tier 6 Plan Member who shall have five Years of Service or more, or upon the filing of a written request therefore with respect to such a Tier 6 Plan Member by or on behalf of the head of the department in which he or she is a Department Member, any Tier 6 Plan Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries or sickness other than injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his or her assigned duties or those to which he or she would be assigned within the Plan Member's civil service classification if returned to duty, shall be retired by order of the Board from further active duty as a Department Member. As a further condition of entitlement to such a pension, the Board shall also determine that such disability was not principally due to or caused by voluntary action of the Plan Member intended to entitle him or her to a nonservice-connected disability pension.

A Tier 6 Plan Member retired under the provisions of this subsection shall be paid thereafter a monthly nonservice-connected disability pension in an amount which shall be equal to the same percentage of the Retired Tier 6 Plan Member's Final Average Salary as the Board shall determine, from time to time, to be the percentage of his or her disability, but such pension shall be in an amount of not less than 30% and not more than 50% of the Retired Tier 6 Plan Member's Final Average Salary.

No Retired Tier 6 Plan Member, while retired pursuant to this subsection, ever shall be paid any pension pursuant either to Section 1704 or to subsection (a) of this section.

(c) **Determination of Disability.** Upon the filing of any written application or request for a disability pension, as referred to in subsections (a) and (b) of this section, the Board:

- (1) shall cause the Tier 6 Plan Member to be examined by and a written report thereon rendered by at least three regular licensed and practicing physicians selected by it;
- (2) shall hold a hearing with respect to such application or request;
- (3) shall receive or hear such other evidence relating to or concerning the Tier 6 Plan Member's disability or claimed disability as may be presented to it.

The Board shall have the power to hear and determine all matters pertaining to the granting and denying of any such application or request for a disability pension. The Board first shall determine whether or not the Tier 6 Plan Member is incapable of performing his or her assigned duties or those to which he or she would be assigned within the Plan Member's civil service classification if returned to duty. If the Board were to determine that he or she is not so incapable, it then shall be the duty of the Board to deny the application or request. If the Board were to determine that he or she is so incapable, it then shall determine, pursuant to the language used in subsections (a) and (b) of this section, whether his or her incapacity or disability is service-connected or nonservice-connected. The Board then shall determine the percentage of his or her incapacity or disability, within the limitations prescribed in subsections (a) and (b) of this section, and shall grant the application or request accordingly. If the Board were to determine that the disability is nonservice-connected, and that the incapacity or disability was principally due to or caused by voluntary action by the Tier 6 Plan Member intended to entitle him or her to a nonservice-connected disability pension, it then shall be the duty of the Board to deny the application or request. The Board upon its own motion or upon the written request of any Retired Tier 6 Plan Member, retired pursuant to subsections (a) or (b) of this section, shall have the power to consider new evidence pertaining to the case of any such Retired Plan Member and to increase or decrease the percentage of his or her incapacity or disability within the limitations prescribed in subsections (a) or (b) of this section but any such increase or decrease shall be based only upon injuries or sickness for which he or she was retired. In the case of any former Tier 6 Plan Member who became such by reason of his or her resignation or discharge as a Department Member, the Board, in order to grant any application filed by him or her for a disability pension, must also determine, in addition to all of the foregoing, that any existing incapacity or disability upon his or her part occurred prior to the termination of his or her active status as a Department Member and had been continuous up to the date of the Board's determinations.

The Board shall use the disability rating schedule adopted for Tier 3 to assist in standardizing disability pension awards or such other disability rating schedule as the Board may thereafter by rule adopt to assist in standardizing disability pension awards.

(d) **Termination of Disability Pensions.** The Board shall have the power to hear and determine upon its own motion all matters pertaining to the termination or reduction of any disability pension pursuant to the provisions of this subsection.

(1) **Pensions Granted to Persons Whose Active Status Terminated By Reason of Retirement.** The pension of any Retired Tier 6 Plan Member, retired pursuant to subsections (a) or (b) of this section and whose active status as a Department Member had been terminated by reason of his or her retirement, shall cease when the incapacity or disability for which he or she had been retired shall cease and he or she either:

(A) shall have been restored to active duty as a Department Member in the same permanent rank which he or she had held as of the date of retirement; or

(B) shall have been ordered restored to active duty as a Department Member in such same permanent rank and shall have declined, refused or neglected to report therefore or to perform duties as such.

Provided, however, that any Retired Tier 6 Plan Member who has been retired for more than five years from the date of the Board's action by which he or she was retired may never be restored to active duty as a Department Member. After a Retired Tier 6 Plan Member, who has been retired for more than five years on a service-connected or nonservice-connected disability pension, has been found to be no longer disabled, the Board shall adjust such Retired Tier 6 Plan Member's pension to 30% of his or her Final Average Salary. The adjusted pension shall reflect such cost of living adjustments as would have occurred had the Retired Tier 6 Plan Member's pension originally been based on such adjusted percentage.

(2) **Pensions Granted to Former Tier 6 Plan Members.** The pension of any Retired Tier 6 Plan Member, retired pursuant to subsections (a) or (b) of this section and whose active status as a Department Member had been terminated by reason of his or her resignation or discharge as such, shall cease when the incapacity or disability for which he or she received a disability pension shall cease.

(e) **Periodic Medical Examinations.** Except in those instances in which the Board has determined that, due to the nature of the disability, no purpose would be served in having periodic medical examinations to determine whether or not a Retired Tier 6 Plan Member is still disabled, all Retired Tier 6 Plan Members on a disability pension shall undergo medical examinations at periodic intervals, as determined by the Board, for the first five years of their disability retirement. Retired Tier 6 Plan Members who receive disability pensions shall thereafter undergo medical examinations as determined by the Board.

If a Retired Tier 6 Plan Member resides outside of the State of California, the Board shall have the authority to order medical examinations of Retired Plan Members at any place it may determine to be desirable and shall, if it is determined that it would impose hardship on the person to be examined to travel to such place, have the authority to defray the reasonable cost of any such travel required.

(f) **Assessing Cost for Missed Medical Appointments.** The Board shall have the authority to provide, by rule, for assessing the cost of medical appointments missed by disability pension applicants, or by Retired Tier 6 Plan Members on a disability pension, where such missed appointments were not caused by factors beyond the control of the applicant or Retired Tier 6 Plan Member.

(g) **Re-application After Denial of Disability Pension.** The Board shall establish reasonable rules governing the re-application by a Tier 6 Plan Member for a disability pension where an application has been denied and a new application has been filed subsequently for the same or similar medical reasons as those which were the basis of a previously denied application. A former Tier 6 Plan Member, whose status as a Department Member had been terminated by reason of his or her resignation or discharge prior to the date that the Board determined to deny the original application, shall have no right to file a new application because the earlier denial, once final, established as a matter of law that he or she did not qualify for disability retirement at the time of the Board's determination.

(h) **Transfers Under Civil Service.** For a period of one year following the effective date of a Retired Tier 6 Plan Member's disability pension, such Retired Plan Member shall be eligible for status without examination under the provisions of Section 1014 of the Charter in civil service classifications other than those that would entitle him or her to membership in any Tier of the Fire and Police Pension Plan; but the provisions of this subsection shall not apply to former Tier 6 Plan Members whose status as Department Members had terminated by reason of resignation or discharge.

(l) **Exclusion for Willful Conduct.** In making its determinations and findings relative to subsections (a), (b), and (c) of this section, the Board shall consider whether and to what extent the activity giving rise to the disability of a Tier 6 Plan Member was caused or aggravated by such member's willful misconduct. If the Board finds that the disability was caused or aggravated by such willful misconduct, the Board shall deny the Tier 6 Plan Member's application for a disability pension.

Sec. 1707. Service or Disability Pensions for Former Plan Members.

Any former Tier 6 Plan Member, who became such because of termination of his or her employment for any reason including retirement, who shall believe that he or she is eligible to be paid a pension pursuant to Section 1704 or 1706 of this Tier 6, may file his or her written application for the payment of a pension pursuant to either one of these sections within one year from the date he or she ceased to be a Plan Member, and the Board, if it were to determine that the contingencies provided in this Tier 6 for the payment thereof had happened or occurred as to such former Plan Member prior to the date upon which he or she had ceased to be a Plan Member and if there is no legal bar or defense to the granting to him or her of such pension or to any judicial action or proceeding which could be brought by him or her with respect thereto, shall grant him or her the pension in accordance with his or her written application.

Sec. 1708. Survivorship Pensions.

(a) **Pension for Qualified Survivor.**

(1) **Tier 6 Plan Member's Service-Connected Death.** The Qualified Survivor of a Tier 6 Plan Member who shall die by reason of injuries received or sickness caused by the discharge of his or her duties while a Department Member, shall be paid for life a monthly pension in an amount which shall be equal to 80% of the deceased Plan Member's Final Average Salary.

For the purposes of the benefit provided in this subsection (a)(1), a Tier 6 Plan Member has died by reason of injuries received or sickness caused by the discharge of his or her duties if there is clear and convincing evidence that the discharge of the Plan Member's duties were the predominant cause of his or her death.

(2) **Tier 6 Plan Member's Nonservice-Connected Death.** The Qualified Survivor of a Tier 6 Plan Member who shall have five or more Years of Service and who shall die while a Department Member, by reason of injuries or sickness other than injuries received or sickness caused by the discharge of his or her duties, shall be paid for life a

monthly pension in an amount which shall be equal to 50% of the deceased Plan Member's Final Average Salary.

(3) **Tier 6 Retired Plan Member's Death While on a Service Pension.** The Qualified Survivor of a Retired Tier 6 Plan Member, who shall die while he or she is receiving a pension pursuant to Section 1704, shall be paid for life a monthly pension in an amount which shall be equal to 70% of the pension received by the deceased Retired Tier 6 Plan Member immediately preceding the date of his or her death. The benefit described in this subsection (a)(3) may be modified as provided in subsection (b) of this section.

(4) **Tier 6 Retired Plan Member's Death While on a Service-Connected Disability Pension.** The Qualified Survivor of a Retired Tier 6 Plan Member, who shall die while he or she is receiving a service-connected disability pension pursuant to Section 1706, shall be paid for life a monthly pension in an amount which shall be equal to 80% of the pension received by the deceased Retired Tier 6 Plan Member immediately preceding the date of his or her death, unless the death of the Retired Plan Member occurs within three years after the effective date of his or her pension and is due to service-connected causes, in which case, the Qualified Survivor shall receive, or in a case where an option has been elected pursuant to subsection (b) of this section, may elect to receive, 80% of the Retired Plan Member's Final Average Salary, as modified by the cost of living adjustments made pursuant to Section 1716 of this article since the date of retirement of the Retired Plan Member. The benefit described in this subsection (a)(4) may be modified as provided in subsection (b) of this section.

(5) **Tier 6 Retired Plan Member's Death While on a Nonservice-Connected Disability Pension.** The Qualified Survivor of a Retired Tier 6 Plan Member, who shall die while he or she is receiving a nonservice-connected disability pension pursuant to Section 1706, shall be paid for life a monthly pension in an amount which shall be equal to 70% of the pension received by the deceased Retired Plan Member immediately preceding the date of his or her death. The benefit described in this subsection (a)(5) may be modified as provided in subsection (b) of this section.

(6) **Tier 6 Plan Member's Nonservice-Connected Death While on Military Leave.** The Qualified Survivor of a Tier 6 Plan Member who, while on military leave, is killed as a result of the discharge of his or her military duties shall be paid for life, as a nonservice-connected survivor benefit, a monthly pension in an amount which shall be equal to 50% of the deceased Plan Member's Final Average Salary. This benefit

shall be paid in lieu of any benefits that would otherwise be payable under subsections (a)(2), (a)(7) or (a)(8) of this section.

(7) **Nonservice-Connected Death of Tier 6 Plan Member with Less than Five Years of Service.** In the event the Tier 6 Plan Member died of nonservice-connected causes before having completed five years of Service, the Qualified Survivor of the deceased Plan Member, or his or her Minor or Dependent Children if there is no Qualified Survivor, or his or her Dependent Parents if there is no Qualified Survivor and no Minor or Dependent Children, shall be entitled to the Basic Death Benefit described in subsection (a)(8) below.

(8) **Basic Death Benefit and Election.** The Basic Death Benefit shall consist of: (1) the return of a deceased Tier 6 Plan Member's contributions to the Plan with accrued interest thereon; subject, however to the rights created by virtue of the Tier 6 Plan Member's designation of a beneficiary as otherwise provided in Tier 6; and (2) if the deceased Plan Member had at least one Year of Service, the deceased Plan Member's Final Average Salary multiplied by the number of completed Years of Service, not to exceed six years; provided that said amount shall be paid in monthly installments of one-half of the deceased Plan Member's Final Average Salary.

A Qualified Survivor, or a guardian acting on behalf of the Minor or Dependent Children of a deceased Tier 6 Plan Member if there is no Qualified Survivor, or Dependent Parents if there is no Qualified Survivor and no Minor or Dependent Children entitled to a pension pursuant to any of the provisions of this section, where benefits are based upon the Plan Member's death in active service, may in lieu of the pension provided and before the first payment of such pension, elect to receive the Basic Death Benefit.

(b) **Optional Pensions for Qualified Survivor.** At any time before the first payment of a service pension, a service-connected disability pension, or a nonservice-connected disability pension, the Tier 6 Plan Member may elect to receive, in lieu of his or her pension as provided in Section 1704 or Section 1706, the actuarial equivalent at that time of such pension and of the pension for the Qualified Survivor, as provided in subsection (a) of this section, by electing an optional pension payable throughout the balance of his or her life, with the provisions that upon his or her death such optional pension shall be continued to the Tier 6 Plan Member's Qualified Survivor in the proportional amount designated by the Plan Member at the time of election of the option provided by this section.

The amount of such optional pension shall be so calculated that the liability of the Fire and Police Pension Plan at the date of retirement under the

optional pension shall be equal to the liability of the Fire and Police Pension Plan at the same date under the pension awarded in accordance with the provisions of Section 1704 or Section 1706 and of the survivorship pension provided by subsection (a) of this section. For the purpose of this section, the liability of the Fire and Police Pension Plan is defined as the present value, in accordance with tables adopted by the Board, of the pensions or optional pensions calculated by approved actuarial methods, and recommended by the Board's actuary. In determining the actuarial equivalent of the pension for a Qualified Survivor as provided pursuant to subsection (a)(4) of this section, the equivalent of a survivorship pension of 80% of the retiree's pension shall be used in all cases.

The optional amounts, calculated in accordance with the foregoing paragraph, shall provide a range of optional values such that the amount to be paid to the Qualified Survivor of the Plan Member shall range from 75% to 100% of the pension payable to the Tier 6 Plan Member, varying by increments of 5%.

If a Retired Tier 6 Plan Member, previously retired on a disability pension pursuant to the provisions of Section 1706, should be reinstated to active duty upon termination of his or her disability, the election to receive the optional pension as herein provided, shall be deemed cancelled as of the effective date of such reinstatement.

A Retired Tier 6 Plan Member, previously retired on a disability pension pursuant to the provisions of Section 1706, shall have the right to cancel any option previously elected by him or her pursuant to the provisions of this subsection in the event his or her pension is subsequently adjusted as provided for in Section 1706.

The Board shall by rule provide for a method in which the election to receive an optional pension shall be exercised.

(c) **Additional Pension Amounts.** Whenever any Tier 6 Plan Member or Retired Tier 6 Plan Member shall die and leave surviving him or her, in addition to a Qualified Survivor, a Minor Child or Children or a Dependent Child or Children of the deceased member and the Qualified Survivor, then such Qualified Survivor, shall be paid an additional monthly pension in an amount which shall be equal to 25% of the pension he or she as a Qualified Survivor would be entitled to pursuant to the provisions of subsection (a) of this section while there is one Minor Child or Dependent Child, 40% while there are two Minor Children or Dependent Children or a combination thereof, and 50% while there are three or more Minor Children or Dependent Children or a combination, and such additional monthly pension shall be the exclusive property of such Qualified Survivor and not the property of any such Minor Child or Dependent Child.

Whenever any Tier 6 Plan Member or Retired Tier 6 Plan Member shall die and leave surviving him or her in addition to a Qualified Survivor, a Minor Child or Children or a Dependent Child or Children who are not the child or children of the Qualified Survivor, then the guardian(s) or conservator(s), as appropriate, of the estate(s) of any such Minor Child or Children or Dependent Child or Children shall be paid a monthly pension in an amount which shall be equal to 25% of the pension the Qualified Survivor would be entitled to pursuant to the provisions of subsection (a) of this section while there is one Minor Child or Dependent Child, 40% while there are two Minor Children or Dependent Children or a combination, and 50% while there are three or more Minor Children or Dependent Children or a combination.

Whenever any Tier 6 Plan Member or Retired Tier 6 Plan Member shall die and leave surviving him or her, in addition to a Qualified Survivor, a Minor Child or Children or a Dependent Child or Children of the deceased member and the Qualified Survivor and a Minor Child or Children or a Dependent Child or Children not the child or children of the Qualified Survivor, then a monthly pension shall be paid in an amount which shall be equal to 25% of the pension the Qualified Surviving Spouse would be entitled to pursuant to the provisions of subsection (a) of this section while there is one Minor Child or Dependent Child, 40% while there are two Minor Children or Dependent Children or a combination, and 50% while there are three or more Minor Children or Dependent Children or a combination. The amount of such monthly pension shall be divided by the number of Minor Children or Dependent Children and shall be adjusted accordingly whenever any Minor or Dependent Child shall cease to be such. The Qualified Survivor shall be paid the portion of such monthly pension which shall be applicable to the number of his or her Minor Children or Dependent Children and the same shall be her or his exclusive property. The guardian(s) or conservator(s), as appropriate, of the estate(s) of the Minor Children or Dependent Children who are not those of the Qualified Survivor shall be paid the portion of such monthly pension which shall be applicable to such Minor Children or Dependent Children and the same shall be the exclusive property of such children.

Any benefits provided in this subsection which are not the property of the Qualified Survivor, but are the property of the Minor Child or Dependent Child, shall not be required to be paid to a guardian or conservator of the Minor Child or Dependent Child if the Minor Child or Dependent Child is an adult who is capable of managing his or her financial affairs, in which case the benefits may be paid directly to such adult Minor Child or Dependent Child. Dependent Child benefits payable under this subsection may also be paid pursuant to the provisions of Charter Section 1238, if applicable.

The additional pension amounts provided in this subsection for persons other than a Qualified Survivor are to be calculated on the basis of the applicable Qualified Survivor pension provided pursuant to subsection (a) of this section,

unmodified by any election that may previously have been made pursuant to the provisions of subsection (b) of this section.

Additional pension amounts are also subject to the limitation that the amount of any survivorship pension provided in this section, after the additional payments provided in this subsection are added thereto, may not exceed 100% of the Final Average Salary of the deceased Tier 6 Plan Member or 100% of the Final Average Salary of the deceased Retired Tier 6 Plan Member, as modified by the cost of living adjustments made pursuant to Section 1716 of this Tier 6 since the date of retirement of the Retired Plan Member. In case of such excess, any additional pension amounts shall be reduced to a level where the total amount of pension is equal to such maximum.

(d) **Pension for Minor or Dependent Children.** Whenever any Tier 6 Plan Member or Retired Tier 6 Plan Member shall die without leaving a Qualified Survivor, the guardian or conservator, as applicable, of the estate(s) of his or her Minor or Dependent Children shall be paid, until each such child shall cease to be a Minor or Dependent Child, a monthly pension equal to the pension a Qualified Survivor would have been eligible to receive pursuant to subsection (a) of this section had a Qualified Survivor survived such Member. Whenever any Tier 6 Plan Member or Retired Tier 6 Plan Member shall die leaving a Qualified Survivor who thereafter shall die, the guardian or conservator, as applicable, of the estate(s) of his or her Minor or Dependent Children shall be paid, until each such child shall cease to be a Minor or Dependent Child, a monthly pension equal to the pension a Qualified Survivor would have been eligible to receive pursuant to subsection (a) of this section. In any of the foregoing events and if there were to be more than one Minor or Dependent Child, an equal share of such monthly pension shall be paid for and on behalf of each such child to the guardian or conservator, as applicable, of his or her estate and shall be adjusted as each of them shall cease to be a Minor or Dependent Child in the manner set forth in subsection (c) of this section. If payments are made pursuant to this subsection (d), no additional pension amounts shall be paid pursuant to subsection (c) of this section. With regard to benefits payable to a Minor Child or Dependent Child who is an adult and capable of managing his or her financial affairs, the foregoing provisions requiring payment to a guardian or conservator of such child shall be disregarded and payment may be made directly to such adult child. Dependent Child benefits payable under this subsection may also be paid pursuant to the provisions of Charter Section 1238, if applicable.

(e) **Pension for Dependent Parents.** Whenever any Tier 6 Plan Member or Retired Tier 6 Plan Member shall die without leaving a Qualified Survivor or a Minor or Dependent Child, a monthly pension shall be paid to such Dependent Parents or to the survivor of them until each such Dependent Parent shall cease to be such. Any Dependent Parent who shall cease to be such but who thereafter again shall become unable to pay his or her necessary living

expenses without a pension shall be entitled to have his or her pension reinstated.

The total amount of a pension payable to the Dependent Parents shall be the same as that to which a Qualified Survivor would have been entitled pursuant to subsection (a) of this section.

(f) **Determinations With Respect to Cause of Death and Dependency.** The Board shall have the same power as that which has been given to it by Section 1706(c) and (d) in order to determine:

(1) whether a Tier 6 Plan Member's death was service-connected or nonservice-connected for the purposes of Section 1708(a)(1) and (2);

(2) whether or not a child of a deceased Tier 6 Plan Member or Retired Tier 6 Plan Member is a Dependent Child; and

(3) whether or not any parent of a deceased Tier 6 Plan Member or Retired Tier 6 Plan Member is a Dependent Parent.

The Board also shall have the power to determine, from time to time, whether or not a child continues to be a Dependent Child, whether or not a parent continues to be a Dependent Parent and whether or not a Dependent Parent who had ceased to be such thereafter shall have become entitled to have his or her pension reinstated. The Board shall also have the power to determine whether an adult Minor Child or Dependent Child is capable of managing his or her own financial affairs.

(g) **Medical Reports and Hearings.** The power of the Board to determine whether a Tier 6 Plan Member's death was service-connected or nonservice-connected, as provided in subsection (f) of this section, hereafter may be exercised by it upon the basis of a written report from one regularly licensed and practicing physician selected by it but the Board, in its discretion, may obtain such a report from more than one such physician. The determination hereinbefore referred to in this subsection may, at the option of the Board, be made without a hearing being held pursuant to the provisions of subsection (f) of this section, provided that, should any decision made without a hearing being held adversely affect any person, such person may request and, upon such request, shall be granted a hearing before the Board at which such decision shall be reconsidered.

(h) **Distribution of Contributions.** Whenever a Tier 6 Plan Member dies prior to retirement without leaving a person or persons entitled to receive a pension pursuant to the provisions of this section, then, and in that event, his or her contributions to the Plan, together with such interest as may have been

credited to the Tier 6 Plan Member's individual account shall be paid to such person as he or she shall have nominated by written designation duly executed and filed with the Board or, if there is no such designation, then to the Tier 6 Plan Member's surviving spouse or state-registered domestic partner, or, if none, then to the Tier 6 Plan Member's children, or, if no children, then to the Tier 6 Plan Member's parents. In the event there is no written designation of beneficiary, surviving spouse, state-registered domestic partner, children or parents, then the contributions shall be paid to the executor or administrator of the estate of such deceased Tier 6 Plan Member, or to any other person legally authorized to collect money due the decedent.

Sec. 1710. Funding.

(a) **Creation of Funds.** Subject to Charter Section 1220(b), two entirely separate and distinct funds hereby are created and established for record keeping, actuarial and other administrative purposes related to this Tier 6, one of which shall be known as the "Fire and Police Tier 6 Service Pension Fund" and the other of which shall be known as the "Fire and Police Tier 6 General Pension Fund."

(b) **Fire and Police Tier 6 Service Pension Fund.** The Fire and Police Tier 6 Service Pension Fund shall consist of:

- (1) deductions made pursuant to Section 1714 from the salaries of Tier 6 Plan Members;
- (2) all contributions and donations to the Fire Department, the Police Department or the Harbor Department for services by any Tier 6 Plan Members, except amounts of money donated to provide for any medal or permanent competitive award;
- (3) all fines imposed upon Tier 6 Plan Members for violations of rules and regulations of the respective department in which they are Department Members;
- (4) proceeds from the sale of unclaimed property as determined by the Board; and
- (5) all interest, earnings and profits resulting from investments of such monies.

(c) **Fire and Police Tier 6 General Pension Fund.** The Fire and Police Tier 6 General Pension Fund shall consist of:

- (1) all monies appropriated to the fund by the Council; and

(2) all interest, earnings and profits resulting from investment of such monies.

(d) **Use of Funds.** The monies in the Fire and Police Tier 6 Service Pension Fund shall be used, other than for the investment thereof, exclusively for the payment of service pensions granted pursuant to Section 1704 and for the refund of contributions as provided in this Tier 6 and such uses as may be authorized by Sections 1220(b) and Section 1220(c), subject to the limitations contained in Section 1220(d). The monies in the Fire and Police Tier 6 General Pension Fund shall be used, other than for the investment thereof, exclusively for the payment of all pensions other than service pensions, such benefits as may be provided by ordinance adopted pursuant to the enabling provisions contained in Section 1718, and such other uses as authorized by Charter Section 1220(b) and (c).

(e) **Authorized Transfer Between Funds.** In the event that the money in the Fire and Police Tier 6 Service Pension Fund should be insufficient, at any time, to pay all service pensions, then the Board shall have the power and authority to cause the Controller to transfer to the fund sufficient monies therefore from the Fire and Police Tier 6 General Pension Fund, except as otherwise provided by Section 401(h) of the Internal Revenue Code.

(f) **Benefits Shall Be a General Obligation of the City.** The obligation to pay benefits pursuant to this Tier 6 shall be a general obligation of the City. Charter Section 1210 shall apply to this Tier 6 in a manner substantially identical to its application to Tier 3.

Sec. 1712. Actuarial Determinations and Tier 6 Unfunded Liabilities.

(a) **Actuarial Standards.** The Fire and Police Pension Plan – Tier 6 shall be maintained on a reserve basis which, for the purposes of this Tier 6, shall mean one which provides for the accumulation and maintenance of the Fire and Police Tier 6 Service Pension Fund and the Fire and Police Tier 6 General Pension Fund which together will at all times be equal to the difference between the present value of the obligations assumed and the present value of the monies to be received for paying such obligations, where such present values are estimated in accordance with accepted actuarial methods and on the basis of an assumed rate of interest and the mathematical probabilities of the occurrence of such contingencies as affect both the payment of the assumed obligations and the receipt of monies with which they are to be paid in accordance with the provisions of Charter Section 1210 (b)(3), applied as if the term "Tier 3" as used therein were "Tier 6", and Section 1714.

(b) **Actuarial Valuations.** The Board shall secure an actuarial valuation showing the cost of maintaining the plan and funds on such reserve basis and, at intervals of not to exceed five years, shall cause to be made an

actuarial investigation including, but not limited to, the mortality, service and salary experience of the Plan Members and other beneficiaries and shall further cause to be made annually an actuarial valuation of the assets and liabilities of the funds.

The Board, from time to time and with the advice of the investment counsel, shall establish such an assumed rate of interest for the purpose of actuarial valuations, as in its judgment seems proper in the light of the experience and prospective earnings on the investment of the funds.

(c) **Retention of Actuary.** The Board shall retain a competent consulting actuary for the purpose of making the necessary actuarial studies, reports, investigations and valuations and shall, with the advice of the actuary, adopt such actuarial assumptions as shall be necessary.

(d) **Accounting for Unrealized Profits and Losses.** With the advice of the consulting actuary and of the investment counsel, the Board, for the purpose of the actuarial valuations, may provide by rule for the manner and the extent to which any unrealized profits or losses in the equity type investments of the funds shall be taken into account.

(e) **Unfunded Liabilities.** The unfunded liabilities of the Fire and Police Pension Plan – Tier 6 shall be funded in accordance with the actuarial funding method adopted by the Board upon the advice of its consulting actuary. With the advice of the consulting actuary, the Board shall establish amortization policies for unfunded actuarial accrued liabilities and surpluses.

Sec. 1714. Member Contributions – Tier 6.

(a) **Contribution Amounts.** Each Tier 6 Plan Member shall contribute to the Fire and Police Pension Plan-Tier 6 as follows:

(1) **Regular Contributions.** Each Tier 6 Plan Member shall make regular contributions to the Fire and Police Pension Plan – Tier 6 by salary deduction at the rate of 9% of the amount of his or her salary, except that further contributions to the Plan shall not be required from a Tier 6 Plan Member who has served as a Plan Member more than 33 years.

(2) **Additional Contributions to Support Funding of Retiree Health Benefits.** Each Tier 6 Plan Member shall make additional contributions to the Fire and Police Pension Plan – Tier 6 by salary deduction at the rate of 2 % of the amount of his or her salary, except that further contributions to the Plan shall not be required from a Tier 6 Plan Member who has served as a Plan Member more than 25 years. The purpose of these contributions is to provide additional employee funding

for service pensions in order to support the City's ability to fund retiree health benefits. This 2% member contribution shall not be increased by ordinance.

For purposes of determining the amount of these deductions, Salary shall mean those elements of a Tier 6 Plan Member's compensation which would be included in calculating Final Average Salary. The administrative heads of the Fire Department, Police Department, and Harbor Department shall cause to be shown on each and every payroll of such departments all deductions that are required to be made pursuant to this subsection for Department Members who are Tier 6 Plan Members. All references in Tier 6 to contributions shall be deemed to include both regular contributions and additional contributions, unless a different meaning is clearly indicated in the context.

(b) Payroll Deductions and Years of Service Credit for Overtime.

Whenever a Plan Member, for overtime work, shall take a period of time off with pay:

(1) deductions for pension purposes, as provided in subsection (a), shall be made from such pay but only in the same amount as that which would have been deducted from his or her salary if such period had been one of regular work; and

(2) such period shall be part of his or her Years of Service.

Whenever a Plan Member, for overtime work, shall receive a cash payment:

(1) deductions for pension purposes shall not be made from such payment; and

(2) the period of overtime work for which he or she shall receive such payment shall not be part of his or her Years of Service.

(c) Member Accounts. The Board shall maintain an individual account for contributions that are made by or for each Tier 6 Plan Member, as hereinabove provided. Regular interest shall be credited to such individual accounts as of the last day of June and December of each year at such rate as the Board may deem proper in light of the Fire and Police Pension Plan's earnings, exclusive of profits and losses on principal heretofore or hereafter resulting from sales of securities. No such interest shall be credited at any other time or to the individual account of any person who is not a Tier 6 Plan Member but such interest shall be credited to the end of the pay period preceding termination, using the last interest rate used for the preceding June or December for crediting the Plan Member's individual accounts. A former Plan Member who did not receive a refund of his or her contributions and who re-enters service and

becomes a Tier 6 Plan member shall, upon re-entry, be credited with interest on his or account as if he or she had never terminated service.

(d) **Payroll Deduction.** Each Tier 6 Plan Member shall be deemed to consent and agree to each deduction made as provided for herein and the payment of each payroll check to such Plan Member shall be a full and complete discharge and acquittance of all claims and demands whatever for the services rendered by each member during the period covered by such payroll, except such claims as such Plan Member has to the benefits or payments provided for in this Tier 6.

(e) **Election of Refund Forfeits Right to Benefits.** Upon termination of employment as a Department Member for any reason except retirement, a terminated member may elect to receive a refund of contributions, together with accrued interest. Tier 6 Plan Members or beneficiaries thereof who elect to receive a refund of contributions, forfeit the right to benefits provided in this Tier 6. A terminated member who elected to have contributions returned, but who re-enters service and again becomes a Tier 6 Plan Member, shall have the privilege of regaining the prior service credit by repaying the amount of his or her previously refunded contributions and interest and an amount calculated as interest which would have been earned between the date of original termination of status as a Tier 6 Plan Member and the date of re-entry into service as a Department Member.

(f) **Payment of Benefits Forfeits Right to a Refund.** After payment of any pension benefit has commenced, the Tier 6 Plan Member or beneficiaries forfeit the right to a refund of the Plan Member's contributions. Tier 6 Plan Members who are restored to active duty from a disability pension may not thereafter have contributions made by them prior to their retirement on such disability pension refunded.

(g) **Assuring Full Member Contributions.** The Board shall have rule-making authority to insure that the Fire and Police Pension Plan – Tier 6 receives member contributions for all periods of credited service, except that the Board shall not have authority to require contributions for service credit for military service and for periods while a Tier 6 Plan Member is receiving a disability pension, or full pay for Injury On Duty. Tier 6 Plan Members, however, may elect to make contributions for periods of Injury On Duty compensated at the rate provided by general law in order to acquire credit for Years of Service for such period. Such contributions shall be at the contribution rate herein provided and shall be based on the salary the Plan Member would have received if he or she had not occupied Injury On Duty status.

Sec. 1716. Cost of Living Adjustments.

(a) **Determination of Cost of Living Adjustments.** The Board, before May 1 of each year commencing with the year 2012, shall determine the percentage of the annual increase or decrease in the cost of living as of March 1 of that year from March 1 of the preceding year as shown by the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics or such other index as the Federal Government may develop to replace the All Urban Consumers Index for the area in which the City is located. If any such index were not to reflect the cost of living as of a particular March 1, then the index for the closest preceding date shall be used.

(b) Annual Cost of Living Adjustments.

(1) Commencing as of July 1 of the year in which the Board shall determine the percentage of increase or decrease in the cost of living, the monthly amounts of all pensions granted pursuant to the provisions of this Tier 6, shall be increased or decreased by reason of such determined percentage of increase or decrease in the cost of living, not to exceed an increase or decrease of 3% in any given year. Pensions which became payable before July 1, but subsequent to the preceding July 1, will be adjusted on a prorated basis whereby one-twelfth of the annual adjustment shall be applied for each completed month since such pension commenced. In no event shall pensions adjusted hereunder ever be decreased below the amount received by the Beneficiary when such pension first became payable to him or her.

(2) If the percentage of increase in the cost of living, as determined by the Board in accordance with subsection (a), were to exceed three percent (3%), the percentage of increase in the cost of living in excess of three percent (3%) shall be accumulated and carried over and added to the retiree's "COLA bank". In subsequent years, should the Board determine, based upon the applicable index, that the cost of living increase is below three percent (3%), an additional percentage, if available in such COLA bank, will be withdrawn from the retirees' COLA bank and applied to that current year's cost of living increase or decrease, up to the maximum of three percent (3%).

(c) **Discretionary Cost of Living Adjustments.** To the extent that the annual cost of living adjustments provided by subsection (b) hereof are less than the annual change in the cost of living as determined in subsection (a) hereof, the Council may grant discretionary cost of living adjustments, in addition to the annual cost of living adjustments provided by subsection (b) hereof, subject to the following conditions and requirements:

(1) **No More Than Every Three Years.** Discretionary adjustments may not be provided more frequently than once every three years, counting from the date the last discretionary adjustment became effective.

(2) **Limit of Adjustments.** Discretionary adjustments shall not exceed one-half of the difference between the percentage of the annual increases in the cost of living, as determined pursuant to the provisions of subsection (a) of this section, and the annual adjustments made pursuant to subsection (b) of this section for each of the preceding three years. Discretionary adjustments shall be allocated to each of the three years for which an adjustment is made. The adjustment may not exceed the percentage available in the retiree's COLA bank and upon application the additional percentage will be withdrawn from the retiree's COLA bank.

(3) **Pensions Eligible for Adjustment.** Discretionary adjustments herein provided shall be applied to pensions granted pursuant to Sections 1704, 1706 and 1708 subject to the following limitations: If a pension became payable on or after July 1 immediately preceding the effective date of such adjustment, it shall not be so adjusted; and any pension which shall have become payable at a time within the three year period (but prior to the immediately preceding July 1), shall be prorated on a monthly basis to the number of completed months for which the pension was received, provided that pensions paid pursuant to Section 1708(a)(3), (4) or (5), or Section 1708(c), (d) or (e), shall be adjusted by basing eligibility on the date upon which the Retired Plan Member's pension became effective.

(4) **Report to Council Prior to Adoption by Ordinance.** Discretionary cost of living adjustments may be provided only by ordinance. Ordinances providing discretionary adjustments may not be finally adopted until the Council has first obtained and published a report from the actuary or actuaries of the Fire and Police Pension Plan – Tier 6 indicating the present value of the liabilities that will be created by the proposed discretionary adjustment. This report must identify the annual funding cost of amortizing this liability pursuant to the amortization policies adopted by the Board.

(5) **Vote by Council.** Ordinances adopted pursuant to this subsection must be by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and re-adoption by the Council by not less than three-fourths of the membership of Council. No such ordinance may be finally adopted by the Council until the expiration of at least 30 days after its first presentation to the Council, nor until after a public hearing has been held thereon. Ordinances adopted pursuant to

this subsection, shall be published no later than November 30, and shall become effective January 1.

(6) **Prospective Application.** All adjustments provided in this subsection are to be applied prospectively only and shall not be understood to permit retroactive adjustments of pensions.

Sec. 1718. Provision of Certain Subsidy Payments by Ordinance.

(a) **Purpose of this Section.** It is the purpose of this section to enable the City Council to provide by ordinance a program or programs whereby persons receiving pensions pursuant to the provisions of Tier 6 may become eligible to have subsidy payments made on their behalf for health insurance, accident insurance, life insurance or health care plan coverage or coverage for any combination of such programs as determined by the Council and subject to such conditions of entitlement as may be set forth in any ordinance adopted in accordance with the provisions of this section.

(b) **Mode of Adoption of Ordinance.** Ordinances adopted pursuant to this section must be approved by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and readoption by the Council by three-fourths of the membership of the Council. No such ordinance may be finally adopted by the Council until the expiration of at least 30 days after its first presentation to the Council, nor until after a public hearing has been held thereon. Any ordinance adopted pursuant to this section shall go into effect upon its publication, but the terms of such ordinance, or portions thereof, may be operative at a later date or dates. Council shall, prior to approval of the ordinance, be advised in writing by an enrolled actuary as to the cost of the proposed benefits.

(c) **Council Authority to Establish Subsidy Limitations.** The Council may establish by ordinance the maximum subsidy payments for beneficiaries under any programs established by the Council pursuant to subsection (a), including appropriate limitations for employees receiving subsidies from other City plans.

(d) **Administration of Subsidy Program.** Any subsidy program adopted by ordinance pursuant to this section shall be administered by the Board. In furtherance thereof, the Board shall have the authority to contract for suitable programs as defined in subsection (a), to be made available to retired members or other beneficiaries, and shall have the power to adopt such rules as it deems necessary to administer such programs. Notwithstanding the foregoing provisions, the Board may authorize the Personnel Department to administer any program or part thereof established by ordinance pursuant to the provisions of this section, but the Board shall reimburse the General Fund of the City of Los

Angeles for all necessary expenses incurred by the Personnel Department in administering these programs.

(e) **Board Authority to Adjust Subsidy Amount.** The Council may by ordinance authorize the Board to increase or decrease subsidy payments pursuant to factors, standards, and limitations prescribed in the ordinance.

(f) **Subsidies for Tier 6 Disability Retirees With Less Than Ten Years of Service.** The Council, by ordinance adopted pursuant to this section, shall provide a health subsidy at age 55 for Tier 6 Plan Members who retire on service-connected disability pensions with less than ten Years of Service. Such ordinance shall be adopted by the Council no later than June 30, 2011.

(g) **Health Insurance Premium Subsidy for Tier 6 to be Provided on the Same Terms and Conditions as for the Other Tiers.** In consideration of the additional 2% contribution that Tier 6 members are making, pursuant to Section 1714(a)(2), to provide additional employee funding for service pensions in order to support the City's ability to fund retiree health benefits, the City Council, by ordinance adopted pursuant to this section, shall provide a health insurance premium subsidy for Retired Tier 6 Plan Members on the same terms and conditions that apply to retired members of other Tiers as of the effective date of the Charter amendment establishing Tier 6. Such ordinance shall be adopted by the Council no later than June 30, 2011. The rights granted in this Subsection (g), however, may include appropriate limitations for employees receiving subsidies from other City plans as provided in Subsection (c) herein.

Sec. 1720. Compliance with Certain Internal Revenue Code Provisions.

(a) The benefits payable to any person who becomes a Plan Member shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code.

(b) If any of the provisions of Section 415 of the Internal Revenue Code should be repealed, the provisions of this section shall be deemed repealed to the same extent.

Sec. 1722. Compensation Limits.

(a) The Final Average Salary taken into account to determine the benefits provided by Tier 6 shall not exceed the annual limit set forth in Section 401(a)(17) of the Internal Revenue Code and regulations thereunder for any Plan Year. This annual compensation limitation shall be adjusted automatically for each Plan Year to the amount prescribed by the Secretary of the Treasury or the Secretary's delegate.

(b) If any of the limitations of Section 401(a)(17) should be repealed, the provisions of this section shall be deemed repealed to the same extent.

Sec. 1724. Recall to Active Duty

(a) **Rules for Recall to Active Duty.** The Appointing authority of the department shall promulgate rules and set standards as he or she may deem necessary or desirable with respect to recalling a Retired Tier 6 Member to active duty.

(b) **Conditions for Recall to Active Duty.** A Retired Tier 6 Plan Member, whenever retired, shall be eligible to be recalled to active duty in the department from which he or she retired only upon the following conditions:

(1) **Service Retirement and Former Rank.** That his or her original retirement had been pursuant to Section 1704 and had been from the Fire Department while holding a rank lower than Fire Chief or from the Police Department while holding a rank lower than Chief of Police or from the Harbor Department while holding a rank lower than Port Ward.

(2) **Certification.** That he or she had certified, in writing, that he or she had read and understands the provisions of this section; and

(3) **Consent to Recall.** That he or she voluntarily consented to be recalled to active duty.

(c) **Limitations on Recall.** The Appointing Authority may recall a retired member to active duty:

(1) **Rank at Retirement.** Only in or to a vacant position in the rank held by him or her at the effective date of his or her original retirement.

(2) **90 Day Limit.** For not to exceed 90 days in any one calendar year; and

(3) **Status defined in the Section.** The salary, benefits and other terms and conditions of employment of any recalled member shall be provided under Subsections (e) and (f) of this section.

(d) **No Recall of Police Exceeding 12 Months Without Loss of Pension.** Recall of retired members of the Police Department may be approved for a period in excess of 90 days but not for more than 12 consecutive months, without loss of pension, in which case the salary, benefits and other terms and conditions of employment for the recalled police officers shall be established by ordinance. After a Retired Tier 6 Plan Member has been recalled under this

provision for a period in excess of 90 days, he or she may not be recalled again under this provision until at least six months have passed since the date he or she last served under the prior recall.

(e) **Status of Recalled Members.** A retired member if he or she were to be recalled to active duty, thereafter shall be known as a "recalled member" and as such:

(1) His or her recall to active duty shall be a privilege only and the Appointing Authority may terminate his or her service at any time;

(2) His or her pension shall be paid during the period of his or her recall to active duty;

(3) He or she shall be paid the salary provided for his or her rank and the longevity pay or merit pay provided for his or her aggregate years of service prior to the effective date of his or her original retirement;

(4) He or she shall have no deductions made for pension purposes, pursuant to Section 1714 related to member contributions to Tier 6, from his or her salary and longevity pay or merit pay; and

(5) He or she, the surviving spouse or domestic partner, minor child or children or dependent parent or parents never shall be entitled to any pension benefits provided by this Tier by reason of his or her service as a recalled member.

(f) **Tier 6 Construed with Recalled Member Rules.** The provisions of this Tier 6 shall be construed and applied, as to a recalled member, his or her surviving spouse or domestic partner, minor child or children and dependent parent or parents, in accordance with the respective applicable provisions of subsection (e) of this section.

Sec. 1726. Social Security Participation.

(a) **Implementation Procedure for Social Security Participation.** Should Social Security participation be mandated or made available to Plan Members by federal legislation amending the Social Security Act or by action taken by the City or by Plan Members as provided by law, the following provisions shall govern the manner in which such participation by Plan Members is to be implemented and the limitations hereinafter set forth shall be controlling unless federal law is contrary to these provisions, is in conflict therewith and is clearly intended to be preemptive. Should applicable provisions of federal law in any respect differ from the provisions contained in this section and should they be determined to be preemptive as to any part thereof, then and in that event,

those provisions of this section not affected by such federal law shall remain in full force and effect.

(b) **Council Authority to Coordinate Benefits and Contributions.**

As to the rights and entitlement to benefits of Plan Members participating in such Social Security coverage, the Council shall have the power and authority, subject to the veto of the Mayor, to adopt ordinances modifying the benefits and conditions of entitlement provided in this Tier 6, including adjustments of Plan Member contributions to the Fire and Police Pension Plan – Tier 6 as hereinafter more specifically provided and subject to the limitations stated herein.

(c) **Supermajority Vote Required.** Ordinances adopted pursuant to this section must be approved by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and re-adoption by the Council by a vote of not less than three-fourths of the membership of Council. No such ordinance may be finally adopted by the Council until the expiration of at least 30 days after its first presentation to the Council, nor until after a public hearing has been held thereon. Any ordinance adopted pursuant to this section shall go into effect upon publication.

(d) **Integration of Social Security and Pension Plan.** Any participation in Social Security coverage shall be by integration with the benefits provided by this Tier 6 and shall not be in addition to the benefits provided in the Fire and Police Pension Plan – Tier 6. Integration is to be defined in harmony with the provisions of the Social Security Act and must be in substantial compliance with the rules and regulations governing the Act. Benefits provided by an integrated system must be at least equal to the benefits offered by the Fire and Police Pension Plan – Tier 6 prior to such integration. The level of integration may be periodically adjusted by the Mayor and Council to ensure an adequate level of integration.

(e) **Minimum Plan Member Contributions.** Plan Members participating in Social Security shall have their contributions to the Fire and Police Pension Plan reduced but Plan Members must contribute at least 5% of salaries to the integrated Fire and Police Pension Plan – Tier 6.

Sec 2. Amend the definition of Department Member in Subsection (e) of Charter Section 1202 to read:

(e) **Department Member.** A person who is a sworn Member of the Fire Department or a sworn Member of the Police Department, as those terms are defined for each Tier. This term also includes a person who is a sworn Member of the Harbor Department who qualifies for membership in the Plan pursuant to the provisions of any Tier of the Plan, but shall not include any sworn employee of the Harbor Department who was appointed prior to January 8, 2006 and remained a member of the Los Angeles City Employees' Retirement System.

Sec. 3. Amend Section 1226 of the Charter to read:

Sec. 1226. Authority of City Council to Allow Retired Members to Return to Active Duty.

(a) **Council Authority.** The Council may, by ordinance adopted in accordance with the provisions of this section, authorize the return to active duty of Retired Plan Members from any Tier.

(b) **Limitations on Council Authority.** The authority given to the Council herein is specifically limited as follows:

(1) A retiree's pension shall be terminated when he or she returns to active duty.

(2) The return to active duty provisions shall be substantially similar to those contained in Charter Section 1410 for Tier 2.

(3) The Retired Plan Member shall return to active duty as a member of the tier from which he or she retired.

(4) Members who participated in the Deferred Retirement Option Program (DROP) shall not be eligible to return to active duty.

(5) Rehired Members are ineligible to participate in DROP until three years following return to active duty.

(c) **Mode of Adoption.** Ordinances adopted pursuant to this section shall be adopted in the same manner as provided in Section 1618(b), but the City Council shall be advised in writing by an enrolled actuary as to the cost of the proposed change.

Sec. 4. Add a new Charter Section 1240 to read:

Sec. 1240. Council Authority to Maintain Tax-Qualified Status of Plan.

The Council may, by ordinance, amend the Fire and Police Pension Plan and the provisions of any and all Tiers of the Plan to incorporate provisions of federal laws and regulations required to maintain the tax-qualified status of the Fire and Pension Plan. The Council also may enact ordinances to modify or repeal such provisions. Ordinances adopted pursuant to this section shall be adopted in the manner provided in Charter Section 1618(b). It is the intent of this section to facilitate compliance with the provisions of federal laws affecting the Fire and Police Pension Plan.

Sec. 5. Add a new Section 1242 to the Charter to read:

Sec. 1242. Authority of City Council to Create an Excess Benefit Plan by Ordinance.

(a) **Council Authority.** The Council may by ordinance establish an Excess Benefit Plan to supplement the benefits of certain employees under the various Tiers of the Plan to the extent such benefits are reduced by the limitations on benefits imposed by Section 415 of the Internal Revenue Code of 1986 as amended. The terms and conditions of any Excess Benefit Plan adopted under the authority of this section shall be substantially the same as those of the Excess Benefit Plan established in Los Angeles Administrative Code Section 4.2021 for Tier 5. If the Council establishes an Excess Benefit Plan, the Excess Benefit Plan must be established as a "qualified governmental excess benefit arrangement" within the meaning of Section 415(m) of the Internal Revenue Code and, once established, may be amended by the Council by ordinance to comply with the Code requirements to maintain such qualification and status.

(b) **Mode of Adoption.** Ordinances adopted under this section shall be adopted in the manner provided in Section 1618(b).

Sec. 6. Add a new Section 1244 to the Charter to read:

Sec. 1244. Adoption of Board Rules to Comply with Federal or State Law.

If at any time federal or state law should become preemptive or controlling with respect to the provisions of this Plan or the provisions of any Tier, the Board shall have the power to adopt such rules as may be necessary to comply with such federal or state law. Such rules shall be adopted upon the advice and with the concurrence of the City Attorney.

Sec. 7. Add a new Section 1246 to the Charter to read:

Sec. 1246. Forfeiture of Unclaimed Funds to the Plan.

The Board of Fire and Police Pension Commissioners shall have the authority to declare a forfeiture of all monies, including but not limited to contributions, interest thereon and benefits, that become payable or distributable from the Plan to any owner who either cannot be found or refuses to accept the payment or distribution of such monies within ten years of the date such monies become payable or otherwise distributable from the Plan. However, at the discretion of the Board, a person may be relieved from a forfeiture declared under this section. The Board may delegate its authority to declare a forfeiture of money or its discretion to relieve a person from a forfeiture of money to the

general manager of the Department of Fire and Police Pensions pursuant to rules adopted by the Board.

Sec. 8. Add a new Section 1248 to the Charter to read:

Sec. 1248. Actuarial Determinations and Unfunded Liabilities.

Notwithstanding any provision of any Tier to the contrary, the unfunded liabilities of the Fire and Police Pension Plan, and of each Tier of the Plan, shall be funded in accordance with the actuarial funding method adopted by the Board upon the advice of its consulting actuary. With the advice of the consulting actuary, the Board shall establish amortization policies for unfunded actuarial accrued liabilities and surpluses.

Sec. B. The City Clerk is hereby authorized and directed to publish a notice containing the proposed ballot measure, specifying the date of March 8, 2011 as the date the measure is to be voted upon by the qualified voters of the City of Los Angeles. The notice shall be published once in a newspaper of general circulation in the City of Los Angeles, and in each edition thereof during that day of publication. The City Clerk is authorized and directed to prepare and keep in the City Clerk's office a sufficient supply of copies of the proposed ballot measure and to distribute the proposed ballot measure to any and all persons requesting a copy. Further, the City Clerk is authorized and directed to mail copies of the proposed ballot measure to each of the qualified voters of the City of Los Angeles.

Sec. C. The City Clerk is hereby authorized and directed to cause a notice to be published once in a newspaper of general circulation that copies of voter information pamphlets containing the proposed ballot measure may be obtained upon request in the City Clerk's office.

Sec. D. The City Clerk shall file a duly certified copy of this Resolution forthwith with the Board of Supervisors and with the Registrar-Recorder of the County of Los Angeles.

I hereby certify that the foregoing Resolution was adopted by the Council of the City of Los Angeles at its meeting held on NOV 17 2010.

JUNE LAGMAY, City Clerk



[Signature]

Deputy

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By *[Signature]*
MARY JO CURWEN
Deputy City Attorney

Date November 16, 2010

C.F. No. ~~10-1021~~ 11-1100-57