

MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 13 - 0 3 1 7

NOV 04 2013

REPORT RE:

**REVISED DRAFT ORDINANCE AMENDING CHAPTER 10 OF DIVISION 4
OF THE LOS ANGELES ADMINISTRATIVE CODE TO SUSPEND RECIPROCITY
BETWEEN THE LOS ANGELES CITY EMPLOYEES' RETIREMENT SYSTEM AND
THE WATER AND POWER EMPLOYEES' RETIREMENT PLAN, AND TO MAKE
RELATED CHANGES**

The Honorable Los Angeles City Council
of The City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality, to be substituted for the draft ordinance previously submitted with Report No. R13-0313, dated October 28, 2013. A minor revision to the original draft ordinance was required in order to appropriately address an issue which did not become apparent until after the original ordinance was submitted (differences in the way the two plans treat noncontributory time). The ordinance as transmitted revises provisions of the Los Angeles Administrative Code (LAAC) in order to suspend reciprocity between the Los Angeles City Employees' Retirement System (LACERS) and Water and Power Employees' Retirement Plan (WPERP), and to make relate changes. A copy of the draft ordinance was sent, pursuant to council Rule 38, to the Los Angeles City Employees' Retirement System and the City Administrative Office and their comments have been incorporated.

Sections 1 through 3 provide that, in lieu of reciprocity, Tier 1 members of LACERS will be able to qualify for service retirement based upon combined service with LACERS and WPERP, although benefits will only be paid based upon service and compensation with LACERS.

Section 4 provides that Tier 1 members may not qualify for disability retirement from LACERS based upon WPERP service unless the member purchases credit for WPERP service or WPERP service was transferred to LACERS under reciprocity.

Sections 5 and 11 will allow members of Tier 1 and Tier 2, respectively, to purchase WPERP service with LACERS on the same cost basis that currently applies to the buy back of other governmental service for members of Tier 2.

Sections 6 through 8 provide that, in lieu of reciprocity, Tier 2 members of LACERS will be able to qualify for service retirement based upon combined service with LACERS and WPERP, although benefits will only be paid based upon service and compensation with LACERS.

Section 9 provides that Tier 2 members may not qualify for disability retirement from LACERS based upon WPERP service unless the member purchases credit for WPERP service or WPERP service was transferred to LACERS under reciprocity.

Section 10 prohibits Tier 2 members from making back contributions for periods of employment with the Department of Water and Power.

Section 12 extends the period of time within which employees who transfer under protective leaves have to opt out of reciprocity after December 31, 2013. Section 13 suspends the right to reciprocity so that City employees who transfer from DWP positions on or after January 1, 2014, will no longer be able to transfer their WPERP service to LACERS.

Section 14 provides that this ordinance shall become effective upon publication, but the terms of the ordinance shall not become operative until January 1, 2014.

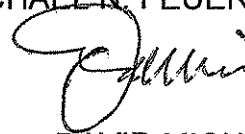
This ordinance may be adopted by the City Council pursuant to the provisions of Charter Section 1168, which requires approval by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and the override by the Council by three-fourths of the council. The final adoption of this ordinance cannot occur until after a public hearing has been held and until at least thirty days after its first presentation to the Council. Since this ordinance changes retirement benefits, Government Code Section 7507 requires that a report from an actuary, who is an associate or fellow of the Society of Actuaries, must be obtained addressing the future costs of the changes, and this report must be made public at a public meeting at least two weeks prior to the adoption of these changes. If the future costs of the changes exceed one-half of one percent of the future annual costs, an actuary shall be present to provide information as needed at the public meeting at which the adoption of a benefit change shall be considered. Upon adoption of this ordinance, Government Code Section 7507 further requires that the Mayor shall acknowledge in writing that he understands the current and future cost of the benefit as determined by the actuary.

If you have any questions regarding this matter, please contact Deputy City Attorney Mary Jo Curwen at (213) 978-4400. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

DM:MJC:pj
Transmittal

ORDINANCE NO. _____

An ordinance amending Chapter 10 of Division 4 of the Los Angeles Administrative Code to suspend reciprocity between the Los Angeles City Employees' Retirement System and the Water and Power Employees' Retirement Plan, and to make related changes.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Section 4.1005 of Article 1, Chapter 10 of Division 4 of the Los Angeles Administrative Code is amended by adding a new Subsection (e) to read as follows:

(e) **WPERP Service.** All of the member's service with the Water and Power Employees' Retirement Plan (WPERP) shall be combined with LACERS service solely for the purpose of determining retirement eligibility under this section. All WPERP service, except WPERP service based on the purchase of Other Government Service (OGS) and noncontributory WPERP service, may count towards the minimum five (5) years of continuous City service based on actual service with the City requirement and towards the ten (10) years of continuous City service requirement, as applicable.

Sec. 2. Section 4.1006 of Article 1, Chapter 10 of Division 4 of the Los Angeles Administrative Code is amended by adding a new Subsection (d) to read as follows:

(d) **WPERP Service.** All of the member's service with the Water and Power Employees' Retirement Plan (WPERP) shall be combined with LACERS service solely for the purpose of determining retirement eligibility under this section. All WPERP service, except WPERP service based on the purchase of Other Government Service (OGS) and noncontributory WPERP service, may count towards the minimum five (5) years of continuous City service, as applicable. Further, the date that the member first became a member of WPERP may be used to satisfy the requirement that ten (10) years must have elapsed since he or she first became a member.

Sec. 3. Section 4.1007 of Article 1, Chapter 10 of Division 4 of the Los Angeles Administrative Code is amended by adding a new Subsection (d) to read as follows:

(d) **WPERP Service Credit.** Service credit with the Water and Power Employees' Retirement Plan (WPERP) shall not be included in the calculation of the member's retirement allowance pursuant to Subsection (a) of this section unless the member has purchased credit for this WPERP service with the Retirement System or unless such service credit was transferred to the Retirement System pursuant to reciprocity under current Section 4.1095 or prior Section 4.1060.

Sec. 4. Section 4.1008 of Article 1, Chapter 10 of Division 4 of the Los Angeles Administrative Code is amended by adding a new Subsection (k) to read as follows:

(k) **WPERP Service.** Service with the Water and Power Employees' Retirement Plan (WPERP) shall not count towards continuous service for purposes of Subsection (a) of this section unless such service was transferred to the Retirement System pursuant to reciprocity under current Section 4.1095 or prior Section 4.1060. Service with the WPERP shall not be included as years of service in the calculation of the member's disability retirement allowance pursuant to Subsection (c) of this section unless the member has purchased credit for this WPERP service with the Retirement System or unless such service was transferred to the Retirement System pursuant to reciprocity under current Section 4.1095 or prior Section 4.1060.

Sec. 5. A new Section 4.1020.1 is added to Article 1, Chapter 10 of Division 4 of the Los Angeles Administrative Code to read as follows:

Sec. 4.1020.1. Purchase of Service with WPERP.

A member may purchase credit for periods of service with the Water and Power Employees' Retirement Plan (WPERP) on the terms and conditions set forth below, except that periods of noncontributory WPERP service may not be purchased.

(a) **Contributions Must Be Transferred.** A member may not purchase credit for periods of service with WPERP so long as his or her contributions remain on deposit with WPERP unless he or she authorizes a transfer of his or her WPERP contributions to the Retirement Plan, to be credited towards payment pursuant to this section.

(b) **Treatment of Purchased Service.** Service purchased under this section shall be treated the same as LACERS service for purposes of establishing the minimum ten (10) years of continuous service required to qualify for retirement under Subsection 4.1005(c), including the minimum five (5) years required to be based on actual service with the City, the minimum five (5) years of continuous service required to qualify for retirement under Subsection 4.1006(a), or the minimum five (5) years of continuous service required to qualify for disability retirement under Subsection 4.1008(a), except that WPERP service purchased under WPERP's Other Governmental Service (OGS) program shall not be treated the same as LACERS service for the aforementioned purposes. WPERP service purchased under WPERP's OGS program when purchased with the Retirement Plan shall only count as service credit for purposes of calculating the member's service retirement allowance or disability retirement allowance, as applicable. Service purchased under this section shall not count as service or service credit for the purpose of qualifying for any benefits provided in Chapter 11 of Division 4 of this Code.

(c) **Written Agreement and Cost of Purchase.** A member electing to purchase WPERP service under this section shall enter into a written agreement with

the Retirement System. Such agreement shall specify the amount to be paid for the purchase of this service. The cost to purchase service shall be determined as follows:

The member's contribution rate shall be combined with the "City Contribution Rate" (as defined in Subsection (e) of Section 4.1067) to establish the total percent of the member's compensation, at the time of purchase, that is to be paid for the total length of the period of service that the member agrees to purchase. Compensation as used in this subsection shall refer to the member's compensation earnable, as defined in Subsection 4.1001(a), at the time of purchase.

As an example, assuming the member's compensation at the time of purchase is \$100,000.00 per year, the member's contribution rate is ten percent (10%), the City Contribution Rate is twenty percent (20%), and the period of service to be purchased is two (2) years, the cost would be determined as follows:

The ten percent (10%) member contribution rate plus the twenty percent (20%) City Contribution Rate results in a total contribution rate of thirty percent (30%). Thus, to purchase two (2) years of service would cost the member a total of \$60,000.00 (thirty percent (30%)) of the member's \$100,000.00 compensation for each year of service purchased).

(d) Method of Purchase.

(1) The member shall transfer any contributions he or she has on deposit with WPERP as payment towards his or her purchase cost.

(2) The member may elect to pay on an after-tax basis in a lump sum or in biweekly installments through payroll deduction, subject to any applicable Internal Revenue Code restrictions.

(3) The Board may establish rules to allow members to pay for purchases via rollovers of funds.

(4) Should the member elect to purchase the buy back service credit through payroll deduction, annual interest at a rate determined by the Board and set at the commencement of the agreement shall be charged. The Board may establish a minimum biweekly payroll deduction.

(e) Execution of the Agreement. A member entering into a purchase agreement shall complete all payments prior to the effective date of retirement in order to receive full credit for the service purchased. In the event the member elects to retire prior to completing payment under the purchase agreement, the member may receive prorated credit for that portion of the service for which payments have already been made and forfeit the remainder of service covered by the agreement; or the member may make a lump sum payment sufficient to complete the total payment covered by the

agreement. Additionally, a member who elects to terminate an after-tax agreement prior to its completion, or at the time of retirement, may elect to receive a cash refund of the purchase contributions and interest payable upon the earlier of death, termination of employment or retirement, or to receive prorated service at retirement.

(f) **Member's Death.** In the event that a member who has entered into a purchase agreement dies prior to retirement, the funds paid for this purchase shall be considered to be a part of the member's accumulated contributions and shall be refunded accordingly, with interest thereon computed at the rate applicable to regular member contributions. In the event of the death of a member who has entered into a purchase agreement, the surviving eligible beneficiary of the member may elect a refund of the purchase contributions and interest thereon; elect to apply the credit, or a portion thereof, to the calculation of the benefits for which the survivor qualifies without the addition of buy back service credit; or elect to complete the terms of the agreement with a lump sum payment of the remaining amount owed.

(g) **Limits on Purchase.** In the event part or all of the purchased service credit at the time of retirement would cause the member's service retirement allowance to exceed one hundred percent (100%) of final compensation, the purchase cost attributable to any excess service credit that may not be used in the retirement formula, including interest thereon, shall be refunded or may be applied by the member to purchase a larger annuity if doing so does not cause the retirement allowance to exceed any federal limitations that may apply.

(h) **Administration.** The administration of this section shall be under the exclusive management and control of the Board of Administration. Said Board shall have, and is hereby granted, full power and authority to adopt and enforce all such rules and regulations as it may deem necessary for the carrying out of the provisions of this section. The Board of Administration shall have the right to construe this section, to interpret any provision thereof, to make rules and regulations relating to this section, and to determine any factual questions arising in connection with the operation of this section after such investigation or hearing as the Board may deem appropriate. Any decision made by the Board under the provisions of this section shall be conclusive and binding on all parties concerned.

Sec. 6. Section 4.1055 of Article 2, Chapter 10 of Division 4 of the Los Angeles Administrative Code is amended by adding a new Subsection (d) to read as follows:

(d) **WPERP Service.** All of the member's service with the Water and Power Employees' Retirement Plan (WPERP) shall be combined with LACERS service solely for the purpose of determining retirement eligibility under this section. All WPERP service, except WPERP service based on the purchase of Other Government Service (OGS) and noncontributory WPERP service, may count towards the ten (10) years of continuous City service requirement, as applicable.

Sec. 7. Section 4.1056 of Article 2, Chapter 10 of Division 4 of the Los Angeles Administrative Code is amended by adding a new Subsection (c) to read as follows:

(c) **WPERP Service.** All of the member's service with the Water and Power Employees' Retirement Plan (WPERP) shall be combined with LACERS service solely for the purpose of determining retirement eligibility under this section. WPERP service, except WPERP service based on the purchase of Other Government Service (OGS) and noncontributory WPERP service, may count towards the minimum five (5) years of continuous City service, as applicable. Further, the date that the member first became a member of WPERP may be used to satisfy the requirement that ten (10) years must have elapsed since he or she first became a member.

Sec. 8. Section 4.1057 of Article 2 in Chapter 10 of Division 4 of the Los Angeles Administrative Code is amended by adding a new Subsection (d) to read as follows:

(d) **WPERP Service Credit.** Service credit with the Water and Power Employees' Retirement Plan (WPERP) shall not be included in the calculation of the member's retirement allowance pursuant to Subsection (a) of this section unless the member has purchased credit for this WPERP service with the Retirement System or unless such service credit was transferred to the Retirement System pursuant to reciprocity under current Section 4.1095 or prior Section 4.1060.

Sec. 9. Section 4.1058 of Article 2, Chapter 10 of Division 4 of the Los Angeles Administrative Code is amended by adding a new Subsection (k) to read as follows:

(k) **WPERP Service.** Service with the Water and Power Employees' Retirement Plan (WPERP) shall not count towards continuous service for purposes of Subsection (a) of this section unless the member has purchased credit for this WPERP service with the Retirement System or unless such service was transferred to the Retirement System pursuant to reciprocity under current Section 4.1095 or prior Section 4.1060. Service credit with the WPERP shall not be included in the calculation of the member's disability retirement allowance pursuant to Subsection (c) of this section unless the member has purchased credit for this WPERP service with the Retirement System or unless such service was transferred to the Retirement System pursuant to reciprocity under current Section 4.1095 or prior Section 4.1060.

Sec. 10. Subsection (a) of Section 4.1064 of Article 2, Chapter 10 of Division 4 of the Los Angeles Administrative Code is amended by adding a new paragraph at the end to read:

Persons who become members of Tier 2 on or after January 1, 2014, shall not be eligible to make back contributions under this subsection for periods of employment with the Department of Water and Power.

Sec. 11. A new Section 4.1067.1 is added to Article 2, Chapter 10 of Division 4 of the Los Angeles Administrative Code to read as follows:

Sec. 4.1067.1. Purchase of Service with WPERP.

A member may purchase credit for periods of service with the Water and Power Employees' Retirement Plan (WPERP) on the terms and conditions set forth below, except that periods of noncontributory WPERP service may not be purchased.

(a) **Contributions Must Be Transferred.** A member may not purchase credit for periods of service with WPERP so long as his or her contributions remain on deposit with WPERP unless he or she authorizes a transfer of his or her WPERP contributions to the Retirement Plan, to be credited towards payment pursuant to this section.

(b) **Treatment of Purchased Service.** Service purchased under this section shall be treated the same as LACERS service for purposes of establishing the minimum ten (10) years of continuous service required to qualify for retirement under Subsection 4.1055(a), the minimum five (5) years of continuous service required to qualify for retirement under Subsection 4.1056(a), or the minimum ten (10) years of continuous service required to qualify for disability retirement under Subsection 4.1058(a), except that WPERP service purchased under WPERP's Other Governmental Service (OGS) program shall not be treated the same as LACERS service for the aforementioned purposes. WPERP service purchased under WPERP's OGS program when purchased with the Retirement Plan shall only count as service credit for purposes of calculating the member's service retirement allowance or disability retirement allowance, as applicable. Service purchased under this section shall not count as service or service credit for the purpose of qualifying for any benefits provided in Chapter 11 of Division 4 of this Code.

(c) **Written Agreement and Cost of Purchase.** A member electing to purchase WPERP service under this section shall enter into a written agreement with the Retirement System. Such agreement shall specify the amount to be paid for the purchase of this service. The cost to purchase service shall be determined as follows:

The member's contribution rate shall be combined with the "City Contribution Rate" (as defined in Subsection (e) of Section 4.1067) to establish the total percent of the member's compensation, at the time of purchase, that is to be paid for the total length of the period of service that the member agrees to purchase. Compensation as used in this subsection shall refer to the member's compensation earnable, as defined in Subsection 4.1051(a), at the time of purchase.

As an example, assuming the member's compensation at the time of purchase is \$100,000.00 per year, the member's contribution rate is ten percent (10%), the City Contribution Rate is twenty percent (20%), and the period of service to be purchased is two (2) years, the cost would be determined as follows:

The ten percent (10%) member contribution rate plus the twenty percent (20%) City Contribution Rate results in a total contribution rate of thirty percent (30%). Thus, to purchase two (2) years of service would cost the member a total of \$60,000.00 (thirty percent (30%)) of the member's \$100,000.00 compensation for each year of service purchased).

(d) **Method of Purchase.**

(1) The member shall transfer any contributions he or she has on deposit with WPERP as payment towards his or her purchase cost.

(2) The member may elect to pay on an after-tax basis in a lump sum or in biweekly installments through payroll deduction, subject to any applicable Internal Revenue Code restrictions.

(3) The Board may establish rules to allow members to pay for purchases via rollovers of funds.

(4) Should the member elect to purchase the buy back service credit through payroll deduction, annual interest at a rate determined by the Board and set at the commencement of the agreement shall be charged. The Board may establish a minimum biweekly payroll deduction.

(e) **Execution of the Agreement.** A member entering into a purchase agreement shall complete all payments prior to the effective date of retirement in order to receive full credit for the service purchased. In the event the member elects to retire prior to completing payment under the purchase agreement, the member may receive prorated credit for that portion of the service for which payments have already been made and forfeit the remainder of service covered by the agreement; or the member may make a lump sum payment sufficient to complete the total payment covered by the agreement. Additionally, a member who elects to terminate an after-tax agreement prior to its completion, or at the time of retirement, may elect to receive a cash refund of the purchase contributions and interest payable upon the earlier of death, termination of employment or retirement, or to receive prorated service at retirement.

(f) **Member's Death.** In the event that a member who has entered into a purchase agreement dies prior to retirement, the funds paid for this purchase shall be considered to be a part of the member's accumulated contributions and shall be refunded accordingly, with interest thereon computed at the rate applicable to regular member contributions.

(g) **Limits on Purchase.** In the event part or all of the purchased service credit at the time of retirement would cause the member's service retirement allowance to exceed seventy-five percent (75%) of final compensation, the purchase cost attributable to any excess service credit that may not be used in the retirement formula, including interest thereon, shall be refunded or may be applied by the member to purchase a

larger annuity if doing so does not cause the retirement allowance to exceed any federal limitations that may apply.

(h) **Administration.** The administration of this section shall be under the exclusive management and control of the Board of Administration. Said Board shall have, and is hereby granted, full power and authority to adopt and enforce all such rules and regulations as it may deem necessary for the carrying out of the provisions of this section. The Board of Administration shall have the right to construe this section, to interpret any provision thereof, to make rules and regulations relating to this section, and to determine any factual questions arising in connection with this section's operation after such investigation or hearing as the Board may deem appropriate. Any decision made by the Board under the provisions of this section shall be conclusive and binding on all parties concerned.

Sec. 12. Subsection (d) of Section 4.1095 of Article 4, Chapter 10 of Division 4 of the Los Angeles Administrative Code is amended by adding a new paragraph at the end to read as follows:

Notwithstanding the seven-month period specified above, a System Member who changed employment on a protective leave status pursuant to Civil Service Rule 7.7 or Charter Section 1001(e), as applicable, from the Department of Water and Power (DWP) to the City and qualified for reciprocity on or before December 31, 2013, and who continues to be employed by the City on such protective leave status as of December 31, 2013, shall have until thirty (30) days following the termination of his or her protective leave or until the expiration of a seven-month period from his or her entry into City service, whichever occurs later, to elect in writing not to participate in the reciprocal retirement benefits arrangement provided in this section.

Sec. 13. Section 4.1095 of Article 4, Chapter 10 of Division 4 of the Los Angeles Administrative Code is amended by adding a new Subsection (l) to read as follows:

(l) **Suspension of the Reciprocal Retirement Arrangement.** Employees who change employment from the DWP to other positions with the City that make them eligible for membership in LACERS on or after January 1, 2014, shall not be eligible to participate in the reciprocal retirement arrangement established in this section. Reciprocity on the terms and conditions set forth in this section shall only be provided to those employees who changed employment from the DWP to other positions with the City that made them eligible for membership in LACERS prior to January 1, 2014.

Sec. 14. As provided in Charter Section 1186(b), this ordinance shall become effective upon publication, but the terms of this ordinance shall not become operative until January 1, 2014.

Sec. 15. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than two-thirds** of all its members, at its meeting of _____.

HOLLY L. WOLCOTT, Interim City Clerk

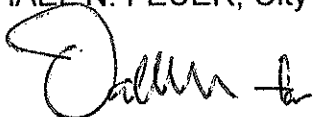
By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
MARY JO CURWEN
Deputy City Attorney

Date NOV 04 2013

File No. CF 13-1459