ORDINANCE NO. 7,263–N.S.

REPEALING AND REENACTING SECTIONS 601 (METHOD OF DISTRIBUTION), 604 (PAYMENT OF SMALL BENEFITS) AND ADDING SECTION 605 (ROLLOVER) TO BERKELEY MUNICIPAL CODE CHAPTER 4.36 THE SUPPLEMENTARY RETIREMENT AND INCOME PLAN I

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 4.36.601 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.36.601 Method of distribution.

Distribution under this plan, shall, subject to Section 4.38.602, be made or commence after a reasonable administrative period following the occurrence of the event which occasions the distribution or a change in the method of receipt thereof, but no later than sixty days after the close of the plan year in which the participant reaches normal retirement date, or if the participant continues in employment beyond normal retirement date, the year in which such participant dies or retires. Distribution shall be made by the trustee in accordance with whichever of the following methods or combination thereof the participant, in his sole discretion, shall elect.

A. One lump sum payment;

B. Cash payments in approximately equal monthly, quarterly, semi-annual or annual installments over a period of years certain which period may be based on but not exceed the life expectancy of the participant or of the participant and the participant's beneficiary, but shall, in any event, be subject to the following limitation:

If the amount to be distributed each year under subsection B is based upon the life expectancy of either the participant or the participant and the beneficiary, the amount to be distributed each year must at least be equal to the quotient obtained by dividing the participant's account balance at the beginning of the year by the applicable life expectancy or expectancies. The life expectancies shall be determined from tables set forth in IRS Regulation 1.401(a)(9)-9, as now in effect and as amended from time to time.

Effective for distributions on and after January 1, 2002, the plan will apply the minimum distribution requirements of Section 401(a)(9) of the code in accordance with the final regulations under Section 401(a)(9), notwithstanding any other provision of the plan to the contrary.

If the participant makes no selection of the method and timing of distribution, the account balance shall be paid in one lump sum at his normal retirement date.

Section 2. That Section 4.36.604 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.36.604 Payment of small benefits.

For payments made on or after December 1, 2008, if, prior to commencement of benefits, a participant's account is not greater than one thousand dollars (or such other

amount as prescribed by the Secretary of Treasury), distribution shall be paid in one lump sum after a reasonable administrative period following the event which occasions the distribution in lieu of other forms of benefits provided in Sections 4.36.601 and 4.36.603.

Section 3. That Section 4.36.605 is added to the Berkeley Municipal Code to read as follows:

4.36.605 Rollover.

A. A distributee may elect, at the time and in the manner prescribed by the committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. Effective January 1, 2008, in addition to the election set forth in subsection A above, a distributee may elect, at the time and in the manner prescribed by the committee, to have any portion of an eligible rollover distribution paid directly to a Roth IRA specified by the distributee in a direct rollover in accordance with the provisions of Code section 408A(e). Any such distribution to a Roth IRA shall comply with the provisions of Code section 402(c). In addition, the limitation on adjusted gross income set forth in the following paragraph shall apply for distributions to a Roth IRA on or after January 1, 2008 and prior to January 1, 2010.

In accordance with Code section 408A(c)(3)(B) (as in effect and applicable to distributions after December 31, 2007 and to tax years beginning prior to January 1, 2010), a rollover to a Roth IRA shall only be allowed if, for the tax year of the distribution to which the rollover relates, the distributee's adjusted gross income does not exceed $100,000 and the distributee is not a married individual filing a separate return. The limitation in the foregoing sentence shall not apply for distributions on or after January 1, 2010.

C. For purposes of this Section 4.36.605, the following definitions apply:

1. An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

2. An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution.

3. A "distributee" includes a participant or former participant, a participant's or former participant's surviving spouse and a participant's or former participant's spouse

or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p).

Effective January 1, 2007, a “distributee” shall also include a nonspouse beneficiary. A nonspouse beneficiary may elect a direct trustee to trustee transfer to an individual retirement plan (“IRA”) that is established for the purpose of receiving the distribution on behalf of a designated beneficiary who is a nonspouse beneficiary. The IRA must be established in a manner that identifies it as an IRA with respect to a deceased individual and also identifies the deceased individual and the beneficiary. Any such transfer by a nonspouse beneficiary shall be subject to all the conditions and restrictions specified in this Section 4.36.605. Such a transfer shall also comply with the rules of Code Section 402(c)(11) and with all other applicable rules and regulations governing such transfers that are issued by the Internal Revenue Service.

4. A “direct rollover” is a payment by the plan to the eligible retirement plan specified by the distributee.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on October 30, 2012, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

ORDINANCE NO. 7,264–N.S.

REPEALING AND REENACTING SECTIONS 106 (EMPLOYEE), 107 (EMPLOYER), 108 (FIDUCIARY), 601 (METHOD OF DISTRIBUTION), 604 (PAYMENT OF SMALL BENEFITS), 801 (GENERAL PURPOSE), 803 (LIMITATION UPON THE RIGHT TO AMEND) AND ADDING SECTION 605 (ROLLOVER) AND SECTION 606 (PURCHASE OF PERMISSIVE SERVICE CREDIT) TO BERKELEY MUNICIPAL CODE CHAPTER 4.38 THE SUPPLEMENTARY RETIREMENT AND INCOME PLAN II

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 4.38.106 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.38.106 Employee.

"Employee" shall mean any person who is employed by the Employer and who is covered under the Employer's miscellaneous employees contract with the Administration of the State of California Public Employees Retirement System (a miscellaneous employee) and, effective January 1, 1989, any employee who is represented by the Berkeley Police Association (a police employee).

Section 2. That Section 4.38.107 of the Berkeley Municipal Code is repealed and reenacted as follows:

4.38.107 Employer.

"Employer" shall mean the City of Berkeley and any other public entity that has adopted the Plan with the approval of the Council. Effective as of July 1, 2007, the Berkeley Housing Authority shall be considered an Employer under the Plan with respect to its employees. An employer who has been approved to participate under the Plan may do so as long as it fulfills its obligations as an Employer under the Plan to the satisfaction of the City of Berkeley, as determined in the City of Berkeley's sole and absolute discretion. If the City determines that an Employer is not fulfilling its obligations, the City shall provide written notice to that effect to the Employer and that Employer's participation under the Plan shall terminate as of the date of such notice.

Section 3. That Section 4.38.108 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.38.108 Fiduciary.

"Fiduciary" shall mean any person who exercises any discretionary authority or discretionary control respecting the management or disposition of plan assets, renders any investment advice for a fee or other compensation, or exercises any discretionary authority or responsibility for plan administration. The trustee, employer, and any other person who meets this definition will be considered a fiduciary; provided, however, that participants who elect to direct their investments as provided in this plan shall not, solely

by virtue of such direction and control, be considered fiduciaries of the plan. For purposes of the plan, the City of Berkeley shall be the plan fiduciary.

Section 4. That Section 4.38.601 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.38.601 Method of distribution.

Distribution under this plan, shall, subject to Section 4.38.602, be made or commence after a reasonable administrative period following the occurrence of the event which occasions the distribution or a change in the method of receipt thereof, but no later than sixty days after the close of the plan year in which the participant reaches normal retirement date, or if the participant continues in employment beyond normal retirement date, the year in which such participant dies or retires. Distribution shall be made by the trustee in accordance with whichever of the following methods or combination thereof the participant, in his sole discretion, shall elect.

A. One lump sum payment;

B. Cash payments in approximately equal monthly, quarterly, semi-annual or annual installments over a period of years certain which period may be based on but not exceed the life expectancy of the participant or of the participant and the participant's beneficiary, but shall, in any event, be subject to the following limitation:

If the amount to be distributed each year under subsection B is based upon the life expectancy of either the participant or the participant and the beneficiary, the amount to be distributed each year must at least be equal to the quotient obtained by dividing the participant's account balance at the beginning of the year by the applicable life expectancy or expectancies. The life expectancies shall be determined from tables set forth in IRS Regulation 1.401(a)(9)-9, as now in effect and as amended from time to time.

Effective for distributions on and after January 1, 2002, the plan will apply the minimum distribution requirements of Section 401(a)(9) of the code in accordance with the final regulations under Section 401(a)(9), notwithstanding any other provision of the plan to the contrary.

If the participant makes no selection of the method and timing of distribution, the account balance shall be paid in one lump sum at his normal retirement date.

Section 5. That Section 4.38.604 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.38.604 Payment of small benefits.

For payments made on or after December 1, 2008, if, prior to commencement of benefits, a participant's account is not greater than one thousand dollars (or such other amount as prescribed by the Secretary of Treasury), distribution shall be paid in one lump sum after a reasonable administrative period following the event which occasions the distribution in lieu of other forms of benefits provided in Sections 4.38.601 and 4.38.603.

Section 6. That Section 4.38.605 is added to the Berkeley Municipal Code to read as follows:

4.38.605 Rollover.

A. A distributee may elect, at the time and in the manner prescribed by the committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. Effective January 1, 2008, in addition to the election set forth in subsection A above, a distributee may elect, at the time and in the manner prescribed by the committee, to have any portion of an eligible rollover distribution paid directly to a Roth IRA specified by the distributee in a direct rollover in accordance with the provisions of Code section 408A(e). Any such distribution to a Roth IRA shall comply with the provisions of Code section 402(c). In addition, the limitation on adjusted gross income set forth in the following paragraph shall apply for distributions to a Roth IRA on or after January 1, 2008 and prior to January 1, 2010.

In accordance with Code section 408A(c)(3)(B) (as in effect and applicable to distributions after December 31, 2007 and to tax years beginning prior to January 1, 2010), a rollover to a Roth IRA shall only be allowed if, for the tax year of the distribution to which the rollover relates, the distributee's adjusted gross income does not exceed $100,000 and the distributee is not a married individual filing a separate return. The limitation in the foregoing sentence shall not apply for distributions on or after January 1, 2010.

C. For purposes of this Section 4.38.605, the following definitions apply:

1. An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

2. An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution.

3. A "distributee" includes a participant or former participant, a participant's or former participant's surviving spouse and a participant's or former participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p).

Effective January 1, 2007, a "distributee" shall also include a nonspouse beneficiary. A nonspouse beneficiary may elect a direct trustee to trustee transfer to an individual retirement plan ("IRA") that is established for the purpose of receiving the distribution on

behalf of a designated beneficiary who is a nonspouse beneficiary. The IRA must be established in a manner that identifies it as an IRA with respect to a deceased individual and also identifies the deceased individual and the beneficiary. Any such transfer by a nonspouse beneficiary shall be subject to all the conditions and restrictions specified in this Section 4.38.605. Such a transfer shall also comply with the rules of Code Section 402(c)(11) and with all other applicable rules and regulations governing such transfers that are issued by the Internal Revenue Service.

4. A "direct rollover" is a payment by the plan to the eligible retirement plan specified by the distributee.

Section 7. That Section 4.38.606 is added to the Berkeley Municipal Code to read as follows:

4.38.606 Purchase of Permissive Service Credit.

Notwithstanding any provision of the Plan to the contrary, the Employer may permit a Participant whose retirement has not occurred pursuant to Sections 501 through 504 of this Chapter 4.38 to transfer as a direct plan to plan transfer, any portion of the Participant's account to PERS, or any other defined benefit plan in which the Participant is eligible to participate and which accepts the transfer, for the purpose of purchasing service credits; *provided, however,* that prior to permitting such transfer, the Employer shall reasonably determine that PERS or such other defined benefit plan shall: (a) accept such a transfer; (b) subject such transferred amounts to withdrawal and distribution restrictions so that the Participant may not withdraw such transferred amounts prior to retirement, death, disability, or separation from service; and, (c) hold such transferred amounts for the benefit of the Participant as elective contributions on a fully vested and nonforfeitable basis and credit applicable interest to such transferred amounts.

Section 8. That Section 4.38.801 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.38.801 General purpose.

It is the expectation and the intention of the employer to make such contributions as are provided for herein. The City of Berkeley, however, in its sole and absolute discretion reserves the rights set forth in the succeeding sections of this article.

Section 9. That Section 4.38.803 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.38.803 Limitation upon the right to amend.

Notwithstanding anything contained herein to the contrary, the council shall not have the power to amend Section 4.38.301 to reduce the employers' contributions to the plan without a majority vote of the participants and former participants due benefits under the plan concurring on the amendment thereto.

Section 10. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on October 30, 2012, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

ORDINANCE NO. 7,265–N.S.

REPEALING AND REENACTING SECTION 604 (PAYMENT OF SMALL BENEFITS), AND ADDING SECTION 605 (ROLLOVER) AND SECTION 606 (PURCHASE OF PERMISSIVE SERVICE CREDIT) TO BERKELEY MUNICIPAL CODE CHAPTER 4.39 THE SUPPLEMENTARY RETIREMENT AND INCOME PLAN III

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 4.39.604 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.39.604 Payment of small benefits.

For payments made on or after December 1, 2008, if, prior to commencement of benefits, a participant's account is not greater than one thousand dollars (or such other amount as prescribed by the Secretary of Treasury), distribution shall be paid in one lump sum after a reasonable administrative period following the event which occasions the distribution in lieu of other forms of benefits provided in Sections 4.39.601 and 4.39.603.

Section 2. That Section 4.39.605 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.39.605 Rollover.

A. A distributee may elect, at the time and in the manner prescribed by the committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. Effective January 1, 2008, in addition to the election set forth in subsection A above, a distributee may elect, at the time and in the manner prescribed by the committee, to have any portion of an eligible rollover distribution paid directly to a Roth IRA specified by the distributee in a direct rollover in accordance with the provisions of Code section 408A(e). Any such distribution to a Roth IRA shall comply with the provisions of Code section 402(c). In addition, the limitation on adjusted gross income set forth in the following paragraph shall apply for distributions to a Roth IRA on or after January 1, 2008 and prior to January 1, 2010.

In accordance with Code section 408A(c)(3)(B) (as in effect and applicable to distributions after December 31, 2007 and to tax years beginning prior to January 1, 2010), a rollover to a Roth IRA shall only be allowed if, for the tax year of the distribution to which the rollover relates, the distributee's adjusted gross income does not exceed $100,000 and the distributee is not a married individual filing a separate return. The limitation in the foregoing sentence shall not apply for distributions on or after January 1, 2010.

C. For purposes of this Section 4.39.605, the following definitions apply:

1. An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic

payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

2. An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution.

3. A "distributee" includes a participant or former participant, a participant's or former participant's surviving spouse and a participant's or former participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p).

Effective January 1, 2007, a "distributee" shall also include a nonspouse beneficiary. A nonspouse beneficiary may elect a direct trustee to trustee transfer to an individual retirement plan ("IRA") that is established for the purpose of receiving the distribution on behalf of a designated beneficiary who is a nonspouse beneficiary. The IRA must be established in a manner that identifies it as an IRA with respect to a deceased individual and also identifies the deceased individual and the beneficiary. Any such transfer by a nonspouse beneficiary shall be subject to all the conditions and restrictions specified in this Section 4.39.605. Such a transfer shall also comply with the rules of Code Section 402(c)(11) and with all other applicable rules and regulations governing such transfers that are issued by the Internal Revenue Service.

4. A "direct rollover" is a payment by the plan to the eligible retirement plan specified by the distributee.

Section 3. That Section 4.39.606 is added to the Berkeley Municipal Code to read as follows:

4.39.606 Purchase of Permissive Service Credit

Notwithstanding any provision of the Plan to the contrary, the Employer may permit a Participant whose retirement has not occurred pursuant to Sections 501 through 504 of this Chapter 4.39 to transfer as a direct plan to plan transfer, any portion of the Participant's account to PERS, or any other defined benefit plan in which the Participant is eligible to participate and which accepts the transfer, for the purpose of purchasing service credits; *provided, however,* that prior to permitting such transfer, the Employer shall reasonably determine that PERS or such other defined benefit plan shall: (a) accept such a transfer; (b) subject such transferred amounts to withdrawal and distribution restrictions so that the Participant may not withdraw such transferred amounts prior to retirement, death, disability, or separation from service; and, (c) hold such transferred amounts for the benefit of the Participant as elective contributions on a

fully vested and nonforfeitable basis and credit applicable interest to such transferred amounts.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on October 30, 2012, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.