



Office of the City Manager

CONSENT CALENDAR
October 23, 2007

To: Honorable Mayor and Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: David W. Hodgkins, Director of Human Resources

Subject: Deferred Compensation Plan: Amend Plan to Allow Employees to Purchase Additional Retirement Service Credit

RECOMMENDATION

Adopt first reading of an Ordinance to amend Ordinance No. 6,749-N.S., the City of Berkeley Deferred Compensation Plan (the "Plan") to add a new Article XIII, Purchase of Additional Retirement Service Credit from the California Public Employees' Retirement System (CalPERS).

FISCAL IMPACTS OF RECOMMENDATION

None. The change to the Plan will not have any affect on fees for the Plan.

CURRENT SITUATION AND ITS EFFECTS

The passing of the Pension Protection Act of 2006 removed restrictions in the Internal Revenue Code on retirement plans and now allows employees to withdraw funds to purchase Additional Retirement Service Credit from CalPERS by making a direct Trustee-To-Trustee transfer. The proposed change to the Plan will allow employees to transfer funds in the Plan to purchase Additional Retirement Service Credit in accordance with changes in tax law.

BACKGROUND

The Deferred Compensation Plan was originally established on January 10, 1985. The primary purpose of the Plan was to attract and hold key personnel by permitting them to defer current income until retirement, termination of employment or death. The basic amount of current income that an employee may defer is \$15,500 in calendar year 2007. The Plan is established in accordance with the provisions of Section 457 of the Internal Revenue Code. The City currently has agreements with three carriers to administer self-directed investment accounts for all participants: Hartford, Prudential, and CalPERS 457.

The CalPERS Board voted in February 2004 to allow members to buy additional years of service to increase their benefit calculations at the time of their retirement. Pension benefits under CalPERS are calculated based on the formula for the age at time of retirement, single highest year of compensation and years of service credit. CalPERS

titled this benefit "Additional Retirement Service Credit", and set it as a one-time option for members to purchase from one to five years of additional retirement service credit.

The cost to purchase Additional Retirement Service Credit is based on a calculation performed by CalPERS of the member's age, salary, and years of service. To cover the cost to purchase Additional Retirement Service Credit, CalPERS would accept "After-Tax" payments (i.e. lump sum and partial payments made after income tax withholding); "After-Tax" and "Pre-Tax" installment payments from payroll deductions; After-Retirement Plan-To-Plan transfers from Internal Revenue Code 403(b) and 457 governmental retirement plans; and In-Service Plan-To-Plan transfers from 403(b) and 457 governmental retirement plans. However, because the IRS regulations did not allow In-Service Plan-To-Plan transfers from 403(b) and 457 governmental retirement plans, the City and most other public employers did not allow employees to utilize this last option.

In 2006, the Federal Government passed the Pension Protection Act. This act, in part, removed IRS restrictions on plan-to-plan transfers, allowing employees to withdraw funds from qualified retirement plans to purchase Additional Retirement Service Credit as long as the transaction is performed as a Trustee-To-Trustee transfer. This was a radical departure from previous interpretations of the law, which did not allow withdrawal of funds by active employees except in special cases of hardship. All three carriers are now prepared to process these types of transfers. Staff worked with tax counsel at Saltzman & Johnson to ensure that the amendment to the Plan conformed with the requirements of the Pension Protection Act of 2006.

RATIONALE FOR RECOMMENDATION

Amending the Plan to allow Trustee-To-Trustee transfers to purchase Additional Retirement Service Credit will not incur any additional cost to the City, and will allow Participants an additional benefit that is available to them by law.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

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ORDINANCE NO. -N.S.

AMENDING ORDINANCE 6,749-N.S. THE CITY OF BERKELEY DEFERRRED COMPENSATION PLAN TO ALLOW EMPLOYEES TO PURCHASE ADDITIONAL RETIREMENT SERVICE CREDIT

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

Section 1. That Ordinance 6,749-N.S., the City of Berkeley Deferred Compensation Plan is amended to include Article XIII as follows:

Article XIII

Purchase of Additional Retirement Service Credit from CalPERS

14.01 Purchase of Airtime. Any part of a Participant's individual account, from whatever source derived, may be used to purchase Additional Retirement Service Credit from CalPERS if permitted by CalPERS.

14.02. Trustee-to-Trustee Transfers. The purchase of Additional Retirement Service Credit from assets in this Plan shall be made only by trustee-to-trustee transfers, without the assets being made available to the Participants.

14.03. Application. To purchase Additional Retirement Service Credit, the Participant must make written application to the Plan Administrator using such forms and providing such information as the Administrator may from time to time require.

Section 2. That Ordinance 6,749-N.S., the City of Berkeley Deferred Compensation Plan is amended to renumber the existing Article XIII as Article XIV.

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.

