



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: **Ballot Measure to Allow Council
to Provide for Different
Retirement Benefits for Future
Employees**

DATE: July 30, 2010

On July 28, the Rules Committee agreed to move forward to the Council Agenda of August 3, 2010 the recommendation by Councilmember Oliverio that the City Attorney prepare ballot language to change the City Charter to remove the "minimum benefits" and "contributions/cost sharing" provisions in Sections 1504 and 1505 of the Charter for future employees. Councilmember Oliverio acknowledged at the Committee meeting that due to certain labor considerations the ballot language may have to be drafted in a manner that would provide the Council with the authority to provide for a different retirement plan in the future. This memo will discuss the proposed ballot measure drafted by my Office.

Retirement Plans under the Charter

Pursuant to Section 1500 of the Charter, the Council creates and maintains retirement plans for officers and employees of the City. In addition, the Council is permitted to amend or otherwise change any retirement plan or adopt new or different plans for officers and employees of the City. Section 1501 permits the Council to exclude certain persons from any or all retirement plans. Section 1504 provides for minimum retirement benefits for certain members of the police and fire departments, and Section 1505 provides for minimum retirement benefits for essentially all other officers and employees. Both Sections 1504 and 1505 provide for the exclusion of certain persons from the application of those sections. In particular, persons listed in Section 1501 are specifically excluded from Sections 1504 and 1505.

Proposed Charter Amendment to Provide Different Retirement Benefits.

Since the Charter can only be amended by the voters, the City Council cannot make unilateral changes to it. The City Council can make changes to ordinances, subject to any restrictions under applicable law.

Currently, any new or modified plan for future employees would be subject to the minimum benefits provided under Sections 1504 and 1505, unless those Sections provide otherwise. Both Section 1504 and Section 1505 provide for exclusion of certain persons from those provisions, including those persons referenced in Section 1501.

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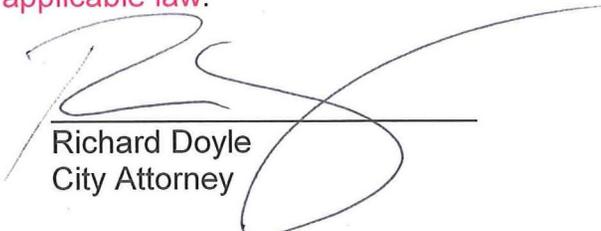
Page 2

The proposed Charter amendment would expand the list of employees that could be excluded from the provisions of Section 1504 and Section 1505 to include any employee hired after the effective date of an ordinance adopted by the Council after November 3, 2010. The Council would need to consider the extent of any such exclusion based on any applicable law. Accordingly, the proposed ballot measure would modify Charter Section 1501 as follows:

SECTION 1501. EXCLUSIONS.

(a) The Council in its discretion may exclude all or any of the following persons from any or all retirement plans, to wit: Persons mentioned in subparagraphs (1), (2), (4), (5), (6), and (7) of sub-section (a) of Section 1101 of this Charter; all persons employed or whose services are contracted for pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of this Charter; persons employed pursuant to Section 1110 of this Charter; persons in City service primarily for training, study or educational purposes; persons employed or paid on a part-time, per diem, per hour or any basis other than a monthly basis; temporary employees; persons employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons. Also, persons who are members of any other retirement or pension system, other than the federal social security system or any other federal retirement or pension system, and who are receiving credit in such other system for service rendered to the City may be excluded, as to such service, from any such plan or plans.

(b) On or after November 3, 2010, the Council may, by ordinance, exclude any officer or employee hired on or after the ordinance's effective date from any retirement plan or benefit of any retirement plan. Any such ordinance shall be subject to the requirements of applicable law.



Richard Doyle
City Attorney