

AN ORDINANCE AMENDING THE
SAN DIEGO COUNTY
DEFERRED COMPENSATION PLAN
ORDINANCE NO. 8977 (NEW SERIES)

The Board of Supervisors of the County of San Diego do ordain as follows:

Section 1. Ordinance No.6246 (New Series) is hereby repealed.

Section 2. A San Diego County Deferred Compensation Plan, a continuation of the Plan originally set forth in Ordinance No. 6246 (New Series), is hereby adopted to read as follows:

ARTICLE 1

General

1.1 The "Name" of this Plan is the San Diego County Deferred Compensation Plan, referred to throughout this document as the "Plan".

1.2 The primary purpose of this Plan is to permit permanent full-time and permanent part-time employees of the County of San Diego to enter into an agreement which will provide for deferral of payment of a portion of their current compensation until death, retirement, termination of employment, or other event, in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended, with other applicable provisions of such Code, and in accordance with the General Statutes of the State of California. (The Internal Revenue Code of 1986, as amended, is hereafter referred to as "Code".)

1.3 It is intended that the Plan shall qualify as an Eligible Deferred Compensation Plan within the meaning of Section 457(b) of the Code sponsored by an Eligible Governmental Employer.

1.4 The Employer does not and cannot represent or guarantee that any particular federal or state income, payroll or other tax consequence will occur by reason of participation in this Plan. A Participant should consult with his or her own attorney or other representative regarding all tax or other consequences of participation in this Plan.

ARTICLE 2

Definitions

For purposes of this Plan, the following words and phrases shall have the meaning set forth below:

- 2.1 "Administrator" means the County Treasurer or his or her duly authorized designee for that purpose who shall exercise the discretion or other functions given to the Employer under the terms of the Plan.
- 2.2 "Adjusted" means adjusted for the cost of living at the time and in the manner as prescribed under section 457(e)(15) of the Code.
- 2.3 "Annuity Contracts" means an annuity contract, either fixed and/or variable, issued by a provider under the Plan.
- 2.4 "Beneficiary" means any person designated by the Participant to receive an annuity, death benefit, or other benefit under the provisions of this Plan, by reason of such Participant's death.
- 2.5 "Code" means the Internal Revenue Code of 1986, as amended.
- 2.6 "Compensation" means the total of all wages or salaries which are paid by the Employer to, or for the benefit of, an Employee for services rendered, calculated without deduction for any portion thereof deferred under the provisions of this Plan or for any amounts contributed to any program established pursuant to Code Sections 403(b), 401(k), 408(k)(6), or 501(c)(18).
- 2.7 "Deferred Compensation" means that portion of an Employee's compensation which said Employee has elected to defer in accordance with the provisions of this Plan.
- 2.8 "Deferred Retirement Date" means the date beyond the Normal Retirement Date specified in Section 2.14 designated by the Participant.
- 2.9 "Eligible Deferred Compensation Plan" has the meaning given it by the Internal Revenue Code Section 457(b) and the regulations thereunder.
- 2.10 "Eligible Governmental Employer" means a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State.
- 2.11 "Employer" means the County of San Diego.
- 2.12 "Employee" means any individual defined as eligible by the Employer. Permanent full-time and permanent part-time employees of the County of San Diego are eligible.
- 2.13 "Includible Compensation" means compensation from the Employer that is currently includible in gross income for federal income tax purposes (i.e., taxable income).

2.14 "Normal Retirement Date" means the date a Participant retires pursuant to the Employer's Retirement Plan without reduced benefits.

2.15 "Participant" means any Employee as defined in Section 2.12 who elects to participate in this Plan or who has unpaid benefits due under the Plan, as well as any retired or separated employee or beneficiary who has unpaid benefits due under the Plan.

2.16 "Participation Agreement" means an agreement filed by an Employee to elect or modify participation in the Plan.

2.17 "Participation Account" means the bookkeeping account to which there is credited the Participant's Deferred Compensation, together with any interest, dividends, gains, losses, or the like thereon.

2.18 "Plan Year" means the calendar year during which the Plan becomes effective, and each succeeding calendar year during the existence of this Plan.

2.19 "Provider" means any organization appointed by the Administrator and approved by the San Diego County Board of Supervisors to provide services and benefits under the Plan.

2.20 "Termination of Employment" means in the case of an Employee, separation from service within the meaning of Section 402(e)(4)(D) of the Code or on account of the Participant's death or retirement.

ARTICLE 3

Operation of Plan

3.1 Participation. Any permanent full-time or permanent part-time Employee may elect to become a Participant in the Plan and to defer payment of part of his compensation not yet earned by executing a written Participation Agreement and filing it with the Administrator or Provider.

3.2 Participation Agreement. The Administrator shall establish a form of Participation Agreement which shall contain, among other provisions, a provision whereby the Participant specifies:

- (a) that portion of his or her Compensation which is to be deferred.
- (b) his or her investment preference.

(c) a Beneficiary or Beneficiaries, including one or more contingent Beneficiaries, to receive any benefits which may be payable under this Plan or on the death of the Participant.

(d) that his or her salary, wage or other compensation is as set forth in any salary ordinance or otherwise without deductions for amounts deferred under the provisions of this plan.

(e) that the participant together with his or her heirs, successors, and assigns, holds harmless the Employer from any liability hereunder for all acts performed in good faith, including acts relating to the investment of deferred amounts and/or the Employee's investment preference hereunder.

(f) a payment option and method of payment (monthly, quarterly, semi-annually or annually) if applicable. The option and method of payment shall be selected within 60 days of Termination of Service, and may be changed at any time prior to the earliest distribution date for benefits provided in the Plan for a Participant and may not thereafter be modified.

3.3 Agreement Effective Date. If the Participation Agreement is received prior to the last pay day of the month, it will take effect on the first pay day of following month. If received on or after the last pay day of the month, it will take effect on the second pay day of the following month. Thereafter, during each employment year in which the Employee is a Participant in the Plan, that portion of his said Compensation which is specified by the Employee in the Participation Agreement shall be deferred and paid in accordance with the provisions of this Plan.

3.4 Amendment of Participation Agreement. The Participant may revoke his election to participate and may change the amount of Compensation to be deferred, or his investment preference, by signing and filing with the Administrator or Provider a written revocation or amendment, on a form approved by the Administrator. Any such revocation or amendment shall be effective prospectively only, beginning with the first pay period of the subsequent month.

3.5 Regular Contributions. The regular contribution is the amount of compensation which may be deferred by a Participant subject to the following limitations:

(a) Calendar Year Maximum. The maximum amount a Participant may defer during a calendar year shall not exceed the lesser of (i) \$7,500 (as Adjusted), or (ii) 33-1/3% of the Participant's Includible Compensation (typically 25% of the Participant's gross taxable income from the Employer).

(b) Pay Period Maximum. The maximum amount a Participant may defer during a pay period, when combined with previous deferrals during the calendar year, shall not exceed the lesser of (i) \$7,500 (as Adjusted) or (ii) 33-1/3% of the Participant's year to date Includible Compensation (typically 25% of the Participant's year-to-date gross taxable income from the

Employer).

(c) Pay Period Minimum. The minimum amount a Participant may defer is \$10 per biweekly pay period per Provider.

3.6 Catch-Up Contributions. A Participant may defer an additional amount under this "catch-up provision", for one or more of the last three calendar years ending before attaining the Participant's Normal or Deferred Retirement Date as defined in Sections 2.8 and 2.14. The use of "catch-up" is subject to the following restrictions:

(a) The maximum amount a Participant may defer each calendar year shall not exceed the lesser of these two amounts:

(1) \$15,000 minus the regular contribution, or

(2) any Employer provided compensation eligible for deferral that was not deferred for any prior taxable year which began after December 31, 1978.

(b) To use "catch-up", a Participant must declare a retirement age, which may be any age at or after which the Participant qualified for Normal Retirement eligibility, but no later than age 70-1/2. This declaration does not compel retirement.

(c) The "catch-up" provision may not be used during the calendar year that the Participant ceases to be an Employee.

(d) The "catch-up" provision may be used only once by any Participant, whether under this Plan or any other eligible Deferred Compensation Plan.

(e) Participants may continue to make regular contributions after they are no longer eligible to use "catch-up".

3.7 Employer Contributions. Nothing in this Plan prohibits the Employer from making deposits to a Participant's Participation Account as additional compensation for services rendered, subject to the Participant's regular contribution limits.

ARTICLE 4

Investment Responsibilities

The Employer shall defer payment of Participant compensation in the amount specified in each Participation Agreement filed with the Employer.

4.1 Investment of the Deferred Amount. The deferred amount shall be held for the

exclusive benefit of Participants and their Beneficiaries, and may be under one or more Annuity Contracts which may provide for guaranteed rates of interest, or variable investment options.

4.2 Employer's Investment Rights. The Administrator shall select such investment options that shall be eligible under the Plan.

4.3 Amendment of Investment Preference. The Participant may amend his statement of investment preference by filing with the Administrator or Provider a signed amendment on a form approved by the Administrator. Such amendment will, unless specifically stated otherwise, apply only to future amounts deferred under the Plan.

4.4 Investment Disclaimer. Any action by the Administrator of approving or forwarding any such investment request shall not be considered to be either an endorsement or a guarantee of any investment; nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations as provided under the distribution guidelines given below.

4.5 Statements. The Administrator will cause to be issued statements periodically to reflect the actual earnings, gains, contributions and losses posted to the Participation Accounts.

ARTICLE 5

Distributions

Code Section 457 and the applicable regulations determine the Participant's eligibility for distributions and options available.

5.1 Eligibility. Distribution may be taken under any of the following circumstances:

- (a) Retirement;
- (b) Separation from service within the meaning of Sections 1.457-2(h)(2) and (3) of the Income Tax regulations;
- (c) Participant's death;
- (d) Approval of request for emergency withdrawal;
- (e) Attainment of age 70-1/2, whether or not still employed.

5.2 Distribution and Deferral. Distribution must follow the minimum distribution requirements of Sections 401(a)(9) and 457(d) of the Code and the regulations thereunder as they may be amended from time to time. There is a substantial penalty (federal excise tax) for not satisfying the minimum distribution requirements.

Upon becoming eligible in accordance with Section 5.1 hereof, distribution is subject to the following guidelines:

(a) A Participant may elect to commence distribution in accordance with the distribution schedules set forth at Section 5.3 hereof. Unless the Participant fails to make any election or if the Participant elects a postponed distribution commencement date pursuant to Section 5.2(b) below, the Participant's Participation Account shall be, or shall commence to be, distributed not later than sixty (60) days after the close of the Plan Year in which the Participant's Participation Account becomes eligible for distribution. If a Participant fails to make any election, distribution shall commence in accordance with Section 5.5 hereof.

(b) A Participant may elect to postpone the commencement date specified in the election made pursuant to Section 5.2(a) to a later date if (i) such postponement election is made prior to the original commencement date specified in the election made pursuant to Section 5.2(a), and (ii) no other postponement election has been made pursuant to this Section 5.2(b); provided further, that a Participant may change the form of payment elected at any time that is at least sixty (60) days prior to the date on which payments will commence.

(c) A Participant may elect to postpone distribution, even after using the "catch-up" provision.

(d) If eligibility for distribution is on account of the Participant's death, distribution shall commence in accordance with Section 5.8 hereof.

(e) Notwithstanding any provision of the Plan to the contrary, distribution must commence no later than April 1st following the later of (i) the calendar year in which the Participant attains age 70-1/2 or (ii) the calendar year in which the Participant separates from service, and must be completed by the Participant's allowable life expectancy, defined as the single or joint (spousal) life expectancy as set forth in the life annuity actuarial tables (Code Section 72 and regulations thereunder).

5.3 Distribution Schedule. Except in the event of the Participant's death, the full amount credited to the Participant's Participation Account (including earnings and net gain or loss), less any federal or State income tax required to be withheld, shall be distributed as instructed by the Participant, following one of the following distribution schedules:

Option 1. Lump sum payment. A lump sum;

Option 2. Payments for a specified period. Amounts payable in substantially non-increasing installments over a specified period of years, but not in excess of the Participant's allowable life expectancy;

Option 3. Equal installments. Amounts payable in equal installments. Payments must meet minimum distribution requirements.

Option 4. Partial payment. Lump sum payment of partial balance of account. If this payment method is selected, an additional payment must also be selected for the balance remaining in the Participant's account.

Option 5. Life annuity. An annuity payable during the lifetime of the Participant;

Option 6. Life annuity with period certain guaranteed. An annuity payable during the lifetime of the Participant, or his Beneficiary, with the guarantee that if at the Participant's death payments have not been made for the guaranteed period as elected, payments will continue to the Beneficiary. The guaranteed period to be elected must be either ten (10) or fifteen (15) years if the Beneficiary is not a spousal Beneficiary. For a spousal Beneficiary, the guaranteed period to be elected may be either ten (10), fifteen (15) or twenty (20) years but may not exceed the life expectancy of the Participant and his spousal Beneficiary; or

Option 7. Joint and survivor annuity. An annuity payment during the lifetime of the Participant and a spousal Beneficiary of the Participant.

Option 8. Other payout option. Any distribution elected by the Participant and agreed to by Administrator, provided that such option must provide for substantially non-increasing payments for any period after the commencement date, and meet minimum distribution requirements (see Section 5.2).

5.4 Participation Accounts Not Exceeding \$5,000. Notwithstanding any provision of the Plan to the contrary, if the total amount of a Participant's Participation Account under the Plan does not exceed \$5,000, the Participant may elect to receive (or the Employer may elect to pay to the Participant without the Participant's consent) the total amount in a lump sum payable within 60 days of such election; provided, however, such amount may be distributed pursuant to this Section 5.4 only if: (a) no amount has been deferred under the Plan with respect to such Participant during the two-year period ending on the date of the distribution, and (b) there has been no prior distribution under the Plan to such Participant to which this Section 5.4 applied.

5.5 Default Distribution Schedule. If the Participant fails to select a payment option for any event which causes amounts to become available under the Plan, the Participant shall be deemed to have elected, pursuant to Section 5.2(b) hereof, to postpone distribution of his benefit until the year in which the Participant attains age 70 ½ . Upon such Participant's attainment of age 70 ½, payments shall commence for a specified period of ten (10) years as provided for in Option 2. Notwithstanding the foregoing, Participation Accounts not exceeding \$5,000 shall be subject to earlier distribution in accordance with Section 5.4 hereof.

5.6 Method of Payment Options. If the Participant has elected a payment option requiring installment payments, the Participant may also elect to have such payment made either monthly, quarterly, semi-annually or annually.

5.7 Income Tax Reporting. Amounts paid to a Participant shall be reported on appropriate tax reporting forms to a Participant as wages subject to withholding for federal income taxes.

5.8 Distribution Schedule In The Event of the Participant's Death. In the event of the Participant's death, the full amount credited to the Participant's Participation Account (including earnings and net gain or loss), less any federal or State income tax required to be withheld, shall be distributed according to the following requirements:

(a) If distribution has commenced prior to the death of the Participant, the balance of a Participant's Participation Account shall be paid to the Beneficiary so that the remaining distribution will be effected at least as rapidly as under the method of payment used before the Participant's death.

(b) If the distribution has not commenced prior to the death of the Participant, a non-spousal beneficiary may take distribution under Options 1, 2, 4 or 6 above over a maximum of 15 years, commencing no later than one year after the date of the Participant's death.

A spousal beneficiary may defer distribution no later than the year the deceased Participant would have reached age 70-1/2 and may take distribution under Options 1, 2, 3, 4 or 6 above for a period not exceeding his/her own life expectancy.

(c) If the Beneficiary fails to make such selection, payments shall be made to the Beneficiary in accordance with the Option 2 over a 10 year period.

The Employer shall process distribution requests immediately upon receipt of all required forms.

5.9 Emergency Distribution. Notwithstanding any other provisions of this Plan, a Participant may apply for a lump sum withdrawal of funds from the Plan under certain emergency conditions. The Deferred Compensation Committee will evaluate the request for conformity with its interpretation of the applicable regulations.

Any remaining benefits shall be paid upon retirement, termination of employment, or death in accordance with this Article 5.

The decision of the Deferred Compensation Committee concerning Emergency Withdrawals

shall be final as to all Participants.

ARTICLE 6

Beneficiary

6.1 Designation. Each Participant has the right, by written notice filed with the Administrator and Provider, to designate one or more beneficiaries to receive any benefits payable under this Plan in the event of the Participant's death prior to the complete distribution of benefits. The Participant accepts and acknowledges that he has the burden for executing and filing, with the Administrator and Provider a proper beneficiary designation form.

The form for this purpose shall be provided by the Administrator or Provider. It is not binding until it is signed, filed with the Administrator or Provider by the Participant, and accepted.

If no such designation is in effect upon the Participant's death, or if no designated beneficiary survives the Participant, the beneficiary shall be the estate.

If no estate executor or administrator is appointed and qualified within one hundred twenty (120) days after the Participant's death, the payment may be made first, to a surviving spouse, second, to a surviving child or children, and third, to a surviving parent or parents.

ARTICLE 7

Non-Assignability

Neither the Participant nor the Participant's beneficiary, nor any other designee, shall have any right to commute, sell, assign, pledge, hypothecate, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be nonassignable and nontransferable.

Except to the extent otherwise provided by law, no payments shall be subject to attachment, garnishment or execution, or be transferable in the event of bankruptcy or insolvency.

ARTICLE 8

Plan Transfers

Code Section 457 and the applicable regulations permit transfers of plan interests when the Participant changes employers.

8.1 Transfers In. The full value of a Participation Account may be accepted from another

Eligible Deferred Compensation Plan maintained by another employer and credited to the Participant's Participation Account under this Plan, if:

- (a) The Participant has separated from service with that employer and become an Employee;
- (b) The other employer's plan provides that such transfer can be made.

As it deems necessary, the Employer may require such documentation from the predecessor plan to effect the transfer, to confirm that such plan is an Eligible Deferred Compensation Plan within the meaning of Code Section 457 and to assure that transfers are provided for under such plan.

The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer agrees to hold such other assets under the Plan.

Any amounts transferred that had been deferred during prior calendar years will not be subject to current calendar year deferral limitations.

8.2 Transfers Out. The full value of a Participation Account may be transferred to another Eligible Deferred Compensation Plan maintained by another employer, if:

- (a) The Participant has separated from service with the Employer and become an employee of the other employer;
- (b) The other employer's plan provides that such transfer will be accepted;
and
- (c) The Participant and the employer have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer.

As it deems necessary, the Administrator may require such documentation from the other plan to effect the transfer, to confirm that such plan is an Eligible Deferred Compensation Plan within the meaning of Code Section 457 and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Code Section 457 and the applicable regulations.

ARTICLE 9

Administration and Accounting

9.1 Administration by Employer. This Plan shall be administered by the Administrator, who shall prescribe such forms, and adopt such rules and regulations as are necessary to carry out the purposes of the Plan. The Administrator may employ investment counsel to provide advice concerning categories of investment, investment guidelines and investment policy, provided, however, that the advice or recommendations of any such investment counsel shall not be binding on the Administrator, which shall make the final determination concerning investment categories, investment guidelines and policies.

9.2 Administrative Costs. The Administrator shall determine, in a manner deemed fair and equitable, the administrative costs associated with the withholding of Deferred Compensation amounts pursuant to this plan or in making investments or otherwise administering or implementing the Plan. The Employer may withhold or collect, or have withheld or collected, such costs, in such manner as he deems equitable either (1) from the compensation deferred pursuant to the Plan, the income produced from the compensation deferred pursuant to the Plan, the income produced from any investment, whether or not augmented, or (2) from the organization receiving such investment where required by law to collect therefrom or, if not so required, where mutually satisfactory to such organization and the Administrator. The Administrator may remit or direct the remission of appropriate amounts so withheld or collected to the Employer.

ARTICLE 10

Amendments

10.1 Right to Amend, Modify and Terminate. The Employer may at any time modify or terminate the Plan by notifying Participants of such action. The Employer shall not have the right to reduce or affect the value of any Participant's account or any rights accrued under the Plan prior to modification or termination.

10.2 Conformation. The Administrator shall amend and interpret the Plan to the extent necessary to conform to the requirements of Code Section 457 and any other applicable law, regulation or ruling, including amendments that are retroactive. In the event the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Code Section 457, the Employer shall correct such inconsistency within the period provided in Code Section 457(b).

10.3 Plan Termination. In the event of the termination of the Plan, distribution of benefits shall be made to Participants and beneficiaries pursuant to the distribution guidelines in Section 5 or the transfer provisions of Section 8.

ARTICLE 11

Exclusive Benefit

- 11.1 All amounts of compensation deferred under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in trust or under one or more annuity contracts described in Section 401(f) of the Code for the Participants and their Beneficiaries. Except as may otherwise be permitted or required by law, no assets or income of the Plan shall be used for, or diverted to, purposes other than for the exclusive purpose of providing benefits for Participants and their Beneficiaries or defraying reasonable expenses of administration of the Plan.

ARTICLE 12

Miscellaneous

12.1 Retirement System Integration. Benefits payable by, and deductions for Employee contributions to, any retirement system of the Employer shall be computed without reference to amounts deferred pursuant to this Plan.

12.2 Employment. Neither the establishment of the Plan nor any modification thereof, nor the establishment of any account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer except as herein provided; and, in no event, shall the terms or employment of any Employee be modified or in any way affected hereby.

12.3 Successors and Assigns. The Plan shall be binding upon and shall inure to the benefit of the Employer, its successors and assigns, all Participants and Beneficiaries and their heirs and legal representatives.

12.4 Written Notice. Any notice or other communication required or permitted under the Plan shall be in writing, and if directed to the Employer shall be sent to the designated office of the Administrator, and, if directed to a Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at his or her last known address as it appears on the Employer's record.

12.5 Total Agreement. This Plan and the Participation Agreement, and any subsequently adopted amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the

Participant.

12.6 Gender. As used herein the masculine shall include the neuter and the feminine where appropriate.

12.7 Controlling Law. This Plan is created and shall be construed, administered and interpreted in accordance with Section 457 of the Code and the regulations thereunder and under the laws of the State of California as the same shall be at the time any dispute or issue is raised. If any portion of this Plan is held illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder shall be unaffected.

PASSED, APPROVED AND ADOPTED this 10th day of November, 1998.