

EXHIBIT 1

ARTICLE IX

(All executive authority, power, and responsibilities conferred upon the City Manager in this Article are transferred to the Mayor during the operative period of Charter Article XV. See Charter § 260(b).)

THE RETIREMENT OF EMPLOYEES

Section 141: City Employees' Retirement System

The Council of the City is hereby authorized and empowered by ordinance to establish a retirement system and to provide for death benefits for compensated public officers and employees, other than those policemen and firemen who were members of a pension system on June 30, 1946. No employee shall be retired before reaching the age of sixty-two years and before completing ten years of service for which payment has been made, except such employees may be given the option to retire at the age of fifty-five years after twenty years of service for which payment has been made with a proportionately reduced allowance. Policemen, firemen and full time lifeguards, however, who have had ten years of service for which payment has been made may be retired at the age of fifty-five years, except such policemen, firemen and full time lifeguards may be given the option to retire at the age of fifty years after twenty years of service for which payment has been made with a proportionately reduced allowance.

The Council may also in said ordinance provide:

- (a) For the retirement with benefits of an employee who has become physically or mentally disabled by reason of bodily injuries received in or by reason of sickness caused by the discharge of duty or as a result thereof to such an extent as to render necessary retirement from active service.
- (b) Death benefits for dependents of employees who are killed in the line of duty or who die as a result of injuries suffered in the performance of duty.
- (c) Retirement with benefits of an employee who, after ten years of service for which payment has been made, has become disabled to the extent of not being capable of performing assigned duties, or who is separated from City service without fault or delinquency.
- (d) For health insurance benefits for retired employees.

(Editor's note: Supplement No. 655)
(Amendment voted 03-13-1945; effective 04-09-1945.)
(Amendment voted 04-19-1949; effective 05-20-1949.)
(Amendment voted 03-13-1951; effective 03-26-1951.)
(Amendment voted 06-08-1954; effective 01-10-1955.)
(Amendment voted 11-06-1990; effective 02-19-1991.)
(Amendment voted 11-08-1994; effective 01-30-1995.)
(Amendment voted 11-05-1996; effective 02-10-1997.)

Section 142: Employment of Actuary

The Board of Administration hereinafter provided, shall secure from a competent actuary a report of the cost of establishing a general retirement system for all employees of The City of San Diego. Said actuary shall be one who has had actual experience in the establishing of retirement systems for public employees, and his position shall be considered one requiring expert or technical training within the meaning of subdivision (k) of Section 118 of Article VIII of this Charter.

Section 143: Contributions

The retirement system herein provided for shall be conducted on the contributory plan, the City contributing jointly with the employees affected thereunder. Employees shall contribute according to the actuarial tables adopted by the Board of Administration for normal retirement allowances, except that employees shall, with the approval of the Board, have the option to contribute more than required for normal allowances, and thereby be entitled to receive the proportionate amount of increased allowances paid for by such additional contributions. The City shall contribute annually an amount substantially equal to that required of the employees for normal retirement allowances, as certified by the actuary, but shall not be required to contribute in excess of that amount, except in the case of financial liabilities accruing under any new retirement plan or revised retirement plan because of past service of the employees. The mortality, service, experience or other table calculated by the actuary and the valuation determined by him and approved by the board shall be conclusive and final, and any retirement system established under this article shall be based thereon. Funding obligations of the City shall be determined by the Board on an annual basis and in no circumstances, except for court approved settlement agreements, shall the City and the Board enter into multi-year contracts or agreements delaying full funding of City obligations to the system. When setting and establishing amortization schedules for the funding of the unfunded accrued actuarial liability, the Board shall place the cost of the past service liability associated with a new retirement benefit increase on no greater than a fixed, straight-line, five year amortization schedule. Effective July 1, 2008, the Board shall place the cost associated with net accumulated actuarial losses on no greater than a fifteen year amortization

schedule and the Board shall place the benefit associated with net accumulated actuarial gains on no less than a five year amortization schedule. Notwithstanding the above, the Board shall retain plenary authority and fiduciary responsibility for investment of moneys and administration of the system as provided for in article XVI, section 17 of the California Constitution. The setting and establishing of amortization schedules by the Board pursuant this section is not intended and shall not be interpreted to preclude the City from issuing pension obligation bonds or other similar instruments containing repayment terms exceeding fifteen years.

(Amendment voted 03-13-1945; effective 04-09-1945.)

(Amendment voted 06-08-1954; effective 01-10-1955.)

(Amendment voted on 11-2-2004; effective on 04-01-2005)

Section 143.1: Approval of Retirement System Benefit

- (a) No ordinance amending the retirement system which affects the benefits of any employee under such retirement system shall be adopted without the approval of a majority vote of the members of said system. No ordinance amending the retirement system which increases the benefits of any employee, legislative officer or elected official under such retirement system, with the exception of Cost of Living Adjustments, shall be adopted without the approval of a majority of those qualified electors voting on the matter. No ordinance amending the retirement system which affects the vested defined benefits of any retiree of such retirement system shall be adopted without the approval of a majority vote of the affected retirees of said retirement system.
- (b) Prior to any proposed amendment of the retirement system which increases benefits of any employee, legislative officer or elected official under such retirement system being placed on the ballot, the retirement system shall prepare an actuarial study of the cost due to the benefit changes proposed based upon the amortization schedules established by Charter Section 143. A summary of the actuarial study shall be published in the ballot pamphlet.
- (c) Nothing in subsection (a) of this section shall prevent City officials from negotiating tentative agreements with employee organizations incorporating benefit changes to the extent permitted by state law, provided, however that no amendment of the retirement system which increases benefits, with the exception of the Cost of Living Adjustments, of any employee, legislative officer or elected official under such retirement system, shall become binding or effective until approved by a majority of those qualified electors voting on the matter, and shall not have any force or effect if rejected by said voters. The City Council shall have no authority to enter into final or binding agreements regarding retirement system benefit increases until and unless those increases to retirement system

benefits are approved by a majority of those qualified electors voting on the matter.

- (d) The requirement for voter approval of retirement system benefit increases shall become operative on January 1, 2007, for all proposed increases in retirement system benefits tentatively agreed upon by the City on or after that date. This requirement shall remain in effect for a period of fifteen (15) years from that date, at which time this requirement shall be automatically repealed and removed from the Charter.

(Addition voted 06-08-1954; effective 01-10-1955.)

(Amendment voted 11-06-1990; effective 02-19-1991.)

(Amendment voted 11-07-2006; effective 12-13-2006.)

Section 144: Board of Administration

Effective April 1, 2005, the system shall be managed by a newly constituted Board of Administration which shall consist of 13 members. Seven members shall constitute a quorum of the Board and the concurring vote of seven members shall be required for the Board to take any action. Prior to April 1, 2005, in anticipation of the effective date, and thereafter, members shall be selected to serve as follows:

- (a) Seven (7) members shall be appointed by the Mayor and confirmed by the Council. No person who is a City employee, participant in the Retirement System, or City union representative may be eligible for appointment in this category. Such appointees shall have the professional qualifications of a college degree in finance, economics, law, business, or other relevant field of study or a relevant professional certification. In addition, such appointees shall have a minimum of fifteen (15) years experience in pension administration, pension actuarial practice, investment management, real estate, banking, or accounting. Members of the Board serving in this category shall serve staggered terms of four (4) years each (inaugural appointments shall have three (3) members serving two year terms) and members in this category shall be limited to a maximum of eight (8) consecutive years in office and an interval of four (4) years must pass before such persons can be reappointed. Such appointees shall not have any other personal interests which would create a conflict of interest with the duties of a Board member and trustee.
- (b) One (1) police safety member of the Retirement System elected by the active police safety members to serve a four (4) year term, except that the inaugural member elected in 2005 to fill the seat in this category shall serve a two (2) year term.

- (c) One (1) fire safety member of the Retirement System elected by the active fire safety members to serve a four (4) year term.
- (d) Two (2) general members of the Retirement System elected by active general members of the Retirement System to serve a four (4) year term.
- (e) One (1) retired member of the Retirement System elected by the retired members of the Retirement System to serve a four (4) year term, except that the inaugural member elected in 2005 to fill the seat in this category shall serve a two (2) year term.
- (f) One (1) City management employee in the administrative service appointed by the City Manager to serve at the pleasure of the City Manager selected from the following: City Manager, City Treasurer, Deputy or Assistant City Manager, or person in a similar position who reports to the City Manager.

The Board of Administration may establish such rules and regulations as it may deem proper; shall elect one of its members president and appoint a secretary and may appoint such other employees as may be necessary. Such appointments, except the actuary, shall be made under the provisions of Article VIII of this Charter.

The Board of Administration shall be the sole authority and judge under such general ordinances as may be adopted by the Council as to the conditions under which persons may be admitted to benefits of any sort under the retirement system; and shall have exclusive control of the administration and investment of such fund or funds as may be established; and shall be permitted to invest in any bonds or securities which are authorized by General Law for savings banks; and, further, shall be permitted to invest in such additional classes or types of investments as are approved by resolution of the Council of the City of San Diego; provided, however, that individual investments within the classes or types approved by the Council must be approved by independent investment counsel; and, provided, further, the board may place such funds in the hands of the Funds Commission for investment. Provided, however, that the Auditor and Comptroller shall refuse to allow any warrant drawn for payment of a retirement allowance if, in the opinion of the Auditor and Comptroller, such retirement allowance has been granted in contravention of this Article or any ordinances passed under the authority granted herein.

(Amendment voted 03-13-1951; effective 03-26-1951.)

(Amendment voted 11-08-1960; effective 01-09-1961.)

(Amendment voted 11-04-1969; effective 01-29-1970.)

(Amendment voted 06-04-1974; effective 08-13-1974.)

(See Article X for additional members.)

(Amendment voted on 11-2-2004; effective on 04-01-2005)

Section 145: Retirement Fund

All moneys contributed by employees of the City or appropriated by the Council or received from any other source under the terms of this Article, shall be placed in a special fund in the City Treasury to be known as the City Employees' Retirement Fund, which said fund is hereby created. Such fund shall be a Trust Fund to be held and used only for the purpose of carrying out the provisions of this Article. No payments shall be made therefrom except upon the order of the Board of Administration. This fund may be placed by the Board under the Funds Commission for investment; but shall not be merged with other funds of the City.

Section 146: Additional Provisions

The Council is hereby fully empowered by a majority vote of the members to enact any and all ordinances necessary, in addition to the ordinance authorized in Section 141 of this Article, to carry into effect the provisions of this Article; and any and all ordinances so enacted shall have equal force and effect with this Article and shall be construed to be a part hereof as fully as if drawn herein.

Section 147: Former Pensioners Entitled to Benefits of this Article

All persons who were receiving pensions prior to the adoption of this Charter shall be entitled to all the provisions of this Article.

Section 148: Declaration of Intent

It is the intent and purpose of this Article, where not in conflict with the terms of the present existing City Employees' Retirement System, to continue said system in force and effect as existing at the time this Charter is adopted.

Section 148.1: Authority to Consolidate City Employees' Retirement System with State of California Retirement System And/or U.s. Government Social Security

Notwithstanding any of the provisions of this Article IX to the contrary, the Council may, with the approval of a majority of all active members of the City Employees' Retirement System, enter into a contract with the State of California wherein said employees shall be entitled to become members of and enjoy all of the benefits of the State Retirement System for state employees, and/or with the U. S. Government for the conferring of Social Security benefits upon such municipal employees; provided, however, that in any such contract provision shall be made for protecting and safeguarding any and all vested rights of the active and retired members of the City Employees' Retirement System as it exists under this Charter.

(Addition voted 04-21-1953; effective 05-29-1953.)

Section 149: Contracting Public Agencies

Subject to approval by the City Council, a public agency may participate in the City Employees Retirement Trust Fund. After a finding by the City Council that the public agency is eligible for participation in the Trust Fund and approval by the City Council of a contract between the Board of Administration and the public agency, as provided by ordinance, the Board may administer the benefits adopted by the public agency for its employees. The public agency shall establish its own benefits and vesting schedule. All monies contributed by the public agency and its employees or appropriated by the public agency or received from any other source under the terms of this Article shall be placed in the Trust Fund to be held and used only for the purpose of paying benefits and necessary expenses of administration related to the public agency's participation. The public agency and its employees shall be responsible for all costs associated with participation in the Fund and the administration of the public agency's benefits. The Board may establish such rules and regulations as it may deem proper, within the terms of applicable Charter sections and ordinances, for the administration of the public agency's contract and benefits.

(Addition voted 03-05-2002; effective 04-24-2002.)

ARTICLE X

TRANSFER OF POLICE AND FIRE DEPARTMENT EMPLOYEES INTO THE RETIREMENT SYSTEM

Notwithstanding any language in Article IX of this Charter to the contrary the City Council shall, upon the taking effect of this amendment, by ordinance provide for the transfer into the City Employees' Retirement System of all members of the Police and Fire Departments of the City of San Diego who were regularly employed and members of their respective Pension systems on June 30, 1946; provided, however, that in any such ordinance said Council shall provide as follows:

- (1) A minimum retirement allowance of \$200.00 per month when a member has completed the required number of years of service as provided in this Charter, and who at the effective date of the ordinance is receiving a monthly salary of at least \$400.00.
- (2) For retirement of members of the Police Department who entered the service of the department on or prior to the 8th day of May, 1941, and who have served for 20 years or more in the aggregate as a member or employee in any rank or capacity in said department, regardless of age, and for the retirement of members of the Police Department who entered the service of the department subsequent to the 8th day of May, 1941, after completion of 25 years of service in the aggregate.
- (3) For retirement of members of the Fire Department who entered the service of the Department on or prior to January 1, 1936, and who have served for 20 years or more in the aggregate as a member or employee in any rank or capacity in said department, regardless of age, and for the retirement of members of the Fire Department who entered the service of the department subsequent to the 1st day of January, 1936, after completion of 25 years of service in the aggregate.
- (4) Each member of either the Fire or Police Department who is entitled to retire after 20 years of aggregate service with the City shall receive a pension credit of 2 ½% of his final compensation for each year completed at the effective date of said ordinance, but in no case shall such credit exceed 50 % of such final compensation. For each year completed after the effective date of said ordinance the member shall be credited with 1/60th of his final compensation. The pension credits specified above will not be allowable until after such member shall have reached the age of 50 years. No member of either department who is entitled to retire after 20 years as above and who has had 20 years of service in the aggregate shall receive less than the following: \$200.00 per month as retirement allowance, together with such

additional amount per month as will represent the actuarial equivalent of that portion of the contributions of such member contributed after his 20th year of service but before his attainment of age 50.

- (5) Members of the Fire and Police Departments who are not eligible for retirement until the completion of 25 years of service in the aggregate shall receive a pension credit of 2 % of their final compensation for each year completed at the effective date of said ordinance, provided that such credit shall not exceed 50 % of such final compensation, and in addition thereto shall be entitled to credits of 1/60th of their final compensation for each year completed after the effective date of the ordinance. The pension credits specified in this paragraph will not be allowable until after such member shall have reached the age of 55 and has completed 20 years of aggregate service in the department, provided, however, that such member may be permitted to retire at the age of 50 years after 20 years of aggregate service in the department with a reduced allowance, as provided in Article IX and the ordinance passed pursuant thereto. Except as to those members who are forced to retire because of disability or who die, 'Final Compensation' within the meaning of paragraphs 4 and 5 hereof shall be the highest average compensation received during any five consecutive years of service, limited, however, to the following monthly maximums for members who retire: During the first year after the ordinance is adopted, \$400.00; during the second year, \$500.00; during the third year, \$600.00; during the fourth year, \$700.00; during the fifth year, \$800.00; and after the end of the fifth year there shall be no ceiling considered in determining the amount of the final compensation. As to those members who are compelled to retire because of disability or who die after the ordinance becomes effective 'Final Compensation' shall be defined as above, but with the following monthly maximums: For death or disability occurring during the first year, after the ordinance is adopted, \$500.00; during the second year, \$600.00; during the third year, \$700.00; during the fourth year, \$800.00; during the fifth year, \$900.00; and after the end of the fifth year no ceiling shall be considered in determining the amount of the final compensation.
- (6) No member of either the Fire or Police Departments transferred pursuant to the provisions of this Article of the Charter shall be required to contribute in excess of 8% of his total salary; and each member so transferred shall be classed as a safety member of a special class and shall be entitled to all of the service credit earned by such member in the Police and Fire Retirement System up to the date of transfer without further contributions from said member because of absences prior thereto while serving in the armed forces of the United States.

Immediately upon the taking effect of the ordinance making the transfer of members into the City Employees' Retirement System, all of the provisions of Article IX not inconsistent with the hereinabove provided, together with any ordinance passed pursuant

thereto, shall be applicable to such transferred members, and the Police and Fire Retirement System heretofore created in 1947 is abolished, and except as prescribed by this amendment all benefits therein authorized are canceled.

All moneys in the Police and Fire Retirement Fund at the date of the taking effect of the ordinance transferring said members are hereby transferred to the City Employees' Retirement Fund.

Nothing herein contained shall be construed in any way so as to affect the vested rights of members of the Police and Fire Departments who have been heretofore retired by virtue of any retirement or pension system of The City of San Diego.

(Amendment voted 04-19-1955; effective 05-05-1955.)

Note: Sections 149-192, relative to Police Relief and Pension Fund and Fire Relief and Pension Fund, were amended at various times, combined in 1947, and replaced in 1955 by new Article X.

(Amendment vote 11-02-2004; effective on 04-01-2005)

EXHIBIT 2

Article 4: City Employees' Retirement System

("Retirement System" incorp 1-22-1952 by O-5046 N.S., contained in O-10792 O.S. adopted 11-29-1926; repealed 10-25-1962 by O-8744 N.S.)
("City Employees' Retirement System" added 10-25-1962 by O-8744 N.S.)

Division 1: Creation of System and Definitions

("Definitions" incorp. 1-22-1952 by O-5046 N.S., contained in O-10792 O.S. adopted 11-29-1926; repealed 10-25-1962 by O-8744 N.S.)
("Creation of System and Definitions" added 10-25-1962 by O-8744 N.S.)

§24.0100 Purpose of Article

The purpose of this article is to recognize a public obligation to City employees for their long service in public employment by making provision for retirement compensation and death benefits as additional elements of compensation for future services and to provide a means by which City employees who become disabled may be replaced without inflicting hardship on the employees removed.
("Purpose of Article" added 12-8-1976 by O-11964 N.S.)

§24.0101 Creation of System

The City Employees' Retirement System created and established by the terms and provisions of Ordinance No. 10792, adopted by the Common Council of The City of San Diego on November 29, 1926, be, and the same is hereby continued in existence, except as hereinafter changed and modified.
("Creation of System" added 12-8-1976 by O-11964 N.S.)

§24.0102 Rights and Benefits

The rights and benefits heretofore earned, and which have become vested under the City Employees' Retirement System as created by said Ordinance No. 10792 of members of such system who have heretofore retired and are now receiving retirement allowances are hereby preserved in all particulars, and nothing in this ordinance contained shall be construed in any way to affect any of such rights and benefits.
("Rights and Benefits" added 12-8-1976 by O-11964 N.S.)

§24.0103 Definitions

Unless otherwise stated, for purposes of this Article:

“Accumulated Additional Contributions” means the sum of additional contributions standing to the credit of a Member’s individual account and interest thereon.

“Accumulated Contributions” means Accumulated Normal Contributions plus any Accumulated Additional Contributions standing to the credit of a Member’s account.

“Accumulated Normal Contributions” means the sum of all normal contributions standing to the credit of a Member’s individual account and interest thereon.

“Actuarial Equivalent” means a benefit of equal value when computed upon the basis of the mortality, interest and other tables adopted by the Board for this purpose.

“Actuary” means the actuary regularly employed on a full or part-time basis by the Board.

“Annuity” means payment for life derived from contributions made by a Member.

“Base Compensation” means and includes the base salary or wages paid (standard hours multiplied by the hourly rate) on a regular bi-weekly basis to an employee for his or her services in any given pay period, including (by way of example) but not limited to such items of compensation as: time during which the employee is excused from work for holidays, annual leave taken, sick leave taken, compensatory time off taken, industrial leave taken, discretionary leave taken, and pay for out-of-class assignments. Base Compensation means salary before pre-tax deductions for such items as participation in a deferred compensation plan, SDCERS, or for authorized dependent health care premiums. A complete listing of included and excluded items of compensation or remuneration is memorialized in a document entitled “Earnings Codes Included in Retirement Base Compensation [the Earnings Codes Document], which is prepared annually and which shall be kept on file in the Office of the City Clerk, and also maintained by the City Manager, the City Auditor, the Retirement Administrator and the Personnel Director. The Earnings Codes Document shall be amended annually, as necessary to reflect any changes or additions made during the City’s budget adoption process.

For purposes of calculating retirement benefits, *“Base Compensation”* shall not include any item of compensation or remuneration which is identified in the Earnings Codes Document as excluded from Base Compensation, including (by way of example) but not limited to: the Flexible Benefits Plan dollar value available to an

employee each fiscal year; the amount of an employee's retirement system contribution which the City pays on behalf of the employee [the Retirement Offset]; payments made for overtime work (whether at straight or premium pay, and whether paid directly or by conversion to compensatory time off); payments made by the City to the Supplemental Pension Savings Plan on behalf of an employee; payments made by the City to an employee in lieu of the employee's taking of accrued annual leave; payments made by the City to an employee as a Uniform Allowance or Uniform Reimbursement, or the monetary value of employer-provided uniforms; payments made by the City to an employee as a Tool Allowance; payments made by the City to an employee as an Automobile Allowance or for reimbursement of miles driven while using a personal vehicle for work-related duties; payments made by the City to an employee as a Moving Allowance; payments made by the City to an employee for exceptional performance or pursuant to a "pay for performance" plan, unless such payments are expressly designated in the annual Salary Ordinance for inclusion in Base Compensation; payments made to an employee pursuant to the City's Long Term Disability Plan or pursuant to the Worker's Compensation Statute; and cash conversions of accrued, unused annual leave or "old" sick leave, in connection with or in anticipation of separation from employment.

"Base Retirement Benefit" means the monthly retirement benefit for service or disability paid to a Member, or a like amount which is deposited monthly in the account of a DROP Participant, which includes: 1) the Unmodified Service Retirement allowance (which shall be modified if the member selects an optional retirement as provided in Division 6); 2) the Cost of Living Annuity; 3) the annual Cost of Living Adjustment (COLA) described in Section 24.1505; and 4) the Surviving Spouse Annuity described in Section 24.0521 if selected by the Member. The Base Retirement Benefit does not include the Annual Supplemental Benefit (13th check) described in Section 24.1503 or the Supplemental COLA adjustment described in Section 24.1504.

"Beneficiary" means any person in receipt of a pension, annuity, retirement allowance, death benefit, or any other benefit authorized by this Article.

"Board" means the Board of Administration for the City Employees' Retirement System.

"City sponsored health insurance plan" means a group health insurance plan, selected by and in contractual privity with the City of San Diego, made available to Health Eligible Retirees.

"Code" unless otherwise indicated means the Internal Revenue Code of 1986, as amended.

“*Continuous Service*” means service of an eligible Member deemed to be of a continuous nature pursuant to Section 24.1005 of this Code. “*Continuous Service*” shall not be construed as synonymous with “Creditable Service.”

“*Cost of Living Annuity*” means an amount to be added to the retirement allowance of a Member or Officer, calculated by computing the actuarial equivalent of the accumulated contributions in the cost of living annuity account of the Member or Officer at the time of the retirement of the Member or Officer.

“*Creditable Service*” for purposes of qualification for benefits and retirement allowances under this System means service rendered for compensation as an employee or officer (employed, appointed or elected) of the City or a contracting agency, and only while he or she is receiving compensation from the City or contracting agency, and is a Member of and contributing to this System pursuant to appropriate provisions of this Article. Except as provided in Chapter 2, Article 4, Division 13, for which repurchase of credits may be permissible, time during which a Member is absent from City service without compensation shall not be allowed in computing Creditable Service. The term “*Current Service*,” shall mean the same as Creditable Service.

“*Creditable Service Pension*” means the pension derived from the contributions of the City, that when added to the Member’s Service Retirement Annuity, is sufficient to equal the Unmodified Service Retirement Allowance.

“*Deferred Member*” means any Member who leaves his or her employee contributions on deposit with the Retirement System after terminating City or contracting agency service. When a Deferred Member applies for retirement benefits, he or she is entitled, when eligible, for the retirement benefits in effect on the day the Deferred Member terminates City or contracting agency service and leaves his or her contributions on deposit with the Retirement System.

“*Drop*” means Deferred Retirement Option Plan, an alternative method of benefit accrual described in Division 14.

“*Elected Officer*” means the Mayor, members of the City Council, and the City Attorney.

“*Final Compensation*” for General Members and Elected Officers means the Base Compensation based on the highest one year period during membership in the Retirement System for those Members and Officers who are on the active payroll of the City of San Diego on or after June 30, 1989, and who retire on or after July 1, 1989.

“Final Compensation” for Safety Members means the Base Compensation for the highest one year period during membership in the Retirement System, for those Safety Members who are on the active payroll of The City of San Diego on or after January 1, 1988, and who retire on or after July 1, 1988.

“General Member” is any Member not otherwise classified as a Safety Member or Elected Officer.

“Health Eligible Retiree” means any retired General Member, Safety Member, or Elected Officer who: (1) was on the active payroll of the City of San Diego on or after October 5, 1980, and (2) retires on or after October 6, 1980, and (3) is eligible for and is receiving a retirement allowance from the Retirement System.

“Investment Earnings Received” means all interest received (net of interest purchased) on notes, bonds, mortgages, short-term money market instruments, and savings accounts; cash dividends received on stock investments; and all realized gains and losses from the sale, trade, or conversion of any investments of the Retirement System.

“Member” means any person employed by the City of San Diego who actively participates in and contributes to the Retirement System, and who will be entitled, when eligible, to receive benefits from the Retirement System. There are three classes of Member: General, Safety, and Elected Officer.

“Normal Contributions” means contributions by a Member at the normal rates of contribution, but does not include additional contributions by a Member.

“Prior Service” means service prior to January 1, 1927.

“Public Agency” means any city or public agency, located or having jurisdiction wholly or partially within the County of San Diego, that has no private sector ownership or control and has only public employees.

“Public Agency Participant” means a Public Agency employee who is: (1) compensated through the Public Agency’s payroll system, (2) treated as an employee by the Public Agency for tax-reporting and other purposes, and (3) participates in the Public Agency’s retirement plan administered by the Retirement System under Division 18 of this Article.

“Qualified Retiree” means a retiree who is eligible to receive the annual supplemental benefit set forth in Division 15.

“*Retirement Fund*” means the trust fund created by the City Charter in Article IX.

“*Retirement System*” and “*System*” means the City Employees’ Retirement System as created by this Article, and the “1981 Pension System” means the Employees’ Retirement System as created by Chapter II, Article 4, Division 11.

“*Safety Member*” means any Member who is: (1) a sworn officer of the City Police Department hired after July 1, 1946, (2) a uniformed member of the City Fire Department hired after July 1, 1946, (3) a full-time City lifeguard, or (4) effective July 1, 2003, a Police Department recruit employed by the City and participating in the City’s Police Academy. Except as provided above, police cadets, persons sworn for limited purposes only, and all other employees of the Police Department, Fire Department and lifeguard service are not Safety Members.

“*Service Retirement Annuity*” means the Annuity which is the Actuarial Equivalent of the Member’s Accumulated Normal Contributions at the time of the Member’s retirement.

“*Surviving Spouse Annuity*” means an amount to be added to the Member’s Base Retirement Benefit, calculated by computing the Actuarial Equivalent of the Accumulated Contributions in the Member’s Surviving Spouse Annuity account at the time of the Member’s retirement or participation in DROP, if the Member is not married at the effective date of retirement and elects to annuitize.

“*Undistributed Earnings Reserve*” shall mean the balance remaining in the account to which the earnings to the fund are credited, after the annual distribution to the employee and employer reserve accounts in accordance with interest assumption rates established by the Board, plus accumulated earnings which have not been so distributed.

“*Unmodified Service Retirement Allowance*” means the monthly allowance paid to a Member based on a formula using the Member’s age at retirement, the Member’s Final Compensation, and the Retirement Calculation Factor selected by the Member for the calculation of the Member’s Base Retirement Benefit, in accordance with Sections 24.0402 and 24.0403.

(Amended 6-3-2003 by O-19183 N.S.)

§24.0103.1 Compliance with the California Domestic Partner Rights and Responsibilities Act of 2003

Unless otherwise stated, for purposes of this article: “surviving spouse” includes a registered Domestic Partner pursuant to the California Domestic Partner Rights and Responsibilities Act of 2003.

(“*Compliance with the California Domestic Partner Rights and Responsibilities Act of 2003*” added 1-17-2007 by O-19568 N.S.; effective 2-16-2007.)

§24.0104 Membership

- (a) Membership in the Retirement System shall be compulsory and a condition of employment for all members of the classified and unclassified service.
- (b) Effective July 1, 1991, employees in the Classified Service are required to join the Retirement System on the date of their employment.
- (c) Employees in the classified service paid on an hourly basis are not eligible for membership in the Retirement System nor shall they accrue any benefits in this system except as provided in Section 24.1304. Salaried employees in the classified service including those working one-half (1/2) or three-quarter (3/4) time are eligible for and shall become members of the Retirement System. Retirement benefits shall accrue to the above eligible members in the same proportion to full benefits as their service relates to the service of a full-time member.
- (d) Effective August 11, 1993, employees in the unclassified service are required to join the Retirement System on the date of their employment providing they are employed one-half (1/2), three-quarter (3/4) or full-time. Upon joining the System, they shall receive all the privileges and benefits afforded other members and shall be bound by all regulations governing such membership.
- (e) All eligible members in the Classified service transferring to the unclassified service pursuant to Section 117 of the City Charter shall be required to remain in and maintain membership in the Retirement System unless said person first terminates classified employment prior to assuming the unclassified position.
("Membership" renumbered from Sec. 24.0105 and amended 3-31-1997 by O-18392 N.S.)

§24.0105.1 Same—Exclusion From

Notwithstanding the provisions of Section 24.0104, all persons hired by The City of San Diego after January 3, 1975, pursuant to provisions of federally funded programs of limited duration not requiring as a condition of such program transition to permanent positions in the Classified Service of the City, shall be ineligible for membership in the Retirement System.

("Same—Exclusion From" added 2-13-1975 by O-11488 N.S.)

§24.0106 Transfer of Special Class

All members of the Police and Fire Retirement System for policemen and firemen of The City of San Diego who were regularly employed on June 30, 1946, are hereby transferred to the City Employees' Retirement System, who from the effective date of this amendment shall be classed and known as safety members of a special class, or

special class safety members. From and after the effective date of this amendment all of such members so transferred shall be entitled to all of the privileges and benefits of safety members of the City Employees' Retirement System, except as hereinafter in this ordinance specifically provided to the contrary.

("Transfer of Special Class" added 12-8-1976 by O-11964 N.S.)

§24.0107 Severability

If any section or part of this article be, for any reason, held unconstitutional or invalid by a court of competent jurisdiction, that holding shall not affect the validity of the remaining portions of this division, but such remaining portions shall be and remain in full force and effect.

("Severability" added 1-12-1971 by O-10479 N.S.)

EXHIBIT 3

LEXSTAT CA LAB C 4659

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LABOR CODE
Division 4. Workers' Compensation and Insurance
Part 2. Computation of Compensation
Chapter 2. Compensation Schedules
Article 3. Disability Payments

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Lab Code § 4659 (2007)

§ 4659. Permanent disability 70% or more; Permanent total disability; Annual payment increases

(a) If the permanent disability is at least 70 percent, but less than 100 percent, 1.5 percent of the average weekly earnings for each 1 percent of disability in excess of 60 percent is to be paid during the remainder of life, after payment for the maximum number of weeks specified in Section 4658 has been made. For the purposes of this subdivision only, average weekly earnings shall be taken at not more than one hundred seven dollars and sixty-nine cents (\$107.69). For injuries occurring on or after July 1, 1994, average weekly wages shall not be taken at more than one hundred fifty-seven dollars and sixty-nine cents (\$157.69). For injuries occurring on or after July 1, 1995, average weekly wages shall not be taken at more than two hundred seven dollars and sixty-nine cents (\$207.69). For injuries occurring on or after July 1, 1996, average weekly wages shall not be taken at more than two hundred fifty-seven dollars and sixty-nine cents (\$257.69). For injuries occurring on or after January 1, 2006, average weekly wages shall not be taken at more than five hundred fifteen dollars and thirty-eight cents (\$515.38).

(b) If the permanent disability is total, the indemnity based upon the average weekly earnings determined under Section 4453 shall be paid during the remainder of life.

(c) For injuries occurring on or after January 1, 2003, an employee who becomes entitled to receive a life pension or total permanent disability indemnity as set forth in subdivisions (a) and (b) shall have that payment increased annually commencing on January 1, 2004, and each January 1 thereafter, by an amount equal to the percentage increase in the "state average weekly wage" as compared to the prior year. For purposes of this subdivision, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance as reported by the United States Department of Labor for California for the 12 months ending March 31 of the calendar year preceding the year in which the injury occurred.

HISTORY:

Added Stats 1971 ch 1750 § 5.7, operative April 1, 1972. Amended Stats 1973 ch 1023 § 7, operative April 1, 1974. Amended Stats 1993 ch 121 § 52.5 (AB 110), effective July 16, 1993; Stats 2002 ch 6 § 67 (AB 749).

EXHIBIT 4

LEXSTAT CAL LAB CODE § 3202

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LABOR CODE
Division 4. Workers' Compensation and Insurance
Part 1. Scope and Operation
Chapter 1. General Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Lab Code § 3202 (2007)

§ 3202. Construction

This division and Division 5 (commencing with Section 6300) shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment.

HISTORY:

Enacted 1937. Amended Stats 1984 ch 193 § 96; Stats 1986 ch 248 § 158.

EXHIBIT 5

LEXSTAT CA GOV C 21020

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GOVERNMENT CODE
Title 2. Government of the State of California
Division 5. Personnel
Part 3. Public Employees' Retirement System
Chapter 11. Service Credit
Article 5. Credit for Public Service

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 21020 (2007)

§ 21020. "Public service"

"Public service" for purposes of this article means the following:

(a) The period of time an employee served the state, a school employer, or a contracting agency prior to becoming a member, when the service was rendered in a position in which the employee was excluded provided one of the following conditions is met:

- (1) The position has since become subject to compulsory membership in this system.
- (2) The employee was excluded because the employee was serving on a part-time basis.
- (3) The employee was excluded because the employee failed to exercise the right to elect membership under this part.

(b) Employment in the State Emergency Relief Administration or the State Relief Administration, regardless of the source of the compensation paid for that employment.

(c) Employment as an academic employee of the University of California prior to October 1, 1963.

(d) Employment by the state in which the person was not eligible for membership in this system if the ineligibility was solely because his or her compensation was paid from other than state-controlled funds. However, time spent in work as a work relief recipient under programs such as, but not limited to, the Works Progress Administration, the Civil Works Administration, the Federal Emergency Relief Administration, the National Youth Administration, and the Civilian Conservation Corps, shall not constitute public service.

(e) Employment in a function formerly performed by a public agency other than a contracting agency and assumed by a contracting agency where the employees who performed those functions are or were transferred to or employed by the contracting agency without change in occupation or position.

(f) Civilian service as an employee or officer of an agency of the government of the United States that performed functions the same as or substantially similar to those performed by this state prior to January 1, 1942, and that were transferred from the state to that agency, including military service in any branch of the Armed Forces of the United States performed by an individual on military leave of absence from that federal employment, if all the following conditions exist:

Cal Gov Code § 21020

(1) Prior to performing that federal service he or she was employed by the state.

(2) He or she was laid off from state service or would have been laid off if he or she had not been absent in military service because of the transfer of the functions of the state to an agency of the United States government.

(3) Subsequent to his or her layoff from state service he or she was employed by the United States government in an agency performing functions the same as or substantially similar to those of the state agency from which he or she was laid off.

(4) After his or her separation from federal service, he or she was employed by a state agency.

(5) In lieu of paragraphs (1), (2), and (3), the United States government pays to the state or an agency of the state, funds equal to contributions that would have been made by the state had the member been in state service for the period of his or her public service with respect to members who were not employed by the state prior to entering that federal employment or whose state service prior to entering that federal employment was terminated for reasons other than the transfer of the function.

(g) Employment in a district, prior to the time the district became a subsidiary district of a city, of a person who was employed by the city following the reorganization to render service to the district and who became a member in that employment.

HISTORY:

Added Stats 1995 ch 379 § 2 (SB 541). Amended Stats 1996 ch 906 § 124 (SB 1859); Stats 2000 ch 489 § 9 (AB 2840).

EXHIBIT 6

LEXSTAT CAL GOV CODE § 31720

Deering's California Codes Annotated
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GOVERNMENT CODE
Title 3. Government of Counties
Division 4. Employees
Part 3. Retirement Systems
Chapter 3. County Employees Retirement Law of 1937
Article 10. Disability Retirement

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Gov Code § 31720 (2007)

§ 31720. Permanent incapacitation

Any member permanently incapacitated for the performance of duty shall be retired for disability regardless of age if, and only if:

- (a) The member's incapacity is a result of injury or disease arising out of and in the course of the member's employment, and such employment contributes substantially to such incapacity, or
- (b) The member has completed five years of service, and
- (c) The member has not waived retirement in respect to the particular incapacity or aggravation thereof as provided by Section 31009.

The amendments to this section enacted during the 1979-80 Regular Session of the Legislature shall be applicable to all applicants for disability retirement on or after the effective date of such amendments.

HISTORY:

Added Stats 1947 ch 424 § 1. Amended Stats 1955 ch 1756 § 6; Stats 1957 ch 1388 § 1; Stats 1959 ch 1184 § 6.5; Stats 1965 ch 650 § 2; Stats 1980 ch 240 § 1.

EXHIBIT 7

Article 4: City Employees' Retirement System

Division 5: Disability Retirements

*("Benefits" incorp. 1-22-1952 by O-5046 N.S.,
contained in O-10792 O.S., adopted 11-29-1926;
repealed 10-25-1962 by O-8744 N.S.)*

*("Disability Retirement for Members and
Safety Members" added 10-25-1962 by O-8744 N.S.)
(Retitled to "Disability Retirements"
on 2-8-1993 by O-17891 N.S.)*

§24.0501 Industrial Disability—Safety and General Members

- (a) Any Member who joined the Retirement System on or before September 3, 1982, is eligible for an industrial disability retirement allowance, regardless of his or her age or Creditable Service, if:
 - (1) the Member is permanently incapacitated from the performance of duty,
 - (2) the Member's incapacity is the result of injury or disease arising out of or in the course of his or her City employment, and
 - (3) the Member's incapacity renders his or her retirement necessary.

- (b) Any Member who enrolled in the Retirement System after September 3, 1982 will receive an industrial disability retirement allowance, regardless of his or her age or Creditable Service, if:
 - (1) the Member is permanently incapacitated from the performance of duty,
 - (2) the Member's incapacity is the result of injury or disease arising out of or in the course of his or her employment,
 - (3) the Member's incapacity renders his or her retirement necessary, and
 - (4) the Member's incapacity did not arise from:
 - (A) a preexisting medical condition, or

- (B) a nervous or mental disorder.
- (c) For purposes of section 24.0501, a preexisting medical condition is a condition that occurred or existed before the Member joined the Retirement System. Any medical condition that occurs during a mandatory waiting period before the Member is eligible to join the Retirement System is not a preexisting condition.
- (d) Despite section 24.0501(b)(4), a Member who is employed by the City as of July 1, 2000 is eligible for an industrial disability retirement if all of the following conditions are met:
 - (1) the Member is a victim of a violent attack involving the use of deadly force,
 - (2) the attack occurs on or after July 1, 2000,
 - (3) the attack occurs before July 1, 2003, if the Member is in the Police Officers' Association bargaining unit, or before July 1, 2005, for all other Members,
 - (4) the attack occurs while the Member is performing his or her duties as a City employee,
 - (5) the attack causes the Member great bodily harm,
 - (6) the attack causes the Member to suffer a nervous or mental disorder, and
 - (7) the Board determines, based upon the medical evidence, that the Member has become psychologically or mentally incapable of performing his or her normal and customary duties, as a result of the attack.

(Amended 11-18-2002 by O-19121 N.S.)

§24.0502 Industrial or Non-Industrial—Service Retirement if Greater

Upon retirement for industrial or non-industrial disability, a member, including a safety member, who has attained the minimum age at which he may retire for service, shall receive his service retirement allowance, if greater.

(“Industrial or Non-Industrial—Service Retirement if Greater” added 12-8-1976 by O-11964 N.S.)

§24.0503 Industrial Disability—Safety Member—Computation of Benefits

Upon retirement of a Safety Member for industrial disability: (a) that Member shall receive in equal monthly installments a disability retirement allowance of 50% of Final Compensation plus an Annuity purchased with Accumulated Additional Contributions, if any; or, (b) if qualified for service retirement, that Member shall receive the service retirement allowance if such allowance, after deducting such additional Annuity is greater than the amount specified in Section 24.0503(a). The disability retirement allowance for a Safety Member retired because of industrial disability shall be derived from an Annuity based on that Member's Accumulated Normal Contributions and a disability retirement pension derived from contributions of the City.

(Amended 2-25-1997 by O-18383 N.S.)

§24.0504 Non-Industrial Disability—Safety Member—Computation of Benefits

Upon retirement of a safety member for non-industrial disability, he shall receive a non-industrial disability retirement allowance which shall consist of:

- (a) An annuity which is the actuarial equivalent of his accumulated normal contributions at the time of retirement.
- (b) If in the opinion of the Board his non-industrial disability is not due to intemperance, willful misconduct, or violation of law on his part, a disability retirement pension derived from the contributions of the City. The disability retirement pension shall be such an amount as, with that portion of his annuity provided by his accumulated normal contributions, will make his disability retirement allowance equal to 90% of one 1/50th of his final compensation multiplied by the number of years of service credited to him or 1/3 of his final compensation, whichever is greater.

(“Non-Industrial Disability—Safety Member—Computation of Benefit renumbered from Sec. 24.0503.1 on 2-25-1997 by O-18383 N.S.)

§24.0505 Industrial Disability—General Member—Computation of Benefits

Upon retirement of a General Member for industrial disability:

- (a) that Member shall receive in equal monthly installments a disability retirement allowance of 50% of Final Compensation plus an Annuity purchased with Accumulated Additional Contributions, if any; or,

- (b) if qualified for service retirement, that Member shall receive the service retirement allowance if such allowance, after deducting such additional Annuity is greater than the amount specified in Section 24.0505(a). The disability retirement allowance for a General Member retired because of industrial disability shall be derived from an Annuity based on that Member Accumulated Normal Contributions and a disability retirement pension derived from contributions of the City.

("Industrial Disability—General Member—Computation of Benefits," renumbered from Sec. 24.0504.1 and amended 2-25-1997 by O-18383 N.S.)

§24.0506 Non-Industrial Disability—General Member—Computation of Benefits

Upon retirement of a general member for non-industrial disability, he shall receive a non-industrial disability retirement allowance which shall consist of:

- (a) An annuity which is the actuarial equivalent of his accumulated normal contributions at the time of retirement.
- (b) If in the opinion of the Board his non-industrial disability is not due to intemperance, willful misconduct, or violation of law on his part, a disability retirement pension derived from the contributions of the City. The disability retirement pension shall be such an amount as, with that portion of his annuity provided by his accumulated normal contributions, will make his disability retirement allowance equal to 90% of 1/ 60th of his final compensation multiplied by the number of years of service credited to him, or 1/3 of his final compensation, whichever is greater.

("Non-Industrial Disability—General Member—Computation of Benefits" renumbered from Sec. 24.0505.1 on 2-25-1997 by O-18383 N.S.)

§24.0508 Minimum Benefit Due to Intemperance, Willful Misconduct or Violation of the Law

If in the opinion of the Board the disability is due to intemperance, willful misconduct or violation of law on the part of the member, including a safety member, and his annuity is less than \$240.00 per year, the Board may pay the member his accumulated contributions in one lump sum in lieu of his annuity.

("Minimum Benefit Due to Intemperance, Willful Misconduct or Violation of the Law" added 12-8-1976 by O-11964 N.S.)

§24.0509 Annual Filing of Disability Affidavit

The Board of Administration shall prescribe rules and regulations for an annual filing of an affidavit of condition of disability from any member, including a safety member, who has been retired for disability, industrial or non-industrial. The Board may at any time prior to the time such member reaches the minimum age for voluntary retirement order suspension of benefits for failure to timely submit such affidavits or for failure to comply with any lawful order of the Board.

("Annual Filing of Disability Affidavit" added 12-8-1976 by O-11964 N.S.)

§24.0510 Periodic Physical Exams of Disability Retirees

The Board of Administration shall prescribe rules and regulations providing for periodical physical examination of any member, including a safety member, who has been retired for disability, industrial or non-industrial, and may at any time prior to the time or before such member reaches the minimum age of voluntary retirement order such employee to active duty, in which case said disability retirement allowance shall cease.

("Periodic Physical Exams of Disability Retirees" added 12-8-1976 by O-11964 N.S.)

§24.0515 Industrial Disability—Workers Compensation

(a) If, pursuant to general law, an award of compensation shall be made or compensation shall be paid on account of injury or sickness caused by or arising out of employment as an employee of The City of San Diego, that compensation shall not be cumulative with any industrial disability retirement allowance provided for in this article. Such compensation, as may be awarded, shall be set off against any disability retirement pension payments which is the obligation of the City. If the amount of compensation as may be awarded is paid in one sum or in installments equal to or greater than the monthly disability retirement pension payment, no disability retirement pension payments shall be paid until the disability retirement pension payments equal the amount of compensation awarded and paid. No deductions shall be made from the annuity portion of any disability retirement allowance awarded to a member. This provision shall apply only to those persons hired by The City of San Diego on or after October 1, 1978.

(b) Notwithstanding the provision of subsection (a) above, the requirement to set off any compensation received in the nature of workers compensation shall not be applicable to safety members from and after January 1, 1988. All set-off requirements and actions previously imposed upon safety members

pursuant to this section shall, as of January 1, 1988 be discontinued such action to be prospective only. No right of claim to prior valid offsets (prior to January 1, 1988) shall exist. Such discontinuance shall apply to all existing and future industrially retired safety members.

- (c) Notwithstanding the provision of subsection (a) above, the requirement to set off any compensation received in the nature of workers compensation shall not be applicable to general members from and after July 1 1989. All set-off requirements and actions previously imposed upon general members pursuant to this section shall, as of July 1, 1989 be discontinued, such action to be prospective only. No right of claim to prior valid offsets (prior to July 1, 1989) shall exist. Such discontinuance shall apply to all existing and future industrially retired general members.

(Amended 5-15-1989 by O-17295 N.S.)

of the benefit. If the surviving spouse chooses the lump sum payment, the actuarial present value will be determined as of the date of the Member's death.

- (e) If there is no surviving spouse or child eligible to receive the death while eligible benefit, the System will pay the active death benefit to the Member's named Beneficiary. If there is no named Beneficiary, the sum will be paid as stated in section 24.0706.

("Basic Death Benefit Payment Options" repealed; "Death While Eligible Benefit" added 4-2-2002 by O-19043 N.S.)

§24.0705 Industrial Death Benefit

- (a) The System will pay the industrial death benefit, instead of the active death benefit, when a Member dies from industrial causes, as determined by the Workers' Compensation Appeals Board using its normal hearing procedures, if:

- (1) there is a surviving spouse who is named as the Member's Beneficiary and was married to the Member when the Member died, or
- (2) the Member had one or more children under the age of 18 when the Member died.

- (b) The industrial death benefit is the sum of the following:

- (1) A monthly allowance equal to one-half of the Member's Final Compensation, paid to the Member's surviving spouse for the surviving spouse's life. If there is no qualifying surviving spouse, or if the surviving spouse dies before all of the Member's dependent children reach the age of 18, the System will pay this monthly amount in equal shares to the Member's children under the age of 18 until each child dies or reaches the age of 18. This benefit begins to accrue on the day after the Member dies.
- (2) An annuity that is the actuarial equivalent of the Member's Accumulated Additional Contributions on the date the Member died, payable monthly to the Member's surviving spouse for life. If there is no qualifying surviving spouse, the System will pay the Member's Accumulated Additional Contributions in lump sum and in equal shares to the Member's children under the age of 18.

- (c) Payment of the industrial death benefit will stop when the Member's surviving spouse dies and all of the Member's children have either died or reached the age of 18. If this occurs before the sum of the monthly payments made, excluding the annuity derived from the Member's Accumulated Additional Contributions, equals the active death benefit, the System will pay the remainder in lump sum and in equal shares to the Member's surviving children. The System will also pay the Member's Accumulated Additional Contributions, less the Annuity paid from these contributions, to the Member's surviving children, in equal shares. If there are no surviving children, the System will pay the remainder to the Member's named Beneficiary. If there is no named Beneficiary, the sum will be paid as stated in section 24.0706.
- (d) A surviving spouse who is eligible to receive the industrial death benefit may elect instead to receive a lump sum payment of the actuarial present value of the benefit. If the surviving spouse chooses the lump sum payment, the actuarial present value will be determined as of the date of the Member's death.
- (e) If, at the time of the Member's death, the Worker's Compensation Appeals Board has not yet determined whether the Member's death was industrial, the System may pay the active death benefit. If the Worker's Compensation Appeals Board later determines that the Member's death was industrial, and there is a qualifying surviving spouse or minor child, the System will then pay the special death benefit less the amount of the active death benefit.
("Special Death Benefit — Safety Member" repealed; "Industrial Death Benefit" added 4-2-2002 by O-19043 N.S.)

§24.0706 Beneficiary Not Designated

- (a) The System will pay all amounts due because of the death of a Member or retiree as provided in subdivision (b) of this section if the Member's estate would not be probated if no amounts were due from the System and:
 - (1) the Member did not name a Beneficiary,
 - (2) there is no living named Beneficiary,
 - (3) after reasonable efforts, the Board is unable to locate the named Beneficiary, or
 - (4) the Beneficiary is the Member's estate.

EXHIBIT 8

LEXSEE 126 CAL. APP. 3D 523

**LEO R. GURULE, Plaintiff and Respondent, v. BOARD OF PENSION
COMMISSIONERS OF THE CITY OF LOS ANGELES, Defendant and Appellant**

Civ. No. 60862

Court of Appeal of California, Second Appellate District, Division Five

126 Cal. App. 3d 523; 178 Cal. Rptr. 778; 1981 Cal. App. LEXIS 2440

December 7, 1981

PRIOR HISTORY: [***1] Superior Court of Los Angeles County, No. C294879, Harry L. Hupp, Judge.

DISPOSITION: The judgment is affirmed.

SUMMARY:**CALIFORNIA OFFICIAL REPORTS SUMMARY**

The trial court granted a petition for a writ of mandate filed by a city police officer who had sustained an orthopedic injury in the course of his employment, as well as a subsequent psychiatric disability, and commanded the city pension board to find that his permanent disability was service-connected. The board had ruled that the officer was only entitled to a nonservice-connected disability pension, finding that the incapacity was due to injuries other than his service-connected injuries. A provision of the city charter authorized service-connected pensions for incapacity "by reason of" a work-connected injury or disease. (Superior Court of Los Angeles County, No. C294879, Harry L. Hupp, Judge.)

The Court of Appeal affirmed. The court noted that the officer had suffered numerous injuries in the course of his employment and that his psychiatric disability was in part attributable to his work-connected injuries. Thus, the court held that substantial evidence supported the trial court's determination that the officer's psychiatric disability was a result of injuries sustained in his employment. The court further held that it was not necessary, under the charter's language, that the disability be solely or predominately attributable to a work-connected injury. Rather, the court held that the phrase "by reason of" required that there be some connection between the disability and the claimant's employment. (Opinion by Hastings, J., with Stephens, Acting P. J., and Ashby, J., concurring.)

HEADNOTES

**CALIFORNIA OFFICIAL REPORTS
HEADNOTES**

Classified to California Digest of Official Reports, 3d Series

(1) Pensions and Retirement Systems § 9 -- Retirement Systems -- Police Officers -- Service-connected Disability -- Connection Between Disability and Employment -- Aggravation of Preexisting Condition. -- In a mandamus proceeding against a city pension board, brought by a police officer who sustained numerous orthopedic injuries in the course of his employment, as well as a subsequent psychiatric disability, the trial court did not err in commanding the board to grant the officer a service-connected disability retirement pursuant to a provision of the city charter authorizing such retirement for incapacity "by reason of" a work-connected injury or disease. Although the medical reports demonstrated that the psychiatric disability was in part attributable to pre-existing conditions and only in part attributable to his injuries, they constituted substantial evidence supporting the trial court's determination that such disability was a result of injuries sustained in his employment. It was not necessary, under the charter's language, that the disability be solely or predominately attributable to a work-connected injury. Rather, the phrase "by reason of" required that there be some connection between the disability and the claimant's employment.

COUNSEL: Burt Pines, City Attorney, Siegfried O. Hillmer, Assistant City Attorney, and Beverly E. Mosley, Deputy City Attorney, for Defendant and Appellant.

Stillman, Furay, Green & Shinee and Ronald H. Stillman for Plaintiff and Respondent.

JUDGES: Opinion by Hastings, J., with Stephens, Acting P. J., and Ashby, J., concurring.

OPINION BY: HASTINGS

OPINION

[*524] [**779] Board of Pension Commissioners of the City of Los Angeles (appellant) appeals the granting of a petition for writ of mandate [*525] filed by Leo R. Gurule (respondent) commanding appellant to find that respondent's permanent disability was service-connected.

In the course of his employment as a police officer, respondent sustained an orthopaedic injury and at some subsequent time sustained psychiatric disability. While still employed, respondent made an application for a service-connected disability pension pursuant to the provisions of section 190.12 of the Charter of the City of Los Angeles. After a hearing before appellant it was determined that respondent was incapable of performing his duties [***2] with the police department, but it was found that said incapacity was caused by reason of injuries other than injuries received in the discharge of his duties. Appellant concluded that respondent was only entitled to the benefit of a nonservice-connected disability pension.

A petition for writ of mandate to the superior court was timely filed by respondent and was heard on October 12, 1979. The administrative record was received into evidence and the court exercised its independent judgment and weighed the evidence and after considering both written and oral arguments the court granted respondent a service-connected disability retirement pursuant to section 190.12(a) of the Los Angeles City Charter. It is from this judgment that appellant appeals.

Issue on Appeal

The court arrived at its decision by applying the law as stated in *Gelman v. Board of Retirement* (1978) 85 Cal.App.3d 92 [149 Cal.Rptr. 225], and its interpretation of *Government Code section 31720*¹ which it applied to section 190.12(a) of the Los Angeles City Charter. Appellant concedes that *Gelman* correctly interprets *section 31720* as it applies to service-connected [***3] disability claims but argues that the *Gelman* reasoning does not apply to section 190.12(a) of the Los Angeles City Charter because the wording of the two sections is essentially different.

¹ *Section 31720* pertains to claims made by Los Angeles County employees.

Discussion

The pertinent language in the two sections is as follows:

[**780] Section 190.12(a) provides: "(a) Service-Connected Disability. . . [Any] System Member whom the Board shall determine has become [*526] physically or mentally incapacitated *by reason of* injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his duties, shall be retired by order of the Board from further active duty as a Department Member. . . ." (Italics added.)

Government Code section 31720 provides: "Any member permanently incapacitated for the performance of duty shall be retired for disability regardless of age [***4] if, and only if: (a) The member's incapacity *is a result of* injury or disease arising out of and in the course of the member's employment, . . ." (Italics added.)

The trial court held that the phrase ". . . by reason of . . ." in section 190.12(a) was identical in meaning to the phrase ". . . is a result of . . ." in *section 31720*.

In our *Gelman* opinion we held that it was not necessary under *Government Code section 31720* for the employee to establish that his or her disability must be solely connected to an injury incurred in the course of the employment. The wording of the statute states his "incapacity *is a* result of injury or disease arising out of and in the course of his employment," not *the* result thereof. The basic principle enunciated by the opinion is that acceleration or aggravation of a preexisting condition is an incapacity that is *a* result of an injury arising out of the course of employment and therefore entitles the employee to a service-connected disability.

In our present case respondent had suffered numerous orthopaedic injuries while in the course and scope of his employment as a police officer. Prior to the [***5] orthopaedic injuries he had never had or suffered from any psychiatric disability. Respondent was examined at the request of appellant by four psychiatrists. In addition, there were medical reports from two other psychiatrists and two psychologists. Four of the psychiatrists were in agreement that the psychiatric disability which they perceived at the time of their examination was significantly related to respondent's orthopaedic injuries. Three other doctors were in agreement with the four psychiatrists. One doctor was of the opinion that the psychiatric disability was not job related. All of the parties to this appeal agree that in sum the medical reports demonstrate that respondent's psychiatric disability is threefold: (1) it is in part attributable to preexisting characterological deficiencies; (2) it is in part attributable to stresses placed upon him as a police officer, and (3) it is in part the result [*527] of the orthopaedic injuries sustained while performing his duties. We thus have substantial evidence

to support the trial court's determination that respondent's psychiatric disability was a result of injuries sustained in his employment.

(1) [***6] Appellant argues that the trial court erred in ruling that subsection (a) of section 190.12 provides a service-connected disability pension where the injury only aggravates or accelerates a preexisting condition. He contends the trial court in reading subsection (a) should not have placed the emphasis on the phrase ". . . by reason of injuries received . . . by the discharge of (his) duties . . ." but instead should have placed the emphasis on the later phrase in the section that states ". . . caused by the discharge of (his) duties . . ." Such emphasis, appellant claims, establishes that the disability must be solely or predominantly attributable to an injury received while performing the duties of a police officer.

The trial court disagreed, and its reasoning is expressed in its minute order of October 22, 1979, which states: "The Court has seriously considered but rejects respondent's argument that the provisions of the City Charter require a different result here than reached in the *Gelman* case and others like it. In *Gelman*, the Court was dealing with a statute providing for a service connected disability where the incapacity was 'a' result of service connected injury. [***7] The Court carefully points out that the result might be different if the statute required that the injury be 'the' result of the service connected injury. The language of Sec. [**781] 190.12 of Article XVIII of the Charter does not make the distinction which might cause a different result to be reached here. The operative language is that service connected disability is to be found where the employee is '. . . incapacitated by reason of injuries received or sickness caused by the discharge of the duties of such person . . .'"

"*The standard of causation* [italics added] is thus set by interpretation of the phrase '. . . by reason of . . .' which means the same as 'a result of.' The Charter could have been written to read 'incapacitated as the result of,' or 'incapacitated *predominantly* as the result of,' or 'incapacitated *solely* by reason of,' but was not."

We agree with the trial court's interpretation. The last portion of the court's minute order emphasizes that the standard of causation for the physical or mental incapacitation is preceded by the words ". . . by reason of . . ." which means the same as "as a result of." The court then [*528] emphasizes, [***8] as we did in *Gelman*, that the section could have been written to specifically require that the injury must be predominantly or the sole result of the work-connected disability. The phrase that appellant relies on is found later in the section and does not change the meaning as interpreted by the trial court, but is consistent therewith in that there must be *some*

connection between the disability and the claimant's employment.

Appellant contends the court should have considered the policy behind the new pension system² that includes section 190.12 in arriving at its conclusion. It is claimed that subsection (b) of 190.12³ was enacted to also protect employees with only marginal service-connected disability claims, and therefore subsection (a) of the same section can only apply to a service-connected claim that is substantially related to the disability. This argument is unpersuasive. The language of subparagraph (b) does not include a claimant such as respondent. It covers employees who do not have service-connected disability claims. The clear language is ". . . by reason of injuries . . . other than injuries caused by the discharge of the duties of such person . . ." [***9] . ." Instead of supporting appellant's position, subparagraph (b) emphasizes the correct interpretation placed on subparagraph (a) by the trial court. In view of the correct finding that respondent's disability was in some manner service-connected, subparagraph (a), not (b), was the only applicable section.

2 This so-called new pension system was adopted in 1967.

3 Section 190.12(b) provides: "(b) Nonservice-Connected Disability. . . . [Any] System Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries or sickness other than injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his duties, and if the Board further shall determine that such disability was not due to or caused by the moral turpitude of such System Member, shall be retired by order of the Board from further active duty as a Department Member. . . ."

Another reason cited by [***10] appellant for adopting its argument is that *section 31720 of the Government Code* was amended after the *Gelman* opinion to provide that an employee's service-connected disability must be substantially caused by an injury or disease arising in the scope of his or her employment. This argument, however, adds further credence to the trial court's decision in which it pointed out that the framers of the city charter could easily have used clarifying terminology that would have made it clear that such a result was intended. *Gelman* was decided on September 26, 1978. The present new pension system embodying [*529] section 190.12 was adopted in 1967. As noted in *Gelman*, pension legislation must be liberally construed, as pension provisions are founded upon sound public policy

126 Cal. App. 3d 523, *; 178 Cal. Rptr. 778, **;
1981 Cal. App. LEXIS 2440, ***

that seeks to protect, in proper cases, the pensioner and his dependents against economic insecurity. Numerous California cases have held that language similar to that found in [**782] section 190.12(a) must be liberally construed to provide a service-connected disability to injuries that merely aggravated preexisting conditions. (See *Dillard v. City of Los Angeles* (1942) 20 Cal.2d 599 [127 P.2d 917]; [***11] *Bradley v. City of Los Angeles* (1942) 55 Cal.App.2d 592 [131 P.2d 391]; *Faber v.*

Board of Pension Commissioners for the City of Los Angeles (1943) 56 Cal.App.2d 825 [133 P.2d 404].) It is therefore quite obvious that after *Gelman*, the wording of 190.12(a) was suspect and the charter should have been amended, as was *section 31720*, to clearly define its coverage.

The judgment is affirmed.

EXHIBIT 9

LEXSEE 85 CAL APP3D 92

Warning
As of: Dec 18, 2007

**DONALD N. GELMAN, Plaintiff and Appellant, v. BOARD OF RETIREMENT OF
THE LOS ANGELES COUNTY EMPLOYEES' RETIREMENT ASSOCIATION,
Defendant and Respondent**

Civ. No. 51990

Court of Appeal of California, Second Appellate District, Division Five

85 Cal. App. 3d 92; 149 Cal. Rptr. 225; 1978 Cal. App. LEXIS 1951

September 26, 1978

PRIOR HISTORY: [***1] Superior Court of Los Angeles County, No. C 162076, Norman R. Dowds, Judge.

DISPOSITION: The judgment denying the writ of mandate is reversed.

COUNSEL: Lemaire, Faunce & Katznelson and Steven R. Pingel for Plaintiff and Appellant.

John H. Larson, County Counsel, and Gregory Houle, Deputy County Counsel, for Defendant and Respondent.

JUDGES: Opinion by Hastings, J., with Stephens, Acting P. J., and Ashby, J., concurring.

OPINION BY: HASTINGS

OPINION

[*94] [**226] Appellant Donald Gelman sought by writ of mandate to set aside a decision by the Los Angeles County Employees' Retirement Association, Board of Retirement, (Board) denying him a service-connected disability pension. Appellant's writ was denied, and this appeal followed.

Appellant's career as a social worker for the County of Los Angeles began in 1957. In 1966, appellant's assignment was changed from working with geriatric welfare recipients to "aid to the totally disabled" cases, which included those disabled because of psychosis. Following a strike by Los Angeles County social work-

ers in the same year, appellant became depressed because he did not feel that the county welfare system was adequately caring for welfare recipients. [***2] This led to a belief that he was being restricted in his ability to deliver services to his clients, and that individual cases that he serviced suffered because of the limitations placed upon him.

In 1971, appellant became too ill to work. His symptoms of illness included insomnia, frequent nausea, vomiting, shaking, hypertension, difficulty in swallowing and breathing, and inability to concentrate and a loss of confidence. He applied for a service-connected disability retirement (SCDR) on June 12, 1972. On October 4, 1972, respondent Board found that appellant was disabled but that his disability was not service-connected, and granted him a nonservice disability retirement. On November 26, 1973, a hearing was held on the issue of the service-connectedness of appellant's disability before a hearing officer of Board. Medical reports of seven psychiatrists were admitted as evidence; five of them offered on behalf of appellant, and two by respondent Board. All of the psychiatrists whose reports were introduced on behalf of appellant found that his disability was service connected. Dr. Conrad, one of the board-appointed psychiatrists, took no position on the question of service-connection. [***3] The other board-appointed psychiatrist, Theodore Polos, M.D., concluded that the disability was not job-related. In his report, Dr. Polos stated with respect to the causation as follows: "Your second question I find is much more difficult to answer and in essence this patient has a chronic psychoneurosis with physical symptoms, etc. that existed as

early as age 22 to 23 when he was medically discharged from the Army. The passage of time without psychiatric treatment demonstrated a gradual increase in the severity of his symptoms until he had the severe onset of symptoms in 1971. I do not believe that his total [*95] illness is a result of injury on the job. However, it is my opinion that any stressful situation in other professions or occupations would have ultimately resulted in the same type of illness that we have seen in the last few years."

In denying appellant's petition for peremptory writ of mandate, the court made two findings of fact that are pertinent to this appeal. They are:

[**227] "9. Petitioner's employment with the County of Los Angeles aggravated Petitioner's pre-existing mental illness.

"10. Any employment in which Petitioner was likely to have [***4] been engaged would have aggravated Petitioner's pre-existing mental illness either to a greater extent than Petitioner's employment with the County of Los Angeles, or to the same extent as Petitioner's employment with the County of Los Angeles, but not to a lesser extent than Petitioner's employment with the County of Los Angeles."

The hearing officer for the Board had denied appellant's claim on the ground that he had not proved that there was substantial aggravation of his condition that was the proximate cause of his disability. ¹ Finding 10 (*ante*) is in agreement with this conclusion but explains the reasons behind it.

1 The verbatim conclusion was: "Based on all of the documentary and oral testimony before him (introduced and received at the November 26, 1973 Hearing), recognizing the basic conflict's among the expert Medical Reports, and after considering the excellent and professionally done Summary of Appellant's Medical Reports and Critique of the report of Dr. Theodore Polos, M.D. by Mr. Edward L. Faunce the undersigned Referee has concluded that the Applicant-Appellant has *not* borne the burden of showing that his County employment *either* caused directly or indirectly by substantial aggravation of a previously existing emotional condition his presently disabling emotional condition."

[***5] (1a) Appellant's argument on appeal is that the record conclusively establishes that his employment as a social worker aggravated his preexisting mental illness, therefore his disability must be held to have arisen out of and in the course of his employment as a matter of law. We agree.

It is clear that the trial court and the Board denied appellant his pension rights because of Dr. Polos' opinion that his emotional disability would have surfaced in any "stressful" employment, therefore the aggravation here was not substantially caused by his county employment. [*96] (2a) While this conclusion might seem, at first blush, to logically flow from the basic premise, it is not the law that the aggravation must be the sole or proximate cause of the disability. (1b) The five psychiatric reports introduced on behalf of appellant stated that his mental illness was substantially aggravated by his social work. Dr. Polos agreed there was aggravation, but "waffled" in his conclusion, saying: "I do not believe that his *total* illness is a result of injury on the job. However, it is my opinion that *any stressful* situation in other professions or occupations would have ultimately resulted in the [***6] same type of illness that we have seen in the last few years." (Italics added.) Dr. Polos is not saying that appellant's disability is unrelated to his employment with the county. Instead, he is saying it is not the *sole* cause.

Under workers' compensation law, an employer takes his employee as he finds him and any acceleration or aggravation of a preexisting disability becomes a service-connected injury of that employment. (*Kuntz v. Kern County Employees' Retirement Assn.*, 64 Cal.App.3d 414, 421 [134 Cal.Rptr. 501]; *Buckley v. Roche*, 214 Cal. 241, 245-246 [4 P.2d 929].) Although we are dealing here with a government retirement pension and not a workers' compensation claim, it is now well established that the two systems are likeminded in their aim to benefit the employee. In *Heaton v. Marin County Employees Retirement Bd.*, 63 Cal.App.3d 421 [133 Cal.Rptr. 809], the court states at page 428: "In view of the similarity of the service-connectedness language in the statutes governing retirement boards (*Gov. Code*, § 31720, *subd. (a)*) and workmen's compensation appeals boards (*Lab. Code*, § 3600), and the fact that, although the two schemes are independent [***7] and serve different functions, their purposes are "in harmony rather than in conflict" (*Pathe v. City of Bakersfield*, 255 Cal.App.2d 409, 416 [63 Cal.Rptr. 220]), application of such a nonstatutory rule by analogy might be appropriate.' Thus it seems clear that the tendency is to view the two bodies of law as compatible rather than the opposite."

[**228] The trial court was correct in stating that appellant's county employment aggravated his preexisting mental illness (finding No. 9). The record requires such a finding; however, under prevailing law, this determined appellant's right to his pension. In *Heaton, supra*, pages 428-429, the court notes: "[There] are two provisions in [*Gov. Code*] section 31720 which demonstrate that the disability does not have to be entirely ser-

