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# San Diego City Attorney Jan I. Goldsmith

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## NEWS RELEASE

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### **CITY SETTLES SUB-EQUAL LAWSUIT Reserves Right to Require Higher Contributions in the Future**

**San Diego, CA:** In an 8-1 vote, the San Diego City Council decided to settle the “substantially equal” lawsuit by not requiring employees to pay a higher contribution amount. The decision was based upon a policy decision of the Council, not the City’s legal position. Under Charter section 143, the City cannot be required to pay a higher amount, but could voluntarily consent, which it did. Under Proposition B, the City Council is authorized to do so with 6 or more votes and an approval by the court of the settlement as being made in “good faith.”

Under the settlement (which is attached), the City retains the right to require employees at a later point to pay more.

“The City Council has the right to decide policy,” said City Attorney Jan Goldsmith. “The only thing we care about is that the law is followed. The law states that the City cannot be required to pay more than a substantially equal amount. The City can, as it is doing here, agree to pay a higher amount as long as it is with 6 votes or more and approval of the court. A future Council can change this under the terms of the settlement.”

The basic terms of the settlement are as follows:

1. Settlement Agreement (paragraph 1) is based upon City Council policy decision not to require increased burden on employees in light of 5 year MOU’s. All parties stipulated that the following facts are true:

“The City and all of its labor unions agreed in June 2013 to a five year freeze on so-called pensionable pay, as that term is described in Proposition B, approved by the voters in June, 2012. The City estimates that such a freeze will result in a substantial reduction in the City’s annual contributions to the pension plan. In light of this freeze, the City Council has decided that it does not want to further increase the burden on employees thereby risking loss of valued employees, including those in public safety. Based thereon, it is the City Council’s desire as a policy matter to settle the City Contribution Lawsuit on the terms set forth in this Agreement. The City Attorney recommends the terms of this Agreement as a legal method of implementing the City Council’s policy.”

(more)

2. The City voluntarily agrees to SDCERS required contributions up to this point even if more than substantially equal. This is consistent with the law. Charter section 143 stated the City could not be required to pay more, but the City could voluntarily agree to do so.

3. The City will adopt an ordinance to codify this agreement. However, it is agreed that the ordinance may be amended, repealed, revoked and/or revised by City at any time subject to meet and confer and legal objections.

4. Proposition B changed Charter section 143 to prohibit the City from assuming more than a substantially equal contribution. However, an exception was created for settlement of the City Contribution Lawsuit provided that the settlement is approved by 6 votes on the City Council and approved by the court as a good faith settlement. This Agreement was approved by 6 votes and will be presented to the court for a good faith settlement determination.

5. The City and the unions may file cross-motions for attorney fees, but the motions would be resisted by the opposing party.

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