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CITY CLERK DEPT.

ORDINANCE NO. 016619

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AN ORDINANCE AMENDING TITLE 2, CHAPTER 64 (CITY EMPLOYEES' PENSION FUND) TO: (i) INCREASE EMPLOYER AND EMPLOYEE CONTRIBUTIONS TO THE FUND; (ii) CHANGE THE METHOD OF CONTRIBUTING TO THE FUND FROM POST-TAX BASIS TO PRE-TAX BASIS; (iii) REVISE THE VOTING PROCEDURES FOR THE ELECTION OF BOARD OF TRUSTEES OF THE FUND; AND (iv) ALLOW FOR INVESTING IN NEW ASSET CLASSES

WHEREAS, Title 2, Chapter 2.64 (City Employees' Pension Fund) of the El Paso City Code (the "*Code*"), establishes the creation of a pension fund (the "*Fund*") for non-uniformed employees of the City of El Paso (the "*City*");

WHEREAS, the Fund recently received an actuarial valuation, which stated that the Fund's current contribution rates are not sufficient to keep the Fund actuarially sound over a reasonable period of time;

WHEREAS, the Fund currently does not comply with the funding guidelines prescribed by GASB 25, which requires that the unfunded actuarial accrued liability be amortizable over a 30-year period;

WHEREAS, increasing the employer and employee contributions to the Fund will improve the financial and actuarial positions of the Fund and will cause the Fund to become compliant with current GASB funding guidelines;

WHEREAS, the last increase in contributions by either the City or the employees occurred over twenty (20) years ago on September 1, 1984;

WHEREAS, the City finds that it would be in the collective best interest of the City, the Fund and the Fund's participants and beneficiaries that contributions to the Fund by the City and its employees be increased to the rates set forth in this Ordinance;

WHEREAS, the City employee contributions to the Fund are currently made on a post-tax basis;

WHEREAS, changing contributions to the Fund from a post-tax basis to a pre-tax basis shall mitigate the negative financial impact to the employee resulting from an increase in the employee contribution rate;

WHEREAS, the Internal Revenue Code in Section 414(h)(2) allows employers to pick-up employee contributions to the Fund and effectively lower the taxable income to the employees;

WHEREAS, the City finds that it would be in the collective best interest of the City, the Fund, and the Fund's participants and beneficiaries that contributions to the Fund be made on a pre-tax basis;

WHEREAS, the membership on the Board of Trustees of the Fund (the "Board") is partially made up of elected City employees;

WHEREAS, the City Clerk has recommended that minor changes be made to the timing and processes used to conduct the election of employee members of the Board;

WHEREAS, the Fund has received professional investment advice from its investment consultant indicating that the use of additional asset classes would lower the overall volatility of the Fund's investment portfolio;

WHEREAS, the Fund's investment consultant has indicated that most public pension plans have investments in high yield, real estate and emerging market equity securities;

WHEREAS, the Board believes that it would be prudent to invest, with limitations, in high yield, real estate and emerging market equity securities in order to lower the overall volatility of the Fund's investment portfolio; and

WHEREAS, the City and the Board believe that it would be in the best interest of the City, the Fund, and the Fund's participants and beneficiaries to amend Chapter 2.64 of the Code in order to provide for all of the above.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That, Section 2.64.030 (Board of Trustees--Membership) of the Code is hereby amended to read as follows:

2.64.030 Board of trustees--Membership.

A. The two district representatives serving on such board shall be designated by city council. The mayor shall appoint the two citizens who are not officers or employees and the retiree member. The four employees serving on such board shall be elected by a vote of the employees qualified to participate in such fund. Such election shall be held during three working days falling within the last full week of April during times as determined and set by the City Clerk. The City Manager shall give notice of the time and place of the election by posting notices on the bulletin boards in City Hall and in all city

departments not later than the first day of April immediately preceding the election. Candidates for election to the board shall in person file an application with the city clerk not later than April 10th requesting that their names be placed on the ballot. A list of all qualified candidates shall be posted by the city clerk on the bulletin boards in City Hall and in all city departments not later than April 20th. Voting shall be by written ballot and ballot boxes shall be placed at not less than two locations convenient to all members as may be determined by the city clerk. Eligible voters shall be given time off to vote during their regular duty hours. All elections shall be determined by a plurality vote. The candidate or candidates receiving the most votes shall fill existing vacancies, with full terms being filled first. The city clerk shall be in charge of conducting such elections. The city clerk is responsible for furnishing, locating and controlling all ballot boxes and no voting box may be moved without the prior written consent of the city clerk. The city clerk shall print all ballots, assign personnel necessary for the supervision of the voting, prepare eligible voting lists, count the votes and certify successful candidates.

B. The two citizens currently serving on the board shall continue to hold office until the expiration of their present terms of office. They or their successors shall then be appointed or reappointed for terms of two years. The retiree member shall continue to hold office until the expiration of his present term of office. He or his successors shall then be appointed or reappointed for terms of two years.

The term for city employee representatives shall be three years beginning with the election in 1993 to elect two city employee representatives whose terms expire and the election in 1994 to elect two city employee representatives whose terms expire. Thereafter, city employee representative elections to the board shall be held in the year in which a term expires, in accordance with the procedures set forth in subsection A, above.

There shall be no limitation as to the number of consecutive terms which a person duly appointed or elected to the board may serve.

Each member of the board shall continue in office until his successor qualifies, provided, that if a district representative, citizen, employee or retiree serving on such board shall cease to be such during his term, his place on the board shall immediately become vacant. The normal term of office for appointed citizens, elected employees or retirees shall begin on May 1st, and newly elected employees shall assume their terms in the ordinary manner upon being certified by the city clerk as a successful candidate.

C. When a member of the board of trustees is absent from three consecutive regular meetings without being excused by the board, the chairman, vice-

chairman or secretary of the board shall report this fact to the board, so that consideration may be given to removal of such member.

Section 2. That, Section 2.64.041 (Extended voting) of the Code is hereby deleted in its entirety.

Section 3. That, section 2.64.120 (Participation in pension system—Civil service employees) is hereby amended to add paragraph L, as follows:

“L. Notwithstanding anything contained in this Section to the contrary, the City shall not pick-up or pre-tax, pursuant to Section 2.64.401, buy-back contribution payments set forth in this Section.”

Section 4. That, Section 2.64.140 (Participation in pension system—Certain employees not in the classified service) is hereby amended to add paragraph F, as follows:

“F. Notwithstanding anything contained in this Section to the contrary, the City shall not pick-up or pre-tax buy-back contribution payments made pursuant to this Section.”

Section 5. That, Section 2.64.160 (Participation in pension system—Certain employees on full salary basis—Conditions) is hereby amended to add paragraph C, as follows:

“C. Notwithstanding anything contained in this Section to the contrary, the City shall not pick-up or pre-tax, buy-back contribution payments made pursuant to this Section.”

Section 6. That, Section 2.64.180 (Investments) is hereby amended to add paragraph H, as follows:

“H. The fund may invest in alternative investments, defined as emerging market equity, real estate investment trust, private real estate or high yield debt instruments. Such alternative investments are subject to the following limitations. Emerging market equity managers are expected to invest in equity securities domiciled in countries generally recognized as an emerging country by the international finance community as well as countries included in the MSCI Emerging Market Free Index. Equities may be common or preferred corporate stocks, debentures or preferred shares, which are convertible into corporate stock; and investment trust shares. Emerging market equity managers are also allowed to transact in instruments such as forward contracts, futures contracts and other derivative instruments for hedging purposes including currency hedging. Any allocation to emerging market equities is independent of the requirements set forth in Section 2.64.180 G, which describes permissible equity investments in developed international markets. Real Estate Investment Trusts are to be invested in real estate investment trusts or related securities, such as real estate operating companies, whose primary objective(s) is equity investment in income-producing real property located within the United States or District of Columbia or pooled funds, which invest similar securities. The portfolio will be diversified by either property type and/or by the various geographic regions of the

country. The real estate investment trust must have the objective of establishing a high quality, income producing real estate. Ownership should be primarily through equity interest. The following securities may not be purchased: Investment in undeveloped, non-income producing property; funds where leverage is intended to exceed thirty percent of the market value of the fund; and investment in non-U.S. real estate. Private real estate may include private real estate equity, equity-oriented debt, mortgages, construction loans, mezzanine debt on real estate, and private investment vehicles if such instruments are designed for tax-exempt investors. High yield fixed income is authorized to invest in below investment grade fixed income securities. The fund may invest in all domestic fixed income securities (including without limitation, convertible securities, preferred stock and Rule 144A securities) rated at least CCC by Standard and Poor's or Caa by Moody's as determined at the time of purchase. The following securities may not be purchased: all foreign issues, including without limitation, emerging market debt, Eurobonds and Yankee bonds.

The total amount of the fund that is permitted to be allocated to the above described investment is limited to not more than twenty-five percent of the total fund assets and the fund may not invest more than ten percent of the fund's total assets in either emerging market equity, real estate investments or high yield debt instruments."

Section 7. That, Section 2.64.190 (Contributions) is hereby amended to add paragraph C, as follows:

"C. Notwithstanding anything contained in this Section to the contrary, the City shall not pick-up or pre-tax buy-back contribution payments made pursuant to this Section."

Section 8. That, subsection 2.64.190A of section 2.64.190 (Contributions) is hereby amended to read as follows:

"A. Beginning on the first full pay period after May 1, 2007, every employee who is a participant in the fund shall contribute thereto, on a pre-tax basis, 7.75 percent of his salary or wages. The City and all its departments and divisions of a proprietary nature, and all other employers whose employees are permitted to participate in the Fund, shall contribute an amount equal to 11.65 percent of the salary or wages of their respective employees who contribute to the fund, subject to subdivision (1) of this subsection.

Section 9. That, Section 2.64.200 (Retirement pensions) Subsection B.1 is hereby amended to read as follows:

"1. Unless otherwise approved by the board of trustees, the monthly pension will be computed on the basis of the monthly base salary the employee is entitled to receive for the month immediately prior to retirement."

Section 10. That, subsection 2.64.200C.5 of Section 2.64.200 (Retirement Pensions) is hereby amended to read as follows:

“5. An employee may elect to receive early or deferred pension benefits and shall be entitled to select an optional retirement settlement as provided in Section 2.64.240. Such an election and selection shall be made at the time the employee applies for a pension, and neither the election nor selection of optional retirement settlement may be changed after an application for a pension has been approved by the board.”

Section 11. That, subsection 2.64.200F.6 of Section 2.64.200 (Retirement Pensions) is hereby amended to read as follows:

“6. Employees who elect to participate in the pension fund shall have the further option of paying into the fund, in one lump sum, at any time prior to submitting an application for retirement, the amount of contributions which they would have paid, had they been members of the fund from the date of their original appointments, or any late date, but not to include any time during breaks in service, plus interest at the rate of seven and one-half percent per annum, compounded annually, on the total amount for the period from the date when the first contribution would have been made to the date when the total is actually paid. Any buy-back shall be made in one lump sum. In the case of nongrant-funded employees, the city will make corresponding contributions, without interest, in accordance with the formula in effect at such previous time; provided, however, that such employees must pay interest at the current actuarial rate assumption approved by the board on the employer contributions for the portion of buy-back periods which are longer than five years, as well as the interest on employee contributions; further provided, however, that this provision relating to paying interest on employer contributions shall not apply to employees in the service who are eligible for membership at the time the ordinance codified in this section is adopted. Periods of buy-back without interest on the employer portion of contribution shall cover the first continuous or intermittent service most immediately contiguous to the date of the buy-back. Periods of buy-back on which interest on the employer portion of contribution is payable shall cover continuous or intermittent service most immediately contiguous to the period of buy-back without payment of interest on the employer portion. Notwithstanding anything contained in this subsection to the contrary, the City shall not pick-up or pre-tax, pursuant to Section 2.64.500, buy-back contribution payments made pursuant to this subsection.”

Section 12. That, Section 2.64.220 (Repayment of Contributions) is hereby amended to add paragraph H, as follows:

“H. As used in Section 2.64.220, the term “contributions” shall exclude any interest paid by an employee on any buy-back contribution payments made under the provisions of this code, and under no circumstances shall an employee be entitled to a refund of such interest.”

Section 13. That, Section 2.64.260 (Computation of length of service) is hereby amended to add paragraph E, as follows:

“E. For any type of purchase of pension service credit authorized and enumerated in Section 2.64.260, and notwithstanding anything contained in this Section to the contrary, the City shall not pick-up or pre-tax contribution payments made pursuant to this Section.”

Section 14. That, Section 2.64.500 (Pick-Up of Required Employee Contributions), is hereby added to Chapter 2.64, as follows:

“2.64.500. Pick-Up of Required Employee Contributions.

- A. As provided by Section 414(h)(2), of the Internal Revenue Code of 1986 (26 U.S.C. Section 414(h)(2)), the City shall pick-up and pay an employee's required contribution under the provisions of this Chapter 2.64. The City's pick-up of employee contributions shall take effect on the first full pay period following May 1, 2007. Although the contributions so picked-up are designated as employee contributions, the contributions shall be treated as contributions being paid by the City in lieu of contributions by the employee for determining tax liability under the Internal Revenue Code of 1986 and are not included in the gross income of the employee or the employee's beneficiary. The employee may not choose to receive the picked-up contributions directly, and the City must pay the picked-up contributions to the Fund.
- B. Employee contributions picked-up under Paragraph A of this Section are included in the compensation of the employee for purposes of determining benefits and contributions under the Fund.
- C. The City shall pay the employee contributions from the same source of funds used in paying compensation to the employee by reducing the gross compensation of the employee.”
- D. The City's pick-up of contributions is limited only to an employee's required contribution and is not applicable to any permissive purchase of pension service credit.”

Section 15. Except as herein amended, Title 2 of the Code shall remain in full force and effect.

(Signature page to follow)

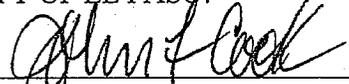
ORDINANCE NO. 619910

AN ORDINANCE AMENDING TITLE 2, CHAPTER 64 (CITY EMPLOYEES' PENSION FUND) TO: (i) INCREASE EMPLOYER AND EMPLOYEE CONTRIBUTIONS TO THE FUND; (ii) CHANGE THE METHOD OF CONTRIBUTING TO THE FUND FROM POST-TAX BASIS TO PRE-TAX BASIS; (iii) REVISE THE VOTING PROCEDURES FOR THE ELECTION OF BOARD OF TRUSTEES OF THE FUND; AND (iv) ALLOW FOR INVESTING IN NEW ASSET CLASSES

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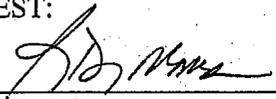
PASSED AND APPROVED this 1st day of May, 2007.

CITY OF EL PASO:



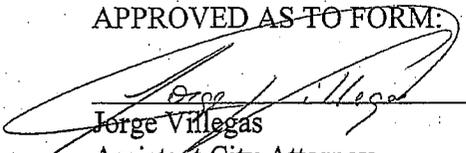
John F. Cook
Mayor

ATTEST:



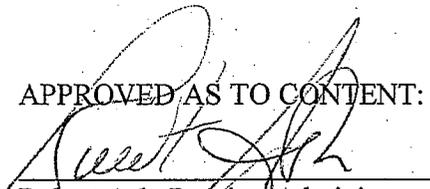
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Jorge Villegas
Assistant City Attorney

APPROVED AS TO CONTENT:



Robert Ash, Pension Administrator
City Employees Pension Fund

Eduardo Miranda
Board Counsel