

ORDINANCE NO. 7,583-N.S.

REPEALING AND REENACTING SECTIONS 4.36.103 (COMPENSATION), 4.36.402(A).C (ADJUSTMENTS ON ACCOUNT OF EXCESSIVE CREDITS), 4.36.402(A).D (CODE SECTION 415 COMPENSATION DEFINITION), AND 4.36.602 (TIME OF DISTRIBUTION) TO BERKELEY MUNICIPAL CODE CHAPTER 4.36 THE SUPPLEMENTARY RETIREMENT AND INCOME PLAN I

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 4.36.103 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.36.103 Compensation.

“Compensation” shall mean the total amount of an employee’s annual compensation as reported for W-2 purposes before any payroll deductions for income tax, amounts elected to be deferred under any deferred compensation plan, group insurance, or for any other purpose, and effective for plan years beginning on and after January 1, 2001, including any amount that is not includible in the participant’s taxable gross income pursuant to Section 132(f) of the Internal Revenue Code, but excluding payments which would not be subject to FICA tax if the dollar limitation of Section 3121(a) did not apply and if the employer were covered by the Federal Social Security System, contributions by the employer under this plan, group insurance, retainer fee under contract, or the like. Notwithstanding the foregoing, the annual compensation of each participant taken into account in any Plan Year beginning after December 31, 2001 shall not exceed \$200,000 adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code.

Section 2. That Section 4.36.402(A).C of the Berkeley Municipal Code is repealed and reenacted to read as follows:

C. Adjustments on account of excessive credits. If the amount credited to a participant’s accounts for any plan year would exceed the amount permitted under the limitations of subsection A. above, corrections will be made, as determined by the committee pursuant to the Employee Plans Compliance Resolution System described in Revenue Procedure 2016-51, as may further be modified by the Internal Revenue service from time to time (collectively, “EPCRS”).

Section 3. That Section 4.36.402(A).D of the Berkeley Municipal Code is repealed and reenacted to read as follows:

D. Code Section 415 compensation definition. Participant’s compensation for the purposes of this section shall mean a participant’s earned income, wages, salaries, bonuses and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan and excluding the following:

1. Employer contributions to a plan of deferred compensation which are not included in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation;
2. Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
3. Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;
4. Other amounts which received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement) toward the purchase of an annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the employee).

Notwithstanding the foregoing, for plan years beginning on and after January 1, 1998, compensation shall include any amount that would have been included in the foregoing description, but for the participant's election to defer payment under Section 125, 402(e)(3), 402(h)(1)(B), 403(b), or 457(b) of the Code and certain contributions described in Section 414(h)(2) of the Code that are picked up by the employing unit and treated as employer contributions. Effective for plan years beginning on and after January 1, 2001, compensation shall also include any amount that is not included in the participant's taxable gross income pursuant to Section 132(f) of the Code.

For plan years beginning on or after January 1, 2008, for purposes of applying the maximum benefit limitations under this Section 4.36.302, compensation shall also include compensation paid by the later of 2½ months after an employee's severance from employment with the Employer or the end of the plan year that includes the date of the employee's severance from employment, if, absent a severance from employment, such payment would have been paid to the employee while the employee continued in employment with the Employer, and is regular compensation for services during the employee's regular working hours, compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar compensation. In addition, effective for plan years beginning on an after January 1, 2008, compensation may not exceed the amount described in Code section 401(a)(17).

For plan years beginning after December 31, 2008, the plan will treat Differential Wage Payments as Compensation for all Plan contributions and benefit purposes. For purposes of this Section 4.36.402(A).D, "Differential Wage Payments" means any payment that is (i) made by the Employer to an individual with respect to any period during which he or she is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period more than 30 days; and (ii) represents all or a portion of the wages the individual would have received from the Employer if he or she were performing services for the Employer.

A participant's compensation for any limitation year is the compensation actually paid or includable in gross income during such year.

Section 4. That Section 4.36.602 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.36.602 Time of distribution.

Distribution of the account balance of a participant, whose participation hereunder has terminated other than by death, shall be made within a reasonable time after termination. In no event shall distribution commence later than 60 days after the close of the plan year in which occurs the participant's normal retirement date, unless the participant requests a delay beyond that date. Effective January 1, 2003, if a participant requests a delay beyond that date distribution shall commence no later than the later of (1) the deferred retirement date or, (2) the April 1 following the calendar year in which such participant attains age 70½.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 5, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

ORDINANCE NO. 7,584-N.S.

REPEALING AND REENACTING SECTIONS 4.38.103 (COMPENSATION), 4.38.402(A).C (ADJUSTMENTS ON ACCOUNT OF EXCESSIVE CREDITS), 4.38.402(A).D (CODE SECTION 415 COMPENSATION DEFINITION), AND 4.38.602 (TIME OF DISTRIBUTION) TO BERKELEY MUNICIPAL CODE CHAPTER 4.38 THE SUPPLEMENTARY RETIREMENT AND INCOME PLAN II

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 4.38.103 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.38.103 Compensation.

“Compensation” shall mean the total amount of an employee’s compensation while a participant as reported for W-2 purposes before any payroll deductions for income tax, amounts elected to be deferred under any deferred compensation plan, group insurance, or for any other purpose, and effective for plan years beginning on and after January 1, 2001, including any amount that is not includable in the participant’s taxable gross income pursuant to Section 132(f) of the Internal Revenue Code, but excluding payments which would not be subject to FICA tax if the dollar limitation of Section 3121(a) did not apply and if the employer were covered by the Federal Social Security System, contributions by the employer under this plan, group insurance, retainer fee under contract, or the like. Notwithstanding the foregoing, the annual compensation of each participant taken into account in any Plan Year beginning after December 31, 2001 shall not exceed \$200,000 adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code.

Section 2. That Section 4.38.402(A).C of the Berkeley Municipal Code is repealed and reenacted to read as follows:

C. Adjustments on account of excessive credits. If the amount credited to a participant’s accounts for any plan year would exceed the amount permitted under the limitations of subsection A. above, corrections will be made, as determined by the committee pursuant to the Employee Plans Compliance Resolution System described in Revenue Procedure 2016-51, as may further be modified by the Internal Revenue service from time to time (collectively, “EPCRS”).

Section 3. That Section 4.38.402(A).D of the Berkeley Municipal Code is repealed and reenacted to read as follows:

D. Code Section 415 compensation definition. Participant’s compensation for the purposes of this section shall mean a participant’s earned income, wages, salaries, bonuses and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan and excluding the following:

1. Employer contributions to a plan of deferred compensation which are not included in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation;
2. Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
3. Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;
4. Other amounts which received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement) toward the purchase of an annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the employee).

Notwithstanding the foregoing, for plan years beginning on and after January 1, 1998, compensation shall include any amount that would have been included in the foregoing description, but for the participant's election to defer payment under Section 125, 402(e)(3), 402(h)(1)(B), 403(b), or 457(b) of the Code and certain contributions described in Section 414(h)(2) of the Code that are picked up by the employing unit and treated as employer contributions. Effective for plan years beginning on and after January 1, 2001, compensation shall also include any amount that is not included in the participant's taxable gross income pursuant to Section 132(f) of the Code. For plan years beginning on or after January 1, 2008, for purposes of applying the maximum benefit limitations under this Section 4.38.302, compensation shall also include compensation paid by the later of 2½ months after an employee's severance from employment with the Employer or the end of the plan year that includes the date of the employee's severance from employment, if, absent a severance from employment, such payment would have been paid to the employee while the employee continued in employment with the Employer, and is regular compensation for services during the employee's regular working hours, compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar compensation. In addition, effective for plan years beginning on an after January 1, 2008, compensation may not exceed the amount described in Code section 401(a)(17).

For plan years beginning after December 31, 2008, the plan will treat Differential Wage Payments as Compensation for all Plan contributions and benefit purposes. For purposes of this Section 4.38.402(A).D, "Differential Wage Payments" means any payment that is (i) made by the Employer to an individual with respect to any period during which he or she is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period more than 30 days; and (ii) represents all or a portion of the wages the individual would have received from the Employer if he or she were performing services for the Employer.

A participant's compensation for any limitation year is the compensation actually paid or includable in gross income during such year

Section 4. That Section 4.38.602 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.38.602 Time of distribution.

Distribution of the account balance of a participant, whose participation hereunder has terminated other than by death, shall be made within a reasonable time after termination. In no event shall distribution commence later than 60 days after the close of the plan year in which occurs the participant's normal retirement date, unless the participant requests a delay beyond that date. Effective January 1, 2003, if a participant requests a delay beyond that date distribution shall commence no later than the later of (1) the deferred retirement date or, (2) the April 1 following the calendar year in which such participant attains age 70½.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 5, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

ORDINANCE NO. 7,585-N.S.

REPEALING AND REENACTING SECTIONS 4.39.403(B) (ADJUSTMENTS ON ACCOUNT OF EXCESSIVE CREDITS), 4.39.403(C) (CODE SECTION 415 COMPENSATION DEFINITION), AND 4.39.603 (DISTRIBUTION OF DEATH BENEFITS) TO BERKELEY MUNICIPAL CODE CHAPTER 4.39 THE SUPPLEMENTARY RETIREMENT AND INCOME PLAN III

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 4.39.403(B) of the Berkeley Municipal Code is repealed and reenacted to read as follows:

B. Adjustments on account of excessive credits. If the amount credited to a participant's accounts for any plan year would exceed the amount permitted under the limitations of subsection A. above, corrections will be made, as determined by the committee pursuant to the Employee Plans Compliance Resolution System described in Revenue Procedure 2016-51, as may further be modified by the Internal Revenue service from time to time (collectively, "EPCRS").

Section 2. That Section 4.39.403(C) of the Berkeley Municipal Code is repealed and reenacted to read as follows:

C. Code Section 415 compensation definition. Participant's compensation for the purposes of this section shall mean a participant's earned income, wages, salaries, bonuses and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan and excluding the following:

1. Employer contributions to a plan of deferred compensation which are not included in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation;
2. Other amounts which received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement) toward the purchase of an annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the employee).

Compensation shall include any elective deferral under Section 402(g)(3), and any amount which is contributed or deferred by the employer at the election of the employee and is not includible in income by reason of Section 125, 132(f)(4) or 457 of the Code.

Notwithstanding the foregoing, for plan years beginning on or after January 1, 2008, for purposes of applying the maximum benefit limitations under this Section 4.39.403(C), compensation shall also include compensation paid by the later of 2½

months after an employee's severance from employment with the Employer or the end of the plan year that includes the date of the employee's severance from employment, if, absent a severance from employment, such payment would have been paid to the employee while the employee continued in employment with the Employer, and is regular compensation for services during the employee's regular working hours, compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar compensation. In addition, effective for plan years beginning on an after January 1, 2008, compensation may not exceed the amount described in Code section 401(a)(17).

For plan years beginning after December 31, 2008, the plan will treat Differential Wage Payments as Compensation for all Plan contributions and benefit purposes. For purposes of this Section 4.39.403(C), "Differential Wage Payments" means any payment that is (i) made by the Employer to an individual with respect to any period during which he or she is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period more than 30 days; and (ii) represents all or a portion of the wages the individual would have received from the Employer if he or she were performing services for the Employer

Section 3. That Section 4.39.603 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

4.39.603 Distribution of Death Benefits

A. Death before required beginning date: if the participant dies before his required beginning date, the participant's account balance shall be distributed to the participant's beneficiary in accordance with the following rules:

1. To participant's surviving spouse: if the participant's surviving spouse is the participant's designated beneficiary, distributions must begin on or before the later of the following: (i) the end of the calendar year following the calendar in which the participant died; or (ii) the end of the calendar year in which the participant would have attained age 70 1/2. Distribution may be made in a lump sum payment or in installments pursuant to Section 4.39.601.B that equal or exceed an annual amount determined by dividing the participant's account balance by the spouse's remaining life expectancy.
2. To participant's other designated beneficiary: if the participant has designated a beneficiary who is not his surviving spouse, distributions must begin on or before the end of the calendar year following the calendar year in which the participant died. Distributions may be made in a lump sum payment or in installments pursuant to Section 4.39.601.B that equal or exceed an annual amount determined by dividing the participant's account balance by the beneficiary's remaining life expectancy.
3. If no designated beneficiary: if the participant has not designated a beneficiary, the participant's entire account balance must be distributed by the

end of the calendar year which contains the fifth anniversary of the date of the participant's death.

B. Death on or after his required beginning date: if the participant dies on or after his required beginning date, the participant's account balance shall be distributed beginning in the calendar year following the calendar year of the participant's death in accordance with the following rules:

1. To participant's surviving spouse: if the participant's surviving spouse is the participant's designated beneficiary, distributions may be made in a lump sum payment or in installments pursuant to Section 4.39.601.B that equal or exceed an annual amount determined by dividing the participant's account balance by the longer of (i) the participant's remaining life expectancy, or (ii) the spouse's remaining life expectancy.

2. To participant's designated beneficiary: if the participant has designated a beneficiary who is not his surviving spouse, distributions may be made in a lump sum payment or in installments pursuant to Section 4.39.601.B that equal or exceed an annual amount determined by dividing the participant's account balance by the longer of (i) the participant's remaining life, or (ii) the beneficiary's remaining life expectancy.

3. If no designated beneficiary: if the participant has not designated a beneficiary, distributions may be made in a lump sum payment or in installments pursuant to Section 4.39.601.B that equal or exceed an annual amount determined by dividing the participant's account by the participant's remaining life expectancy.

4. All calculations made under this section shall be in accordance with applicable Treasury regulations.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 5, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

