

1 A. By Ordinance 78444, enacted in 1949 and now codified in Section 4.36.100 of the
2 Seattle Municipal Code (SMC), the City provides for membership in the Seattle City Employees'
3 Retirement System (SCERS) for certain officers and employees of the City, including the Seattle
4 Public Library, whose positions are established by ordinance, or who occupy certain temporary
5 assignments established by the City.

6 B. In addition, in 1951 the Seattle Department of Health merged with the King County
7 Department of Health. Under Ordinance 117983, enacted in 1995, the City approved an
8 interlocal agreement under which the City transferred all employees of the joint department,
9 Seattle-King County Department of Public Health, that were City employees to King County.
10 Under that ordinance, such employees who were "members of the Seattle City Employees
11 Retirement System at the Transfer Date shall remain members of that system and for that limited
12 purpose be considered City employees."
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14 C. In addition, in 1972, under Ordinance 101714, the City transferred City transit
15 employees to the Municipality of Metropolitan Seattle (Metro). Pursuant to that ordinance and
16 RCW 35.58.390, the transferred employees may remain members of SCERS until they elect to
17 become members of a pension plan provided by Metro. In 1994, Metro merged with and became
18 part of King County. Accordingly, transferred employees who have not elected to become
19 members of Metropolitan King County's pension system may remain members of SCERS.
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21 D. Except in the limited circumstance, specifically provided for by ordinance or statute,
22 involving the former employees of the City of Seattle Department of Health later employed by
23 Public Health – Seattle & King County, and Metro, the City has provided for SCERS-related
24 benefits only for persons who are directly employed by the City.
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1 E. On August 18, 2011, the Washington Supreme Court entered an opinion in the matter
2 of *Dolan v. King County*, 172 Wn.2d 299, 258 P.3d 20 (2011), relating to the determination of
3 eligibility for membership in a State of Washington retirement program. That opinion does not
4 apply to SCERS, but may create an ambiguity that previously did not exist regarding whether an
5 employee of a City contractor is eligible for SCERS membership.

6 F. The City has consistently interpreted and applied SMC Chapter 4.36 to exclude
7 employees of City contractors, whether or not the contractor is providing mandatory or
8 discretionary governmental services, and whether or not the contractor is a for-profit or non-
9 profit entity, from membership in SCERS.
10

11 G. Because of the potential ambiguity caused by the *Dolan v. King County* opinion, it is
12 prudent for the City to clarify that an employee of a City contractor, whether or not the
13 contractor is providing mandatory or discretionary governmental services, and whether or not the
14 contractor is a for-profit or non-profit entity, is not eligible for SCERS membership.
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16 H. The City has contracted in the past, and may contract in the future, for private entity
17 operation of City property and for services provided in the past by the City. In *Sievert v. City of*
18 *Seattle*, 167 Wn.2d 1002, 220 P.3d 207 (2009), the Washington Court of Appeals determined
19 that the City was not obligated to include in SCERS the former employees of the Department of
20 Parks and Recreation who were later employed at the Woodland Park Zoo by a private entity
21 under contract with the City.
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23 I. The City provides government services, whether the services are mandatory or
24 discretionary, through City officers, employees, contractors, volunteers, or combinations thereof.
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1 The City has not intended in its ordinances to provide SCERS eligibility to employees of City
2 contractors.

3 J. This ordinance does not diminish any existing pension rights. It is not the intent of the
4 Mayor or City Council to change the rights of any City officer or employee vested under any
5 ordinance previously enacted. Rather, this ordinance is intended to be curative and remedial.
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7 **Section 2.** Section 4.36.030 of the Seattle Municipal Code, last amended by Ordinance
8 120684, is amended to delete letter labels for individual definitions as follows:

9 SMC 4.36.030 Definitions -- Alphabetical "A" through "B(~~-~~)"

10 Unless a different meaning is plainly required by the context the terms used in this
11 chapter shall have the following meanings:
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13 ~~((A-))~~"Accumulated additional contributions" means the sum of all additional
14 contributions deducted from the compensation of a member, standing to the credit of his
15 individual account, together with regular interest thereon.
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17 ~~((B-))~~"Accumulated contributions" means accumulated normal contributions plus
18 accumulated additional contributions but shall not include death benefit assessments.

19 ~~((C-))~~"Accumulated normal contributions" means the sum of all normal contributions,
20 deducted from the compensation of a member, standing to the credit of his individual account,
21 together with regular interest thereon.
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23 ~~((D-))~~"Actuarial equivalent" means a benefit of equal value when computed upon the
24 basis of such mortality tables and regulations as shall be adopted by the Board.
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1 ~~((E-))~~"Actuarial present value" means the value of an amount or series of amounts
2 payable or receivable at various times, determined as of a given date by the application of a
3 particular set of actuarial assumptions.

4 ~~((F-))~~"Adjusted benefit" means the initial benefit plus the cumulative cost of living
5 adjustments provided for in subsection 4.36.215.A (~~Section 4.36.215A~~). The adjusted benefit
6 of employees who retired prior to January 1, 1998, shall be calculated on January 1 of the year
7 that Section 1 of Ordinance 120656 becomes effective as if a cumulative cost of living
8 adjustment of 1.5% per year had been in effect from the date of retirement to the date that
9 Section 1 of Ordinance 120656 becomes effective and then adjusted annually as provided in
10 subsection 4.36.215.A (~~Section 4.36.215A~~). There will be no retrospective benefit payments
11 for employees who retired prior to January 1, 1998, only prospective adjusted benefit payments
12 from and after January 1 of the year that Section 1 of Ordinance 120656 becomes effective.
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15 ~~((G-))~~"Annuity" means the payments derived from contributions made by a member as
16 provided in Sections 4.36.210 and 4.36.230.

17 ~~((H-))~~"Basic pension" means the annuity derived from normal contributions of members;
18 the pension derived from matching contributions of the City and the pension for prior service, if
19 any.
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21 ~~((I-))~~"Beneficiary" means any person in receipt of a pension, annuity, retirement
22 allowance, disability allowance, or any other benefit provided in this Chapter 4.36 (~~chapter~~).

23 ~~((J-))~~"Board" means "Board of Administration" as provided in Section 4.36.130.
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1 **Section 3.** Section 4.36.040 of the Seattle Municipal Code, last amended by Ordinance
2 121366, is amended by adding the following new definition and deleting letter labels for
3 individual definitions as follows:

4 **SMC 4.36.040 Definitions – Alphabetical “C” through “D((~~⊖~~))”**

5 Unless a different meaning is plainly required by the context the terms used in this
6 chapter shall have the following meanings:

7 ~~((A-))~~ “City” means The City of Seattle.

8 “City contractor” means any person or entity performing services for the City pursuant to
9 any agreement, including but not limited to agreements for public works as defined in RCW
10 39.040.010; consultant as defined in Section 20.50.010; supplies, material, equipment, or
11 services as defined in Chapter 20.60; or legal (including indigent public defense) and other
12 professional services.

13 ~~((B-))~~ “City service” means service rendered to the City for compensation, and for the
14 purpose of this chapter, a member shall be considered as being in the “City service” only while
15 he or she is receiving compensation for such service or is on leave of absence on account of
16 sickness or injury, or on family or medical leave under Chapter 4.26 and makes contributions
17 covering such period as provided in subsection 4.36.120.A (~~(Section 4.36.120 A)~~).

18 ~~((C-))~~ “Compensation” means the salary or wage, exclusive of overtime, indicated on
19 payrolls and/or vouchers. Compensation in excess of the limitations set forth in 401(a)(17) of the
20 Internal Revenue Code shall not be included in determining contributions or in determining
21 benefits. This restriction does not apply to any individual who was a member prior to January 1,
22 1996.
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1 ~~((D-))~~ “Compensation earnable” by a member means the average compensation as
2 determined by the Board of Administration upon the basis of the average period of employment
3 of members in the same group or class of employment and at the same rate of pay. Any other
4 provisions of this chapter, particularly subsection 4.36.110.B (~~Section 4.36.110 B~~), insofar as
5 in conflict herewith are hereby superseded.

6 ~~((E-))~~ “Continuous service” means uninterrupted employment by the City, except that
7 discontinuance of City service of a member caused by layoff, sick leave under Chapter 4.24,
8 family or medical leave under Chapter 4.26, leave of absence, suspension, or dismissal, followed
9 by reentrance into City service within one (~~((1))~~) year, shall not count as a break in the continuity
10 of service; provided, that for the purpose of establishing membership in the retirement system
11 continuous service shall mean six (~~((6))~~) months' service in any one (~~((1))~~) year.

12 ~~((F-))~~ “Creditable service” means such City service as is evidenced by the record of
13 normal contributions received from the employee plus prior service if credit for same is still
14 intact or not lost through withdrawal of accumulated normal contributions as provided in Section
15 4.36.190.
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17 ~~((G-))~~ “Current benefit” means the annual payment currently paid on behalf of a
18 member. It includes, where applicable, the permanent benefit increase granted by Ordinance
19 99566 and Ordinance 104156. It takes into account any reductions based on options selected by
20 the member under Section 4.36.260. It shall also mean payments of accumulated contributions
21 made under subsection 4.36.270.B (~~Subsection 4.36.270 B~~), and payments received by a
22 beneficiary as a result of an option selected under Section 4.36.260. It shall not include the
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1 cumulative cost of living adjustments provided for in subsection 4.36.215.B.1 (~~Subsection~~
2 ~~4.36.215 B1~~)).

3 (~~H.~~) "Death benefit" means the payment upon proof of death of a member provided for
4 in Section 4.36.320.

5 (~~I.~~) "Death benefit assessment" means the payments required of members of the death
6 benefit system under Sections 4.36.320 and 4.36.330.

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8 (~~J.~~) "Domestic partner" as used in this Chapter 4.36 (~~chapter~~) means an individual
9 designated by an unmarried City officer or employee in an affidavit filed pursuant to (~~Seattle~~
10 ~~Municipal Code~~) Sections 4.30.020 and 4.36.185 and qualified under Section 4.30.010.

11
12 **Section 4.** Section 4.36.050 of the Seattle Municipal Code, last amended by Ordinance
13 121366, is amended, including deleting letter labels for individual definitions, as follows:

14 **SMC 4.36.050 Definitions – Alphabetical "E" through "M(~~:~~)"**

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16 Unless a different meaning is plainly required by the context, the terms used in this
17 chapter shall have the following meanings:

18 (~~A.~~) "Employee" means all officers and employees of the City and of the Seattle Public
19 Library eligible to membership in the retirement system pursuant to law. The term "employee"
20 does not include an officer or employee of a City contractor, whether or not the contractor is
21 providing mandatory or discretionary governmental services, and whether or not the contractor is
22 a for-profit or non-profit entity.

23
24 (~~B.~~) "Final compensation" means the average annual compensation earnable by a
25 member during his 24 (~~twenty-four (24)~~) highest consecutive months prior to termination of
26



1 employment with the City. The "final compensation" of a member who retires from a temporary,
2 interim, provisional, intermittent or part-time position is determined by multiplying the member's
3 average hourly rate during his or her highest consecutive 4,176 (~~four thousand one hundred~~
4 ~~seventy six (4,176))~~) hours of service by 2,088 (~~two thousand eighty eight (2,088))~~) hours.

5 ~~((C-))~~"Fiscal year" means any year commencing with January 1st and ending with
6 December 31st next following.

7 ~~((D-))~~"Funding Ratio" means the ratio of the actuarial value of assets over the actuarial
8 accrued liabilities as determined by an actuarial valuation ordered by the Retirement Board.

9 ~~((E-))~~"Indexed benefit" means the initial benefit payable on behalf of a member, adjusted
10 for inflation in an amount equal to the ratio of the June Seattle-Tacoma-Bremerton ("STB")
11 Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W") for the current
12 year over the STB CPI-W for the first half of the calendar year in which a benefit payable on
13 behalf of a member was first paid. If the benefit was first paid during a year in which this index
14 did not exist, the Board shall establish a similar index value to represent the June index value
15 based on published Consumer Price Index information for the Seattle area.

16 ~~((F-))~~"Initial benefit" means the retirement allowance as calculated to be effective on the
17 date of the member's retirement. It takes into account any reductions based on options selected
18 by the member under Section 4.36.260. It shall also mean payments of accumulated
19 contributions made under subsection 4.36.270.B (~~Subsection 4.36.270-B~~), and payments
20 received by a beneficiary as a result of an option selected under Section 4.36.260.

21 ~~((G-))~~"Member" means any person included in the retirement system as provided in
22 Section 4.36.100. The term "member" does not include an officer or employee of a City
23



1 contractor, whether or not the contractor is providing mandatory or discretionary governmental
2 services, and whether or not the contractor is a for-profit or non-profit entity.

3 **Section 5.** Section 4.36.060 of the Seattle Municipal Code, last amended by Ordinance
4 107228, is amended to delete letter labels for individual definitions as follows:

5 SMC 4.36.060 Definitions -- Alphabetical "N" through "Q((:))"

6 Unless a different meaning is plainly required by the context the terms used in this
7 chapter shall have the following meanings:
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9 ~~((A-))~~"Normal contribution" means contribution at the rate provided for in subsection
10 4.36.110.A ~~((Section 4.36.110 A))~~.
11

12 ~~((B-))~~"Pension" means payments derived from any contributions made by the City. .

13 ~~((C-))~~"Prior service" means City service of a member prior to July 1, 1929, except as
14 follows: In the case of officers and employees of the Seattle Public Library prior to July 1, 1937;
15 in the case of employees entering the classified civil service under the Charter Amendments of
16 March 12, 1940, and March 13, 1945, prior to March 16, 1940, and March 16, 1945,
17 respectively; and in case of employees entering such service under RCW 35.22.450, prior to
18 September 1, 1943.
19

20 **Section 6.** Section 4.36.070 of the Seattle Municipal Code, last amended by Ordinance
21 119220, is amended to delete letter labels for individual definitions as follows:

22 SMC 4.36.070 Definitions -- Alphabetical "R" through "Z((:))"

23 Unless a different meaning is plainly required by the context the terms used in this
24 chapter shall have the following meanings:
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1 ((€)) and to those members reentering after such dates if reentry is within one (~~(1)~~) year after
2 City service prior to such dates. Such credit shall be granted those becoming members pursuant
3 to RCW 41.28.250, in the same proportion as the amount of money deposited to cover service
4 from July 1, 1929, to date of entry into the system, bears to the amount of money necessary to
5 cover all service during that period, excluding, however, all service after the first of the month
6 following attainment of age 67 (~~sixty-seven (67)~~).

7
8 Provided, that the Board may grant credit for prior service to any eligible member
9 entering the retirement system after the dates above mentioned if he or she, because of sickness
10 or other disability or while serving as an officer of a labor organization, the membership of
11 which includes City employees, has been on leave of absence, regularly granted, since
12 discontinuance of City service, regardless of the length of such leave.

13 * * *

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15 **Section 9.** Subsection 4.36.190.B of the Seattle Municipal Code, which section was last
16 amended by Ordinance 121365, is amended to revise cross-references as follows:

17
18 SMC 4.36.190 Discontinuance or reentrance of eligible employee -- Purchase of
19 creditable service(~~(-)~~)

20 * * *

21 B. Redeposit and Purchase of Creditable Service for eligible employees reentering City
22 service.

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24 1. Any member or former member who reenters City service may redeposit in the
25 retirement fund an amount equal to that which he or she previously withdrew therefrom, or some
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1 part thereof, plus compound interest, at the actuarial assumed rate of investment return, which
2 would have accumulated on the amount, as determined by the Board, between the date of his or
3 her last termination of his or her membership and the date of redeposit. Within two ~~((2))~~ years
4 after his or her re-entry into City service, a former member must redeposit the entire sum
5 determined to be due to purchase all, or part of, their former creditable service, or sign and file
6 with the Board a redeposit contract in accord with subsection 4.36.190.C in order to reestablish
7 all or part of his or her former creditable service. In the event such redeposit is made by a
8 member, the City shall reinstate all or that part of the former creditable service purchased by the
9 member.
10 member.

11 2. If a member within two ~~((2))~~ years after reentering the retirement system after
12 a termination of his or her membership does not make such a redeposit or file a properly
13 executed redeposit contract, he or she may purchase all, or some part of, his or her former
14 creditable service only by paying into the retirement fund the amount, or some part thereof, he or
15 she previously withdrew plus compound interest as determined by the Board. The following
16 provisions apply to redeposits made pursuant to this subsection 4.36.190.B.2 ~~((Subsection~~
17 4.36.190B-2)):
18

19 a. Determination of applicable interest rates. The interest rate for each year
20 since the date of withdrawal of contributions shall be the greater of the rate the retirement fund
21 has earned, net of fees, as reported by the Retirement System's Investment Performance
22 Consultant, or the interest rate equivalent to the actuarial assumed rate of investment return at the
23 time of executing the redeposit contract.
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1 b. Calculation of "accumulated contributions." For purposes of
2 determining a member's accumulated contributions pursuant to Section (~~Subsection~~) 4.36.030
3 (~~B~~), only a portion of the total amount deposited shall be considered. The portion to be
4 considered as the member's accumulated contributions shall be only the amount previously
5 withdrawn as the member's contributions including interest, plus interest calculated at the
6 actuarial assumed rate of investment return.

7
8 c. Withdrawal of contributions limited. The total amount deposited for the
9 purchase of said former creditable service will be available for withdrawal by the member only if
10 the member terminates employment with the City and withdraws his or her total accumulated
11 contributions prior to retirement or dies and benefits are not payable under subsections
12 4.36.270.B and 4.36.270.C (~~Subsections 4.36.270 B and C~~). In the event such redeposit is made
13 by a member, his rate of contribution shall be as determined under subsection 4.36.110.A
14 (~~Subsection 4.36.110 A~~), and the City shall reinstate all, or that part of, the former creditable
15 service purchased by the member.

16
17 3. Unless otherwise stated, members allowed to purchase creditable service
18 pursuant to (~~SMC~~) Chapter 4.36(~~3~~) shall pay, as a single lump sum payment at the time of
19 retirement, the actuarial present value of the resulting increase in their benefit as provided in this
20 subsection 4.36.190.B.3 (~~Subsection SMC 4.36.190 B3~~).

21
22 a. The actuarial present value shall be calculated by the Retirement Board
23 using the current actuarial assumptions as approved by the Retirement Board.

24 b. For purposes of determining the member's accumulated contributions
25 pursuant to Section (~~Subsection~~) 4.36.030 (~~B~~), only a portion of the total amount deposited
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1 shall be considered. The portion to be considered as the member's accumulated contributions
2 shall be calculated at the employee's current hourly rate times the current contribution rate times
3 the number of hours to be purchased.

4 c. If a member elects to pay at resignation from City service, the actuarial
5 present value will be estimated at the time of resignation and adjusted at retirement for factors
6 existing at the time of retirement, if necessary, according to rules established by the Retirement
7 Board.
8

9 d. In the event such payment is made by a member, the City shall consider
10 such City service previously rendered as creditable service for the member.

11 4. Unless otherwise stated, the purchase price for the purchase of creditable
12 service must be paid in full to the retirement fund prior to the time of resignation from City
13 service or retirement, whichever occurs first.
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17 **Section 10.** Section 4.36.410 of the Seattle Municipal Code, enacted by Ordinance
18 118497, is amended to add a new subsection D as follows:

19 **SMC 4.36.410 Administration of chapter -- Construction -- Severability((:))**

20 * * *

21 D. This Chapter 4.36 shall not be construed or applied to provide membership eligibility
22 to an officer or employee of a City contractor, whether or not the contractor is providing
23 mandatory or discretionary governmental services, and whether or not the contractor is a for-
24 profit or non-profit entity.
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Section 11. This ordinance is curative and remedial and is applicable to any person not currently a member of SCERS under SMC Chapter 4.36.

Section 12. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Budget Office	Linda Taylor-Manning	684-8376

Legislation Title:

AN ORDINANCE relating to the City Employees' Retirement System; amending Chapter 4.36 of the Seattle Municipal Code to clarify eligibility for membership consistent with past practice and interpretation; making technical changes; and ratifying and confirming certain prior acts.

Summary of the Legislation:

The purpose of this ordinance is to clarify and confirm that employees of for-profit or non-profit corporations or other entities providing governmental services are not eligible for membership in the Seattle City Employees' Retirement System.

Background:

On August 18, 2011, the Washington Supreme Court entered an opinion in the matter of *Dolan v. King County*, relating to the determination of eligibility for membership in a State of Washington retirement program. That opinion does not apply to SCERS, but may create an ambiguity that previously did not exist regarding whether an employee of a City contractor is eligible for SCERS membership.

The City has consistently interpreted and applied SMC Chapter 4.36 to exclude employees of City contractors. Because of the potential ambiguity caused by the *Dolan v. King County* opinion, it is prudent for the City to clarify that an employee of a City contractor, whether or not the contractor is providing mandatory or discretionary governmental services, and whether or not the contractor is a for-profit or non-profit entity, is not eligible for SCERS membership.

Please check one of the following:

X **This legislation does not have any financial implications.**

Other Implications:

- a) **Does the legislation have indirect financial implications, or long-term implications?**
No.

- b) **What is the financial cost of not implementing the legislation?**
Not applicable.



- c) **Does this legislation affect any departments besides the originating department?**
This legislation clarifies a citywide policy related to the Seattle Employee's Retirement System.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
Not applicable.
- e) **Is a public hearing required for this legislation?**
No.
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.
- g) **Does this legislation affect a piece of property?**
No.
- h) **Other Issues:**

List attachments to the fiscal note below:
Not applicable.





City of Seattle
Office of the Mayor

March 13, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am transmitting the attached proposed Council Bill related to the Seattle City Employees' Retirement System (SCERS) which clarifies eligibility for membership consistent with past practice. This legislation will amend the Seattle Municipal Code (SMC) to clarify and confirm that employees of for-profit or non-profit corporations providing governmental services are not eligible for membership in SCERS.

On August 18, 2011, the Washington Supreme Court entered an opinion in the matter of *Dolan v. King County*, relating to the determination of eligibility for membership in a State of Washington retirement program. That opinion does not apply to SCERS, but may create an ambiguity that previously did not exist regarding whether an employee of a City contractor is eligible for SCERS membership.

The City has consistently interpreted and applied SMC Chapter 4.36 to exclude employees of City contractors. Given the potential ambiguity caused by the *Dolan v. King County* opinion, it is prudent for the City to clarify this point and amend SMC Chapter 4.36. Thank you for your consideration of this legislation. Should you have questions, please contact Linda Taylor-Manning at 684-8376.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

