

CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 6

Date: February 16, 2011

TO: Honorable Mayor and Members of the City Council

FROM: Sheryl Bennett, Human Resources Director
Cindy Titgen, Benefits and Workers' Compensation Manager

SUBJECT: Adoption of Second Amendment to the City of Escondido Flexible Benefit Plan

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2011-19 which adopts the Second Amendment of the City of Escondido Flexible Benefit Plan

FISCAL ANALYSIS:

No cost impact

BACKGROUND:

In 1991 the City established a Flexible Benefit Plan (Plan) for City employees which was revised in 2000 (Resolution 2000-197), amended in 2004, revised and restated on January 1, 2007, and amended in 2010. The Plan is revised, amended and restated from time to time in accordance with changes to benefit programs and federal or state legislation.

This Plan allows employees certain employee benefits as approved by City Council. The Plan is considered a Flexible Benefit Plan which covers all aspects of the City's employee benefits program including eligibility, enrollment, pre-tax elections, flexible spending accounts as well as group medical, dental, and others. The Second Amendment incorporates provisions of the Affordable Care Act of 2010; Children's Health Insurance Program Reauthorization Act of 2009; Genetic Information Nondiscrimination Act; and the Mental Health Parity and Addiction Equity Act.

This Second Amendment supersedes the provisions of the Plan and the First Amendment to the extent those provisions are inconsistent with the provisions of this Amendment. Accordingly, Staff recommends that City Council authorize the adoption of the Second Amendment of the City of Escondido Flexible Benefit Plan effective January 1, 2011, and delegates authority to the Human Resources Director or designee to implement regulatory requirements and approve future Flexible Plan Amendments or restatements of the Plan.

Respectfully submitted,


Sheryl Bennett
Human Resources Director


Cindy Titgen
Benefits and Workers' Compensation Manager

RESOLUTION NO. 2011-19

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, ADOPTING THE
CITY OF ESCONDIDO'S SECOND
AMENDMENT TO THE FLEXIBLE BENEFIT
PLAN DATED JANUARY 1, 2010, AND
DELEGATING FUTURE PLAN AMENDMENT
AUTHORITY TO THE HUMAN RESOURCES
DIRECTOR

WHEREAS, City Council has approved employee benefit plans for City employees; and

WHEREAS, City Council desires to establish a Second Amendment to the City of Escondido Flexible Benefit Plan. The City of Escondido Flexible Benefit Plan (the "Plan") is for the benefit of the eligible employees and others of the City and qualifies as a Cafeteria Plan under Section 125 of the Internal Revenue Code of 1986 (the "Code"), as amended from time to time, and

WHEREAS, attached is a copy of the Second Amendment ("Amendment") to the Plan which incorporates provisions of the Affordable Care Act of 2010; Children's Health Insurance Program Reauthorization Act of 2009; Genetic Information Nondiscrimination Act; and the Mental Health Parity and Addiction Equity Act. This Amendment supersedes the provisions of the Plan and First Amendment to the Plan to the extent those agreements are inconsistent with the provisions of the Amendment; and

WHEREAS, pursuant to Sections 10.1 and 11.6 of the Plan, a person duly authorized by the City's legally constituted authority may amend the Plan; and

WHEREAS, the Human Resources Director recommends City Council delegate future Plan amendment authority to the Human Resources Director or his/her designee

and adopt the present Amendment to the Plan.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, as follows:

1. That the above recitations are true.
2. That the City Council hereby adopts the Second Amendment to the City of Escondido's Flexible Benefit Plan, attached as Exhibit "A" to this resolution and is incorporated by this reference.
3. That the City Council delegates authority to the Human Resources Director or designee to:
 - a) Implement regulatory requirements
 - b) Approve future Flexible Plan Amendments or restatement of the City of Escondido Flexible Plan

SECOND AMENDMENT
City of Escondido Flexible Benefit Plan

Resolution 2011-19
Attachment "A"
Page 1 of 2

2010 HEALTH CARE REFORM & OTHER PROVISIONS AMENDMENT

**ARTICLE I
PREAMBLE**

- 1.1 **Adoption and effective date of amendment.** The Employer adopts this Amendment to the City of Escondido Flexible Benefit Plan ("Plan") to reflect certain provisions of the Affordable Care Act of 2010 (the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act); Children's Health Insurance Program Reauthorization Act of 2009 (State Children's Health Insurance Program (SCHIP)); the Genetic Information Nondiscrimination Act (GINA); and the Mental Health Parity and Addiction Equity Act (MHPAEA). The sponsor intends this Amendment as good faith compliance with the requirements of these provisions. This Amendment shall be effective on or after the date the Employer elects in Section 2.1 below.
- 1.2 **Supersession of inconsistent provisions.** This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Multiple adopting employers.** If more than one employer has adopted the Plan, the main employer shall adopt this amendment on behalf of all adopting employers and such provisions shall apply to all adopting employers.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.

**ARTICLE II
ELECTIONS**

- 2.1 **Effective Dates** The effective dates are indicated in each Article below.

**ARTICLE III
MISCELLANEOUS PROVISIONS**

- 3.1 **Change in Reimbursement.** Effective January 1, 2011, the Plan's definition of "Medical Expenses" under the Health Care Reimbursement Arrangement or Health Flexible Spending Account is amended by the addition of the following:

Notwithstanding anything in the Plan to the contrary, a Participant may not be reimbursed for the cost of any medicine or drug that is not "prescribed" within the meaning of Code Section 106(f) or is not insulin. In addition, only medicine or drugs considered to be prescription drugs under Code Section 106(f) (not "over-the-counter" drugs obtained under prescription) shall be able to be purchased by debit and/or credit cards issued to be used in conjunction with the Plan.

- 3.2 **Dependent.** Effective as of the date the group health plan(s) provide such provision but no earlier than March 30, 2010, the Plan's definition of "Dependent" is amended by the addition of the following:

"**Dependent**" shall include any child of a Participant who is covered under an Insurance Contract, as defined in the Contract, or under the Health Flexible Spending Account as allowed by reason of the Affordable Care Act.

A Participant's "Child" includes his natural child, (stepchild or foster child if the group health plan(s) so provide) adopted child, or a child placed with the Participant for adoption. An Employee's Child will be an eligible Dependent until reaching the limiting age of 26, without regard to student status, marital status, financial dependency or residency status with the Participant or any other person. When the child reaches the applicable limiting age, coverage will end at the end of the calendar year.

The phrase "placed for adoption" refers to a child whom the Participant intends to adopt, whether or not the adoption has become final, who has not attained the age of 18 as of the date of such placement for adoption. The term "placed" means the assumption and retention by such Participant of a legal obligation for total or partial support of the child in anticipation of adoption of the child. The child must be available for adoption and the legal process must have commenced.

- 3.3 **Dependent.** Effective as of the date the group health plan(s) provide such provision but no earlier than March 30, 2010, the Plan's Change in Status provisions are amended by the addition of the following:

Notwithstanding anything in this Section to the contrary, the gain of eligibility or change in eligibility of a child up to the end of the year in which a child attains age 26, as allowed under Code Sections 105(b) and 106 and IRS Notice 2010-38, shall qualify as a change in status.

SECOND AMENDMENT
~~ARTICLE IV~~
SPECIAL ENROLLMENT RIGHTS

- 4.1 **Special Enrollment Rights.** Effective April 1, 2009, the Plan is amended to allow for special enrollments rights in the event a Participant or his or her eligible Dependent (1) loses coverage under Medicaid or a state child health program, or (2) becomes eligible for state assistance with respect to paying his or her contributions to the Plan, as follows:

Special enrollment rights. A Participant may change an election for accident or health coverage during a Plan Year and make a new election that corresponds with the special enrollment rights provided in Code Section 9801(f), including those authorized under the provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (State Children's Health Insurance Program (SCHIP)); provided that such Participant meets the sixty (60) day notice requirement imposed by Code Section 9801(f) (or such longer period as may be permitted by the Plan and communicated to Participants). Such change shall take place on a prospective basis, unless otherwise required by Code Section 9801(f) to be retroactive.

ARTICLE V
GENETIC INFORMATION NONDISCRIMINATION ACT

- 5.1 **Effective Date.** This Section is effective for Plan Years beginning on and after the first day of the Plan Year beginning on or after May 21, 2009.
- 5.2 **Genetic Information Nondiscrimination Act.** Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Genetic Information Nondiscrimination Act.

ARTICLE VI
MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT

- 6.1 **Effective Date.** This Section is effective for Plan Years beginning on and after the first day of the Plan Year beginning on or after October 9, 2009.
- 6.2 **Mental Health Parity and Addition Equity Act.** Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Mental Health Parity and Addiction Equity Act.

This amendment has been executed this _____ day of _____, 2010.

Name of Employer: **City of Escondido**

By: _____
Signature

Print Name / Title

SECOND AMENDMENT
City of Escondido Flexible Benefit Plan

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By: _____
Signature

Print Name / Title