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## REPORT TO THE CITY COUNCIL

### WORKERS' COMPENSATION OFFSET OF INDUSTRIAL DISABILITY RETIREMENT BENEFITS

#### INTRODUCTION

At its December 5, 2011 meeting, the Audit Committee passed a motion to accept and forward to the San Diego City Council (City Council) the City Auditor's Performance Audit of the San Diego City Employees' Retirement System (SDCERS), and requested that the City Attorney prepare and present to the City Council a legal opinion addressing the following two issues: (1) may the City discontinue or modify the reimbursement of the Medicare Part B Income Related Monthly Adjustment Amount (IRMAA) premiums for Health Eligible Retirees?; and (2) may the City offset Industrial Disability Retirement (IDR) benefit payments by Workers' Compensation payments received by the benefit recipient?

This Report addresses the second issue. An accompanying report addresses the first issue.

#### BACKGROUND

On August 28, 1978, the City Council adopted San Diego Ordinance O-12430, adding section 24.0515 to the Municipal Code. That section imposed an offset of worker's compensation benefits received by an employee against any IDR that employee ultimately received. This became commonly referred to as the "IDR Offset."

On December 7, 1987, after meeting and conferring and reaching agreement with the San Diego Police Officers Association and International Brotherhood of Firefighters Local 145, the City Council adopted San Diego Ordinance O-16992. This ordinance eliminated the IDR Offset for Safety Members effective January 1, 1988.

Similarly, on May 15, 1989, after meeting and conferring and reaching agreement with the San Diego Municipal Employees Association and AFSCME Local 127, the City Council adopted San Diego Ordinance O-17295. This ordinance eliminated the IDR Offset for General Members effective July 1, 1989.

Therefore, in its present state, the IDR Offset does not apply to Safety Members receiving an IDR on and after January 1, 1988, and to General Members receiving an IDR on and after July 1, 1989.

### ANALYSIS

Reinstitution of the IDR Offset would require an amendment to Municipal Code section 24.0515. As a term and condition of employment and affecting wages, reinstatement of the IDR Offset would be subject to the meet and confer requirements of the Meyers-Milias-Brown Act.<sup>1</sup>

Further, as any such amendment would affect the benefits of employees under the Retirement System, such an amendment could not be adopted in the absence of a majority vote of the Retirement System members. San Diego Charter § 143.1(a).

Assuming the requisite meet and confer obligation was satisfied, and agreement was reached or the reinstatement was imposed after impasse and a vote was successfully conducted under San Diego Charter section 143.1, the IDR Offset could only be applied prospectively to active employees and new hires. It could not be applied to those already retired. As this Office previously opined, those who have retired did so subject to that level of benefits in existence during employment and present at the time of retirement. *See Op. City Att’y 2010-1 (January 21, 2010).*

### CONCLUSION

The IDR Offset was eliminated in 1988 for Safety Members and in 1989 for General Members. Reinstating that offset requires engaging in meet and confer with the labor organizations, agreement with them or imposition after impasse, and a Charter section 143.1 vote. Further, the IDR Offset could only be applied prospectively to active and new employees, and could not apply to retirees.

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By \_\_\_\_\_ /s/  
William Gersten  
Deputy City Attorney

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<sup>1</sup> Cal. Gov’t Code §§ 3500-3511.