

RESOLUTION NUMBER R-286193

ADOPTED ON AUGUST 1, 1995

WHEREAS, San Diego Municipal Code ("SDMC") section 24.0514 establishes a compensation limitation for certain retirees receiving disability retirement allowances from the San Diego City Employees' Retirement System; and

WHEREAS, this compensation limitation applies only to those retirees who have not yet attained the age for voluntary service retirement and who were hired by The City of San Diego on or after October 1, 1978; and

WHEREAS, pursuant to this compensation limitation, the Board of Administration ("Board") is required to reduce the monthly disability retirement pension portion of the disability retirement allowance for those retirees subject to the compensation limitation who engage in gainful employment not in City service; and

WHEREAS, the reduction, when required, is that amount received by the retiree from his or her outside employment which exceeds the maximum current compensation attached to the position that the retiree held at the time of his or her disability retirement; and

WHEREAS, if the position that the retiree held at the time of his or her disability retirement has been abolished, the maximum compensation attached to such position immediately prior to its abolition is modified for years succeeding abolition by

the average percentage increase in salaries for all City employees; and

WHEREAS, a companion SDMC section, SDMC section 24.0516, requires a disability retiree hired after October 1, 1978, who has not reached the minimum age for voluntary service retirement, to provide the Board with quarterly statements of all compensation earned by that retiree; and

WHEREAS, SDMC section 24.0516 also requires the retiree to provide the Board with a copy of his or her annual Federal income tax return within thirty (30) days of it being filed with the Internal Revenue Service; and

WHEREAS, failure to file the required quarterly statements of income earned by the disability retiree shall be cause for the Board to suspend disability allowance payments; and

WHEREAS, SDMC sections 24.0514 (compensation limitation for certain disability retirees) and 24.0516 (reporting requirements for certain disability retirees) were administered and enforced by the Board from October 1, 1978, to approximately September 30, 1987, when they ceased to be enforced for unknown reasons; and

WHEREAS, there is no record of any member receiving a compensation notice during the period of October 1, 1987 to June 30, 1994, and hence the Board did not receive income statements as required by SDMC section 24.0516 or impose reductions in the disability retirement pensions as required by SDMC section 24.0514 during this period of time; and

WHEREAS, in early 1994, the Retirement Administrator determined that these sections were not being administered or

enforced by retirement staff and requested a legal opinion from the City Attorney on the Board's responsibilities regarding the enforcement of these sections; and

WHEREAS, the City Attorney issued a Memorandum of Law on June 1, 1994, and advised the Board to direct the Retirement Administrator to either: (1) implement the disability income offset program as described in SDMC sections 24.0514 and 24.0516 immediately; or (2) prepare an ordinance for the City Council explaining the drawbacks and costs of offsetting outside earnings and seek a change in the SDMC; and

WHEREAS, the Retirement Administrator docketed the disability income offset program on the agenda for the Board's regularly scheduled meeting in August, 1994; and

WHEREAS, at this meeting the Board directed retirement staff to prepare a policy and procedure for reimplementing the enforcement of SDMC sections 24.0514 and 24.0516 including an assessment of the disability retirees impacted by the offset program, the financial benefit to be realized upon enforcement of the offset program and the costs of administration; and

WHEREAS, the Board directed staff to send out compensation/offset notices to those disability retirees impacted by the requirements of SDMC sections 24.0514 and 24.0516, accumulate the results from these notices and report the results back to the Board; and

WHEREAS, the results were summarized for the quarter beginning October 1, 1994, and the quarter beginning January 1, 1995, as set forth in greater detail in the attached

Administrator's Report dated June 16, 1995; and

WHEREAS, based on the information received from the disability retirees impacted by the offset program, the requirements of the offset program set forth in SDMC sections 24.0514 and 24.0516, and the Memorandum of Law issued by the City Attorney, the Board approved procedures to officially reimplement the offset program, effective July 1, 1995, including, effective July 31, 1995, the suspension of disability retirement allowances for those retirees who do not comply with the reporting requirement set forth in SDMC section 24.0516; and

WHEREAS, because certain retirees were not notified of the income offset provisions in their Certificate of Retirement Allowances at the time of their disability retirement, the Board recommends that the compensation reporting requirements and any income offset that may have resulted from such reporting requirements, be permanently suspended retroactively for those members who were subject to the requirements of the disability income offset program from October 1, 1987, through and including March 31, 1995, and for this period only; and

WHEREAS, the Board agreed to include in the Administrator's Report dated June 16, 1995, the alternative presented by the Retired Fire and Police Association of San Diego, Inc. to repeal SDMC sections 24.0514 and 24.0516 eliminating the compensation offset program and the companion reporting requirements; and

WHEREAS, the Council having reviewed the Administrator's Report dated June 16, 1995, concurs with the Board's recommendation; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the compensation reporting requirements, and any income offset that may have resulted from such reporting requirements, be permanently suspended for those members who were subject to the requirements of the disability income offset program from October 1, 1987, through March 31, 1995.

2. That the City Manager is directed to meet and confer with the Employee Organizations on the Disability Offset Program and return to the Council in Closed Session with a report on how to proceed with the Program.

3. That no disability income will be offset by outside earnings until the Disability Offset Program has been reviewed by this Council.

4. That the Retirement Board is requested to direct their Staff to review the retirement provisions of the San Diego Municipal Code to see if there are any other retirement provisions which are not being enforced appropriately.

5. That the Retirement Board is further requested to respond in writing that, upon a review of the Municipal Code, it is their opinion that there are no sections of the Municipal Code

regarding retirement benefits that are not presently being enforced as stated therein.

APPROVED: JOHN W. WITT, City Attorney

By 
Loraine Etherington Chapin
Deputy City Attorney

LEC:mrh
07/12/95
08/10/95 REV. 1
Or.Dept:Retire.
R-96-46
Form=r.auagr