

(O-99-73)
(Cor. Copy)

ORDINANCE NUMBER O-**18608** (NEW SERIES)

ADOPTED ON **JAN 11 1999**

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 4, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 15 TITLED INVESTMENT EARNINGS, SUPPLEMENTAL BENEFITS AND ADJUSTMENTS; BY REPEALING DIVISION 5-B AND SECTIONS 24.0531 AND 24.0532; BY AMENDING DIVISIONS 9 AND 15 BY REPEALING SECTION 24.0907 AND REENACTING IT AS SECTIONS 24.1501 AND 24.1502, BY AMENDING DIVISIONS 4 AND 15 BY RENUMBERING AND AMENDING SECTION 24.0404 TO 24.1503; BY AMENDING DIVISION 15 BY ADDING SECTION 24.1504; BY AMENDING DIVISION 15 BY REENACTING SECTION 24.0531 AND 24.0532 TO SECTIONS 24.1505 AND 24.1506, RESPECTIVELY; AND, BY AMENDING DIVISION 15 BY ADDING SECTION 24.1507, ALL RELATING TO THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, the Retirement Board directed its General Counsel to prepare an ordinance amending Chapter II, Article 4, of the San Diego Municipal Code ("SDMC") by adding Division 15 titled "Investment Earnings, Supplemental Benefits and Adjustments"; and

WHEREAS, said ordinance was prepared by the Retirement Board's General Counsel and provided to the City Attorney for his review and approval; and

WHEREAS, as a result of the benefit improvements included in the Manager's Proposal of 1997, employee contributions to the Retirement System were scheduled to increase by amounts ranging from 0.49% to 1.13%; and

WHEREAS, based on agreements reached with the City's four labor organizations, these increased employee contributions were scheduled to take effect at different times in Fiscal Year 1998 and Fiscal Year 1999; and

WHEREAS, during meet and confer for successor labor agreements effective July 1, 1998, there was an agreement to submit a joint recommendation to the Retirement Board regarding the payment of this increase in employee contributions; and

WHEREAS, it was recommended the Retirement Board establish a reserve from undistributed earnings, in an amount to be determined by the Board's actuary to generate interest sufficient to pay 0.49% of employee contributions for all Safety and General Members; and

WHEREAS, it was recommended the payment of this increase in employee contributions be retroactive to July 1, 1998; and

WHEREAS, at the time the Manager's Proposal was approved, the City Manager also agreed to conduct a study to determine whether it was feasible to fund an improved Cost of Living Allowance ("COLA") benefit for certain retirees; and

WHEREAS, for the past year, a group of retirees has worked with the Manager's office to study and evaluate options for a Supplemental COLA to present to the City Council for its consideration; and

WHEREAS, the Supplemental COLA agreed upon was limited to a closed group of retirees whose benefits, as determined by the Board's Actuary, fell below 75% of the original purchasing power of their benefits when combined with their 13th check as of July 1, 1998; and

WHEREAS, the Supplemental COLA was identified as the amount necessary to bring the retiree's benefit when combined with the retiree's 13th check to a level not less than 75% of the retiree's base retirement benefit; and

WHEREAS, it was further agreed the amount of the Supplemental COLA would not exceed a 50% increase in the retiree's current benefit when combined with the retiree's 13th check; and

WHEREAS, it was recommended the Retirement Board establish a specific reserve from undistributed earnings, in an amount to be determined by the Board's actuary to fund the proposed supplemental COLA for the designated closed group of current retirees; and

WHEREAS, it was recommended the Supplemental COLA be paid from a reserve set aside from undistributed earnings for this closed group of retirees until the reserve is exhausted; and

WHEREAS, the proposed sections of the SDMC for the recommended Reserves for the Supplemental COLA and employee contributions have been placed in new Division 15 of the SDMC; and

WHEREAS, as a matter of housekeeping and convenience, other sections of the SDMC regarding Surplus Undistributed Earnings, adjustments to benefits and the Annual Supplemental Benefit have been amended as to form only and moved into Division 15; and

WHEREAS, it is now necessary and proper to amend the SDMC to reflect the changes to certain benefits and the reorganization of other benefits under the Retirement System; and

WHEREAS, the Retirement Board has reviewed and approved the proposed changes to the SDMC and recommends adoption; and

WHEREAS, although not required by Charter Section 143.1, the Retirement Board has agreed to conduct a vote of the retiree membership for the Supplemental COLA; and

WHEREAS, the Supplemental COLA benefit shall not become effective until approved by the retiree membership, NOW, THEREFORE,

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

Section 1. That Chapter II, Article 4, of the San Diego Municipal Code is amended by adding Division 15, to read as follows:

DIVISION 15

INVESTMENT EARNINGS, SUPPLEMENTAL BENEFITS

AND ADJUSTMENTS

Section 2. That Chapter II, Article 4, of the San Diego Municipal Code is amended by repealing Division 5-B and Sections 24.0531 and 24.0532.

Section 3. That Chapter II, Article 4, Division 9, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 24.0907 and reenacting and amending it in new Division 15 as Sections 24.1501 and 24.1502, to read as follows:

SEC. 24.1501 Investment Earnings Received

Investment Earnings Received shall be determined on a cash basis, except that Investment Earnings Received shall be increased or decreased by the amount of the annual amortization of purchase discounts or premiums on interest-bearing investments earned in accordance with generally accepted accounting principles for financial reporting purposes. No subsequent changes in the method of accounting for the Retirement System shall affect the determination of Investment Earnings Received. Surplus Undistributed Earnings shall be determined by the City Auditor and Comptroller in accordance with this Section and shall be certified by the City's independent public accountant.

SEC. 24.1502 Surplus Undistributed Earnings

(a) Surplus Undistributed Earnings shall be comprised of Investment Earnings Received for the previous fiscal year, less, in the following order:

(1) An amount sufficient to credit interest to the contribution accounts of the Members, the City and the Unified Port District at an interest rate determined by the Board and distributed in accordance with Section 24.0905 and related Board rules; and

(2) An amount sufficient to meet the budgeted expenses and costs of operating the System including all personnel and services for the fiscal year; and

(3) An amount necessary to maintain such reserves as the Board deems appropriate on advice of its investment counselor and/or Actuary; and

(4) An amount sufficient to credit the Unified Port District ("UPD") with a proportional share of Surplus Undistributed Earnings as defined in this Section; and

(5) An amount, (the Division 12 amount), appropriate to provide health benefits to Health Eligible and Non Health Eligible Retirees as provided in Division 12 for the next fiscal year provided:

(A) in the next fiscal year, the City contributes to the 401(h) Fund no less than an equal amount which is designated to be used for retiree health benefits to be paid or reimbursed in the next fiscal year; and,

(B) to the extent the City makes a contribution to the 401(h) Fund for the next fiscal year, the Division 12 amount shall be treated as a portion of normal employer contributions paid to the Retirement System when the City so designates in accordance with Section 24.1203(b)(5); and

(6) An amount sufficient to provide necessary funds to pay an annual supplemental benefit to Qualified Retirees, pursuant to the provisions and conditions set forth in Section 24.1503. If, at the time of the annual determination, the amount provided for the supplemental benefits is less than \$100,000, no supplemental benefits will be paid in that fiscal year and the monies will be placed in a special reserve and be carried forward to ensuing years until such time as the amount to be provided for this

(2) The retiree must be on the retirement payroll for the month of October of any year in which benefits are to be paid except as provided otherwise in Section 3 of this ordinance for the first year's distribution;

(3) Qualified Retirees shall be limited to the following classes:

(A) Retired General and Safety Members;

(B) Retired Unified Port District Members; and

(C) Special Class Safety Members who are receiving fixed monthly retirement benefits; and

(D) Survivors of (a), (b) and (c) above receiving monthly pensions from the system, provided such members had met the minimum continuous service requirement in subsection A.1. above.

(4) Legislative and Special Class Safety Members who are receiving fluctuating monthly retirement benefits, and the survivors of both classes shall not be eligible for participation in the annual supplemental benefit program established by this Article.

(b) For the purpose of determining the amount of the supplemental benefit payment to Qualified Retirees, the following process shall apply:

(1) The Retirement Administrator each year shall identify all Qualified Retirees on the retirement payroll for the month of October.

(2) The Retirement Administrator shall then determine the number of years of creditable service possessed by each Qualified Retiree identified in 1. above.

(3) The number of creditable years for all Qualified Retirees shall be added together to determine the total sum of Qualified creditable years.

(4) The total sum of qualified creditable years shall then be divided into the total of Surplus Undistributed Earnings designated for distribution by the Board pursuant to Section 24.1502(a)(6) of this Section to arrive at a per annum dollar value for each creditable year; provided, however, that in no event shall the per annum dollar value exceed \$30 (thirty dollars) except for those General Members who retired between January 8, 1982 and June 30, 1985, who shall be entitled to a per annum value not to exceed \$45 (forty-five dollars).

Notwithstanding the preceding paragraph, and effective Fiscal Year 1997, Qualified Retirees who retired on or before October 6, 1980, but after December 31, 1971, will receive \$60 (sixty dollars) per year of service and Qualified Retirees who retired on or before December 31, 1971, will receive \$75 (seventy-five dollars) per year of service.

(5) The per annum dollar value shall then be multiplied by each Qualified Retiree's creditable service to determine the annual supplemental benefit to be paid each Qualified Retiree the following November.

(6) Except as provided in Section 24.1503(b)(7), the supplemental benefits of survivors of deceased Qualified Retirees, as defined in Section 24.1503(a), shall be determined in the same ratio as their monthly benefits bear to the monthly benefit received by their respective deceased retired spouses.

(7) The supplemental benefit of a survivor of a Qualified Special Class Safety Retiree shall be determined by allocating to the surviving spouse fifty percent (50%) of the qualified creditable years issued to the deceased Member.

(c) The Board, with the cooperation and approval of the City Auditor and Comptroller, shall promulgate necessary rules to effectuate the provisions and intent of this Article.

Section 5. That Chapter II, Article 4, Division 15, is amended by adding Section 24.1504, to read as follows:

SEC. 24.1504 Supplemental COLA Program

The purpose of the Supplemental COLA Program is to increase the retirement benefit of certain Qualified Retirees as defined in Section 24.1503 by an amount sufficient to insure that their benefit as of July 1, 1998, when combined with their Annual Supplemental Benefit as defined in Section 24.1503, is at a level equivalent to seventy-five percent (75%) of the present value of their Base Retirement Benefit. The amount of increase under this Section, however, shall not exceed fifty percent (50%) of the Qualified Retiree's benefit in effect as of July 1, 1998.

For purposes of this section, the Base Retirement Benefit is the full monthly Retirement Allowance received upon retirement. The benefit in effect July 1, 1998, is the benefit as defined in either Section 24.0402 or Section 24.0403, as adjusted by both the Cost of Living Adjustment defined in Section 24.1505 and the Annual Supplemental Benefit, defined in Section 24.1503.

(a) Participation in the Supplemental COLA Program shall be limited to Qualified Retirees as defined in Section 24.1503 or their survivors, who:

(1) Retired on or before June 30, 1982; and

(2) Received a retirement allowance on July 1, 1998, which, as

determined by the System's Actuary, was at a level less than the equivalent of 75% of the

present value of their Base Retirement Benefit when combined with their Annual Supplemental Benefit as defined in Section 24.1503.

(b) The amount to be paid as the Supplemental COLA benefit shall be calculated in accordance with the following procedures:

(1) The System's Actuary shall determine the factor necessary to calculate the equivalent of 75% of the present value of the Qualified Retiree's Base Retirement Benefit. This calculation shall be based on the Cost of Living Index as shown by the Bureau of Labor Statistics Consumer Price Index, United States - All items, for each applicable Fiscal Year.

(2) The above factor shall be multiplied times the Qualified Retiree's benefit in effect July 1, 1998, as defined above, but not including the Annual Supplemental Benefit, to determine the amount of the increase required under the Supplemental COLA Program.

(3) The amount of the increase to the Qualified Retiree's Base Retirement Benefit under the Supplemental COLA Program shall not exceed 50% of the Qualified Retiree's benefit in effect as of July 1, 1998.

(4) The payment for the increase to the Qualified Retiree's Base Retirement Benefit under the Supplemental COLA Program shall start in January, 1999, retroactive to July 1, 1998, with an amount for the months of July through December 1998 added to an increased January Retirement Allowance, and then monthly thereafter.

(5) The increase to the Qualified Retiree's Base Retirement Benefit calculated under the Supplemental COLA Program shall be paid to the Qualified Retiree

or his or her survivor for life or until the Reserve established to pay this supplemental benefit is depleted.

(6) The Qualified Retiree's Retirement Allowance as increased by the Supplemental COLA Program shall be adjusted each July 1 thereafter in accordance with Sections 24.1505 and 24.1506.

(c) A reserve created by the Board pursuant to Section 24.1502(a)(3) shall be used to pay for the Supplemental COLA benefit as follows:

(1) The Reserve shall be credited with thirty-five million dollars (\$35,000,000) from Undistributed Earnings for the Fiscal Year ending June 30, 1998.

(2) Benefit payments under the Supplemental COLA Program shall be accounted for separately and charged against this Reserve.

(3) The Reserve shall be credited with interest annually, if sufficient funds are available, in accordance with Section 24.1502(a)(7).

(4) Benefit payments under the Supplemental COLA Program shall cease at such time as the Reserve is depleted.

(d) Reevaluation

(1) The System's Actuary shall conduct an annual evaluation of the Reserve to determine the feasibility of expanding the Supplemental COLA Program to include additional retirees and their survivors, additional Funds in the Reserve or the recalculation of benefits annually.

(2) Prior to April 30th of each Fiscal Year, representatives of the City Manager's office, the Retirement Administrator, and representatives of eligible retired member of CERS, may meet to consider, for recommendation to the City Council, any

recalculation of benefits, any increase in the number of Qualified Retirees or their survivors, or any increase in the Reserve created to pay the Supplemental COLA benefit.

The factors for consideration are:

- (A) The status of benefits of those retirees previously set at the 75% level;
- (B) The status of benefits of those retirees previously capped at the 50% increase level;
- (C) The status of retirees not previously eligible for the Supplemental COLA Program who now meet the necessary criteria;
- (D) The amount of Surplus Undistributed Earnings available to provide such additional benefits;
- (E) The amount of the Annual Supplemental Benefit to be combined with the benefit in effect July 1, 1999, or as part of the Base Retirement Benefit.

Section 6. That Chapter II, Article 4, Division 15, is amended by reenacting repealed Section 24.0531 as Section 24.1505, to read as follows:

SEC. 24.1505 Cost of Living Adjustment Effective Dates and Maximum Annual Change

(a) The Board shall before July 1, 1971 and before each July 1 thereafter determine whether there has been an increase or decrease in the cost of living as provided in this section. Excepting those special class safety members whose retirement allowances are based upon ½ the amount of the current salary of their retired rank, every person receiving a monthly retirement allowance from this system on June 30, 1971 and each June 30 thereafter shall, on and/or effective July 1, 1971 and each July 1 thereafter, have his or her monthly retirement allowance then being received increased or decreased

by that percentage determined by the Board to approximate the nearest 1/10th of one percent of the percentage of annual increase or decrease in the cost of living which has occurred between the two previous January firsts, as shown by the Bureau of Labor Statistics Consumer Price Index, United States--All items. Such change, however, shall not exceed 2.0% per year and no decrease shall reduce the monthly retirement allowance below the amount being received by any person on the effective date of his or her retirement or the effective date of the application of this section, whichever is later. The amount of any cost of living increase or decrease in any year which is not met by the maximum annual change of 2.0% in allowances shall be accumulated to be met by increase or decreases in allowances in future years.

(b) The allowance of all persons who retired from the 1981 Plan shall be adjusted each July 1, following the third anniversary of the commencement of the allowance. The adjustment shall be equal to 50% of the change in the all Urban Consumer Price Index for the San Diego area -- all items, except that such adjustment shall not exceed 10% annually. No adjustment shall reduce the allowance below the amount originally granted.

Section 7. That Chapter II, Article 4, Division 15, of the San Diego Municipal Code is amended by reenacting repealed Section 24.0532 as Section 24.1506, to read as follows:

**SEC. 24.1506 Cost of Living Adjustment Program Shared Between
Employer and Members**

(a) The cost of any anticipated cost of living increase in allowances which is based upon services rendered after July 1, 1971, shall be shared equally between the employer and the contributing Member, with the individual member's contributions based

upon his or her age at his or her nearest birthday at time of entrance into the Retirement System.

(b) Commencing July 1, 1971, and until adjusted by the Board upon the recommendation of the Actuary, the contribution requirements of Members as contained in Sections 24.0202 and 24.0302, respectively, plus surviving spouse contributions as contained in Section 24.0521, shall be increased by 15%. In addition, the contribution requirement for those Members specified therein who are active members on or after June 30, 1985, shall be increased by 20%. These "cost of living contributions" will be separately totaled upon the retirement of Members after July 1, 1971.

Section 8. That Chapter II, Article 4, Division 15, of the San Diego Municipal Code, is amended by adding Section 24.1507, to read as follows:

SEC. 24.1507 Adjustments to Employee Contributions

(a) A reserve created by the Board pursuant to Section 24.1502(a)(3) shall be used to pay a portion of employee contributions as follows:

(1) The Reserve shall be created with thirty-five million (\$35,000,000) from Undistributed Earnings for the Fiscal Year ended June 30, 1997.

(2) The monies in the Reserve shall not be counted as a part of System assets for the purpose of the annual actuarial valuation.

(3) The Reserve shall be credited with interest annually, if sufficient funds are available, in accordance with Section 24.1502(a)(7).

(4) The Auditor and Comptroller shall certify annually the amount of the anticipated payroll for the next Fiscal Year.

(5) Based upon the certification of anticipated payroll, the Auditor shall transfer each July 1 an amount equal to 0.49% of that payroll from the Reserve to the Reserve for Employer Contributions.

(6) All transactions under this Section shall be accounted for separately.

(b) None of the transactions described in this Section shall reduce the principal of the Reserve unless expressly authorized by the Board.

Section 9. The benefit improvements relating to the Supplemental COLA Program shall not become effective unless approved by the retirees of the Retirement System pursuant to an election conducted by the Board. The Retirement Administrator is directed to immediately inform the City Clerk of the results of the vote conducted by the Board. The provisions in the San Diego Municipal Code governing the Supplemental COLA shall not be adopted pursuant to this ordinance unless and until the Retirement Administrator notifies the City Clerk the retirees of the Retirement System have approved the Supplemental COLA.

Section 10. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

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Section 11. With the exception of the voting requirements for the Supplemental COLA in Section 2, this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

.....APPROVED: CASEY GWINN, City Attorney

By 
Theresa C. McAteer
Deputy City Attorney

LEC:TCM:mrh
11/25/98 (Cor. Copy)
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