

RESOLUTION NUMBER R- 297221

ADOPTED ON OCT 21 2002

RESOLUTION OF THE CITY OF SAN DIEGO AUTHORIZING  
2002 PAYMENT OF THE ANNUAL SUPPLEMENTAL BENEFIT  
(13TH CHECK)

WHEREAS, the City Council has the sole authority to establish the retirement benefits available under the San Diego City Employee's Retirement System [System]; and

WHEREAS, the Board of Administration [Retirement Board] for the System has the sole authority to manage the System, determine the rights to benefits under the System and invest the System's Trust Fund; and

WHEREAS, San Diego Municipal Code [SDMC] section 24.1503 describes the Annual Supplemental Benefit otherwise known as the 13<sup>th</sup> Check; and

WHEREAS, the annual payment of the 13<sup>th</sup> Check in any given year is contingent upon the availability of Surplus Undistributed Earnings for that year as described in SDMC section 24.1502; and

WHEREAS, the cost of the 13<sup>th</sup> Check for 2002 is estimated to be approximately \$3.9 million dollars; and

WHEREAS, there are insufficient Surplus Undistributed Earnings as described in SDMC section 24.1502 to pay the 13<sup>th</sup> check in 2002; and

WHEREAS, pursuant to the settlement of the *Andrews* lawsuit in 1986, a stand-alone account known as the 13<sup>th</sup> Check Supplemental Benefit Account (13<sup>th</sup> Check Account) was established and credited with \$2.0 million dollars; and

WHEREAS, the 13<sup>th</sup> Check Account was created to pay the 13<sup>th</sup> check benefit in years in which there were insufficient Surplus Undistributed Earnings to pay this benefit; and

WHEREAS, the 13<sup>th</sup> Check Account was depleted in 1991 when it was used to pay the 13<sup>th</sup> Check for that year; and

WHEREAS, there was no provision in the 13<sup>th</sup> Check Account requiring the Retirement Board to replenish the Account if it were to be depleted; and

WHEREAS, the Retirement Board, although not required to do so, replenished the 13<sup>th</sup> Check Account in 1997; and

WHEREAS, the 13<sup>th</sup> Check Account contains approximately \$3.5 million dollars; and

WHEREAS, there is another account dedicated to the 13<sup>th</sup> Check benefit which is called the Reserve for Supplemental Benefit Payments (13<sup>th</sup> Check Reserve); and

WHEREAS, the 13<sup>th</sup> Check Reserve contains approximately \$175 thousand dollars; and

WHEREAS, there is approximately \$3,744,211 in these 13<sup>th</sup> Check accounts which is not sufficient to pay the 13<sup>th</sup> Check benefit in full to eligible retirees but which is sufficient to pay a substantial portion of the 2002 13<sup>th</sup> Check; and

WHEREAS, the Board's outside Fiduciary Counsel has advised absent approval by the City Council there is no authority to pay the 13<sup>th</sup> Check benefit in 2002 because there are no Surplus Undistributed Earnings this year as required by SDMC section 24.1502; and

WHEREAS, the Retirement Board's Fiduciary Counsel also advised there is no authority to charge either the 13<sup>th</sup> Check Account or the 13<sup>th</sup> Check Reserve to pay the 13<sup>th</sup> Check benefit absent specific direction from the City Council; and

WHEREAS, the Retirement Board's Fiduciary Counsel further advised a substantial portion of the 13<sup>th</sup> Check benefit for 2002 could be paid this year by charging the 13<sup>th</sup> Check Account and 13<sup>th</sup> Check Reserve if the City Council were to authorize payment of this contingent benefit to the extent of the funds available in this Reserve and Account; and

WHEREAS, on May 29, 2002 at a special meeting of the Retirement Board, the Board directed Staff to seek direction from the City Council regarding the payment of the 13<sup>th</sup> Check for 2002 using the 13<sup>th</sup> Check Account and 13<sup>th</sup> Check Reserve; and

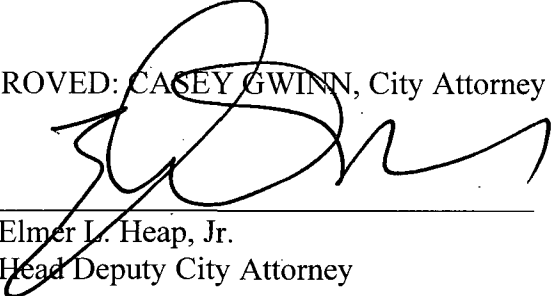
WHEREAS, the use of the 13<sup>th</sup> Check Account and 13<sup>th</sup> Check Reserve to pay for the 2002 payment of the 13<sup>th</sup> Check does not alter the contingent nature of this benefit; and

WHEREAS, if there are insufficient surplus undistributed earnings in any future year, there is no requirement to pay the benefit for that year; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Retirement Board is authorized to pay the 13<sup>th</sup> Check in 2002 to all eligible retirees to the extent of the funds available in the 13<sup>th</sup> Check Account and 13<sup>th</sup> Check Reserve.

APPROVED: CASEY GWINN, City Attorney

By

  
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