

5500  
10/19

RESOLUTION NUMBER R- 303074

DATE OF FINAL PASSAGE OCT 16 2007

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE RETENTION OF OUTSIDE COUNSEL AND DECLARATORY RELIEF ACTIONS RELATED TO RETIREMENT BENEFIT CHANGES.

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

1. That the Mayor is authorized to retain outside legal counsel, reporting jointly to the City Council and to the Mayor, to provide legal services related to determining the effective date of retirement benefit changes for employees hired between July 1, 2005 and February 16, 2007.

2. That the initiation of litigation is authorized, to include a Declaratory Relief Action and other actions as necessary, to determine the effective date of the retirement benefit changes.

3. That the City Auditor and Comptroller is authorized to appropriate the necessary funding from the Public Liability Fund and to expend these funds for outside counsel fees related to this action.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

[submitted unsigned – see accompanying memorandum]

By \_\_\_\_\_

CMB:als  
10/11/07  
Or.Dept:Mayor  
R-2008-319

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 09 2007.

ELIZABETH S. MALAND  
City Clerk

By *Asha Richardson*  
Deputy City Clerk

Approved: 10-16-07  
(date)

*JSL*  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Office of  
The City Attorney  
City of San Diego

MEMORANDUM  
MS 59

(619) 236-6220

**DATE:** October 11, 2007  
**TO:** Elizabeth Maland, City Clerk  
**FROM:** City Attorney  
**SUBJECT:** Resolution R-303074 Retention of Outside Counsel Related to Retirement Benefit Changes (R-2008-319)

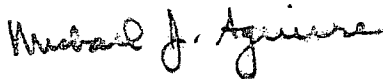
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The attached Resolution R-303074 is provided by the City Attorney in accordance with San Diego Charter section 40 which requires that resolutions be prepared in writing and facilitates the processing and publishing of the resolution by the City Clerk. The resolution, which is unsigned, reflects the actions of the City Council on October 9, 2007 on item S500 as noted in the Clerk's minutes. We are submitting the resolution without a signature of approval because we believe the action taken by the Council violates Charter section 40.

Charter section 40 provides, in relevant part, that: "[t]he City Attorney shall be the chief legal adviser of and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties. . ." and "[i]t shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; . . . to prosecute or defend, as the case maybe, all suits or cases to which the City may be a party. . ." The action authorizing the retention of outside counsel to file a declaratory relief action and report directly to the Mayor and City Council violates Charter section 40. Accordingly, the City Attorney intends to continue to represent the City in this matter.

MICHAEL J. AGUIRRE, City Attorney

By



Michael J. Aguirre  
City Attorney

MJA:jb  
Attachment

R- 303074



**OFFICE OF MAYOR JERRY SANDERS  
CITY OF SAN DIEGO**

**MEMORANDUM**

Date: October 16, 2007  
To: Elizabeth Maland, City Clerk  
From: Mayor Jerry Sanders *JSL*  
Subject: Resolution R-303074 Retention of Outside Counsel Related to Retirement Benefit Changes (R-2008-319)

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The City Attorney has prepared Resolution R-303074 documenting the Council's action on Tuesday, October 9, 2007 to authorize retention of outside legal counsel and declaratory relief actions related to retirement benefit changes. The action was approved 6-0. Typically, the Resolution includes a number of "WHEREAS" clauses which document the basis for the Council's action. This was not included by the City Attorney in this case. Also, the City Attorney did not sign the Resolution, and attached a memorandum stating "we believe the action taken by the Council violates Charter section 40". The memo goes on to state "the City Attorney intends to continue to represent the City in this matter".

In order for the record to be complete, I am providing this memorandum. It establishes the basis for the approved course of action, including the "conflict" which contributes to the necessity to retain outside counsel. It also documents the Council and Mayor's decision for outside counsel to serve as sole legal representation for the City on this issue, reporting directly and jointly to the Mayor and City Council. The following information was included in the back up for the item and was discussed during the Council hearing:

- o The City Council adopted Resolution R-300600 on June 27, 2005 approving the FY 2006 – FY 2008 Memoranda of Understanding for the San Diego Municipal Employees Association (SDMEA) and AFSCME Local 127 and the FY 2006 Memoranda of Understanding for the International Association of Fire Fighters Local 145 and the Deputy City Attorney's Association which included revisions to retirement benefit eligibility for employees hired on or after July 1, 2005
- o The City Council voted 6-0 to adopt Ordinance O-19567, New Series, on January 9, 2007 amending the Municipal Code to reflect the benefit eligibility changes for employees hired and elected officials assuming office on or after July 1, 2005. This Ordinance became effective on February 16, 2007

*R 303074*

- The San Diego City Employees' Retirement System (SDCERS), based on the legal opinion of their fiduciary counsel ReedSmith, has established an effective date of February 16, 2007 for the benefit changes negotiated and agreed to in the MOUs approved in 2005, citing that the changes were not memorialized via amendments to the Municipal Code "in a timely manner" as called for in the documents
- The City Attorney, citing a legal opinion from K&L Gates, has opined that the effective date for the benefit changes is July 1, 2005 consistent with the effective date established in the adopted 2005 MOUs.
- Approximately 700 new City employees were hired between July 1, 2005 and February 16, 2007. It is in the City's best interest to resolve the dispute over the effective date of the benefit changes in order to have certainty with respect to the City's financial obligation associated with the subject retirement benefits for these new employees.
- The City Attorney, despite a court ruling to the contrary, contends that his office serves as the legal counsel for both parties in this conflict, the City and SDCERS. Additionally, since the City Attorney's failure to act created the problem that necessitates this litigation, a conflict exists in that his office could be witnesses and could need to defend their actions in conflict with the City's defense.
- The City Council and Mayor cite the City Attorney's position and delayed actions as creating a "conflict" which impedes his ability to participate, on the City's behalf, in the legal resolution of the benefit eligibility issue.