

51
9/02/08

ORDINANCE NUMBER O- 19781 (NEW SERIES)

DATE OF FINAL PASSAGE SEP 11 2008

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 4, DIVISION 15, OF THE SAN DIEGO MUNICIPAL CODE, BY REPEALING AND ADDING SECTIONS 24.1501 AND 24.1502, AMENDING SECTIONS 24.1503 AND 1504, AND ADDING SECTION 24.1503.5, ALL RELATING TO "SURPLUS EARNINGS" AND THE "WATERFALL."

WHEREAS, in 1980, Ordinance number 0-15353 was adopted whereby 50% of the annual returns of SDCERS, to the extent those returns exceeded the actuarial assumed rate of return, were defined as "Surplus Earnings;" and

WHEREAS, subsequently, ordinances were adopted directing the payment of interest, expenses and benefits from the "Surplus Earnings" commonly referred to as the [Waterfall]; and

WHEREAS, the concept of "Surplus Earnings," when used in a defined benefit public pension plan, and the use of pension assets to fund non-pension benefits has been criticized by the actuarial community as inconsistent with sound actuarial principles, and results in an increase in the Unfunded Actuarially Accrued Liability and corresponding Annual Required Contributions; and

WHEREAS, the concept of "Surplus Earnings" and its vehicle commonly referred to as the "Waterfall" is presently codified in San Diego Municipal Code Section 24.1502 and provides for funding of: (1) interest to be credited to the contribution accounts of the Members, the City, and the Unified Port District at an interest rate determined by the Board; (2) operating costs of SDCERS; (3) reserves maintained by the Board on the

advice of its actuary; (4) a proportional amount of Surplus Undistributed Earnings credited to the Unified Port District; (5) post-retirement health care premiums; (6) the contingent “13th check;” (7) a portion of the *Corbett* settlement; and (8) the Supplemental COLA; and

WHEREAS, certain uses of “Surplus Earnings” are inconsistent with federal tax law to the extent they allow the payment of non-pension benefits from dedicated pension assets; and

WHEREAS, certain uses of “Surplus Earnings” are inconsistent with the goal of state law to assure the competency of the assets of the retirement system to meet promised retirement benefits and to ensure an actuarially sound retirement system; and

WHEREAS, it is the intent of the Council of the City of San Diego to ensure that the benefits referenced in San Diego Municipal Code section 24.1502 be actuarially accounted for as a retirement system liability and accordingly be calculated in the City’s Annual Required Contribution; and

WHEREAS, and therefore, San Diego Municipal Code section 24.1502 and attendant sections referring or incorporating it must be amended; NOW THEREFORE,

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

Section 1: That Chapter 2, Article 4, Division 15, section 24.1501 is repealed.

Section 2: That Chapter 2, Article 4, Division 15, section 24.1501 is added to

read as follows:

§24.1501 Elimination of “Surplus Earnings”

It is the intent of this Division that the concept of “Surplus Earnings” be eliminated, that payments previously made from “Surplus Earnings” be made instead from plan assets, and that liabilities associated with any benefit transfers from system assets be reflected in the system’s liabilities and included in the actuarial calculation of the Annual Required City Contribution.

Section 3: That Chapter 2, Article 4, Division 15, section 24.1502 is repealed.

Section 4: That Chapter 2, Article 4, Division 15, section 24.1502 is added to

read as follows:

§24.1502 Transfers Made From Plan Assets

(a) The following amounts shall be transferred as set forth below from plan assets as determined by the Board:

- (1) An amount sufficient to credit interest to the contribution accounts of the Members, City, Regional Airport Authority and the Unified Port District at an interest rate determined by the Board and distributed in accordance with Section 24.0904 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.

- (3) An amount sufficient to pay the Annual Supplemental Benefit (13th Check) to Qualified Retirees, pursuant to the provisions and conditions set forth in Section 24.1503
- (4) An amount sufficient to increase the Base Retirement Benefit by 7% for all retired City employees and Beneficiaries who are covered by the Corbett Settlement, pursuant to the provisions and conditions set forth in Section 24.1503.5.
- (5) An amount sufficient to credit interest to the Available Benefit Amount (as defined in Section 24.1504(c)) for the Supplemental COLA as set forth in this Division.

Section 5: That Chapter 2, Article 4, Division 15. section 24.1503 is amended, to read as follows:

§24.1503 Annual Supplemental Benefit (13th Check)-Qualification and Determination

The purpose and intent of this section is to provide necessary guidelines for effectuating the payment of Annual Supplemental Benefits set forth in Section 24.1502(a)(3), by (a) identifying and defining those retirees qualified to receive such benefit, and (b) establishing a method for determining the amount of the annual supplemental benefit.

- (a) For the purpose of identifying those retirees who shall be deemed qualified to receive the Annual Supplemental Benefit established in this Section, the following criteria shall apply:
- (1) The retiree must have completed a minimum of ten (10) years Creditable Service as a Member of the System in order to be qualified;
 - (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 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.

- (5) For the sole purpose of establishing eligibility for the Supplemental COLA described in Section 24.1504, Qualified Retirees may include those retirees with less than ten (10) years creditable service, including those who are receiving an industrial disability retirement from the System, those who have (10) years of continuous service with the System, survivors of Special Class Safety Members who are receiving fluctuating monthly retirement benefits, and survivors of special death benefit recipients.

- (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 product of a formula that consists of investment earnings received less the sum of the amounts specified in Section 24.1502(a)(1) and (a)(2) 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.
 - (8) If, at the time of the annual determination, the amount determined by the formula as set forth in Section 24.1503(b)(4) is less than \$100,000, no supplemental benefits will be paid in that fiscal year and the amount determined by the formula in Section 24.1503(b)(4) will be carried forward to ensuing years until such time as the amount to be provided for this benefit as determined by the formula set forth in Section 24.1503(b)(4) for that year and the amount carried forward from prior years is \$100,000 or more.
- (c) The Board shall promulgate necessary rules to effectuate the provisions and intent of this Article.

Section 6: That Chapter 2, Article 4, Division 15. section 24.1503.5 is added to read as follows:

§24.1503.5 Corbett Settlement Increase-Qualification and Determination

The right to receive the Corbett Settlement Increase set forth in Section 24.1502 (a)(4) will accrue monthly. But, the increase will be paid annually when the Annual Supplemental Benefit (13th check) is normally distributed. The increase will be paid, on a prorated basis, to the Beneficiary or estate of any retiree who dies during the fiscal year but before the annual payment is made. The Corbett Settlement Increase will not be paid in any year in which the Annual Supplemental Benefit (13th Check) is not paid, but the liability for the increase will be carried forward as a contingent liability that will be paid when the Annual Supplemental Benefit is again paid.

Section 5: That Chapter 2, Article 4, Division 15, section 24.1504 of the San Diego Municipal Code is amended, to read as follows.

§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 in July 1, 1998, is the benefit as defined in Section 24.0402, Section 24.0403 or Section 24.0405, 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, including special death benefit recipients, 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 Available Benefit Amount under Section 24.1504(c) is zero.

- (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) Payment of the Supplemental COLA benefit shall be limited to the Available Benefit Amount determined as follows:
 - (1) The Available Benefit Amount as of June 30, 1998 shall initially be thirty-five million dollars (\$35,000,000).
 - (2) Benefit payments under the Supplemental COLA Program shall be accounted for separately and charged against this Available Benefit Amount.
 - (3) The Available Benefit Amount from time to time remaining shall be credited with interest annually, if the total of the amounts transferred pursuant to Sections 24.1502 (a) (1), (2), (3) and (4) are less than investment earnings received in that year, in accordance with Section 24.0904 and related Board rules.
 - (4) Benefit payments under the Supplemental COLA Program shall cease at such time as the Available Benefit Amount is zero.

- (d) Reevaluation.
- (1) The System's Actuary shall conduct an annual evaluation of the Available Benefit Amount to determine the feasibility of expanding the Supplemental COLA Program to include additional retirees and their survivors, additional credits to the Available Benefit Amount 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 any recalculation of benefits, any increase in the number of Qualified Retirees or their survivors, or any increase in the Available Benefit Amount 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 the Annual Supplemental Benefit to be combined with the benefit in effect July 1, 1999, or as part of the Base Retirement Benefit.

§24.1505 No change.

§24.1506 No change.

10/09/2008.COR.Copy

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: September 5, 2008

TO: Elizabeth Maland, City Clerk

FROM: City Attorney

SUBJECT: Item 51 of the September 2, 2008 City Council Meeting-Amendments to the San Diego Municipal Code Eliminating the Surplus Undistributed Earnings ("Waterfall") Relating to the City Employees' Retirement System. (Citywide)

The attached ordinance R-2009-36 is provided by the City Attorney in accordance with San Diego Charter section 40 that requires that ordinance be prepared in writing and to facilitate the processing and publishing of the ordinance by the City Clerk. However, the fact that we are providing the ordinance should not be construed as a judgment of the legality of these actions. The ordinance, which is unsigned, reflects only the actions of the City Council on September 2, 2008, on item 51 as noted in the Clerk's minutes.

If you have any questions regarding this matter, please feel free to contact us.

MICHAEL J. AGUIRRE



City Attorney

MJA:jdf
Attachment

RECEIVED
CITY CLERK'S OFFICE
08 SEP -5 PM 3:27
SAN DIEGO, CALIF.

0-19781

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of SEP 02 2008.

ELIZABETH S. MALAND
City Clerk

By *Mary Zumaya*
Deputy City Clerk

Approved: 9-11-08
(date)

J.S.
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor