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MEMORANDUM OF LAW

DATE: June 1, 2009

TO: The Honorable Mayor Jerry Sanders and Members of the City Council

FROM: City Attorney

SUBJECT: DROP and Charter Section 143.1

INTRODUCTION

Most City of San Diego ("City") employees are represented by one of five bargaining units: The Local 127, American Federation of State and County Municipal Employees ("Local 127 AFSCME"), the Municipal Employees Association ("MEA"), the Police Officers Association ("POA"), the International Association of Firefighters Local 145 ("IAFF Local 145") and the Deputy City Attorneys' Association ("DCAA").

During labor negotiations in 2008 and 2009, the City sought to eliminate or curtail the Deferred Retirement Option Plan ("DROP") for existing employees. The bargaining units have taken the position that DROP may not be amended without approval of a majority of San Diego City Employees' Retirement System ("SDCERS") members under San Diego's Charter and, in any event, DROP is a vested benefit of employees.

On April 1, 2009, the City filed case number 37-2009-00086499-CU-PT-CTL in San Diego Superior Court ("DROP lawsuit") against the POA. The Complaint alleges, among other things:

... the City is facing a funding gap in its pension system that has grown to \$2 billion due to investment returns. ... To meet this challenge, the City has embarked on a reform effort that includes the implementation of cost-cutting measures, benefit adjustments, and benefit controls. (DROP lawsuit at ¶ 2.)

A key element of the City's overall reform process is the elimination of DROP for those active employees who have not already enrolled in the program. (*Id.* at ¶ 3.)

Commonly referred to as ‘double-dipping’, other major public employee pension systems in California such as the California Public Employee Retirement System (CalPERS), and the State Teachers Employee Retirement System (CalSTRS) already prohibit, or limit such an opportunity for member of their retirement systems. (*Id.* at ¶ 4.)

The City has presented its proposal to eliminate DROP to POA, and has demanded POA meet and confer with the City regarding its proposal. As a benefit of employment, DROP is a mandatory subject of bargaining under applicable labor relations laws. However, POA has consistently refused to meet and confer with the City regarding the proposal, thereby impeding the City’s efforts to move forward with its reform process in an efficient manner. (*Id.* at ¶ 5.)

The City’s Complaint in the DROP lawsuit asks the Court to order POA to meet and confer regarding the City’s proposal to eliminate DROP.

On April 21, 2009, the City Council unanimously approved the terms of tentative labor agreements for Fiscal Years 2009-10 and 2010-11 for the MEA, the IAFF Local 145 and the DCAA. Among other terms, the parties agreed to defer negotiations on the DROP issue until the DROP lawsuit is resolved.

Negotiations with the remaining two bargaining units, Local 127 AFSCME and the POA, did not end in agreement. On April 14, 2009, the City Council imposed on both unions the terms and conditions of employment contained in the Mayor’s last, best and final offer for Fiscal Year 2009-10. Those terms included changes to DROP. In addition, DROP was eliminated for unrepresented and unclassified employees.

The Board of Administrators for SDCERS has informed the City that it will not implement changes to DROP without approval of a majority of SDCERS’ members.

Although there have been many legal analyses conducted regarding DROP over the years, none have reviewed the history of DROP and analyzed whether it complied with the Charter when it was originally implemented. We have done so and have discovered that the ordinance creating DROP never took effect under the San Diego City Charter or even under its own terms. As a result, we conclude that elimination of DROP does not need approval of SDCERS members.

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QUESTION PRESENTED

Can DROP be eliminated without approval of SDCERS' membership?

SHORT ANSWER

Yes. The ordinance creating DROP never took effect under the San Diego City Charter or even under its own terms. Simply stated, in 1997, the labor unions did not get enough of their members to vote for approval of the ordinance.

DISCUSSION

San Diego's City Charter ("Charter") section 143.1(a) provides in pertinent part:

No ordinance amending the retirement system which affects the benefits of any employee under such retirement system shall be adopted without the approval of a majority vote of the members of said system.

Section 143.1 only applies where an ordinance **amends the retirement system and affects the benefits of an employee**. As discussed below, termination of DROP would not amend the retirement system or affect benefits because the ordinance enacting DROP never became effective as part of the retirement system for two separate reasons:

1. The ordinance did not receive "approval of a majority vote of the members of said system" as required by section 143.1;
2. The ordinance by its own express terms was conditional and the conditions did not occur.

Since DROP was never formally adopted as a benefit under the retirement system, there is no need to conduct a vote under section 143.1 to eliminate it.

I. THE ORDINANCE CREATING DROP NEVER BECAME EFFECTIVE BECAUSE IT DID NOT RECEIVE "APPROVAL OF A MAJORITY VOTE OF THE MEMBERS" OF THE RETIREMENT SYSTEM

In 1997, the City amended the San Diego Municipal Code ("SDMC") to provide for DROP as an "alternative method of [retirement] benefit accrual." (San Diego Municipal Code §§ 24.0103, 24.1401(a).) Members¹ of SDCERS who are eligible to retire may instead continue working as active employees for up to five years. (SDMC § 24.1402.)

¹ A "Member" is any person employed by the City who actively participates in and contributes to the Retirement System, and who will be entitled, when eligible, to receive benefits from the Retirement System. (SDMC § 24.0103.)

DROP was implemented by agreement of the City in June 1996 and through a series of ordinances, Ordinance No. O-18385 (March 4, 1997) and Ordinance No. O-18392 (March 31, 1997).²

Between April 4, 1997, and April 20, 1997, SDCERS conducted an election “as required by Section 143.1 of the City Charter.” (Exhibit A, SDCERS Bulletin “Benefits Election,” dated April 1997, pg. 1.) SDCERS’ Bulletin concisely detailed the proposed changes to the Retirement System which were approved by the City Council in June of 1996 as part of MP I, including the proposed implementation of DROP. Issue #4 of that election bulletin stated “[i]t is **proposed** that a Deferred Retirement Option Plan (DROP) be established effective April 1, 1997” and continued over the course of approximately six paragraphs to detail the intricacies of the proposed plan. [emphasis added] (Exhibit A, pg. 2). The benefits election bulletin stated that “[t]he election is required by Section 143.1 of the City Charter. **After approval by a majority vote of the active members** of the Retirement System, the San Diego Municipal Code will be amended to reflect the **proposed changes.**” [emphasis added] (*Id.* pg 1.)

On April 21, 1997, SDCERS provided the results of the Benefits Election which asked employees to respond either “yes” or “no” to the following question: “Should the San Diego Municipal Code be amended to implement the changes to City of San Diego General and Safety Member retirement benefits referenced in the attached Elections Bulletin?” (Exhibit B.) DROP was issue number #4 in that benefits election.

The statistical report attached to SDCERS’ certification letter detailed that there were only 3,269 confirmed votes out of 9,206 eligible voting members, a 35.51% participation rate. (Exhibit B, pg 2.)

The affirmative votes constituted a majority of those members voting, but did not constitute a majority of the members of the retirement system. As discussed below, the election failed because it did not receive “approval of a majority vote of the members of said system” as required by Charter section 143.1.

Simply stated, the labor unions did not get enough of their members to vote.

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² Ordinance O-18392 (March 31, 1997) repealed Ordinance O-18385 (March 4, 1997). An attempt to make DROP “permanent” was made in 2002 through Ordinance O-19701 (June 18, 2002). Per discussions the City had with Mark Hovey, SDCERS Chief Financial Officer, in March 2009, no Charter section 143.1 vote took place with regard to Ordinance O-19701.

A. The 1997 vote failed because it did not receive approval of a majority vote of the members. Majority approval of those voting was not enough.

Charter section 143.1 is absolutely clear that “approval of a majority vote of the members” is required. It does not provide that approval of a majority of those members voting is sufficient.

The plain and unambiguous language of Charter section 143.1 requires that before any ordinance is formally adopted which affects the benefits of any employee under the retirement system there must be a **majority** vote of **all** members of the system.

That is the reason that the SDCERS Board of Administration historically was careful to point out to members the need for them to vote. In announcing a vote in 1965, the SDCERS Administrator explained that the changes “must also be approved by a majority vote of all the members of the Retirement System.” The SDCERS Administrator further reemphasized:

In summary, a yes vote by the majority of **all** the members of the System will mean improved benefits and the employer and employee will contribute a greater amount. A lack of a majority of yes votes will result in no improvement in benefits and a small reduction in present employee contributions. **It is therefore important that every member votes.** [emphasis added]

(Exhibit C, Changes in Retirement Benefits, April 15, 1965.)

The notice of votes in 1967 and 1970 contained similar language: “. . . must be approved by a majority vote of the members.” (Exhibits D and E, Changes in Retirement Benefits, March 17, 1967 and February 27, 1970, respectively.)

The notice of vote for creation of DROP in 1997 explained the need for approval “by a majority vote of the active members of the Retirement System:”

The election is required by Section 143.1 of the City Charter. After approval by a majority vote of the active members of the Retirement System, the San Diego Municipal Code will be amended to reflect the proposed changes.

(Exhibit A, Benefits Election, April 1997.)

As stated above, the 1997 election resulted in only 3269 ballots cast out of 9,206 eligible voters, not close to a majority vote. (See Exhibit B.)

The SDCERS Board of Administration has a policy that it will comply with Section 143.1 and will not implement an ordinance amending the retirement system unless it has been

approved by a **majority vote of the SDCERS membership**. (See Resolution of Board, July 21, 2006.) This is consistent with legal advice given by and to SDCERS over the years.

On October 2, 2002, SDCERS' Assistant General Counsel Roxanne Story Parks, in a legal memorandum to the SDCERS Board accurately expressed the law that the clear language of the Charter must be enforced. She went on to opine:

Charter section 143.1 clearly mandates that an ordinance affecting the benefits of any member of the retirement system must be approved by a **majority vote of all retirement system members**. [emphasis added]

(Exhibit F, SDCERS Legal Services Division Memorandum, dated Oct. 2, 2002, pg. 1.)

Ms. Parks went on to explain:

Charter section 143.1 does not allow for a vote of only General Members, nor does it allow for a vote of only members within a particular bargaining unit. And, section 146 does not authorize the Council pass [sic] an ordinance to allow for this. Any other construction of section 143.1 would not only violate the clear language of that section, but could lead to absurd results.

(*Id.* at 6.)

On October 16, 2002, Deputy City Attorney Michael Rivo, in a letter to former Retirement Board Administrator Larry B. Grissom, concurred with Ms. Parks' legal opinion and conclusion with regard to the voting requirements under Charter section 143.1. (Exhibit G, pg. 1.) Deputy City Attorney Rivo stated that "Section 143.1 is not ambiguous and clearly states that **all members of the system**, and not just those in the classifications affected, must vote on any change which affects the members' benefits." [emphasis added] (*Id.*)

In a 1993 Memorandum of Law, Deputy City Attorney Richard A. Duvernay was asked whether SDCERS could rely on the labor union meet and confer process and their members' ratification of a memorandum of understanding to satisfy the Charter section 143.1 voting requirements. (Exhibit H, 1993 City Attorney Memorandum of Law.) Mr. Duvernay responded to SDCERS that a vote of the whole system was required pursuant to Charter section 143.1. Mr. Duvernay explained that the SDCERS Board in past years when major benefit changes were proposed did conduct votes seeking approval of all the members and advised SDCERS Board to continue this practice. (*Id.* at 1264.)

In addressing the importance of SDCERS providing the necessary information for members to make an informed decision pursuant to Section 143.1, the memorandum stated:

The Board's fiduciary obligation is to manage the trust with a high degree of skill and care. One aspect of that responsibility concerns the provision of the trust instrument which grants members the right to vote upon changes in benefit levels. . . . [T]he right to vote would be quite meaningless if members were not provided with enough information to make an informed decision. This of course, brings the matter full circle back to the Board's responsibility; for if the Board does not provide this information to the membership, who will?

As trustees, Board members may not delegate to others the performance of acts they can reasonably be required to perform. Probate Code section 16012. When the Board does delegate its functions, which it necessarily and routinely does, they must nevertheless exercise general supervision over those who perform the delegated matters. Probate Code section 16012. City management and the labor organizations do not have access to necessary actuarial expertise the Board routinely relies upon, nor are they accountable to the Board. For these reasons, we would advise against the Board relying upon the meet and confer process to fully inform members with respect to the consequences of any benefit change.

In conclusion, the Board is presently conducting benefit elections under appropriate circumstances.

(*Id.* at 1265.)

It has been undisputed for fifty (50) years that, under Charter section 143.1, "approval of a majority vote of the members" is required. Section 143.1 does not provide that approval of those members voting is sufficient. As expressed by SDCERS' legal counsel seven years ago, we are bound by the clear wording of the law. (*See California Teachers Association v. San Diego Community College District* (1981) 28 Cal.3d 692, 698.)

The 1997 election resulted in only 3,269 ballots cast out of 9,206 eligible voters, not close to a majority vote of the members. (Exhibit B.) Accordingly, it is clear that the 1997 vote did not satisfy Section 143.1's requirement of "approval of a majority vote of the members."

B. As a result of the failed 1997 vote, the DROP ordinance did not take effect.

The City of San Diego is a "charter city." (Cal. Const., art. XI, which authorizes the organization of cities as either "general law cities" or "charter cities;" Cal. Gov't Code § 34101; *Grimm v. City of San Diego* (1979) 94 Cal. App. 3d 33, 37.) As a charter city, San Diego "can make and enforce all ordinances and regulations regarding municipal affairs subject only to the restrictions and limitations imposed by the city charter, as well as conflicting provisions in the United States and California Constitutions and preemptive state law." (*Grimm*, 94 Cal. App. 3d at 37; Cal. Const., art. XI, §§ 3, 5.)

In effect, the “charter is to a city what the state constitution is to the state.” (*Grimm*, 94 Cal. App. 3d at 37.) A charter, being the supreme law of a city, is subject only to constitutional limitations and preemptive state law. (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal. 4th 161, 170.) “[I]t is well settled that a charter city may not act in conflict with its charter,” and that any act that is violative of or not in compliance with the charter is ultra vires and void. (*Id.* at 171.) Ultra vires is defined as “[u]nauthorized; beyond the scope of power allowed or granted by a corporate charter or by law.” (Black’s Law Dictionary, *ultra vires* p. 1559 (8th ed. 2007).)

The San Diego Municipal Code sections which include pension benefits that were not approved by a majority vote of the members of the retirement system as required by Section 143.1 are void as contrary to the requirements of the Charter. *Montgomery v. Board of Admin. of City Employees’ Retirement System of San Diego* (1939) 34 Cal. App. 2d 514, dealt with an issue concerning a conflict between Charter section 141 (in its original form), which required ten years of continuous service for benefit eligibility, and ordinances implementing then existing SDMC sections which permitted the totaling of intermittent periods of employment to satisfy the ten year vesting requirement. In 1938, the Board suspended payments to pensioners whose eligibility had been calculated by the method of totaling intermittent periods of employment pursuant to the ordinance. Shortly thereafter, Montgomery filed a lawsuit asking the court to determine and declare his rights and the rights of all other pensioners under the Charter and the SDMC sections amended pursuant to the subject ordinances. The court noting the conflict between the Charter and the ordinances and SDMC, discussed the supremacy of the Charter and ruled that “in so far as the ordinances attempt to substitute intermittent service for continuous service as a basis for retirement, their provisions are void as contrary to the charter and as an attempt to amend the charter in an unauthorized manner.” (*Id.* at 520.)

In the instant situation, the amending of the municipal code sections pursuant to an ineffective ordinance, similar to the municipal code sections and ordinances in *Montgomery*, are clearly contrary to the expressed unambiguous language of Charter section 143.1 and are therefore ultra vires and invalid.

II. THE ORDINANCE CREATING DROP NEVER BECAME EFFECTIVE BECAUSE BY ITS OWN EXPRESS TERMS IT WAS CONDITIONAL AND THE CONDITIONS DID NOT OCCUR

A condition precedent is a condition to be performed before some right dependent thereon accrues. (Cal. Civ. Code § 1436.) “Before any party to an obligation can require another party to perform any act under it, he [or she] must fulfill all conditions precedent thereto imposed upon himself [or herself]” (Cal. Civ. Code § 1439.)

Dating as far back as 1867, the California Supreme Court has made clear that when an ordinance or resolution contains a mandatory condition precedent, which has not been complied with, the ordinance or resolution cannot be legally passed and is therefore invalid. (*Herzo v. City of San Francisco* (1867) 33 Cal. 134, 149; *see also Sullivan v. McKinley* (1939) 14 Cal. 2d 113,

117, “[n]o ordinance is valid unless the mandatory prerequisites to its enactment and performance are substantially observed;” *Schofield v. City of Los Angeles* (1932) 120 Cal. App. 240, 245-46, holding that a Los Angeles City Charter section which required a proposed ordinance having to do with zoning first be submitted to the Board of City Planning Commissioners for report and recommendation, was a mandatory condition precedent, and therefore any ordinance passed in violation of such charter provision is void and of no effect.) This rule of law continues in effect today.

Ordinance O-18392 (“the DROP ordinance”) establishing DROP states:

Section 25. The benefit improvements shall not become effective unless approved by the active members of the Retirement System. The Retirement Administrator is directed to immediately inform the City Clerk of the results of the vote held pursuant to Charter section 143.1. The San Diego Municipal Code shall not be amended pursuant to this ordinance unless and until the Retirement Administrator notifies the City Clerk the members of the Retirement System have approved the increase on [sic] benefits.

(Exhibit I, Ordinance O-18392, pg. 45.)

By its own terms, the DROP ordinance states that DROP is not effective unless the following conditions occur:

1. “. . . unless approved by the active members of the Retirement System.”
2. “. . . unless and until the Retirement Administrator notifies the City Clerk the members of the Retirement System have approved the increase on [sic] benefits.”

As described above, the first condition did not occur. The 1997 election did not result in approval by the active members of the Retirement System. Of 9,206 eligible voters, only 3,269 ballots were cast. (Exhibit B.)

Nor, did the second condition occur. The Retirement Administrator notified the City Clerk of the total ballots cast, the number of “yes” votes, the number of “no” votes and the total number of eligible voters. But, the Retirement Administrator **DID NOT** notify the City Clerk that “the members of the Retirement System have approved the increase on [sic] benefits.” (Exhibit B.)

There is a good reason why the Retirement Administrator did not notify the City Clerk that the members of the Retirement System approved DROP—it did not occur.

The DROP ordinance clearly and unambiguously contained conditions precedent which needed to be satisfied before DROP could legally take effect. Consequently, before the City

could be obligated under the ordinance to provide DROP, the conditions must have occurred. They did not occur. Accordingly, the DROP ordinance never took effect.

III. BECAUSE IT WAS NOT PROPERLY IMPLEMENTED, DROP IS NOT A VESTED RIGHT OF CURRENT EMPLOYEES

As discussed above, on April 1, 2009, the City filed the DROP lawsuit seeking a ruling as whether DROP is a vested right of existing employees. (*See Kern v. City of Long Beach* (1947) 29 Cal. 2d 848, discussing at length the doctrine of public employees having a vested right to their public pension under federal and state constitutions “contract clause.”)

However, as explained by the Court in *Medina v. Board of Retirement, Los Angeles County Employees Retirement Ass’n* 112 Cal.App.4th 864, 871 (2003):

When a claim is presented under the contract clause, it must first be determined “whether there is a valid contract to be impaired. **The contract clause does not protect expectations that are based upon contracts that are invalid, illegal, unenforceable, or which arise without the giving of consideration. . . .**” [emphasis added]

Any contracts to give retirement members pension benefits which were not approved pursuant to Charter § 143.1 are invalid as beyond the City’s scope of authority. (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal. 4th 161, 171.) Therefore, the **vested rights doctrine does not apply.**

IV. PRINCIPLES SUCH AS ESTOPPEL AND LACHES DO NOT BAR TERMINATION OF DROP

DROP has been provided as an employee benefit since 1997. This is the first time that anyone has raised the fact that the ordinance creating DROP was never effective. Accordingly, we must assess whether and to what extent a Court may apply the equitable principle of estoppel to find that DROP must continue to be offered and whether the ability to terminate DROP is time-barred.

A. Estoppel

Estoppel is an equitable principle that may apply where a party relies upon a promise. As an equitable doctrine, its application is left to the Court’s discretion subject to parameters established by case law.

Generally, the elements for equitable estoppel are: (1) the party to be estopped was apprised of the facts, (2) the party to be estopped intended by conduct to induce reliance by the other party, or acted so as to cause the other party reasonably to believe reliance was intended,

(3) the party asserting estoppel was ignorant of the facts, and (4) the party asserting estoppel suffered injury in reliance on the conduct. (*City of Long Beach v. Mansell* (1970) 3 Cal. 3d 462, 489.)

“The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.” (*City of Long Beach v. Mansell, supra* at 496-97.)

However, “neither the doctrine of estoppel, nor any other equitable principle may be invoked against a government body where it would operate to defeat the effective operation of a policy adopted to protect the public.” (*San Diego County v. California Water & Tel. Co.* (1947) 30 Cal. 2d 817, 826.)

The California Supreme Court has recognized the existence of cases which applied estoppel to the area of public employee pensions, in which the courts “emphasized the unique importance of pension rights to an employee’s well-being, and have frequently arisen after employees were induced to accept and maintain employment on the basis of expectations fostered by widespread, long continuing misrepresentations by their employers.” (*Longshore v. County of Ventura* (1979) 25 Cal. 3d 14, 28-29.) In *Longshore*, the Supreme Court went on to explain the instances where estoppel may be applied to pension rights:

In each of these instances the potential injustice to employees or their dependents clearly outweighed any adverse effects on established public policy. **However, no court has expressly invoked principles of estoppel to contravene directly any statutory or constitutional limitations.** [emphasis added].

(*Id.*)

In *Medina v. Board of Retirement, Los Angeles County Employees Retirement Ass’n* (2003) 112 Cal. App. 4th 864, 869, the Court held that estoppel is not available where the government agency to be estopped did not possess the authority to do what it appeared to be doing. (See also, *Emma Corp. v. Inglewood Unified School Dist.* (2004) 114 Cal. App. 4th 1018, 1030, “[e]stoppel is available against public entities in narrow circumstances, but not if its application would contradict existing statutes or public policy;” Witkin, Summary of California Law, vol. 13, *Equity* § 198 (2008); Cal. Jur. 3d Admin. Law § 171, *Estoppel* (2009).)

In *Medina*, two county employees who were deputy sheriffs earlier in their careers and later became deputy district attorneys attempted to remain classified as “safety personnel” whom received more generous retirement benefits compared to those provided to “general” county employees. When the two deputies became deputy district attorneys, whom are eligible only for the lower “general” benefits, the county mistakenly continued to classify them in the “safety”

retirement category. Many years later, the county discovered the error and reclassified them as “general” retirement members effective from the date they became deputy district attorneys. The deputies sued to be reinstated as “safety” members under an estoppel theory. The trial court ruled in favor of the county and the appellate court affirmed, holding estoppel could not apply because deputy district attorneys could not legally be classified as “safety” members under controlling statutes and ordinances. (*Medina v. Board of Retirement, Los Angeles County Employees Retirement Ass’n*, supra at 869-70.)

Here, it is unlikely that estoppel would be invoked to mandate continued implementation of DROP despite failure of its implementing ordinance to receive approval under Charter section 143.1. Not only would it violate the City’s Charter and, therefore, the above case law, but it would be inequitable for a Court to require the City to obtain majority approval to eliminate a program that never took effect because there was not majority approval to create it.

B. Timeliness

The vote related to the DROP ordinance took place in 1997 and SDCERS has been granting DROP applications since that time. It has only recently been discovered that the DROP ordinance did not become effective in 1997. The question is whether the City is time-barred from terminating DROP upon a determination that it is not part of the retirement system.

As discussed above, it is well settled that a charter city may not act in conflict with its charter and that any act that is violative of or not in compliance with the charter is ultra vires and void. (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal. 4th 161, 170.) Based thereon, the City is empowered to repeal provisions of the Municipal Code. (*See County Mobilehome Positive Action Comm., Inc. v. County of San Diego* (1998) 62 Cal. App. 4th 727, 734-35.) There is no need to initiate litigation to repeal an ordinance.

To the extent the issue is litigated, it is unlikely to be time-barred. The statute of limitation is three years for an action “upon a liability created by statute.” (Code Civ. Proc. § 338 (a).) Although it is questionable as to whether this statute of limitation even applies to these circumstances, it does not apply to bar a determination of future DROP benefits. A cause of action for pension benefits arises at the time an individual applies for those benefits. (*Dillon v. Board of Pension Commrs. of Los Angeles* (1941) 18 Cal. 2d 427, 430; *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal. 4th 809, 821-25.) The statute of limitations on that cause of action would not expire until three years from the date of application, thereby including future claims.

Nor would the equitable doctrine of laches bar the City from eliminating DROP based upon the fact that the ordinance creating DROP never took effect. The doctrine of laches is an equitable doctrine that can be raised as a defense to a lawsuit. “The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay.” (*Conti v. Board of Civil Service*

Commissioners (1969) 1 Cal.3d 351, 359, fns. omitted.) Considerations relevant to estoppel apply to laches. (See discussion of estoppel, *supra*.) (*County of Los Angeles v. Berk* (1980) 26 Cal.3d 201, 222.)

Moreover, peculiar to the doctrine of laches is the fact that “**the doctrine has no application to the effectiveness of a statute or ordinance.**” [emphasis added] (*Teachers Management & Inv. Corp. v. City of Santa Cruz* (1976) 64 Cal.App.3d 438, 448.)

Accordingly, because laches cannot now make effective an ordinance and municipal code section that was voted down by the members of the pension system in 1997, pension members who have yet to enter DROP will be unable to show the requisite prejudice necessary for the doctrine of laches to now create DROP.

V. THE MUNICIPAL CODE NEEDS TO BE CORRECTED TO REMOVE REFERENCES TO DROP

The Municipal Code is a compilation of the City’s administrative, criminal and regulatory ordinances. (SDMC section 11.0101.) Under the Charter:

The Council may by ordinance codify all of the ordinances of a general nature of the City into a Municipal Code. When so codified such Municipal Code and all sections thereof shall be admissible in all courts as **prima facie evidence of the due passage** and publication of the ordinances as codified. [emphasis added]

(Charter section 20.)

Under Charter section 20, the Municipal Code, therefore, is not itself the law but only “prima facie” evidence of the ordinances, with the ordinances being the actual law. (*See United States National Bank of Oregon v. Independent Insurance Agents of America, Inc.* (1993) 508 U.S. 439, 449, “[t]hrough the appearance of a provision in the current edition of the United States Code is “prima facie” evidence that the provision has the force of law, . . . , it is the Statutes at Large that provides the “legal evidence of laws.”) As the United States Supreme Court has held, the very meaning of “prima facie” is that the Municipal Code cannot prevail over the ordinance when the two are inconsistent. (*Stephan v. U.S.* (1943) 319 U.S. 423, 426, “the [Judicial] Code establishes ‘prima facie’ the laws of the United States. But the very meaning of ‘prima facie’ is that the [Judicial] Code cannot prevail over the Statutes at Large when the two are inconsistent.”)

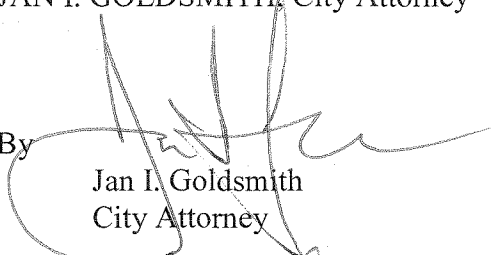
As detailed above, Ordinance O-18392 did not become effective because the condition precedent contained within the ordinance, a majority vote of all members of the pension system, failed. Accordingly, Article 4, Division 14 of the Municipal Code, to the extent it states that a City ordinance has enacted DROP, is an incorrect statement of the law. Therefore, the Municipal Code should be corrected forthwith to remove Article 4, Division 14 as no legal basis exists for the implementation of DROP.

CONCLUSION

The ordinance creating DROP never took effect under the San Diego City Charter or even under its own terms. As a result, we conclude that elimination of DROP does not need approval of SDCERS members.


JAN I. GOLDSMITH, City Attorney

By



Jan I. Goldsmith
City Attorney

By



Walter C. Chung
Deputy City Attorney

By



M. Travis Phelps
Deputy City Attorney

Exhibit

A

SDCERS BULLETIN



April 1997

City Employees' Retirement System

BENEFITS ELECTION

In June 1996, the City Council approved a proposal to make changes to the San Diego City Employees' Retirement System related to: (1) retiree health insurance, (2) retirement plan benefits, (3) employer contribution rates, and (4) retirement system reserves. This proposal was agreed to and is supported by all four of the City's labor organizations. Portions of the proposal requiring SDCERS Board approval (employer contribution rates and system reserves) were approved by the Board after review and approval by its independent fiduciary counsel. The proposal includes a provision to assure the funding level of the system will not drop below a level the Board's actuary deems reasonable in order to protect the financial integrity of the Retirement System. The interrelationship of the various issues in the proposal to each other necessitates the entire proposal be approved and acted upon concurrently.

The Retirement System is now conducting an election relating to provisions of the proposal that will affect the General and Safety Member benefits of the Retirement System. It will take place from Friday, April 4, 1997, through Sunday, April 20, 1997. The election is required by Section 143.1 of the City Charter. After approval by a majority vote of the active members of the Retirement System, the San Diego Municipal Code will be amended to reflect the proposed changes.

IF YOU WOULD LIKE A COPY OF THE AMENDED SAN DIEGO MUNICIPAL CODE SECTIONS RELATING TO THE CHANGES TO YOUR RETIREMENT BENEFITS, PLEASE CONTACT YOUR DEPARTMENTAL PAYROLL CLERK, UNION OFFICE, OR SDCERS STAFF AT 533-4660.

The proposed changes are as follows:

ISSUES AFFECTING ALL SDCERS GENERAL AND SAFETY MEMBERS

1. It is proposed, effective August 1, 1997, a Post Retirement Health Benefit be established for Health Eligible Retirees and Non Health Eligible Retirees.

A Health Eligible Retiree is any retired General Member, Safety Member or Legislative Officer who : (1) was on the active payroll of the City of San Diego on or after October 5, 1980 and (2) retired on or after October 6, 1980, and (3) is eligible for and is receiving a retirement allowance from the Retirement System.

Health Eligible Retirees may choose to participate in a City sponsored health insurance plan or any other health insurance plan of their choice. The Retirement System will pay or reimburse the applicable Medicare-eligible or non-Medicare eligible retiree-only premium up to but not to exceed the cost of the retiree-only premium for the highest cost HMO plan which is also a City sponsored health insurance plan made available to Health Eligible Retirees. (Currently, this is the Blue Cross California Care health insurance plan.)

Additionally, the Retirement System will reimburse the Part B Supplemental Medical Expense Premium for those Health Eligible Retirees enrolled in Medicare.

Effective August 1, 1997, the "sliding scale" health benefit with a \$2,000 cap is eliminated and replaced with the Post Retirement Health Benefit for Health Eligible Retirees.

A Non Health Eligible Retiree is any retiree: (1) who retired or terminated employment as a vested member from The City of San Diego prior to October 6, 1980, and (2) is eligible for and is receiving a retirement allowance

ISSUES AFFECTING ALL SDCERS GENERAL AND SAFETY MEMBERS

from the Retirement System.

Non Health Eligible Retirees will be entitled to payment or reimbursement not to exceed \$600.00 per year for health insurance expenses.

2. It is proposed the Disability Income Offset be eliminated. The San Diego Municipal Code currently requires a member employed by the City of San Diego on or after October 1, 1978, and who is granted a disability retirement report any non-City employment compensation to the Retirement System. The member's retirement allowance is subject to reduction based on this compensation until the member reaches the minimum age for service retirement - age 50 for Safety members or age 55 for General members. If approved, there would be no reduction of retirement benefits if the retiree had other income.
3. It is proposed a five year purchase of service credit provision be established effective January 1, 1997. Under this proposal, the member may purchase up to five years of service credit by paying both employee and employer contributions in an amount and manner determined by the SDCERS Board to make the system whole for such time.

In addition, members retiring on or after January 1, 1997 may purchase probationary periods, military and veterans code leaves, waiting periods for the 1981 Pension Plan, actual time worked hourly or part time, special leaves without pay occurring prior to January 1, 1997, the difference in time between part time and full time prior to January 1, 1997, long term disability, vocational rehabilitation maintenance (VRMA) and temporary total disability (TTD), FMLA periods, special leaves of absence with job to be saved periods and any period preceding reinstatement by the Civil Service Commission following a termination appeal.

4. It is proposed that a Deferred Retirement Option Plan (DROP) be established effective April 1, 1997. DROP provides an alternative form of benefit accrual while allowing a member to continue working for the City of San Diego.

During the DROP period, a DROP member retains all rights, privileges and benefits of being an active City employee, except as specifically modified in the DROP Plan Document, and is subject to the same terms and conditions of employment including disciplinary actions up to and including termination. The member continues to be eligible for the active employee Flex Benefits Program for the classification and is not eligible for "retiree" health benefits until such time as the member completes or terminates the DROP period.

Under the DROP, a monthly service retirement allowance along with any COLA increases, Supplemental Benefit checks and any adjustments to such payments applicable to retirements effective on the date the member entered the DROP are deposited into a trust account. These SDCERS benefits are calculated as if the member were retiring on the date the member enters the DROP. The member's contributions to the Retirement System cease. The member and the City each contribute 3.05% of the member's salary each pay period that the member participates in the DROP. The member's contribution is made on a pre-tax basis pursuant to Internal Revenue Code section 414(h)(2). These monies are placed in a trust account and are distributed to the DROP participant upon the termination of employment or completion of the DROP period whichever occurs first. No withdrawals may be made from the DROP account until the member completes or terminates his or her DROP period. Interest will be credited to the member's DROP account at a rate determined by the Board. The member is 100% vested in the DROP from its inception.

A DROP participant who becomes disabled may apply for conversion of his or her deferred retirement allowance to a disability allowance calculated at the date of entry into the DROP.

A member who participates in DROP irrevocably designates a specific consecutive period of months for participation, not to exceed sixty months. The member must terminate City service at the end of the designated period.

ISSUES AFFECTING ALL SDCERS GENERAL AND SAFETY MEMBERS

The DROP plan will be offered on a trial basis for a period of three years beginning April 1, 1997. During this three year trial period, the DROP will be evaluated by the City on a cost basis. If the City determines DROP to not be cost effective, the City may determine not to extend DROP for elections that would otherwise have been made after April 1, 2000.

5. It is proposed for retirements effective on or after January 1, 1997, the 50% continuance would be available to the spouse to whom the member was married on the date of retirement. The requirement that the member be married to his or her spouse at least one year prior to retirement for the spouse to receive a 50% continuance is eliminated.
6. It is proposed the surviving spouse of a member who is killed while in performance of duty be entitled to continued health coverage as provided in California Labor Code Section 4856.

ISSUES AFFECTING GENERAL MEMBERS OF THE RETIREMENT SYSTEM

1. It is proposed the General Member Industrial Disability Benefit be increased from 33 1/3% to 50% of final compensation for retirements effective on or after January 1, 1997.
2. It is proposed the modified special death benefit provided to the surviving spouse of a General Member killed in the line of duty be amended to eliminate the requirement that the benefit be discontinued if the spouse remarries. It is further proposed that the benefit of any such spouse terminated as a result of remarriage be reinstated effective January 1, 1997.
3. It is proposed the percent of final compensation (high one year salary) at the specified ages be changed from the current levels to those shown for all retirements effective on or after January 1, 1997.

AGE	CURRENT	PROPOSED
55	1.48%	2.00%
56	1.56%	2.00%
57	1.63%	2.00%
58	1.72%	2.00%
59	1.81%	2.08%
60	1.92%	2.16%
61	1.99%	2.24%
62	2.09%	2.31%
63	2.20%	2.39%
64	2.31%	2.47%
65	2.43%	2.55%

These proposed changes will require increases in the employee and employer contribution rates. The member's share of the costs will be paid from excess earnings of the Retirement Fund for FY 1997.

On December 27, 1997, the General Member employee's contribution rate will be increased by .56% and by .57% effective the earliest date in FY99 that General Members receive a salary increase.

The remainder of the cost will be borne by the City of San Diego pursuant to the Manager's proposal approved by the SDCERS Board of Administration and the City Council.

ISSUES AFFECTING SAFETY MEMBERS OF THE RETIREMENT SYSTEM

1. It is proposed the special death benefit provided to the surviving spouse of a Safety Member killed in the line of duty be amended to eliminate the requirement that the benefit be discontinued if the spouse remarries. It is

ISSUES AFFECTING SAFETY MEMBERS OF THE RETIREMENT SYSTEM

further proposed the benefit of any such spouse terminated as a result of remarriage be reinstated effective January 1, 1997.

- It is proposed the percent of final compensation (high one year salary) at the specified ages be changed from the current levels to those shown for all retirements effective on or after January 1, 1997.

AGE	12/31/96 PERCENTAGES			PROPOSED PERCENTAGES		
	LIFEGUARD	POLICE	FIRE	LIFEGUARD	POLICE	FIRE
50	2.00%	2.50%	2.20%	2.20%	2.50%	2.50%
51	2.10%	2.54%	2.32%	2.32%	2.60%	2.60%
52	2.22%	2.58%	2.44%	2.44%	2.70%	2.70%
53	2.34%	2.62%	2.57%	2.57%	2.80%	2.80%
54	2.47%	2.66%	2.72%	2.72%	2.90%	2.90%
55	2.62%	2.70%	2.77%	2.77%	2.9999%	2.9999%
56+	2.62%	2.77%	2.77%	2.77%	2.9999%	2.9999%

These proposed changes will require increases in the employee and employer contribution rates. The member's share of the costs will be paid from excess earnings of the Retirement Fund for FY 1997.

On December 27, 1997, the Lifeguard employee's contribution rate will be increased by .25% and by .25% effective the earliest date in FY99 that Lifeguard members receive a salary increase.

On July 1, 1998, the Police Safety Member employee contribution will be increased by .49% and the Fire Safety Member employee contribution rate will be increased by .75%.

The remainder of the cost will be borne by the City of San Diego pursuant to the Manager's proposal approved by the SDCERS Board of Administration and the City Council.

- It is proposed a retirement allowance cap of 90% of Final Compensation (high one year salary) be established for Safety members.

Any Safety Member whose unmodified retirement allowance would have exceeded 90% of Final Compensation using the Retirement Calculation Factors in effect on December 31, 1996, may elect to continue to accrue benefits under those factors and not be subject to the 90% retirement allowance cap. The Safety Members will not be required to pay any additional contributions related to the increase in benefits effective January 1, 1997.

If the unmodified retirement allowance of a Safety Member would have exceeded 90% of Final Compensation using the Retirement Calculation Factors in effect on December 31, 1996, that Safety Member may elect to accrue benefits using the Factors that become effective January 1, 1997. The Safety Member making this election shall: 1) be eligible to accrue benefits in excess of the 90% retirement allowance cap, 2) not be eligible to participate in DROP and 3) retire no later than July 1, 1997.

If the unmodified retirement allowance of a Safety Member exceeds 90% of Final Compensation using the Retirement Calculation Factors in effect on January 1, 1997 on a date after January 1, 1997, but before April 1, 1997, the Safety Member will accrue benefits in excess of the 90% retirement allowance cap. The accrual will cease at the level attained on March 31, 1997.

Exhibit

B



THE CITY OF

SAN DIEGO

525 "B" STREET • SUITE 1120 • SAN DIEGO, CA 92101 - 4494
(619) 533-4660 - M.S. 840

CITY EMPLOYEES'
RETIREMENT
SYSTEM

April 21, 1997

This is to certify that on April 21, 1997, I witnessed the downloading of election results from the Interactive Voice Response System (IVR) for **Benefits Election Number 28** to improve the retirement benefits of **City of San Diego** General and Safety Members of the Retirement System. The Benefits Election Bulletin specifying the increased benefits on which the members voted is attached. The results of such election are as follows:

Should the San Diego Municipal Code be amended to implement the changes to City of San Diego General and Safety Member retirement benefits referenced in the attached Elections Bulletin?

Yes votes	<u>3,181</u>
No votes	<u>88</u>
TOTAL BALLOTS :	<u>3,269</u>

Signed: *John T. Casey*
John Casey, Retirement Board Member

Signed: *Ron Gumbert*
~~Ron Gumbert~~, Retirement Board Member
KEITH W. EVERSON

Signed: *Laura Converse*
Laura Converse, City Clerk's Office Representative

ATTEST: *Lawrence B. Grissom*
Lawrence B. Grissom, Retirement Administrator



DIVERSITY
BRINGS US ALL TOGETHER

4/18/97

Ret Election 28 Statistics Report
3269 Confirmed Votes - 9206 Eligible to Vote
35.51 % Participation

Question	Total Votes	% Of Votes
349 - YES or NO	3269	100.00
350 - CNF YES	3181	97.31
351 - CNF NO	88	2.69

Jim Carver
Ruth W. Enron
John A. Casey 4/21/97
Lawrence P. Janssen

Exhibit

C

CHANGES IN RETIREMENT BENEFITS A SPECIAL REPORT

From
The Retirement Board of Administration
April 15, 1965

Acting upon the recommendations of the Retirement Board of Administration the City Council has tentatively approved several major improvements in benefits for members of the City Employees' Retirement System. Before these benefits can be adopted by the Council, they must also be approved by a majority vote of the members of the Retirement System. Ballots will be distributed and you will be voting on this important matter in the very near future.

The purpose of this report is to fully inform you of these changes in benefits and to provide you with other pertinent information to assist you in making your decision.

Due to the better earnings of your Retirement Fund the Board is now able to raise the interest assumption rate from 3 1/2% to 4%. As you may recall the rate was increased in 1962 from 3% to 3 1/2% and resulted in a reduction in your required contributions to the Retirement System. If there were no changes in benefits at this time the increase in the interest assumption rate would again result in a reduction in your contribution rate. However, the cost of the improved benefits, which are shared between the employee and the employer, will offset the reduction which would be realized from the higher interest assumption.

Additionally, as a result of longer life expectancy it is necessary for the Board to adopt more recently developed mortality tables. The fact that we can expect to receive a pension for a longer time requires the employee and the employer to contribute at a slightly higher rate during our working years. When this is combined with the proposed improved benefits, the average employee's present contribution requirements will be increased by about 5%. A summary schedule of the present and proposed employee contribution rates is shown at the end of this report.

In summary, a yes vote by the majority of all the members of the System will mean improved benefits and the employer and employees will contribute a greater amount. A lack of a majority of yes votes will result in no improvement in benefits and a small reduction in present employee contributions to the Retirement System. It is therefore important that every member votes.

The Retirement Board has carefully analyzed the present benefits of our System in comparison with other public Retirement Systems and believes there is a need for the improved benefits. The proposed changes which are listed below have been endorsed by the Municipal Employees' Association, City and County Employees' Local 127, and both the Police Officers' and Firefighters' Associations.

PROPOSED CHANGES

1. Death While Eligible Option - For General and Safety Members:

At present, if an employee dies, who was eligible for service retirement, his beneficiary receives only the basic death benefit, which consists of:

- a) a refund of the deceased employee's accumulated contributions, and
- b) one-months pay for each year the deceased employee was in the Retirement System, up to six months pay.

If the deceased employee was a General or Safety Member who was eligible to retire for service but had not done so, this change would give the surviving spouse or minor dependent children as beneficiaries a choice. Instead of the basic death benefit the spouse could receive for life (or the dependent children could receive until their eighteenth birthday) a monthly retirement benefit equal to one-half the amount the deceased employee would have received if he had retired on the day of his death.

2. Full Formula Benefit at age 60 - For General Members Only:

At present the service retirement formula for General Members provides a full benefit at age 62. This change would provide the full benefit at age 60 and would also provide increases over the present percentages for retirement at other ages. As an example, from the following table, a male General Member retiring at age 62 would receive 15% more under the new system.

Age At Retirement	Present Percentages Of Full Benefit*		New Percentages Of Full Benefit*	
	Male	Female	Male	Female
55	66%	69%	70%	77%
56	70	72	75	77
57	75	76	80	82
58	79	81	86	87
59	84	85	93	93
60	90	90	100	100
61	95	95	107	107
62	100	100	115	114
63	106	106	123	122
64	113	112	133	131
65	120	119	143	141

* Rounded off to the nearest percentage

Exhibit

D

CHANGES IN RETIREMENT BENEFITS AN ELECTION REPORT

From

The Retirement Board of Administration

March 17, 1967

The Retirement Board of Administration has recommended to the City Council several changes in the San Diego City Employees' Retirement System which will increase the overall benefits for members retiring in the future. Before the Council can adopt an ordinance to amend the benefits of this System, they must first be approved by a majority vote of the members.

The purpose of this report is to fully inform you of the recommended changes and to provide you with other related information to assist you in making your decision. Ballots will be distributed and you will be voting on this important matter in the very near future.

IN SUMMARY, A MAJORITY OF YES VOTES ON THESE PROPOSED CHANGES WILL MEAN HIGHER FUTURE PENSION BENEFITS AND A SLIGHT INCREASE IN CONTRIBUTION REQUIREMENTS. LESS THAN A MAJORITY OF YES VOTES WILL MEAN NO CHANGE IN PENSION BENEFITS AND A SLIGHT REDUCTION IN CONTRIBUTION REQUIREMENTS.

BACKGROUND INFORMATION

The Retirement Board has the authority to raise or lower the interest rate to reflect earnings on our investments. Due to increased earnings by the Retirement Fund the Board is able at this time to raise the interest rate from 4% to 4½%, effective June 30, 1967. If there were no changes in benefits, the higher interest rate would result in a slight reduction in the amount the employer and the employees contribute to the System.

However, the Retirement Board has carefully analyzed the present benefits of our System and believe there is a need to improve the benefits in order to make our System more nearly comparable to other large public retirement systems in California. The costs for these improved benefits, which are partly shared between the employees and the employer, will more than offset the reduction in contributions which would be realized from the higher interest rate of 4½%. A partial table of present and proposed employee contribution rates is shown at the end of this report.

The four proposed changes, which are listed below, have been endorsed by the City and County Employees' Local 127, the Police Officers' and Fire Fighters' Associations, and tentatively endorsed by the Municipal Employees' Association. While the first three proposals would improve pension benefits, it should be noted that the fourth change is not concerned with benefits, but rather with the disposition of any remaining earnings after regular interest has been credited to the employees' and employer's contributions.

PROPOSED CHANGES

1. To "freeze" the base compensation in the retirement formula at \$400/mo. - Affects all members, except Police and Fire personnel.

Our Retirement System currently provides lower benefits on that portion of a member's salary subject to withholding tax for Social Security and higher benefits on any salary in excess of the taxable Social Security base. Therefore, as the annual salary subject to withholding for Social Security is increased, there is an automatic reduction in both the future pension benefits from, and contributions to, the City Retirement System.

The current annual salary subject to a Social Security withholding is \$6600 (\$550/mo), having been increased, from time to time, from an annual salary of \$4200 (\$350/mo), on January 1, 1956 when our Retirement System was integrated with Social Security.

This change would disassociate our retirement formula from the present and future Social Security taxable base, and would provide for lower benefits on the first \$400 of monthly salary and higher benefits on any salary in excess of \$400 per month. The net effect of this change would be to increase the member's monthly pension, and to increase both the employer's and the employees' contributions to the Retirement System.

2. 1/50th Benefit Formula For Safety Members - Affects only Police and Fire personnel employed after 4/25/1947.

Safety Members now have a benefit formula of 1/55th of their final compensation for each year of membership. This change would replace the 1/55th fraction with a 1/50th fraction, amounting to a 10% increase in the benefit formula. A related formula would apply to lifeguards who are Safety Members. The net effect would be higher pension benefits and an increase in both the employer and employee contribution requirements.

3. To Define "final compensation" as the highest consecutive 3-year earnings - Affects all members, except Police and Fire personnel employed before 4/25/47.

Pension benefits are based on a fraction of a members "final compensation" for each year of membership. Currently, final compensation is defined as the highest consecutive 5-year earnings. This change would define final compensation as the highest 3-year's earnings. Increased pension benefits that would result from this change will be dependent on each employee's personal employment history and the extent to which inflation affects future salaries. This change would not affect employee contribution requirements. Any costs resulting from this amendment would increase future employer contributions.

3. 1.55 Benefit Formula - For Safety Members Only:

Safety Members now have a 1.60 benefit formula. This change would provide them with a 1.55 benefit formula. A related formula would apply to lifeguards who are Safety Members. This amounts to a 9.09% increase in retirement benefits.

4. Death Benefit After Retirement

This new benefit would provide a \$400 death benefit, payable to the beneficiary or estate of present and future retired members.

5. Special Service-Connected Death Benefit - For General Members Only:

If the deceased employee is a General Member and if the Retirement Board determines that his death is service-connected, this benefit will give the surviving widow or minor dependent children, as beneficiaries, a choice. Instead of the basic death benefit the widow could receive for life, or until her remarriage a monthly retirement benefit sufficient, when added to her Social Security benefit, to equal one-half of the deceased member's final compensation. If there were no widow, or if she died, the same benefit would be payable to dependent children under 18.

6. Optional Settlement - For Special Class Safety Members Only:

Under this change Special Class Safety Members who haven't yet retired would be able to elect the option IV Settlement. By accepting a reduced pension under this settlement, this will permit the retiring member to provide a monthly benefit to either his surviving widow (over and above the \$75.00 maximum now provided) or a monthly benefit to some other named beneficiary.

Current and Proposed Employee Contribution Rates

The percent of salary that an employee contributes to the Retirement System depends upon his age at the time he becomes a member of the System. For the sake of brevity the following partial schedule of current and proposed rates of contribution are shown.

General Members

Age At Entry	<u>Current Rate</u>				<u>Proposed Rate Improved Benefits</u>				<u>Proposed Rate Present Benefits</u>			
	A Rate*		B Rate**		A Rate*		B Rate**		A Rate*		B Rate**	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
20	3.23%	3.91%	4.84%	5.86%	3.26%	3.72%	4.89%	5.58%	2.91%	3.35%	4.37%	5.03%
25	3.43	4.15	5.15	6.22	3.51	3.99	5.27	5.99	3.15	3.60	4.72	5.40
30	3.68	4.43	5.52	6.65	3.81	4.32	5.72	6.48	3.42	3.91	5.13	5.86
35	3.95	4.76	5.93	7.14	4.16	4.71	6.24	7.06	3.73	4.26	5.60	6.39
40	4.27	5.13	6.40	7.70	4.55	5.15	6.82	7.73	4.09	4.67	6.14	7.00
45	4.62	5.55	6.93	8.33	4.99	5.65	7.48	8.48	4.49	5.13	6.74	7.70
50	5.01	6.02	7.52	9.03	5.47	6.23	8.21	9.34	4.95	5.66	7.42	8.49
55	5.46	6.55	8.19	9.82	6.03	6.85	9.04	10.28	5.45	6.24	8.18	9.36

* The A Rate is applied to the first \$400 of regular monthly earnings.

** The B Rate is applied to the monthly earnings rate in excess of \$400.

For example a male employee entering the system at age 35, and with a salary of \$532 per month currently contributes 3.95% of \$400 (or \$15.80), plus 5.93% of \$132 (or \$7.83), a total of \$23.63 per month. His future monthly contributions with improved benefits would be \$24.88, and with the present benefits would be \$22.31.

SAFETY MEMBERS

Age At Entry	<u>Current Rate</u>				<u>Proposed Rate Improved Benefits</u>				<u>Proposed Rate Present Benefits</u>			
	A Rate*		B Rate**		A Rate*		B Rate**		A Rate*		B Rate**	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
20	4.63%	5.46%	6.94%	8.19%	4.59%	5.17%	6.89%	7.75%	4.21%	4.73%	6.32%	7.10%
25	4.90	5.79	7.35	8.68	4.98	5.60	7.47	8.40	4.57	5.13	6.85	7.70
30	5.20	6.15	7.80	9.22	5.43	6.10	8.14	9.15	4.97	5.59	7.46	8.39
35	5.53	6.52	8.29	9.78	5.92	6.66	8.88	9.99	5.43	6.11	8.14	9.16
40	5.85	6.91	8.78	10.37	6.44	7.25	9.66	10.87	5.91	6.64	8.86	9.96
45	6.27	7.39	9.40	11.09	6.96	7.83	10.44	11.74	6.38	7.17	9.57	10.76
50	6.77	8.00	10.16	12.00	7.46	8.39	11.19	12.58	6.84	7.69	10.26	11.53

* Both A and B Rates are applied to salary of Lifeguards, as explained above for General Members.

** Police and Fire personnel use B Rate only.

For example a police patrolman entering the System at age 30, and with a salary of \$696 per month currently contributes 7.80% of \$696, or \$54.29 per month. His future monthly contributions with improved benefits would be \$56.65, and with the present benefits would be \$51.92.

4. To provide that "excess" earnings of the Retirement Fund be used to reduce annual employer contribution requirements.

Under the present retirement ordinance, after regular interest is annually credited to the employer and each employee's account from the earnings of the Retirement Fund, the Retirement Board may distribute any remaining surplus earnings between the employer and the employees as an extra interest credit. This, in fact, was done once before on June 30, 1965, when each account received an additional 1.93% extra interest credit from increased earnings on our investments.

This extra interest credit has the effect of reducing the employer contribution requirements. However, it results in no decrease in employee contributions nor does it increase pension benefits, since they are based on a formula. Only members who terminate their employment and withdraw their accumulated contributions realize any gain from an extra interest credit, since their accumulated contributions have been increased when extra interest has been credited to their accounts.

This proposed change will have no effect on member's future pension benefits, but if approved, it will provide that any remaining surplus earnings, after regular interest has been credited to all accounts, shall be used to reduce future employer contribution requirements. Extra interest would, therefore, no longer be credited to employee accounts.

CURRENT AND PROPOSED EMPLOYEE CONTRIBUTION RATES

The percent of salary that an employee contributes to the Retirement System depends upon his age at the time he becomes a member of the System. The following partial schedule of current and proposed rates of contribution for males is shown for comparison.

GENERAL MEMBERS

Age At Entry	Current Rates		Proposed Rates Improved Benefits		Proposed Rates Present Benefits	
	% of Salary up to \$550/mo.	% of Salary over \$550/mo.	% of Salary up to \$400/mo.	% of Salary over \$400/mo.	% of Salary up to \$550/mo.	% of Salary over \$550/mo.
20	3.26%	4.89%	3.01%	4.52%	3.01%	4.52%
25	3.51%	5.27%	3.27%	4.91%	3.27%	4.91%
30	3.81%	5.72%	3.58%	5.37%	3.58%	5.37%
35	4.16%	6.24%	3.93%	5.90%	3.93%	5.90%
40	4.55%	6.82%	4.33%	6.50%	4.33%	6.50%
45	4.99%	7.48%	4.79%	7.18%	4.79%	7.18%
50	5.47%	8.21%	5.29%	7.94%	5.29%	7.94%
55	6.03%	9.04%	5.87%	8.80%	5.87%	8.80%

For example, a male employee entering the System at age 35, and with a current salary of \$616 per month, contributes 4.16% of \$550 (or \$22.88), plus 6.24% of \$66 (or \$4.12), a total of \$27.00 per month for present benefits. His future monthly contributions with improved benefits would be \$28.46, and his future monthly contributions with no change in benefits would be \$25.51.

SAFETY MEMBERS

Age at Entry	Current Rate	Proposed Rate Improved Benefits	Proposed Rates Present Benefits
20	6.89%	7.08%	6.44%
25	7.47%	7.74%	7.04%
30	8.14%	8.50%	7.72%
35	8.88%	9.34%	8.49%
40	9.66%	10.24%	9.30%
45	10.44%	11.14%	10.13%

For example, a police patrolman entering the System at age 30 and with a current salary of \$749 per month, contributes 8.14% of \$749, or \$60.97 per month. His future monthly contributions with improved benefits would be \$63.67, and his future monthly contributions with no change in benefits would be \$57.82.

Exhibit

E

PROPOSED CHANGES IN RETIREMENT BENEFITS
AN ELECTION REPORT

From
The Retirement Board of Administration

February 27, 1970

The Retirement Board of Administration has recommended to the City Council several changes in the San Diego City Employees' Retirement System which will increase the pension benefits of members retiring in the future. These improved benefits will also raise both the employer and employees' retirement contributions. Before the Council may adopt an ordinance to amend the benefits of this System, these changes must first be approved by a majority vote of the members.

The purpose of this report is to fully inform you of the proposed changes and the resulting cost to the employees and the City. Ballots will be distributed and you will be voting on this important matter in the very near future.

BACKGROUND INFORMATION

The Retirement Board has the authority to raise or lower the interest rate to reflect earnings on our investments. Due to increased earnings by the Retirement Fund the Board is able at this time to raise the interest rate from the current 4% to 5%, effective July 1, 1970. If there were no changes in benefits, the higher interest rate would result in a reduction in the amount the City and the employees contribute to the System.

However, the Retirement Board has carefully analyzed the present benefits of our System and believes there is a need to improve the benefits in order to make our System more nearly comparable to other large public employee retirement systems in California. The costs for these improved benefits, which are shared between the City and the employees will more than offset the reduction in contributions which would be realized from the higher interest rate of 5%. A partial table of present and proposed employee contribution rates is shown at the end of this report.

- SUMMARY -

A majority of yes votes by the employees will permit the Council to adopt an ordinance to accomplish six changes described on the following pages, which will result in higher future pension benefits and an average increase of approximately 30% in the employee contributions. Based on current funding requirements the City's annual costs will be increased by about \$2.8 million, a 45% increase.

Less than a majority of yes votes will mean no change in pension benefits, an average reduction of about 16% in employee contributions, and no obligation for the City to pay for improved benefits.

EXAMPLE RETIREMENT BENEFITS OF PRESENT & PROPOSED SYSTEM

	Present Benefits	Proposed Benefits
A Safety Member earning \$800/mo., retiring at age 50 with 25 years of service	\$280.56 to retiree, no monthly benefits to surviving spouse after his death, no adjustment in pension benefits after retirement. Total Value = \$86,132	\$400.00/mo. to retiree, \$200/mo. to his surviving spouse after his death, pensions adjusted annually by up to 1½%, based on changes in the Cost-of-living. Total Value = \$132,400 plus the Cost-of-Living Formula.
A General Member earning \$800/mo, retiring at age 60 with 30 years of service.	\$333.33/mo. to retiree, no monthly benefits to surviving spouse after retiree's death, no adjustment in pension benefits after retirement. Total Value = \$71,000.	\$383.33/mo. to retiree, \$191.67/mo. to surviving spouse after retiree's death, pension adjusted annually by up to 1½%, based on changes in Cost-of-Living. Total Value = \$99,474 plus the Cost-of-Living Formula.

1. Provide full formula benefits for General Members at 57½. - Affects all members, except Police and Fire personnel, and full-time Lifeguards.

Our Retirement System currently permits General Members with sufficient years of service to retire anytime between the ages of 55 and 65, with 60 being the age at which 100% of the retirement formula applies. Members who retire between 55 and 60 receive a proportionately reduced percentage (below 100%) of the retirement formula and members who retire between 60 and 65 receive a proportionately increased percentage (above 100%) of the retirement formula.

This change would fix age 57½ as the age at which 100% of the retirement formula would apply, with proportionate decreases for retirement between 55 and 57½ and proportionate increases for retirement between 57½ and 65. The following figures show the current percentages based on age 60, the proposed percentages based on age 57½ and the increase in retirement benefits at each age that results from this change.

Age	Present Percentages Based on Age 60		Proposed Percentages Based on Age 57½		Increase in Pension Benefits	
	Male	Female	Male	Female	Male	Female
55	69.25%	71.25%	87.79%	89.54%	26.8%	25.7%
56	74.31	76.04	92.32	93.82	24.2	23.4
57	79.84	81.26	97.25	98.46	21.8	21.2
58	85.91	86.96	102.64	103.50	19.5	19.0
59	92.60	93.18	108.53	108.99	17.2	17.0
60	100.00	100.00	115.00	115.00	15.0	15.0
61	107.33	107.05	119.43	119.47	11.3	11.6
62	115.34	114.74	125.35	125.48	8.7	9.4
63	124.12	123.12	131.60	131.86	6.0	7.1
64	133.72	132.28	138.22	138.65	3.4	4.8
65	144.27	142.30	145.25	145.93	.7	2.5

2. Provide full formula benefits for Safety Members at 50. - Affects only Police and Fire personnel employed after 4/25/47 and full-time Lifeguards.

The Retirement System currently allows Safety Members with sufficient years of service to retire anytime between the ages of 50 and 65, with 55 being the age at which 100% of the retirement formula applies. Members who retire between 50 and 55 receive a proportionately reduced percentage (below 100%) of the retirement formula. There are no increases in the retirement formula (above 100%) for retirement between ages 55 and 65.

This change would fix age 50 as the age at which 100% of the retirement formula would apply, with proportionate increases for retirement between ages 50 and 55. The percentage of full formula applicable to age 55 would also apply to all ages between 55 and 65. The following figures show the current percentages based on age 55, the proposed percentages based on age 50, and the increase in retirement benefits at each age that results from this change.

Age	Present Percentages Based on Age 55		Proposed Percentages Based on Age 50		Increase in Pension Benefits
	Male	Female	Male	Female	
50	70.14%	70.14%	100.00%	100.00%	42.6%
51	75.07	75.07	105.16	105.16	40.1
52	80.47	80.47	110.78	110.78	37.7
53	86.38	86.38	116.92	116.92	35.4
54	92.86	92.86	123.36	123.36	32.8
55-65	100.00	100.00	130.99	130.99	31.0

3. Provide the surviving spouse of a deceased retiree with a pension equal to 50% of the retiree's pension. - Affects all members except Police and Fire personnel employed before 4/25/1947.

The Retirement System currently has no provision for the payment of pensions to the surviving spouse of deceased retirees, unless the employee at retirement voluntarily reduces his pension under an optional settlement in order to provide a continuing pension to his survivor. This change would automatically provide the surviving spouse of deceased retirees with a pension equal to 50% of the retiree's pension, without the employee having to voluntarily reduce his pension at retirement.

RETIREMENT SYSTEM

In order to qualify for this benefit the surviving spouse must have been married to the deceased retiree at least one year prior to his or her retirement. If an employee is not married at retirement, the Retirement System will either refund the accumulated contributions he has made for this benefit or allow him to increase his own pension by the annuity value of these contributions. The following figures indicate the percentage of member's future contributions that will be attributable to this benefit:

Membership Classification	Sex	Percentage of Member's Contributions Attributable to 50% survivor benefit
General Members	Male	15.67%
General Members	Female	4.29
Safety Members	Male	11.76
Safety Members	Female	3.30

4. Provide an annual Cost-of-Living Benefit for retired members and survivors, based on Consumer Price Index adjustments, but not to exceed 1½% per year. - Applies to all present and future retirees and survivors, except Police personnel employed before 5/8/1941, and Fire personnel employed before 4/25/1947.

The present Retirement System guarantees a specific fixed pension benefit, determined by formula at retirement, and paid to the retiree as long as he or she lives. This change would provide for an annual future adjustment in retirement benefits (limited to 1½% of the retiree's pension), if there are changes in the cost-of-living, as measured by The Consumer Price Index, a report published by the U. S. Dept. of Labor. Future retirement benefits would therefore be increased or decreased by up to 1½% per year if the cost-of-living goes up or down. However, retirement benefits could never be reduced below the level of benefits paid when this provision becomes effective, or the initial benefits at retirement in the case of future retirees.

The members' retirement contributions will be increased by 15% to pay their share of funding for this benefit. Members' future cost-of-living contributions will be added to their basic retirement benefits as a monthly annuity, guaranteeing them a return of their contributions in any event. Additional pension increases would depend upon additional increases in the Consumer Price Index above the value of the pensioners monthly annuity.

5. Increase the Minimum pension for disability retirees from 25% to 33-1/3% of the member's final compensation. - Applies to all members, except Police and Fire personnel employed prior to 4/25/1947.

This provision will affect the industrial (on-the-job) and non-industrial (off-the-job) retirement benefits of non-safety personnel, and the non-industrial retirement benefits of safety personnel, by raising the minimum disability retirement benefits from the present 25% to 33-1/3% of the disabled member's final compensation. Under the present Retirement System a disabled member may receive more than one-third of his final compensation, depending on how long he has been employed by the City. This proposed change simply raises the minimum payment by the indicated percentages. This change will have no effect upon future employee contribution requirements.

6. Amend the present restrictions on disability pension payments to retirees who find new employment. - Affects all present and future disability retirees, except Police & Fire personnel employed before 4/25/1947.

The Retirement System now provides for a reduction in pension payments when a disability retiree earns enough wages so that his earnings and his pension exceed the salary of the job he held with the City. The proposed change would still provide for a pension reduction, but it would be \$1.00 of disability pension for each \$2.00 of excess wages and in no event could the pension be reduced by more than 50%. This change will have no effect upon future employee contribution requirements.

Other Proposed Changes

The Retirement Board has also recommended the following two additional changes in the Retirement System which do not affect either the contributions or the benefits of the General Members or Safety Members and therefore do not require their majority vote approval:

- to permit the remaining Special Class Safety Officers (Police & Fire personnel hired before 4/25/1947) who are still employed to retire under the revised Safety Member provisions, if they so elect and agree to re-establish their contributions to the amount required by the 1947 City Charter.
- to adopt a separate retirement plan for the Mayor and the City Council, patterned after the State Legislator's retirement plan.

CURRENT AND PROPOSED EMPLOYEE CONTRIBUTION RATES

The percent of salary that an employee contributes to the Retirement System depends upon his age at the time he becomes a member of the System. The following partial schedule of current and proposed rates of contribution for males is shown for comparison.

GENERAL MEMBERS

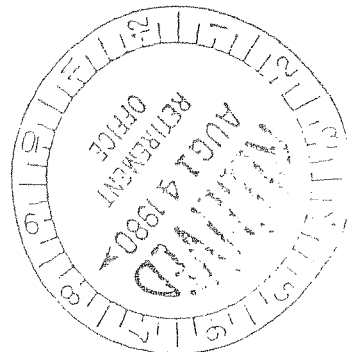
Age At Entry	Current Rates		New Rates With Proposed Changes		New Rates Without Changes in Benefits	
	% of Salary up to \$400/mo.	% of Salary over \$400/mo.	% of Salary up to \$400/mo.	% of Salary over \$400/mo.	% of Salary up to \$400/mo.	% of Salary over \$400/mo.
20	3.01%	4.52%	3.66%	5.48%	2.38%	3.57%
25	3.27	4.91	4.06	6.08	2.65	3.97
30	3.58	5.37	4.53	6.80	2.97	4.45
35	3.93	5.90	5.08	7.62	3.33	5.00
40	4.33	6.50	5.70	8.57	3.76	5.64
45	4.79	7.18	6.43	9.65	4.24	6.36
50	5.29	7.94	7.25	10.87	4.79	7.19
55	5.87	8.80	8.18	12.26	5.42	8.13

For example, a male employee entering the System at age 35, and with a current salary of \$786 per month now contributes 3.93% of \$400 (or \$15.72), plus 5.90% of \$486 (or \$22.77), a total of \$38.49 per month for present benefits. His future monthly contributions if the proposed changes are approved would be \$49.73, and his future monthly contributions with no change in benefits would be \$32.62.

SAFETY MEMBERS

Age at Entry	Current Rate	New Rate With Proposed Changes	New Rate Without Changes in Benefits
20	7.08%	8.98%	5.72%
25	7.74	10.02	6.40
30	8.50	11.22	7.20
35	9.34	12.59	8.09
40	10.24	14.10	9.07
45	11.14	15.66	10.07

For example, a police patrolman entering the System at age 25 and with a current salary of \$887 per month, contributes 7.74% of \$887, or \$68.65 per month for present benefits. His monthly contributions with improved benefits would be \$88.88, and his future monthly contributions with no change in benefits would be \$56.77.



Exhibit

F

**SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM
MEMORANDUM
LEGAL SERVICES DIVISION**

FILE: W:\ATTY\Elections\whovotes.rsp.wpd
DATE: October 2, 2002
TO: The Board of Administration, via Lawrence B. Grissom, Retirement Administrator
FROM: Roxanne Story Parks, Assistant General Counsel, via Loraine Chapin, General Counsel
SUBJECT: Retirement Benefit Elections

Issue Presented

Must a retirement ordinance that affects the benefits of some members of the retirement system be approved by a majority vote of all members of the retirement system, or may it be approved by a majority vote of only those members whose benefits will be affected by the ordinance?

Short Answer

Charter section 143.1 clearly mandates that an ordinance affecting the benefits of any member of the retirement system must be approved by a majority vote of all retirement system members.

Analysis

Section 143.1 of the San Diego City Charter provides:

"No ordinance amending the retirement system which affects the benefits of any employee under such retirement system shall be adopted without the approval of a majority vote of the members of said system. No ordinance amending the retirement system which affects the vested defined benefits of any retiree of such retirement system shall be adopted without the approval of a majority vote of the affected retirees of said retirement system."

The issue addressed in this memorandum is whether a retirement ordinance that affects the benefits of some, but not all, "employees under" the retirement system must be approved by a majority vote of all retirement system members, or by a majority vote of only those members who will be affected by the ordinance.

Specifically, the City has agreed to increase the retirement factors for all General Members and to impose a cap on their benefits using the new factors. In addition, the City has agreed to allow some General and Safety Members, those who are represented by Local 145, to: (1) extend DROP using annual leave and (2) use their annual leave to purchase service credit with the retirement system.

All of these changes "affect the benefits" of some "employee[s] under such retirement system," and therefore cannot be adopted "without the approval of a majority vote of the members of said system." This brings us to the issue at hand: Must all members of the retirement system be allowed to vote on all of these changes? Or, may the retirement system hold two separate elections: one on the new retirement factors, in which only the General Members would vote, and another on the annual leave benefits, in which only the members represented by Local 145 would vote?

The answer to these questions turns on the meaning of "majority vote of the members of said system." The term "said system" clearly refers to the "retirement system," which is mentioned twice earlier in the same sentence. The "retirement system" is clearly "SDCERS." Section 141 of the Charter, entitled "City Employees' Retirement System," empowered the City Council to establish a "retirement system" for compensated public officers and employees, including "policemen, firemen and full-time lifeguards." And, although the Charter allows the City to set a younger retirement age for Safety Members than for General Members, it does not provide for separate "retirement systems" to be created for different classes of membership.

The Municipal Code supports this construction. Section 24.0103 specifically defines "retirement system" to mean "the City Employees' Retirement System," and defines "member" as follows:

"Member" means any person who actively participates in and contributes to the Retirement System, and who is thereafter entitled, when eligible, to receive benefits therefrom. There are three classes of Members: General, Safety, and Elected Officers.

Accordingly, all classes of members participate in the same retirement system, which is SDCERS. The remaining question is whether "a majority vote of the members" of SDCERS means that all SDCERS members must be allowed to vote on changes

The Board of Administration
October 2, 2002
Page 3

affecting any member, or whether the Board may read into this phrase the modification that only members affected by the proposed ordinance must be allowed to vote.

The California Supreme Court recited the following basic rules of statutory construction in *California Teachers Association v. San Diego Community College District*:

"In construing a statute, we begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. An equally basic rule of statutory construction is, however, that courts are bound to give effect to statutes according to the usual, ordinary import of the language employed in framing them. Although a court may properly rely on extrinsic aids, it should first turn to the words of the statute to determine the intent of the Legislature. If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history. [Citations omitted; emphasis added.]"¹

In fact, the California Supreme Court has consistently held that where a statute is free from ambiguity, the words of the statute must generally be followed regardless of the actual intent of the legislature. For example, in *Mulville v. City of San Diego*, the Court stated:

"In construing a legislative enactment the intent of the Legislature must be determined primarily by attributing the ordinary and popular sense to the words of the statute where they are free from ambiguity and the result is not absurd, and this must be done even though it appears probable that a different object was in the mind of the Legislature."²

In other words, the Board should ascertain the intent of Charter section 143.1 first by reading the statute while giving the words their ordinary, usual and popular meanings. The Board should not add to or alter the words. Only if the statute is unclear, should the Board look to extrinsic, or extraneous, evidence to divine the meaning of the statute. In any event, there is no legislative history on the meaning of the phrase

¹ *California Teachers Association v. San Diego Community College District*, 28 Cal.3d 692 at 698 (1981).

² 183 Cal. 734 at 739 (1920).

"approval of a majority vote of the members of said system," so we are left with the language of the statute.³

With these rules of construction in mind, the phrase "majority vote of the members of said system" can only be read to mean one thing, that all members must be allowed to vote. Without altering the clear language of the statute, or adding words to it, section 143.1 cannot reasonably be read as allowing only those members who are affected by a proposed benefit change to vote on that change.

Interestingly, when section 143.1 was amended in 1990 to allow "affected retirees" to vote on ordinances affecting their vested defined benefits, the preceding sentence relating to the active member vote was not amended to add the word "affected." This clearly implies that the standard was intended to be different for retired and active members -- that while only retirees who are "affected" by an ordinance are allowed to vote, this restriction does not apply to active members.

Finally, it has been suggested that Charter section 146 would allow the City Council to enact an ordinance "clarifying" that Charter section 143.1 really means that only "affected" members are allowed to vote on retirement ordinances. Section 146 provides:

"The Council is hereby fully empowered by a majority vote of the members to enact any and all ordinances necessary, in addition to the ordinance authorized in Section 141 of this Article, to carry into effect the provisions of this Article; and any and all ordinances so enacted shall have equal force and effect with this Article and shall be construed to be a part hereof as fully as if drawn herein."

But, adding the qualification that only "affected" members may vote to a Charter provision that requires "a majority vote of the members of [the retirement] system" would not be a clarification of section 143.1; it would be an amendment. And, it is well settled that the City Council may not amend the Charter by adding to or subtracting from Charter provisions, or enacting ordinances that are inconsistent with the Charter.

³ We have reviewed the legislative history for Charter section 143.1, which consists of two amendments to the City Charter, and there is no information concerning the meaning of either "affects the benefits of any employee" or "approval of a majority vote of the members of said system." The first amendment dated June 8, 1954, added section 143.1. As originally created, section 143.1 only addressed the voting requirements for any employee under the Retirement System whose benefits were affected by an ordinance amending said System. The second amendment, dated November 6, 1990, added a voting requirement for retirees when an ordinance amending the Retirement System affects their "vested defined benefits."

The decision in *Montgomery v. Board of Admin. of City Employees' Retirement System of San Diego*⁴ is particularly relevant. *Montgomery* addressed Charter section 141, in its original form, which authorized the City Council to establish a retirement system, but provided that no employee be retired for service "before he reaches the age of sixty-two and before ten years of continuous service . . ." The City Council had adopted ordinances setting up the retirement system, which allowed employees to retire with ten years of service, even if the service was intermittent. Consistent with these ordinances the Retirement Board had granted pensions to a number of members who did not have ten years of continuous service. But, in 1938, this procedure was questioned, and the Board suspended payments to retirees who did not have ten years of continuous service.

A retiree brought an action in declaratory relief asking the superior court to determine and declare the rights of retirees under the Charter and the ordinances. The superior court declared void the provisions of the ordinances that attempted to give members credit for intermittent service and held that only those retirees who had ten years of continuous service could receive pensions.

On appeal, the retirees argued that Charter section 146 empowered the City Council to adopt retirement ordinances that would have the same force and effect as Charter provisions. They argued that they were entitled to their pensions because the Council had adopted ordinances allowing interrupted service to be considered continuous service. The Fourth District Court of Appeal rejected this argument, holding that Charter section 146:

" . . . gives no authority to pass any enactment that conflicts with the charter provisions . . . we must hold that it is only an ordinance that puts into effect charter provisions that is to have the same force and effect as though a part of and included in the charter; that the section [146] does not empower the city council to pass any ordinance conflicting with the charter or that may have the effect of amending it."⁵

The court stressed that any other construction of section 146 would render it unconstitutional:

"If section 146 of the charter must be construed as giving authority to the city council . . . by ordinance to add to or subtract from the charter

⁴34 Cal.App.2d 514 (1939).

⁵*Id.* at 521.

provisions . . . it must be held to be unconstitutional as attempting to permit the amendment of the charter in an unauthorized manner.

* * *

It is clear that certain provisions of the retirement ordinances . . . conflict with the provisions of the charter. Certainly, intermittent service is not continuous service and in so far as the ordinances attempt to substitute intermittent service for continuous service as a basis for retirement, their provisions are void as contrary to the charter and as an attempt to amend the charter in an unauthorized manner. It does not follow that section 146 of the charter is unconstitutional.

* * *

It is our duty to so construe the provisions of section 146 of the charter so that they may be held constitutional if that can be done . . .⁶

Accordingly, section 146 does not authorize the Council to amend section 143.1 by ordinance; Charter provisions may only be amended by a majority vote of electorate of the City.

We are aware that the Retirement System has held elections for specific membership groups in the past. This does not change our legal opinion. It is well established that where a statute is clear, prior interpretations that are inconsistent with the statute are given no deference.

Charter section 143.1 does not allow for a vote of only General Members, nor does it allow for a vote of only members within a particular bargaining unit. And, section 146 does not authorize the Council pass an ordinance to allow for this. Any other construction of section 143.1 would not only violate the clear language of that section, but could lead to absurd results.⁷ Any other construction of section 146 would render it unconstitutional.

Roxanne Story Parks

⁶*Id.* at 520 - 521 (1939).

⁷Taken to its logical extreme, the City could enact benefit improvements for a small group of members, or even a single member, subject only to a majority vote of the members (or member) receiving the improved benefits.

Exhibit
G

ESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS
MICHAEL RIVO
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CIVIL DIVISION
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October 16, 2002

Larry B. Grissom
Retirement Administrator
Retirement Office
401 "B" Street, Fourth Floor, Suite 400
San Diego, CA 92101-4298

Dear Mr. Grissom:

Re: Elections pursuant to City of San Diego Charter Section 143.1

This will respond to your October 3, 2002 letter to the City Attorney regarding the above matter. Specifically, you asked for clarification on two issues. The first issue is whether or not the City Attorney's Office concurs with the legal opinion by Retirement Assistant General Counsel Roxanne Story Parks dated October 2, 2002, regarding San Diego City Charter section 143.1 and retirement benefit elections. The second issue is who should conduct such elections - the City (Manager) or Retirement.

As to the legal opinion by Ms. Story Parks regarding Charter section 143.1, we believe the opinion is sound and concur with its conclusion. It is a thorough analysis and correctly interprets the Charter section. Section 143.1 is not ambiguous and clearly states that all members of the system, and not just those in the classifications affected, must vote on any change which affects the members' benefits. We have nothing further to add to the opinion.

As to the issue of which department, the Manager's or Retirement, should conduct such elections, we believe that Retirement should conduct the elections because they concern retirement matters, and also because we believe Retirement is under a responsibility to conduct such elections.

As you know, Charter section 144 provides that "[t]he system shall be managed by a Board of Administration." The Section also states that the Board "may establish such rules and regulations as it deems proper; . . ." *Id.* The Section further states that the Board "shall have exclusive control of the administration and investment of such [retirement funds] as may be established; . . ." *Ibid.*

October 16, 2002

-2-

Mr. Larry Grissom

San Diego Municipal Code (SDMC) section 24.0901 was codified to enact this Charter directive. Section 24.0901 states in part: "The Board may make the rules it deems proper to *administer* the Retirement System." (Emphasis added.) "Retirement System" is defined in SDMC section 24.0103 as "the City Employees Retirement System as created by this Article," Section 24.0101 refers to the creation of the system in 1926 through Ordinance No. 10792, which stated in Section 2, "A retirement system is hereby established and placed under the management of the Board . . . for the purpose of providing retirement allowances for employees of The City"

As you also know, in response to these directives, Retirement enacted its own policies and procedures which acknowledge and implement the mandates of the Charter and SDMC. For instance, Rule 1.00 states:

The purpose of these Board Rules is to augment the retirement ordinances of The City of San Diego. It is intended that these Rules shall provide guidance by establishing and clarifying the procedural and administrative processes necessary to carry out the responsibilities of the Retirement Board as set forth in the Charter and Municipal Code. . . .

Rules 7.01 through 7.06 became the policies and procedures regarding benefit elections. Rule 7.01 states in part: "The Board shall hold an election among all the affected members of the Retirement System whenever an ordinance affects the benefits of any class members of the System." Rules 7.02 through 7.06 set forth the procedures for Retirement to hold these elections.¹

Turning back to Charter section 144 and SDMC section 24.0901, we believe the sections' language indicates that the Board, and by extension the Retirement Office, must handle *all* administration of the system, and arguably, such administration includes elections. As quoted above, Charter section 144 states that the *system* shall be *managed* by the Board. SDMC section 24.0901 states the Board may make rules to *administer* the system. Elections must be held when any "amendment to the system . . . affects the benefits of any employee under such . . . system." Charter § 143.1. Thus, again arguably, an election is an extension of an administrative duty under the exclusive control of the Board, entrusted to it by the Charter.

Comments made to you in a 1993 City Attorney memorandum of law can be used by analogy to support this interpretation of these passages (*see* 1993 City Att'y MOL 1264, copy attached). In this memorandum, Deputy City Attorney Rick Duvernay addressed a question raised by you about the necessity of Retirement providing information to system members regarding benefit elections when that information was already provided in some format during

¹If Ms. Story Parks' opinion is adopted by Retirement, several of these rules should be amended to comply with the legal analysis which concludes all members need to vote on changes instead of only affected members. Several of the rules read "affected members" and can be interpreted inapposite to her legal conclusion.

the meet and confer process. In discussing the importance of Retirement providing the information, DCA Duvernay stated:

The Board's fiduciary obligation is to manage the trust [retirement system funds] with a high degree of skill and care. One aspect of that responsibility concerns the *provision of the trust instrument* which *grants members the right to vote* upon changes in benefit levels. . . . [T]he right to vote would be quite meaningless if members were not provided with enough information to make an informed decision. This, of course, brings the matter full circle back to the Board's *responsibility, for if the Board does not provide this information to the membership, who will?*

As trustees, Board members *may not delegate to others* the performance of *acts* they can *reasonably be required* to perform. Probate Code section 16012. When the Board does delegate its functions, which it necessarily and routinely does, they must nevertheless exercise general supervision over those who perform the delegated matters. Probate Code section 16012. City management and the labor organizations do not have access to the necessary actuarial expertise the Board routinely relies upon, *nor are they accountable to the Board*. For these reasons, we would advise against the Board relying upon the meet and confer process to fully inform members with respect to the consequences of any benefit change.

In conclusion, *the Board is presently conducting benefit elections under appropriate circumstances*.

1993 City Att'y MOL 1264, 1265 (emphases added).

As with the responsibility outlined above, Retirement arguably also has a responsibility to its members in relation to the execution of the elections. Management is not accountable to the Board, and does not have Retirement's expertise necessary to carry out these retirement matters. The responsibility of all administrative matters entrusted to Retirement by the Charter should extend to conducting informed and accurate elections, as Retirement has been doing for numerous years.

Although the language has been modified over the years, the original ordinance enacting the system in 1926 (Ordinance No. 10792) entrusted to the Board "[t]he *general* administration and the responsibility for the *proper operations* of the retirement system" (Emphases added.) We do not believe the loss of the word "general" from the original ordinance of 1926 to the language implemented in the Charter years later means a loss of this administrative duty. Charter section 144 still mandates "the system shall be managed by a Board" The Board, over many years, has included conducting benefit elections in the gambit of its responsibilities,

Mr. Larry Grissom

-4-

October 16, 2002

presumably because it is an administrative matter dealing with the retirement system. The Board even enacted rules to implement these elections.

In conclusion, this office concurs with Retirement counsel's legal analysis of Charter section 143.1, which states that all members of the system, and not just those affected by a benefit change, must vote on the benefit change pursuant to Charter section 143.1. This office also opines that Retirement should continue to conduct the elections concerning retirement benefit changes. Although one reason is because Retirement has historically conducted the elections and is more knowledgeable and better equipped to perform them than the Manager's Office, this is not the only reason. This office strongly believes holding the elections is an extension of Retirement's responsibilities mandated by the Charter and SDMC section 24.0901. Retirement has acknowledged this responsibility by enacting internal policies and procedures in their rules and regulations, and we find no legal reason why the practice should be transferred now.

Sincerely yours,

CASEY GWINN, City Attorney

By 

Michael Rivo
Deputy City Attorney

MR:ms

Exhibit

H

Office of
The City Attorney
City of San Diego

MEMORANDUM

236-6220

DATE: August 27, 1993
TO: Larry Grissom, Retirement Administrator
FROM: City Attorney
SUBJECT: Benefits Election

In a memorandum dated July 8, 1993, in which you refer to San Diego City Charter ("Charter") section 143.1, you ask us to evaluate the circumstances under which the system is obligated to conduct benefit elections. You point out that benefit changes to the San Diego City Employees' Retirement System ("SDCERS") almost always result from the meet and confer process and as a part of that process the benefit changes must be approved by both management and the affected labor organizations. What you imply is that, under those circumstances, benefit elections appear to be a burdensome duplication of effort. Suffice it to say, for whatever reasons (a debate over which could surely rage on for several hours), tinkering with SDCERS benefits has become the norm in recent years and benefit elections an unpleasant fact of life for your staff.

Charter section 143.1 reads as follows:

Sec. 143.1 Approval of Amendments by Members

No ordinance amending the retirement system which affects the benefits of any employee under such retirement system shall be adopted without the approval of a majority vote of the members of said system.

No ordinance amending the retirement system which affects the vested defined benefits of any retiree of such retirement system shall be adopted without the approval of a majority vote of the affected retirees of said retirement system.

In my quest to discover the true purpose and meaning of Charter section 143.1, I could find no case law or attorney opinions shedding light on the subject. However, in the dusty archives, I

Larry Grissom
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did find three Special Benefit Election Reports ("Reports") issued by the Board of Administration ("Board") between the years 1965 and 1970. Each of these Reports was issued at a time when major benefit changes were proposed.

In reading these Reports, I found it ironic and somewhat amusing that twenty-five (25) years later we are still struggling with some of the same issues. (See, proposed change No. 4 in the 1967 report and proposed change No. 6 in the 1970 report.) After reading the Reports, I think it is fair to say, and at least comforting to know, that we are conducting elections today under the same circumstances as we did twenty-five (25) years ago.

In each Report, the Board explained that an increase in contribution rates would be necessary to properly fund the new benefits. The changes were described to the employees as a "tradeoff;" higher benefits with higher contribution rates or the same benefits with no increase or a decrease in contribution rates. I was impressed by the thoroughness of the Reports and left with a feeling that the voting right is not something to be taken for granted or taken lightly.

The Board's fiduciary obligation is to manage the trust with a high degree of skill and care. One aspect of that responsibility concerns the provision of the trust instrument which grants members the right to vote upon changes in benefit levels. These Reports serve as a good reminder that the right to vote would be quite meaningless if members were not provided with enough information to make an informed decision. This, of course, brings the matter full circle back to the Board's responsibility; for if the Board does not provide this information to the membership, who will?

As trustees, Board members may not delegate to others the performance of acts they can reasonably be required to perform. Probate Code section 16012. When the Board does delegate its functions, which it necessarily and routinely does, they must nevertheless exercise general supervision over those who perform the delegated matters. Probate Code section 16012. City management and the labor organizations do not have access to the necessary actuarial expertise the Board routinely relies upon, nor are they accountable to the Board. For these reasons, we would advise against the Board relying upon the meet and confer process to fully inform members with respect to the consequences of any benefit change.

In conclusion, the Board is presently conducting benefit elections under appropriate circumstances. The Board could, and probably should devote more effort to providing information to

Larry Grissom
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the membership in connection with those elections. In the near future, when major changes to the plan are proposed with respect to death benefits, division of community property assets and disability benefits, I recommend that the Board issue informational reports to the membership fully describing those changes, similar to the attached Reports.

If you have any questions, please give me a call.

JOHN W. WITT, City Attorney

By



Richard A. Duvernay
Deputy City Attorney

RAD:mrh:352
Attachment
ms-93-6

CHANGES IN RETIREMENT BENEFITS A SPECIAL REPORT

From
The Retirement Board of Administration
April 15, 1965

Acting upon the recommendations of the Retirement Board of Administration the City Council has tentatively approved several major improvements in benefits for members of the City Employees' Retirement System. Before these benefits can be adopted by the Council, they must also be approved by a majority vote of the members of the Retirement System. Ballots will be distributed and you will be voting on this important matter in the very near future.

The purpose of this report is to fully inform you of these changes in benefits and to provide you with other pertinent information to assist you in making your decision.

Due to the better earnings of your Retirement Fund the Board is now able to raise the interest assumption rate from 3 $\frac{1}{2}$ % to 4%. As you may recall the rate was increased in 1962 from 3% to 3 $\frac{1}{2}$ % and resulted in a reduction in your required contributions to the Retirement System. If there were no changes in benefits at this time the increase in the interest assumption rate would again result in a reduction in your contribution rate. However, the cost of the improved benefits, which are shared between the employee and the employer, will offset the reduction which would be realized from the higher interest assumption.

Additionally, as a result of longer life expectancy it is necessary for the Board to adopt more recently developed mortality tables. The fact that we can expect to receive a pension for a longer time requires the employee and the employer to contribute at a slightly higher rate during our working years. When this is combined with the proposed improved benefits, the average employee's present contribution requirements will be increased by about 5%. A summary schedule of the present and proposed employee contribution rates is shown at the end of this report.

In summary, a yes vote by the majority of all the members of the System will mean improved benefits and the employer and employees will contribute a greater amount. A lack of a majority of yes votes will result in no improvement in benefits and a small reduction in present employee contributions to the Retirement System. It is therefore important that every member votes.

The Retirement Board has carefully analyzed the present benefits of our System in comparison with other public Retirement Systems and believes there is a need for the improved benefits. The proposed changes which are listed below have been endorsed by the Municipal Employees' Association, City and County Employees' Local 127, and both the Police Officers' and Firefighters' Associations.

PROPOSED CHANGES

1. Death While Eligible Option - For General and Safety Members:

At present, if an employee dies, who was eligible for service retirement, his beneficiary receives only the basic death benefit, which consists of:

- a) a refund of the deceased employee's accumulated contributions, and
- b) one-months pay for each year the deceased employee was in the Retirement System, up to six months pay.

If the deceased employee was a General or Safety Member who was eligible to retire for service but had not done so, this change would give the surviving spouse or minor dependent children as beneficiaries a choice. Instead of the basic death benefit the spouse could receive for life (or the dependent children could receive until their eighteenth birthday) a monthly retirement benefit equal to one-half the amount the deceased employee would have received if he had retired on the day of his death.

2. Full Formula Benefit at age 60 - For General Members Only:

At present the service retirement formula for General Members provides a full benefit at age 62. This change would provide the full benefit at age 60 and would also provide increases over the present percentages for retirement at other ages. As an example, from the following table, a male General Member retiring at age 62 would receive 15% more under the new system.

Age At Retirement	Present Percentages Of Full Benefit*		New Percentages Of Full Benefit*	
	Male	Female	Male	Female
55	66%	69%		
56	70	72	70%	72%
57	75	76	75	77
58	79	81	80	82
59	84	85	86	87
60	90	90	93	93
61	95	95	100	100
62	100	100	107	107
63	106	106	115	114
64	113	112	123	122
65	120	119	133	131
			143	141

* Rounded off to the nearest percentage

CHANGES IN RETIREMENT BENEFITS AN ELECTION REPORT

From

The Retirement Board of Administration

March 17, 1967

The Retirement Board of Administration has recommended to the City Council several changes in the San Diego City Employees' Retirement System which will increase the overall benefits for members retiring in the future. Before the Council can adopt an ordinance to amend the benefits of this System, they must first be approved by a majority vote of the members.

The purpose of this report is to fully inform you of the recommended changes and to provide you with other related information to assist you in making your decision. Ballots will be distributed and you will be voting on this important matter in the very near future.

IN SUMMARY, A MAJORITY OF YES VOTES ON THESE PROPOSED CHANGES WILL MEAN HIGHER FUTURE PENSION BENEFITS AND A SLIGHT INCREASE IN CONTRIBUTION REQUIREMENTS. LESS THAN A MAJORITY OF YES VOTES WILL MEAN NO CHANGE IN PENSION BENEFITS AND A SLIGHT REDUCTION IN CONTRIBUTION REQUIREMENTS.

BACKGROUND INFORMATION

The Retirement Board has the authority to raise or lower the interest rate to reflect earnings on our investments. Due to increased earnings by the Retirement Fund the Board is able at this time to raise the interest rate from 4% to 4½%, effective June 30, 1967. If there were no changes in benefits, the higher interest rate would result in a slight reduction in the amount the employer and the employees contribute to the System.

However, the Retirement Board has carefully analyzed the present benefits of our System and believe there is a need to improve the benefits in order to make our System more nearly comparable to other large public retirement systems in California. The costs for these improved benefits, which are partly shared between the employees and the employer, will more than offset the reduction in contributions which would be realized from the higher interest rate of 4½%. A partial table of present and proposed employee contribution rates is shown at the end of this report.

The four proposed changes, which are listed below, have been endorsed by the City and County Employees' Local 127, the Police Officers' and Fire Fighters' Associations, and tentatively endorsed by the Municipal Employees' Association. While the first three proposals would improve pension benefits, it should be noted that the fourth change is not concerned with benefits, but rather with the disposition of any remaining earnings after regular interest has been credited to the employees' and employer's contributions.

PROPOSED CHANGES

1. To "freeze" the base compensation in the retirement formula at \$400/mo. — Affects all members, except Police and Fire personnel.

Our Retirement System currently provides lower benefits on that portion of a member's salary subject to withholding tax for Social Security and higher benefits on any salary in excess of the taxable Social Security base. Therefore, as the annual salary subject to withholding for Social Security is increased, there is an automatic reduction in both the future pension benefits from, and contributions to, the City Retirement System.

The current annual salary subject to a Social Security withholding is \$6600 (\$550/mo), having been increased, from time to time, from an annual salary of \$4200 (\$350/mo), on January 1, 1956 when our Retirement System was integrated with Social Security.

This change would disassociate our retirement formula from the present and future Social Security taxable base, and would provide for lower benefits on the first \$400 of monthly salary and higher benefits on any salary in excess of \$400 per month. The net effect of this change would be to increase the member's monthly pension, and to increase both the employer's and the employees' contributions to the Retirement System.

2. 1/50th Benefit Formula For Safety Members — Affects only Police and Fire personnel employed after 4/25/1947.

Safety Members now have a benefit formula of 1/55th of their final compensation for each year of membership. This change would replace the 1/55th fraction with a 1/50th fraction, amounting to a 10% increase in the benefit formula. A related formula would apply to lifeguards who are Safety Members. The net effect would be higher pension benefits and an increase in both the employer and employee contribution requirements.

3. To Define "final compensation" as the highest consecutive 3-year earnings — Affects all members, except Police and Fire personnel employed before 4/25/47.

Pension benefits are based on a fraction of a members "final compensation" for each year of membership. Currently, final compensation is defined as the highest consecutive 5-year earnings. This change would define final compensation as the highest 3-year's earnings. Increased pension benefits that would result from this change will be dependent on each employee's personal employment history and the extent to which inflation affects future salaries. This change would not affect employee contribution requirements. Any costs resulting from this amendment would increase future employer contributions.

3. 1.55 Benefit Formula – For Safety Members Only:

Safety Members now have a 1.60 benefit formula. This change would provide them with a 1.55 benefit formula. A related formula would apply to lifeguards who are Safety Members. This amounts to a 9.09% increase in retirement benefits.

4. Death Benefit After Retirement

This new benefit would provide a \$400 death benefit, payable to the beneficiary or estate of present and future retired members.

5. Special Service-Connected Death Benefit – For General Members Only:

If the deceased employee is a General Member and if the Retirement Board determines that his death is service-connected, this benefit will give the surviving widow or minor dependent children, as beneficiaries, a choice. Instead of the basic death benefit the widow could receive for life, or until her remarriage a monthly retirement benefit sufficient, when added to her Social Security benefit, to equal one-half of the deceased member's final compensation. If there were no widow, or if she died, the same benefit would be payable to dependent children under 18.

6. Optional Settlement – For Special Class Safety Members Only:

Under this change Special Class Safety Members who haven't yet retired would be able to elect the option IV Settlement. By accepting a reduced pension under this settlement, this will permit the retiring member to provide a monthly benefit to either his surviving widow (over and above the \$75.00 maximum now provided) or a monthly benefit to some other named beneficiary.

Current and Proposed Employee Contribution Rates

The percent of salary that an employee contributes to the Retirement System depends upon his age at the time he becomes a member of the System. For the sake of brevity the following partial schedule of current and proposed rates of contribution are shown.

Age At Entry	<u>General Members</u>											
	<u>Current Rate</u>				<u>Proposed Rate Improved Benefits</u>				<u>Proposed Rate Present Benefits</u>			
	A Rate*		B Rate**		A Rate*		B Rate**		A Rate*		B Rate**	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
20	3.23%	3.91%	4.84%	5.86%	3.26%	3.72%	4.89%	5.58%	2.91%	3.35%	4.37%	5.03%
25	3.43	4.15	5.15	6.22	3.51	3.99	5.27	5.99	3.15	3.60	4.72	5.40
30	3.68	4.43	5.52	6.65	3.81	4.32	5.72	6.48	3.42	3.91	5.13	5.86
35	3.95	4.76	5.93	7.14	4.16	4.71	6.24	7.06	3.73	4.26	5.60	6.39
40	4.27	5.13	6.40	7.70	4.55	5.15	6.82	7.73	4.09	4.67	6.14	7.00
45	4.62	5.55	6.93	8.33	4.99	5.65	7.48	8.48	4.49	5.13	6.74	7.70
50	5.01	6.02	7.52	9.03	5.47	6.23	8.21	9.34	4.95	5.66	7.42	8.49
55	5.46	6.55	8.19	9.82	6.03	6.85	9.04	10.28	5.45	6.24	8.18	9.36

* The A Rate is applied to the first \$400 of regular monthly earnings.

** The B Rate is applied to the monthly earnings rate in excess of \$400.

For example a male employee entering the system at age 35, and with a salary of \$532 per month currently contributes 3.95% of \$400 (or \$15.80), plus 5.93% of \$132 (or \$7.83), a total of \$23.63 per month. His future monthly contributions with improved benefits would be \$24.88, and with the present benefits would be \$22.31.

SAFETY MEMBERS

Age At Entry	<u>SAFETY MEMBERS</u>											
	<u>Current Rate</u>				<u>Proposed Rate Improved Benefits</u>				<u>Proposed Rate Present Benefits</u>			
	A Rate*		B Rate**		A Rate*		B Rate**		A Rate*		B Rate**	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
20	4.63%	5.46%	6.94%	8.19%	4.59%	5.17%	6.89%	7.75%	4.21%	4.73%	6.32%	7.10%
25	4.90	5.79	7.35	8.68	4.98	5.60	7.47	8.40	4.57	5.13	6.85	7.70
30	5.20	6.15	7.80	9.22	5.43	6.10	8.14	9.15	4.97	5.59	7.46	8.39
35	5.53	6.52	8.29	9.78	5.92	6.66	8.88	9.99	5.43	6.11	8.14	9.16
40	5.85	6.91	8.78	10.37	6.44	7.25	9.66	10.87	5.91	6.64	8.86	9.96
45	6.27	7.39	9.40	11.09	6.96	7.83	10.44	11.74	6.38	7.17	9.57	10.76
50	6.77	8.00	10.16	12.00	7.46	8.39	11.19	12.58	6.84	7.69	10.26	11.53

*Both A and B Rates are applied to salary of Lifeguards, as explained above for General Members.

**Police and Fire personnel use B Rate only.

For example a police patrolman entering the System at age 30, and with a salary of \$696 per month currently contributes 7.80% of \$696, or \$54.29 per month. His future monthly contributions with improved benefits would be \$56.65, and with the present benefits would be \$51.92.

4. To provide that "excess" earnings of the Retirement Fund be used to reduce annual employer contribution requirements.

Under the present retirement ordinance, after regular interest is annually credited to the employer and each employee's account from the earnings of the Retirement Fund, the Retirement Board may distribute any remaining surplus earnings between the employer and the employees as an extra interest credit. This, in fact, was done once before on June 30, 1965, when each account received an additional 1.93% extra interest credit from increased earnings on our investments.

This extra interest credit has the effect of reducing the employer contribution requirements. However, it results in no decrease in employee contributions nor does it increase pension benefits, since they are based on a formula. Only members who terminate their employment and withdraw their accumulated contributions realize any gain from an extra interest credit, since their accumulated contributions have been increased when extra interest has been credited to their accounts.

This proposed change will have no effect on member's future pension benefits, but if approved, it will provide that any remaining surplus earnings, after regular interest has been credited to all accounts, shall be used to reduce future employer contribution requirements. Extra interest would, therefore, no longer be credited to employee accounts.

CURRENT AND PROPOSED EMPLOYEE CONTRIBUTION RATES

The percent of salary that an employee contributes to the Retirement System depends upon his age at the time he becomes a member of the System. The following partial schedule of current and proposed rates of contribution for males is shown for comparison.

GENERAL MEMBERS						
Age At Entry	Current Rates		Proposed Rates Improved Benefits		Proposed Rates Present Benefits	
	% of Salary up to \$550/mo.	% of Salary over \$550/mo.	% of Salary up to \$400/mo.	% of Salary over \$400/mo.	% of Salary up to \$550/mo.	% of Salary over \$550/mo.
20	3.26%	4.89%	3.01%	4.52%	3.01%	4.52%
25	3.51%	5.27%	3.27%	4.91%	3.27%	4.91%
30	3.81%	5.72%	3.58%	5.37%	3.58%	5.37%
35	4.16%	6.24%	3.93%	5.90%	3.93%	5.90%
40	4.55%	6.82%	4.33%	6.50%	4.33%	6.50%
45	4.99%	7.48%	4.79%	7.18%	4.79%	7.18%
50	5.47%	8.21%	5.29%	7.94%	5.29%	7.94%
55	6.03%	9.04%	5.87%	8.80%	5.87%	8.80%

For example, a male employee entering the System at age 35, and with a current salary of \$616 per month, contributes 4.16% of \$550 (or \$22.88), plus 6.24% of \$66 (or \$4.12), a total of \$27.00 per month for present benefits. His future monthly contributions with improved benefits would be \$28.46, and his future monthly contributions with no change in benefits would be \$25.51.

SAFETY MEMBERS

Age at Entry	Current Rate	Proposed Rate Improved Benefits	Proposed Rates Present Benefits
20	6.89%	7.08%	6.44%
25	7.47%	7.74%	7.04%
30	8.14%	8.50%	7.72%
35	8.88%	9.34%	8.49%
40	9.66%	10.24%	9.30%
45	10.44%	11.14%	10.13%

For example, a police patrolman entering the System at age 30 and with a current salary of \$749 per month, contributes 8.14% of \$749, or \$60.97 per month. His future monthly contributions with improved benefits would be \$63.67, and his future monthly contributions with no change in benefits would be \$57.82.

PROPOSED CHANGES IN RETIREMENT BENEFITS
AN ELECTION REPORT

From
The Retirement Board of Administration

February 27, 1970

The Retirement Board of Administration has recommended to the City Council several changes in the San Diego City Employees' Retirement System which will increase the pension benefits of members retiring in the future. These improved benefits will also raise both the employer and employees' retirement contributions. Before the Council may adopt an ordinance to amend the benefits of this System, these changes must first be approved by a majority vote of the members.

The purpose of this report is to fully inform you of the proposed changes and the resulting cost to the employees and the City. Ballots will be distributed and you will be voting on this important matter in the very near future.

BACKGROUND INFORMATION

The Retirement Board has the authority to raise or lower the interest rate to reflect earnings on our investments. Due to increased earnings by the Retirement Fund the Board is able at this time to raise the interest rate from the current 4¼% to 5%, effective July 1, 1970. If there were no changes in benefits, the higher interest rate would result in a reduction in the amount the City and the employees contribute to the System.

However, the Retirement Board has carefully analyzed the present benefits of our System and believes there is a need to improve the benefits in order to make our System more nearly comparable to other large public employee retirement systems in California. The costs for these improved benefits, which are shared between the City and the employees will more than offset the reduction in contributions which would be realized from the higher interest rate of 5%. A partial table of present and proposed employee contribution rates is shown at the end of this report.

- SUMMARY -

A majority of yes votes by the employees will permit the Council to adopt an ordinance to accomplish six changes described on the following pages, which will result in higher future pension benefits and an average increase of approximately 30% in the employee contributions. Based on current funding requirements the City's annual costs will be increased by about \$2.8 million, a 45% increase.

Less than a majority of yes votes will mean no change in pension benefits, an average reduction of about 16% in employee contributions, and no obligation for the City to pay for improved benefits.

EXAMPLE RETIREMENT BENEFITS OF PRESENT & PROPOSED SYSTEM

	Present Benefits	Proposed Benefits
A Safety Member earning \$800/mo., retiring at age 50 with 25 years of service	\$280.56 to retiree, no monthly benefits to surviving spouse after his death, no adjustment in pension benefits after retirement. Total Value = \$86,132	\$400.00/mo. to retiree, \$200/mo. to his surviving spouse after his death, pensions adjusted annually by up to 1½%, based on changes in the Cost-of-living. Total Value = \$132,400 plus the Cost-of-Living Formula.
A General Member earning \$800/mo, retiring at age 60 with 30 years of service.	\$333.33/mo. to retiree, no monthly benefits to surviving spouse after retiree's death, no adjustment in pension benefits after retirement. Total Value = \$71,000.	\$383.33/mo. to retiree, \$191.67/mo. to surviving spouse after retiree's death, pension adjusted annually by up to 1½%, based on changes in Cost-of-Living. Total Value = \$99,474 plus the Cost-of-Living Formula.

PROPOSED CHANGES TO

1. Provide full formula benefits for General Members at 57½. - Affects all members, except Police and Fire personnel, and full-time Lifeguards.

Our Retirement System currently permits General Members with sufficient years of service to retire anytime between the ages of 55 and 65, with 60 being the age at which 100% of the retirement formula applies. Members who retire between 55 and 60 receive a proportionately reduced percentage (below 100%) of the retirement formula and members who retire between 60 and 65 receive a proportionately increased percentage (above 100%) of the retirement formula.

This change would fix age 57½ as the age at which 100% of the retirement formula would apply, with proportionate decreases for retirement between 55 and 57½ and proportionate increases for retirement between 57½ and 65. The following figures show the current percentages based on age 60, the proposed percentages based on age 57½ and the increase in retirement benefits at each age that results from this change.

Age	Present Percentages Based on Age 60		Proposed Percentages Based on Age 57½		Increase in Pension Benefits	
	Male	Female	Male	Female	Male	Female
55	69.25%	71.25%	87.79%	89.54%	26.8%	25.7%
56	74.31	76.04	92.32	93.82	24.2	23.4
57	79.84	81.26	97.25	98.46	21.8	21.2
58	85.91	86.96	102.64	103.50	19.5	19.0
59	92.60	93.18	108.53	108.99	17.2	17.0
60	100.00	100.00	115.00	115.00	15.0	15.0
61	107.33	107.05	119.43	119.47	11.3	11.6
62	115.34	114.74	125.35	125.48	8.7	9.4
63	124.12	123.12	131.60	131.86	6.0	7.1
64	133.72	132.28	138.22	138.65	3.4	4.8
65	144.27	142.30	145.25	145.93	.7	2.5

2. Provide full formula benefits for Safety Members at 50. - Affects only Police and Fire personnel employed after 4/25/47 and full-time Lifeguards.

The Retirement System currently allows Safety Members with sufficient years of service to retire anytime between the ages of 50 and 65, with 55 being the age at which 100% of the retirement formula applies. Members who retire between 50 and 55 receive a proportionately reduced percentage (below 100%) of the retirement formula. There are no increases in the retirement formula (above 100%) for retirement between ages 55 and 65.

This change would fix age 50 as the age at which 100% of the retirement formula would apply, with proportionate increases for retirement between ages 50 and 55. The percentage of full formula applicable to age 55 would also apply to all ages between 55 and 65. The following figures show the current percentages based on age 55, the proposed percentages based on age 50, and the increase in retirement benefits at each age that results from this change.

Age	Present Percentages Based on Age 55		Proposed Percentages Based on Age 50		Increase in Pension Benefits
50	70.14%		100.00%		42.6%
51	75.07		105.16		40.1
52	80.47		110.78		37.7
53	86.38		116.92		35.4
54	92.86		123.36		32.8
55-65	100.00		130.99		31.0

3. Provide the surviving spouse of a deceased retiree with a pension equal to 50% of the retiree's pension. - Affects all members except Police and Fire personnel employed before 4/25/1947.

The Retirement System currently has no provision for the payment of pensions to the surviving spouse of deceased retirees, unless the employee at retirement voluntarily reduces his pension under an optional settlement in order to provide a continuing pension to his survivor. This change would automatically provide the surviving spouse of deceased retirees with a pension equal to 50% of the retiree's pension, without the employee having to voluntarily reduce his pension at retirement.

RE ENT RETIREMENT SYSTEM

In order to qualify for this benefit the surviving spouse must have been married to the deceased retiree at least one year prior to his or her retirement. If an employee is not married at retirement, the Retirement System will either refund the accumulated contributions he has made for this benefit or allow him to increase his own pension by the annuity value of these contributions. The following figures indicate the percentage of member's future contributions that will be attributable to this benefit:

Membership Classification	Sex	Percentage of Member's Contributions Attributable to 50% survivor benefit
General Members	Male	15.67%
General Members	Female	4.29
Safety Members	Male	11.76
Safety Members	Female	3.30

4. Provide an annual Cost-of-Living Benefit for retired members and survivors, based on Consumer Price Index adjustments, but not to exceed 1½% per year. - Applies to all present and future retirees and survivors, except Police personnel employed before 5/8/1941, and Fire personnel employed before 4/25/1947.

The present Retirement System guarantees a specific fixed pension benefit, determined by formula at retirement, and paid to the retiree as long as he or she lives. This change would provide for an annual future adjustment in retirement benefits (limited to 1½% of the retiree's pension), if there are changes in the cost-of-living, as measured by The Consumer Price Index, a report published by the U. S. Dept. of Labor. Future retirement benefits would therefore be increased or decreased by up to 1½% per year if the cost-of-living goes up or down. However, retirement benefits could never be reduced below the level of benefits paid when this provision becomes effective, or the initial benefits at retirement in the case of future retirees.

The members' retirement contributions will be increased by 15% to pay their share of funding for this benefit. Members' future cost-of-living contributions will be added to their basic retirement benefits as a monthly annuity, guaranteeing them a return of their contributions in any event. Additional pension increases would depend upon additional increases in the Consumer Price Index above the value of the pensioners monthly annuity.

5. Increase the Minimum pension for disability retirees from 25% to 33-1/3% of the member's final compensation. - Applies to all members, except Police and Fire personnel employed prior to 4/25/1947.

This provision will affect the industrial (on-the-job) and non-industrial (off-the-job) retirement benefits of non-safety personnel, and the non-industrial retirement benefits of safety personnel, by raising the minimum disability retirement benefits from the present 25% to 33-1/3% of the disabled member's final compensation. Under the present Retirement System a disabled member may receive more than one-third of his final compensation, depending on how long he has been employed by the City. This proposed change simply raises the minimum payment by the indicated percentages. This change will have no effect upon future employee contribution requirements.

6. Amend the present restrictions on disability pension payments to retirees who find new employment. - Affects all present and future disability retirees, except Police & Fire personnel employed before 4/25/1947.

The Retirement System now provides for a reduction in pension payments when a disability retiree earns enough wages so that his earnings and his pension exceed the salary of the job he held with the City. The proposed change would still provide for a pension reduction, but it would be \$1.00 of disability pension for each \$2.00 of excess wages and in no event could the pension be reduced by more than 50%. This change will have no effect upon future employee contribution requirements.

Other Proposed Changes

The Retirement Board has also recommended the following two additional changes in the Retirement System which do not affect either the contributions or the benefits of the General Members or Safety Members and therefore do not require their majority vote approval:

- to permit the remaining Special Class Safety Officers (Police & Fire personnel hired before 4/25/1947) who are still employed to retire under the revised Safety Member provisions, if they so elect and agree to re-establish their contributions to the amount required by the 1947 City Charter.
- to adopt a separate retirement plan for the Mayor and the City Council, patterned after the State Legislator's retirement plan.

CURRENT AND PROPOSED EMPLOYEE CONTRIBUTION RATES

The percent of salary that an employee contributes to the Retirement System depends upon his age at the time he becomes a member of the System. The following partial schedule of current and proposed rates of contribution for males is shown for comparison.

GENERAL MEMBERS

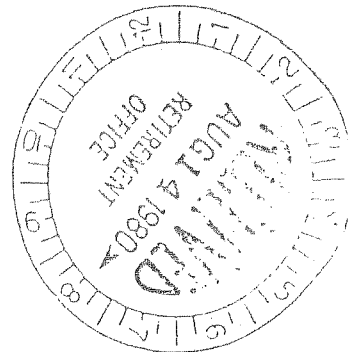
Age At Entry	Current Rates		New Rates With Proposed Changes		New Rates Without Changes in Benefits	
	% of Salary up to \$400/mo.	% of Salary over \$400/mo.	% of Salary up to \$400/mo.	% of Salary over \$400/mo.	% of Salary up to \$400/mo.	% of Salary over \$400/mo.
20	3.01%	4.52%	3.66%	5.48%	2.38%	3.57%
25	3.27	4.91	4.06	6.08	2.65	3.97
30	3.58	5.37	4.53	6.80	2.97	4.45
35	3.93	5.90	5.08	7.62	3.33	5.00
40	4.33	6.50	5.70	8.57	3.76	5.64
45	4.79	7.18	6.43	9.65	4.24	6.36
50	5.29	7.94	7.25	10.87	4.79	7.19
55	5.87	8.80	8.18	12.26	5.42	8.13

For example, a male employee entering the System at age 35, and with a current salary of \$786 per month now contributes 3.93% of \$400 (or \$15.72), plus 5.90% of \$486 (or \$22.77), a total of \$38.49 per month for present benefits. His future monthly contributions if the proposed changes are approved would be \$49.73, and his future monthly contributions with no change in benefits would be \$32.62.

SAFETY MEMBERS

Age at Entry	Current Rate	New Rate With Proposed Changes	New Rate Without Changes in Benefits
20	7.08%	8.98%	5.72%
25	7.74	10.02	6.40
30	8.50	11.22	7.20
35	9.34	12.59	8.09
40	10.24	14.10	9.07
45	11.14	15.66	10.07

For example, a police patrolman entering the System at age 25 and with a current salary of \$887 per month, contributes 7.74% of \$887, or \$68.65 per month for present benefits. His monthly contributions with improved benefits would be \$88.88, and his future monthly contributions with no change in benefits would be \$56.77.



CITY EMPLOYEES' RETIREMENT SYSTEM

CITY OF SAN DIEGO

March 24, 1970

From: Retirement Officer, Ralph W. Kausch

To: Police Chief, Fire Chief, and Aquatics Superintendent

Subject: Employee Election on Proposed Changes in Retirement Benefits.

Your assistance is respectfully requested in conducting the election by eligible employees on proposed changes in retirement benefits.

Enclosed are sufficient ballots and related material for the employees in your organization who are General Members and/or Safety Members in the City Employees' Retirement System, and therefore eligible to vote in this election.

Please assign your payroll clerk or some other responsible person the task of issuing onewhite ballot, coin envelope, and white return envelope to each of your employees who are General Members, and one pink ballot, coin envelope, and pink return envelope to each of your employees who are Safety Members. This can be determined from your copy of the latest payroll warrant-check register.

If the payroll record shows a retirement deduction, the employee is a member of the Retirement System. Issue balloting material as explained below, based on the retirement code number in the preceding column of the payroll.

<u>Code Number</u>	<u>Code Meaning</u>	<u>Ballot Material to be issued</u>
1	General Members	General Member - White
2	Police & Fire Safety Members	Safety Member - Pink
3	Lifeguard Safety Members	Safety Member - Pink
4	Special Safety - 8% Contrib.	Safety Member - Pink
5	Special Safety - 1% Contrib.	NONE
6	Special Safety - 2% Contrib.	NONE
7	Special Safety - 4% Contrib.	NONE
8	Special Safety - 6% Contrib.	NONE

It is requested that the employees' names and department be typed on the return envelope before issuing the balloting material, since many signatures are difficult to identify. Please also ensure that voters sign their names on the return envelope or the ballot will be voided.

Voting may commence as soon as you are prepared to distribute the enclosed material. Note the deadline of Friday, April 10, 1970 for the return of all ballots to the City Clerk's Office.

Please contact me if you have any questions or need any additional information.

Ralph W. Kausch
 Ralph W. Kausch, Secretary
 Retirement Board of Administration

RWK/s

CITY EMPLOYEES' RETIREMENT SYSTEM
OF
SAN DIEGO
GENERAL MEMBER OFFICIAL BALLOT
(vote for one only)

I approve of the adoption of an ordinance to amend the City Employees' Retirement System by both increasing my retirement contributions and affecting those changes to increase my benefits which are described as items numbered 1, 3, 4, 5, and 6, in an Election Report from the Retirement Board, dated February 27, 1970, and on file in the City Clerk's office as document #730924.

I recognize that approval of a majority of the members affected is necessary before Council may adopt these changes, but that such majority approval does not bind the Council to adopt such changes.

I do not approve of an ordinance to amend the City Employees' Retirement System by both increasing my retirement contributions and affecting those changes in my benefits as they were described to me, as items numbered 1, 3, 4, 5, and 6, in an Election Report from the Retirement Board, dated February 27, 1970 and on file in the City Clerk's office as document #730924.

— INSTRUCTIONS —

1. Mark the ballot with an X in the box opposite your choice.
2. Fold the ballot and seal it in the small coin envelope.
3. Seal the small envelope containing the ballot in the envelope addressed to the City Clerk.
4. Be sure to write your name clearly in the space provided for your signature on the envelope addressed to the City Clerk. Failure to do so will void your ballot.
5. Ballots must be received in the City Clerk's office no later than 5:00 p.m., April 10, 1970, in order to be counted.

CITY EMPLOYEES' RETIREMENT SYSTEM
OF
SAN DIEGO
SAFETY MEMBER OFFICIAL BALLOT
(vote for one only)

I approve of the adoption of an ordinance to amend the City Employees' Retirement System by affecting those changes in my benefits as they were described to me, as items numbered 2, 3, 4, 5, and 6, in an Election Report from the Retirement Board, dated February 27, 1970, and on file in the City Clerk's office as document #730924.

I do not approve of the adoption of an ordinance to amend the City Employees' Retirement System by affecting those changes in my benefits as they were described to me, as items numbered 2, 3, 4, 5, and 6, in an Election Report from the Retirement Board, dated February 27, 1970, and on file in the City Clerk's office as document #730924.

- INSTRUCTIONS -

1. Mark the ballot with an X in the box opposite your choice.
2. Fold the ballot and seal it in the small coin envelope.
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5. Ballots must be received in the City Clerk's office no later than 5:00 p.m. March 27, 1970, in order to be counted.

Exhibit

I

CLERK'S FILE COPY

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(O-97-88 REV. 1)

ORDINANCE NUMBER O- 18392

(NEW SERIES)

ADOPTED ON MAR 31 1997

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING DIVISION 1 BY AMENDING SECTION 24.0103, AMENDING AND RENUMBERING SECTION 24.0105 TO SECTION 24.0104; BY AMENDING DIVISION 2 BY AMENDING SECTIONS 24.0201, 24.0202 AND 24.0203; BY RENUMBERING SECTION 24.0206.5 TO SECTION 24.0207; BY RENUMBERING 24.0207 TO SECTION 24.0208; BY ADDING SECTION 24.0209, AND BY AMENDING SECTIONS 24.0210 AND 24.0211; BY AMENDING DIVISION 3 BY AMENDING SECTIONS 24.0301 AND 24.0302, AND BY ADDING SECTION 24.0309; BY AMENDING DIVISION 4 BY AMENDING SECTIONS 24.0402, 24.0403 AND 24.0404; BY AMENDING DIVISION 5 BY AMENDING SECTIONS 24.0521 AND 24.0532; BY AMENDING DIVISION 6 BY AMENDING SECTION 24.0608; BY AMENDING DIVISION 7 BY ADDING SECTION 24.0715; BY AMENDING DIVISION 8 BY AMENDING SECTION 24.0801; BY AMENDING DIVISION 9 BY AMENDING SECTION 24.0907; BY REPEALING DIVISION 12 AND BY REENACTING DIVISION 12 BY ADDING SECTIONS 24.1201, 24.1202, 24.1203, AND 24.1204; BY AMENDING DIVISION 13 BY AMENDING SECTIONS 24.1304, AND 24.1307, AND BY REPEALING SECTION 24.1311; BY REPEALING DIVISION 14 AND BY REENACTING DIVISION 14 BY ADDING SECTIONS 24.1401, 24.1402, 24.1403, 24.1404, 24.1405, 24.1406, 24.1407, 24.1408, AND 24.1409, ALL RELATING TO THE CITY EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, on July 2, 1996, after meeting and conferring with the Police Officers Association, Fire Fighters Local 145, Municipal Employees Association, and AFSCME, Local 127, the City Council approved a proposal to implement a number of revisions to the Retirement System; and

EXHIBIT	230
WIT.	Marshall
DATE	6-2-2006
Kramm & Associates, Inc.	

WHEREAS, on November 5, 1996, the passage of Proposition D amended City Charter section 141 to permit the Retirement System to provide for health insurance to eligible retirees; and

WHEREAS, on February 6, 1997, a task force of the four labor organizations reached agreement with the City Management Team on the level of health benefits to be provided by the Retirement System; and

WHEREAS, it is the intent of the agreement reached between the four labor organizations and the City Management Team that the level of health benefits to be provided by the Retirement System ~~not be diminished by any change in HMO health care providers by the City, or any new~~ or amended contract with an HMO health care provider or by conversion to a blended premium for active employees and retirees without mutual agreement with the exclusive bargaining representatives; and

WHEREAS, the four labor organizations and the City Management Team have agreed that any change will not be approved by the City Council until after the proposed change has been reviewed by a qualified independent consultant, who is mutually selected and jointly compensated by the City and the recognized labor organizations, who concludes that the proposed changes will not affect the benefit in any manner which triggers the voting rights of active employees, unless this process is waived by mutual consent; and

WHEREAS, the four labor organizations and the City Management Team have reached agreement on the specific provisions to be included in the Deferred Retirement Option Plan; and

WHEREAS, the City wishes to ensure that retirees are provided with appropriate health benefits; and

WHEREAS, the best way to provide these benefits is through the Retirement System using the undistributed earnings of the System; and

WHEREAS, the tax laws put limits on the method the Retirement System can use to provide health benefits, and these limits are contained in Section 401(h) of the Internal Revenue Code; and

WHEREAS, Section 401(h) prevents a transfer of undistributed earnings of the Retirement System for paying health benefits; and

WHEREAS, Section 401(h) does not prevent undistributed earnings from being used in the place of City contributions if an equal amount of City contributions are designated for health benefits (known as the "bifurcated rate"); and

WHEREAS, if a bifurcated rate program is used, then the City and the Board agree the net economic consequences to the Retirement System and the City is the same as if undistributed earnings were used to directly provide health benefits, and agree the requirements of the tax law will be met; and

WHEREAS, the Board has obtained full and complete legal advice indicating it can enter into a bifurcated arrangement under the current ordinance and charter and has endorsed this arrangement; and

WHEREAS, the City and the Board have agreed the bifurcated rate arrangement is to be used for a "pay as you go" health program and this program will not be fully actuarially funded; and

WHEREAS, on February 10, Ordinance No. 0-97-75 was introduced amending numerous provisions of Chapter II, Article 4 of the San Diego Municipal Code related to the following:

service retirement and disability retirement formulae, elimination of the disability income offset, the establishment of a post retirement health benefit to be administered by the City Employees' Retirement System and establishment of a \$600 annual benefit for pre-1980 retirees who are not eligible for retiree health insurance, elimination of the remarriage penalty, modification of the one-year marriage requirement to establish eligibility as a surviving spouse, and purchase of service credit; and

WHEREAS, on February 18, 1997, Ordinance No. 0-97-86 was introduced by adding Division 14 to Chapter II, Article 4 of the San Diego Municipal Code establishing a Deferred Retirement Option Plan; and

WHEREAS, the City Council ordered all interested parties to move expeditiously toward completing the outstanding contingencies involved in Ordinances 97-75 and 97-86; and

WHEREAS, it is recommended a third ordinance be introduced (0-97-88) to "clean up" and technically amend language to assure that the provisions meet with and satisfy all applicable state and federal requirements; and

WHEREAS, all employees of the Unified Port District (the "District"), except for Harbor Police Officers, participate in the Retirement System as General Members, under a Retirement Agreement dated February 11, 1964 (the "Agreement"), on file with the City Clerk as Document No. 667149, as amended by a First Amendment to the Agreement, on file in the office of the San Diego City Clerk as Document No. 279991; and

WHEREAS, the changes to the Retirement System described in O-97-75 and 97-86 (collectively, the "Manager's Proposal") would automatically affect the District's Members unless otherwise provided by the Municipal Code or Agreement; and

WHEREAS, the Agreement needs to be amended because the District will not be participating in all of the benefits recommended in the Manager's Proposal; and

WHEREAS, the District and City intended to enter into a new agreement where the Board would administer District benefits as set forth in a separate plan document rather than the Municipal Code but there was not enough time to do the work necessary within the time line for the Manager's Proposal; and

WHEREAS, in the interim, the District proposed a Second Amendment to the Agreement ("Second Amendment to Agreement") which sets forth those benefits to be offered District employees as a result of the Manager's Proposal; and

WHEREAS, the Second Amendment to Agreement, attached to Resolution No. R-288414, is incorporated by reference herein; and

WHEREAS, Ordinances 97-75 and 97-86 were introduced prior to outside fiduciary counsel, tax counsel and plan consultant to the Retirement System completing reviews of the ordinance language implementing these benefit changes; and

WHEREAS, outside fiduciary counsel, tax counsel and plan consultant to the Retirement System have reviewed and approved the previous ordinances (0-97-75 and 0-97-86) as well as the Cleanup ordinance (0-97-88); and

WHEREAS, the Ordinance 97-88 does not introduce any changes to the agreements reached with the labor organizations; and

WHEREAS, it is now necessary and proper to amend the San Diego Municipal Code to reflect the changes to the benefits under the Retirement System set forth in 0-18383, 0-97-86 and this Cleanup ordinance (0-97-88); and

WHEREAS, in accordance with Section 143.1 of the Charter for The City of San Diego, the active membership will vote on April 4, 1997, through April 13, 1997, on the changes to the Retirement System set forth in 0-18383, 0-97-86 and this Cleanup ordinance; and

WHEREAS, the benefit improvements set forth in 0-18383, 0-97-86 and this Cleanup ordinance shall not become effective unless approved by the active members of the City Employees' Retirement System, NOW, THEREFORE,

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

~~Section 1. That Chapter II, Article 4, Division 1, of the San Diego Municipal Code be~~
and the same is hereby amended by amending Section 24.0103, to read as follows:

SEC. 24.0103 Definitions

Unless otherwise stated, for purposes of this Article:

"Accumulated Additional Contributions" means the sum of additional contributions standing to the credit of a Member's individual account and interest thereon.

"Accumulated Contributions" means Accumulated Normal Contributions plus any Accumulated Additional Contributions standing to the credit of a Member's account.

"Accumulated Normal Contributions" means the sum of all normal contributions standing to the credit of a Member's individual account and interest thereon.

"Actuarial Equivalent" means a benefit of equal value when computed upon the basis of the mortality, interest and other tables adopted by the Board for this purpose.

"Actuary" means the actuary regularly employed on a full or part-time basis by the Board.

"Annuity" means payment for life derived from contributions made by a Member.

"Beneficiary" means any person in receipt of a pension, annuity, retirement allowance, death benefit, or any other benefit authorized by this Article.

"Board" means the Board of Administration for the City Employees' Retirement System.

"City sponsored health insurance plan" means a group health insurance plan, selected by and in contractual privity with The City of San Diego, made available to Health Eligible Retirees.

"Compensation" means the remuneration paid in cash out of city funds controlled by the Council of The City of San Diego, plus the monetary value as determined by the Board of board, lodging, fuel, laundry and other advantages furnished to an employee in payment for the employee's services.

"Compensation Earnable" by a Member means the base compensation as determined by the Board for the period under consideration upon the basis of the normal number of days ordinarily worked by persons in the same grade or class of

positions during the period and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by such employee at the beginning of the absence.

"Continuous Service" means service of an eligible Member deemed to be of a continuous nature pursuant to Section 24.1005 of this Code. "Continuous Service" shall not be construed as synonymous with "Creditable Service."

"Cost of Living Annuity" means an amount to be added to the retirement allowance of a Member or Officer, calculated by computing the actuarial

equivalent of the accumulated contributions in the cost of living annuity account of the Member or Officer at the time of the retirement of the Member or Officer.

"Creditable Service" for purposes of qualification for benefits and retirement allowances under this System means service rendered for compensation as an employee or officer (employed, appointed or elected) of the City or a contracting agency, and only while he or she is receiving compensation from the City or contracting agency, and is a Member of and contributing to this System pursuant to appropriate provisions of this Article. Except as provided in Chapter II, Article 4, Division 13, for which repurchase of credits may be permissible, time during which a Member is absent from City service without compensation shall not be allowed in computing Creditable Service. The term

"Current Service" shall mean the same as Creditable Service.

"DROP" means Deferred Retirement Option Plan, an alternative method of benefit accrual described in Division 14.

230.8

"Final Compensation" for General Members and Legislative Officers means the Compensation Earnable based on the highest one-year period for those Members and Officers who are on the active payroll of The City of San Diego on or after June 30, 1989, and who retire on or after July 1, 1989. The Board shall adjust contribution rates for high one-year General Member and Legislative Officer eligibles as may be necessary and required upon advice of the Actuary, from and after December 30, 1988.

"Final Compensation" for Safety Members means the Compensation Earnable based on the highest one-year period, for those Safety Members who are on the active payroll of The City of San Diego on or after January 1, 1988, and who retire on or after July 1, 1988. The Board shall adjust contribution rates for high one-year Safety Member eligibles as may be necessary and required upon advice of the Actuary, from and after January 1, 1988.

"General Member" is any Member not otherwise classified as a Safety Member or Legislative Officer.

"Health Eligible Retiree" means any retired General Member, Safety Member, or Legislative Officer who (1) was on the active payroll of The City of San Diego on or after October 5, 1980, and (2) retires on or after October 6, 1980, and (3) is eligible for and is receiving a retirement allowance from the Retirement System.

"Investment Earnings Received" means all interest received (net of interest purchased) on notes, bonds, mortgages, short-term money market

instruments, and savings accounts; cash dividends received on stock investments; and all realized gains and losses from the sale, trade, or conversion of any investments of the Retirement System.

"Legislative Officers" means the Mayor and/or members of the City Council.

"Member" means any person who actively participates in and contributes to the Retirement System, and who is thereafter entitled, when eligible, to receive benefits therefrom. There are two classes of Members: General and Safety.

"Normal Contributions" means contributions by a Member at the normal rates of contribution, but does not include additional contributions by a Member.

"Prior Service" means service prior to January 1, 1927.

"Qualified Retiree" means those retirees eligible to receive the annual supplemental benefit set forth in Division 4.

"Retirement Fund" means the trust fund created by the City Charter in Article IX.

"Retirement System" or "this System" means the City Employees Retirement System as created by this Article, and the "1981 Pension System" means the Employees Retirement System as created by Chapter II, Article 4, Division 11.

"Safety Member" means any person who is either a sworn officer of the Police Department of The City of San Diego employed since July 1, 1946, a uniformed member of the Fire Department of The City of San Diego employed

23rd. 10

since July 1, 1946, or a full-time employed lifeguard of The City of San Diego, or a full-time police officer of the Unified Port District who is a peace officer under Penal Code section 830.1(a); provided, however, that police cadets, persons sworn for limited purposes only, and all other members of the Police and Fire Departments and lifeguard service shall not be considered Safety Members for the purpose of this Article.

"Undistributed Earnings Reserve" shall mean the balance remaining in the account to which the earnings to the fund are credited, after the annual distribution to the employee and employer reserve accounts in accordance with interest assumption rates established by the Board, plus accumulated earnings which have not been so distributed.

Section 2. That Chapter II, Article 4, Division 1, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 24.0105 to Section 24.0104, to read as follows:

SEC. 24.0104 Membership

a. and b. [No change in text.]

c. Employees in the classified service paid on an hourly basis are not eligible for membership in the Retirement System nor shall they accrue any benefits in this system except as provided in Section 24.1304. Salaried employees in the classified service including those working one-half ($\frac{1}{2}$) or three-quarter ($\frac{3}{4}$) time are eligible for and shall become members of the Retirement System. Retirement benefits shall accrue to the above eligible members in the same

proportion to full benefits as their service relates to the service of a full-time member.

d. and e. [No change in text.]

Section 3. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0201, to read as follows:

SEC. 24.0201 Contribution of General Members

For General Members, the Board shall provide:

1. [No change in text.]
2. The normal rates of contribution for each Member, except Safety Member shall be such as will provide an average Annuity at age 57½ equal to 1/120th of the Member's Final Compensation, according to the tables adopted by the Board for each year of service rendered after entering the System.
3. An employee who is granted a special leave of absence without pay in order to serve as the duly elected president of a recognized employee labor organization, shall be permitted, if he or she so elects, to continue making contributions during the period of presidential leave in an amount prescribed in accordance with Section 24.1307.

Section 4. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0202, to read as follows:

SEC. 24.0202 Adoption of General Member Contribution Rates

The Board, based upon the advice of the Actuary, shall periodically adopt the rate of contribution of each General Member according to age at the time of entry into the Retirement System, said rates to be contained in the Operating Tables furnished to the Board by the System's Actuary.

Section 5. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0203, to read as follows:

SEC. 24.0203 Maximum and Minimum Rates for General Members

The normal rate of contribution established for age 57 is the rate for any member other than a safety member who has attained a greater age before entrance into the Retirement System, and that established for age 20 is the rate for any member who enters the Retirement System at a lesser age.

Section 6. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by renumbering Section 24.0206.5 to Section 24.0207, to read as follows:

SEC. 24.0207 Termination of Benefits - General Member

[No change in text.]

Section 7. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by renumbering Section 24.0207 to Section 24.0208, to read as follows:

SEC. 24.0208 Auditor and Comptroller to Withhold Monies Owing City-General Members

[No change in text.]

Section 8. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by adding Section 24.0209, to read as follows:

SEC. 24.0209 Annuity, Actuarial Equivalent of General members' Accumulated Contributions

The actual amount of annuity receivable by a General Member upon retirement shall be the actuarial equivalent of the General Member accumulated contributions.

Section 9. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 24.0211 to Section 24.0210, to read as follows:

SEC. 24.0210 Upgrade of Benefits - General Members

Effective July 1, 1991, any General Member who was enrolled and participating in the 1981 Pension Plan between September 3, 1982, and June 30, 1989, shall receive the same level of benefits provided to General Members in CERS, except as provided in Section 24.0501(b).

Section 10. That Chapter II, Article 4, Division 3, of the San Diego Municipal Code be and the same is hereby amended by amending Sections 24.0301 and 24.0302, to read as follows:

SEC. 24.0301 Contributions of Safety Members

For Safety Members, the Board shall provide:

1. [No change in text.]

2. The normal rates of contribution for each Safety Member shall be such as will provide an average Annuity at age 50 equal to 1/100th of his Final Compensation, according to the tables adopted by the Board for each year of service rendered after entering the System.

3. An employee who is granted a special leave of absence without pay in order to serve as the duly elected president of a recognized employee labor organization, shall be permitted, if he or she so elects, to continue making contributions during the period of presidential leave in an amount prescribed in accordance with Section 24.1307.

SEC. 24.0302 Adoption of Safety Member Contribution Rates

The Board, based upon the advice of the Actuary, shall periodically adopt the rate of contribution of each Safety Member according to age at the time of entry into the Retirement System, said rates to be contained in the Operating Tables furnished to the Board by the System's Actuary.

Section 11. That Chapter II, Article 4, Division 3, of the San Diego Municipal Code be and the same is hereby amended by adding Section 24.0309, to read as follows:

SEC. 24.0309 Annuity, Actuarial Equivalent of Safety Members' Accumulated Contributions

The actual amount of annuity receivable by a Safety Member upon retirement shall be the actuarial equivalent of the Safety Member accumulated contributions.

Section 12. That Chapter II, Article 4, Division 4, of the San Diego Municipal Code be and the same is hereby amended by amending Sections 24.0402, 24.0403 and 24.0404, to read as follows:

SEC. 24.0402 Retirement Allowance — General Member

a. The Board shall provide that upon retirement for service, a General Member, is entitled to receive a retirement allowance which shall consist of:

(1) A service retirement annuity.

(2) A current service pension.

b. and c. [No change in text.]

d. The unmodified service retirement allowance is calculated by multiplying a General Member's years of creditable service by the retirement percentage set forth in Table 1 of Section 24.0402, by the General Member's Final Compensation. The factors set forth in Table 1 of Section 24.0402 shall be pro-rated to reflect quarterly increments in the General Member's attained age.

Table 1 of Section 24.0402

RETIREMENT CALCULATION FACTOR

GENERAL MEMBER

Retirement Age	Unmodified Factor* Effective 1/1/97
55	2.00%
56	2.00%
57	2.00%
58	2.00%
59	2.08%
60	2.16%
61	2.24%
62	2.31%
63	2.39%
64	2.47%
65+	2.55%

* Unmodified Factor utilized to calculate the maximum service retirement allowance. Retirement allowances are actuarially reduced if Member elects any optional retirement settlements pursuant to Division 6 of this Chapter.

SEC. 24.0403 Retirement Allowances – Safety Member

a. The Board shall provide that upon retirement from service a Safety Member is entitled to receive a retirement allowance which shall consist of:

1. and 2. [No change in text.]

b. and c. [No change in text.]

d. Subject only to the retirement allowance cap described in Section 24.0403(e), the unmodified service retirement allowance is calculated by multiplying a Safety Member's years of creditable service by the retirement percentage set forth in Table 1 of Section 24.0403 by the Safety Member's Final Compensation. The factors set forth in Table 1 of Section 24.0403 shall be prorated to reflect quarterly increments in the Safety Member's attained age.

e. The unmodified service retirement allowance for a Safety Member shall not exceed 90% of Final Compensation except as provided in Sections 24.0403(f), 24.0403(g), and 24.0403(h).

f. If the unmodified service retirement allowance of a Safety Member would have exceeded 90% of Final Compensation using the Retirement Calculation Factors in effect on December 31, 1996, as shown in Table 1 of Section 24.0403, that Safety Member may elect to continue to accrue benefits under that Table and not be subject to the 90% retirement allowance cap set forth in Section 24.0403(e). A Safety Member making such election shall not be required to pay any additional contributions as recommended by the actuary related to the increase in benefits effective January 1, 1997.

g. If the unmodified service retirement allowance of a Safety Member would have exceeded 90% of Final Compensation using the Retirement Calculation Factors in effect on December 31, 1996, as shown in Table 1 of Section 24.0403, that Safety Member may elect to accrue benefits as shown in the

schedule effective January 1, 1997, on that Table. A Safety Member making such election shall:

(1) Be eligible to accrue benefits in excess of the 90 % limitation stated in Section 24.0403(e).

(2) Not be eligible to participate in DROP pursuant to Division 14.

(3) Retire no later than July 1, 1997.

h. If the unmodified service retirement allowance of a Safety Member exceeds 90% of Final Compensation using the Retirement Calculation Factors in effect on January 1, 1997, as shown on Table 1 of Section 24.0403 on a date after January 1, 1997, but before April 1, 1997, that Safety Member shall accrue benefits in excess of the 90% limitation stated in Section 24.0403(e), provided, however, that the accrual shall cease at the level attained on March 31, 1997.

Table 1 of Section 24.0403

RETIREMENT CALCULATION FACTOR

LIFEGUARDS

Retirement Age	Unmodified Factor* Effective 12/31/96	Unmodified Factor* Effective 1/1/97
50	2.00%	2.20%
51	2.10%	2.32%
52	2.22%	2.44%
53	2.34%	2.57%
54	2.47%	2.72%
55+	2.62%	2.77%

* Unmodified Factor utilized to calculate the maximum service retirement allowance. Retirement allowances are actuarially reduced if Member elects any optional retirement settlements pursuant to Division 6 of this Chapter.

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RETIREMENT CALCULATION FACTOR

FIRE AND POLICE

Retirement Age	Unmodified Factor*		Unmodified Factor*
	Effective 12/31/96		
	Police	Fire	Effective 1/1/97
50	2.50%	2.20%	2.50%
51	2.54%	2.32%	2.60%
52	2.58%	2.44%	2.70%
53	2.62%	2.57%	2.80%
54	2.66%	2.72%	2.90%
55	2.70%	2.77%	2.9999%
56+	2.77%	2.77%	2.9999%

* Unmodified Factor utilized to calculate the maximum service retirement allowance. Retirement allowances are actuarially reduced if Member elects any optional retirement settlements pursuant to Division 6 of this Chapter.

SEC. 24.0404 Annual Supplemental Benefit -- 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 24.0907 of this Code 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. [No change in text.]

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B. For the purpose of determining the amount of the supplemental benefit payment to Qualified Retirees, the following process shall apply:

1. through 3. [No change in text.]

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 24.0907 of this Code 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. through 7. [No change in text.]

C. [No change in text.]

Section 13. That Chapter II, Article 4, Division 5, of the San Diego Municipal Code be and the same is hereby amended by amending Sections 24.0521, to read as follows:

SEC. 24.0521 Surviving Spouse—Contribution Rates and Benefits

From and after July 1, 1973, every Member, shall, in addition to Normal Contributions, make survivor contributions in an amount equal to a percentage of the Normal Contributions as set forth below:

Membership Classification	Survivor Contributions as Percentage of Normal Contributions
General Members	9.98%
Safety Members	11.76%

Such survivor contributions, together with interest thereon, shall be paid to the Member or his or her beneficiary in the event the Normal Contributions are so paid under Sections 24.0206, 24.0306, and 24.0703.

Upon the death of any Member who retires for service or disability after the effective date of this section, his or her surviving spouse shall receive, on July 1, 1973 and thereafter, a monthly allowance equal to 50% of the decedent's monthly retirement allowance if:

(1) and (2) [No change in text.]

(3) the monthly retirement allowance of the deceased Member was not modified in accordance with Optional Settlement 1, 2, 3, or 4 provided by this System.

No benefits will be paid under this section if there is a surviving spouse who qualifies for and receives the special death benefit or modified special death benefits provided by this System.

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Upon the retirement of a Member for service or disability having no spouse at the time of retirement who is eligible for benefits under this section the Member shall have the option of having refunded to him or her in lump sum the Accumulated Contributions including interest made pursuant to this section, or of having these contributions treated as voluntary additional contributions made to provide a larger Annuity benefit.

Section 14. That Chapter II, Article 4, Division 5, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0532, to read as follows:

SEC. 24.0532 Cost of Living Adjustment Program Shared Between Employer and Members

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.

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 15. That Chapter II, Article 4, Division 6, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0608, to read as follows:

SEC. 24.0608 Social Security Integrated Option

All members of the City Employees' Retirement System who, on and after the integration date are entitled to Social Security benefits, shall have an option as follows:

Upon receipt of evidence furnished by the eligible member that said member will be entitled to Social Security benefits at age 65, the said eligible member upon retirement may request and the Board shall grant a modified retirement allowance which will be the actuarial equivalent of the unmodified retirement allowance; such retirement allowance shall be so modified as to provide a greater monthly payment before the first of the month in which the member attains the age of 65 and a lesser monthly payment commencing on such date; such greater monthly payment shall equal the sum of the lesser monthly payment plus the estimated individual's Old Age Insurance Benefits which will be payable. This modified allowance may be further modified on an actuarial basis in accordance with the provisions of Sections 24.0603, 24.0604, 24.0605, 24.0606 or 24.0607.

For officers and employees of The City of San Diego hired prior to January 1, 1982, the above provisions shall apply for that period of Social Security coverage prior to January 1, 1982. Subsequent to the withdrawal date

(December 31, 1981), all provisions for social security integration shall be inapplicable to such employees except for the prior period of vesting.

Section 16. That Chapter II, Article 4, Division 7, of the San Diego Municipal Code be and the same is hereby amended by adding Section 24.0715, to read as follows: -

SEC. 24.0715 Continued Health Coverage

Any surviving spouse eligible for death benefits pursuant to Sections 24.0705, 24.0706, 24.0709, 24.0710, 24.0710.1, 24.0710.2 and 24.0710.3 shall be entitled to continued health coverage as provided in California Labor Code Section 4856.

Section 17. That Chapter II, Article 4, Division 9, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0907, to read as follows:

SEC. 24.0907 Surplus Undistributed Earnings

a. Surplus Undistributed Earnings shall be comprised of Investment Earnings Received for the previous fiscal year, less:

(1) An amount sufficient to credit interest to the contribution accounts of the Members, 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

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(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.

(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).

(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 24.0404. 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 benefit from ensuing Surplus Undistributed Earnings and the special reserve is \$100,000 or more.

b. At the beginning of each fiscal year, the Board shall credit all Surplus Undistributed Earnings to the Reserve for Employer Contributions, for the sole and exclusive purpose of reducing Retirement System liability.

c. For the purpose of distributing annual supplemental benefits to qualified retirees, 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.

Section 18. That Chapter II, Article 4, Division 12, of the San Diego Municipal Code be and the same is hereby amended by repealing Division 12.

Section 19. That Chapter II, Article 4, Division 12, of the San Diego Municipal Code be and the same is hereby amended by reenacting and adding Sections 24.1201, 24.1202, 24.1203, and 24.1204, to read as follows:

DIVISION 12

Post Retirement Health Benefits

SEC. 24.1201 Eligible Retirees

(a) Effective August 1, 1997, two separate post retirement health benefits shall be offered, one to Health Eligible Retirees and the other to Non Health Eligible Retirees as set forth in this Division. A Health Eligible Retiree is any General Member, Safety Member or Legislative Officer who: (1) was on the active payroll of The City of San Diego on or after October 5, 1980, and (2)

retires on or after October 6, 1980, and (3) is eligible for and is receiving a retirement allowance from the Retirement System. A Non Health Eligible Retiree is any retiree who: (1) retired or terminated employment as a vested member from The City of San Diego prior to October 6, 1980; and (2) is eligible for and is receiving a retirement allowance from the Retirement System.

(b) Health Eligible Retirees who retired on or after July 1, 1992 under the "sliding scale" benefit in existence at the time of their retirement shall have their Retiree Health Benefit prospectively adjusted on August 1, 1997, to be the same as that for Health Eligible Retirees who retire on or after August 1, 1997.

SEC. 24.1202 Post Retirement Health Benefits Defined

(a) Non Health Eligible Retirees shall be entitled to payment or reimbursement of an amount not to exceed \$600.00 per year for health insurance expenses.

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(b) Health Eligible Retirees shall be entitled to participate in and obtain health coverage under any currently available City sponsored health insurance plan or any other health insurance plan of their choice and have their premiums paid or reimbursed in accordance with the limitations set forth in this Division.

(c) Regardless of the health insurance plan selected, payment or reimbursement to a Health Eligible Retiree shall not exceed the lower of (1) the cost of the Medicare eligible or Non-Medicare eligible retiree-only premium for the highest cost Health Maintenance Organization (HMO) plan which is a City sponsored health insurance plan, or (2) the actual premium cost incurred by or for the Health Eligible Retiree.

(d) A Health Eligible Retiree timely enrolled in Medicare shall also be entitled to reimbursement of the cost of the part B supplemental medical expense premium.

(e) A Health Eligible Retiree who, on January 1, 1997, was enrolled in and who remains continuously enrolled in any Preferred Provider Organization (PPO), shall not be subject to the limitation set forth in (c)(1) of this section. Instead, the limitation shall not exceed the cost of the Medicare eligible or Non-Medicare eligible retiree-only premium for the City sponsored PPO plan made available to Health Eligible Retirees.

SEC. 24.1203 401(h) Fund Established

(a) All post retirement health benefit payments pursuant to this Division shall comply with all applicable Federal laws, including Section 401(h) of the Internal Revenue Code ("Code"). To the extent there may be a conflict between the rules of this Division and Section 401(h) of the Code or regulations issued thereunder, the Code and regulations shall govern.

(b) 401(h) Fund - Compliance with Applicable Provisions of the Code

(1) All health benefits pursuant to this Division shall be paid solely from the 401(h) Fund established pursuant to Code Section 401(h) and any regulations issued thereunder.

(2) No health benefits provided under the 401(h) Fund shall discriminate in favor of highly compensated employees.

(3) The 401(h) Fund shall be a separate account solely for providing health benefits and shall be established and maintained by the Board to reflect the amounts contributed for the payment of post retirement health benefits. This account shall be for record keeping purposes only. Amounts credited to the 401(h) Fund may be invested with other Retirement System funds set aside for retirement purposes, without identification of which investments are allocable to each account. However, earnings on each account shall be allocated to each in a reasonable manner.

(4) Contributions to the 401(h) Fund shall be made by the City solely to pay and make reimbursement for health benefits for retirees eligible for health benefits. Contributions shall be reasonable, ascertainable, necessary and appropriate. Contributions shall not exceed the amounts that, under the Code, would violate the rule that requires health benefits to be subordinate to the retirement benefits.

(5) The City must, at the time it makes a contribution to the 401(h) Fund, designate in writing to the Board that portion of the contribution allocable to the 401(h) Fund to be used solely for health benefits.

(6) Prior to the satisfaction of all liabilities under the Retirement System to provide for health benefits, no part of the 401(h) Fund shall be used for, or diverted to, any purpose other than providing health benefits, except that, amounts credited to the 401(h) Fund may be used to pay for necessary and appropriate administrative expenses related to post retirement health benefits.

(7) Any amounts contributed to the 401(h) Fund and which remain in the 401(h) Fund after the satisfaction of all liabilities for health benefits (including but not limited to benefits payable in the future for existing members) shall be returned to the City. The City shall provide benefits to affected members and retirees of the Retirement System equivalent to any amount so returned.

(8) This section does not require separate accounts for key employees because no member of the Retirement System is a key employee under the definitions of the Code.

(9) Assets attributable to any forfeitures of benefits payable under the 401(h) Fund shall be used to reduce the City's contributions to pay for health benefits provided under the 401(h) Fund.

(c) The Board may adopt such rules and regulations pursuant to Section 24.0901 as necessary or appropriate to carry out the requirements of this Division.

~~SEC. 24.1204~~ Funding

Post retirement health benefits described in this Division shall be paid from the following sources of funds in descending order of availability, as may be appropriate to provide the benefits set forth in this Division:

(a) from the 401(h) Fund, to the extent of monies therein; and, if necessary,

(b) by the City, directly, from any source of funds available to The City of San Diego.

Section 20. That Chapter II, Article 4, Division 13, of the San Diego Municipal Code be and the same is hereby amended by amending Sections 24.1304, and 24.1307, to read as follows:

SEC. 24.1304 Purchase of Service Credit for Part-Time or Hourly Service in Positions not Eligible for Membership

Upon vesting, any Member who was employed by the City in a position that was less than full-time or was otherwise not eligible for membership, may purchase full-time service credit for the period of time he or she rendered part-time or hourly service prior to membership.

No employee shall be eligible to purchase service credit under this Section for periods of employment after January 1, 1997.

SEC. 24.1307 Purchase of Approved Leaves of Absence

(a) Notwithstanding the definition of Creditable Service in Section 24.0103, any Member granted an approved leave of absence shall have the right, upon his or her return to City service, and upon request by the Member, to obtain service credit for a period of up to one year of such absence by paying into the Retirement System an amount determined by the Board to be the equivalent of the employee cost of that service.

(b) Notwithstanding the definition of Creditable Service in Section 24.0103, any Member granted an approved leave of absence for periods of time in excess of one year shall have the right, upon return to City service, and upon request by the Member, to obtain service credit for such excess leave of absence by paying into the Retirement System an amount determined by the Board to be the equivalent of the employee and employer cost of that service.

(c) A member is not eligible to purchase service credit under Section 24.1307(a) or (b) for periods of leave of absence that begin after January 1, 1997.

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except for leaves of absence granted by the City for long term disability benefits, Family Medical Leave Act periods approved by the City, leaves of absence without pay approved by the Civil Service Commission with job to be saved, including any period preceding reinstatement by the Civil Service Commission following a termination appeal.

Section 21. That Chapter II, Article 4, Division 13, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 24.1311.

Section 22. That Chapter II, Article 4, Division 14, of the San Diego Municipal Code be and the same is hereby amended by repealing Division 14.

Section 23. That Chapter II, Article 4, Division 14, of the San Diego Municipal Code be and the same is hereby amended by reenacting Division 14, by adding Sections 24.1401, 24.1402, 24.1403, 24.1404, 24.1405, 24.1406, 24.1407, 24.1408 and 24.1409, to read as follows:

DIVISION 14

DEFERRED RETIREMENT OPTION PLAN

SEC. 24.1401 Purpose and Duration

a. Effective April 1, 1997, a deferred retirement option plan (DROP) is created and offered to Members on a voluntary basis as an alternative method of benefit accrual in the Retirement System as set forth in this Division.

b. DROP is created to add flexibility to the Retirement System. It provides Members who elect to participate in the program access to a lump sum

benefit in addition to their normal monthly retirement allowance at their actual retirement. DROP is intended to be cost neutral regarding plan funding.

c. The DROP plan shall be offered on a trial basis for a period of three years commencing April 1, 1997 and ending March 31, 2000. During this three year trial period, DROP shall be evaluated by the City on a cost basis. During and by the end of this three year period, the city will determine whether the costs of DROP, including but not limited to any increase to the employer contribution rate recommended by the System's actuary specifically related to DROP, are greater than any savings realized as a result of the implementation of DROP. If the City determines DROP to not be cost effective, the City may determine not to extend DROP for elections that would otherwise have been made by Members after April 1, 2000. If the City determines DROP to be cost effective, or takes no action to eliminate further DROP participation, DROP shall become a permanent benefit effective April 1, 2000.

SEC. 24.1402 Eligibility, Duration of DROP Participation, and Waiver

a. Any Member, except a Safety Member who elects to accrue benefits pursuant to Section 24.0403 (g), who has attained the age and service necessary to be eligible for service retirement shall be eligible to participate in DROP.

b. Any member who elects to participate in DROP shall voluntarily and irrevocably:

(1) Designate a period of participation not to exceed sixty (60) consecutive months.

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(2) Cease, from and after the date the Member begins participating in DROP, to accrue benefits under any other Division of this Article.

(3) Have DROP benefits credited to a DROP Participation Account pursuant to Section 24.1404.

(4) Accrue benefits from and after the date the Member begins participating in DROP pursuant to the terms of this Division.

(5) Receive benefits from the Retirement System upon termination of City employment at the time and in the manner provided in the relevant Sections of this Article.

(6) Agree to terminate City employment upon completion of the designated DROP participation period.

(7) Execute such waivers with respect to age and other discrimination in employment laws as are required by the City and the Retirement System.

SEC. 24.1403 Termination of DROP Participation

a. DROP participation may be terminated by voluntary termination of employment at any time before the completion of the DROP participation period designated by the Member on the appropriate DROP participation form.

b. DROP shall be terminated by the first occurrence of any one of the following events:

(1) upon the completion of the DROP participation period designated by the Member on the appropriate DROP participation form.

(2) involuntary termination of employment. In the event a termination for cause is reversed, a Member's participation in DROP, less any benefits previously distributed pursuant to Section 24.1407, shall be reinstated for the duration of the original DROP participation period initially designated by the Member on the appropriate DROP participation form..

(3) death of the Member.

(4) approval of disability retirement benefits under the terms of this article.

SEC. 24.1404 DROP Benefits and Participation Accounts

a. A DROP Participation Account is a "nominal" account established within the Retirement System on behalf of each DROP participant. All benefits accrued pursuant to this Division shall be accounted for in the DROP Participation Account. A DROP participant shall not have a claim on the assets of the Retirement System with respect to his or her DROP Participation Account, nor shall there be any assets set aside for any DROP participant which are separate from all other Retirement System assets.

b. All amounts credited to the member's DROP Participation Account shall be fully vested.

c. A Member's DROP Participation Account shall be credited with:

(1) an amount, credited monthly, which is calculated in the same manner as a service retirement benefit using the factors for age, service, and final compensation in effect on the effective date of DROP participation. This

amount shall be increased annually pursuant to the COLA provisions described in Section 24.0531.

(2) an amount, credited annually, representing the Annual Supplemental Benefit described in Section 24.0404 based upon the Member's Creditable Service on the day before the Member elects to participate in DROP.

(3) an amount, credited bi-weekly at the end of each pay period, equal to 3.05% of the Member's compensation earnable.

(4) an amount, deducted from the Members's salary and credited bi-weekly at the end of each pay period, equal to 3.05% of the Member's compensation earnable. This amount shall be picked up and paid by the City for the sole purpose of obtaining tax deferral and in accordance with the requirements of Internal Revenue Code Section 414 (h) (2).

(5) an amount, representing interest, the rate and manner of crediting to be determined by the Board through rules and regulations adopted pursuant to Section 24.0901. These rules and regulations shall have the same force and effect as a duly adopted ordinance.

SEC. 24.1405 Additional DROP Provisions

a. Effective on the date that a member elects to participate in DROP, employee and employer contributions pursuant to Divisions 2, 3 and 8 of this Article shall cease with respect to that Member.

b. A Member who elects to participate in DROP and becomes disabled during the period of DROP participation shall be eligible to apply for

disability retirement benefits. In the event the application for disability retirement benefits is approved by the Board:

(1) the disability retirement benefit shall be calculated using the factors of age, service, and final compensation in effect the day before the effective date of DROP participation.

(2) all amounts in the Member's DROP Participation Account shall be distributed pursuant to Section 24.1407.

c. In the event a Member dies during the period of DROP participation, eligible survivors shall be entitled to receive:

(1) all amounts in the Member's DROP Participation Account pursuant to Section 24.1407, including the retiree death benefit in Section 24.0714.1.

(2) if eligible, a Special Death Benefit pursuant to Sections 24.0705, 24.0706, 24.0709, 24.0710, 24.0710.1, 24.0710.2, and 24.0710.3 using the factors of age, service and final compensation in effect on the date of the Member's death. The Special Death Benefit shall be paid in lieu of any survivor continuance otherwise payable in the form of benefit determined pursuant to Section 24.1404 (c) (1).

(3) if ineligible for a Special Death Benefit, the designated beneficiary shall only be entitled to the amount and form of benefit determined pursuant to Section 24.1404 (c) (1) in accordance with the Member's designation at the time of DROP election.

d. A Member who elects to participate in DROP shall qualify as a Health Eligible Retiree and be eligible to receive Post Retirement Health Benefits pursuant to Division 12 upon completion of the period of DROP participation and separation from City service..

SEC. 24.1406 Designation of Beneficiary

a. A Member who elects to participate in DROP shall designate a beneficiary. Member's beneficiary designation shall be applicable to all distributions pursuant to Section 24.1407.

~~b. If the designated beneficiary predeceases a DROP participant who~~
then dies before designating a new beneficiary, all distributions pursuant to Section 24.1407 shall be made to the estate of the DROP participant.

c. No beneficiary designation made under this Section shall be in abrogation of a Member's community property obligations under applicable California law.

SEC. 24.1407 Payment of Benefits

a. Upon the simultaneous termination of DROP participation and City employment, a Member shall be entitled to receive:

(1) the monthly retirement allowance in the amount determined under Section 24.1404(c) (1) that was credited monthly to the Member's DROP Participation Account at the date of termination of DROP participation; and

(2) the amount for which the Member is eligible under the Annual Supplemental Benefit described in Section 24.0404 based upon the ~~Member's Creditable Service on the day before the Member's election to~~ participate in DROP.

(3) All amounts credited to the Member's DROP Participation Account on the effective date of termination of DROP participation.

b. The normal form of payment shall be a lump sum distribution, provided, however, a Member may elect to receive an annuity pursuant to this Section. If the Member elects to receive an annuity:

(1) the annuity shall be in any form established by the Board and subject to applicable provisions of the Internal Revenue Code.

(2) the annuity shall be the actuarial equivalent of the amount credited to the DROP Participation Account at the termination of the DROP participation period. For this purpose, "actuarial equivalent" is an amount that has the same present value as the amount credited to the DROP Participation Account at the termination of the DROP participation period based on interest rates and mortality tables recommended by the System's actuary and adopted by

the Board as a part of rules and regulations pursuant to Section 24.0901. The annuity shall be calculated using the age of the DROP participant and, if a joint and survivor option is elected, the age of the beneficiary on the date of termination of the DROP participation period.

c. No COLA or supplemental benefit or later adjustment shall be made with respect to any annuity payable pursuant to Section 24.1407 (b).

SEC. 24.1408 Compliance with Applicable Provisions of the Internal Revenue Code.

a. It is intended DROP shall not jeopardize in any way the tax

qualified status of the Retirement System under the rules and regulations of the Internal Revenue Service. The Board shall have the authority pursuant to Section 24.0901 to adopt rules and regulations to the extent necessary or appropriate for DROP to comply with applicable Federal laws and regulations, with such action having the same force and effect as a duly enacted ordinance.

b. Notwithstanding any other provision in this Article, benefits provided pursuant to this Division shall be subject to the requirements of the Internal Revenue Code (Code) and regulations issued thereunder as necessary for the Retirement System to remain a tax qualified retirement plan, including, but not limited to, the following:

(1) The limitations of Section 415 of the Code relating to the amount of benefits that can be paid.

(2) The limitations of Section 401 (a) (17) of the Code relating to the amount of compensation that can be taken into account for benefit accrual.

(3) The limitations of Section 401 (a) (9) relating to the time that benefit payments must begin.

(4) The limitations of Section 401 (a) (31) relating to the rollover of benefits.

(5) The limitations of Section 401 (a) (25) relating "definitely determinable" benefits.

SEC. 24.1409 Employment Status during DROP Participation

A Member who elects to participate in DROP shall have all of the rights, ~~privileges, and benefits, and be subject to all other terms and conditions of active~~ employment, including, but not limited to, the City Flexible Benefits Plan.

Section 24. That Chapter II, Article 4, Division 8, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0801, to read as follows:

SEC. 24.0801 City's Contribution

Commencing July 1, 1954 the City shall contribute to the Retirement Fund in respect to members a percentage of earnable compensation as determined by the System's Actuary pursuant to the annual actuarial evaluation required by Section 24.0901. The required City contributions shall be determined separately by the Actuary for General Members and Safety Members.

All deficiencies which may accrue as a result of the adoption of any section in the Retirement Ordinances must be amortized over a period of thirty years or less. Any amount designated pursuant to Section 24.1203(b)(5) shall not constitute a deficiency within the meaning of this Section.

Section 25. The benefit improvements shall not become effective unless approved by the active members of the Retirement System. The Retirement Administrator is directed to immediately inform the City Clerk of the results of the vote held pursuant to Charter section 143.1. The San Diego Municipal Code shall not be amended pursuant to this ordinance unless and until the Retirement Administrator notifies the City Clerk the members of the Retirement System have approved the increase on benefits.

Section 26. For purposes of establishing a referendum only, this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

~~APPROVED: CASEY GWINN, City Attorney~~

By Sharon A. Marshall
Sharon A. Marshall
Deputy City Attorney

LEC:SAM:mrh

03/13/97

03/14/97 Corrected Copy

03/17/97 Corrected Copy

03/26/97 REV. 1

Or.Dept:Labor.R.

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REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

CITY ATTORNEY.

2. FROM: (ORIGINATING DEPARTMENT)
City Manager/Labor Relations

3. DATE
February 25, 1997

Municipal Code Amendments to Implement Retirement System Proposal

FOR INFORMATION, CONTACT: (NAME & MAIL STA.)
Cathy Lexin, MS 9A

6. TELEPHONE NO.
236-6313

7. CHECK HERE IF BOX 1472A, "DOCKET SUPPORTING INFORMATION," HAS BEEN COMPLETED ON PAGE 2:

COMPLETE FOR ACCOUNTING PURPOSES

IND				
EPT.				
ORGANIZATION				
SUBJECT ACCOUNT				
JOB ORDER				
I.P. NO.				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:
Costs associated with these changes are provided for in the current FY 97 budget.

ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	<i>Cathy Lexin</i>	2/25/97		CITY MANAGER	<i>[Signature]</i>	2/25/97
	EOCP	<i>[Signature]</i>	2/27/97		AUDITOR		
	Larry Grissom				CITY ATTORNEY		
	Truca Herring				ORIGINATING DEPARTMENT		
					MGR. DOCKET COORD.		COUNCIL REP.
				<input checked="" type="checkbox"/>	RULES COMMITTEE	<input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
						<input type="checkbox"/> Refer to _____ Date _____	

PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

1a. MANAGER'S RECOMMENDATIONS: Introduce the Ordinance

1. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): All

CITY CLERK INSTRUCTIONS: None

ENVIRONMENTAL IMPACT: None

ISSUES: A majority vote of the Members of the Retirement System is required prior to these changes taking effect. CERS will conduct the appropriate election following the introduction of this Ordinance.

BUCKET SUPPORTING INFORMATION

ly 2, 1996, after meeting and conferring with the Police Officers Association, Fire Fighters Local 145, Municipal Employees Association, and AFSCME, Local 127, the City Council approved a proposal to implement a number of revisions to the City Employees' Retirement System subject to the satisfaction of various contingencies contained in the proposal, including reviews and approvals by the City Attorney and City Counselor regarding the transfer of health insurance and the addition of the Deferred Retirement Option feature (DROP). On November 5, 1996, the passage of Proposition D amended City Charter Section 141 allowing the transfer of retiree health insurance to CERS, and payment therefor from excess undistributed earnings of CERS. On February 6, 1997, a task force of the four labor organizations reached agreement with the City Management Team on the level of health benefit to be transferred to CERS, as well as the specific provisions to be included in the DROP Plan.

On February 10, 1997, Ordinance No. 0-97-75 was introduced. This Ordinance amends numerous provisions of Chapter II, Article 4 of the San Diego Municipal Code related to the following: Service retirement and disability retirement formulae, elimination of the disability benefit offset, the establishment of a retiree health insurance benefit to be administered by CERS and paid for to the extent available from excess undistributed earnings, establishment of a \$600 annual benefit for pre-1980 retirees who are not eligible for retiree health insurance, elimination of the remarriage penalty and modification of the one-year marriage requirement to establish eligibility as a surviving spouse, and purchase of service.

On February 18, 1997, Ordinance No. 0-97-84 was introduced. This Ordinance adds a Division 14 to Chapter II, Article 4 of the San Diego Municipal Code establishing a Deferred Retirement Option Plan.

In order to move expeditiously toward completing the outstanding contingencies, these two Ordinances were introduced prior to CERS' legal advisors, outside fiduciary counsel and tax counsel completing reviews of the ordinance language implementing these benefit changes. Consequently, it is recommended that a third ordinance be introduced to "clean up" and technically amend language to assure that the provisions meet with and satisfy all applicable state and federal requirements. This Ordinance does not introduce any changes to the agreements reached with the labor organizations.

CAL IMPACT: Unknown at this time.

The blended employer contribution rate for FY97 will increase from 7.08% to 7.33% and is estimated to increase by an additional 0.50% each of the subsequent nine years. Transferring retiree health costs to the retirement system will save approximately \$5M per year to the City's annual operating budget.

All employees of the Unified Port District are Members of CERS with benefits administered under separate contract authorized by the City Council. It is recommended that the Council approve a resolution authorizing an amendment of that contract in order to set forth those benefits to be offered to District employees.

SUBJECT: Municipal Code Amendments to Implement Retirement System Proposal

LINE: (CITY MANAGER / DEPT. HEAD / AUTHOR INITIALS)

INITIALS:

[Signature]
ORIGINATING DEPT. HEAD

[Signature]
CITY MANAGER
(FOR MANAGERIAL DEPARTMENTS ONLY)

0-18392

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