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MEMORANDUM OF LAW

DATE: May 11, 2012

TO: Jay Goldstone, Chief Operating Officer

FROM: City Attorney

SUBJECT: Continued Funding of the Supplemental COLA Benefit

INTRODUCTION

The Supplemental COLA benefit was created in January 1999 for retirees who retired before July 1, 1982 whose benefits had fallen below 75 percent of their original purchasing power. The San Diego City Council (Council) ordinance creating the benefit required the San Diego City Employees' Retirement System (Retirement System) to set aside $35 million of "undistributed earnings" in a special reserve to pay the benefit to qualified retirees and their survivors "for life or until the Reserve established to pay this supplemental benefit is depleted."[1] The Supplemental COLA Reserve will be depleted in October 2013. You have asked whether the City of San Diego is required to contribute additional funds to the Reserve, in order to continue payment of the Supplemental COLA, and if not, whether the City has the authority to do so voluntarily.

QUESTIONS PRESENTED

1. Is the Supplemental COLA benefit vested, such that the City is required to replenish the Supplemental COLA Reserve to continue payment of the benefit?

2. If the City has no legal obligation to replenish the Supplemental COLA Reserve, would a decision to do so constitute "extra compensation or extra allowance" in violation of the California Constitution?

3. Is a vote of the people under San Diego Charter (Charter) section 143.1 required before the City may replenish the Supplemental COLA Reserve?

4. What steps are required before the City may contribute funds to continue payment of the Supplemental COLA benefit?

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[1] San Diego Municipal Code (SDMC) section 24.1504, as it read when adopted by San Diego Ordinance O-18608 on January 11, 1999.

SHORT ANSWERS

1. No. A retired employee does not acquire a vested right to a benefit enacted after retirement, absent additional consideration exchanged for that benefit, because he or she did not provide services with a reasonable expectation of receiving the benefit.

2. No. It is well settled under California law that an increase in pension benefits granted to retired public employees or their survivors is not "extra compensation or extra allowance," as proscribed by the California Constitution.

3. No. Voter approval is required only for ordinances that increase the benefits of "any employee, legislative officer or elected official." From the history and context of Charter section 143.1, it is clear that the term "employee" does not include retirees. In addition, section 143.1 specifically exempts "Cost of Living Adjustments" from the vote requirement, which probably includes the Supplemental COLA.

4. In order to make the Supplemental COLA a lifetime benefit paid for by the City, rather than a limited benefit paid from "undistributed earnings" of the Retirement System, the Council would have to adopt an ordinance amending San Diego Municipal Code (SDMC) section 24.1504. It is the view of this Office that the ordinance would not affect the "vested defined benefits" of any retiree, and that it would not have to be approved by a majority vote of the affected retirees under Charter section 143.1.

BACKGROUND

The Supplemental COLA benefit was added to the City's defined benefit pension plan by San Diego Ordinance O-18608, adopted on January 11, 1999. As described in the recitals of that ordinance, the City Manager recommended creation of the benefit after meeting for the preceding year with a group of retirees to study and evaluate ways to improve the Cost of Living Allowance for certain retirees.

The benefit was initially granted to a group of retirees who had retired with at least ten years of service credit on or before June 30, 1982, whose benefits as of July 1, 1998 (including the Annual Supplemental Benefit (13th Check)) had fallen below 75 percent of their original purchasing power. This initial group was expanded by the adoption of San Diego Ordinance O-18839 on September 12, 2000, which added industrial disability retirees with less than ten years of service credit.[2]

The Supplemental COLA benefit amount is calculated on an individual retiree basis, according to a formula set forth in subsection (b) of SDMC section 24.1504. The benefit has been paid monthly since January 1999, with the first payment retroactively covering the period of July 1, 1998 through December 31, 1998.

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[2] San Diego Ordinance O-18839 also extended eligibility for the Annual Supplemental Benefit (13th Check) to industrial disability retirees with less than ten years of service credit.

As discussed in section I of this Memorandum, the Supplemental COLA is not a vested benefit under the Retirement System, and the creation of the benefit did not affect the "vested defined benefits" of any retiree. Nonetheless, the retirees were given the opportunity to vote on the benefit in September 1998.[3]

The City has never directly contributed any of the funds to pay the Supplemental COLA benefit; all funding has come from the Retirement System's Supplemental COLA Reserve (Reserve). The Reserve was established with $35 million from "Undistributed Earnings for the Fiscal Year ending June 30, 1998."[4] The duration of the benefit is limited to the "Available Benefit Amount" (synonymous with "Supplemental COLA Reserve"), which is defined as the initial $35 million credited to the Reserve, plus annual interest (credited in years in which the benefits paid are less than the investment earnings received), minus the benefits paid.[5]

SDMC section 24.1504(c)(4) provides that when the Available Benefit Amount is zero, "[b]enefit payments under the Supplemental COLA Program shall cease."[6] But, section 24.1504(d)(1) requires the System's actuary to conduct an annual evaluation of the Available Benefit Amount to determine, among other things, "the feasibility of . . . additional credits to the Available Benefit Amount" from the System's undistributed earnings. In addition, section 24.1504(d)(2) provides that before each April 30, representatives of the City Manager's office, the Retirement Administrator, and representatives of eligible retirees "may meet to consider . . . any increase in the Available Benefit Amount created to pay the Supplemental COLA benefit."

The Retirement System has informed the City that the Reserve will be depleted in October 2013. You have asked whether the City is required to contribute additional funds to the Reserve, in order to continue payment of the Supplemental COLA, and if not, whether the City has the authority to do so.

ANALYSIS

I. THE CITY IS NOT REQUIRED TO REPLENISH THE SUPPLEMENTAL COLA RESERVE BECAUSE THE SUPPLEMENTAL COLA IS NOT A VESTED RETIREMENT BENEFIT.

It is well settled in California that a public employee's pension constitutes an element of compensation and that the right to pension benefits vests upon the acceptance of employment.[7] In addition, vested pension benefits are not limited to those in effect at the beginning of

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[3] The election results were certified on December 7, 1998. The retirees voted 2,396 to 51 to approve the benefit.

[4] San Diego Ordinance O-18608 (Jan. 11, 1999), SDMC § 24.1504(c)(1).

[5] O-18608, SDMC § 24.1504(c)(1)-(4).

[6] *See also* SDMC section 24.1504(b)(5), which states that the benefit will be paid to each eligible retiree or his or her survivor for life "or until the Available Benefit Amount under Section 24.1504(c) is zero."

[7] *Miller v. State of California*, 18 Cal. 3d 808, 815 (1977); *Betts v. Board of Administration*, 21 Cal. 3d 859, 863 (1978); *Kern v. City of Long Beach*, 29 Cal. 2d 848, 855 (1947); *Dryden v. Board of Pension Commrs.*, 6 Cal. 2d 575, 579 (1936).

employment, but also include those granted during the course of employment.[8] Once vested, a pension right may not be destroyed without impairing a contractual obligation of the employing public entity.[9]

It is equally well settled that a retired employee does not gain a vested contractual right to a pension benefit (or benefit increase) enacted after he or she stops working, unless the retiree provides additional consideration in exchange for that benefit. "The contractual basis of a pension right is the exchange of an employee's services for the pension right . . . ."[10] Therefore, a retired employee does not acquire a vested right to a benefit enacted after he retires, absent additional consideration exchanged for that benefit, because the employee did not provide services with a reasonable expectation of receiving that benefit.[11]

Claypool v. Wilson illustrates this point.[12] In that case, the court considered whether the State of California could repeal supplemental COLA benefits it had previously granted to both active and retired employees. The court concluded that the State could repeal the benefits as to retirees who had ended their service before the effective date of the benefit, because those retirees "have no vested right which could be impaired by their repeal."[13] The court specifically rejected the retirees' argument that once new pension benefits were given to retired persons they could not be taken away, noting that the only cases supporting this argument involved situations where new consideration supported the new benefits.[14]

New consideration was found to exist in *Pasadena Police Officers Ass'n v. City of Pasadena,* leading the court to conclude that the COLA benefit enacted after the plaintiffs' retirement was constitutionally protected against impairment.[15] The court noted that although the retirees did not have a vested right to the COLA based on the contract in effect during their employment, their right to continuation of the COLA benefit was based on a different contract supported by new consideration.[16] The retirees had been given a choice in 1969 between retaining their fixed pensions, with no cost of living increases, and to a new plan with adjustable pensions. The court stated:

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[8] *Betts*, 21 Cal. 3d at 866 ("An employee's contractual pension expectations are measured by benefits which are in effect not only when employment commences, but which are thereafter conferred during the employee's subsequent tenure."); *Phillis v. City of Santa Barbara*, 229 Cal. App. 2d 45, 66 (1964); *Pasadena Police Officers Ass'n v. City of Pasadena*, 147 Cal. App. 3d 695, 703 (1983).

[9] As this Office has previously explained, in San Diego City Attorney Legal Opinion 2010-1, reasonable modifications to a pension benefit may be made before an employee's retirement in order to (1) keep a retirement system flexible to permit adjustments in accord with changing conditions, and (2) maintain the integrity of the system, as long as employees disadvantaged by the change are provided with "comparable new advantages."

[10] *Claypool v. Wilson*, 4 Cal. App. 4th 646, 662 (1992), rehearing denied (Jan 13, 1992), rehearing denied and opinion modified (Apr 13, 1992), review denied (Jun 18, 1992), citing *California State Teachers Ass'n v. Cory*, 155 Cal. App. 3d 494, 506 (1984).

[11] *Pasadena Police Officers Ass'n*, 147 Cal. App. 3d at 706 (1983).

[12] *Claypool v. Wilson*, 4 Cal. App. 4th 646 (1992).

[13] *Id.* at 663.

[14] *Id.*

[15] *Pasadena Police Officers Ass'n v. City of Pasadena*, 147 Cal. App. 3d 695, 706-708.

[16] *Id.*

> By electing to come under the 1969 system, these members gave up their fixed pension and subjected themselves to the potential of a *reduction* in their pension should the cost of living index decline. By so agreeing, the retirees gave consideration for the city's promise to pay a fully adjustable pension [citation omitted] and a contract was formed, a contract entitled to constitutional protection against impairment.[17]

The court concluded that the city's attempt in 1981 to impose a cap on the retirees' COLA benefit increases was an unconstitutional impairment of contract.[18]

The City's Supplemental COLA benefit was granted in 1999 to a group of retired employees, all of whom had ended their service at least sixteen years earlier. These retirees had no expectation of receiving the Supplemental COLA while they were working for the City. They were not asked to make an election or to give up anything in exchange for the new benefit, and unlike the retirees in *Pasadena Police Officers Ass'n*, the pre-1982 City retirees were not exposed to any additional risk as a result of receiving the Supplemental COLA. Therefore, as in *Claypool v. Wilson*, the pre-1982 retirees have no vested right in the continuance of the Supplemental COLA benefit.

II. REPLENISHMENT OF THE SUPPLEMENTAL COLA WOULD NOT CONSTITUTE "EXTRA COMPENSATION OR EXTRA ALLOWANCE" OR A GIFT OF PUBLIC FUNDS UNDER THE CALIFORNIA CONSTITUTION OR CHARTER SECTION 93.

The Supplemental COLA ordinance increased the retirement benefits of a group of retirees beyond what they were entitled to when they left City service. The benefit will sunset unless the City contributes additional funds, but the City is under no legal obligation to do so. Under these facts, a City decision to replenish the Supplemental COLA Reserve may be viewed as another post-retirement benefit increase for pre-1982 retirees. It would not, however, be unconstitutional or a violation of Charter section 93.

Article XI, section 10(a) of the California Constitution provides:

> A local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or pay a claim under an agreement made without authority of law.

This provision has been held to apply to charter cities.[19]

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[17] *Id.* at 707, citing to *Kern v. City of Long Beach*, 29 Cal. 2d 848, 853 (1947).
[18] *Id.* at 708-709.
[19] *See e.g., Nelson v. City of Los Angeles*, 21 Cal. App. 3d 916 (1971).

In addition to the prohibition of "extra compensation" for past services, article IV, section 17 of the California Constitution prohibits the legislature from "making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever . . . . ."[20] Unlike the "extra compensation" prohibition, this constitutional provision does not apply to charter cities.[21] But, Charter section 93 similarly prohibits the gift of public funds stating, in relevant part, that "[t]he credit of the City shall not be given or loaned to or in aid of any individual, association or corporation; except that suitable provision may be made for the aid and support of the poor." Therefore, cases interpreting the "gift of public funds" prohibition in the California Constitution are instructive in interpreting Charter section 93.

A number of cases have considered whether a pension benefit increase, granted after retirement, violates the "extra compensation" or "gift of public funds" prohibitions in the California Constitution, and have answered "no."

Nelson v. City of Los Angeles[22] is the seminal decision on whether a post-employment pension increase constitutes extra compensation under article XI, section 10(a) of the California Constitution.[23] In *Nelson*, city voters adopted a charter amendment that raised the minimum pension payable to retirees and widows from $250 to $350 per month. The city refused to apply the increase to people in pensionable status on the effective date of the amendment, contending that the amendment was void to the extent it applied to anyone already receiving a pension, because it constituted "extra compensation." The court disagreed, based upon a review of the long line of cases analyzing two closely related constitutional provisions: (1) the provision prohibiting the State Legislature and general law cities and counties from granting extra compensation to a public employee after service has been rendered,[24] and (2) the provision prohibiting gifts of public funds.

The court noted that when article XI, section 10 was added to the California Constitution in 1970, it did not introduce a new concept to California law. It merely extended to charter cities and counties a limit on their power that had applied for many years to the state Legislature and general law counties and cities by article IV, section 17 (formerly section 32).[25] The court also noted the close relation in purpose between article IV, section 10, and the constitutional provision against gifts of public money.[26] On this basis, the court concluded that cases construing the effect of those constitutional provisions on the right of a governmental body to increase the pensions of retired employees were persuasive in construing article XI, section 10.

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[20] Cal. Const. art. XVI, § 6.
[21] *Tevis v. City & County of San Francisco*, 43 Cal. 2d 190, 197 (1954)
[22] *Nelson v. City of Los Angeles*, 21 Cal. App. 3d 916 (1971).
[23] *See also American River Fire Protection District v. Brennan*, 58 Cal. App. 4th 20 (1997).
[24] Article IV, section 17 of the California Constitution provides, in pertinent part:

> The Legislature has no power to grant, or to authorize a city, county, or other public body to grant, extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part . . . .

[25] *Nelson v. City of Los Angeles*, 21 Cal. App. 3d 916 at 918.
[26] *Id.*

After examining these lines of cases, the court concluded that:

> [U]niform precedent . . . leads us to the conclusion that the increases in pension benefits granted to persons in a pensionable status . . . are not proscribed by California Constitution, article XI, section 10.[27] The court's rationale was that "an increase in pension benefits payable to a retired public employee or his widow on pensionable status is paid as the result of rights incident to that status and not as a matter of increased compensation or allowance.[28]

In *Sweesy v. Los Angeles County Peace Officers' Retirement Board*,[29] the California Supreme Court considered whether an amendment to the Los Angeles County Peace Officers Retirement Act, giving widows of already retired peace officers a pension not provided in the Act before the officers retired. The Court sustained the validity of the pension against a claim that the payments would be a gift of public money, stating "the law is well settled that additional benefits may constitutionally be provided for members of the (retirement) system who have acquired a pensionable status."[30]

Based upon the above authorities, the City's granting of the Supplemental COLA benefit in 2000 to retired employees was not "extra compensation" or a "gift of public funds. Likewise, if the Council decides to expand this benefit beyond its initial $35 million allocation, that also would not constitute extra compensation or a gift of public funds under the California Constitution or Charter section 93.

III. CHARTER SECTION 143.1 DOES NOT REQUIRE APPROVAL BY A MAJORITY OF THE ELECTORS BEFORE THE CITY MAY CONTRIBUTE ADDITIONAL FUNDS TO ALLOW THE RETIREMENT SYSTEM TO CONTINUE PAYING THE SUPPLEMENTAL COLA.

Charter section 143.1(a) sets out three distinct voting requirements for City ordinances amending benefits under the Retirement System:

1. An ordinance "which affects the benefits of any employee" under the Retirement System must be approved by "a majority vote of the members of said system";

2. An ordinance "which increases benefits of any employee, legislative officer or elected official" under the Retirement System must be approved by "a majority of those qualified electors voting on the matter"; and

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[27] *Nelson v. City of Los Angeles*, 21 Cal. App. 3d 916, 919-920 (1971).
[28] *Id.* at 919, citing to *Brummund v. City of Oakland*, 111 Cal. App. 2d 114, 121 (1952); *Home v. Souden*, 199 Cal. 508 (1926).
[29] *Sweesy v. Los Angeles County Peace Officers' Retirement Board,* 17 Cal. 356 (1941).
[30] *Id.* at 361; *see also, Brummund v. City of Oakland,* 111 Cal. App. 2d 114, 121 (1952) ("This state and other states [citations], recognize that increased benefits to one already having a pensionable status are constitutional and economically appropriate.")

3. An ordinance "which affects the vested defined benefits of any retiree" of the Retirement System must be approved by "a majority vote of the affected retirees of said system."

Charter section 143.1 draws a clear distinction between "employees" and "retirees" in defining the votes necessary to approve retirement benefit changes. The first vote category, requiring member approval of ordinances affecting the benefits of "any employee," was approved by the voters on June 8, 1954, and added to the Charter effective January 10, 1955. This remained the only voting requirement in section 143.1 until the public voted in the November 6, 1990 general election to add the requirement that ordinances affecting the "vested defined benefits of any retiree" be approved by a majority vote of "affected retirees." In the voter pamphlet, the argument in favor of the "retiree vote" amendment stated:

> This addition to the Charter will provide some voice by City retirees in changes to their retirement benefit. Several years ago a part of the inflation protection (the 13th check) was changed and some retirees received increased benefits of a higher cost-of-living allowance and paid health care, all without a vote of those affected. Some of these defined benefits were vested and others may or may not have been. Active employees did vote for their changes, but retirees were not permitted to vote.

It is clear from the above argument that the term "members," as used in the Charter section 143.1 vote requirement employee benefit changes, had historically been interpreted to mean "active members," to the exclusion of retirees.[31] It is also clear that the Charter amendment proposed in 1990 was intended to give retirees the right to vote on changes to their benefits, a right that they did not have at that point.

The requirement of a public vote was added effective December 13, 2006, as a result of City voters' approval of Proposition B in the November 7, 2006 general election, which added the following language to Charter section 143.1:

> No ordinance amending the retirement system which increases the benefits of any employee, legislative officer or elected official under such retirement system, with the exception of Cost of Living Adjustments, shall be adopted without the approval of a majority of those qualified electors voting on the matter.

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[31] This is consistent with the definition of "Member" in SDMC section 24.0103, the definitions section of the Retirement Plan. Section 24.0103 defines "Member" as "any person employed by the City of San Diego who actively participates in and contributes to the Retirement System, and who will be entitled, when eligible, to receive benefits from the Retirement System." Since retirees are no longer employed by the City, and no longer make contributions to the Retirement System, they are not "Members."

Unlike the two other vote requirements under section 143.1, a public vote is triggered only by an ordinance that "increases" retirement benefits. Moreover, only increases to the benefits of an "employee, legislative officer or elected official" trigger a public vote. Retirees are not mentioned in this sentence, even though they are specifically called out in the following sentence of section 143.1 (giving retirees the right to vote on changes that affect retirees). Moreover, "Cost of Living Adjustments" are specifically excluded from the vote requirement.[32]

In construing the meaning of a statute, the primary task is to determine the intent of the lawmakers.[33] When a provision has been approved by the voters, their intent governs.[34] To determine the intent of the voters, the courts look to the ordinary and common meaning of the words used in the statute.[35] Finally, whenever possible, courts are required to give meaning to every word in a statute and avoid a construction that would make any word surplusage.[36]

Applying these rules of construction, and giving the words "employee" and "retiree" their ordinary meanings, it is clear that the voters did not intend the public vote requirement to apply to benefit changes that affect only retirees. The three vote requirements in Charter section 143.1 were approved by the voters over a period of over 50 years. Each amendment defined precisely what types of benefit changes would trigger a vote and who would vote for each type of change. Since 1955, clear distinctions have been maintained between the terms "employee" and "retiree," distinctions that are consistent with the ordinary meanings of those terms. Thus, an ordinance affecting retirees who receive the Supplemental COLA will not trigger a public vote under Charter section 143.1.

IV. AN ORDINANCE IS REQURIED TO AMEND THE SUPPLEMENTAL COLA BENEFIT, BUT IT WOULD NOT REQUIRE A MAJORITY VOTE OF AFFECTED RETIREES.

The Supplemental COLA benefit expires when the funds in the Supplemental COLA Reserve are depleted. And although the Municipal Code contemplates a process for continuing the benefit, the funding is not contemplated to come from the City, but rather from "undistributed earnings" of the Retirement System. Even though SDMC section 24.1504 lays out a process for determining whether "additional credits" may be made to the Supplemental COLA Reserve, SDMC section 24.1504 does not authorize the Retirement Board to credit, or the City to contribute, additional funds to the Reserve.

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[32] SDMC section 24.1902, enacted under the authority of Charter section 143.1, attempts to define "Cost of Living Adjustment" narrowly to include only the 2 percent COLA under SDMC section 24.1505, to the exclusion of the Supplemental COLA under SDMC section 24.1504, which is also a "Cost of Living Adjustment." Charter section 143.1 refers to "Cost of Living Adjustments" in the plural. If the exclusion was intended to apply only to one of the two Cost of Living Adjustments in existence at the time, it would have identified the specific Cost of Living Adjustment subject to the exclusion. To the extent there is a conflict between the Charter and the Municipal Code, the Charter prevails. *Stuart v. City and County of San Francisco Civil Service Comm.*, 174 Cal. App. 3d 201, 206 (1985, review denied 1986) (city charter provisions supersede all municipal laws, ordinances, rules, or regulations inconsistent with the charter).
[33] *Brown v. Kelly Broadcasting Co.*, 48 Cal. 3d 711, 724 (1989).
[34] *Kaiser v. Hopkins*, 6 Cal. 2d 537, 538 (1936).
[35] *Keller v. Chowchilla Water Dist.*, 80 Cal. App. 4th 1006, 1010-1011 (2000).
[36] *Arnett v. Dal Cielo*, 14 Cal. 4th 4, 22 (1996).

The Council has previously indicated its intent to stop using Retirement System earnings to pay benefits from "Surplus Undistributed Earnings," in favor of ensuring that all retirement benefits are actuarially accounted for. In 2008, the Council adopted San Diego Ordinance O-19781, ending the practice of using the Surplus Undistributed Earnings to pay the Annual Supplemental Benefit (13th Check). The express intent of O-19781, set forth in a recital, was to ensure that the Annual Supplemental Benefit would "be actuarially accounted for as a retirement system liability and accordingly be calculated in the City's Annual Required Contribution."

In keeping with the intent expressed in O-19781, if the Council wishes to continue payment of the Supplemental COLA benefit, the funding should come from the City rather than from crediting undistributed Retirement System earnings to the Reserve. If the Council desires to continue the Supplemental COLA beyond the depletion of the Supplemental COLA Reserve, it must adopt an ordinance amending SDMC section 24.1504. Otherwise, the benefit will expire when the funds are exhausted. The ordinance must address whether the benefit will be funded by the City or from Retirement System assets. If the benefit will be funded by the City, the ordinance must address whether the City will fund the benefit on a "pay as you go" basis (through direct City contributions to the Reserve), or through the City's Annual Required Contribution by defining the benefit as a retirement system liability.

It is this Office's view that such an ordinance would not require approval by a majority vote of the affected retirees under Charter section 143.1, because it would not affect a "vested defined benefit" of any retiree. As discussed earlier in this Memorandum, the eligible pre-1982 retirees do not currently have a vested right to the Supplemental COLA because they did not supply any consideration in exchange for the benefit. Since they would not provide any consideration for the extension of the benefit, it would remain unvested. Retirees do not have the right to vote on changes to benefits that are not vested.[37]

[37] Retirees were given the opportunity to vote on the benefit before it was enacted in 1999, possibly because all retirees could be affected by the crediting of $35 million of System earnings to the Supplemental COLA Reserve. Likewise, an argument could be made that retirees could be affected by recognizing the Supplemental COLA as a Retirement System liability. However, this still would not constitute a change in the "vested defined benefits" of any retirees under Charter section 143.1.

CONCLUSION

The retirees and survivors receiving the Supplemental COLA do not have a vested right to the continued payment of that benefit. The City therefore has no legal obligation to replenish the Supplemental COLA Reserve. Nonetheless, the City may voluntarily fund the benefit without triggering a vote of the public under Charter section 143.1 and without violating the California Constitution or Charter section 93. Before doing so, the Council must amend SDMC section 24.1504 by ordinance, specifying how the benefit will be funded and how long it will continue to be paid. The ordinance would not require approval by a majority vote of the affected retirees.

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ Roxanne Story Parks
Roxanne Story Parks
Deputy City Attorney

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