

MEMORANDUM OF LAW

DATE: May 16, 1988

TO: Doris Uzdavines, Employee Savings Plans
Administrator via Sam Gray, Employee Benefits
Manager

FROM: City Attorney

SUBJECT: Supplemental Pension Savings Plan - Spousal
Signature

You have asked this office if there is a statutory requirement for the spousal consent procedures described in the current Supplemental Pension Savings Plan (SPSP) documents, the proposed amendments to the Supplemental Pension Savings Plan documents and in the current provisions of The City of San Diego's 401(k) plan document.

The spousal signature requirement for participant withdrawals in excess of \$3,500 from certain tax qualified pension plans is the result of the amendments to 26 U.S.C. . 417 and 29 U.S.C. . 1055 contained in the Retirement Equity Act of 1984 (Public Law 98-397, 98 Stat. 1426). As we previously indicated to you see attached memorandum of law dated October 15, 1985, these amendments do not apply to governmental plans such as SPSP or The City of San Diego's 401(k) plan pursuant to 26 U.S.C. .. 401(a) (11)(D)(ii), 412(h)(3), 417(a)(1) and 1003.

The City of San Diego adopted the requirement for a spousal signature upon the advice of our tax consultants who believed that both the SPSP plan documents and the 401(k) plan document should be consistent with private sector plans. Our consultants believed at that time that congress would soon impose these requirements on governmental plans. Congress has not yet done this, therefore, at the present time the only legal requirement for a spousal consent signature for a withdrawal in excess of \$3,500 is that found in the particular plan document. If The City of San Diego desires to delete this requirement, it may do so by amending the appropriate plan document in accordance with the procedures for amending the plan found in the plan document. The City should also meet and confer with the appropriate

recognized employee organizations prior to amending any of these plans under these circumstances because it affects the conditions under which employees receive benefits.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

JMK:smm:357:(x043.2)

Attachment

ML-88-48