

MEMORANDUM OF LAW

DATE: September 4, 1992

TO: Jack McGrory, City Manager

FROM: City Attorney

SUBJECT: Impact of State's Budget on Salaries, Wages and Retirement Benefits of City Employees

As a result of the projected loss of revenue due to the State's budget crisis, you have asked this office to advise you on ways that the City Council could implement an agreement with employee organizations to decrease the amount spent on wages and salaries for City employees during this fiscal year and to provide ways of encouraging City employees to retire early.

It has been suggested that one method of reducing the salaries of City employees would be to have the employee organizations agree to amend the annual salary ordinance. Unfortunately, amending the salary ordinance midyear is not a simple matter. Section 70 of the Charter of The City of San Diego requires that the annual salary ordinance be adopted at the time of the preparation of the annual budget and that no increase or decrease in wages or salaries may be made during any fiscal year, except under certain narrow conditions. Those conditions were added to Charter section 70 in 1951 as a result of the severe impact post World War II inflation had on the ability of City employees to meet the extraordinary increase in the cost of living at that time. The 1951 amendment lists five (5) conditions, each of which must be met before the City Council may revise the salary ordinance midyear. Those conditions are: 1) there has been a significant change in living costs; 2) the salaries and wages fixed for the fiscal year are not comparable to the level of other salaries and wages of other public or private employments for comparable services; 3) the best interests of the City are not being protected or are in jeopardy; 4) the Manager or other department head has recommended the change; and 5) funds are available for such a revision.

Clearly, the 1951 amendments were designed to assist the City of San Diego in maintaining a work force during a period of rapid inflation. The amendments did not contemplate a midyear reduction in salaries because of a budget crisis, such as the one

facing the City of San Diego at this time. In fact, numerous legal issues would arise if the City reduced the statutory salary levels of City employees midyear. However, as it is clear that under the current circumstances the City Council lacks the authority to reduce salaries, we need not address those legal issues. We do note, however, that the only provision of the Charter which specifically addresses insufficient appropriations to meet salary requirements is the layoff provision of Charter section 129.

It is obvious that the City of San Diego desires to resolve this budget crisis without layoffs if at all possible. We believe that there are ways to reduce the cost of salaries and wages without layoffs and without the necessity of amending the salary ordinance. Nothing in the law prohibits the City of San Diego from meeting with the recognized employee organizations and developing a plan for the employees to reduce wages or salaries by temporary voluntary demotions or step decreases. In addition, the City of San Diego is free to negotiate with the recognized employee organizations over such concepts as reduced work hours or temporary changes of employee status from full-time to three-quarter-time or half-time.

In regards to providing early retirement incentives, we reiterate to you our previous advice that any early retirement incentive must comport with the age and service provisions of Charter section 141. In addition, any early retirement incentive which the City adopts must be consistent with the maximum limitation on benefit provisions of the Internal Revenue Code, and be ratified by the membership of the City Employees Retirement System.

JOHN W. WITT, City Attorney

By

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Assistant City Attorney

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