

## MEMORANDUM OF LAW

DATE: March 2, 1995

TO: Jack McGrory, City Manager

FROM: City Attorney

SUBJECT: Legislative Officers' Retirement Plan - Amendment to Vesting Requirements of San Diego Municipal Code Section 24.0545

We have received a memorandum from you requesting that we prepare a proposed amendment to San Diego Municipal Code ("SDMC") section 24.0545 which would change the definition of "years of service" to "completion of a full term." In addition, you have asked whether the change may be made as part of the annual appropriation ordinance.

We have difficulty with the language that you have proposed but have drafted an amendment that accomplishes the needed objective. Also, the change may not be made as part of the appropriation ordinance but must be processed under a separate ordinance amending the SDMC. A brief background and a proposed amendment to this provision follow.

### BACKGROUND

We previously outlined the background and law with respect to the vesting requirements of the Legislative Officers' Retirement Plan ("LORP") in a February 5, 1993, memorandum of law, which we reaffirm and attach for reference.

To summarize, the LORP unambiguously requires that a legislative member be employed with the City for a minimum of four years to qualify for retirement benefits. The potential need for an amendment to this vesting requirement arose with the passage of Proposition E on November 3, 1992.

Proposition E amended sections 10 and 12 of the San Diego City Charter ("Charter") to create Council district elections that will synchronize with California state elections by 1998. Specifically, Councilmembers in the primary and general election of 1993 for Districts 1, 3, 5 and 7 were chosen by the electors for a term of three years. In the primary and general election of 1995, Councilmembers for Districts 2, 4, 6 and 8 shall also be chosen by the electors for a term of three years. All Councilmembers elected after these dates will be chosen for a term of four years.

This Charter amendment has created a situation where new Councilmembers elected in either 1993 or 1995 may serve a term of three years and leave office without the four years of creditable service necessary to retire under the LORP. For this reason, we suggested in our previous memorandum of law that the Retirement Administrator explain

the possible consequences of the Charter change to the Retirement Board, City Auditor and the City Council. We further suggested that if a temporary or permanent change in the LORP vesting requirement is desired or suggested by an interested party, that change could be formally proposed to Council.

#### DISCUSSION

In light of the foregoing, you requested that an amendment addressing this matter be prepared. Specifically, you requested that the phrase "completion of a full term" be used instead of "years of service" for the vesting requirements of the LORP. Such a broad definition is of concern. This definition could lead to ambiguity in the future should the term lengths continue to change. In addition, this definition would not give the Retirement System certainty when determining the amount of future benefits for legislative members.

For the above reasons, we recommend the attached proposed amendment to the LORP. This amendment changes the vesting requirements for legislative members who took office for a term of three years between 1993 and 1995. Only those Councilmembers who were elected to serve a three year term will qualify for this change in vesting requirements. Therefore, this provision would only be in effect until 1998 when the terms return to four years.

In response to your question as to the use of an appropriations ordinance to implement this change, we remind you that the purpose of the annual appropriation ordinance is to adopt a budget during the month of July (see Charter section 71). The appropriation ordinance, and amendments to it, are not subject to referendum (see Charter sections 17 and 23). Changes in retirement benefits are accomplished by amending the SDMC sections concerning the Retirement System (see Chapter II, Article 4, Section 24.0100) by a separate ordinance, subject to referendum (see Charter sections 16 and 17).

Before proposing such an amendment to the LORP, the Retirement Administrator should consult the Retirement System's actuary to determine what effect a change in the vesting requirements would have on the legislative members' contribution rate. This information should be shared with the Councilmembers prior to any action being taken.

JOHN W. WITT, City Attorney

By

Jennifer K. Hooper

Deputy City Attorney

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Attachments

cc Lawrence B. Grissom

ML-95-15