

## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

**Date Issued:** November 9, 2006

**IBA Report Number:** 06-54

**City Council Agenda Date:** November 13, 2006

**Item Number:** 603 and 604

**Subject:** Amendments to San Diego Municipal Code to (1) Implement Benefit Eligibility Changes for Employees Hired and Elected Officials Assuming Office On or After July 1, 2005 and (2) Implement Requirements of California's Domestic Partner Rights and Responsibilities Act of 2003.

### OVERVIEW

Two ordinances are presented for consideration that would effect changes to the City's Municipal Code with respect to retirement benefits. One modifies the Municipal Code to reflect benefit adjustments for employees hired and elected officials assuming office on or after July 1, 2005, as agreed upon by the City and its labor unions (Item 603). The other modifies the Municipal Code to implement the requirements of the State of California's Domestic Partner Rights and Responsibilities Act of 2003 (Item 604).

### FISCAL/POLICY DISCUSSION

The IBA is very supportive of these ordinances being presented for City Council consideration at this time. As discussed in IBA Report 06-51, there are several Municipal Code changes, including these two, that have been pending for some time and should be prepared and approved at the earliest opportunity.

It is our understanding that the two ordinances are accurate, in which case we urge the City Council to approve. At the same time, there are two issues which we would bring to the Council's attention. The first is a provision of Charter section 143.1 that requires a vote of the retirement system membership to approve benefit changes prior to the adoption of any ordinance effecting that change. The Charter section is as follows:

#### **SECTION 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 system.

This Charter language raises the question of whether majority approval by SDCERS members is required prior to the adoption of the benefit change ordinance (Item 603) before the City Council. In discussions with the IBA, the City Attorney's Office has stated that this Charter section should not apply, since the benefit changes apply only to employees hired on or after July 1, 2005. Because the binding labor contracts were approved prior to that date, there were no members of SDCERS at that time that were affected and thus no vote is necessary. This position would appear to find the date of the labor contract, as opposed to the date of passage of this ordinance, to be the critical factor. However, since no formal advice has been issued, the IBA recommends that the City Council request the City Attorney's opinion on the matter. We further encourage the Council Members to explore and understand this issue to their satisfaction prior to approving the ordinance.

The second issue surrounds the approval of two benefit modifications in the FY 2006 labor contracts that are not included in the current ordinance for addition to the Municipal Code. As expressed in this ordinance, employees hired on or after July 1, 2005 are not eligible for the defined benefit retiree medical plan offered to employees hired previous to that date. However, the City and unions did agree that the City would establish a defined contribution plan for employees hired on or after July 1, 2005. Since this defined contribution plan has not yet been established, the IBA concurs that it is not appropriate for inclusion in the ordinance before the City Council today. Yet, we would remind the City Council that this issue is pending and that it is expected that this component would be brought before the Council at the appropriate time for inclusion in the Municipal Code.

The second benefit change not included in this ordinance is a change to the definition of health-eligible retirees who are under a reciprocity agreement for time served in another system. These employees, hired on or after July 1, 2005, must serve five years with the City to receive 50% of the retiree health benefit and 10 years to receive 100% of the retiree health benefit, regardless of the amount of time served in a reciprocal system. It is our understanding that this item is not included in the current ordinance because several of the labor unions have slightly different language in their respective MOUs for this provision. It is expected that this should be resolved expeditiously and that this item will be brought back for inclusion in the Municipal Code at that time.

With respect to Item 604, implementing the requirement of the Domestic Partner Rights and Responsibilities Act of 2003, we support the ordinance and find it to be accurate and comprehensive.

**CONCLUSION**

The IBA supports the approval of these two ordinances, following a comprehensive and satisfactory discussion of the requirements of Charter section 143.1.

**[SIGNED]**

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APPROVED: Andrea Tevlin  
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