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Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: April 9, 2007

TO: Mayor Jerry Sanders and Council President Scott Peters

FROM: City Attorney

SUBJECT: Response to Memorandum dated April 5, 2007

This office received a memorandum dated April 5, 2007 requesting a written legal analysis of the issues raised by SDCERS, Local 145 and the Independent Budget Analyst [IBA]. By way of a memorandum dated March 23, 2007, this office previously responded in writing to the issues raised by Local 145. With regard to the issues raised by the IBA, they were responded to both at Council Staff Docket Briefing as well as before Council at the first reading of the ordinance on March 5, 2007. Nonetheless and as redundant to those raised by SDCERS, they will be responded to herein.

Essentially, the concerns raised by both SDCERS and the IBA evolve around the belief that repeal of the "Waterfall" as presently codified in San Diego Municipal Code Section 24.1502 precludes SDCERS' ability to pay the annual supplemental benefit (13th check) and the *Corbett* benefit. Going further, SDCERS contends that repeal of Section 24.1502 would "result in the usurpation of the City's sole authority either to set, modify or rescind benefits." This office disagrees. The 13th check and *Corbett* benefits were created by contractual settlement agreements, not Municipal Code enactment. Whether, when and to whom these benefits have to be paid are thus governed by the terms of the settlement agreements that created these benefits. These agreements and their terms are binding on both the City and SDCERS, signatories to them. It is thus inaccurate to state that absent codification, SDCERS and the City have no duty to pay them, when and if due.

It is also inaccurate to state that the City has somehow abdicated its exclusive power to set benefits. The issue of repeal before Council is not an issue of setting benefits, but rather, finally, eliminating an improper funding vehicle for the payment of these benefits. The stated purpose of Section 24.1502 is to provide a funding vehicle for payment of these benefits. It is this

impropriety that is sought to be eliminated. Its elimination will not impact the duty to pay any benefits the City and SDCERS are otherwise legally obligated to pay.

SDCERS' contention that its tax-qualified status is somehow jeopardized in the event of repeal of the Waterfall is misplaced. SDCERS has been provided with and continues to have available to it the formulae for calculating both the 13th check and *Corbett* settlement benefits. Repeal of Section 24.1502 does not alter both the contractual and statutory bases for benefit payment. By Charter provision, contractual settlements and Municipal Code (13th check), SDCERS is provided with the necessary terms and conditions upon which these benefits are to be paid. It is this backdrop to which the comments of this office before Council as referred to by SDCERS, were made. They were not made as blithely stated by SDCERS "regardless of whether the plan describes how and when the benefit is to be made". As conceded by SDCERS, it is the City as the plan sponsor that provides for the benefits and SDCERS that administers the benefits. It is this office's position that by both operation of law and fact, the benefits have been provided and SDCERS must administer them in accordance with fiduciary and constitutional principles. SDCERS has the tools and enablement to pay the benefits when due. Repeal of the Waterfall as codified in Section 25.1502 does not eliminate this.

In addition to the foregoing, SDCERS stated concern as to lack of guidance of how the 13th check will be paid is belied by Section 24.1503, which sets forth the definition of the beneficiary class and formulae for determination of the amount of benefit. Furthermore, Section 24.1503(c) specifically authorizes SDCERS to promulgate rules and regulations to effectuate the benefit and intent of Section 24.1503. SDCERS is thus provided both with the existence of the benefit, the methodology in which to calculate it, and the beneficiary class to whom to pay it to.

MICHAEL J. AGUIRRE, City Attorney

By
City Attorney

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