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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** October 16, 2009

**IBA Report Number:** 09-81

**City Council Meeting Date:** October 20, 2009

**Item Number:** 331

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# San Diego City Employees' Retirement System Request to Amend San Diego Municipal Code Section 24.1102

## OVERVIEW

The San Diego City Employees' Retirement System (SDCERS) has requested amendments to the Municipal Code relating to general members' purchase allowances of pre-1981 Pension Plan service credits that are currently precluded by Section 24.1102. Additionally, Section 24.1102 contains language excluding former 1981 Plan general members from retiree healthcare benefits. SDCERS is requesting removal of such preclusions in its proposed amendments.

For the past 17 years SDCERS has granted purchase allowances and retiree healthcare benefits to affected members, in conflict with the Municipal Code preclusions. SDCERS purportedly relied on the City's related 1992 MOU's in granting such benefits. However, the MOU's terms were never codified, and 17 years later there is no plausible explanation for this, short of an oversight or error.

If the Municipal Code is not amended as requested, SDCERS has indicated it will "unwind" all of the purchase allowances that have been previously granted, which would have significant impacts on affected individuals - currently estimated to be approximately 150, per SDCERS. With respect to retiree health benefits, an estimate for the number of affected members is not currently available and could be substantially more.

The “Requested Action” for this agenda item is for the City Council to provide direction to the City Attorney. Further background information is contained in the October 5, 2009 Report to the City Council (#09-142) and additional supporting materials for Item 331 of the October 20, 2009 Council docket.

## FISCAL/POLICY DISCUSSION

In a June 17, 2009 letter to SDCERS, the City Attorney posed the following questions:

1. Is the public vote triggered under section 143.1(a), second sentence?
2. Was the membership vote dictate of section 143.1 satisfied in 1992? It appears from the voting materials supplied by SDCERS that there were individual labor organizations that voted, as opposed to the entire membership.
3. Do we need an actuarial calculation under California Government Code section 7507 and/or San Diego Charter section 143.1(b)?
4. Assuming section 143.1 has not been complied with, is there an estoppel or other equitable doctrine that can be relied upon to solve this problem?

In a written response to the City Attorney’s office, dated July 15, 2009, SDCERS’ General Counsel concludes in summary: a public vote is not triggered under Section 143.1(a); the membership vote dictate of section 143.1 was satisfied in 1992; an actuarial calculation under California Government Code section 7507 is not needed; and the doctrine of laches would uphold the 1992 vote should it be challenged.

Additionally, an August 20, 2009 Staff Report from the SDCERS Legal Division to their Business and Governance Committee addressed some of these issues. It states that neither an actuarial cost study nor a Charter Section 143.1 vote are necessary before enacting an ordinance amending San Diego Municipal Code section 24.1102 “because a vote of the membership did occur in 1992 and the proposed ordinance would neither change nor increase a retirement benefit but retroactively correct a mistake made by the City Attorney’s office when drafting the original ordinance in 1992.”

Despite the responses from SDCERS, the City Attorney believes these issues have not been satisfactorily resolved and additional legal review is required. We concur that additional legal analysis is needed before City Council is requested to take action on this matter.

The IBA also recommends that an actuarial cost study be conducted regarding these purchase allowances, irrespective of the legal matters, so that the City Council is fully informed as to the fiscal impact over the past 17 years, as well as for the future. Additionally, the cost for providing retiree health benefits to the affected members should be provided to Council.

The City Attorney has indicated that his office is ready to provide legal analysis. The IBA recommends that the City Attorney's questions are fully addressed before the Council makes recommendations regarding this item. Additionally, the IBA recommends that an analysis of any discrepancies among the related MOU's, preamble to O-17770, 1992 SDCERS membership voting materials and existing Municipal Code be provided to Council.

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