

## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

**Date Issued:** May 31, 2007

**IBA Report Number:** 07-59

**City Council Docket Date:** June 5, 2007

**Item Number:** 331

**Subject:** Amendments to the San Diego Municipal Code Eliminating the Surplus Undistributed Earnings (“Waterfall”) as Codified in San Diego Municipal Code Section 24.1502 and as Referred to in Sections 24.1501, 24.1503, 24.1504, and 24.1507, all relating to the City Employees’ Retirement System.

### OVERVIEW

This item is the second reading of the ordinance that will strike certain portions of the San Diego Municipal Code that, over the past two decades, have created unrecognized liabilities in the Retirement System and diverted assets from the SDCERS Trust Fund. The concept of Surplus Undistributed Earnings have been broadly disapproved of and appropriate revision of these Municipal Code sections will be consistent with provisions of the City Remediation Plan, California Constitution and Internal Revenue Code.

### FISCAL/POLICY DISCUSSION

The IBA has several concerns with this ordinance, which we raised in detail in IBA Report 07-26 (attached). Since we raised these concerns upon the first reading of the ordinance, we have endeavored to collaborate with various stakeholders to develop a modified ordinance that would address concerns while still achieving the appropriate repeal of the “Waterfall” and concept of Surplus Undistributed Earnings, as is supported by all parties.

Over the course of the past month, alternative Municipal Code language was developed that we believe adequately addresses the concerns that were raised by ourselves and other parties. That alternative Municipal Code language is attached for information purposes. The IBA worked closely with SDCERS to formulate language and presented drafts to the Mayor’s Office for review and comment as well. It is important to note that the City Attorney’s Office was requested to participate from the beginning as a key participant in this collaboration and we were optimistic about coming to a joint resolution. However the City Attorney ultimately rejected the proposal that was developed.

The IBA remains concerned about the potential impacts of the docketed ordinance as described in our original report. We believe alternative language can satisfy the objectives of this ordinance while avoiding potential negative ramifications and addressing the concerns that various stakeholders have raised throughout this process. Therefore, we recommend that the City Council not approve the docketed ordinance and seek to have more comprehensive language submitted for review and approval.

**CONCLUSION**

We strongly recommend that the City Council not approve this item as proposed and that the docketed ordinance be returned to the City Attorney. We suggest that the City Council direct the City Attorney to review and docket the alternative language within 30 business days in order to address the valid concerns raised by various stakeholders.

**[SIGNED]**

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Penni Takade  
Deputy Director

**[SIGNED]**

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APPROVED: Andrea Tevlin  
Independent Budget Analyst

Attachments:

1. IBA Report 07-26
2. Draft of alternative Municipal Code language