

**PENSION REFORM COMMITTEE  
MEETING OF  
Tuesday, November 4, 2003  
4:00 PM – 6:00 PM Meeting**

**401 B Street  
Conference Room, 4<sup>th</sup> Floor**

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**Minutes**

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**THE REGULAR MEETINGS OF THE PENSION REFORM COMMITTEE ARE  
SCHEDULED FOR EVERY TUESDAY AT 4:00 PM AT 401 B STREET, 4<sup>TH</sup> FLOOR**

**Item 1: Call to Order**

The meeting was called to order at 4:05 PM.

**Item 2: Roll Call**

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff Present</u>
April Boling	Richard Vortmann	Patricia Frazier
Steve Austin	Kathleen Walsh-Rotto	Chris Morris
Robert Butterfield		Mary Braunwarth
Tim Considine		Larry Grissom
Stanley Elmore		Dennis Gibson
Judie Italiano		Paul Barnett
William Sheffler		Pam Holmberg

**Item 3: Approval of Minutes**

There was a motion to approve the minutes of the October 21, 2003 Committee meeting by Mr. Elmore. The motion was seconded by Mr. Butterfield. It was unanimously approved.

**Item 4: Laws and Regulations Relating to City Employee Benefits and  
Collective Bargaining**

A presentation on the Meet & Confer Process Regulations was given by Chris Morris from the City Attorney's office. The presentation is attached. Mr. Morris answered questions from the Committee.

Lori Chapin, General Counsel to San Diego City Employees Retirement System (SDCERS), gave a presentation and answered questions about the SDCERS plan. Her presentation included an overview of the plan, the amendment process and significant City Charter and Municipal Code amendments. The outline of the presentation is attached.

Mr. Austin indicated it would be helpful to have an analysis back to 1985 showing the impact of at least the major plan amendments on the funded status of the plan. Mr. Grissom, Retirement Administrator of SDCERS, cautioned that many variables such as market condition, current dollar values and number of retirees will not be reflected in a basic report on the impact of these changes. He also stated that for an analysis to include all the variables would take six months and cost approximately \$40,000. Mr. Grissom said he could provide copies of the Annual Actuarial Valuations done by the current actuarial firm since the mid-1990s. After discussion, it was decided that in lieu of performing any analysis at this time, copies of the annual actuarial reports from the current actuary would be sent to the Committee for their review. It was felt that the Committee could get a sense of direction and the impact of plan amendments from the analysis provided in the annual actuary reports. The reports will be sent out to the Committee members in the next week.

**Item 8: Non-Agenda Public Comment**

Jim Gleason, a retired City employee, expressed his concerns about SDCERS. His concerns included the following: 1) Funding for retirement benefits has not gone along with the benefits; 2) Retirees are not party to the meet and confer process – some of the benefits for retirees are dependent on earnings of the system; and 3) Retirees vote only when there is a vested benefit that could be in jeopardy.

**Item 5: Discussion and Possible Guidance or Action Regarding Upcoming Presentations related to the Retirement System Overview**

Ms. Boling outlined the agenda items for upcoming meetings. The meeting of November 11 is cancelled because of the Veterans Day holiday. Rick Roeder, SDCERS' Actuary, will give a presentation on SDCERS actuarial value on November 18. There will be no staff presentations on November 25 so the Committee can develop a work plan and schedule, and the Committee can also discuss the status report due back to City Council on January 22. Ms. Boling added that the completed audited financial statements should also be available by that time with information on SDCERS' new deferred liability. These statements will allow the committee to provide input in the report to City Council on the sufficiency of the City's funding level. On December 2, Larry Grissom will finish the actuarial presentation and explain the process of distributing surplus earnings (the waterfall.) On December 9, Bruce Herring, Deputy City Manager, will provide an overview of the collective bargaining process. The Risk Management Department will give a presentation on the City's 401K, SPSP, and Deferred Compensation plans on December 16. Time did not allow for a presentation on Post-Retirement Vested Benefits today. It will be rescheduled to a meeting in December. The schedule may be reviewed and revised in the future.

Ms. Boling asked the Committee if any other presentations were needed at this time. No additional presentations were requested.

**Item 6: Comments by Committee Chairperson**

Ms. Boling reported that due to the length of the October Retirement Board meeting, the Board did not consider the Audit Committee's recommendation for the selection of an auditing firm to

complete the Actuarial, Best Practices, and Investment Operations audits. They expect to consider them at the November meeting. Once the contract has been awarded, the audits should take five to six months to complete.

Ms. Boling asked when the annual Financial Statement audit would be ready. Larry Grissom reported that the audit should be completed by the end of November or early December. The Actuarial Report for June 2003 is expected the end of December or early January.

**Item 7:       Comments by Committee Members**

None

**Item 9:       Adjournment**

**Adjourned at 6:10 PM**

**There will not be a meeting on Tuesday, November 11 due to the Veterans Day holiday. The next meeting will be on Tuesday, November 18 at 4:00 PM at the same location**



# Outline of Presentation

- I. Overview of SDCERS Plan
- II. Overview of Amendment Process
- III. Significant City Charter Amendments
- IV. Significant Municipal Code Amendments
- V. Issues
- VI. Questions



## Overview of SDCERS Plan

- State Constitution - Article 16 § 17
- Article 9 §§ 141-149
- City Charter - Article 10 § 1
- Municipal Code - §§ 24.0100-24.1809



## Overview of SDCERS Plan

### State Constitution – Article 16 § 17

- Public Retirement Boards have sole and exclusive fiduciary responsibility over the assets of a public retirement system
- 3 Primary duties
  - Prompt delivery of benefits
  - Defray reasonable expenses
  - Minimize employer contributions



## Overview of SDCERS Plan

City Charter - Article 9 § 141-149

§ 141 - Vesting

§ 143 - Contributions

§ 144 - Board of Duties and Responsibilities

§ 145 - Retirement Trust fund

§ 149 - Contracting Public Agencies

City Charter - Article 10 § 1

Consolidated Police and Fire Plans merged into  
SDCERS



## Overview of SDCERS Plan

Municipal Code - § 24.0100-24.1809

- 04 Service
- 05 Disability
- 09 Board Duties
- 12 Health
- 13 PSC
- 14 DROP (Deferred Retirement Option Plan)
- 17 EORP (Elected Officers Retirement Plan)
- 18 Contracting Public Agencies



## Overview of Amendment Process

- State Constitution – Statewide Election
- City Charter – Citywide Election
- Municipal Code – Member Election and Meet and Confer



## Significant City Charter Amendments

- 1951: Board increased from 7 to 9 members to add City Manager and 1 citizen/appointee
- 1955: Board increased from 9 to 11 members to add 1 police and 1 fire
- 1960: Investment vehicles expanded
- 1970: Life Insurance official position replaced with 1 more citizen/appointee
- 1974: Board increased from 11 to 13 with 1 retiree and 1 more citizen/appointee



## Significant City Charter Amendments

- 1991: Retiree vote added and mandatory retirement age removed
- 1995: Continuous service replaced with “service for which payments made”
- 1997: Health Insurance Benefits added
- 2002: Contracting Public Agencies added



## Significant Municipal Code Amendments The 70's

### 1971

- Annual COLA of up to 1½%
- Disability retirement for GM raised from 25% to 33 1/3%
- LORP added
- Disability income offset

### 1972

- Full Formula for GM at age 57 ½ instead of age 60
- Full Formula for SM at age 50 instead of age 55



## Significant Municipal Code Amendments The 70's

### 1973

- Automatic 50% surviving spouse continuance added

### 1974

- Annual filing of disability affidavits
- Minimum pension of GM retirees w/20 or more years of service increased to \$150 per month

### 1977

- Quorum for Board meetings set at 9 members



## Significant Municipal Code Amendments The 70's

### 1978

- Limitations for outside income
- Workers Compensation offset
- Disability Income Reporting requirements

### 1979

- Mandatory retirement age increased to 70
- Sex based contribution rates ruled unconstitutional



## Significant Municipal Code Amendments The 80's

### 1980

- Creation of the 13<sup>th</sup> check

### 1981

- The 1981 Pension Plan established
- Death benefits added to the 1981 Pension Plan for GM and SM

### 1982

- City withdrew from Social Security
- City-sponsored group health insurance benefit added



## Significant Municipal Code Amendments The 80's

### 1985

- \$30 cap for each year of creditable service for 13<sup>th</sup> check
- SM now eligible prospectively for City health insurance benefit
- Industrial disability retirements added to 1981 Plan for SM

### 1986

- Andrews settlement on 13<sup>th</sup> check litigation
- Eligibility for City's health insurance benefit rolled back to 10/6/80



## Significant Municipal Code Amendments The 80's

### 1987

- SDCERS benefits granted to all police and fire SM from and after January 1, 1988
- Final Comp high one year, not average 3 years
- Workers Compensation offset eliminated
- SDCERS benefits were granted to GM from and after July 1, 1989, with the exception of participation in the City's health insurance program



## Significant Municipal Code Amendments The 90's

### 1990

- Upgrade of benefits for SM enrolled in the 1981 Pension Plan between 9/3/82 and 12/31/87

### 1992

- Mandatory membership for Classified GM and Unclassified SM on and after July 1, 1991
- Hourly purchase of service credit permitted



## Significant Municipal Code Amendments The 90's

### 1992

- Retirement Calculation factors increased for SM
- Health insurance on a sliding scale for GM
- COLA increased from 1.5% to 2.0%
- System's actuarial funding methodology changed from EAN to PUC
- New 30 year Amortization schedule starts 7/1/91
- 1981 Pension Plan service upgraded to SDCERS equivalent for benefit calculation only



## Significant Municipal Code Amendments The 90's

1992

- IRC 414(h)(2) “pickup” for employee contributions
- Early Retirement Incentive Program (ERIP)
- Reciprocity with CalPERS



## Significant Municipal Code Amendments The 90's

### 1993

- Pre-existing conditions clarified
- Fire Retirement Calculation Factors increased
- Mandatory membership for Unclassified employees effective August 11, 1993
- PSC payment options expanded to include direct transfers from City tax qualified DC plans
- 1 year PSC purchase requirement removed



## Significant Municipal Code Amendments The 90's

### 1995

- Retiree Death Benefit increased from \$400 to \$2000
- IRC 401(a)(17) compensation limits adopted
- Changes made to LORP for term limits (3 and 7 year terms for 1993 and 1995 elections)

### 1996

- For FY 97 only, 13<sup>th</sup> check for retirees who retired between 1/1/72 and 10/6/80 increased to \$60 per year
- For FY 97 only, 13<sup>th</sup> check for retirees who retired on or before 12/31/71 increased to \$75 per year



## Significant Municipal Code Amendments The 90's

### 1997 (Manager's Proposal I)

- Presidential Leave added
- Retirement Calculation Factors changed from 2% at 55 for GM to 2.55% at 65. Fire changed from 2.2% at 50 to 2.77% at 55. Police changed from 2.5% at 50 to 2.99% at 55
- A 90% cap of Final Compensation established for SM



## Significant Municipal Code Amendments The 90's

### 1997 (Manager's Proposal I)

- The increases to the 13<sup>th</sup> Check for those employees who retired before 1980 made permanent if there are sufficient surplus undistributed earnings (SUE)
- Industrial Disability Retirement benefit for GM increased from 33 1/3% to 50%
- Disability Retirement Reporting requirement eliminated



## Significant Municipal Code Amendments The 90's

### 1997 (Manager's Proposal I)

- The requirement that a surviving spouse must be married to the member one year prior to retirement in order to received the automatic 50% continuance eliminated
- Remarriage penalty for special death benefit removed
- A \$600 health benefit for non Health Eligible Retirees



## Significant Municipal Code Amendments The 90's

### 1997 (Manager's Proposal I)

- Exemption from process and a prohibition against assignment added
- A requirement that probationary time could only be purchased at time of retirement eliminated
- Vested members allowed to purchase part time and hourly. Not available for periods of employment after 1/1/97



# Significant Municipal Code Amendments The 90's

## 1997 (Manager's Proposal I)

- Purchase of service credit upon reinstatement not available to any employee hired or reinstated after 1/1/97
- Requirement that the most recent service is to be purchased first eliminated
- Continued health coverage established for any surviving spouse eligible for death benefits in accordance with the Labor Code



# Significant Municipal Code Amendments The 90's

## 1997 (Manager's Proposal I)

- Changes to types of leaves of absence approved for purchase

## 1999

- Employee Contribution Rate Reserve created
- Supplemental COLA added



# Significant Municipal Code Amendments The 2000's

## 2000

- Continued health coverage under City's flex plan extended to surviving spouses and dependent children of Members killed in the line of duty
- Quorum for Board changed from 9 to 7 members



## Significant Municipal Code Amendments The 2000's

### 2000

- Corbett Settlement
  - Retirees received one time lump sum payment in 11/2000 representing a 7% increase to Base Retirement Benefit retroactive to 7/1/95
  - Effective 7/7/00 the right to receive the 7% increase to Base Retirement Benefit is contingent on availability of SUE. If no SUE, liability carried forward to next year



## Significant Municipal Code Amendments The 2000's

### 2000

- Corbett Settlement
  - Active GM, SM, and LO received choice of increase in Retirement Calculation Factor with no change in Final Compensation OR 10% increase in Final Compensation with old Retirement Calculation Factors (6/30/00)



## Significant Municipal Code Amendments The 2000's

### 2000

- Corbett Settlement
  - Employee Contribution rates increased
  - DROP participants received one time lump sum payment in 11/00 to DROP account representing 7% increase to Base Retirement Benefit and effective 7/1/00 a 10% increase to Base Retirement Benefit



## Significant Municipal Code Amendments The 2000's

### 2000

- Eligibility for Supplemental COLA expanded to include those who retired on Disability Retirement with less than 10 years
- Industrial Disability Retirement expanded on 2-year trial basis to cover mental disorders for victims of violent attack involving use of deadly force



## Significant Municipal Code Amendments The 2000's

### 2000

- Health Insurance benefit expanded to permit reimbursement for retirees out of area up to the cost of the retiree-only premium for the City sponsored PPO
- Age to receive LORP benefits reduced from 60 to 55
- LORP Retirement Calculation factor changed from 3% (after \$500) to 3.5% for each year of Creditable Service
- Supplemental COLA expanded to include disability retirees with less than 10 years of service



## Significant Municipal Code Amendments The 2000's

### 2001

- Preservation of Benefits plan created
- Reimbursement amount for Non Health Eligible retirees increased from \$600 to \$1200
- Elected position of City Attorney added to LORP and LORP renamed to EORP
- EORP improvements extended to all former legislative officers
- DROP distribution options expanded



## Significant Municipal Code Amendments The 2000's

### 2002 (Manager's Proposal II)

- Presidential Leave compensation modifications
- GM Retirement Calculation Factor increased from 2.25% to 2.5% at 55
- 90% cap for GM Retirement Benefits
- Employee Contribution Rate Reserve used to pay increases to Employee Contribution Rates



## Significant Municipal Code Amendments The 2000's

### 2002 (Manager's Proposal II)

- Creation of 115 Trust authorized for future health insurance payments
- Reimbursement levels for Health Insurance Benefit increased



## Significant Municipal Code Amendments The 2000's

### 2002 (Manager's Proposal II)

- For Firefighters covered by Local 145 only, the ability to convert Annual Leave accrued after 7/1/02 to Creditable Service or to extend DROP
- Sunset for Industrial Disability Retirement for Mental Disability due to violent attack at work extended to 7/1/05



## Significant Municipal Code Amendments The 2000's

### 2003

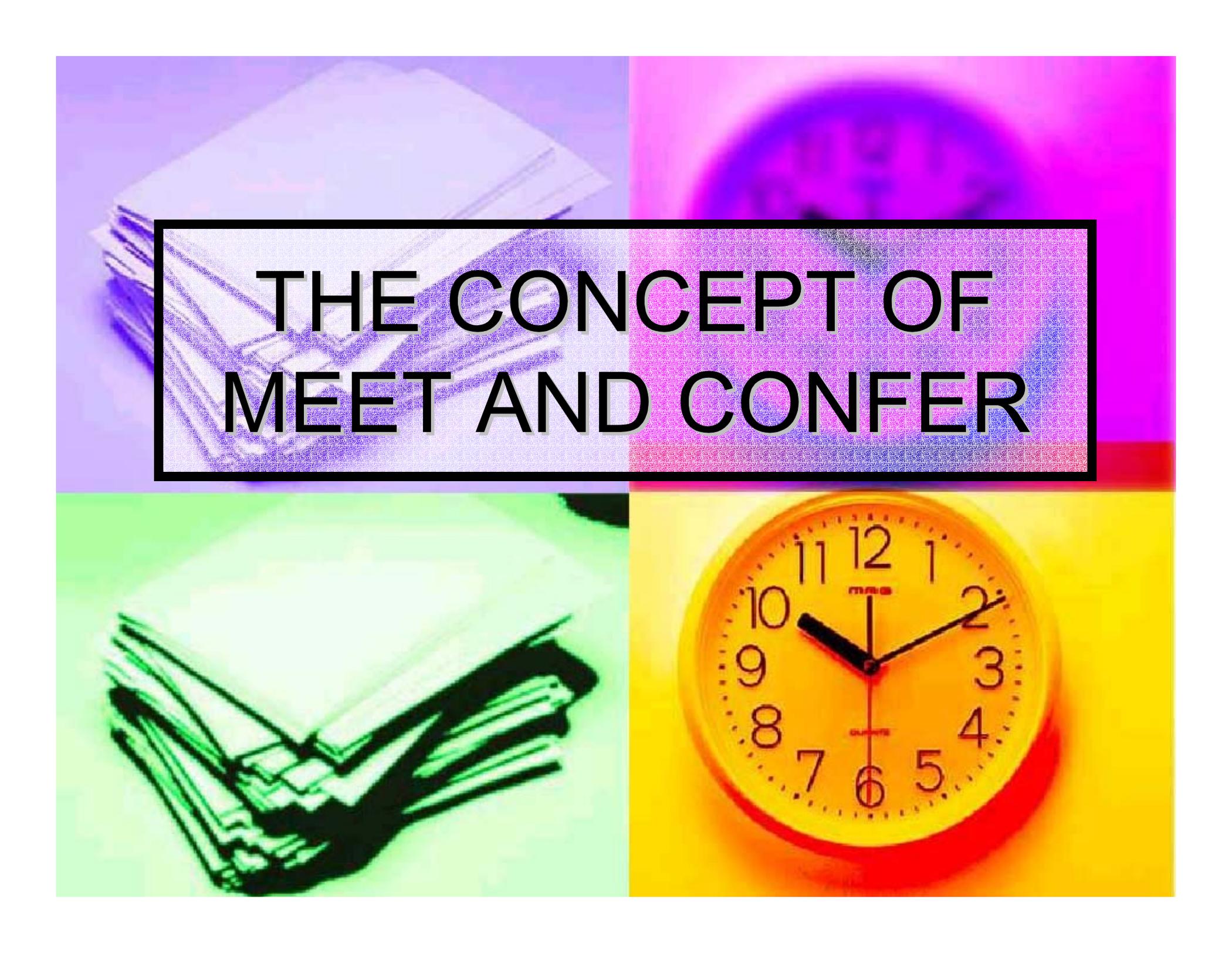
- Division 18 regarding the participation of other public agencies in SDCERS
- Definition of Safety Member expanded to include Police Recruits from Day 1 in the Police Training Academy
- Prohibition against using 5-year PSC towards vesting removed



## Issues

- Elections
- Board Composition
- Disability Process
- Plan Design





# THE CONCEPT OF MEET AND CONFER

- The *Meyers-Milias-Brown Act* (“MMBA”), found in Government Code sections 3500 through 3511, sets forth statutory provisions which govern local government employee-employer bargaining relations. The purpose of the MMBA is to “promote full communication between public employers and their employees by providing a reasonable method of resolving disputes” regarding employment matters. Cal. Gov. Code § 3500.

- To meet these goals, public agencies are required to "'meet and confer' [in good faith] with employee organizations before the agencies change ordinances, rules or regulations affecting matters 'within the scope of representation. . . .'" *San Francisco Fire Fighters Local 798 v. Board of Supervisors*, 3 Cal. App. 4th 1482, 1490 (1992) (citations omitted).

- “Meet and confer in good faith” means the agency and union shall personally meet and “exchange freely information, opinions, and proposals, and to endeavor to reach an agreement on matters within the scope of representation . . . .” Cal. Gov. Code § 3505.

"Good faith" was reviewed in *Placentia Fire Fighters v. City of Placentia*, 57 Cal. App. 3d 9, 26-27 (1976). The court in *Placentia* stated:

The question of good faith is primarily a factual determination based on the totality of the circumstances . . . .

In general, good faith is a subjective attitude and requires a genuine desire to reach agreement. The parties must make a serious attempt to resolve differences and reach a common ground. The effort required is inconsistent with a "predetermined resolve not to budge from an initial position."

(Citations omitted.)

## “Scope of representations” includes:

[a]ll matters relating to employment conditions and employer-employee relations, including but not limited to, wages, hours, *and other terms and conditions of employment*, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

Cal. Gov. Code § 3504 (emphasis added). Thus, any matter within the terms and conditions of employment is subject to meet and confer, with some exceptions.

# EXCEPTIONS TO MEET AND CONFER

- For a matter to be outside the scope of representation, thus not subject to meet and confer, it must fit the exception provided in Section 3504 (“the merits, necessity, or organization of any service or activity provided by law or executive order”). This exception has been termed a “general managerial policy decision.” *Fire Fighters Union v. City of Vallejo*, 12 Cal. 3d 608, 616 (1974); *see also, San Jose Peace Officer's Assn. v. City of San Jose*, 78 Cal. App. 3d 935, 948 (1978).

Examples found to be “general managerial policy decisions”:

- -- Change in use of force policy
- -- Changes in certain procedures

BUT . . .

- Other changes in procedures found to be within scope of representation and not managerial policies:
  - -- Changes that affected the way employees might be disciplined
  - -- Changes that affected the way employees might be evaluated

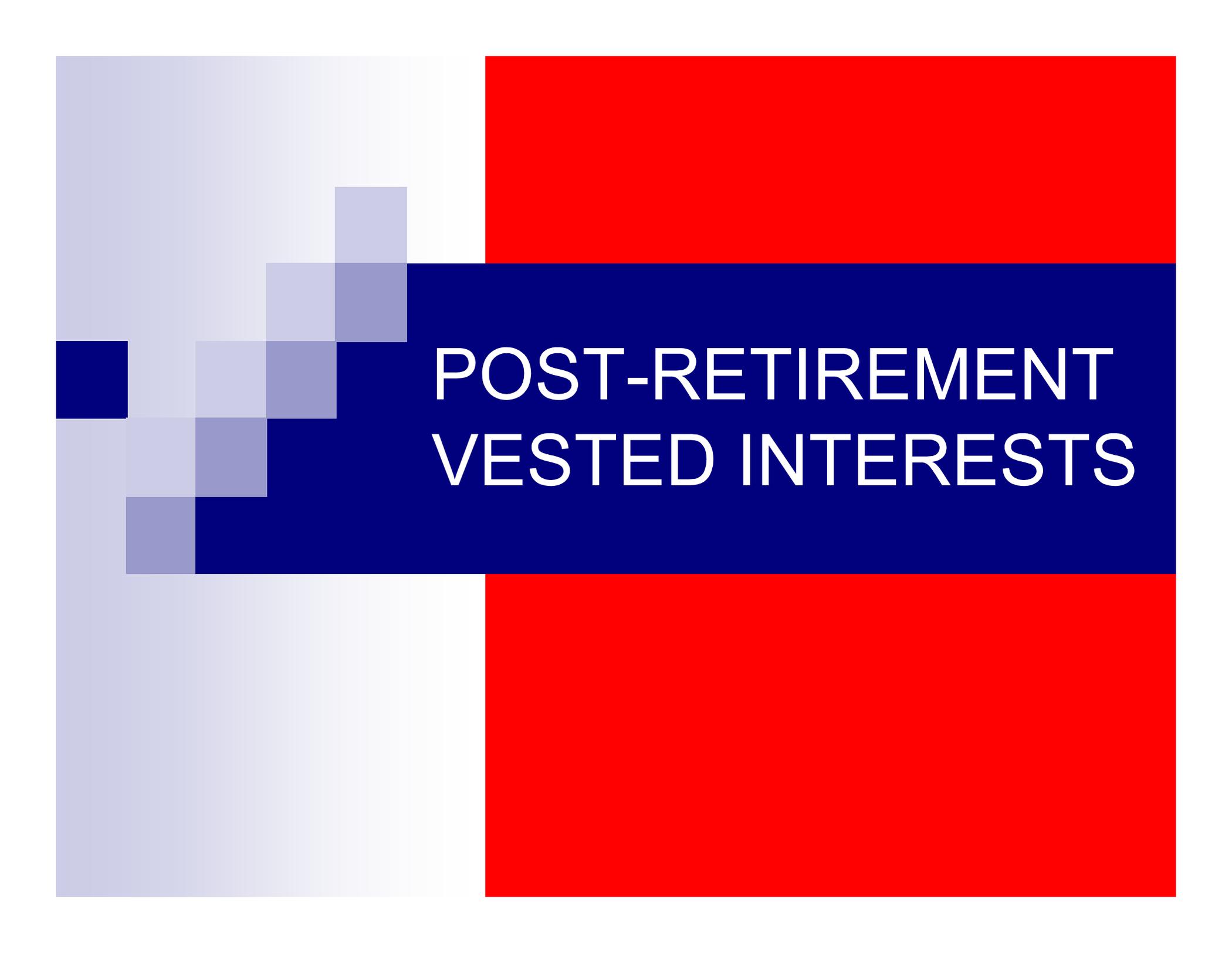
**IMPASSE REACHED**

- If the union and the City reach an impasse in negotiations, the City can impose its last, best and final offer *after ALL* impasse procedures have been exhausted. However, the offer unilaterally imposed is not considered an agreement. Cal. Gov. Code § 3505.4.

- Section 3505 states that the meet and confer process should include sufficient time “for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.” City Council Policy 300-6 includes general impasse procedures.

**REMEDIES AVAILABLE TO  
THE UNION IF LAST, BEST  
AND FINAL OFFER  
UNILATERALLY IMPOSED**

- All unions the City negotiates with can file a petition for writ of mandate with the Superior Court to get the imposition overturned.
- Most of the unions can file a complaint for unfair practices with the California Public Employees Relations Board (POA excepted per Cal. Gov. Code § 3511).



# POST-RETIREMENT VESTED INTERESTS

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- May a City modify or terminate the post-retirement health benefits offered to new hires without impinging vested rights?

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- Yes. New hires have no vested interest in any aspect of their employment before they actually become employees.

- 
- May a City modify or terminate the post-retirement health benefits of current represented employees without impinging vested rights?

- Maybe. Recent legal authority indicates that because City employees have no vested interest, the City may change retiree health benefits, on a going forward basis, of current employees through the meet and confer process (older contrary authority does exist).

- May the City terminate the health benefits of current retirees without impinging vested rights?

- 
- No—unless the right to do so is in an MOU or other controlling document in effect at the time of retirement.