

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: January 14, 2008
TO: Honorable Mayor Jerry Sanders and Council Members
FROM: City Attorney
SUBJECT: "Cashless Leave" Conversion-SDMC sections 24.1310(c) and 24.1402(b)(8)

On or about December 20, 2007, the Internal Revenue Service [IRS] released its Statement of Compliance relating to the San Diego City Employees' Retirement System [SDCERS]. This Statement of Compliance delineated various SDCERS system violations of the Internal Revenue Code, which must be corrected in order for the plan to maintain its tax qualified status under Internal Revenue Code section 401(a).

One of the violations found by the IRS was the City Council's granting, on November 18, 2002, members represented by Fire Fighters Local 145 "the ability to convert Annual Leave accrued after July 1, 2002, to service credit in SDCERS or extend their participation in the System's Deferred Retirement Option Plan ("DROP")." The IRS has concluded that this arrangement violated the Internal Revenue Code as the ability to convert "cashless" leave to retirement or DROP credit was "an impermissible cash or deferred arrangement in violation of the Code section 401(a)".

The City Council, having created this impermissible allowance on November 18, 2002, must now take immediate steps to rescind the program. Therefore, accompanying this memorandum is a 1472 repealing to the date of enactment those portions of the San Diego Municipal Code that provides for this impermissible benefit.

Under the terms of the Compliance Statement, the City was given 150 days of December 21, 2007 to take the necessary action in order to cure the offending provisions/practices relative to the retirement plan. Accordingly it is critical for the City Council to act now as a first step toward ensuring that the retirement plan maintain its qualified tax status.

Hon. Mayor and Council Members
January 14, 2008
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MICHAEL J. AGUIRRE

A handwritten signature in black ink, appearing to read 'MJA', with a stylized flourish extending to the right.

City Attorney

MJA:amt

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):
CITY ATTORNEY

3. DATE:
JANUARY 14, 2008

SUBJECT:

ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 2, ARTICLE 4, DIVISIONS 13 AND 14, REPEALING EXISTING SECTION 24.1310(c) AND A PART OF EXISTING SECTION 24.1402(b)(8) OF THE SAN DIEGO MUNICIPAL CODE, RELATING TO "CASHLESS LEAVE" CONVERSION TO RETIREMENT SYSTEM CREDITABLE SERVICE.

4. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

WILLIAM GERSTEN X35876 MS59

ALINA TAYLOR X36593 MS59

8. COMPLETE FOR ACCOUNTING PURPOSES

ID					9. ADDITIONAL INFORMATION / ESTIMATED COST:
T.					
ORGANIZATION					
BUDGET ACCOUNT					
ORDER					
PROJECT NUMBER					
BUDGET UNIT					

10. ROUTING AND APPROVALS

ROUTE #	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
	ORIG. DEPT	<i>Michael J. Aguirre</i>	1/14/08	8	DEPUTY CHIEF		
				9	COO		
				10	CITY ATTORNEY	<i>Michael J. Aguirre</i>	1/14/08
	CFO			11	ORIG. DEPT		
				DOCKET COORD: _____ COUNCIL LIAISON _____			
				<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: _____			

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 2, ARTICLE 4, DIVISIONS 13 AND 14, BY REPEALING EXISTING SECTION 24.1310(c) AND A PART OF EXISTING SECTION 24.1402(b)(8) OF THE SAN DIEGO MUNICIPAL CODE, TO ELIMINATE "CASHLESS LEAVE" CONVERSION TO RETIREMENT SYSTEM CREDITABLE SERVICE BY LOCAL SAN DIEGO FIREFIGHTERS LOCAL 145 MEMBERS.

11A. STAFF RECOMMENDATIONS:

ADOPT AMENDMENTS TO THE SAN DIEGO MUNICIPAL CODE TO REFLECT BENEFIT LIMITATIONS FOR EMPLOYEES HIRED ON OR AFTER JULY 1, 2005, IN ACCORDANCE WITH THE 2005 CTIVE BARGAINING AGREEMENTS REACHED WITH FOUR OUT OF THE FIVE EMPLOYEE UNIONS AND SIMILARLY IMPOSED ON THE SAN DIEGO POLICE OFFICERS' ASSOCIATION

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): ALL

COMMUNITY AREA(S): ALL

ENVIRONMENTAL IMPACT: THIS ACTION IS NOT A "PROJECT" FOR PURPOSES OF CEQA

HOUSING IMPACT: N/A

OTHER ISSUES:

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 4,
DIVISIONS 13 AND 14 BY REPEALING EXISTING SECTION
24.1310(c) AND A PART OF EXISTING SECTION
24.1402(b)(8) OF THE SAN DIEGO MUNICIPAL CODE,
REPEALING TO "CASHLESS LEAVE" CONVERSION TO
RETIREMENT SYSTEM CREDITABLE SERVICE.

WHEREAS, on or about December 20, 2007, the Internal Revenue Service [IRS] released, and SDCERS accepted, its Voluntary Correction Program Statement of Compliance relating to the San Diego City Employees' Retirement System [SDCERS]; and

WHEREAS, this Compliance Statement delineated various SDCERS violations of the Internal Revenue Code, which must be corrected in order for the plan to maintain its tax qualified status; and

WHEREAS, one of the violations found by the IRS was the City Council's granting, on November 18, 2002, members represented by Fire Fighters Local 145 "the ability to convert Annual Leave accrued after July 1, 2002, to service credit in SDCERS or extend their participation in the System's Deferred Retirement Option Plan ("DROP")."; and

WHEREAS, the IRS has concluded that this arrangement violated the Internal Revenue Code as the ability to convert "cashless" leave to retirement or DROP credit was "an impermissible cash or deferred arrangement in violation of Code section 401(a)"; and

WHEREAS, the City Council, having created this impermissible allowance on November 18, 2002, must now take the steps needed to rescind same by amending Chapter 2, Article 4,

Divisions 13 and 14, by repealing existing Section 24.1310(c) and a part of existing Section 24.1402(b)(8) of the San Diego Municipal Code; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 4, Division 13, Section 24.1310 of the San Diego Municipal Code is amended by repealing subsection (c), to read as follows:

§24.1310 Purchase of Service Credit Payment Options

- (a) To purchase Creditable Service, a Member must elect to pay and thereafter pay, in accordance with such election before retirement, into the Retirement Fund an amount, including interest, determined by the Board. No Member will receive Creditable Service under this Division for any service for which payment has not been completed pursuant to this Division before the effective date of the Member's retirement.
- (b) Subject to any limitations imposed by the Internal Revenue Code, such payments under section 24.1310(a) may be made by lump sum, installment payments, direct transfer to the Retirement System from any defined contribution plan maintained by the City of San Diego, or in such manner and at such time as the Board may by rule prescribe. Any sums paid by a Member under section 24.1310 are considered to be and administered as Member contributions.

Section 2. That Chapter 2, Article 4, Division 14, Section 24.1402 of the San Diego Municipal Code is amended, to read as follows:

§24.1402 Eligibility, Duration of DROP Participation, and Waiver

- (a) [No change in text.]
- (b) Before a Member may participate in DROP, he or she must voluntarily and irrevocably:
 - (1) – (7) [No change in text.]
 - (8) agree to leave City employment on or before the end of the Member's designated DROP participation period;
 - (9) [No change in text.]

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney



By

Michael J. Aguirre
City Attorney

MJA:wjg
01/14/08
Or.Dept:CityAtty
O-2008-88

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor