10 VIOLATIONS OF LAW THAT NEED TO BE CORRECTED TO SAVE CITY EMPLOYEES' TROUBLED PENSION PLAN

San Diego City Attorney Michael Aguirre, January 22, 2008

1. Employees are permitted to receive both their salary and pension benefits for five years after retirement age, even though it is not cost-neutral as required by law.[1]
   Solution: Obey the law. Require program to be operated at cost-neutrality.

2. Employees were allowed to buy pension years below cost rather than work for pension years. The law requires employees to pay the full cost for pension years they bought.[2]
   Solution: Obey the law. Reduce pension years purchased to actual value.

3. Employees are allowed to use pension years they bought to satisfy the rule that requires 10 years of actual service to the City to get a pension.[3]
   Solution: Obey the law. Require employees to work 10 years as mandated by the City Charter.

4. Elected officials are permitted to buy more pension credits than permitted under term limit law.[4]
   Solution: Obey the law. Immediately rescind the pension years bought by elected officials.

5. Employees can use pension years they purchased to retire at age 55 rather than 62.[5]
   Solution: Obey the law. Require employees to work 20 years in order to retire at age 55 as mandated by the City Charter.

6. Employees who act as their union's presidents are able to combine their union salary with their City salary, and factor in their years of union service to increase their retirement benefits in violation of the Internal Revenue Code.
   Solution: Obey the law. Pay retirement benefits based only on an employee's City salary and years of service.[6]

7. Firefighters are allowed to convert their unused vacation time to pension service credits to increase their pension benefits in violation of the Internal Revenue Code.[7]
   Solution: Obey the law. Use only an employee's actual service time and cost-neutral purchased service credits to determine their pension benefits.

8. The City is using a 20-year or longer period to amortize the pension debt.[8]
   Solution: Obey the law. Enforce the City Charter section requiring pension debt be paid off in 15 years.

9. Retirement System is paying benefits above IRS limits.
   Solution: Obey the law. Require Vote of the People before paying benefits above IRS limits.

10. Retirement System using outside attorney as General Counsel.
    Solution: Obey the law. Elected City Attorney is the Chief Legal Advisor to the San Diego City Employees' Retirement System as mandated by the City Charter.

[1] This benefit is known as DROP and under Municipal Code § 24.1401(b): "DROP is intended to be cost neutral." Enforcing the law would save taxpayers $200-$400 million.

[2] 23 July 1996 City Manager's Retirement Proposal memo: "Employees would pay into the retirement fund an amount, including interest, equivalent to the employee and employer full cost of such service." Cost savings is $146 million savings.

[3] The City Council's minutes provide the: "action will remove the prohibition and allow the purchase of creditable service to apply towards the ten year vesting requirement."18 November 2002 Minutes San Diego City Council pp 9-10.

[4] Charter § 12(f): "no person shall serve more than two consecutive four-year terms as a Council member from any particular district."

[5] Charter § 141 "No employee shall be retired before reaching the age of 62 years and before competing 10 years of service for which payment has been made, except such employees may be given the option to retire at the age of 55 years after 20 years of service for which payment has been made with a proportionally reduced allowance."

[6] 20 December 2007 Internal Revenue Service Voluntary Correction Program Compliance Statement provided that: the terms of the City pension plan that provided special retirement benefits to past and current union presidents of the three of the City's unions "were not permitted by the (Internal Revenue) Code."

[7] 20 December 2007 Internal Revenue Service Voluntary Correction Program Compliance Statement provided that "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)" was an "impressible cash or deferred arrangement in violation of Code section 401(a)."

[8] Charter § 143: "Effective July 1, 2008, the Board shall place the cost associated with net accumulated actuarial losses on no greater than a fifteen year amortization schedule."

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