

Law Offices of
TOSDAL, SMITH, STEINER & WAX
600 B Street, Suite 2100
San Diego, CA 92101-4508

Thomas L. Tosdal
Ann M. Smith
Fern M. Steiner
Michael K. Wax
Jon Y. Vanderpool
James M. Stern*
Robyn K. Park

Telephone: (619) 239-7200
Facsimile: (619) 239-6048

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*Certified Specialist Workers' Compensation Law
State Bar of California Board of Legal Specialization

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Council President Scott Peters
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City of San Diego
202 C Street
San Diego, CA 92101

Hand-Delivered

Re: City's Charter-Imposed Duty To Levy "Pension" Tax

Dear Mayor Sanders, Council President Peters, and Members of the City Council:

During the collective bargaining process in the spring of 2005, MEA urged the City to fulfill its mandatory duty pursuant to City Charter § 76 to add to its annual tax levy on all real and personal property within the city, "a sum sufficient to meet the requirements of the pension funds herein provided for the Police and Fire Departments and the City Employees' Retirement Fund." As noted by MEA at the time, adding such a "pension tax" to the City's annual tax levy is not a matter of discretion but rather a matter of duty, and, therefore, enforceable by the courts. The express language of the Charter states:

"In addition to the foregoing tax levy, the Council, *if necessary, shall levy* annually a sum sufficient to meet the requirements of the pension funds herein provided for the Police and Fire Departments and the City Employees' Retirement Fund."

The mandate is clear and unequivocal unless the City's position is that such a tax levy is *not* necessary. If this *is* the City's position, then why did the City demand – and receive – economic concessions during the meet and confer process with its labor unions (in 2005 and

again this year) on the basis that such concessions were “necessary” due to the City’s pension debt – and why does the City Attorney repeatedly represent to the Court on behalf of the City that the City does not have enough money to pay its pension obligations? In fact, the evidence is indisputable that such a levy *is* and *has been necessary* for many years in light of the City’s revenue-challenged status and its need to offer a competitive wage and benefit package to recruit and retain a quality workforce equipped to deliver the services expected by San Diego residents.

And the City’s failure to levy this Charter-mandated tax is intolerable in the current context where the City is using its *own past failure* to fund SDCERS at appropriate levels as an excuse for attempting to deprive employees and retirees of their property rights in promised pension benefits which are protected by the State and Federal Constitutions. The City’s persistent refusal to levy this tax for the benefit of the pension funds it was designed to strengthen is a continuing and direct deprivation of employees’ Constitutional rights under the circumstances.

Pursuant to the City Charter, the City Council must adopt an Ordinance fixing the tax rates and levying taxes for the fiscal year 2006-2007 no later than the last day of August each year. Please note that a tax levy to “meet the requirements of the pension funds” is not a “special tax” within the meaning of Charter § 76.1 and does not require a vote of the electorate. The amount of the tax must, however, conform to the limitations of Proposition 13 – meaning that the amount levied must relate to the pension benefit plan terms in effect before the effective date of Proposition 13 (June 30, 1978). Despite this limitation, the permissible annual levy would represent a significant offset to the City’s annual actuarially-required contribution to SDCERS.

Such an annual tax levy “to meet the requirement of the pension funds” would also have an undeniable advantage over other methods of reducing the UAAL – it will create no new debt for the City as will, for example, the sale of pension obligation bonds.

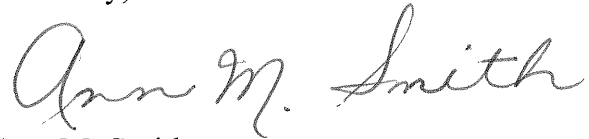
During the meet and confer process in 2005, MEA made a formal request that the City seek an actuarial calculation determining the total amount of the City’s pension indebtedness related to pre-Proposition 13 plan terms in order to provide this calculation to the City Council for determination of an appropriate annual “sum sufficient to meet the requirements of the pension funds.” Obviously, the amount of the levy would be determined by the (a) amount of the total obligation amenable to such tax, and (2) the total assessed valuation of the real and personal property within the city to which the tax would apply.

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By this correspondence, MEA renews its request that the City fulfill its mandatory duty under the Charter to add such a pension tax to its annual levy, and that the City do so no later than the last day in August 2006 as required by City Charter § 75.

Sincerely,

A handwritten signature in cursive script that reads "Ann M. Smith".

Ann M. Smith

Attorney for the San Diego Municipal
Employees Association

cc: San Diego Municipal Employees Association
AFSCME Local 127
San Diego City Fire Fighters Local 145
San Diego Police Officers Association