Agenda Report

May 12, 2003

TO: CITY COUNCIL

THROUGH: Legislative Policy Committee

FROM: City Manager

SUBJECT: Support for Relief from State Regulations Resulting in Costs to Cities

RECOMMENDATION:
If the State removes revenue from local governments in an effort to resolve the deficit problem, it is recommended that the City Council advocate for the following:

1. A constitutional amendment protecting local government revenues in the future; and,
2. Relief from the following State requirements:
    a. Binding arbitration requirements for negotiations with local unions;
    b. Retirement benefit increases for at least three years without consideration of local impacts;
    c. Cal PERS rates increases to local government; and,
    d. Workers' compensation costs resulting from inefficiencies in treating physician presumption, permanent disability rating systems, reporting standards, and 4850 pay.

BACKGROUND:
The City Council asked that the staff review State mandates and requirements that are driving the costs of local government higher. After a careful review the following issues were considered of most concern.

Binding Arbitration
Signed in 2000, SB 402 required public agencies to submit to binding arbitration to resolve disputes over economic issues in negotiations with public safety unions. Although the State Supreme Court recently found that this legislation violates the State Constitution related to the delegation of decision-making authority over municipal

matters to private parties, there is some concern over the wording of the decision, and whether the wording implies that some other form of binding arbitration might legally be imposed

It is the position of many California public agencies that binding arbitration would affect a complete surrender of any right of the City to ultimately decide on compensation issues for the city's employees. Of further concern is the expense and timeliness of the arbitration process, and the unresolved issues of how operations should proceed while issues in dispute work their way through an arbitration process that may take many months.

Retirement Benefits Increases
Increases in retirement benefits, particularly when combined with the substantial investment losses that PERS has recently experienced, will result in increased costs to local agencies. Further, by mandating benefit levels, the State undermines the ability and the responsibility of the City Council to negotiate pay and benefits for its employees, at a level appropriate for the local circumstances. Ultimately, the City loses control over employee costs, which make up approximately 80% of City's General Fund budget. As costs increase, the ability to provide service to the community is directly impacted. In effect, when the retirement benefits are increased and the PERS Board does poorly in the market, the City has discretion only in the decision of which services to cut.

Cal PERS Rate Increases
Over the years the State has enacted legislation and/or PERS has modified its policies that have resulted in significantly higher costs to the City. Some of the changes have provided opportunity for the City to improve benefits and some have mandated benefit increases. Under either scenario, the pressures to remain competitive for recruitment purposes almost blurs the distinction. An example of a mandated increase that has cost the City was legislative increase to the maximum retirement benefit. In 1999 the legislature increased the maximum retirement benefit for public safety to 85% from 75% and then to 90% in 2001. While it takes additional years of service to achieve this higher benefit, it nonetheless has resulted in higher PERS costs.

On the quasi-mandated front, every time retirement benefits are improved, the City is pressured to provide these higher benefits just to remain competitive with other public entities. The most recent benefit was the approval of 3@50_ and 3@55_benefits. While the City was able to negotiate a 3@55_benefit, it will still cost approximately $2 million annually in higher PERS' rates.

Additionally, PERS has implemented the use of 10% corridors instead of using the more traditional smoothing approach. This imposition causes PERS rates to be higher in order to accelerate the funding of the local liability. Cities are effectively PERS clients yet there is no consideration of the fiscal impacts on cities from PERS decisions.

Workers Compensation
There are numerous systematic inefficiencies in the California workers' compensation system resulting in escalating costs to employers. While the City is seeking reform of the system, a few of the most significant issues are outlines below:

Treating Physician Presumption
The problem as created, is that the treating physician is "presumed correct", (LC4062.9); allowing them to maximize all disability and treatment options available. The presumption is rebuttable; however, the legal means by which the defendant must dispute the possible incorrectness of the treating doctor is time consuming, costly, and frequently does not result in a change in the medical direction of the claim, or better medical care for the injured worker.

This law was changed via AB 749, effective 1/1/2003, and medical issues are decided under the substantial evidence rule. However, injured employees can pre-designate their treating physician prior to an injury, and their selected doctor will continue to enjoy the presumption of correctness.

Permanent Disability Rating System
The Permanent Disability Rating System is in need of a legal overhaul. Today, the evaluation and finding of permanent disability is based upon the objective presence of a disability or injury, or loosely measurable subjective factors of pain, or prophylactic work restrictions.

"Prophylactic" work restrictions are defined as precautionary or preventative. The physician determines that the injured worker "can" perform the duties of the job, however, "should not" in order to prevent further deterioration of the condition that could result in increased medical treatment and disability. In these cases, the employee may receive permanent disability payments that can range up to $70,000 or more, but is allowed to return to their regular job without enforceable restrictions. By returning to work however, the employee places themself at risk of further injury.

In contrast, if a physician issues a "regular" work restriction, the employee is required to abide by it. Depending on the severity of the restriction the employee would either be placed in a permanent modified position, retrained, transferred to another job, or terminated and given vocational rehabilitation due to their inability to meet the physical job requirements.

Labor Code 4850
Public Safety employees are entitled to a full-paid leave of absence without loss of salary for the period of disability, but not exceeding one year, if disabled by injury or illnesss arising out of or in the course of their duties. This benefit is paid in lieu of temporary disability or maintenance allowance and is non-taxable. Any proposal to increase the time frame would be a potentially tremendous financial hardship for the City for every additional lost time claim filed.

Reporting Standards
The quality of medical-legal reporting and medical care can be improved by strengthening the Qualified Medical Examiner (QME) Process for both represented and unrepresented workers. This change should focus on 1) ensuring quality, unbiased, and objective medical-legal reporting; 2) improve the QME selection process to provide unrepresented workers and the claims administrator with clear and comprehensive reports; and 3) enforce the discipline of the QME's for the failure to produce timely or inaccurate reports among other things.

FISCAL IMPACT:
While it is difficult to quantify, relief from these State requirements could result in millions of dollars in savings.

Respectfully submitted,

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