

## **EXHIBIT 4**

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FILED  
Stephen M. Kelly, Clerk

JAN 29 2008

Court of Appeal Fourth District

STEVEN A. SLOAN et al.,

D049158

Plaintiffs and Respondents,

v.

(Super. Ct. No. GIC848641)

CITY OF SAN DIEGO,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of San Diego County, Judith F. Hayes, Judge. Affirmed as modified.

Three City of San Diego police officers (Officers) brought a declaratory relief action seeking an order requiring the City of San Diego (City) to include canine care pay in "Base Compensation" for purposes of determining their retirement benefits. After a bench trial, the court found in the Officers' favor and entered a judgment stating that San Diego Municipal Code section 24.0103<sup>1</sup> requires the City to include canine care pay in "Base Compensation."

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<sup>1</sup> All undesignated section references are to the San Diego Municipal Code.

The City appeals. We hold the trial court: (1) properly determined section 24.0103 incorporates a document known as the "Earnings Codes Document" to serve as the source for identifying the specific pay items included in retirement base compensation; and (2) properly found that canine care pay was included in retirement base compensation in the Earnings Codes Documents from 2000 through 2005. However, we determine the judgment must be modified to clarify the scope of the declaratory relief. As so modified, we affirm the judgment.

#### FACTUAL AND PROCEDURAL SUMMARY

The San Diego Police Department uses dogs for a variety of law enforcement purposes. The Department assigns each dog to a canine unit officer, and requires the officer to take the dog home and care for the dog during off-duty hours. This home care enhances the effectiveness of the dogs because "once the dog is properly bonded he will respond properly to commands and work more efficiently." The officers must care for the dog 24 hours per day, and cannot permit the dog to substantially interact with family members. In exchange for these duties, each officer receives 3.5 additional hours of weekly compensation paid at the premium overtime rate. The officers are paid this amount for the off-duty care regardless of the number of hours worked. Officers assigned to the canine unit generally spend much more than 3.5 hours each week caring for the police dog.

The plaintiffs in this case are three police officers who have been assigned to the canine care unit for more than 10 years. They are safety members of the City's retirement system. (§ 24.0103.) The amount of benefits paid to these officers at retirement depends

on several factors, including the officer's "Final Compensation." (§§ 24.0403, 24.0103.) "Final Compensation" is defined as "the Base Compensation for the highest one year period during membership in the Retirement System." (§ 24.0103.)

After the City refused to include canine care pay in Base Compensation for purposes of calculating police officer retirement benefits, the Officers filed this action in June 2005, seeking an order requiring the City to include canine care pay in Base Compensation.

A one-day bench trial was held in May 2006. At trial, the legal issue concerned whether canine care pay fell within the definition of "Base Compensation" under the Municipal Code. As will be discussed more fully in the Discussion section below, the Municipal Code defines "Base Compensation" as "base salary or wages paid," but also refers to a document entitled the "Earnings Codes Document" as the source for a "complete listing" of pay classes included in Base Compensation. (§ 24.0103.)

Based on this Municipal Code definition, a primary focus of the Officers' case at trial was the nature and contents of the Earnings Codes Documents. The evidence showed that the City auditor's office annually prepares the Earnings Codes Document, which is a multi-page comprehensive listing of hundreds of pay classes for City employees. The Earnings Codes Document divides these pay classes into two categories: (1) those pay classes "INCLUDED IN RETIREMENT BASE EARNINGS"; and (2) those pay classes "EXCLUDED IN RETIREMENT BASE EARNINGS." After the City auditor's office prepares the annual Earnings Codes Document, it is approved by

various City officials and then ratified by the city council through its adoption of the annual budget.

At trial, the Officers produced evidence that "canine care pay" was placed in the category of items "INCLUDED IN RETIREMENT BASE EARNINGS" on the Earnings Codes Documents for 2000, 2001, 2002, 2003, 2004, and 2005. During each of these years, several City officials reviewed the Earnings Codes Document and signed an acknowledgement that the pay items included in retirement base pay were correct. At various times, these City officials included the City personnel director, the City auditor, and the City manager.

Other than the Officers, the only City employee to testify at trial was Kyle Elser, the City's payroll and accounts payable manager, who acknowledged that as far back as he could recall canine care pay was identified in the Earnings Codes Document as included in retirement base compensation, and it was never excluded. However, Elser said he now believes this was a mistake. He based this opinion on the fact that canine care pay is considered "overtime pay." He also stated that the Earnings Codes Document is used for payroll purposes, and canine care pay never had an amount entered into the automated payroll system (CAPPS) to correspond with the base pay code.

At trial, the Officers also submitted the deposition testimony of Jerry Fort, who had been previously responsible for identifying the earning codes included as base

compensation upon which retirement contributions are determined.<sup>2</sup> Fort stated that "the standard that's been applied [to determine which pay classes were included in retirement base compensation] . . . has been those add-ons which occur as a result of regular recurring duties that a person would perform on a . . . normal basis as part of their regular assignment would be included as part of their base compensation for retirement contribution purposes." When given a hypothetical at the deposition about canine care pay, Fort stated that this would be a type of add-on he would have to examine to decide whether to include it in base compensation.

The City did not call any of its own witnesses at trial, but introduced a copy of the parties' 2003 Memorandum of Understanding (MOU), a collective bargaining agreement. Although this MOU had expired, the evidence showed the parties continued to act under most of its provisions. Article 32 of the MOU is entitled "OVERTIME," and provides that "Employees assigned to the Canine Unit will be paid 3.5 additional hours of compensation each 40-hour work week at premium rate overtime . . . . The parties agree that this is a reasonable amount of time for such activities."

After taking the matter under submission, the trial court ruled in the Officers' favor based on its finding that the "City's Earnings Code Document currently in effect (as well as those in effect in years past) **expressly includes** Canine Care Pay in retirement base earnings or 'Base Pay' for purposes of determining peace officer retirement." The court

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<sup>2</sup> Fort was deceased at the time of the trial. The testimony has been elicited as part of another lawsuit against the City. The court overruled the City's hearsay objections to the deposition testimony.

rejected the City's argument that this listing was a "mistake," stating: "The Earnings Code Document for the City . . . is ratified on a yearly basis by the City Council. Each Document is signed by the Retirement Administrator, the City's Personnel Director, the City's Auditor and Comptroller, and the City Manager. . . . [¶] . . . [¶] Inclusion in the list of earnings included in the determination of retirement pay is no mistake. There is no credible evidence before this court to support the conclusion that no one read or considered the Earnings Code Document before signing it. To the contrary, the evidence supports the conclusion that every City Auditor and Controller who signed the document since 1998 read and understood the classifications included and excluded prior to affixing his/her signature." The court also rejected the City's argument that the "overtime" character of canine care pay precluded the court from determining the pay constituted Base Compensation for retirement benefits purposes.

On June 28, 2006, the court entered a judgment stating: "The City of San Diego is required pursuant to San Diego Municipal Code section 24.0103 to include Canine Care Pay in Base Compensation."

Thereafter the City's assistant auditor prepared a new Earnings Codes Document, effective July 1, 2006, which expressly *excluded* canine care pay from Base Compensation. This document contained a footnote stating that the previous characterization during the past five years had been a "mistake[]." On January 25, 2007, four days before the City filed their appellate briefs in this case, several City officials signed acknowledgements of the new Earnings Codes Document. The City then

requested that this court take judicial notice of the new Earnings Codes Document and the acknowledgements. For the reasons explained below, we deny this request.

## DISCUSSION

The City contends the court erred in determining canine care pay is included in "Base Compensation" for purposes of retirement pay.

### I. *Governing Legal Principles*

We begin with the express definition of "Base Compensation" contained in the Municipal Code:

*"'Base Compensation' means and includes the base salary or wages paid (standard hours multiplied by the hourly rate) on a regular bi-weekly basis to an employee for his or her services in any given pay period, including (by way of example) but not limited to such items of compensation as: time during which the employee is excused from work for holidays, annual leave taken, sick leave taken, compensatory time off taken, industrial leave taken, discretionary leave taken, and pay for out-of-class assignments. Base Compensation means salary before pre-tax deductions for such items as participation in a deferred compensation plan, SDCERS, or for authorized dependent health care premiums. A complete listing of included and excluded items of compensation or remuneration is memorialized in a document entitled 'Earnings Codes Included in Retirement Base Compensation [the Earnings Codes Document], which is prepared annually and which shall be kept on file in the Office of the City Clerk, and also maintained by the City Manager, the City Auditor, the Retirement Administrator and the Personnel Director. The Earnings Codes Document shall be amended annually, as necessary to reflect any changes or additions made during the City's budget adoption process.*

*"For purposes of calculating retirement benefits, 'Base Compensation' shall not include any item of compensation or remuneration which is identified in the Earnings Codes Document as excluded from Base Compensation, including (by way of example) but not limited to: the Flexible Benefits Plan dollar value available to an employee each fiscal year; the amount of an employee's*

retirement system contribution which the City pays on behalf of the employee [the Retirement Offset]; *payments made for overtime work* (whether at straight or premium pay, and whether paid directly or by conversion to compensatory time off); payments made by the City to the Supplemental Pension Savings Plan on behalf of an employee; payments made by the City to an employee in lieu of the employee's taking of accrued annual leave; payments made by the City to an employee as a Uniform Allowance or Uniform Reimbursement, or the monetary value of employer-provided uniforms; payments made by the City to an employee as a Tool Allowance; payments made by the City to an employee as an Automobile Allowance or for reimbursement of miles driven while using a personal vehicle for work-related duties; payments made by the City to an employee as a Moving Allowance; payments made by the City to an employee for exceptional performance or pursuant to a 'pay for performance' plan, unless such payments are expressly designated in the annual Salary Ordinance for inclusion in Base Compensation; payments made to an employee pursuant to the City's Long Term Disability Plan or pursuant to the Worker's Compensation Statute; and cash conversions of accrued, unused annual leave or 'old' sick leave, in connection with or in anticipation of separation from employment." (§ 24.0103, italics added.)

The city council adopted this ordinance in August 2000, and made it effective beginning July 1, 2000.

In determining the meaning of section 24.0103, we are guided by settled appellate principles. "The construction of an ordinance is a pure question of law for the court, and the rules applying to construction of statutes apply equally to ordinances." (*H.N. & Frances C. Berger Foundation v. City of Escondido* (2005) 127 Cal.App.4th 1, 12.)

"Well-established rules of statutory construction require us to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law. [Citation.] We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citation.]

The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context. [Citations.] These canons generally preclude judicial construction that renders part of the statute 'meaningless or inoperative.'

[Citation.]" (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715-716.)

## II. *Earnings Codes Document is Source for Pay Items Included in Base Compensation*

Viewing section 24.0103 under these statutory interpretation principles, we agree with the trial court that the annual Earnings Codes Document is the source for determining whether a pay item was Base Compensation for purposes of retirement benefits. Section 24.0103 states that Base Compensation means "base salary or wages paid," but then unambiguously states that a "*complete listing of included and excluded items of compensation or remuneration is memorialized in the . . . Earnings Codes Document*" that is to be prepared annually and maintained in the files of various public officials. (§ 24.0103, italics added.) Section 24.0103 also specifically refers to the Earnings Codes Document in identifying the items that are excluded from Base Compensation: "For purposes of calculating retirement benefits, 'Base Compensation' shall not include any item of compensation or remuneration *which is identified in the Earnings Codes Document as excluded from Base Compensation.*" (§ 24.0103, italics added.) These provisions reflect that the city council intended to incorporate by reference the Earnings Codes Document to precisely define the scope and meaning of "Base Compensation."

This construction is strongly supported by the language of the annual Earnings Codes Document, each of which contained two parts. The first part (labeled "Exhibit A")

is entitled "EARNINGS CODES INCLUDED IN RETIREMENT BASE EARNINGS."

The second part of the Earnings Codes Document (labeled "Exhibit B") is entitled "EARNINGS CODES EXCLUDED IN RETIREMENT BASE EARNINGS." From 2000 through 2005, canine care pay was listed in the first part (Exhibit A), under the following subtitle: "The add-on Earnings Codes listed below are classified as 'negotiated specialty add-ons' and are included in retirement base earnings because all employees performing that class of work during their ordinary work hours on a consistent basis earn them at the same rate of pay." (Capitalization omitted.) During these years, canine care pay was never listed under Exhibit B.

In light of the language of section 24.0103 and the annual Earnings Codes Documents, we find unavailing the City's argument that the Earnings Codes Document merely "implements" base compensation "for internal practical and administrative purposes." There is no reason to have repeatedly referred to the Earnings Codes Document in the Municipal Code section defining Base Compensation for retirement benefits purposes if the Earnings Codes Document was merely to serve an accounting function. Moreover, the City's argument is inconsistent with the actions of city officials. As found by the trial court, the categorization of the pay classes on each Earnings Codes Document was expressly approved by various city officials, including the City manager at a time when the City operated under the city manager form of government. These approvals were reflected on a form that specifically asked whether each city official "Agree[d]" or "Disagree[d]" with the earnings codes *included* as "RETIREMENT BASE COMPENSATION" listed in Exhibit A and those *excluded* from "RETIREMENT BASE

*COMPENSATION*" listed in Exhibit B. (Italics added.) With respect to each Earnings Codes Document, a responsible city official returned the document with a check mark next to the "Agree" box. The city council ratified the correctness of the classifications during the annual budget adoption process.

The City contends that even if canine pay care was included in Base Compensation for purposes of retirement benefits, the city officials had no authority to make this designation because the designation violated the ordinance and was thus void and of no effect. In support of this argument, the City relies on the second paragraph of section 24.0103, which states: "For purposes of calculating retirement benefits, 'Base Compensation' shall not include any item of compensation or remuneration which is identified in the Earnings Codes Document as excluded from Base Compensation, including (by way of example) but not limited to: . . . *payments made for overtime work . . .*" (§ 24.0103, italics added.) The City contends this provision removes "canine care pay" from Base Compensation because canine care pay is "overtime pay."

This contention is based on a faulty reading of the ordinance. The second paragraph of section 24.0103 does not exclude all overtime payments from the definition of Base Compensation. Instead, it states that "'Base Compensation' shall not include any item of compensation or remuneration *which is identified in the Earnings Codes Document as excluded from Base Compensation . . .*" (§ 24.0103, italics added.) Because canine care pay is not "identified in the Earnings Codes Document as excluded from Base Compensation," this sentence does not have the effect of excluding canine care pay, and does not remove the City's authority to include such pay in the definition of

Base Compensation. The City's proposed interpretation reads out the phrase "which is identified in the Earnings Codes Document as excluded from Base Compensation" from section 24.0103. If the drafters of the Municipal Code had intended to restrict the City's authority to include one of the listed items within the definition of retirement base compensation, it could have said so directly without including the qualifying phrase "which is identified in the Earnings Codes Document as excluded." A city ordinance will not be construed as restricting a city's power unless the restriction is stated expressly. (See *Taylor v. Crane* (1979) 24 Cal.3d 442, 450-451 ["Restrictions on a charter city's powers may not be implied"].)

Contrary to the City's contention, this interpretation does not render section 24.0103's listing of "example[s]" of excluded items as mere "surplusage." The drafters of the code section could reasonably decide that it was appropriate to illustrate the types of compensation items that would typically be excluded from retirement base pay, without contradicting the other provisions that the Earnings Codes Document is the relevant source for a "complete listing" of the pay items included in Base Compensation. If we were to adopt the City's view, we would have to conclude that the various references to the Earnings Codes Document are surplusage. This construction is not reasonable. (See *Los Angeles County Safety Police Assn. v. County of Los Angeles* (1987) 192 Cal.App.3d 1378, 1390-1391 ["[A] statute should not be given a construction that results in rendering one of its provisions nugatory"].)

In this regard, the City's emphasis in its appellate briefs on the fact that canine care pay is overtime pay is unhelpful. For support of its position, the City points to: (1) the

fact that the City compensates officers for canine care at overtime rates; (2) the MOU specifically identifies canine care pay as overtime pay; (3) the Officers' own testimony that canine care pay is overtime; and (4) federal law and regulations that treat time spent caring for police dogs as overtime.

At trial, the Officers did not dispute that canine care pay was overtime pay in the sense that it was paid at a premium rate for services beyond the regular 40-hour work week. However, under section 24.0103, the critical test is not whether certain pay can be construed as overtime pay, but it is whether the pay classification was identified in the Earnings Codes Document (incorporated into the Municipal Code) as included within the definition of Base Compensation for purposes of retirement benefits. Because section 24.0103 does not exclude all overtime pay from retirement base compensation (it expressly excludes only those categories of overtime pay that are listed as excluded on the Earnings Codes Document), this section cannot be the basis for a conclusion that canine care pay is excluded. Likewise, the MOU does not provide that overtime pay cannot be included in Base Compensation for purposes of retirement. Instead, it merely designates canine care pay as overtime "premium" pay, and establishes a negotiated set amount of hours for the overtime for administrative convenience.<sup>3</sup>

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<sup>3</sup> We recognize the trial court concluded canine care pay was not "overtime" because it shares many characteristics with "regular periodic compensation." However, we need not reach this issue because we find the overtime character of canine care pay is not dispositive here.

The City's reliance on *Ventura County Deputy Sheriff's Assn. v. Board of Retirement* (1997) 16 Cal.4th 483 is also misplaced. In that case, the court construed the phrase "compensation earnable" as used in Government Code section 31461, which governs retirement benefits for county employees. (*Ventura County, supra*, at p. 487.) Because this phrase is not included in the current section 24.0103, the high court's interpretation is not applicable here. We reject the City's argument that because the prior version of section 24.0103 included the phrase "compensation earnable," this phrase should control in this case. The city council minutes reflecting the adoption of the current section 24.0103 state that the purpose of the amendment was "to clarify the items of compensation that are included in the calculation of City employee retirement pay . . . ." There is no suggestion in the minutes that the City intended to remove all overtime pay from the definition of retirement base compensation.<sup>4</sup>

The City additionally argues that even assuming the Earnings Codes Document is the relevant source for defining Base Compensation, the Earnings Codes Document designation was not controlling here because the designation was the result of an "inadvertent" or "ministerial" error. However, the trial court found that the evidence did not support this argument. The court stated that "[t]here is no credible evidence before

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<sup>4</sup> In a footnote, the City appears to suggest the city council's delegation of the Base Pay classification to city administrators was improper. However, the City does not directly make this argument or cite relevant supporting authority. In any event, the trial court specifically found, and the evidence supports, that the City ratified the administrators' actions by approving the annual budget. Thus, there was no improper delegation.

this court to support the conclusion that no one read or considered the Earnings Codes Document before signing it. To the contrary the evidence supports the conclusion that every City auditor and controller who signed the document since 1998 read and understood the classifications included and excluded prior to affixing his/her signature."

Substantial evidence supports the court's finding. Canine care pay was included in this designation six different times. Several high-ranking city officials—including the city manager—signed an acknowledgement expressly agreeing that the earnings codes included as retirement base pay were correct. When the city council amended the Municipal Code to incorporate the Earnings Codes Document, canine care pay was specifically identified as an item of Base Compensation in the applicable Earnings Codes Document. Even after the lawsuit was filed, an Earnings Codes Document was approved that again listed canine care pay as included within the definition of retirement base compensation.

To show that the inclusion of canine care pay in retirement base compensation was a clerical error, the City relied solely on the testimony of the City's payroll and accounts payable manager, who testified that he believed this inclusion was a mistake because there was never a computer code attached to the pay for purposes of the payroll system. The court had an ample basis to find that this testimony did not establish that each of the city officials—and the city council when it approved the budget—had not reviewed the list of included items when the official signed the acknowledgement form agreeing with the accuracy of the categories listed on the Earnings Codes Document.

### III. *The City's Request for Judicial Notice*

The City next contends this court should reverse the judgment because *after the judgment* a City auditor prepared a revised Earnings Codes Document that *now* expressly excludes canine care pay from Base Compensation, and provides that the prior inclusion of canine care pay was a "mistake[]." The City requests that we take judicial notice of this Earnings Codes Document, which was created *after the June 28, 2006 judgment*, and expressly applies only to earnings *after July 1, 2006*. The City also requests that we take judicial notice of several documents entitled "ACKNOWLEDGEMENT OF EARNINGS CODE" signed by various City officials on January 25, 2007, four days before the City filed its opening appellate brief in this case...

This evidence is not properly before us. It is a fundamental principle of appellate law that our review of the trial court's decision must be based on the evidence before the court at the time it rendered its decision. (See *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3; *Kumar v. National Medical Enterprises, Inc.* (1990) 218 Cal.App.3d 1050, 1057, fn. 1; *People's Home Sav. Bank v. Sadler* (1905) 1 Cal.App. 189, 193.) Thus, ordinarily, a reviewing court will not take judicial notice of matters not before the trial court. (*Vons Companies, supra*, 14 Cal.4th at p. 444; *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325; *Poway Royal Mobilehome Owners Assn. v. City of Poway* (2007) 149 Cal.App.4th 1460, 1482, fn. 6.)

The City has not cited any exceptional circumstances that would justify a deviation from this rule. The City instead argues that we may consider the new Earnings Codes Document because it was a "curative" legislative act. (See *City of Compton v.*

*Boland* (1945) 26 Cal.2d 310, 313.) However, there is no evidence before us that the preparation of these new documents was a legislative act, i.e., that the city council approved these documents or knew that these documents characterized the prior canine care pay designation as a "mistake." Unlike the prior Earnings Codes Documents, there was no showing the city council ratified the new Earnings Codes Document through approval of the annual budget. Further, unlike the prior Earnings Codes Documents, the new documents were not presented as exhibits at trial, and therefore there were no opportunity for the Officers to review these documents or to cross-examine those involved in preparing these documents.

Additionally, even assuming we could construe the City's postjudgment actions as a legislative act that constitutes an attempt to interpret the City's prior acts, the interpretation of a statute or an ordinance is generally an exercise of judicial power. (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 922; see *Anderson v. San Francisco Rent Stabilization & Arbitration Bd.* (1987) 192 Cal.App.3d 1336, 1349.) Although a legislative body's subsequent declaration of its prior intent may be a factor in the analysis, the declaration is not binding on a court, and a court should not accept the declaration if the clarification is inconsistent with the plain meaning of the prior act or its legislative history. (See *Carter, supra*, 38 Cal.4th at pp. 922-923.) In this case, the statement that the prior designation of canine care pay was a "mistake" is inconsistent with the evidence, and appears to be solely an attempt to overturn the trial court's factual finding to achieve a favorable result for the City.

Moreover, even if we were to review the newest Earnings Codes Document and the January 2007 approvals of this document, it would not change our decision in this case. As explained below, we shall modify the judgment to clarify that it applies only to canine care pay earned after July 1, 2000, and earned during a time that canine care pay was designated as Base Compensation on an Earnings Codes Document. Although it is within the scope of the City's authority to prospectively change the types of pay classes that constitute retirement base compensation, the changed definition would not affect the rights of the plaintiffs before us on the claims asserted in this lawsuit. The extent to which a changed definition may be retroactively applied was not an issue in the lower court proceedings, and we decline to reach it here.

#### *IV. The Judgment Must Be Modified to Clarify its Limited Scope*

The City's final argument is that the declaratory judgment is too broad and should be limited to a particular time period. Although the City did not assert this contention below, we reach the argument in the interests of justice. The judgment as entered states: "The City of San Diego is required pursuant to San Diego Municipal Code section 24.0103 to include Canine Care Pay in Base Compensation." We agree with the City that this sentence is potentially misleading because it could be construed to mean that the City is required to include canine care pay in Base Compensation under any circumstances. Because this broad construction is not supported by section 24.0103 or the evidence submitted at trial, the judgment must be narrowed.

First, section 24.0103's definition of Base Compensation as incorporating the annual Earnings Codes Document was effective on July 1, 2000. Before this time, the

ordinance did not refer to the Earnings Codes Document, and instead defined Base Compensation by reference to the phrase "Compensation Earnable." The Officers do not claim that canine care pay came within the prior definition of "Compensation Earnable." Thus, the declaratory judgment should apply only to canine care pay earned after July 1, 2000.

Second, the court's ruling was based on its finding that canine care pay was identified as Base Compensation in the 2000 through 2005 Earnings Codes Documents. Thus, the declaratory judgment ordering that the City include canine care pay in Base Compensation should apply only to canine care pay earned at a time when the Earnings Codes Documents included canine care pay in the category of retirement base compensation.

The judgment should thus be modified to read as follows: "The City of San Diego is required pursuant to San Diego Municipal Code section 24.0103 to include canine care pay in Base Compensation for purposes of calculating retirement benefits. This order applies only to canine care pay earned after July 1, 2000 and earned at a time when canine care pay was identified in an Earnings Codes Document as within the definition of Base Compensation."

#### DISPOSITION

The judgment is modified to read: "The City of San Diego is required pursuant to San Diego Municipal Code section 24.0103 to include canine care pay in Base Compensation for purposes of calculating retirement benefits. This order applies only to canine care pay earned after July 1, 2000 and earned at a time when canine care pay was

identified in an Earnings Codes Document as within the definition of Base Compensation." As so modified, the judgment is affirmed. Appellant to bear respondents' costs on appeal.



HALLER, Acting P. J.

WE CONCUR:



AARON, J.



IRION, J.