

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA  
City Attorney

MOLLIE LEE  
Deputy City Attorney

DIRECT DIAL: (415) 554-4705  
E-MAIL: mollie.lee@sfgov.org

April 6, 2011

Jeff Adachi  
Craig Weber  
P.O. Box 77313  
San Francisco, CA 94107

**Re: Titles and Summaries for Initiatives 11-01b, 11-02c, and 11-03c**

Dear Mr. Adachi and Mr. Weber:

I write to respond to your April 4, 2011 letter and to set the record straight about several inaccuracies that have appeared in media reports about it.

To address misunderstandings about the purpose of the title and summary and this office's role in preparing it, I begin with a brief description of that process. For additional information about the process of preparing ballot materials, please see my detailed response to a similar letter you authored during your ballot measure campaign last year. I am attaching a copy of that response for your convenience.

The title and summary appears on the petition that an initiative proponent uses to collect signatures for a proposed ballot measure. *See* California Elections Code § 9256.

- State law requires the City Attorney to prepare a title and summary that will "express in 500 words or less the purpose of the proposed measure." *Id.* § 9203.
- The summary must be "a true and impartial statement of the proposed measure." *Id.*
- The summary need not catalogue all provisions in a proposed measure. *See Amador Valley Joint Union High School Dist. et al. v. State Board of Equalization*, (1978) 22 Cal.3d 208, 243.

The title and summary does not appear in the Voter Information Pamphlet or on the ballot, as some media accounts have inaccurately reported.

If a proposed measure qualifies for the ballot, a Ballot Simplification Committee ("BSC") consisting of five voting members prepares a fair and impartial summary of the measure following a public hearing process. *See* San Francisco Municipal Elections Code § 610. Each of the BSC's voting members must be a San Francisco resident and registered voter. The Board of Supervisors appoints three of these members, two of whom must be nominated by either the Northern California Chapter of the National Academy of Television Arts and Sciences or the Northern California Broadcasters Association; and one of whom must be nominated by the League of Women Voters of San Francisco. The Mayor appoints two BSC members, one of whom must be nominated by the Northern California Media Workers Guild and one of whom

Letter to Jeff Adachi and Craig Weber  
Page 2  
April 6, 2011

must be an educational reading specialist recommended by the Superintendent of Schools of the San Francisco Unified School District. A deputy city attorney serves as a non-voting, ex officio member. For your reference, I am including an Elections Department publication entitled "About the Ballot Simplification Committee."

At the end of the BSC's hearing process, the City Attorney's Office submits the ballot question for each local measure. *See* San Francisco Municipal Elections Code § 510. In drafting the ballot question, the City Attorney's longstanding practice is to use the BSC's digest as a guide. The City Attorney relies on the digest because the BSC has had the benefit of extensive public input and because the BSC's mandate requires it to use simple language understandable to all voters.

Turning to your recent letter, your primary complaint is that the titles and summaries issued by this office on April 1, 2011 use the terms "retirement benefits" and "retirement system" instead of "pension" and "pension system." As you know, "retirement benefits" and "retirement system" are the terms principally employed in the City Charter, and they are the same terms that San Francisco's Ballot Simplification Committee has used when summarizing retirement measures for the Voter Information Pamphlet.

Indeed, as I expect you recall from your participation as a sponsor of Proposition B last year, the Ballot Simplification Committee devoted significant consideration to this precise word choice in public hearings last August and ultimately chose to use the term "retirement benefits." As with your own use of the term "retirement benefits" in your letter (stating that "the measure would also increase the retirement age for city employees to qualify for full retirement benefits"), the term "retirement benefits" has been routinely and historically used in this context. Moreover, it has been carefully considered, publicly scrutinized, and is not misleading.

Your second complaint is that the title and summary does not specifically note that your proposal would increase the age at which employees could retire with full benefits. But the title and summary explicitly states that your proposal "would reduce retirement benefits for employees hired after December 31, 2011." It also makes clear that - for these employees - your proposal would increase the minimum retirement age and would "reduce the percentage employees receive based on retirement age." This accurately conveys the principal purposes and legal impacts of the proposed measure. If electors deciding whether to sign the petition want more detail, they can consult the text of your proposed measure, which must be included with the petition and which states that a "member who retires after reaching the age of 65 shall receive a service retirement allowance at the rate of 2.3% of average final compensation per year of service" and that for police and firefighters, a "member who retires after reaching the age of 57 shall receive a service retirement allowance at the rate of 2.7% of average final compensation per year of service." Due to the 500-word limitation imposed by state law, there simply is not room to include this level of detail in the title and summary.

Finally, as you know, City Attorney Dennis Herrera took no part in preparing or reviewing these titles and summaries, and he took no part in preparing or reviewing this letter, for the reasons set forth in the City Attorney's memorandum of August 27, 2010. The August 27 memorandum is available in the list of public opinions on the City Attorney Office's website, at <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=669>.

Letter to Jeff Adachi and Craig Weber  
Page 3  
April 6, 2011

Please direct all further correspondence regarding this matter to Chief Assistant City Attorney Jesse Smith and Deputy City Attorney Mollie Lee.

Very truly yours,

JESSE C. SMITH  
Chief Assistant City Attorney



Mollie Lee  
Deputy City Attorney

cc: John Arntz, Director of Elections  
Betty Packard, Chair, Ballot Simplification Committee



# SF PENSION REFORM

SOLVING SAN FRANCISCO'S FISCAL CRISIS

POB 77313 • San Francisco, CA 94107 • 415-905-9100 • [www.sfpensionreform.com](http://www.sfpensionreform.com)

April 4, 2011

Dennis Herrera  
City Attorney  
1 Dr. Carlton Goodlett Place  
San Francisco, CA 94102

Dear City Attorney Herrera,

I have reviewed the Summary and Title for each of the three proposed pension reform measures prepared by your office. I was surprised to see that each of the three Summary and Title documents failed to mention the word "pension" even once. Instead, your office used the "retirement benefits" and "retirement system" in its place. I believe that the use of these terms is inaccurate and therefore potentially misleading to voters. *See* California Elections Code section 9204.

The word "pension" appears 59 times throughout each measure. The word "pension" is used because it specifically refers to "a regular payment made by an employer to a former employee when they have retired." According to the Merriam-Webster Dictionary, a pension is defined as "a fixed sum paid regularly to a person." This is what City employees receive upon retirement. The term "pension" is distinct from "retirement benefits," which broadly refers to money that has been "set aside . . . to be spent after retirement." "Retirement benefits" are broader than just "pension," as they include a wide range of remuneration, including defined contribution plans (e.g., IRAs or 401(k)s), Social Security benefits, deferred compensation and other benefits, such as health. The validity of this distinction is evident from the fact that two of your proposed titles – "Retirement and Retiree Health-Care Benefits for City Employees" – are redundant, as "retirement benefits" in fact *include* "retiree health-care benefits."

I believe that the title of the Charter Amendments should read: "Pension Benefits for City Employees" and "Pension and Retiree Health-Care Benefits for City Employees." I also respectfully request that you use "pension benefits" and "pension system" rather than "retirement benefits" and "retirement system" throughout the measure. I believe that use of "pension" is more accurate and will avoid misleading voters into thinking the measure affects retirement benefits more generally.

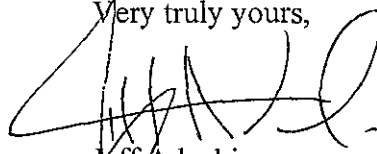
As you know, pension reform is a critical issue for the future of the City. The City faces

escalating pension costs that are projected to increase from \$357 million to \$600 million in the next four years. It is absolutely imperative that citizens be informed that the purpose of this measure is to reform the "pension" system for city employees, and not all their "retirement" benefits and plans.

In addition, the Summary and Title prepared by your office only mentions that the measure would change minimum retirement ages, without also stating that the measure would also increase the retirement age for city employees to qualify for full retirement benefits (from 55 to 57 for police officers and firefighters and from 62 to 65 for other city employees). This information is important so the voters know that the measure not only changes the minimum age for retirement but also increases the age requirements in order for city employees to receive full retirement benefits. Failing to include this information may also mislead voters into believing that the measure reduces rather than increases the age when a city employee qualifies for full benefits. I respectfully ask that this critical information be included in the summary and title.

I can be reached at (415) 905-9100 if you or a member of your staff wishes to discuss this further. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeff Adachi".

Jeff Adachi

A handwritten signature in black ink, appearing to read "Craig Weber".

Craig Weber

cc: Jesse Smith, Deputy City Attorney  
Mollie Lee, Deputy City Attorney  
John Arntz, Director, Department of Elections



DENNIS J. HERRERA  
City Attorney

MOLLIE LEE  
Deputy City Attorney

DIRECT DIAL: (415) 554-4705  
E-MAIL: mollie.lee@sfgov.org

October 15, 2010

Mr. Jeff Adachi  
Yes on Proposition B  
P.O. Box 77313  
San Francisco, CA 94107

Re: Ballot Question for Proposition B, City Retirement and Health Plans

Dear Mr. Adachi:

I write in response to your letter dated October 13, 2010, which the City Attorney's Office received by mail yesterday afternoon. In that letter, you requested that the City Attorney's Office "issue a letter correcting" the ballot question for Proposition B on the November 2, 2010 ballot. Your request is untimely and without merit.

In sum, the process that precedes the printing of ballot digests and ballot questions allows numerous opportunities for public input, objections and even legal challenges. The process is set forth in State and local law, and is summarized in the *Guide to Qualifying Initiative Charter Amendments for the San Francisco Ballot* on the Department of Elections' website. Based on the record here, we have every reason to believe you were aware of the public review process. The legal deadline for challenging ballot questions for measures appearing on the November ballot ended almost two months ago. See S.F. Mun. Elec. Code § 590(b)(3). In accordance with State law, the City began to distribute ballot pamphlets and ballots to vote-by-mail voters at the end of September, and early voting began in City Hall almost two weeks ago, on October 4<sup>th</sup>. Even if it were possible to change the already printed and distributed ballot question for Proposition B so close to Election Day – and there is no precedent for doing so – no change is necessary because the ballot materials are accurate.

The language to which you object was based on the City's Ballot Simplification Committee's (the "BSC") impartial digest of the measure following a public hearing process in August. The City afforded a number of opportunities to challenge the language in that digest, including the BSC's request for reconsideration process and the 10-day public inspection period for review of the final digests and ballot questions. Also, as you know, other parties challenged Proposition B in a pre-election lawsuit during the 10-day public inspection period. As a result of the court's decision in that case striking a portion of the measure, you and other parties stipulated to changes in the ballot question and the digest before the Department of Elections printed the final ballot materials.

I explain the law and the facts supporting our response in more detail below.

#### **Ballot Simplification Committee Digest**

The Municipal Elections Code charges the BSC with adopting a fair and impartial summary of each local ballot measure following a public hearing process. See S.F. Mun. Elec. Code § 610. The BSC invites input from proponents of measures, City departments and other interested members of the public, and affords an opportunity for anyone who disagrees about a ballot digest's wording to make their case about why it should be changed.

Letter to Mr. Jeff Adachi  
Page 2  
October 15, 2010

At its public meeting on August 4, 2010, the BSC heard public comment and adopted a draft digest for Proposition B. You attended that meeting and spoke on the record. The draft digest adopted by the BSC that day stated that the measure would, among other effects, "decrease employer contributions to the Health Service System for health benefits for employees, retirees and their dependents." In adding that language, the BSC considered the public written departmental analysis and oral testimony from the director of the City's Health Service System ("HSS").

As required by Municipal Elections Code section 610(c), the BSC announced that any person could request reconsideration of the draft digest within 24 hours – by 1:55 p.m. on August 5<sup>th</sup>. You did not submit a request for reconsideration, even though the draft digest included the language about which you now complain. The BSC did receive requests from two other parties before the deadline and held a public meeting on August 6<sup>th</sup> to consider those requests. At that meeting, the BSC finally adopted the digest. You arrived at that meeting late, after the BSC had already considered and voted on the final digest. The BSC allowed you to speak regarding the digest language but did not reopen its consideration of the digest because other interested members of the public had already left the meeting.

#### **City Attorney's Ballot Question**

At the end of the BSC's hearing process, the City Attorney must submit the ballot question for each measure. *See* S.F. Mun. Elec. Code § 510. In drafting the ballot question, consistent with the longstanding practice of this office, the City Attorney uses the BSC's digest as a guide. Each digest includes a section titled "A Yes Vote Means," and the City Attorney generally attempts to track the language of that digest section with as few modifications as necessary. The City Attorney relies on the digest because the BSC has had the benefit of extensive public input and because the BSC's mandate requires it to use simple language understandable to all voters.

Here, the ballot question for Proposition B mirrors word-for-word the substance of the final "A Yes Vote Means" portion of the BSC's digest.

#### **Public Examination Period**

After the BSC adopts its final digests, the Controller delivers his financial analyses and the City Attorney submits ballot questions, City law provides a 10-day public examination period during which any member of the public can review those documents at the Department of Elections in City Hall. *See* S.F. Mun. Elec. Code § 590(b). During that period, any voter may seek a writ of mandate or injunction requiring the City to amend or delete any materials that are false, misleading or inconsistent with the requirements of the Elections Code. *See id.*; Cal. Elec. Code § 9295. If no voter has filed litigation by the end of the public examination period, the City may publish the ballot materials. *See id.*

The public examination period for the materials to which you object began August 10 and ended August 20. During that period, you contacted me to inquire about the ballot question for Proposition B. I informed you that the final version of the question was available for public inspection at the Department of Elections, and I also sent you a copy of the ballot question. In an email to me on August 16<sup>th</sup>, you asked "why does the question state that health benefits are reduced for city employees and retirees," and I responded the following morning, explaining that the question tracked digest language approved by the BSC. During the public examination period, you did not seek judicial review or otherwise file a complaint regarding the language of the digest or the ballot question.

Letter to Mr. Jeff Adachi  
Page 3  
October 15, 2010

**Pre-election litigation**

While you did not challenge the ballot question in court, other parties filed suit challenging other aspects of Proposition B during the 10-day public examination period. In that litigation, in which you were a party, the Superior Court invalidated a provision of Proposition B. In doing so, it struck that provision from the legal text, and ordered conforming changes in ballot materials, including the ballot question. Once again, you did not complain about the ballot question and in fact, you stipulated to corrections to the modified ballot question. Also, a key consideration in that litigation was the Department of Elections' deadline for printing ballot materials. The City submitted a declaration, which it sent to your counsel, stating that its deadline for printing ballots was September 1. Consistent with that deadline, the Department printed ballots and began to distribute them to vote-by-mail voters in September.

**Conclusion**

As described in detail above, you have had numerous opportunities to object to the language referenced in your October 13 letter – at the August 4 BSC meeting, in a written request for reconsideration on August 5, at the August 6 BSC meeting, and by seeking judicial relief during the public examination period. Now, nearly two months after the examination period ended and two weeks after voting has begun, you have asked the City Attorney to alter the already printed and distributed ballot question by issuing a letter, even though do you not seek any change to the digest language that the question mirrors. You cite no authority for the proposition that the City Attorney could take such an extraordinary step at this late date, and we are aware of none.

Moreover, even if it were possible to amend the ballot question this close to Election Day – and to do so by letter with no judicial consideration or public input, and no correlative change to the digest, as you have requested – it is not required. As noted above, the BSC adopted the language to which you object based on testimony from the director HSS, who analyzed the measure and its expected effects on health care costs and consumer behavior. As she explained, many retirees participate in the City's health service system and Proposition B would increase premiums for the most expensive plans offered HSS. This would cause some retirees to choose less expensive health plans, which would lower the City's contributions for retirees' health benefits. Accordingly, the digest and the ballot question are accurate, and they need not be changed.

For all of these reasons, we decline your request.

Very truly yours,

DENNIS J. HERRERA  
City Attorney



Mollie Lee  
Deputy City Attorney

cc: John Arntz, Director of Elections  
Betty Packard, Chair, Ballot Simplification Committee  
Jesse Capin Smith, Chief Assistant City Attorney  
Jon Givner, Deputy City Attorney



**CITY PENSION  
REFORM**

POB 77313 • San Francisco, CA 94107 • 415-905-9100 • **YES ON PROPOSITION B** • [www.sfsmartreform.com](http://www.sfsmartreform.com) • [sfsmartreform@yahoo.com](mailto:sfsmartreform@yahoo.com)

October 13, 2010

City Attorney Dennis Herrera  
City Attorney's Office  
1 Dr. Carlton Goodlett Place  
San Francisco, CA 94102

Dear City Attorney Herrera,

I am writing to request that your office issue a letter correcting an erroneous statement included in the ballot question prepared by your office for Proposition B.

The ballot question provides, "Shall the City increase employee contributions to the Retirement System for retirement benefits; decrease employer contributions to the Health Service System for health benefits for employees, *retirees* and their dependents; and change rules for arbitration proceedings about City collective bargaining agreements?" (Emphasis added.)

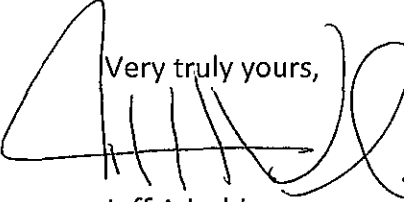
According to the Ballot Simplification Committee Digest in the Voter's Information Pamphlet, Proposition B would "decrease employer contributions to the Health Service System for health benefits for employees, retirees and their dependents ..." In another section it says "Proposition B would decrease the employers' contribution to the Health Service System, and increase the employees' payments, and possibly retirees' payments, to that system."

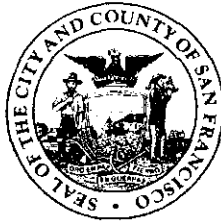
These statements are plainly erroneously because Proposition B does not modify contributions by retired employees for their health care or the cost of their dependent health care. The amount of retiree health care contributions is determined by the formula set forth in Charter section A8.428, which Proposition B does not change. Proposition B only restricts the City from paying more than the ten county survey for active employees and states that the City may only agree in MOUs to pay up to 50% of the lowest cost plan for dependents. Of course, retirees benefits are not set by collective bargaining agreements; rather section A8.428 (b)(3) (iii) provides that the City pays 50% of retirees "remaining contributions" after application of the ten county survey. Further, the last sentence of subsection (e) provides that "the maximum amount of coverage for dependents of *active* employees paid by the City in the Health Service System pursuant to this subsection shall be determined based upon the lowest cost plan offered by the Health Service System."

It is very important that the ballot question be both accurate in its description of the proposition. In its current form, the ballot question misinforms the electorate as to Proposition B's effect on retiree health care. In the summary and title prepared by your office in May 2010, it states "the proposed Charter amendment applied to "employee coverage." There is no mention of any effect whatsoever on retiree health care.

I am therefore requesting that your office issue a letter or opinion correcting this error as soon as possible so that voters are promptly notified of the erroneous statements contained in ballot question and digest. It is imperative that this error be corrected as soon as possible, given that the election is less than three weeks away.

Thank you.

Very truly yours,  
  
Jeff Adachi



Contact: Barbara Carr  
Telephone: 415-554-4375  
E-mail: publications@sfgov.org

### About the Ballot Simplification Committee

The Ballot Simplification Committee works in public meetings to prepare a fair and impartial summary of each local ballot measure in simple language. These summaries, or "digests," are printed in San Francisco's Voter Information Pamphlet, which is mailed to every registered voter before the election.

Each digest must explain the primary purposes and points of the measure, but is not required to include auxiliary or subsidiary information. Each digest must include the following four sections:

- *The Way It Is Now*
- *The Proposal*
- *A "Yes" Vote Means*
- *A "No" Vote Means*

In general, each digest is limited to 300 words. Digests may exceed the 300-word limit if the Committee determines that the complexity or scope of the proposed measure requires a longer digest. In addition, digests must be written as close as possible to the eighth-grade reading level.

The Ballot Simplification Committee also assists the Department of Elections in preparing other informational material for the Voter Information Pamphlet, such as a glossary of the terms that appear in the pamphlet. The Committee is responsible only for the digests and this other informational material. The City Attorney prepares the ballot questions and the Director of Elections determines the titles of propositions.

The uncertainty of whether the Governor will call a special statewide election for June 7 has affected planning for Ballot Simplification Committee meetings. Normally, the Committee completes digests no later than 85 days before an election, which would be March 14 for a June 7 election. Although an election has not yet been called, **the Committee is scheduled to meet on Monday, March 21**, to draft digests for local measures that would appear on the ballot if a June 7 election is called; **the Committee is also scheduled to meet on Tuesday, March 22**, to review any Requests for Reconsideration of digests drafted the previous day. If, prior to the meeting dates, it is clear that there will not be a June statewide special election, the Ballot Simplification Committee meetings will be cancelled.

Meeting agendas and agenda packets will be posted on the Department of Elections website, [www.sfelections.org/bsc](http://www.sfelections.org/bsc), and in our office in City Hall, Room 48. Agendas will be

posted at least 72 hours prior to the meeting, and agenda materials will be made available as early as possible. Please check often for any updates.

### **Procedure for Drafting Digests**

The City Attorney's Office prepares a preliminary draft digest of each proposition. The Committee edits and amends the draft digest during public meetings.

The Committee begins by discussing and editing the preliminary draft digest prepared by the City Attorney's Office. During this discussion, the Committee may solicit information from City staff or from the drafters of the proposition. Other public comment generally is not permitted during this phase of the Committee's work.

When the Committee has agreed upon a draft digest, it opens the meeting to comments and suggestions from the public. Each speaker is generally permitted three minutes. The Committee respectfully requests that comments are limited to specific points concerning the language of the draft, are not argumentative, and do not repeat the suggestions of others.

After all members of the public who wish to comment on the digest have been heard, the Committee considers each of the comments and suggestions and decides whether to amend the draft digest. The Committee then votes to adopt the digest. At least three votes are required to adopt a digest.

### **Procedure for Reconsideration of Digests**

Following adoption of a digest by the Ballot Simplification Committee, any person may request that the Committee reconsider the digest by submitting a written Request for Reconsideration to the Department of Elections. The request must indicate the specific language in the digest that the requestor wants to amend, what alternate language the requestor recommends, and the reasons for that recommendation. **Requests for Reconsideration must be submitted within 24 hours of adoption of the digest.** Each digest will be posted as soon as possible after adoption at [www.sfelections.org/bsc](http://www.sfelections.org/bsc), with the deadline for Requests for Reconsideration.

Please address any Requests for Reconsideration as follows:

E-mail: [publications@sfgov.org](mailto:publications@sfgov.org)

Fax: 415-554-7257

Hand Delivery: Ballot Simplification Committee – Request for Reconsideration,  
C/o Barbara Carr, Department of Elections, City Hall, Room 48

Upon receipt of a Request for Reconsideration, the Committee deliberates and votes on whether to reconsider its digest. If the Committee decides to reconsider the digest language, it does so at that time. The Committee may or may not change the language of the digest. After this reconsideration, the Committee again opens the meeting to comments and suggestions from the public. The Committee then considers those

comments and suggestions, decides whether or not to amend, and votes to adopt a final digest. The Committee's decisions concerning Requests for Reconsideration are final.

### **Committee Members**

The Ballot Simplification Committee consists of five voting members, each of whom must be a San Francisco resident and registered voter. The voting members are selected as follows:

- the Board of Supervisors appoints three:
  - two must be nominated by either the Northern California Chapter of the National Academy of Television Arts and Sciences or the Northern California Broadcasters Association.
  - one must be nominated by the League of Women Voters of San Francisco.
- the Mayor appoints two:
  - one must be nominated by the Northern California Media Workers Guild (formerly Northern California Newspaper Guild.)
  - one must be an educational reading specialist recommended by the Superintendent of Schools of the San Francisco Unified School District.

The City Attorney or his or her representative serves as a non-voting *ex officio* member. The Committee's work is administered by the Department of Elections.

The current voting members of the Committee are:

**Betty Packard, Chair**

*Nominated by the Northern California Broadcasters Association/California Press Women*  
Appointed by the Board of Supervisors

**June Fraps**

*Nominated by the National Academy of Television Arts and Sciences*  
Appointed by the Board of Supervisors

**Ann Jorgensen**

*Nominated by the San Francisco Unified School District*  
Appointed by the Mayor

**Adele Fasick**

*Nominated by the League of Women Voters*  
Appointed by the Board of Supervisors

**Christine Unruh**

*Nominated by the California Media Workers Guild*  
Appointed by the Mayor

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA  
City Attorney

MOLLIE LEE  
Deputy City Attorney

DIRECT DIAL: (415) 554-4705  
E-MAIL: molle.lee@sfgov.org

April 1, 2011

TO ALL INTERESTED PARTIES:

Attached is the City Attorney's title and summary for the proposed local initiative measure designated by the Department of Elections as 11-01b.<sup>1</sup> In preparing this title, the City Attorney makes no representation regarding the merits or legality of the proposed legislation. Nor does the City Attorney verify or confirm any factual or legal assertion made in the proposal. The title is presented as a "true and impartial statement of the purpose of the proposed measure." Elections Code § 9203.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

Mollie Lee  
Deputy City Attorney

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2011 APR - 1 PM 1:46  
DEPARTMENT OF ELECTIONS

<sup>1</sup> The subject matter of this memorandum indirectly involves the Mayoral election. Accordingly, for the reasons set forth in the City Attorney's August 27, 2010, memorandum regarding legal advice on matters concerning the Mayor's race, City Attorney Dennis J. Herrera took no part in preparing or reviewing this advice. The August 27 memorandum is available in the list of public opinions on the City Attorney Office's website, at <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=669>.

## Retirement Benefits for City Employees

The City provides its employees with defined retirement benefits through its Retirement System. Generally employees pay 7.5% of compensation to the System. Investment earnings and City payments fund the balance. The City has sometimes paid the employee contribution.

Most City employees may receive retirement benefits at age 50 with 20 service years or at 60 with 10 years. Police officers and firefighters may receive benefits at age 50 with 5 years.

Retirement benefits generally depend on final compensation, retirement age, and service length. The maximum annual allowance is 90% of final compensation for police and firefighters and 75% of final compensation for other employees. Final compensation is calculated on a one or two-year average.

Retirement benefits may include cost-of-living adjustments up to 2% annually. When the Retirement System has sufficient investment earnings, it may pay a supplemental cost-of-living increase up to a combined total of 3.5% annually.

The Charter amendment would increase the amount most employees contribute to the Retirement System. Employees would pay a minimum contribution; some would pay an additional amount. The minimum contribution rate, as a percentage of compensation, would be:

- 6.0% for most future employees,
- 7.5% for most current employees,
- 8% for future police and firefighters, and
- 10% for current police and firefighters.

Employees making at least \$50,000 would pay an additional amount when the City contribution rate is at least 10%. The rate for the additional amount would be graduated according to compensation and would range from 1.0-8.5%.

The Charter amendment would prohibit the City from paying any employee contribution. It also would prohibit the Retirement System from paying supplemental cost-of-living benefits unless it is fully funded.

The Charter amendment would reduce retirement benefits for employees hired after December 31, 2011:

- For police and firefighters, the minimum retirement age would be 50 with 10 years.
- For other employees, the minimum retirement age would be 55 with 20 years or 65 with 10 years.
- The benefit formula would: reduce the percentage employees receive based on age; limit the compensation calculation to base salary; and calculate final compensation from a five-year average.
- The maximum annual retirement allowance would be the lesser of 75% of final compensation or \$140,000.

Current employees could choose to participate in the lower contribution/lower benefit plans that apply to new employees.

WORD COUNT: 392 [Maximum: 500 words]

[Department of Elections file no. 11-01b]

DEPARTMENT OF ELECTIONS  
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SAN FRANCISCO

**CHARTER AMENDMENT INCREASING CITY EMPLOYEES' CONTRIBUTIONS TOWARD THEIR PENSION BENEFITS AND PROVIDING A REFORMED PENSION PLAN FOR NEW EMPLOYEES**

Be it ordained by the People of the City and County of San Francisco ("City") that:

The People of the City and County of San Francisco hereby enact the following Charter Amendment entitled "The Sustainable City Employee Pension Reform Act" to increase the amounts that City employees contribute toward their pension benefits when the City's costs increase, while exempting lower-paid employees, and provide a reformed pension plan for new employees. This measure protects the City's ability to provide essential public services and ensures that the City's pension obligations to its employees are funded in a sustainable manner.

**SECTION 1. FINDINGS AND PURPOSE**

When the economy was booming, San Francisco's pension liability was largely covered by investment returns on the City's retirement fund. During that time, the City did not contribute towards the retirement fund. That is no longer the case.

This year, the City will contribute \$357 million in taxpayer dollars to city employee pension costs directly from its general operating budget. Within four years, the City's required direct contribution from taxpayers is projected to reach \$600 million – an average increase of \$60 million per year. These costs may force the City to cut an additional \$243 million in services over the next four years or raise taxes to meet its pension obligations to retirees.

Currently, regardless of the actual costs of funding the pension system, most employees contribute a fixed rate of 7.5% of their salary toward the pension system and receive a guaranteed pension upon retirement. Unlike employees' contributions, the City's required contribution rate is not fixed. The City now contributes 13.5% of each employee's salary, but this rate is projected to increase to 28% by 2015, while the employee contribution rate, if no changes are made, will stay the same.

These escalating pension costs come at a time when the City is facing large deficits. In 2011, the City faced a \$379 million budget shortfall and is expected to face an even larger deficit next year. Pension costs are draining the City's general operating funds, and are significantly

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2011 MAR 28 PM 2:33  
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impairing the City's ability to provide basic services to its residents such as police and fire protection, street and infrastructure repair, parks, sports and recreational facilities, health services for low-income families and after-school programs for children. For the City to continue to provide important public services and sustainably fund the pension system, substantial modifications to existing pension formulas and employee contributions are needed.

The employee contribution rates toward pension benefits are presently fixed, regardless of the magnitude of pension cost increases. This measure provides that as the cost of sustaining present levels of benefits increases, present and future employees will be required to contribute additional amounts tied to increases in the employer contribution rate.

This measure also recognizes, however, that lower-paid employees will be less able to meet increases in pension costs than will higher-paid employees. Accordingly, this measure creates a formula that takes into account disparities in employee income. Under this graduated formula, increased contributions paid by taxpayers are correlated with an employee's contribution, based on that employee's level of compensation. However, the lowest earning employees are protected: employees making below \$60,000 will only face minimal increases in their level of required contribution, while employees making below \$50,000 per year are exempt from any increases.

This measure also limits pensions for employees hired after January 1, 2012, to the lower of either \$140,000 annually (adjusted for inflation) or 75% of pensionable compensation, recognizing that higher paid employees have the means to supplement their retirement through self-directed investment, with a limited match by the City. This measure provides that the City may establish a supplemental defined contribution plan, provided that the City's contribution for its employees does not exceed a three percent (3%) matching contribution.

This measure further recognizes that the retirement benefits of police officers and firefighters are more generous than those received by other City employees and that an employee who receives more generous retirement benefits should make a higher contribution than one who does not. Currently, the cost of a typical firefighter's pension is almost three times the amount of

a non-safety employee's pension, while the cost of a typical police officer's pension is double the amount of a non-safety employee. In 2002, a voter-approved measure enhanced pension benefits for police officers and firefighters *provided* that such employees shall enter a cost sharing agreement to achieve a material reduction in the additional cost of these benefits. This measure achieves a greater degree of cost sharing with these employees.

To further reduce City contributions to employee pensions, this measure calls for implementation of a new pension formula for employees hired on or after January 1, 2012. The new formula provides for a reduced level of benefits, at lower contribution rates, than exist for present employees. This new formula will not change benefit levels for present employees. However, present employees may choose to pay a lower contribution rate by electing to be covered by the new formula in exchange for reduced benefits.

The pension provisions in this measure do not apply to teachers and academic administrators employed by San Francisco Unified School District and San Francisco Community College District who are participants in the State Teachers' Retirement System, nor to participants in the California Public Employees' Retirement System. This measure will not reduce the benefits of any person who has already retired from City employment or their dependents, including widows and orphans of public safety officers who die in the line of duty.

In the event that the pension system becomes fully funded or the City identifies new sources of revenue to help reduce the cost of pensions, this measure allows the Board of Supervisors to convene a hearing to determine whether any changes should be made to the Charter. However, any changes in retirement benefits must be submitted to the voters for approval.

This measure does not restrict the collective bargaining rights presently enjoyed by City employees. Pension benefits have always been set by the voters in the City's Charter.

## **SECTION 2. AMENDMENT OF CHARTER**

The San Francisco City Charter is hereby amended as follows:

***A8.490 CONTRIBUTIONS TO EMPLOYEE PENSION BENEFITS (ALL ELECTED OFFICIALS, OFFICERS AND EMPLOYEES)***

The following provisions shall apply to active and future members of the San Francisco City and County Employees' Retirement System (SFERS or "Retirement System") effective January 1, 2012 and to employers participating in SFERS.

- (a) All elected officials, officers, and miscellaneous employees employed as of December 31, 2011, in addition to contributing a fixed rate of 7.5% of each payment of compensation towards their pensions, shall contribute the additional variable sums toward their pensions set forth in Table A. The employer's contribution rate shall be reduced commensurately.
- (b) All uniformed members of the police and fire departments employed as of December 31, 2011, in addition to contributing a fixed rate of 10% of each payment of compensation toward their pensions, shall contribute the additional variable sums towards their pensions set forth in Table A. The employer's contribution rate shall be reduced commensurately.

**TABLE A: ADDITIONAL CONTRIBUTION RATES TO BE PAID BY ELECTED OFFICIALS, OFFICERS, MISCELLANEOUS EMPLOYEES, POLICE OFFICERS AND FIREFIGHTERS.**

Annual Base Wage	If the Employer Contribution Rate Is 10% or More, Employee pays an additional	If the Employer Contribution Rate Is 12.5% or More, Employee pays an additional	If the Employer Contribution Rate Is 15% or More, Employee pays an additional	If the Employer Contribution Rate Is 17.5% or More, Employee pays an additional	If the Employer Contribution Rate Is 20 % or More, Employee pays an additional	If the Employer Contribution Rate Is 22.5% or More, Employee pays an additional	If the Employer Contribution Rate Is 25% or More, Employee pays an additional	If the Employer Contribution Rate is 27.5% Or More, Employee pays an additional	If the Employer Contribution Rate is 30% Or More, Employee pays an additional
\$0-\$49,999	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
\$50,000-\$59,999	1.0	1.5	2.0	2.5	3.0	3.5	4.0	4.5	5.0
\$60,000-\$69,999	1.5	2.0	2.5	3.0	3.5	4.0	4.5	5.0	5.5
\$70,000-\$79,999	2.0	2.5	3.0	3.5	4.0	4.5	5.0	5.5	6.0
\$80,000-\$89,999	2.5	3.0	3.5	4.0	4.5	5.0	5.5	6.0	6.5
\$90,000-	3.0	3.5	4.0	4.5	5.0	5.5	6.0	6.5	7.0

\$99,999									
\$100,000- \$149,999	3.5	4.0	4.5	5.0	5.5	6.0	6.5	7.0	7.5
\$150,000- \$199,999	4.0	4.5	5.0	5.5	6.0	6.5	7.0	7.5	8.0
\$200,000 and above	4.5	5.0	5.5	6.0	6.5	7.0	7.5	8.0	8.5

- (c) The “employer contribution rate” referenced in Table A is the “net employer contribution rate,” as defined by the Retirement System’s actuary, which is comprised of the employer’s normal cost rate, plus the amortization of the total unfunded actuarial liability, plus the expense load.
- (d) The annual base wage rate for employees shall be determined using the employee’s classification and step, by multiplying the hourly base wage rate for such employee by the number of hours annually that individuals in the employee’s classification are regularly scheduled to work.
- (e) All elected officials, officers, and miscellaneous employees who commenced employment on or after January 1, 2012, will receive the reduced pension benefits provided in section A8.490-1 and shall contribute 6% of each payment of compensation toward their pensions, plus the amounts set forth in Table A. Commencing on July 1, 2012, all elected officials, officers, and miscellaneous employees who were employed as of December 31, 2011, may elect to pay the lower contribution rate for years not yet worked, plus the amounts set forth in Table A, in exchange for receiving prospectively the reduced pension benefits provided in section A8.490-1.
- (f) All uniformed members of the police and fire departments who commenced employment on or after January 1, 2012, will receive the reduced pension benefits provided in section A8.490-1 and shall contribute 8% of each payment of compensation toward their pensions, plus the amounts set forth in Table A. Commencing on July 1, 2012, all uniformed members of the police and fire

departments, who were employed as of December 31, 2011, may elect to pay the lower contribution rate for years not yet worked, plus the amounts set forth in Table A, in exchange for receiving prospectively the reduced pension benefits provided in section A8.490-1.

- (g) The SFERS actuary shall study both the fixed contribution rates for employees who commenced employment on or after January 1, 2012, and the contribution rate paid by employees who were employed as of December 31, 2011, who chose the option of the reduced benefit package specified in subsections (e) and (f) of this section. The actuary shall determine the rate of member contribution that would result in the equivalent of a 2% salary savings for the employer as compared to employees who remain in the pre-2012 plan. If the actuary determines that a lower contribution rate than the rate established in subsections (e) and (f) of this section for the reduced benefit contribution will achieve the equivalent of at least a 2% salary savings, as certified by SFERS and the San Francisco Controller, the Retirement Board may reduce the contribution rate paid by these employees up to that amount.
- (h) The rate of contribution charged to all elected officials, officers, police and fire employees, and miscellaneous employees for compensation earned shall be calculated annually. SFERS will inform affected employees no later than 90 days before any change in the employee contribution rate.
- (i) Effective July 1, 2014, the annual base wage rates stated in Table A shall be adjusted annually based on changes in the Consumer Price Index (CPI-U) for the San Francisco Bay Area relative to the prior calendar year.

***A8.490-1 PENSION BENEFITS FOR OFFICERS AND EMPLOYEES HIRED ON OR AFTER JANUARY 1, 2012; PROHIBITION AGAINST PENSION SPIKING; HIGHER MINIMUM AGE FOR REGULAR RETIREMENT; LIMITATION OF RETIREMENT BENEFIT TO THE LESSER OF 75% OF FINAL COMPENSATION OR \$140,000***

The following provisions shall apply to members of the Retirement System hired by the City or other employers participating in the Retirement System on or after January 1, 2012.

- (a) The minimum age for service retirement for elected officials, officers and miscellaneous employees who began employment on or after January 1, 2012 shall be:
  - (i) Age 55 for members who complete at least 20 years of total service in the aggregate credited in the Retirement System. A member who retires at the age of 55 shall receive a service retirement allowance at the rate of 1.3 % of average final compensation per year of service. For each quarter-year of service after age 55, the percent per year of credited service shall increase by 0.025%, to a maximum of 2.3% at age 65.
  - (ii) Age 65 for members who complete at least 10 years of service in the aggregate credited in the Retirement System. A member who retires after reaching the age of 65 shall receive a service retirement allowance at the rate of 2.3 % of average final compensation per year of service.
- (b) The minimum age for service retirement for uniformed members of the police department and fire department who became employed on or after January 1, 2012, shall be age 50, with a minimum of 10 years of service. A member who retires at the age of 50 shall receive a service retirement allowance at the rate of 2.0% of average final compensation per year of service. For each quarter-year of service after age 50, the percent per year of credited service shall increase by 0.025%, to a maximum of 2.7% at age 57. A member who retires after reaching the age of 57 shall receive a service retirement allowance at the rate of 2.7 % of average final compensation per year of service.

- (c) The voters find and declare that “pension spiking,” by which employees’ compensation is increased in their final years of service to artificially inflate their pension benefits, threatens the sustainability of the pension system. To prevent pension spiking, the voters adopt the following provisions:
- (i) “Compensation” for the purposes of section A8.490-1 shall mean base wage as defined by classification or rank and applicable step, and shall not include overtime, premiums, differentials, special pays, educational incentives, retention pays, longevity pays, performance pays, bonuses, “pick-ups” of the employee share of retirement or health contributions, or any other supplemental compensation or remuneration.
  - (ii) “Average final compensation” for all sworn members employed by the San Francisco police and fire departments, elected officials, officers and miscellaneous employees participating in the SFERS shall mean the average monthly compensation earned by a member during the higher of (a) any five consecutive fiscal years of earnings, or (b) the sixty months of earnings immediately prior to retirement.
- (d) For employees who qualify for and elect to receive vesting retirement pursuant to sections A8.600-6, A8.601-15, or A8.602-15, the minimum age necessary to receive a retirement allowance and the percent per year of credited service shall be as set forth above in section A8.490-1(a) or (b) as applicable, and shall be subject to the limitations of section A8-490-1(f), below, limiting the maximum amount of retirement allowance.
- (e) The percentage per year of credited service for uniformed members of the police and fire departments retiring for incapacity shall be as set forth above in section A8.490-1(b), subject to the limitations of section A8.490-1(c) defining compensation and average final compensation and the limitations of section A8.490-1(f), below, limiting the maximum amount of retirement allowance.

Section A8.600-3 shall continue to govern retirement for incapacity of elected officials, officers and miscellaneous employees, subject to the limitations of section A8.490-1(c) defining compensation and average final compensation and the limitations of section A8.490-1(f), below, limiting the maximum amount of retirement allowance.

- (f) In no event shall the retirement allowance of any member of SFERS hired on or after January 1, 2012, exceed seventy-five percent of his or her average final compensation or an annual pension of \$140,000, whichever is less, regardless of the type of retirement. Commencing July 1, 2014, the \$140,000 maximum referenced in this subsection shall be adjusted annually by any increase in the CPI-U for the San Francisco Bay Area relative to the prior calendar year.
- (g) The City and/or other employers participating in SFERS and affected employee organizations may negotiate a supplemental defined contribution plan, provided that the City and County of San Francisco's Mayor and Board of Supervisors shall have no authority to agree to a City contribution in excess of 3% of base wage as defined as A8.490 (d), and provided further that the employee contribution to such defined contribution plan shall equal or exceed the City contribution.

***A8.490-2 SUPPLEMENTAL COST OF LIVING ADJUSTMENTS AFTER JANUARY 1, 2012***

Notwithstanding Charter sections A8.526-1 and A8.526-3, no supplemental cost of living benefits shall be paid after January 1, 2012, unless the SFERS Retirement Fund is 100% funded on an actuarial value of assets basis. No cost of living increase granted to a retiree on or before January 1, 2012, shall be reduced as a result of this section.

***A8.490-3 INTERPRETATION AND EFFECT ON OTHER CHARTER PROVISIONS***

- (a) Any section or part of any section in this Charter, insofar as it conflicts with the provisions of sections A8.490, A8.490-1 or A8.490-2, shall be superseded by the

contents of said sections, including but not limited to other provisions of the Charter enacted prior to the effective date of this measure, regardless of content.

- (b) Nothing in this measure limits City employees' right to collective bargaining. However, the voters find and declare that no representative of the City and County, including but not limited to the Mayor or Board of Supervisors, shall have the authority to enter into a binding MOU inconsistent with the terms of Charter sections A8.490, A8.490-1, or A8.490-2 without approval of the voters. To the extent that any provision of these sections is contrary to the terms of an MOU executed on or before November 8, 2011, any changes to pension benefits or contributions shall become effective for employees covered by such MOU only upon expiration of such MOU, based on the expiration date specified in the MOU as of November 8, 2011.
- (c) The Mayor and/or Board of Supervisors of the City and County of San Francisco shall have no authority to reimburse, assume, pick up or otherwise provide for the City to pay any portion of the employees' required pension contribution provided in this section and/or other sections of this Charter without the approval of the voters.
- (d) No agreement reached or arbitration award decided pursuant to Charter sections A8.409 et seq. or A8.590-1 et seq. may supersede the provisions of sections A8.490, A8.490-1, or A8.490-2. In any arbitration involving employees of the City and County of San Francisco under Charter section A8.409-4 or A8.590-5, the arbitrator shall make specific findings regarding the estimated annual costs to the City of pension benefits attributable to employees covered by the arbitration award for each year of the prior agreement and projected costs for each year of the successor agreement, based on known and projected employer contribution rates. In determining wages and other forms of compensation pursuant to this section, the arbitrator shall consider as increased compensation any increase in the

cost of pension contributions paid or projected to be paid by the City.

Compliance with this provision shall be mandatory.

- (e) Nothing in this section shall reduce the pensions of employees who retired prior to the effective date of this measure or the rights of dependents or survivors of such employees.
- (f) Nothing in this Charter amendment shall reduce the survivor benefits of public safety officers who die in the line of duty.
- (g) In the event that the SFERS actuary determines that the SFERS pension fund has become fully funded or the City identifies sources of new revenue to reduce the cost of pension costs, the Board of Supervisors shall convene a hearing to determine whether any amendments should be made to sections A8.490 through A8.490-2; provided, however, that any such amendment(s) shall be submitted to the voters for approval.
- (h) Nothing in Charter sections A8.490 through A8.490-2 shall alter the authority of the Board of Supervisors, pursuant to Charter section A8.500 to make changes to these provisions to the extent necessary to maintain the tax qualified status of the retirement system.
- (i) By state statute, certain public employees employed by the City and associated governmental entities are not included within SFERS. These include teachers and academic administrators employed by San Francisco Unified School District and San Francisco Community College District who are participants in the State Teachers Retirement System, as well as participants in the Public Employees Retirement System. The provisions in sections A8.490 through A8.490-2 herein do not apply to such employees.

***A8.490-4 ACCRUED BENEFITS AND FUTURE ACCRUALS***

Nothing in sections A8.490 through A8.490-2 shall reduce any accrued current pension benefits earned as of the effective date of this measure. Pension benefits for service not yet performed can be modified prospectively by the voters.

**SECTION 3. SEVERABILITY**

This Charter Amendment shall be interpreted so as to be consistent with the United States and California Constitutions, and all federal and state laws, rules, and regulations. If any section, subsection, sentence, or clause (“portion”) of this Amendment is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this Amendment. The voters hereby declare that this Amendment, and each portion of the Amendment, would have been adopted irrespective of whether any one or more portions of the Amendment are found invalid. If any portion of this Amendment is held invalid as applied to any person, circumstance, employee or category of employee, such invalidity shall not affect any application of this Amendment which can be given effect. If any portion of the Amendment is held invalid as to existing employees, it shall not affect its application to employees hired after the effective date of this measure. This Amendment shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Amendment be interpreted or implemented in a manner that facilitates the purposes set forth herein.

**SECTION 4. EFFECTIVE DATE**

Except as specifically set forth in the text, this Charter Amendment shall be effective January 1, 2012.

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CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA  
City Attorney

OFFICE OF THE CITY ATTORNEY

MOLLIE LEE  
Deputy City Attorney

DIRECT DIAL: (415) 554-4705  
E-MAIL: mollie.lee@sfgov.org

April 1, 2011

TO ALL INTERESTED PARTIES:

Attached is the City Attorney's title and summary for the proposed local initiative measure designated by the Department of Elections as 11-02c.<sup>1</sup> In preparing this title, the City Attorney makes no representation regarding the merits or legality of the proposed legislation. Nor does the City Attorney verify or confirm any factual or legal assertion made in the proposal. The title is presented as a "true and impartial statement of the purpose of the proposed measure." Elections Code § 9203.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

Mollie Lee  
Deputy City Attorney

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<sup>1</sup> The subject matter of this memorandum indirectly involves the Mayoral election. Accordingly, for the reasons set forth in the City Attorney's August 27, 2010, memorandum regarding legal advice on matters concerning the Mayor's race, City Attorney Dennis J. Herrera took no part in preparing or reviewing this advice. The August 27 memorandum is available in the list of public opinions on the City Attorney Office's website, at <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=669>.

## Retirement and Retiree Health-Care Benefits for City Employees

The City provides its employees with defined retirement benefits through its Retirement System. Generally employees pay 7.5% of compensation to the System. Investment earnings and City payments fund the balance. The City has sometimes paid the employee contribution.

Most City employees may receive retirement benefits at age 50 with 20 service years or at 60 with 10 years. Police officers and firefighters may receive benefits at age 50 with 5 years.

Retirement benefits generally depend on final compensation, retirement age, and service length. The maximum annual allowance is 90% of final compensation for police and firefighters and 75% of final compensation for other employees. Final compensation is calculated on a one or two-year average.

Retirement benefits may include cost-of-living adjustments up to 2% annually. When the Retirement System has sufficient investment earnings, it may pay a supplemental cost-of-living increase up to a combined total of 3.5% annually.

The City provides eligible retired City employees with health-care benefits. In 2008 the City created a Retiree Health Care Trust Fund to help pay for those benefits. Employees hired after January 9, 2009 contribute 2% of compensation and the City contributes 1% of compensation to the Fund.

The Charter amendment would increase the amount most employees contribute to the Retirement System. The minimum contribution rate, as a percentage of compensation, would be:

- 7.0% for most future employees,
- 7.5% for most current employees,
- 9% for future police and firefighters, and
- 10% for current police and firefighters.

Employees making \$65,000 per year or more would pay at the greater of:

- the minimum contribution rate, or
- half the total City and employee contribution rate required to fund the System.

After July 1, 2013, the contribution rate for all employees could increase by no more than 2% annually.

The Charter amendment would prohibit the City from paying any employee contribution. It also would prohibit the Retirement System from paying supplemental cost-of-living benefits unless it is fully funded.

The Charter amendment would reduce retirement benefits for employees hired after December 31, 2011:

- For police and firefighters, the minimum retirement age would be 50 with 10 years.
- For other employees, the minimum retirement age would be 55 with 20 years or 65 with 10 years.
- The benefit formula would: reduce the percentage employees receive based on retirement age; limit the compensation calculation to base salary; and calculate final compensation from a five-year average.
- The maximum annual retirement allowance would be the lesser of 75% of final compensation or \$140,000.

The Charter amendment would increase the amount employees contribute to the Retiree Health Care Trust Fund. Employees would contribute at a graduated rate of 2%-4%, increasing with

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compensation, except that employees hired after January 10, 2009, would continue to pay at 2%. Employees would contribute half the Fund's costs after it is fully funded.

WORD COUNT: 483 [Maximum: 500 words]

[Department of Elections file no. 11-02c]

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**CHARTER AMENDMENT INCREASING CITY EMPLOYEES' CONTRIBUTIONS TOWARD THEIR PENSION BENEFITS, PROVIDING A REFORMED PENSION PLAN FOR NEW EMPLOYEES AND FUNDING THE RETIREE HEALTH CARE TRUST FUND**

Be it ordained by the People of the City and County of San Francisco ("City") that:

The People of the City and County of San Francisco hereby enact the following Charter Amendment entitled "The Sustainable City Employee Pension & Benefits Reform Act," to increase the amounts that City employees contribute toward their pension benefits when the City's costs increase, while exempting lower-paid employees, and to fund the Retiree Health Care Trust Fund. This measure also establishes a reformed pension plan for new employees. This measure will protect the City's ability to provide essential public services and ensures that the City's pension and health care obligations to its city employees are funded in a sustainable manner.

**SECTION 1. FINDINGS AND PURPOSE**

When the economy was booming, San Francisco's pension liability was largely covered by investment returns on the City's retirement fund. During that time, the City did not contribute towards the retirement fund. That is no longer the case.

This year, the City will contribute \$357 million in taxpayer dollars to city employee pension costs directly from its general operating budget. Within four years, the City's required direct contribution from taxpayers is projected to reach \$600 million – an average increase of \$60 million per year. These costs may force the City to cut an additional \$243 million in services over the next four years or raise taxes to meet its pension obligations to retirees.

Currently, regardless of the actual costs of funding the pension system, most employees contribute a fixed rate of 7.5% of their salary toward the pension system and receive a guaranteed pension upon retirement. Unlike employees' contributions, the City's required contribution rate is not fixed. The City now contributes 13.5% of each employee's salary, this rate is projected to increase to 28% by 2015, while the employee contribution rate, if no changes are made, will stay the same.

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At the same time that pension costs are rising out of control, the City has also amassed a \$4.3 billion dollar unfunded liability for retiree health care costs for current and former city employees. The City's liability for these costs is growing by more than \$300 million per year and will reach \$10 billion in twelve years. *The City has only saved \$9 million, two-tenths of one percent, to cover this \$4.3 billion debt.* Unless the City and its employees jointly begin to put aside money to support promised retirement health care benefits, those benefits cannot be ensured. By requiring additional contributions, this measure is intended to make sure that those benefits will be there for employees when they retire.

These escalating pension and health care costs come at a time when the City is facing large deficits. In 2011, the City faced a \$379 million budget shortfall and is expected to face an even larger deficit next year. Pension and health care costs are draining the City's general operating funds, and are significantly impairing the City's ability to provide basic services to its residents such as education, police and fire protection, street and infrastructure repair, parks, sports and recreational facilities, health services for low-income families and after-school programs for children. For the City to continue to provide important public services and sustainably fund the pension and health care systems, substantial modifications to existing pension formulas and employee contributions are needed.

The contribution rates of employees toward pension benefits are presently fixed, regardless of the magnitude of pension cost increases. This measure provides that as the cost of sustaining present levels of benefits increases, present and future employees will be required to contribute additional amounts tied to increases in the employer contribution rate.

This measure also recognizes that it is unfair to require lower-paid City employees to contribute more for their benefits, and thus exempts lower-paid City workers. This measure protects employees making below the median income for San Francisco households – \$65,000 a year. Their contribution rates to retiree health and pension benefits will not be increased as a result of this measure.

This measure further provides that employees earning more than \$65,000 will pay one-half of the total pension contribution rates. However, this measure limits any increase in contribution to no more than 2% annually after the first year, to ensure that employees and their families are able to plan for any increases in pension costs.

This measure also limits pensions for employees hired after January 1, 2012, to the lower of either \$140,000 annually (adjusted for inflation) or 75% of pensionable compensation, recognizing that higher paid employees have the means to supplement their retirement through self-directed investment, with a limited match by the City. This measure provides that the City may establish a supplemental defined contribution plan, provided that the City's contribution for its employees does not exceed a three percent (3%) matching contribution.

This measure further recognizes that the retirement benefits of police officers and firefighters are more generous than those received by other City employees and that an employee who receives enhanced retirement benefits should make a higher contribution than one who does not. Currently, the cost of a typical firefighter's pension is almost three times the amount of a non-safety employee's pension, while the cost of a typical police officer's pension is double the amount of a non-safety employee. In 2002, a voter-approved measure enhanced pension benefits for police officers and firefighters *provided* that such employees shall enter a cost sharing agreement to achieve a material reduction in the additional cost of these benefits. This measure achieves a greater degree of cost sharing with these employees.

To further reduce City contributions to employee pensions, this measure calls for implementation of a new pension formula for employees hired on or after January 1, 2012. The new formula provides for a reduced level of benefits, at lower contribution rates, than exist for present employees. This new formula will not change the benefit levels for present employees. The pension provisions in this measure do not apply to teachers and academic administrators employed by San Francisco Unified School District and San Francisco Community College District who are participants in the State Teachers' Retirement System, nor to participants in the California Public Employees' Retirement System. This measure will not reduce the benefits of

any person who has already retired from City employment or their dependents, including widows and orphans of public safety officers who die in the line of duty.

In the event that the pension and health care systems become fully funded or the City identifies new sources of revenue to help reduce the cost of pensions and health care, this measure allows the Board of Supervisors to convene a hearing to determine whether any changes should be made to the Charter. However, any changes in retirement benefits must be submitted to the voters for approval.

This measure does not restrict the collective bargaining rights presently enjoyed by City employees. Pension benefits have always been set by the voters in the City's Charter.

## **SECTION 2. AMENDMENT OF CHARTER**

The San Francisco City Charter is hereby amended as follows:

### ***A8.490 CONTRIBUTIONS TO EMPLOYEE PENSION BENEFITS (ALL ELECTED OFFICIALS, OFFICERS AND EMPLOYEES)***

The following provisions shall apply to active and future members of the San Francisco City and County Employees' Retirement System (SFERS or Retirement "System") effective January 1, 2012 and to employers participating in SFERS.

- (a) All elected officials, officers, and miscellaneous employees employed as of December 31, 2011, shall contribute a minimum of 7.5% of each payment of compensation toward their pensions. All elected officials, officers, and miscellaneous employees who commenced employment on or after January 1, 2012, shall contribute a minimum of 7% of each payment of compensation toward their pensions. In addition, commencing on July 1, 2012, all elected officials, officers, and miscellaneous employees whose annual compensation is \$65,000 or more shall contribute the greater of the minimum contribution above or one-half of the total contribution rate (employer and employee, including normal cost and unfunded actuarial liability).
- (b) Beginning on July 1, 2013, the rate of contribution charged to all elected officials,

officers, and miscellaneous employees for compensation earned shall be recalculated annually.

- (c) Notwithstanding the foregoing, after January 1, 2013, any annual increase to the rate of contribution charged to all elected officials, officers, and miscellaneous employees for compensation who earn in excess of \$65,000 shall not exceed 2% of such compensation in any single year. SFERS will inform affected employees no later than 90 days before any change in the employee contribution rate.
- (d) All uniformed members of the police and fire departments employed as of December 31, 2011, shall contribute a minimum of 10% of each payment of compensation toward their pensions. All uniformed members of the police and fire departments who commenced employment on or after January 1, 2012, shall contribute a minimum of 9% of each payment of compensation toward their pensions. In addition, commencing on July 1, 2012, all uniformed members of the police and fire departments whose annual compensation is \$65,000 or more shall contribute the greater of the minimum contribution above or one-half of the total contribution rate (employer and employee, including normal cost and unfunded actuarial liability).
- (e) Notwithstanding the foregoing, after July 1, 2013, any annual increase to the rate of contribution charged to uniformed members of the police and fire departments for compensation shall not exceed 2% of such compensation in any single year. SFERS will inform affected employees no later than 90 days before any change in the employee contribution rate.
- (f) Commencing July 1, 2014, the \$65,000 threshold referenced in this section A8.490 shall be adjusted annually based on changes in the Consumer Price Index (CPI-U) for the San Francisco Bay Area relative to the prior calendar year.

***A8.490-1 PENSION BENEFITS FOR OFFICERS AND EMPLOYEES HIRED ON OR AFTER JANUARY 1, 2012; PROHIBITION AGAINST PENSION SPIKING; HIGHER MINIMUM AGE FOR REGULAR RETIREMENT; LIMITATION OF RETIREMENT BENEFIT TO THE LESSER OF 75% OF FINAL COMPENSATION OR \$140,000.***

The following provisions shall apply to members of the Retirement System hired by the City or other employers participating in the Retirement System on or after January 1, 2012.

- (a) The minimum age for service retirement for elected officials, officers and miscellaneous employees who began employment on or after January 1, 2012 shall be:
  - (i) Age 55 for members who complete at least 20 years of total service in the aggregate credited in the Retirement System. A member who retires at the age of 55 shall receive a service retirement allowance at the rate of 1.3 % of average final compensation per year of service. For each quarter-year of service after age 55, the percent per year of credited service shall increase by 0.025%, to a maximum of 2.3% at age 65.
  - (ii) Age 65 for members who complete at least 10 years of service in the aggregate credited in the Retirement System. A member who retires after reaching the age of 65 shall receive a service retirement allowance at the rate of 2.3 % of average final compensation per year of service.
- (b) The minimum age for service retirement for uniformed members of the police department and fire department who became employed on or after January 1, 2012, shall be age 50, with a minimum of 10 years of service. A member who retires at the age of 50 shall receive a service retirement allowance at the rate of 2.0% of average final compensation per year of service. For each quarter-year of service after age 50, the percent per year of credited service shall increase by 0.025%, to a maximum of 2.7% at age 57. A member who retires after reaching the age of 57 shall receive a service retirement allowance at the rate of 2.7 % of average final compensation per year of service.

- (c) The voters find and declare that “pension spiking,” by which employees’ compensation is increased in their final years of service to artificially inflate their pension benefits, threatens the sustainability of the pension system. To prevent pension spiking, the voters adopt the following provisions:
- (i) “Compensation” for the purposes of section A8.490-1 shall mean base wage as defined by classification or rank and applicable step, and shall not include overtime, premiums, differentials, special pays, educational incentives, retention pays, longevity pays, performance pays, bonuses, “pick-ups” of the employee share of retirement or health contributions, or any other supplemental compensation or remuneration.
  - (ii) “Average final compensation” for all sworn members employed by the San Francisco police and fire departments, elected officials, officers and miscellaneous employees participating in the SFERS shall mean the average monthly compensation earned by a member during the higher of (a) any five consecutive fiscal years of earnings, or (b) the sixty months of earnings immediately prior to retirement.
- (d) For employees who qualify for and elect to receive vesting retirement pursuant to sections A8.600-6, A8.601-15, or A8.602-15, the minimum age necessary to receive a retirement allowance and the percent per year of credited service shall be as set forth above in section A8.490-1(a) or (b) as applicable, and shall be subject to the limitations of section A8.490-1(f), below, limiting the maximum amount of retirement allowance.
- (e) The percentage per year of credited service for uniformed members of the police and fire departments retiring for incapacity shall be as set forth above in section A8.490-1(b), subject to the limitations of section A8.490-1(c) defining compensation and average final compensation and the limitations of section A8.490-1(f), below, limiting the maximum amount of retirement allowance.

Section A8.600-3 shall continue to govern retirement for incapacity of elected officials, officers and miscellaneous employees, subject to the limitations of section A8.490-1(c) defining compensation and average final compensation and the limitations of section A8.490-1(f), below, limiting the maximum amount of retirement allowance.

- (f) In no event shall the retirement allowance of any member of SFERS hired on or after January 1, 2012, exceed seventy-five percent of his or her average final compensation or an annual pension of \$140,000, whichever is less, regardless of the type of retirement. Commencing July 1, 2014, the \$140,000 maximum referenced in this subsection shall be adjusted annually by any increase in the CPI-U for the San Francisco Bay Area relative to the prior calendar year.
- (g) The City and/or other employers participating in SFERS and affected employee organizations may negotiate a supplemental defined contribution plan, provided that the City and County of San Francisco's Mayor and Board of Supervisors shall have no authority to agree to a City contribution in excess of 3% of base wage as defined by A8.490 (d), and provided further that the employee contribution to such defined contribution plan shall equal or exceed the City contribution.

***A8.490-2 SUPPLEMENTAL COST OF LIVING ADJUSTMENTS AFTER JANUARY 1, 2012***

Notwithstanding Charter sections A8.526-1 and A8.526-3, no supplemental cost of living benefits shall be paid after January 1, 2012, unless the SFERS Retirement Fund is 100% funded on an actuarial value of assets basis. No cost of living increase granted to a retiree on or before January 1, 2012, shall be reduced as a result of this section.

***A8.490-3 EMPLOYEE CONTRIBUTIONS TO RETIREE HEALTH CARE TRUST FUND***

- (a) Effective July 1, 2012, all elected officials, officers and employees who are

members of the City and County Health Service System who were hired before January 10, 2009 shall contribute to the Retiree Health Care Trust Fund established pursuant to section A8.432 the applicable percent of their annual compensation per the table below:

Compensation	Percent
Under \$65,000	0
\$65,000 to \$74,999	2%
\$75,000 to \$84,999	2.5%
\$85,000 to \$94,999	3%
\$95,000 to \$104,999	3.5%
\$105,000 and above	4%

- (b) Employees hired after January 10, 2009, and who are covered by the incremental vesting provisions of Charter section A8.428 will not be required to contribute additional amounts as set forth in subsection (a) of this section.
- (c) Once the Retiree Health Care Trust Fund is fully funded, Participating Employers and their active employees covered by subsection (a) of this section shall each contribute 50% of the normal cost of retiree health care as determined by the employer's actuaries in accordance with generally accepted accounting principles. The Retiree Health Care Trust Fund shall be considered fully funded, for purposes of this subsection, when the actuarial value of assets exceeds the actuarial accrued liability. Normal cost, as used in this section, means the Employer's normal cost under Government Accounting Standards Board (GASB) No. 45, as determined by the employers' respective actuaries.
- (d) The City and County of San Francisco and all Participating Employers shall continue to contribute annually 1% of the total pre-tax compensation of their employees to the Retiree Health Care Trust Fund as specified in Charter section A8.432.

- (e) Nothing herein prevents the City and employee organizations representing City employees from proposing, negotiating or agreeing to increases in the foregoing minimum contribution levels or increases in the City's contribution.

***A8.490-4 INTERPRETATION AND EFFECT ON OTHER CHARTER PROVISIONS***

- (a) Any section or part of any section in this Charter, insofar as it conflicts with the provisions of sections A8.490, A8.490-1, A8.490-2, or A8.490-3, shall be superseded by the contents of said sections, including but not limited to other provisions of the Charter enacted prior to the effective date of this measure, regardless of content.
- (b) Nothing in this measure limits City employees' right to collective bargaining. However, the voters find and declare that no representative of the City and County, including but not limited to the Mayor or Board of Supervisors, shall have the authority to enter into a binding MOU inconsistent with the terms of Charter sections A8.490, A8.490-1, A8.490-2, or A8.490-3 without approval of the voters. To the extent that any provision of these sections is contrary to the terms of an MOU executed on or before November 8, 2011, any changes to pension or health benefits or contributions shall become effective for employees covered by such MOU only upon expiration of such MOU, based on the expiration date specified in the MOU as of November 8, 2011.
- (c) The Mayor and/or Board of Supervisors of the City and County of San Francisco shall have no authority to reimburse, assume, pick up or otherwise provide for the City to pay any portion of the employees' required pension contribution provided in this section and/or other sections of this Charter without the approval of the voters.
- (d) No agreement reached or arbitration award decided pursuant to Charter sections A8.409 et seq. or A8.590-1 et seq. may supersede the provisions of sections

A8.490, A8.490-1, A8.490-2 or A8.490-3. In any arbitration involving employees of the City and County of San Francisco under Charter section A8.409-4 or A8.590-5, the arbitrator shall make specific findings regarding the estimated annual costs to the City of pension benefits attributable to employees covered by the arbitration award for each year of the prior agreement and projected costs for each year of the successor agreement, based on known and projected employer contribution rates. In determining wages and other forms of compensation pursuant to this section, the arbitrator shall consider as increased compensation any increase in the cost of pension contributions paid or projected to be paid by the City. Compliance with this provision shall be mandatory.

- (e) Nothing in this section shall reduce the pensions of employees who retired prior to the effective date of this measure or the rights of dependents or survivors of such employees.
- (f) Nothing in this Charter amendment shall reduce the survivor benefits of public safety officers who die in the line of duty.
- (g) In the event that the SFERS actuary determines that the SFERS pension fund and the Retiree Health Care Trust Fund have become fully funded or the City identifies sources of new revenue to reduce the cost of pensions or health care costs, the Board of Supervisors shall convene a hearing to determine whether any amendments should be made to sections A8.490 through A8.490-3; provided, however, that any such amendment(s) shall be submitted to the voters for approval. The SFERS pension fund and the Retiree Health Care Trust Fund shall be considered fully funded, for purposes of this subsection, when the actuarial value of assets of each fund exceeds the actuarial accrued liability of each fund.
- (h) Nothing in Charter sections A8.490 through A8.490-3 shall alter the authority of the Board of Supervisors, pursuant to Charter section A8.500 to make changes to these provisions to the extent necessary to maintain the tax qualified status of the

retirement system.

- (i) By state statute, certain public employees employed by the City and associated governmental entities are not included within SFERS. These include teachers and academic administrators employed by San Francisco Unified School District and San Francisco Community College District who are participants in the State Teachers Retirement System, as well as participants in the Public Employees Retirement System. The provisions in sections A8.490 to A8.490-2 herein do not apply to such employees.

***A8.490-5 ACCRUED BENEFITS AND FUTURE ACCRUALS***

Nothing in sections A8.490 through A8.490-3 shall reduce any accrued current pension benefits earned as of the effective date of this measure. Pension benefits for service not yet performed can be modified prospectively by the voters.

**SECTION 3. SEVERABILITY**

This Charter Amendment shall be interpreted so as to be consistent with the United States and California Constitutions, and all federal and state laws, rules, and regulations. If any section, subsection, sentence, or clause (“portion”) of this Amendment is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this Amendment. The voters hereby declare that this Amendment, and each portion of the Amendment, would have been adopted irrespective of whether any one or more portions of the Amendment are found invalid. If any portion of this Amendment is held invalid as applied to any person, circumstance, employee or category of employee, such invalidity shall not affect any application of this Amendment which can be given effect. If any portion of the Amendment is held invalid as to existing employees or retirees, it shall not affect its application to employees hired after the effective date of this measure. This Amendment shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the

provisions of this Amendment be interpreted or implemented in a manner that facilitates the purposes set forth herein.

**SECTION 4. EFFECTIVE DATE**

Except as specifically set forth in the text, this Charter Amendment shall be effective January 1, 2012.

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DEPARTMENT OF ELECTIONS

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA  
City Attorney

MOLLIE LEE  
Deputy City Attorney

DIRECT DIAL: (415) 554-4705  
E-MAIL: mollie.lee@sfgov.org

April 1, 2011

TO ALL INTERESTED PARTIES:

Attached is the City Attorney's title and summary for the proposed local initiative measure designated by the Department of Elections as 11-03c.<sup>1</sup> In preparing this title, the City Attorney makes no representation regarding the merits or legality of the proposed legislation. Nor does the City Attorney verify or confirm any factual or legal assertion made in the proposal. The title is presented as a "true and impartial statement of the purpose of the proposed measure." Elections Code § 9203.

Very truly yours,

DENNIS J. HERRERA  
City Attorney

Mollie Lee  
Deputy City Attorney

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<sup>1</sup> The subject matter of this memorandum indirectly involves the Mayoral election. Accordingly, for the reasons set forth in the City Attorney's August 27, 2010, memorandum regarding legal advice on matters concerning the Mayor's race, City Attorney Dennis J. Herrera took no part in preparing or reviewing this advice. The August 27 memorandum is available in the list of public opinions on the City Attorney Office's website, at <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=669>.

## Retirement and Retiree Health-Care Benefits for City Employees

The City provides its employees with defined retirement benefits through its Retirement System. Generally employees pay 7.5% of compensation to the System. Investment earnings and City payments fund the balance. The City has sometimes paid the employee contribution.

Most City employees may receive retirement benefits at age 50 with 20 service years or at 60 with 10 years. Police officers and firefighters may receive benefits at age 50 with 5 years.

Retirement benefits generally depend on final compensation, retirement age, and service length. The maximum annual allowance is 90% of final compensation for police and firefighters and 75% of final compensation for other employees. Final compensation is calculated on a one or two-year average.

Retirement benefits may include cost-of-living adjustments up to 2% annually. When the Retirement System has sufficient investment earnings, it may pay a supplemental cost-of-living increase up to a combined total of 3.5% annually.

The City provides eligible retired City employees with health-care benefits. In 2008 the City created a Retiree Health Care Trust Fund to help pay for those benefits. Employees hired after January 9, 2009 contribute 2% of compensation and the City contributes 1% of compensation to the Fund.

The Charter amendment would increase the amount most employees contribute to the Retirement System. Employees would pay a minimum contribution; some would pay an additional amount. The minimum contribution rate, as a percentage of compensation, would be:

- 6.0% for most future employees,
- 7.5% for most current employees,
- 8% for future police and firefighters, and
- 10% for current police and firefighters.

Employees making at least \$50,000 would pay an additional amount when the City contribution rate is at least 10%. The rate for the additional amount would be graduated according to compensation and would range from 1.0-8.5%.

The Charter amendment would prohibit the City from paying any employee contribution. It also would prohibit the Retirement System from paying supplemental cost-of-living benefits unless it is fully funded.

The Charter amendment would reduce retirement benefits for employees hired after December 31, 2011:

- For police and firefighters, the minimum retirement age would be 50 with 10 years.
- For other employees, the minimum retirement age would be 55 with 20 years or 65 with 10 years.
- The benefit formula would: reduce the percentage employees receive based on age; limit the compensation calculation to base salary; and calculate final compensation from a five-year average.
- The maximum annual retirement allowance would be the lesser of 75% of final compensation or \$140,000.

Current employees could choose to participate in the lower contribution/lower benefit plans that apply to new employees.

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The Charter amendment would increase the amount employees contribute to the Retiree Health Care Trust Fund. Employees hired after January 10, 2009, would continue to contribute 2% of compensation; other employees would contribute 2% in 2016, 3% in 2017, 4% in 2018, and 5% in 2019. Employees would contribute half the Fund's costs after it is fully funded.

WORD COUNT: 500 [Maximum: 500 words]

[Department of Elections file no. 11-03c]

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**CHARTER AMENDMENT INCREASING CITY EMPLOYEES' CONTRIBUTIONS TOWARD THEIR PENSION BENEFITS, PROVIDING A REFORMED PENSION PLAN FOR NEW EMPLOYEES AND FUNDING THE RETIREE HEALTH CARE TRUST FUND**

Be it ordained by the People of the City and County of San Francisco ("City") that:

The People of the City and County of San Francisco hereby enact the following Charter Amendment entitled "The Sustainable City Employee Pension & Benefits Reform Act" to increase the amounts that City employees contribute toward their pension benefits when the City's costs increase, while exempting lower-paid employees, and to fund the Retiree Health Care Trust Fund. This measure also establishes a reformed pension plan for new employees. This measure will protect the City's ability to provide essential public services and ensures that the City's pension and health care obligations to its employees are funded in a sustainable manner.

**SECTION 1. FINDINGS AND PURPOSE**

When the economy was booming, San Francisco's pension liability was largely covered by investment returns on the City's retirement fund. During that time, the City did not contribute towards the retirement fund. That is no longer the case.

This year, the City will contribute \$357 million in taxpayer dollars to city employee pension costs directly from its general operating budget. Within four years, the City's required direct contribution from taxpayers is projected to reach \$600 million – an average increase of \$60 million per year. These costs may force the City to cut an additional \$243 million in services over the next four years or raise taxes to meet its pension obligations to retirees.

Currently, regardless of the actual costs of funding the pension system, most employees contribute a fixed rate of 7.5% of their salary toward the pension system and receive a guaranteed pension upon retirement. Unlike employees' contributions, the City's required contribution rate is not fixed. The City now contributes 13.5% of each employee's salary, but this rate is projected to increase to 28% by 2015, while the employee contribution rate, if no changes are made, will stay the same.

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At the same time that pension costs are rising out of control, the City has also amassed a \$4.3 billion dollar unfunded liability for retiree health care costs for current and former city employees. The City's liability for these costs is growing by more than \$300 million per year and will reach \$10 billion in twelve years. *The City has only saved \$9 million, two-tenths of one percent, to cover this \$4.3 billion debt.* Unless the City and its employees jointly begin to put aside money to support promised retirement health care benefits, those benefits cannot be ensured. By requiring additional contributions, this measure is intended to make sure that those benefits will be there for employees when they retire.

These escalating pension and health care costs come at a time when the City is facing large deficits. In 2011, the City faced a \$379 million budget shortfall and is expected to face an even larger deficit next year. Pension and health care costs are draining the City's general operating funds, and are significantly impairing the City's ability to provide basic services to its residents such as education, police and fire protection, street and infrastructure repair, parks, sports and recreational facilities, health services for low-income families and after-school programs for children. For the City to continue to provide important public services and sustainably fund the pension and health care systems, substantial modifications to existing pension formulas and employee contributions are needed.

The contribution rates of employees toward pension benefits are presently fixed, regardless of the magnitude of pension cost increases. This measure provides that as the cost of sustaining present levels of benefits increases, present and future employees will be required to contribute additional amounts tied to increases in the employer contribution rate.

This measure also recognizes, however, that lower-paid employees will be less able to meet increases in pension costs than will higher-paid employees. Accordingly, this measure creates a formula that takes into account disparities in employee income. Under this graduated formula, increased contributions paid by taxpayers are correlated with an employee's contribution, based on that employee's level of compensation. However, the lowest earning employees are protected: employees making below \$60,000 will only face minimal increases in

their level of required contribution, while employees making below \$50,000 per year are exempt from any increases.

This measure also limits pensions for employees hired after January 1, 2012, to the lower of either \$140,000 annually (adjusted for inflation) or 75% of pensionable compensation, recognizing that higher paid employees have the means to supplement their retirement through self-directed investment, with a limited match by the City. This measure provides that the City may establish a supplemental defined contribution plan, provided that the City's contribution for its employees does not exceed a three percent (3%) matching contribution.

This measure further recognizes that the retirement benefits of police officers and firefighters are more generous than those received by other City employees and that an employee who receives enhanced retirement benefits should make a higher contribution than one who does not. Currently, the cost of a typical firefighter's pension is almost three times the amount of a non-safety employee's pension, while the cost of a typical police officer's pension is double the amount of a non-safety employee. In 2002, a voter-approved measure enhanced pension benefits for police officers and firefighters *provided* that such employees shall enter a cost sharing agreement to achieve a material reduction in the additional cost of these benefits. This measure achieves a greater degree of cost sharing with these employees.

To further reduce City contributions to employee pensions, this measure calls for implementation of a new pension formula for employees hired on or after January 1, 2012. The new formula provides for a reduced level of benefits, at lower contribution rates, than exist for present employees. This new formula will not change benefit levels for present employees. However, present employees may choose to pay a lower contribution rate by electing to be covered by the new formula in exchange for reduced benefits.

The pension provisions in this measure do not apply to teachers and academic administrators employed by San Francisco Unified School District and San Francisco Community College District who are participants in the State Teachers' Retirement System, nor to participants in the California Public Employees' Retirement System. This measure will not

reduce the benefits of any person who has already retired from City employment or their dependents, including widows and orphans of public safety officers who die in the line of duty.

In the event that the pension and health care systems become fully funded or the City identifies new sources of revenue to help reduce the cost of pensions and health care, this measure allows the Board of Supervisors to convene a hearing to determine whether any changes should be made to the Charter. However, any changes in retirement benefits must be submitted to the voters for approval.

This measure does not restrict the collective bargaining rights presently enjoyed by City employees. Pension benefits have always been set by the voters in the City's Charter.

## **SECTION 2. AMENDMENT OF CHARTER**

The San Francisco City Charter is hereby amended as follows:

### ***A8.490 CONTRIBUTIONS TO EMPLOYEE PENSION BENEFITS (ALL ELECTED OFFICIALS, OFFICERS AND EMPLOYEES)***

The following provisions shall apply to active and future members of the San Francisco City and County Employees' Retirement System (SFERS or "Retirement System") effective January 1, 2012 and to employers participating in SFERS.

- (a) All elected officials, officers, and miscellaneous employees employed as of December 31, 2011, in addition to contributing a fixed rate of 7.5% of each payment of compensation towards their pensions, shall contribute the additional variable sums toward their pensions set forth in Table A. The employer's contribution rate shall be reduced commensurately.
- (b) All uniformed members of the police and fire departments employed as of December 31, 2011, in addition to contributing a fixed rate of 10% of each payment of compensation toward their pensions, shall contribute the additional variable sums towards their pensions set forth in Table A. The employer's contribution rate shall be reduced commensurately.

**TABLE A: ADDITIONAL CONTRIBUTION RATES TO BE PAID BY ELECTED OFFICIALS, OFFICERS, MISCELLANEOUS EMPLOYEES, POLICE OFFICERS AND FIREFIGHTERS.**

Annual Base Wage	If the Employer Contribution Rate Is 10% or More, Employee pays an additional	If the Employer Contribution Rate Is 12.5% or More, Employee pays an additional	If the Employer Contribution Rate Is 15% or More, Employee pays an additional	If the Employer Contribution Rate Is 17.5% or More, Employee pays an additional	If the Employer Contribution Rate Is 20 % or More, Employee pays an additional	If the Employer Contribution Rate Is 22.5% or More, Employee pays an additional	If the Employer Contribution Rate Is 25% or More, Employee pays an additional	If the Employer Contribution Rate is 27.5% Or More, Employee pays an additional	If the Employer Contribution Rate is 30% Or More, Employee pays an additional
\$0-\$49,999	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
\$50,000-\$59,999	1.0	1.5	2.0	2.5	3.0	3.5	4.0	4.5	5.0
\$60,000-\$69,999	1.5	2.0	2.5	3.0	3.5	4.0	4.5	5.0	5.5
\$70,000-\$79,999	2.0	2.5	3.0	3.5	4.0	4.5	5.0	5.5	6.0
\$80,000-\$89,999	2.5	3.0	3.5	4.0	4.5	5.0	5.5	6.0	6.5
\$90,000-\$99,999	3.0	3.5	4.0	4.5	5.0	5.5	6.0	6.5	7.0
\$100,000-\$149,999	3.5	4.0	4.5	5.0	5.5	6.0	6.5	7.0	7.5
\$150,000-\$199,999	4.0	4.5	5.0	5.5	6.0	6.5	7.0	7.5	8.0
\$200,000 and above	4.5	5.0	5.5	6.0	6.5	7.0	7.5	8.0	8.5

- (c) The “employer contribution rate” referenced in Table A is the “net employer contribution rate,” as defined by the Retirement System’s actuary, which is comprised of the employer’s normal cost rate, plus the amortization of the total unfunded actuarial liability, plus the expense load.
- (d) The annual base wage rate for employees shall be determined using the employee’s classification and step, by multiplying the hourly base wage rate for such employee by the number of hours annually that individuals in the employee’s classification are regularly scheduled to work.
- (e) All elected officials, officers, and miscellaneous employees who commenced employment on or after January 1, 2012, will receive the reduced pension benefits provided in section A8.490-1 and shall contribute 6% of each payment of

compensation toward their pensions, plus the amounts set forth in Table A. Commencing on July 1, 2012, all elected officials, officers, and miscellaneous employees who were employed as of December 31, 2011, may elect to pay the lower contribution rate for years not yet worked, plus the amounts set forth in Table A, in exchange for receiving prospectively the reduced pension benefits provided in section A8.490-1.

- (f) All uniformed members of the police and fire departments who commenced employment on or after January 1, 2012, will receive the reduced pension benefits provided in section A8.490-1 and shall contribute 8% of each payment of compensation toward their pensions, plus the amounts set forth in Table A. Commencing on July 1, 2012, all uniformed members of the police and fire departments, who were employed as of December 31, 2011, may elect to pay the lower contribution rate for years not yet worked, plus the amounts set forth in Table A, in exchange for receiving prospectively the reduced pension benefits provided in section A8.490-1.
- (g) The SFERS actuary shall study both the fixed contribution rates for employees who commenced employment on or after January 1, 2012, and the contribution rate paid by employees who were employed as of December 31, 2011, who chose the option of the reduced benefit package specified in subsections (e) and (f) of this section. The actuary shall determine the rate of member contribution that would result in the equivalent of a 2% salary savings for the employer as compared to employees who remain in the pre-2012 plan. If the actuary determines that a lower contribution rate than the rate established in subsections (e) and (f) of this section for the reduced benefit contribution will achieve the equivalent of at least a 2% salary savings, as certified by SFERS and the San Francisco Controller, the Retirement Board may reduce the contribution rate paid by these employees up to that amount.

- (h) The rate of contribution charged to all elected officials, officers, police and fire employees, and miscellaneous employees for compensation earned shall be calculated annually. SFERS will inform affected employees no later than 90 days before any change in the employee contribution rate.
- (i) Effective July 1, 2014, the annual base wage rates stated in Table A shall be adjusted annually based on changes in the Consumer Price Index (CPI-U) for the San Francisco Bay Area relative to the prior calendar year.

***A8.490-1 PENSION BENEFITS FOR OFFICERS AND EMPLOYEES HIRED ON OR AFTER JANUARY 1, 2012; PROHIBITION AGAINST PENSION SPIKING; HIGHER MINIMUM AGE FOR REGULAR RETIREMENT; LIMITATION OF RETIREMENT BENEFIT TO THE LESSER OF 75% OF FINAL COMPENSATION OR \$140,000***

The following provisions shall apply to members of the Retirement System hired by the City or other employers participating in the Retirement System on or after January 1, 2012.

- (a) The minimum age for service retirement for elected officials, officers and miscellaneous employees who began employment on or after January 1, 2012 shall be:
  - (i) Age 55 for members who complete at least 20 years of total service in the aggregate credited in the Retirement System. A member who retires at the age of 55 shall receive a service retirement allowance at the rate of 1.3 % of average final compensation per year of service. For each quarter-year of service after age 55, the percent per year of credited service shall increase by 0.025%, to a maximum of 2.3% at age 65.
  - (ii) Age 65 for members who complete at least 10 years of service in the aggregate credited in the Retirement System. A member who retires after reaching the age of 65 shall receive a service retirement allowance at the rate of 2.3 % of average final compensation per year of service.
- (b) The minimum age for service retirement for uniformed members of the police department and fire department who became employed on or after January 1,

2012, shall be age 50, with a minimum of 10 years of service. A member who retires at the age of 50 shall receive a service retirement allowance at the rate of 2.0% of average final compensation per year of service. For each quarter-year of service after age 50, the percent per year of credited service shall increase by 0.025%, to a maximum of 2.7% at age 57. A member who retires after reaching the age of 57 shall receive a service retirement allowance at the rate of 2.7 % of average final compensation per year of service.

- (c) The voters find and declare that “pension spiking,” by which employees’ compensation is increased in their final years of service to artificially inflate their pension benefits, threatens the sustainability of the pension system. To prevent pension spiking, the voters adopt the following provisions:
  - (i) “Compensation” for the purposes of section A8.490-1 shall mean base wage as defined by classification or rank and applicable step, and shall not include overtime, premiums, differentials, special pays, educational incentives, retention pays, longevity pays, performance pays, bonuses, “pick-ups” of the employee share of retirement or health contributions, or any other supplemental compensation or remuneration.
  - (ii) “Average final compensation” for all sworn members employed by the San Francisco police and fire departments, elected officials, officers and miscellaneous employees participating in the SFERS shall mean the average monthly compensation earned by a member during the higher of (a) any five consecutive fiscal years of earnings, or (b) the sixty months of earnings immediately prior to retirement.
- (d) For employees who qualify for and elect to receive vesting retirement pursuant to sections A8.600-6, A8.601-15, or A8.602-15, the minimum age necessary to receive a retirement allowance and the percent per year of credited service shall be as set forth above in section A8.490-1(a) or (b) as applicable, and shall be

subject to the limitations of section A8-490-1(f), below, limiting the maximum amount of retirement allowance.

- (e) The percentage per year of credited service for uniformed members of the police and fire departments retiring for incapacity shall be set forth above in section A8.490-1(b), subject to the limitations of section A8.490-1(c), defining compensation and average final compensation and the limitations of section A8.490-1(f), below, limiting the maximum amount of retirement allowance. Section A8.600-3 shall continue to govern retirement for incapacity of elected officials, officers and miscellaneous employees, subject to the limitations of section A8.490-1(c) defining compensation and average final compensation and the limitations of section A8.490-1(f), below, limiting the maximum amount of retirement allowance.
- (f) In no event shall the retirement allowance of any member of SFERS hired on or after January 1, 2012, exceed seventy-five percent of his or her average final compensation or an annual pension of \$140,000, whichever is less, regardless of the type of retirement. Commencing July 1, 2014, the \$140,000 maximum referenced in this subsection shall be adjusted annually by any increase in the CPI-U for the San Francisco Bay Area relative to the prior calendar year.
- (g) The City and/or other employers participating in SFERS and affected employee organizations may negotiate a supplemental defined contribution plan, provided that the City and County of San Francisco's Mayor and Board of Supervisors shall have no authority to agree to a City contribution in excess of 3% of base wage as defined by A8.490 (d) and provided further that the employee contribution to such defined contribution plan shall equal or exceed the City contribution.

***A8.490-2 SUPPLEMENTAL COST OF LIVING ADJUSTMENTS AFTER JANUARY 1, 2012***

Notwithstanding Charter sections A8.526-1 and A8.526-3, no supplemental cost of living benefits shall be paid after January 1, 2012, unless the SFERS Retirement Fund is 100% funded on an actuarial value of assets basis. No cost of living increase granted to a retiree on or before January 1, 2012, shall be reduced as a result of this section.

***A8.490-3 EMPLOYEE CONTRIBUTIONS TO RETIREE HEALTH CARE TRUST FUND***

- (a) All elected officials, officers and employees who are members of the City and County Health Service System, are employed by a Participating Employer as defined in section A8.432 and were hired before January 10, 2009 shall contribute to the Retiree Health Care Trust Fund established pursuant to section A8.432 the applicable percent of their annual base wage as defined in section A8.490 (d) as follows: Effective July 1, 2016, 2% of base wage; effective July 1, 2017, 3% of base wage; effective July 1, 2018, 4% of base wage; effective July 1, 2019, 5% of base wage.
- (b) Employees hired after January 10, 2009, and who are covered by the incremental vesting provisions of Charter section A8.428 will not be required to contribute additional amounts as set forth in subsection (a) of this section.
- (c) Once the Retiree Health Care Trust Fund is fully funded, Participating Employers and their active employees covered by subsection (a) of this section shall each contribute 50% of the normal cost of retiree health care as determined by the employer's actuaries in accordance with generally accepted accounting principles. The Retiree Health Care Trust Fund shall be considered fully funded, for purposes of this subsection, when the actuarial value of assets exceeds the actuarial accrued liability. Normal cost, as used in this section, means the Employer's normal cost under Government Accounting Standards Board (GASB) No. 45, as determined by the employers' respective actuaries.

- (d) The City and County of San Francisco and all Participating Employers shall continue to contribute annually 1% of the total pre-tax compensation of their employees to the Retiree Health Care Trust Fund as specified in Charter section A8.432.
- (e) Nothing herein prevents the City and employee organizations representing City employees from proposing, negotiating or agreeing to increases in the foregoing minimum contribution levels or increases in the City's contribution.

***A8.490-4 INTERPRETATION AND EFFECT ON OTHER CHARTER PROVISIONS***

- (a) Any section or part of any section in this Charter, insofar as it conflicts with the provisions of sections A8.490, A8.490-1, A8.490-2, or A8.490-3, shall be superseded by the contents of said sections, including but not limited to other provisions of the Charter enacted prior to the effective date of this measure, regardless of content.
- (b) Nothing in this measure limits City employees' right to collective bargaining. However, the voters find and declare that no representative of the City and County, including but not limited to the Mayor or Board of Supervisors, shall have the authority to enter into a binding MOU inconsistent with the terms of Charter sections A8.490, A8.490-1, A8.490-2, or A8.490-3 without approval of the voters. To the extent that any provision of these sections is contrary to the terms of an MOU executed on or before November 8, 2011, any changes to pension or health benefits or contributions shall become effective for employees covered by such MOU only upon expiration of such MOU, based on the expiration date specified in the MOU as of November 8, 2011.
- (c) The Mayor and/or Board of Supervisors of the City and County of San Francisco shall have no authority to reimburse, assume, pick up or otherwise provide for the City to pay any portion of the employees' required pension contribution provided

in this section and/or other sections of this Charter without the approval of the voters.

- (d) No agreement reached or arbitration award decided pursuant to Charter sections A8.409 et seq. or A8.590-1 et seq. may supersede the provisions of sections A8.490, A8.490-1, A8.490-2 or A8.490-3. In any arbitration involving employees of the City and County of San Francisco under Charter section A8.409-4 or A8.590-5, the arbitrator shall make specific findings regarding the estimated annual costs to the City of pension benefits attributable to employees covered by the arbitration award for each year of the prior agreement and projected costs for each year of the successor agreement, based on known and projected employer contribution rates. In determining wages and other forms of compensation pursuant to this section, the arbitrator shall consider as increased compensation any increase in the cost of pension contributions paid or projected to be paid by the City. Compliance with this provision shall be mandatory.
- (e) Nothing in this section shall reduce the pensions of employees who retired prior to the effective date of this measure or the rights of dependents or survivors of such employees.
- (f) Nothing in this Charter amendment shall reduce the survivor benefits of public safety officers who die in the line of duty.
- (g) In the event that the SFERS actuary determines that the SFERS pension fund and the Retiree Health Care Trust Fund have become fully funded or the City identifies sources of new revenue to reduce the cost of pensions or health care costs, the Board of Supervisors shall convene a hearing to determine whether any amendments should be made to sections A8.490 through A8.490-3; provided, however, that any such amendment(s) shall be submitted to the voters for approval. The SFERS pension fund and the Retiree Health Care Trust Fund shall be considered fully funded, for purposes of this subsection, when the actuarial

value of assets of each fund exceeds the actuarial accrued liability of each fund.

- (h) Nothing in Charter sections A8.490 through A8.490-3 shall alter the authority of the Board of Supervisors, pursuant to Charter section A8.500 to make changes to these provisions to the extent necessary to maintain the tax qualified status of the retirement system.
- (i) By state statute, certain public employees employed by the City and associated governmental entities are not included within SFERS. These include teachers and academic administrators employed by San Francisco Unified School District and San Francisco Community College District who are participants in the State Teachers Retirement System, as well as participants in the Public Employees Retirement System. The provisions in sections A8.490 to A8.490-2 herein do not apply to such employees.

***A8.490-5 ACCRUED BENEFITS AND FUTURE ACCRUALS***

Nothing in sections A8.490 through A8.490-3 shall reduce any accrued current pension benefits earned as of the effective date of this measure. Pension benefits for service not yet performed can be modified prospectively by the voters.

**SECTION 3. SEVERABILITY**

This Charter Amendment shall be interpreted so as to be consistent with the United States and California Constitutions, and all federal and state laws, rules, and regulations. If any section, subsection, sentence, or clause (“portion”) of this Amendment is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this Amendment. The voters hereby declare that this Amendment, and each portion of the Amendment, would have been adopted irrespective of whether any one or more portions of the Amendment are found invalid. If any portion of this Amendment is held invalid as applied to any person, circumstance, employee or category of employee, such invalidity shall not affect any application of this Amendment which can be given effect. If any

portion of the Amendment is held invalid as to existing employees or retirees, it shall not affect its application to employees hired after the effective date of this measure. This Amendment shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Amendment be interpreted or implemented in a manner that facilitates the purposes set forth herein.

**SECTION 4. EFFECTIVE DATE**

Except as specifically set forth in the text, this Charter Amendment shall be effective January 1, 2012.

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