

File No. 140455

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date July 10, 2014

Board of Supervisors Meeting Date _____

Cmte Board

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OTHER (Use back side if additional space is needed)

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Completed by: Alisa Miller Date July 3, 2014

Completed by: _____ Date _____

[Administrative Code - Cancer Presumption for Fire and Police Retirement Benefits]

Ordinance amending the Administrative Code to create a cancer presumption for firefighter and police officer industrial disability and death as a result of duty retirement benefits.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font. **Additions to Codes** are in *single-underline italics Times New Roman font*. **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~. **Board amendment additions** are in double-underlined Arial font. **Board amendment deletions** are in ~~strikethrough Arial font~~. **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

(a) San Francisco firefighters and police officers are exposed to carcinogens, some of which are known to cause cancer, as part of their employment with the City and County of San Francisco.

(b) A recently released study by the National Institute for Occupational Safety and Health ("NIOSH") found that firefighters show a sharply elevated risk of cancer compared to the general population (2009). The study found that firefighters are at an elevated risk of all cancers but that the highest rates of cancers are of the respiratory, digestive, and urinary systems. Additionally, mesothelioma (a cancer that develops from cells of the mesothelium, the protective lining that covers many of the body's internal organs) was found to be two times greater among firefighters compared to the general population, indicating likely occupational exposures to asbestos, the known cause of mesothelioma. Since the completion of the NIOSH study, the rate of breast cancer in firefighters has doubled, now making breast cancer

1 a statistically significant added risk. Since 2000, over 230 active and retired San Francisco
2 firefighters have succumbed to cancer. Five of those deaths were in the first three months of
3 2014.

4 (c) Police officers as well are exposed to health and safety risks in their occupation,
5 including exposures that have been shown to potentially cause cancer. Several studies show
6 an increased risk for various types of cancer in police officers. Results from three studies
7 suggested possible increased mortality risks for all cancers, and cancers of the colon, kidney,
8 digestive system, esophagus, male breast, and testis, as well as Hodgkin's disease (American
9 Journal of Industrial Medicine). Further, air pollution has been generally recognized as a
10 health hazard. Outdoor workers such as police officers (particularly officers working traffic
11 duty) experience the highest exposure to airborne pollutants. A majority of the police
12 workforce is exposed to various known or suspected carcinogens.

13 (d) California workers' compensation laws, which provide benefits to employees for
14 industrial injuries, include a cancer presumption for firefighters and police officers. Under
15 those laws, specifically Labor Code Section 3212.1, cancer is presumed industrial if it
16 develops or manifests itself during a period in which the member is in the service of a fire or
17 police department, if the member demonstrates that he or she was exposed, while in that
18 service, to a known carcinogen as defined by the International Agency for Research on
19 Cancer. This presumption is disputable and may be controverted by evidence that the
20 primary site of the cancer has been established and that the carcinogen to which the member
21 has demonstrated exposure is not reasonably linked to the disabling cancer.

22 (e) San Francisco Administrative Code Sections 16.85 and 16.86 create a
23 presumption for firefighters and police officers applying for retirement benefits under the San
24 Francisco City and County Employees' Retirement System ("SFERS") who meet certain
25

1 eligibility criteria that any "heart trouble" or pneumonia is work related, unless there is
2 evidence to the contrary.

3 (f) Currently a San Francisco firefighter or police officer who applies to SFERS for
4 an industrial disability retirement must establish that his or her injury or illness is industrially
5 caused and that it incapacitates the member for the performance of his or her work duties.
6 When a member seeks an industrial disability retirement based on cancer, currently the
7 member must establish that the cancer is industrially caused, as well as incapacitating. Under
8 the proposed ordinance, if a San Francisco firefighter or police officer with cancer who meets
9 certain eligibility requirements can demonstrate work exposure to a carcinogen as defined by
10 the International Agency for Research on Cancer, the cancer will be presumed work related in
11 the SFERS retirement benefit application process. SFERS can offer specified evidence to
12 rebut the presumption. The rebuttal standard in the proposed ordinance mirrors the standard
13 in the California workers' compensation cancer presumption. Firefighters and police officers
14 whose retirement benefits are under CalPERS or a public pension plan under the County
15 Employees Retirement Act of 1937 receive the benefit of the workers' compensation cancer
16 presumption in connection with their retirement benefits, because the workers' compensation
17 determination of industrial causation (made based on the cancer presumption) is
18 determinative for purpose of the retirement process. The proposed ordinance will give San
19 Francisco's firefighters and police officers the benefit of the workers' compensation
20 presumption in the retirement benefit process as is available to those other California
21 firefighters and peace officers.

22
23 Section 2. The Administrative Code is hereby amended by adding Section 16.72 to
24 read as follows:
25

1 **SEC. 16.72. FIREFIGHTER AND POLICE OFFICER INCAPACITATED WITH**
2 **CANCER – WHEN PRESUMED CONTRACTED IN THE COURSE OF EMPLOYMENT.**

3 (a) Subject to the limitations of subsections (b) and (c), whenever any sworn member of the
4 San Francisco Fire Department (“Fire Department”) or San Francisco Police Department (“Police
5 Department”) becomes incapacitated for the performance of his or her duty by reason of cancer that
6 develops or manifests itself while the member is in the service of the Fire Department or Police
7 Department, the cancer shall be presumed to arise out of and in the course of his or her employment.
8 This presumption is disputable and may be controverted by evidence that the primary site of the cancer
9 has been established and that the carcinogen to which the member has demonstrated exposure is not
10 reasonably linked to the disabling cancer.

11 (b) The presumption in subsection (a) shall apply only to:

12 (1) Sworn members of the Fire Department or Police Department who have served a
13 total of five or more years in the Fire Department or Police Department. For purposes of determining
14 whether the member has five or more years of service, time served in another fire or police department
15 in the State of California shall be combined with service in the Fire Department or Police Department,
16 provided that the member (A) was entitled to the same cancer presumption in his or her prior
17 employment and (B) became a member of the Fire Department or Police Department within six months
18 of separating from the prior employment.

19 (2) Applications for industrial disability or death as a result of duty benefits under
20 the San Francisco City and County Employees’ Retirement System (“Retirement System”).

21 (3) Applications for benefits in connection with cancer injuries or deaths filed on or
22 after January 1, 2010, provided that the presumption shall not apply to an application if as of the
23 effective date of this Section 16.72, the hearing officer assigned to hear the application under Charter
24 Section 12.102 and Charter Section A8.518 either (A) has rendered his or her initial decision on the
25 application and the member did not request rehearing within the time specified under the Charter, or

1 (B) has rendered an initial decision and the member timely requested rehearing under the Charter, and
2 the hearing officer has issued a decision on rehearing.

3 (c) The presumption in subsection (a) shall apply only if:

4 (1) The member demonstrates exposure, while in the service of the Fire Department
5 or Police Department, to a known carcinogen as defined by the International Agency for Research on
6 Cancer; and

7 (2) There was no evidence of cancer identified in the physical examination of the
8 member conducted as part of his or her initial hire in the Fire Department or Police Department, as
9 applicable.

10 (d) The Retirement System shall use the member's eligible prior safety service in another
11 fire or police department under subsection (b)(1) to measure the date upon which the member would be
12 qualified for service retirement.

13
14 Section 3. Effective Date. This ordinance shall become effective 30 days after
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
17 of Supervisors overrides the Mayor's veto of the ordinance.

18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By:


22 KATHARINE HOBIN PORTER
23 Deputy City Attorney

24 n:\egana\las2014\1400446\00921783.doc

LEGISLATIVE DIGEST

[Administrative Code - Cancer Presumption for Fire and Police Retirement Benefits]

Ordinance amending the Administrative Code to create a cancer presumption for firefighter and police officer industrial disability and death as a result of duty retirement benefits.

Existing Law

Currently, for purposes of applying for industrial disability or death retirement benefits under the San Francisco Employees' Retirement System ("SFERS"), San Francisco firefighters and police officers are entitled to a presumption that any "heart trouble" or pneumonia arises out of and in the course of their employment, unless there is evidence to the contrary. (See Administrative Code Sections 16.85 and 16.86.) There is no comparable cancer presumption for these retirement benefits. In addition, under state law, firefighters and peace officers are entitled to a presumption for purposes of workers' compensation claims that cancer is industrially caused. (See California Labor Code Section 3212.1.)

Amendments to Current Law

The proposed ordinance would create a cancer presumption for sworn members of the Fire Department and Police Department applying to SFERS for industrial disability or death as a result of duty retirement benefits. A sworn member meeting certain eligibility requirements who has cancer that develops or manifests itself while the member is in the service of the Fire Department or Police Department would be entitled to a presumption that the cancer arose out of and in the course of his or her employment. The presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the cancer.

Background Information

Firefighters and police officers whose retirement benefits are under CalPERS or a public pension plan under the County Employees Retirement Act of 1937 receive the benefit of the workers' compensation cancer presumption under Labor Code Section 3212.1 in connection with those retirement benefits, because the workers' compensation determination of industrial causation (made based on the cancer presumption) is determinative of industrial causation for purpose of the retirement process. The proposed ordinance will give San Francisco firefighters and police officers the benefit of the workers' compensation presumption in the retirement benefit process as is available to those other California firefighters and peace officers.

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BDS-11, cpage



City and County of San Francisco
Employees' Retirement System
Office of the Executive Director

June 24, 2014

File 140455

Angela Calvillo
Clerk of the Board
Board of Supervisors
Room 244, City Hall
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102

Alisa Miller
Clerk, Government Audit and Oversight Committee
Board of Supervisors
Room 244, City Hall
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2014 JUN 25 PM 2:58

Re: Actuarial Cost and Effect Report regarding File No. 140455 – Ordinance amending the Administrative Code to create a cancer presumption for firefighter and police officer industrial disability and death as a result of duty retirement benefits

Dear Ms. Calvillo and Ms. Miller,

The Retirement System acknowledges receipt of your referral of the above referenced proposed ordinance amending the Retirement System provisions of the Administrative Code and your request for an actuarial cost and effect report of the proposed ordinance under Charter Section A8.500.

Terms of the Proposed Ordinance

If adopted by the Board of Supervisors, the proposed ordinance would amend the Administrative Code to create a cancer presumption for firefighters and police officers who apply for industrial disability retirement benefits and for qualified survivors of firefighters and police officers who apply for death as a result of duty retirement benefits. Under the proposed ordinance, if a firefighter or police officer who applies for an industrial disability retirement based on cancer can demonstrate work exposure to a carcinogen as defined by the International Agency for Research on Cancer, then the cancer is presumed industrial. The presumption would also apply when a qualified survivor applies for a death as a result of duty retirement benefit based on cancer and can demonstrate the required work exposure of the member to a carcinogen. The presumption in the proposed ordinance is rebuttable. The rebuttal standard mirrors the rebuttal standard in the California workers' compensation cancer presumption.

Cost and Effect of the Proposed Ordinance

The Retirement System's consulting actuary, Cheiron, conducted an analysis of the cost and effect of the proposed ordinance. I have summarized Cheiron's analysis below. The full Cheiron report is attached.

Under the proposed ordinance, for firefighters and police officers who become incapacitated from the performance of their duties due to cancer and can demonstrate the requisite work exposure to a carcinogen, the cancer will be presumed industrially caused. The same would be true for death as a result of duty applications. While the presumption is rebuttable, it is likely to result in an increase in the number of firefighter and police officer industrial disability retirement and death as a result of duty applications where the cancer is found to be industrial. As a result, additional benefits are likely to be payable for certain firefighter and police officer retirees and their beneficiaries. In particular, (a) benefits payable to qualified survivors of firefighter and police officer members granted industrial disability retirements are higher than those paid for service pensions and (b) the minimum industrial disability retirement benefit of 50% of final compensation may be higher in certain cases than the service pension benefit for the same member.

Cheiron has determined, based on its analysis of the Retirement System's data regarding industrial disability retirement applications involving cancer (as described below), that the additional costs associated with the proposed ordinance would be minor. Specifically, as explained further below, Cheiron estimated that assuming the cancer presumption applied to historical and pending industrial disability retirement applications where cancer was identified as a basis for disability, so that the cancer was found industrial, and assuming the application was granted, then the increase in the System's actuarial liability would be approximately \$3.0 million. This estimated increase is a 0.015% increase in the \$20 billion actuarial liability for the retirement system as of July 1, 2013.

SFERS staff reviewed the medical bases for all denied firefighter and police officer industrial disability retirement applications filed since 1998. They found ten industrial disability retirement applications that listed cancer as one of the medical bases for industrial disability where the application was denied industrial disability benefits. Additionally, staff identified ten pending industrial disability retirement applications that list cancer as one of the medical bases for industrial disability. The results of Cheiron's analysis of these two groups are as follows:

Ten historical industrial disability retirement applications that listed cancer as one of the medical bases for industrial disability that were denied. Cheiron estimates that if all ten of these denied applications were instead granted industrial disability retirement benefits, the estimated increase in the present value of the retirees' benefits as of July 1, 2014 would be approximately \$0.9 million. This increase is primarily due to the increased benefits that would be provided to qualified survivors if the benefit was for an industrial disability. It is not certain that the proposed cancer presumption, had it been in effect when these applications were decided, would have changed the outcomes of any or all of the applications.

Ten pending industrial disability retirement applications that list cancer as one of the medical bases for industrial disability. Cheiron estimates that if the ten pending industrial disability retirement applications that list cancer as one of the medical bases for industrial disability are all determined to involve industrial disabilities and are granted, the estimated increase in the present value of the members' benefits as of July 1, 2104 would be approximately \$2.1 million. Cheiron reports that most of this increase (\$1.4 million) would be due to two applicants who would receive substantially larger benefits when they reach their Qualified Service Retirement dates. The remaining increases are primarily due to the increased benefits that

would be provided to qualified survivors. At this time, the outcomes of these pending applications are unknown, including whether a cancer presumption would impact the outcome.

The Retirement System will appear at the Government Audit and Oversight Committee hearing on this subject and be available to address any questions of the Committee members.

Best regards,



Jay Huih
Executive Director
San Francisco Employees' Retirement System

Attachment: Cheiron report dated June 11, 2014

cc: President David Chiu
Board of Supervisors
Room 244, City Hall
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102

Supervisor Scott Wiener
Board of Supervisors
Room 244, City Hall
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102



June 11, 2014

VIA ELECTRONIC MAIL

Mr. Jay Huish, Executive Director
San Francisco Employees Retirement System
30 Van Ness Avenue, Suite 3000
San Francisco, California 94102

Re: Cancer Presumption for Firefighter and Police Officer Industrial Disability and Death

Dear Jay:

As requested, we have analyzed the effect of the implementation of Ordinance No. 140455, which states that for firefighters and police officers who become incapacitated due to cancer, the cancer shall be presumed to be duty related.

While the presumption is disputable under the proposed ordinance, it is likely to result in an increase in the number of disabilities and deaths that are classified as industrial. As a result, additional benefits are likely to be payable for certain retirees and their beneficiaries. In particular, under an industrial disability, benefits payable to qualified survivors are higher and the minimum industrial disability benefit of 50% of final compensation may be higher. In addition, members who have not yet reached their qualified service retirement (QSR) date (age 50 with 25 years of service) will be eligible for an increased benefit when they do reach this date. Consequently, we cannot certify that the proposed legislation would not increase costs at all.

However, based on historical data provided, we believe the additional costs would be minor. It is our understanding that since 1998, there were 10 cancer cases that were denied industrial disability, and there are 10 pending industrial disability cases with cancer. If the 10 cancer cases that were denied industrial disability were instead granted industrial disability, the estimated increase in the present value of their benefits as of July 1, 2014 would be approximately \$0.9 million. This increase is primarily due to the increased benefits that would be provided to qualified survivors if the benefit had been classified as an industrial disability.

If the 10 cancer cases that are pending were all determined to be industrial disabilities, the estimated increase in the present value of their benefits as of July 1, 2014 would be approximately \$2.1 million. Most of this increase (\$1.4 million) would be due to the two members who would receive substantially larger benefits when they reach their Qualified Service Retirement dates. The remaining increases are primarily due to the increased benefits that would be provided to qualified survivors.

It is not clear if the proposed cancer presumption would affect the determination of industrial disability in the pending cases or if it would have changed all 10 cases that were previously



Mr. Jay Huish
June 11, 2014
Page 2 of 3

denied. However, if all 20 of these cases were decided to be industrial disability due to the proposed cancer presumption, the increase in the System's actuarial liability would be about \$3.0 million. This amount compares to an actuarial liability for the retirement system of over \$20 billion as of July 1, 2013, or a 0.015% increase

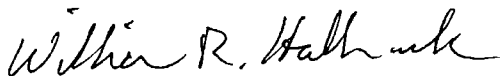
In preparing this letter, we relied on information (some oral and some written) supplied by SFERS. This information includes, but is not limited to, the plan provisions, employee data and financial information. We performed an informal examination of the obvious characteristics of the data for reasonableness and consistency in accordance with Actuarial Standard of Practice #23. For a summary of the plan provisions, assumptions and methods, please refer to the July 1, 2013 actuarial valuation report for SFERS.

To the best of my knowledge, this letter and its contents have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as a credentialed actuary, I meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this letter. This letter does not address any contractual or legal issues. I am not an attorney and our firm does not provide any legal services or advice.

This letter was prepared exclusively for the City and County of San Francisco Employees' Retirement System for the purpose described herein. This letter is not intended to benefit any third party, and Cheiron assumes no duty or liability to any such party.

If you have any questions, please let us know.

Sincerely,
Cheiron



William R. Hallmark, ASA, FCA, EA, MAAA
Consulting Actuary

cc: Ken Kent
Anne Harper
Janet Brazelton

Data Summary

City and County of San Francisco Employees' Retirement System Cancer Presumption for Firefighter and Police Officer Industrial Disability and Death Data Summary					
	<u>Denied Cases</u>		<u>Pending Cases</u>		
	Service Retirement	Industrial Disability	Service Retirement	Industrial Disability	
Count		10		10	
Sum of Benefits Paid to Members	\$ 74,099	\$ 74,195	\$ 69,583	\$ 71,541	
Sum of Increase in Benefit at QSR Date	N/A	N/A	N/A	\$ 13,395	
Sum of Benefits Paid to Beneficiaries	\$ 6,468	\$ 8,574	\$ 4,280	\$ 4,877	
Present Value of Benefits as of 7/1/2014	\$ 14,492,549	\$ 15,404,699	\$ 13,128,353	\$ 15,258,235	

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Jay Huish, Executive Director, Retirement Board

FROM: Alisa Miller, Clerk, Government Audit and Oversight Committee
Board of Supervisors

DATE: May 8, 2014

SUBJECT: LEGISLATION INTRODUCED: RETIREMENT BENEFITS

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Chiu, on April 29, 2014, which is being forwarded to the Retirement Board pursuant to Charter, Section A8.500, which requires the Retirement Board to provide an actuarial report certifying the proposed legislation will not increase costs, other than administrative, for the City and County.

File No. 140455

Ordinance amending the Administrative Code to create a cancer presumption for firefighter and police officer industrial disability and death as a result of duty retirement benefits.

Please forward a copy of the actuarial report to me, as soon as it is available, at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Your report must be received before it can be considered.

c: Norm Nickens, Retirement Board

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Chief Greg Suhr, Police Department
Chief Joanne Hayes-White, Fire Department

FROM: Alisa Miller, Clerk, Government Audit and Oversight Committee
Board of Supervisors

DATE: May 8, 2014

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Chiu, on April 29, 2014, which is being forwarded to your department for informational purposes.

File No. 140455

Ordinance amending the Administrative Code to create a cancer presumption for firefighter and police officer industrial disability and death as a result of duty retirement benefits.

If you have any reports or comments to be considered with the proposed legislation, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Christine Fountain, Police Department
Kelly Alves, Fire Department

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. 170260
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

David Chiu, Scott Wiener

Subject:

Administrative Code - Cancer Presumption for Fire and Police Retirement Benefits

The text is listed below or attached:

See attached.

Signature of Sponsoring Supervisor: *[Handwritten Signature]*

For Clerk's Use Only:

140 455