



DENNIS J. HERRERA  
City Attorney

JON GIVNER  
Deputy City Attorney

Direct Dial: (415) 554-4694  
Email: jon.givner@sfgov.org

## MEMORANDUM

TO: Angela Calvillo  
FROM: Jon Givner  
Deputy City Attorney *JG*  
DATE: July 26, 2013  
RE: Charter Amendment – Retiree Health Care Trust Fund; Board File No. 130481

---

On July 16, the Board of Supervisors voted to place the above-referenced Charter amendment on the November 2013 ballot. Today, the City Attorney's Office resubmitted to your office the final draft of the Charter amendment to correct the following non-substantive formatting errors. Specifically, the language has been revised to reflect that:

- The period after the word "A8.432" in the second line of section 12.204 has been deleted, and a comma inserted in its place;
- The two commas between the words "City and County" and the words "or Participating Employers" in the first paragraph of section A8.432(b) are not existing Charter language, and have therefore been removed;
- There is a comma after the word "compensation" in the second to last sentence of A8.432(b) that is being deleted from existing Charter language;
- The words "the respective" are replacing the existing word "each" in section A8.428(c);
- In the first sentence of section A8.428(d)(1), the words "the Employer's" are not existing Charter language and have therefore been removed from the measure; and
- In the same sentence, the space between "long" and "-term" is not existing Charter language and has therefore been removed, and the space between "A8.428," and "the Board" is new language that is now reflected in underlined font.

These formatting errors have now been corrected to accurately reflect the Charter's current language, to clarify that the words "the respective" in section A8.428(c) are new language and that the words "each" in that same section are being deleted. Thank you for your assistance in this matter.

cc: Erik Rapoport

[Retiree Health Care Trust Fund]

## CHARTER AMENDMENT

## PROPOSITION \_\_\_\_

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by amending Sections 12.204 and A8.432 to limit Retiree Health Care Trust Fund disbursements to defray participating employer retiree health care costs until employer sub-trusts are fully funded; allow for disbursements from the City's sub-trust if the City's retiree health care costs are greater than ten percent (10%) of its total payroll costs even if the City's sub-trust is not fully funded; permit modifications to these disbursement guidelines if recommended by the Controller after consultation with the City's Governmental Accounting Standards Board actuary, and approved by the Mayor, two-thirds of the Board of Supervisors, and the Retiree Health Care Trust Fund Board; permit a participating employer to adopt disbursement guidelines if approved by a two-thirds vote of that participating employer's governing board; and make the Controller, the City Treasurer, and the Executive Director of the San Francisco Employees' Retirement System, or their designees, members of the Retiree Health Care Trust Fund Board.

The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on November 5, 2013, a proposal to amend the Charter of the City and County by amending Sections 12.204 and A8.432 to read as follows:

NOTE: Additions are *single-underline italics Times New Roman*;  
deletions are ~~*strike-through italics Times New Roman*~~.

**SEC. 12.204. RETIREE HEALTH CARE TRUST FUND.**

(a) The Retiree Health Care Trust Fund ("RHCTF") shall be an irrevocable trust fund established under Section A8.432, and separate from the Health Service System trust fund described in Charter Sections 12.203 and A8.428, to provide a funding source to defray the cost of the City's,

and other Participating Employers', obligations to pay for health coverage for retired persons and their survivors entitled to health coverage under Section A8.428. ~~Trust~~ RHCTF assets shall be held for the sole and exclusive purpose of providing health coverage to eligible retired persons and their survivors, and to defray the reasonable expenses of administering the RHCTF, including but not limited to educational, actuarial, consulting, administrative support and accounting expenses associated with the RHCTF. Subject to the approval of the Board of Supervisors by resolution, the Retiree Health Care Trust Fund Board (Board) may, upon the adoption of a resolution, authorize specific payments for specific amounts enumerated in the resolution shall pay for such ~~Administrative costs from the RHCTF., including but not limited to educational, actuarial and consulting expenses associated with the Retiree Health Care Trust Fund, as adopted by the board of supervisors in the annual budget, shall be paid from the Retiree Health Care Trust Fund, but only upon adoption of a resolution by the Retiree Health Trust Fund Board approving such expenses.~~

(b) ~~The Board shall govern the RHCTF shall be governed by a Retiree Health Trust Fund Board ("Board").~~ The Board shall consist of the following five trustees; ~~one of whom shall be appointed by the City Controller, one of whom shall be appointed by the City Treasurer, and one of whom shall be appointed by the Executive Director of the San Francisco Employees' Retirement System, or their respective designees;~~ and two ~~trustees of whom shall be~~ elected from among active employee and retired members of the City's Health Service System. One of the elected trustees shall be an active employee member and one shall be a retired member as of the date of their respective elections. Each elected trustee shall serve for a term of five years. No person may serve simultaneously as a trustee on the Board and as an elected or appointed member of the San Francisco Employees' Retirement System Board or the Health Service System Board.

#### **A8.432 RETIREE HEALTH CARE TRUST FUND.**

There is hereby created a Retiree Health Care Trust Fund (RHCTF) for the purpose described in Section 12.204. Subject to the disbursement limitations set forth in Section A8.432(d) below, ~~The~~ Retiree Health Care Trust Fund Board (Board) ~~described in Section 12.204~~ shall have exclusive authority and control over the administration of the RHCTF, investments of trust assets, and disbursements from, the trust in accordance with the provisions of this Charter.

##### **(a) Employees Who Commenced Employment on or After January 10, 2009**

Active officers and employees of the City and County and of other Participating Employers, who ~~e~~Commenced eEmployment ~~with the City and County, or the Participating Employers,~~ on or after January 10, 2009, shall contribute their respective Employer's "Normal Cost" to the RHCTF. The annual active officer and employee RHCTF contribution rate for each Employer shall be ~~that~~ that Employer's "Normal Cost," as determined by ~~that~~ that Employer's respective General Governmental Accounting Standards Board (GASB) Actuaries computed as a percentage of compensation not to exceed 2% of pre-tax compensation for each officer and employee to the RHCTF. ~~The~~Each Employer's GASB ~~a~~Actuaries shall determine ~~that~~ that Employer's respective "Normal Cost" on a biannual basis.

The City and County and Participating Employers shall each contribute 1% of compensation for officers and employees who ~~e~~Commenced eEmployment on or after January 10, 2009. Once an Employer's GASB Actuary has determined that an Employer's sub-trust is Fully Funded, and that the Employer is subject to no Unfunded Actuarial Accrued Liability, that Employer's 1% RHCTF contribution shall cease. Once an Employer has no Unfunded Actuarial Accrued Liability and the Retiree Health Trust Fund is Fully Funded Thereafter, then the that Employer and its active officers and employees who ~~e~~Commenced eEmployment on or after January 10, 2009, shall instead each contribute 50% of the "Normal Cost," as determined by

~~that~~ Employer's' ~~respective~~ GASB ~~a~~Actuaries, with except that the employee's contribution rate for officers and employees shall not to exceed 2% of pre-tax compensation, and the 1% Employer contribution shall no longer be required. In the event that the contribution rates set forth above do not cover the entire Normal Cost, the Employer shall contribute the balance into the RHCTF.

**(b) Employees Who Commenced Employment on or Before January 9, 2009**

Notwithstanding any other provision of Charter Sections A8.409 through A8.409-9, and A8.590-1 through A8.590-9, starting July 1, 2016, all active officers and employees of the City and County and Participating Employers, who ~~e~~Commenced ~~e~~Employment ~~with the City and County or Participating Employers~~, on or before January 9, 2009, shall contribute 0.25% of pre-tax compensation into the RHCTF. Starting on July 1 of each subsequent year, all active officers and employees of the City and County and Participating Employers, who ~~e~~Commenced ~~e~~Employment ~~with the City and County or Participating Employers~~, on or before January 9, 2009, shall contribute an additional 0.25% of pre-tax compensation up to a maximum of 1%. Notwithstanding the foregoing, the contributions for officers and employees who ~~e~~Commenced ~~e~~Employment on or before January 9, 2009, shall not exceed ~~each~~their Employer's ~~respective~~ "Normal Cost" as determined by ~~the~~each Employer's' respective General Accounting Standards Board (-GASB) Actuaries on a bi-annual basis.

Starting July 1, 2016, the Employers shall contribute 0.25% of compensation into the RHCTF for each officer and employee who ~~e~~Commenced ~~e~~Employment on or before January 9, 2009. Starting on July 1 of each subsequent year, the Employers shall contribute an additional 0.25% of compensation, up to a maximum of 1%, for each officer and employee who ~~e~~Commenced ~~e~~Employment on or before January 9, 2009.

Once an Employer's GASB Actuary has determined that an Employer's sub-trust is Fully Funded, and that the Employer is subject to no Unfunded Actuarial Accrued Liability, that Employer's 1% contribution shall cease. Once an Employer has no Unfunded Actuarial Accrued

~~Liability and the Retiree Health Trust Fund is Fully Funded Thereafter, then that~~ Employer and its active officers and employees who ~~e~~Commenced ~~e~~Employment on or before January 9, 2009, shall instead each contribute 50% of the "Normal Cost," as determined by ~~the~~that Employer's' ~~respective~~ GASB ~~a~~Actuaries, ~~with except that~~ the ~~employee's~~ contribution rate for ~~officers and employees shall not to exceed 1% of pre-tax compensation, and the 1% Employer contribution shall no longer be required. In the event that the contribution rates set forth above do not cover the entire Normal Cost, the Employer shall contribute the balance into the RHCTF.~~

**(c) Segregation ~~And~~ Use of Retiree Health Care Trust Fund Assets Contributions**

~~The Board shall segregate RHCTF C~~contributions ~~to the RHCTF~~ from the City and County, and its officers and employees, and ~~from~~ each Participating Employer, and ~~its~~their officers and employees, ~~shall be segregated from each other into separate sub-trusts for each Employer. and~~ ~~The Board may authorize expenditures from each Employer sub-trust only used as a funding source to defray the respective each~~ Employer's' obligations to pay for ~~its~~ retiree health care ~~costs~~ under Section A8.428, and ~~to pay for the respective each~~ Employer's' share of administrative expenses. The ~~Board may pool sub-trust funds may be pooled~~ for investment purposes only.

**(d) Disbursement of Retiree Health Care Trust Fund Assets**

~~(1) In order to ensure a long-term and sustainable funding source to defray the cost of the City's obligation to pay for health coverage for retired persons and their survivors entitled to health coverage under Section A8.428, the Board may authorize No~~ disbursements ~~from the City's sub-trust, other than disbursements to defray the reasonable expenses of administering the RHCTF, only during periods when the City's GASB Actuary has determined that the City's sub-trust is Fully Funded may be made from the trust prior to January 1, 2020. Commencing January 7, 2020, When the City's sub-trust is Fully Funded, the Board may disburse sub-trust assets may be used to defray the cost of the City's, and other Participating Employer's', obligations to pay for health coverage for ~~the~~its retired persons and their survivors entitled to~~

health care coverage under Section A8.428. The Board shall determine the amount and frequency of such disbursements shall be determined by the Board in consultation with the Employer's' respective City's GASB Actuaries.

(2) Notwithstanding Section A8.432(d)(1) above, and in order to stabilize City contributions during the transition period until the City's sub-trust is Fully Funded, when the Controller projects that total City retiree health care costs for the upcoming fiscal year will exceed ten percent (10%) of City payroll costs, and upon the recommendation of the Controller, after consultation with the City's GASB Actuary, to the Board that it make disbursements from the City's sub-trust to defray the City's retiree health care obligations under Section A8.428, and subject to approval by the Mayor and by resolution of the Board of Supervisors, the Board may authorize stabilization disbursements but only to the extent necessary to limit the City's retiree health care costs to ten percent (10%) of City payroll costs. Stabilization disbursements may not exceed ten percent (10%) of the audited prior year City sub-trust balance. For the purposes of this Section A8.432(d)(2), total City retiree health care costs shall include the City's employer contributions into the RHCTF under Section A8.432 and the City's retiree health care premium contributions under Section A8.428.

(3) Upon a recommendation of the Controller, after consultation with the City's GASB Actuary, approval of the Mayor, and approval of the Board of Supervisors by a two-thirds vote, the Board may adopt disbursement limitations different from the limitations set forth in Sections A8.432(d)(1) and A8.432(d)(2) above. The Mayor, the Board of Supervisors and the Board may approve or reject, but not alter, the Controller's recommended changes to the disbursement limitations set forth in Sections A8.432(d)(1) and A8.432(d)(2) above. Such recommended changes must effectively balance the City's goal of attaining and maintaining a Fully Funded trust with the City's overall financial obligations.

(4) For Participating Employers other than the City and County of San Francisco, the Board may not make any disbursements from a Participating Employer's sub-trust until the

Participating Employer's governing body, after consultation with the Participating Employer's GASB Actuary, has recommended to the Board by a two-thirds vote, and the Board has approved, disbursement limitations that effectively balance the Participating Employer's goal of attaining and maintaining a Fully-Funded trust against the Participating Employer's overall financial obligations.

**(de) Additional Contributions to the Retiree Health Care Trust Fund**

As set forth in A8.409-7 and A8.590-8, nothing in this section shall prevent the City and County of San Francisco and a recognized employee organization from agreeing to, or an arbitration panel formed pursuant to A8.409-4 or A8.590-5 from awarding, an adjustment in employee contributions into the RHCTF Retiree Health Care Trust Fund that results in contributions greater than the contributions required under A8.432 for any and all City employees. In no event shall the City and County of San Francisco and a recognized employee organization agree to, or an arbitration panel formed pursuant to A8.409-4 or A8.590-5 award, any, reduction in contributions below the minimum level of contributions required under A8.432.

**(ef) Definitions:**

"**Actuarial Accrued Liability**" as used in this section, means "Actuarial Accrued Liability" as that term is defined under GASB No. 45 as may be amended from time to time.

"**Commenced eEmployment on**" as used in this section, shall refer to the time an employee starts employment with the City and County, or with a Participating Employer, for the first time, or the time an employee starts employment with the City and County, or with a Participating Employer, on a subsequent occasion after a prior separation from employment with the City and County or any Participating Employer, whichever date is later.

"**Employers**" and "Employers" as used in this section means the City and County and the Participating Employers.

"**Fully Funded**" as used in this section means that an Employer's GASB Actuary has determined that the market value of assets in ~~a sub-trust the Retiree Health Care Trust Fund~~ equals or exceeds the Employer's Actuarial Accrued Liability.

"**GASB Actuary**" and "**GASB Actuaries**" as used in this section means the actuarial firms hired by the Employers to provide estimates of each Employers' respective total liability and annual required contribution for post retirement health benefits under GASB No. 45.

"**GASB No. 45**" as used in this section means Statement No. 45 of the Governmental Accounting Standards Board, Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions as may be amended from time to time.

"**Health coverage**" as used in this section, means the health benefits or health insurance provided by the health service system for retirees, survivors and dependents under Section A8.428.

"**Normal Cost**" as used in this section, means ~~the each~~ Employer's' normal cost under GASB No. 45 as determined by ~~the each~~ Employer's' ~~respective~~ GASB Actuaries.

"**Retiree**" as used in this section, means a former employee who is retired and is entitled to health coverage under Section A8.428, and the qualified survivors or dependents of such retirees who are entitled to health coverage under Section A8.428.

"**Participating Employers**" as used in this section, and Sections A8.432-1, A8.510 and 12.204, shall include the Superior Court of California, County of San Francisco, San Francisco Unified School District and the San Francisco Community College District, following a resolution by ~~their these employers'~~ respective governing boards to participate in the Retiree Health Care Trust Fund.

**(fg) Severability**

The contents of Charter Sections 12.204 or A8.432 shall supersede Any Section or part of any Section in this Charter, insofar as ~~such Section or part~~ should conflict with the provisions of Charter Sections 12.204 or A8.432, or with any part thereof ~~shall be superseded by~~

~~the contents of Charter Sections 12.204 or A8.432.~~ Charter Sections 12.204 or A8.432 shall be interpreted to be consistent with all federal and state laws, rules, and regulations. If any words, phrases, clauses, sentences, subsections, provisions or portions of Charter Sections 12.204 or A8.432 are held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining words, phrases, clauses, sentences, subsections, provisions or portions of Charter Sections 12.204 or A8.432. If any words, phrases, clauses, sentences, subsections, or provisions of Charter Sections 12.204 or A8.432 are held invalid as applied to any person, circumstance, employee or category of employee, such invalidity shall not affect any application of Charter Sections 12.204 or A8.432 which can be given effect. Charter Sections 12.204 or A8.432 shall be broadly construed to achieve their stated purpose.

Notwithstanding Charter Section A8.432, the Board of Supervisors shall adopt, by a majority vote ~~before January 1, 2009~~, such ordinances as are necessary to create and administer the Retiree Health Care Trust Fund, and such further ordinances~~all such other matters~~ as may be necessary to establish and maintain the purpose described in ~~this section and~~ Sections 12.204 and A8.432.

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

By:

 for  
ELIZABETH SALVESON  
Deputy City Attorney

**LEGISLATIVE DIGEST**

A proposal to submit to the qualified voters of the City and County of San Francisco (City), for an election to be held on November 5, 2013, a measure amending provisions in the City's Charter to: (1) limit Retiree Health Care Trust Fund (Trust Fund) disbursements to defray participating employer retiree health care costs until employer sub-trusts are fully funded; (2) allow for disbursements from the City's sub-trust if the City's retiree health care costs are greater than ten percent (10%) of its total payroll costs even if the City's sub-trust is not fully funded; (3) permit modifications to these disbursement guidelines if recommended by the Controller in consultation with the City's Governmental Accounting Standards Board (GASB) actuary, and approved by the Mayor, two-thirds of the Board of Supervisors, and the Retiree Health Care Trust Fund Board; (4) permit a participating employer in the Trust Fund to adopt disbursement guidelines if approved by a two-thirds vote of that participating employer's governing board; and (5) make the Controller, the City Treasurer and the Executive Director of the San Francisco Employees' Retirement System (SFERS), or their designees, members of the Trust Fund Board.

[Retiree Health Care Trust Fund]

**Existing Law**

In January 2009, the City established the Trust Fund to pay for the City's, and other participating employers', retiree health care costs. The San Francisco Unified School District, San Francisco Superior Court, and the San Francisco Community College District are eligible to participate in the Trust Fund upon resolution by their governing boards. Currently, only the City and the San Francisco Community College District participate. Participating employer contributions are segregated into separate sub-trusts.

The Trust Fund Board administers the Trust Fund and is governed by five trustees – one appointed by the City Controller, one by the City Treasurer, one by the SFERS Executive Director, and two elected from among active employee and retired members of the City's Health Service System.

Both the City and its employees make contributions into the Trust Fund calculated as a percentage of total payroll costs. The Trust Fund Board cannot make any payments from the Trust Fund to defray participating employer retiree health care costs until January 1, 2020.

The provisions and operation of the Trust Fund, including employee contributions required by Charter, are not subject to collective bargaining dispute resolution procedures.

Amendments to Current Law

The proposed Charter amendment would limit the Trust Fund Board from making disbursements to the City to defray the City's retiree health care costs until the City's sub-trust is fully funded. The proposal, however, permits the Trust Fund Board to make disbursements from the City's sub-trust if the City's retiree health care costs are greater than ten percent (10%) of the City's total payroll costs.

The proposal permits modifications to these disbursement guidelines for the City's sub-trust if approved by the Controller, the City's GASB actuary, the Mayor, two-thirds of the Board of Supervisors and the Trust Fund Board.

The proposal permits other participating employers in the Trust Fund to adopt disbursement guidelines if approved by a two-thirds vote of that participating employer's governing board

The proposal also allows the Controller, the City Treasurer and the SFERS Executive Director to serve as Trust Fund Board members, instead of their respective appointees.