

[Charter Amendment - Retiree Supplemental Cost of Living Adjustment; Retirement Board Contract with Executive Director]

Describing and setting forth a proposal to the voters at an election to be held on November 8, 2022, to amend the Charter of the City and County of San Francisco to eliminate the full funding requirement for supplemental cost of living benefit payments to members of the San Francisco Employees' Retirement System who retired before November 6, 1996, subject to a monthly monetary cap for retirees and their qualified survivors and beneficiaries in years that the Retirement System is not fully funded; adjust the base retirement allowance for these retirees, or their qualified survivors and beneficiaries, to account for supplemental cost of living adjustments not received in the years 2013, 2014, 2017, 2018 and 2019; and authorize the Retirement Board to enter into an individual contract with any Retirement System executive director hired on or after January 1, 2023.

Section 1. The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on November 8, 2022, a proposal to amend the Charter of the City and County by revising Sections A8.526-3 and 12.100, to read as follows:

NOTE: **Unchanged Charter text and uncodified text** are in plain font. **Additions** are *single-underline italics Times New Roman font*. **Deletions** are ~~*strike-through italics Times New Roman font*~~. **Asterisks (* * * *)** indicate the omission of unchanged Charter subsections.

A8.526-3 SUPPLEMENTAL COST OF LIVING BENEFIT ON AND AFTER JANUARY 10, 2009

(a) Notwithstanding the provisions of Section A8.526-1 or any other provision of this Charter to the contrary, effective January 10, 2009, all supplemental cost of living benefits adjustments payable, including retirement allowances subject to change when the salary rate of a

1 member is changed, shall be determined pursuant to the provisions of this Section A8.526-3 and
2 not Section A8.526-1.

3 (b)(1) On July 1, 2009 and July 1 of each succeeding year, the retirement board shall
4 determine whether, in the previous fiscal year, there were earnings in excess of the expected
5 earnings on the actuarial value of the assets. In those years when the previous year's earnings
6 exceeded the expected earnings on the actuarial value of the assets, then on July 1 each
7 retirement allowance or death allowance payable on account of a member who died, including
8 retirement allowances subject to change when the salary rate of a member is changed, shall be
9 increased by an amount equal to three and one-half percent (3.5%) of the allowance as of June
10 30, less the amount of any cost of living adjustment provided pursuant to Section A8.526-2 and
11 less the amount of any cost of living adjustment, payable in that fiscal year, which is the result of
12 a change in the salary of the member.

13 (b)(2) If on July 1, 2009 and July 1 of each succeeding year, the previous fiscal year's
14 earnings exceeded the expected earnings on the actuarial value of the assets, but they were
15 insufficient to increase said allowances by three and one-half percent (3.5%) as provided in
16 Subsection (b)(1), then to the extent of excess earning, said allowances shall be increased in
17 increments of one-half percent (0.5%) up to the maximum three and one-half percent (3.5%) of
18 the allowance as of June 30, less the amount of any cost of living adjustment provided pursuant
19 to Section A8.526-2 and less the amount of any cost of living adjustment, payable in that fiscal
20 year, which is the result of a change in the salary of the member.

21 (c) When the previous fiscal year's earnings exceeded the expected earnings on the
22 actuarial value of the assets but were not sufficient to fund any supplemental cost of living
23 benefit adjustment pursuant to either Subsection (b)(1) or (b)(2), the Retirement Board shall
24 reserve the excess earnings for that year. Said reserved earnings shall accumulate only until such
25 time that said reserved earnings, plus the next year's earnings in excess of the expected earnings

1 on the actuarial value of the assets, are sufficient to fund one fiscal year's increase in the
2 supplemental cost of living benefit adjustment, at which time the earnings in reserve shall be
3 withdrawn and used to fund a supplemental cost of living benefit adjustment as provided in
4 either Subsection (b)(1) or (b)(2).

5 (d) ~~To clarify the intent of the voters when originally enacting this Section in 2008,~~
6 ~~Beginning on July 1, 2012 and July 1 of each succeeding year, no supplemental cost of living~~
7 ~~benefit adjustment shall be payable unless the Retirement System was also fully funded based on~~
8 ~~the market value of the assets for the previous year. Except as qualified in subsection (g), this~~
9 ~~subsection (d) shall apply only to employees and retirees hired on or after January 7, 2012.~~

10 (e) Any supplemental cost of living benefit adjustment, once paid to a member, shall
11 not be reduced thereafter.

12 (f) Any Section or part of any Section in this Charter, insofar as it should conflict with
13 the provisions of Section A8.526-3 or with any part thereof shall be superseded by the contents
14 of Section A8.526-3. Section A8.526-3 shall be interpreted to be consistent with all federal and
15 state laws, rules, and regulations. If any words, phrases, clauses, sentences, subsections,
16 provisions or portions of Section A8.526-3 are held to be invalid or unconstitutional by a final
17 judgment of a court, such decision shall not affect the validity of the remaining words, phrases,
18 clauses, sentences, subsections, provisions or portions of Section A8.526-3. If any words,
19 phrases, clauses, sentences, subsections, provisions or portions of Section A8.526-3 are held
20 invalid as applied to any person, circumstance, employee or category of employee, such
21 invalidity shall not affect any application of Section A8.526-3 which can be given effect. Section
22 A8.526-3 shall be broadly construed to achieve its stated purposes.

23 (g) Effective January 1, 2023, subsection (d) shall not apply to any members who
24 retired before November 6, 1996, or their qualified survivors and beneficiaries. But in any year
25 that the Retirement System is not fully funded based on the market value of the assets for the

1 previous year, the supplemental cost of living adjustment for these retirees, their qualified
2 survivors, and beneficiaries shall be limited to \$200 per month if their monthly gross pension
3 allowance exceeds \$4,167.

4 The Retirement System shall adjust the base retirement allowance of members who
5 retired before November 6, 1996, or their qualified survivors and beneficiaries, to account for
6 supplemental cost of living adjustments not received in 2013, 2014, 2017, 2018 and 2019, due to
7 the full funding requirement in subsection (d). This aggregate base allowance adjustment shall
8 not exceed \$200 per month for those receiving a monthly gross pension allowance over \$4,167.
9 This subsection (g) does not entitle these retirees, their qualified survivors, or beneficiaries to
10 any retroactive supplemental cost of living adjustment payments.

11 **SEC. 12.100. RETIREMENT BOARD.**

12 (a) The Retirement Board shall consist of seven members as follows: one member of
13 the Board of Supervisors appointed by the President, three public members to be appointed by
14 the Mayor pursuant to Section 3.100, and three members elected by the active members and
15 retired persons of the Retirement System from among their number. The public members
16 appointed by the Mayor shall be experienced in life insurance, actuarial science, employee
17 pension planning or investment portfolio management, or hold a degree of doctor of medicine.
18 There shall not be, at any one time, more than one retired person on the Board. The term of the
19 members, other than the Board of Supervisors member, shall be five years, one term expiring on
20 February 20~~th~~ of each year. The three elected members need not be residents of the City and
21 County. Vacancies on the Board shall be filled by the Mayor for the remainder of the unexpired
22 term, except that in the case of elected employee members, a vacancy shall be filled by a special
23 election within 120 days after the vacancy occurs unless the next regularly scheduled employee
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1 member election is to be held within six months after such vacancy occurred. Elections shall be
2 conducted by the Director of Elections in a manner prescribed by ordinance.

3 (b) The Board shall appoint and may remove an executive director and an actuary. The
4 executive director may be a joint Chief Executive Officer-Chief Investment Officer, or a Chief
5 Executive Officer only. The Board may employ a consulting actuary.

6 Any executive director hired on or after January 1, 2023, shall be employed under an
7 individual contract. Under the contract, the executive director's compensation shall be
8 comparable to the compensation of executive directors of public retirement systems in the United
9 States who perform similar functions and that the Board, after an independent survey,
10 determines most closely resemble the Retirement System in size, mission, and complexity. In
11 addition, the Board may provide an incentive compensation bonus plan for the executive director
12 based on performance goals established by the Board. For purposes of approving the executive
13 director's individual employment contracts, the Board may exercise all powers of the City and
14 County, the Board of Supervisors, the Mayor, and the Director of Human Resources under
15 Article XI of this Charter. The executive director's individual employment contract shall not
16 alter or interfere with the Retirement or Vacation provisions of this Charter or the Health Plans
17 established by the City's Health Service Board; provided however, that the Board may contribute
18 toward defraying the cost of the executive director's health premiums and retirement pick-up.

19 (c) In accordance with Article XVI, Section 17, of the California Constitution, the
20 Retirement Board shall have plenary authority and fiduciary responsibility for investment of
21 monies and administration of the Retirement System.

22 The Board shall be the sole authority and judge, consistent with this Charter and
23 ordinances, as to the conditions under which members of the Retirement System may receive and
24 may continue to receive benefits under the Retirement System, and shall have exclusive control
25 of the administration and investment of such funds as may be established.

1 The Retirement Board shall discharge its duties with respect to the system with the
2 care, skill, prudence and diligence under the circumstances then prevailing that a prudent person
3 acting in a like capacity and familiar with these matters would use in the conduct of an enterprise
4 of a like character and with like aims.

5 The Board shall determine City and County and District contributions on the basis of a
6 normal contribution rate which shall be computed as a level percentage of compensation which,
7 when applied to the future compensation of the average new member entering the System,
8 together with the required member contribution, will be sufficient to provide for the payment of
9 all prospective benefits of such member. The portion of liability not provided by the normal
10 contribution rate shall be amortized over a period not to exceed twenty years.

11 (d) The Board may act by a majority of the members present at a meeting so long as a
12 quorum is in attendance.

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14 APPROVED AS TO FORM:
15 DAVID CHIU, City Attorney

16 By: /s/ _____
17 KELLY COLLINS
18 Deputy City Attorney

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