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

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

(d) California workers’ compensation laws, which provide benefits to employees for industrial injuries, include a cancer presumption for firefighters and police officers. Under those laws, specifically Labor Code Section 3212.1, cancer is presumed industrial if it develops or manifests itself during a period in which the member is in the service of a fire or police department, if the member demonstrates that he or she was exposed, while in that service, to a known carcinogen as defined by the International Agency for Research on Cancer. This 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 disabling cancer.

(e) San Francisco Administrative Code Sections 16.85 and 16.86 create a presumption for firefighters and police officers applying for retirement benefits under the San Francisco City and County Employees’ Retirement System (“SFERS”) who meet certain
eligibility criteria that any "heart trouble" or pneumonia is work related, unless there is evidence to the contrary.

(f) Currently a San Francisco firefighter or police officer who applies to SFERS for an industrial disability retirement must establish that his or her injury or illness is industrially caused and that it incapacitates the member for the performance of his or her work duties. When a member seeks an industrial disability retirement based on cancer, currently the member must establish that the cancer is industrially caused, as well as incapacitating. Under the proposed ordinance, if a San Francisco firefighter or police officer with cancer who meets certain eligibility requirements can demonstrate work exposure to a carcinogen as defined by the International Agency for Research on Cancer, the cancer will be presumed work related in the SFERS retirement benefit application process. SFERS can offer specified evidence to rebut the presumption. The rebuttal standard in the proposed ordinance mirrors the standard in the California workers' compensation cancer presumption. 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 in connection with their retirement benefits, because the workers' compensation determination of industrial causation (made based on the cancer presumption) is determinative for purpose of the retirement process. The proposed ordinance will give San Francisco's 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.

Section 2. The Administrative Code is hereby amended by adding Section 16.72 to read as follows:
SEC. 16.72. FIREFIGHTER AND POLICE OFFICER INCAPACITATED WITH
CANCER – WHEN PRESUMED CONTRACTED IN THE COURSE OF EMPLOYMENT.

(a) Subject to the limitations of subsections (b) and (c), whenever any sworn member of the
San Francisco Fire Department (“Fire Department”) or San Francisco Police Department (“Police
Department”) becomes incapacitated for the performance of his or her duty by reason of cancer that
develops or manifests itself while the member is in the service of the Fire Department or Police
Department, the cancer shall be presumed to arise out of and in the course of his or her employment.
This 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 disabling cancer.

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

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

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

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

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

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

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

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

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

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

By: KATHARINE HOBIN PORTER
Deputy City Attorney

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File Number: 140455       Date Passed: July 29, 2014

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July 10, 2014 Government Audit and Oversight Committee - RECOMMENDED

July 22, 2014 Board of Supervisors - PASSED ON FIRST READING
Ayes: 10 - Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee
Excused: 1 - Avalos

July 29, 2014 Board of Supervisors - FINALLY PASSED
Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/29/2014 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Date Approved
8/7/2014