Ordinance amending the Administrative Code to add cancer and heart/pneumonia presumptions for industrial disability and death in the line of duty retirement benefits for Sheriff members of the San Francisco City and County Employees’ Retirement System.

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) Deputized personnel of the Sheriff's Department hired before January 7, 2012 are members of the California Public Employees' Retirement System (“CalPERS”). Sheriffs assuming office thereafter, and undersheriffs and all deputized personnel of the Sheriff's Department hired thereafter (collectively “Sheriff Members”), are members of the San Francisco City and County Employees’ Retirement System (“SFERS”). (Charter §A8.608.)

(b) Under state law, peace officers -- including deputized sheriff personnel -- are entitled to cancer, heart, and pneumonia presumptions for workers’ compensation claims. (Cal. Labor Code §3212, 3212.1.) If the conditions for the presumption are satisfied and the presumption is not rebutted, the injury, illness, disability, or death is presumed industrial, i.e., caused by work. A workers’ compensation finding that an injury, illness, disability or death is industrial is determinative on that issue in an application for an industrial disability retirement...
or a death as a result of duty benefit under CalPERS. Thus, Sheriff Department personnel who are CalPERS members benefit from the workers’ compensation cancer, heart and pneumonia presumptions in those retirement applications.

(c) Uniformed members of the San Francisco Police and Fire Departments who are SFERS members are entitled to cancer and heart/pneumonia presumptions when certain eligibility requirements are satisfied, in connection with applications for an industrial disability retirement or a death as a result of duty benefit under SFERS. (See Administrative Code §§16.72, 16.85, and 16.86.)

(d) Sheriff Members in SFERS are not currently entitled to cancer, heart, or pneumonia presumptions when applying for an industrial disability retirement or a death as a result of duty benefit. Under this ordinance, Sheriff Members will be entitled to these retirement presumptions. Thus, this ordinance ensures parity and fairness in the retirement plan terms related to industrial disability retirement and death as a result of duty presumptions for Sheriff Members, when compared to the comparable plan terms for members of the Sheriff’s Department who are CalPERS members; San Francisco police officers and firefighters; and other peace officers in California who are CalPERS members.

(e) Peace officers, including Sheriffs, 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 peace 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).

Section 2. The Administrative Code is hereby amended by adding Sections 16.72-1 and 16.86-1, to read as follows:
SEC. 16.72-1. SHERIFF MEMBER INCAPACITATED WITH CANCER – WHEN

PRESUMED CONTRACTED IN THE COURSE OF EMPLOYMENT.

(a) For purposes of this Section 16.72-1, the term “Sheriff Member” shall mean (1) any Sheriff who assumed office on and after January 7, 2012, and (2) any undersheriff or deputized personnel of the Sheriff’s Department hired on and after January 7, 2012.

(b) Subject to the limitations of subsections (c) and (d), whenever any Sheriff Member becomes incapacitated for the performance of his or her duty by reason of cancer that develops or manifests itself while the Sheriff Member is in the service of the Sheriff’s 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 Sheriff Member has demonstrated exposure as required by subsection (d)(1) below is not reasonably linked to the disabling cancer.

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

(1) A Sheriff Member who has served a total of five or more years in the Sheriff’s Department. For purposes of determining whether the Sheriff Member has five or more years of service, time served in a deputized position in another sheriff department in the State of California shall be combined with service in the Sheriff’s Department, provided that the Sheriff Member: (A) was entitled to the same cancer presumption in his or her prior employment; and (B) became a member of the Sheriff’s Department within six months of separating from the prior sheriff department 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 7, 2012, except that the presumption shall not apply to such an application if as of the effective date of this Section 16.72-1, 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 Sheriff Member did not request rehearing within the time specified under the Charter; or (B) has rendered an initial decision and the Sheriff Member timely requested rehearing under the Charter, and the hearing officer has issued a decision on rehearing.

(d) The presumption in subsection (b) shall apply only if:

(1) The Sheriff Member demonstrates exposure, while in the service of the Sheriff’s Department, to a known carcinogen as defined by the International Agency for Research on Cancer; and

(2) There was no evidence of cancer identified in the physical examination of the Sheriff Member conducted as part of his or her initial hire in the Sheriff’s Department.

(e) The Retirement System shall use the Sheriff Member’s eligible prior safety service in another sheriff department in California under subsection (c)(1) to measure the date upon which the Sheriff Member would be qualified for service retirement.

SEC. 16.86-1. SHERIFF MEMBER INCAPACITATED WITH HEART TROUBLE OR PNEUMONIA – WHEN PRESUMED CONTRACTED IN COURSE OF EMPLOYMENT.

(a) For purposes of this Section 16.86-1, the term “Sheriff Member” shall mean (1) any Sheriff who assumed office on and after January 7, 2012; and (2) any undersheriff or deputized personnel of the Sheriff’s Department hired on and after January 7, 2012.

(b) Subject to the limitations of subsections (c) and (d), whenever any Sheriff Member becomes incapacitated for the performance of his or her duty on account of heart trouble or pneumonia that develops or manifests itself while the Sheriff Member is in the service of the Sheriff’s Department, that heart trouble or pneumonia shall be presumed to arise out of and in the course of his or her employment, unless there is evidence to the contrary.

(c) The provisions of this Section 16.86-1 shall apply only to Sheriff Members who have served a total of five or more years:
(1) in the Sheriff's Department; or,

(2) in a deputized position in another sheriff department in the State of California, provided that the Sheriff Member was: (A) entitled to the same presumption in his or her prior employment; and (B) became a member of the Sheriff's Department within six months of separating from the prior sheriff department employment.

(d) The presumption in subsection (b) of this Section 16.86-1 shall apply only to injuries or deaths occurring or after January 7, 2012, and only to applications for benefits under the San Francisco City and County Employees' Retirement System ("Retirement System"). In such cases, the Sheriff Member's prior safety service in another sheriff department in the state of California shall be used by the Retirement System to measure the date upon which the Sheriff Member would have completed at least twenty-five (25) years of service in the aggregate.

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
Ordinance amending the Administrative Code to add cancer and heart/pneumonia presumptions for industrial disability and death in the line of duty retirement benefits for Sheriff members of the San Francisco City and County Employees' Retirement System.

July 15, 2015 Budget and Finance Sub-Committee - RECOMMENDED

July 21, 2015 Board of Supervisors - PASSED ON FIRST READING
  Ayes: 10 - Avalos, Breed, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee
  Excused: 1 - Campos

July 28, 2015 Board of Supervisors - FINALLY PASSED
  Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/28/2015 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

8/6/15
Date Approved