

[Changes to Public Utilities Commission related to water and sewer ]

CHARTER AMENDMENT

PROPOSITION \_\_\_\_\_

Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco to amend the Charter of said City and County by creating a new Article VIII B by adding Sections 8B.120 through 8B.127, and deleting Section 9.111-1 and amending Section 16.103, to establish exclusive control of utilities; rate setting standards and methods; planning and reporting requirements; transfer of surplus funds between utilities; independence in contracting; revenue bonds or other financing methods.

The Board of Supervisors of the City and County of San Francisco hereby submits to the qualified electors of said City and County at an election to be held therein on November 5, 2002, a proposal to amend the Charter of said City and County by creating a new Article VIII B Sections 8B.120 through 8B.128, and deleting Section 9.111-1 and amending Section 16.103 to read as follows:

Note: Additions are single-underline italics Times New Roman;  
deletions are ~~strikethrough italics Times New Roman~~.

Section 1. The San Francisco Charter is hereby amended by creating a new Article VIII B: Public Utilities, to read as follows:

SEC. 8B.120. PREAMBLE

The Public Utilities Commission operates the Water, Clean Water and Power Utilities of the City and County of San Francisco. Hetch Hetchy Water and Power System is an irreplaceable asset of the people of the City and County of San Francisco. The system is fundamental to the economic vitality of San Francisco and the Bay Area. The voters of the City and County of San Francisco are committed to preserving and protecting the system as well as safeguarding the extraordinary quality of the water from Yosemite and local watersheds. The voters find that the protection, maintenance and repair of the system are among their highest priorities.

San Francisco faces an unprecedented challenge: to restore its aging water system to ensure a reliable Bay Area water supply through the next century. Repairs must be accomplished as quickly as possible to avoid system outages, which could be caused by natural disasters such as earthquake. In planning for its future needs and those of its wholesale customers, the City must promote water conservation and responsible stewardship of its natural resources. The effectiveness of the City's Public Utilities Commission, which has jurisdiction over the system, is essential to achieving these goals.

In addition, San Francisco must upgrade and repair its clean water system to meet changes in state and federal water quality requirements, and to ensure reliability of the system, parts of which are outdated, aged or seismically vulnerable. The voters find that the operation of the clean water system should not unnecessarily place a disproportionate environmental burden on any community.

This measure is intended to enhance public confidence in the City's stewardship of public utilities by:

1. Clarifying that the Public Utilities Commission has exclusive control of water, clean water and power assets owned or maintained by the City and County of San Francisco;

2. Establishing rates sufficient to meet operation, maintenance and financial needs of the system based on costs and sound budgeting and auditing procedures to protect retail ratepayers and reduce interest paid on bonds and other indebtedness while ensuring public review;

3. Establishing the Public Utilities Commission as an independent revenue department not subject to undue financial pressures to contribute to the City's general fund;

4. Requiring the development of long term Capital, Financial and Strategic Plans to ensure that the utilities are operated efficiently in accordance with best public utility practice;

5. Authorizing the Public Utilities Commission to independently enter into certain contracts;

6. Giving the Public Utilities Commission the ability to finance needed capital improvements through revenue bonds or other financing methods consistent with the powers of other major public utilities in California; and

7. Promoting labor stability to ensure that the Capital Improvement Plan is completed expeditiously and efficiently.

SEC. 8B.121. PUBLIC UTILITIES COMMISSION

(a) Notwithstanding Charter section 4.112, the Public Utilities Commission shall have exclusive charge of the construction, management, supervision, maintenance, extension, expansion, operation, use and control of all water, clean water and energy supplies and utilities of the City as well as the real, personal and financial assets, that are under the Commission's jurisdiction or assigned to the Commission under Section 4.132.

(b) The Public Utilities Commission may enter into Joint Powers Agreements with other public entities in furtherance of the responsibilities of the Commission.

(c) Except to the extent otherwise provided in this Article, the Public Utilities Commission shall be subject to the provisions of Charter sections 4.100 et seq. generally applicable to boards and commissions of the City and County.

(d) The General Manager shall have the authority to organize and reorganize the department. The General Manager shall adopt rules and regulations governing all matters within the jurisdiction of the department subject to section 4.102 as applicable.

(e) Ownership or control of any public utility or any part thereof under the jurisdiction of the Public Utilities Commission may not be transferred or conveyed absent approval by the Public Utilities Commission and approval by a vote of the electors of the City at the election next ensuing not less than 90 days after the adoption of such ordinance, which shall not go into effect until ratified by a majority of the voters voting thereon. Voter approval shall not be required for sales or transfers of real property declared surplus to the needs of any utility by the Public Utilities

Commission or to leases or permits for the use of utility real property approved by the Public Utilities Commission.

SEC. 8B.122. GOALS AND OBJECTIVES RELATED TO WATER AND CLEAN WATER

(a) The Commission shall develop, periodically update and implement programs to achieve goals and objectives consistent with the following:

(1) Provide water and clean water services to San Francisco and water service to its wholesale customers while maintaining stewardship of the system by the City;

(2) Establish equitable rates sufficient to meet and maintain operation, maintenance and financial health of the system;

(3) Provide reliable water and clean water services and optimize the systems' ability to withstand disasters;

(4) Protect and manage lands and natural resources used by the Commission to provide utility services consistent with applicable laws in an environmentally sustainable manner. Operate hydroelectric generation facilities in a manner that causes no reasonably anticipated adverse impacts on water service and habitat;

(5) Develop and implement priority programs to increase and to monitor water conservation and efficiency system-wide;

(6) Utilize state-of-the-art innovative technologies where feasible and beneficial;

(7) Develop and implement a comprehensive set of environmental justice guidelines for use in connection with its operations and projects in the City;

(8) Create opportunities for meaningful community participation in development and implementation of the Commission's policies and programs; and

(9) Improve drinking water quality with a goal of exceeding applicable drinking water standards if feasible.

SEC. 8B.123 PLANNING AND REPORTING

(A) Planning and Reporting

The Public Utilities Commission shall annually hold public hearings to review, update and adopt:

(1) A Long-Term Capital Improvement Program, covering projects during the next 10-year period; including cost estimates and schedules.

(2) A Long-Range Financial Plan, for a 10-year period, including estimates of operation and maintenance expenses, repair and replacement costs, debt costs and rate increase requirements.

(3) A Long-Term Strategic Plan, setting forth strategic goals and objectives and establishing performance standards as appropriate.

The Capital Improvement Program and Long-Range Financial Plan shall serve as a basis and supporting documentation for the Commission's capital budget, the issuance of revenue bonds, other forms of indebtedness and execution of governmental loans under this Charter.

(B) Citizens' Advisory Committee

The Board of Supervisors, in consultation with the General Manager of the Public Utilities Commission, shall establish by ordinance a Citizens' Advisory Committee to provide recommendations to the General Manager of the Public Utilities Commission, the Public Utilities Commission and the Board of Supervisors.

SEC. 8B.124. WATER AND CLEAN WATER REVENUE BONDS

Notwithstanding, and in addition to, the authority granted under Charter Section 9.107, the Public Utilities Commission is hereby authorized to issue revenue bonds, including notes, commercial paper or other forms of indebtedness, when authorized by ordinance approved by a two-thirds vote of the Board of Supervisors, for the purpose of reconstructing, replacing, expanding, repairing or improving water facilities or clean water facilities or combinations of water and clean water facilities under the jurisdiction of the Public Utilities Commission.

Any legislation authorizing the issuance of revenue bonds (except for refunding bonds) under this section shall be subject to the referendum requirements of Section 14.102 of this Charter. The ordinance authorizing the issuance of such revenue bonds shall not become effective until 30 days after its adoption.

Notwithstanding any other provision of this Charter or of any ordinance of the City and County, the Board of Supervisors may take any and all actions necessary to authorize, issue and repay such bonds, including, but not limited to, modifying schedules of rates and charges to provide for the payment and retirement of such bonds, subject to the following conditions:

(a) Certification by an independent engineer retained by the Public Utilities Commission that:

(1) the projects to be financed by the bonds, including the prioritization, cost estimates and scheduling, meet utility standards; and

(2) that estimated net revenue after payment of operating and maintenance expenses will be sufficient to meet debt service coverage and other indenture or resolution requirements, including debt service on the bonds to be issued, and estimated repair and replacement costs.

(b) Certification by the San Francisco Planning Department that facilities under the jurisdiction of the Public Utilities Commission funded with such bonds will comply with applicable requirements of the California Environmental Quality Act.

Except as expressly provided in this Charter, all revenue bonds may be issued and sold in accordance with state law or any procedure provided for by ordinance of the Board of Supervisors.

#### SEC. 8B.125. RATES

Notwithstanding Charter sections 2.109, 3.100 and 4.102 or any ordinance (including, without limitation, Administrative Code Appendix 39), the Public Utilities Commission shall set rates, fees and other charges in connection with providing the utility services under its jurisdiction, subject to rejection -- within 30 days of submission - - by resolution of the Board of Supervisors. If the Board of Supervisors fails to act within 30 days the rates shall become effective without further action.

In setting retail rates, fees and charges the Commission shall:

1. Establish rates, fees and charges at levels sufficient to improve or maintain financial condition and bond ratings at or above levels equivalent to highly rated utilities of each enterprise under its jurisdiction, meet requirements and covenants under all bond



resolutions and indentures, (including, without limitation, increases necessary to pay for the retail water customers' share of the debt service on bonds and operating expenses of any state financing authority such as the Regional Water System Financing Authority), and provide sufficient resources for the continued financial health (including appropriate reserves), operation, maintenance and repair of each enterprise, consistent with good utility practice;

2. Retain an independent rate consultant to conduct rate and cost of service studies for each utility at least every five years;

3. Set retail rates, fees and charges based on the cost of service;

4. Conduct all studies mandated by applicable state and federal law to consider implementing connection fees for water and clean water facilities servicing new development;

5. Conduct studies of rate-based conservation incentives and/or lifeline rates and similar rate structures to provide assistance to low income users, and take the results of such studies into account when establishing rates, fees and charges, in accordance with applicable state and federal laws;

6. Adopt annually a rolling 5-year forecast of rates, fees and other charges; and

7. Establish a Rate Fairness Board consisting of seven members: the City Administrator or his or her designee; the Controller or his or her designee; the Director of the Mayor's Office of Public Finance or his or her designee; two residential city retail customers, consisting of one appointed by the Mayor and one by the Board of Supervisors; and two city retail business customers, consisting of a large business

customer appointed by the Mayor and a small business customer appointed by the Board of Supervisors. The Rate Fairness Board may:

- i. Review the five-year rate forecast;
- ii. Hold one or more public hearings on annual rate recommendations before the Public Utilities Commission adopts rates;
- iii. Provide a report and recommendations to the Public Utilities Commission on the rate proposal; and
- iv. In connection with periodic rate studies, submit to the Public Utilities Commission rate policy recommendations for the Commission's consideration, including recommendations to reallocate costs among various retail utility customer classifications, subject to any outstanding bond requirements.

These provisions shall be effective January 3, 2003 for the setting of retail rates, fees and charges related to the clean water system. If the voters approve bonds for the Public Utilities Commission's Capital Improvement Program at the November 5, 2002 election then the provisions of this section shall take effect on July 2, 2006 for the setting of retail rates, fees and charges related to the water system. If the voters do not approve such bonds then this section will take effect on January 3, 2003.

#### SEC. 8B.126. PERSONNEL AND MERIT SYSTEM

(a) The General Manager shall be selected under the provisions of Charter sections 3.100 and 4.102. The General Manager may be employed under an individual contract. His or her compensation shall be comparable to the compensation of the chief executive officers of the public water, wastewater and/or power systems in the

United States that the Commission, after an independent survey, determines most closely resemble the Public Utilities Commission in size, mission, and complexity. In addition, the Public Utilities Commission may provide an incentive compensation bonus plan for the General Manager based on performance goals established by the Commission.

(b) The General Manager may negotiate an individual contract with the employee appointed to perform the duties of general infrastructure management and oversight of the Capital Improvement Program subject to approval by the Commission and notwithstanding Charter Section A8.409 et seq.

(c) For purposes of approving individual employment contracts the Public Utilities Commission may exercise all powers of the City and County, the Board of Supervisors, the Mayor, and the Director of Human Resources under Article XI of this charter. Individual employment contracts shall utilize and shall not alter or interfere with, the Retirement or Vacation provisions of this Charter or the Health Plans established by the City's Health Service Board; provided however, that the Commission may contribute toward defraying the cost of the employee's health premiums and retirement pick-up.

#### SEC. 8B.127. CONTRACTING AND PURCHASING

Notwithstanding Charter Section 9.118 or any ordinance, the Public Utilities Commission shall have the sole authority to enter into agreements for the purchase of water; the sale of water to wholesale customers; and agreements necessary to implement Joint Powers Agreements with any wholesale water customer.

In order to promote labor stability and to ensure the Capital Improvement

Program is completed expeditiously and efficiently, the Public Utilities Commission is authorized, to the extent legally appropriate, to enter into project labor agreements, with appropriate Building Construction and Trades Councils, covering significant capital projects.

Section 2. The San Francisco Charter is hereby amended by deleting Section 9.111-1 as follows:

~~SEC. 9.111-1. ENVIRONMENT PROTECTION LOANS~~

~~Notwithstanding any other provision in the Charter, the City and County and its commissions shall have the authority to enter into loans (or other indebtedness) directly or indirectly with, or have any of its indebtedness guaranteed or subsidized by, the State of California or United States of America. All loans or other indebtedness must comply with the following provisions:~~

- ~~a. — proceeds must be used for projects which protect, preserve, or enhance water resources or the environment; and~~
- ~~b. — must be the most cost effective method of financing a project; and~~
- ~~c. — shall be subject to the approval of the Board of Supervisors; and~~
- ~~d. — (i) — cannot increase the amount of approved debt; or~~
  - ~~(ii) — in the case of a refinancing of revenue or general obligation bonds of the City and County or any commission, must result in net debt service savings to the City and County or commission, calculated as provided by ordinance.~~

~~For purposes of this Section 9.111-1, the determination of what constitutes the most cost effective method of financing shall be certified by the Controller.~~

Section 3. The San Francisco Charter is hereby amended by amending Section 16.103 as follows:

SEC. 16.103. UTILITY REVENUES AND EXPENDITURES

(a) Receipts from each utility operated by the Public Utilities Commission shall be paid into the City and County treasury and maintained in a separate fund for each such utility. Appropriations from such funds shall be made for the following purposes for each such utility in the order named, ~~viz:~~

1. For the payment of operating expenses, pension charges and proportionate payments to such compensation and other insurance and accident reserve funds as the Commission may establish or the Board of Supervisors may require;
2. For repairs and maintenance;
3. For reconstruction and replacements as hereinafter described;
4. For the payment of interest and sinking funds on the bonds issued ~~for acquisition, construction or extension~~ by the Public Utilities Commission pursuant to this charter;
5. For extensions and improvements; and
6. For a surplus fund.

For any utility with outstanding bonds for which the indenture requires different payment priorities, the bond priorities will control over the priorities set forth in this section.

(b) For the purpose of providing funds for reconstruction and replacements due to physical and functional depreciation of each of the utilities under the jurisdiction of the Commission, the Commission must create and maintain a reconstruction and replacement fund for each such utility, sufficient for the purposes mentioned in this section, and in accordance with an established practice for utilities of similar character, which shall be the basis for the amount necessary to be appropriated annually to provide for said reconstruction and replacements.

~~1-(c)~~ If, at the end of any fiscal year, the Controller certifies that excess surplus funds of a utility exist, ~~then such excess surplus funds may be transferred by the Board of Supervisors to the General Fund of the City and County, and shall be deposited by the Commission with the Treasurer to the credit of such General Fund. For the purposes of this subsection, excess surplus funds shall exist if the utility has unappropriated, unencumbered funds from hydropower assets or water or clean water assets~~ in excess of 25 percent of the total expenditures of such utility in the previous fiscal year for costs of operation, repair ~~and maintenance~~, maintenance and debt service coverage and required debt service reserves, the Public Utilities Commission may transfer that surplus revenue, in whole or in part, to any other utility system under the Commission's jurisdiction on the operative date of this section.

~~(2)~~ (d) Any surplus revenue which the Public Utilities Commission unanimously finds is not required for utility purposes pursuant to sections (a) and (b) of this section may be transferred to the General Fund by the Public Utilities Commission with the concurrence of If, as part of the budgeting process, the Controller estimates that there will exist, at the end of the budget year, excess surplus funds of a utility, three-fourths of

the Board of Supervisors ~~may budget such excess as revenue to the General Fund for that budget year. During the budget year, the Commission shall deposit with the Treasurer a pro rata portion of the then estimated excess surplus funds no less frequently than quarterly. For the purposes of this subsection, excess surplus funds shall exist if the utility has unappropriated, unencumbered funds in excess of 25 percent of the total expenditure of such utility in the previous fiscal year for costs of operation, repair and maintenance.~~

3. ~~At any time, the Commission may, with the concurrence of two thirds of the Board of Supervisors, authorize the transfer of any portion of a utility's surplus funds to the General Fund~~ upon making all of the following findings of fact and judgment:

~~(A)~~ (a) That a surplus exists or is projected to exist after meeting the requirements of this section;

~~(B)~~ (b) That there is no unfunded operating or capital program or required reserve that by its lack of funding could jeopardize bond ratings, health, safety, water supply or power production;

~~(C)~~ (c) That there is no reasonably foreseeable operating contingency that cannot be funded without General Fund subsidy; and

~~(D)~~ (d) That such a transfer of funds in all other respects reflects prudent utility practice.

The Commission shall make such findings having received reports ~~from the manager of utilities and a public hearing~~ and an affirmative recommendation from the General Manager and a public hearing, which shall have received no less than 30 days of public notice.

4-(e) The provisions of subsection ~~(b)~~(c) above shall not be applied in a manner that would be inconsistent with the provisions of any outstanding or future indentures, resolutions, contracts or other agreements of the City and County relating to bonded indebtedness issued in connection with the utility, or with any applicable state or federal laws.

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

By: \_\_\_\_\_  
Deputy City Attorney