

LEGISLATIVE DIGEST

[Charter Amendment - Forfeiture of Pension Benefits]

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 provide for forfeiture of the pension of a member of the San Francisco Employees' Retirement System upon a finding by clear and convincing evidence after an administrative hearing that the member committed a crime involving moral turpitude in connection with the member's duties as a City employee or officer.

Existing Law

Currently, under Charter Sections A8.509, A8.584-13, A8.586-16, A8.587-14, A8.588-16, A8.597-16, A8.598-16, A8.600-14, A8.601-16, A8.602-16, A8.603-10, A8.604-13, A8.605-13, A8.606-15, A8.607-15, A8.608-13, A8.609-15, A8.610-13, any active or retired City employee who is a member of the San Francisco Employee Retirement System (SFERS) and who is convicted of a crime involving moral turpitude committed in connection with their City duties, forfeits all rights to City-funded benefits under the City's retirement system.

Amendments to Current Law

The proposed measure would amend these Charter provisions to add a second mechanism for forfeiture: a member would forfeit pension benefits if an administrative hearing officer determines by clear and convincing evidence that the member committed a crime involving moral turpitude in connection with their City duties.

The measure would also amend Section A8.585, which currently does not include a forfeiture provision, to include a new Section A8.585-17, which would subject pension benefits under that plan to forfeiture on the same grounds as the other Charter sections.

The measure would also amend Section 12.102 to authorize the Retirement System to hire administrative law judges to preside over the administrative forfeiture proceedings.

Background Information

The Charter bars employees convicted of a crime involving moral turpitude (such as theft, fraud, or the breach of public trust) from collecting employer-funded pension benefits. Currently, there are 18 pension forfeiture provisions codified in Charter Appendix A covering various categories of employees. These sections provide that a member who is convicted of a crime involving moral turpitude committed in connection with the member's employment,

forfeits all rights to any benefits under the pension system, except refund of the member's accumulated contributions. If the member is qualified for service retirement based on years of service and age, the member may, as an alternative, choose to receive an annuity that is the actuarial equivalent of the member's accumulated contributions at the time of conviction.

As to retired members, the provisions similarly provide that any member who is convicted of a crime involving moral turpitude that was committed in connection with the member's duties while employed, forfeits rights to any further benefit from the pension system, except payment of the member's accumulated contributions remaining at the time of the conviction.

These pension forfeiture provisions are intended to prevent an employee who exploits their position or abuses City resources from receiving City-funded pension benefits accrued during their time of service. Because application of the provisions hinges on conviction of a crime involving moral turpitude, employees who are not convicted of a crime do not forfeit their pension, even if they commit fraud or other acts involving moral turpitude. For example, prosecutors may choose not to criminally charge an employee for their conduct, or an employee may plea to a crime that does not involve moral turpitude, in exchange for the prosecution's dropping a charge that involves moral turpitude. Under these and other varied circumstances, there is no basis under the Charter to forfeit the employee's pension benefits.

The proposed amendment would add a second basis for forfeiture if, after an administrative hearing, there is a finding based on clear and convincing evidence that the member committed a crime involving moral turpitude in connection with their duties as an employee or officer. The purpose of the amendment is to close the loophole that has allowed employees who have abused their office and breached the public trust to nonetheless collect full pension benefits. In so doing, the amendment seeks to deter such malfeasance and induce faithful service by public employees, thereby maintaining the integrity of the City's retirement system.

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