

[Set-Asides]

CHARTER AMENDMENT

PROPOSITION \_\_\_\_

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by adding Section 9.122, to set a dollar cap on all Charter set-asides, authorize reductions during fiscal shortfalls and waiver during emergencies, authorize the return of surplus balances, adjust mandatory service levels, and establish City policies regarding future set-asides and non-binding measures.

The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on June 2, 2009, a proposal to amend the Charter of the City and County by adding Section 9.122, to read as follows:

NOTE: Additions are single-underline italics Times New Roman; deletions are ~~strike through italics Times New Roman~~.

Section 1. The San Francisco Charter is hereby amended by adding Section 9.122, to read as follows:

**SEC. 9.122. SET-ASIDES.**

*(a) "Set-Asides" Defined. For purposes of this Section, "Set-Asides" shall mean the mandatory appropriation or expenditure of City funds, including, without limitation, any baseline appropriation or spending requirement, imposed by any and all of the following provisions of the Charter: the Police Department minimum staffing requirement (Section 4.127); the Municipal Transportation Fund (Section 8A.105); the symphony orchestra funding requirement (Section 16.106(1)); the Park, Recreation, and Open Space Fund (Section 16.107); the Children's Fund (Section 16.108); the Library Preservation Fund (Section 16.109); the Public Education Enrichment Fund (Section 16.123-2); and, the*

Controller's Audit Fund (Section F1.113). This Section 9.122 amends and supersedes the relevant provisions of Charter Sections 4.127, 8A.105, 16.106(1), 16.107, 16.108, 16.109, 16.123-2, and F1.113 to the extent that they are inconsistent with any of the provisions of this Section.

(b) "**Set-Asides**" Capped at FY 2008-2009 Levels. The City's obligation to appropriate or spend funds to meet the requirements of any Set-Asides shall be capped at the dollar amount that the Controller determines each of the Set-Asides required in Fiscal Year 2008-2009, and the City shall be under no obligation to appropriate or spend any additional amounts under the Charter. Within 60 days after the end of Fiscal Year 2008-2009, the Controller shall notify the Board of Supervisors and the Mayor in writing of the Controller's determination of the cap for each of the Set-Asides, and such determination shall be conclusive for purposes of this Section.

(c) **Reductions During Fiscal Shortfalls.** In any fiscal year in which the Controller notifies the Board of Supervisors and the Mayor in writing of the Controller's projection that total discretionary City revenues for the upcoming fiscal year will be less than the current fiscal year's total discretionary City revenues by \$100 million dollars or more, the Board of Supervisors may by ordinance approved by the Mayor reduce the City's contribution for that upcoming fiscal year under some or all of the Set-Asides by up to 25 % of the amount as capped under subsection (b) for such Set-Asides. The Mayor and the Board may reduce the City's contributions to different Set-Asides by different amounts.

(d) **Return of Surplus Balances.** If funds appropriated under any of the Set-Asides are not expended or encumbered by the end of the fiscal year for which they were appropriated, the Board of Supervisors may by ordinance require that those funds revert to the General Fund or to the enterprise funds where they originated, as appropriate.

(e) **Adjusting Mandatory Service Levels.** Any Set-Aside stated in the Charter as a mandatory service level, or containing a mandatory service level, shall be deemed adjusted as necessary to carry out the provisions of this Section. The Police Department minimum staffing

level set under Charter Section 4.127 shall be deemed reduced to the number of full duty sworn police officers who can be funded under the cap set under subsection (b) and any reductions under subsection (c). The Municipal Railway minimum service hour requirement set under Charter Section 8A.103 shall be deemed reduced to the number of service hours that can be funded under the cap set under subsection (b) and any reductions under subsection (c). The number of branch libraries and the number of service hours required under Charter Section 16.109 shall be deemed reduced to the levels that can be funded under the cap set under subsection (b) and any reductions under subsection (c).

(f) **Waiver During Emergencies.** In cases of emergency threatening the lives, property, or welfare of the City and County or its citizens, the Board of Supervisor may by ordinance approved by a two-thirds' vote of its members and by the Mayor waive, in part or in full, some or all of the Set-Asides for the fiscal year in which the ordinance is adopted and the following fiscal year. Such ordinance shall require only one reading and shall take effect immediately upon passage, but, notwithstanding Section 2.107 of this Charter, shall not automatically terminate on the 61<sup>st</sup> day following passage.

(g) **Initiative Ordinances Containing Appropriation or Spending Requirements.** Several initiative ordinances also purport to impose appropriation or spending requirements on the City, including: the Neighborhood Beautification and Graffiti Cleanup Fund initiative (adopted as Proposition D at the June 5, 1990 election); the Economic Analysis of Legislation initiative (adopted as Proposition I at the November 2, 2004 election); the Neighborhood Firehouses initiative (adopted as Proposition F at the November 8, 2005 election); the Care Not Cash Initiative (adopted as Proposition N at the November 5, 2006 election); the Small Business Assistance Center initiative (adopted as Proposition I at the November 6, 2007 election); and, the Treatment on Demand Act initiative (adopted as Proposition T at the November 4, 2008 election).

While the appropriation or spending requirements in these measures are not legally binding for fiscal years after the year in which they were adopted because they are imposed under ordinances rather than Charter provisions, these measures may compel the City as a matter of policy to set aside funds for these particular purposes. It is the policy of the people of the City and County that the Mayor and the Board of Supervisors, during periods of fiscal shortfalls as determined by the Controller, follow the same principles for these measures as for Set-Asides regarding caps on appropriations and expenditures, as well as reductions and waivers of program requirements, and the return of surplus balances, when exercising their budgetary and appropriations powers regarding the programs that are the subject of these measures.

(h) **Policy Regarding Future Set-Asides.** It is also the policy of the people of the City and County that any future measure requiring the City to set aside portions of the property tax levy, the General Fund, or any other City revenue source for any particular purposes, or otherwise mandating continuing annual appropriations or expenditures for specific programs, include: (1) a cap on the total amount of such appropriation or expenditure requirement; (2) provisions for reducing City contributions during fiscal shortfalls consistent with subsection (c); (3) provisions for return of surplus balances consistent with subsection (d); (4) provisions for waiver during an emergency consistent with subsection (f); and, (5) an expiration date not to exceed ten years from the effective date of the measure.

Section 2. Notwithstanding any other provision of this amendment, this amendment is not intended to and shall not be construed to authorize the City to take any actions that would impair the City's ability to meet any prior legal duty or obligations, such as those duties or obligations that applicable provisions of contracts, leases, trust agreements, or financing agreements impose, or that would impair the City's ability to fulfill any fiduciary duties or comply with any other legal limitations on the use of particular City monies, including, but not

limited to, the City's ability to refinance or repay principal or interest on any bond, notes, or other evidences of indebtedness, including certificates of participation, issued and/or executed and delivered by the City as of the operative date of this amendment and secured by any of the set-asides identified herein, and such set-asides shall remain in effect to the extent necessary to satisfy or discharge any such legal duties or obligations.

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

By: \_\_\_\_\_  
THOMAS J. OWEN  
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