

[Retirement Benefits for District Attorneys, Public Defenders and Public Defender Investigators.]

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 adding Appendix A8.583 thereto, relating to retirement benefits for attorneys in the District Attorney's and Public Defender's offices and Public Defender Investigators.

The Board of Supervisors of the City and County of San Francisco hereby submits to the qualified voters of the City and County, at an election to be held on November 4, 2003, a proposal to amend the Charter of said City and County by adding Appendix A8.583 to read as follows:

Note: Additions are *single-underline italics Times New Roman*.
Deletions are ~~*strikethrough italics Times New Roman*~~.

SEC. A8.583 RETIREMENT - ATTORNEYS IN THE DISTRICT ATTORNEY'S AND PUBLIC DEFENDER'S OFFICES AND PUBLIC DEFENDER INVESTIGATORS ON AND AFTER JULY 1, 2003.

Local prosecutors, public defenders and public defender investigators, employed as such on or after July 1, 2003 who were members of the retirement system under Sections A8.509 or A8.587 on July 1, 2003, whose accumulated contributions were in the retirement fund on July 1, 2003 and who were not retired on that date, and local prosecutors, public defenders and public defender investigators who become members of the retirement system on and after July 1, 2003 shall be members of the retirement system subject to the provisions of Sections A8.583 through A8.583-13, in addition to such other applicable provisions including, but not limited to, sections A8.500 and A8.500-1 of this charter. This section shall not apply to any person who separated

from service, retired or died before July 1, 2003, or to his or her continuant.

Within 90 days after this section takes effect any local prosecutor, public defender or public defender investigator may elect not to become subject to the retirement benefits described in this Section. Any such election shall be filed in the office of the San Francisco Employees' Retirement System on such form as the Retirement System shall require. The Executive Director of the San Francisco Employees Retirement System shall have all such authority as may be reasonably necessary or appropriate to carry out the provisions of this Section.

A8.583-1 DEFINITIONS

The following words and phrases as used in this section, unless a different meaning is plainly required by the context, shall have the following meaning:

"Retirement allowance," or "allowance," shall mean equal monthly payments, beginning to accrue upon the date of retirement, and continuing for life unless a different term of payment is definitely provided by the context.

"Compensation," as distinguished from benefits under the workers' compensation laws of the State of California shall mean all remuneration whether in cash or by other allowances made by the city and county, for service qualifying for credit under this section, but excluding remuneration for overtime and such other forms of compensation excluded by the board of supervisors pursuant to Section A8.500 of the charter.

"Compensation earnable" shall mean the compensation as determined by the retirement board, which would have been earned by the member had he or she worked, throughout the period under consideration, the average number of days ordinarily worked by persons in the same grade or class of positions as the positions held by him or her during such period and at the rate of pay attached to such positions, it being assumed that during any absence, he or she was in the position held by him or her at the beginning of the absence, and that prior to entering city service, he or she was in the position first held by him or her in city service.

"Benefit" shall include "allowance," "retirement allowance," and "death benefit."

"Average final compensation" shall mean the average monthly compensation earned by a member during any one year of credited service in the retirement system in which his or her average final compensation is the highest.

For the purposes of the retirement system and of this section, Section A8.583 and Sections A8.583-2 through A8.583-13, the terms " local prosecutor, public defender and public defender investigator" or "member," shall mean:

(a) "Local prosecutor" means any one of the following:

(1) An officer or employee of the City and County of San Francisco who meets all of the following criteria:

(A) He or she is employed in the Office of the District Attorney and

(B) His or her job classification is district attorney, deputy district attorney, chief deputy district attorney, senior deputy district attorney, assistant district attorney, chief assistant district attorney, senior assistant district attorney, or any other similar classification or title.

(2) An officer or employee of the City and County of San Francisco who meets all of the following criteria:

(A) He or she was employed in the Office of the District Attorney prior to the date the local child support agency transitioned from the District Attorney to the San Francisco Office of Child Support Services;

(B) His or her job classification was district attorney, deputy district attorney, chief deputy district attorney, senior deputy district attorney, assistant district attorney, chief assistant district attorney, senior assistant district attorney, or any other similar classification or title; and

(C) He or she is an attorney in the San Francisco Office of Child Support Services, with no break in service between employment by the Office of the District Attorney and the San Francisco Office of Child Support Services.

(3) An officer or employee of the City and County of San Francisco who meets all of the following criteria:

(A) He or she is employed in the Office of the City Attorney;

(B) He or she is primarily engaged in the active enforcement of criminal laws within any court in the City and County of San Francisco; and

(C) His or her job classification is city attorney, deputy city attorney, chief deputy city attorney, assistant city attorney, chief assistant city attorney, or any other similar classification or title.

(b)"Local public defender" means an officer or employee of the City and County of San Francisco who meets all of the following criteria:

(1) He or she is employed in the Office of the Public Defender and

(2) His or her job classification is public defender, deputy public defender, chief deputy public defender, senior deputy public defender, assistant public defender, chief assistant public defender, senior assistant public defender, or any other similar classification or title.

(c) "Local public defender investigator" means an officer or employee of the City and County of San Francisco who meets all of the following criteria:

(1) He or she is employed in the Office of the Public Defender;

(2) His or her job classification is inspector, investigator, detective, or any other similar classification or title; and

(3) His or her principal duties are to investigate crime and criminal cases.

"Retirement system" or "system" shall mean San Francisco City and County Employees' Retirement System as created in Section A8.500 of the charter.

"Retirement board" shall mean "retirement board" as created in Section 12.100 of the charter.

"Charter" shall mean the charter of the City and County of San Francisco.

Words used in the masculine gender shall include the feminine and neuter genders, and singular numbers shall include the plural and the plural the singular.

A8.583-2 SERVICE RETIREMENT

(a) Any local prosecutor, public defender and public defender investigator who completes at least five years of service in the aggregate and attains the age of fifty (50) years, such service to be computed under the terms of Section A8.583-7 below, may retire for service at his or her option. A member retired after meeting the service and age requirements in the preceding sentence shall receive a retirement allowance equal to the percentage of average final compensation set forth below opposite his or her age at retirement, taken to the preceding completed quarter year, for each year of service, as computed under Section A8.583-7, below:

<u>Retirement Age</u>	<u>Percent for Each Year of Credited Service</u>
<u>50</u>	<u>2.400</u>
<u>50.25</u>	<u>2.430</u>
<u>50.5</u>	<u>2.460</u>
<u>50.75</u>	<u>2.490</u>
<u>51</u>	<u>2.520</u>
<u>51.25</u>	<u>2.550</u>
<u>51.5</u>	<u>2.580</u>
<u>51.75</u>	<u>2.610</u>
<u>52</u>	<u>2.640</u>
<u>52.25</u>	<u>2.670</u>
<u>52.5</u>	<u>2.700</u>
<u>52.75</u>	<u>2.730</u>
<u>53</u>	<u>2.760</u>
<u>53.25</u>	<u>2.790</u>
<u>53.5</u>	<u>2.820</u>

<u>53.75</u>	<u>2.850</u>
<u>54</u>	<u>2.880</u>
<u>54.25</u>	<u>2.910</u>
<u>54.5</u>	<u>2.940</u>
<u>54.75</u>	<u>2.970</u>
<u>55+</u>	<u>3.000</u>

In no event, however, shall such a retirement allowance exceed ninety (90) percent of his or her final compensation.

(b) The benefits accorded under this section shall not be greater than those benefits provided to safety members of the police or fire department.

(c) Before the first payment of a retirement allowance is made, a member, retired under this section or Section A8.583-3, may elect to receive the actuarial equivalent of his or her allowance, partly in an allowance to be received by him or her throughout his or her life, and partly in other benefits payable after his or her death to another person or persons, provided that such election shall be subject to all the conditions prescribed by the board of supervisors to govern similar elections by other members of the retirement system, including the character and amount, of such other benefits. In the calculations under this section of the retirement allowance of a member having credit for service in a position in the evening schools and service in any other position, separate retirement allowances shall be calculated, in the manner prescribed for each class of service, the average final compensation in each case being that for the respective class of service, provided that the aggregate retirement allowance shall be taken into account in applying the provisions of this section providing for a minimum retirement allowance. Part-time service and compensation shall be converted to full-time service and compensation in the manner prescribed by the board of supervisors, and when so converted shall be applied on full-time service and compensation in the calculation of retirement allowances.

A8.583-3 RETIREMENT FOR INCAPACITY

Any member who becomes incapacitated for performance of duty because of disability determined by a qualified hearing officer to be of extended and uncertain duration, and who shall have completed at least 10 years of service credited in the retirement system in the aggregate, computed as provided in Section A8.583-7, shall be retired upon an allowance of 1.8% (one and eight-tenths percent) percent of the average final compensation of said member, as defined in Section A8.583-1 for each year of credited service, if such retirement allowance exceeds 40 percent of his or her average final compensation; otherwise 1.8% (one and eight-tenths percent) percent of his or her average final compensation multiplied by the number of years of city service which would be credited to him or her were such city service to continue until attainment by him or her of age 60, but such retirement allowance shall not exceed 40 percent of such average final compensation. In the calculation under this section of the retirement allowance of a member having credit for service in a position in the evening schools and service in any other position, separate retirement allowances shall be calculated, in the manner prescribed, for each class of service, the average final compensation in each case being that for the respective class of service; provided that the average final compensation upon which the minimum total retirement allowance is calculated in such case shall be based on the compensation earnable by the member in the classes of service rendered by him or her during the one year immediately preceding his or her retirement. Part-time service and compensation shall be converted to full-time service and compensation in the manner prescribed by the board of supervisors, and when so converted shall be applied as full-time service and compensation in the calculation of retirement allowances. The question of retiring members under this section may be brought before the retirement board on said board's own motion, by the retirement board's executive director on its behalf, by said member, by his or her department head or by his or her guardian. If his or her disability shall cease, his or her retirement allowance shall cease,

and he or she shall be restored to service in the position or classification he or she occupied at the time of his or her retirement.

A8.583-4 NO ADJUSTMENT FOR COMPENSATION PAYMENTS

No modification of benefits provided in this section shall be made because of any amounts payable to or on account of any member under workers' compensation laws of the State of California.

A8.583-5 DEATH BENEFIT

If a member shall die, before retirement:

(a) If no benefit is payable under subsection (b) of this section:

(1) Regardless of cause, a death benefit shall be paid to the member's estate or designated beneficiary consisting of the compensation earnable by the member during the six months immediately preceding death, plus the member's contributions and interest credited thereon.

(2) If a member sustains a traumatic bodily injury through external and violent means in the course and scope of employment and death results within 180 days of such injury, an additional insurance benefit of 12 months of compensation earnable shall be paid to the member's estate or designated beneficiary.

(b) If, at the date of his or her death, he or she was qualified for service retirement by reason of service and age under the provisions of Section A8.583-2, and he or she has designated as beneficiary his or her surviving spouse, who was married to him or her for at least one full year immediately prior to the date of his or her death, one-half of the retirement allowance to which the member would have been entitled if he or she had retired for service on the date of his or her death shall be paid to such surviving spouse who was his or her designated beneficiary at the date of his or her death, until such spouse's death or remarriage, or if there be no surviving spouse, to the unmarried child or children of such member under the age of 18 years, collectively, until every such child dies, marries or attains the age of 18 years, provided

that no child shall receive any allowance after marrying or attaining the age of 18 years. If, at the death of such surviving spouse, who was receiving an allowance under this Subsection (b), there be one or more unmarried children of such member under the age of 18 years, such allowance shall continue to such child or children, collectively, until every such child dies, marries or attains the age of 18 years, provided that no child shall receive any allowance after marrying or attaining the age of 18 years. Should said member leave no surviving spouse and no children, under age of 18 years, but leave a child or children, regardless of age, dependent upon him or her for support because partially or totally disabled and unable to earn a livelihood or a parent or parents dependent upon him or her for support, the child or children and the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving spouse otherwise would have received, during such dependency.

If the total of the payments of allowance made pursuant to this Subsection (b) is less than the benefit which was otherwise payable under Subsection (a) of this section, the amount of said benefit payable under Subsection (a) less an amount equal to the total of the payments of allowance made pursuant to this Subsection (b) shall be paid in a lump sum as follows:

(1) If the person last entitled to said allowance is the remarried surviving spouse of such member, to such spouse.

(2) Otherwise, to the surviving children of the member, share and share alike, or if there are no such children, to the estate of the person last entitled to said allowance.

The surviving spouse may elect, on a form provided by the retirement system and filed in the office of the retirement system before the first payment of the allowance provided herein, to receive the benefit provided in Subsection (a) of this section in lieu of the allowance which otherwise would be payable under the provisions of this subdivision. If a surviving spouse, who was entitled to make the election herein provided, shall die before or after making such election but before receiving any payment pursuant to such election, then the legally appointed guardian of the unmarried children of the member under the age of 18 years may make the election herein

provided before any benefit has been paid under this section, for and on behalf of such children if in his or her judgment it appears to be in their interest and advantage, and the election so made shall be binding and conclusive upon all parties in interest.

If any person other than such surviving spouse shall have and be paid a community property interest in any portion of any benefit provided under this section, any allowance payable under this Subsection (b) shall be reduced by the actuarial equivalent, at the date of the member's death, of the amount of benefits paid to such other person.

Upon the death of a member after completion of at least 10 years of service in the aggregate, computed as provided in Section A8.583-7, an allowance in an amount equal to the retirement allowance to which the member would have been entitled pursuant to Section A8.583-3 if he or she had retired on the date of death because of incapacity for performance of duty shall be paid throughout life or until remarriage to his or her surviving spouse. If there is no surviving spouse entitled to an allowance hereunder, or if he or she dies or remarries before every child of such deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had he or she lived and not remarried shall be paid to his or her child or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any allowance after marrying or attaining the age of 18 years. Should said member leave no surviving spouse and no children, under age of 18 years, but leave a child or children, regardless of age, dependent upon him or her for support because partially or totally disabled and unable to earn a livelihood or a parent or parents dependent upon him or her for support, the child or children and the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving spouse otherwise would have received, during such dependency. No allowance, however shall be paid under this section to a surviving spouse unless he or she was married to the member prior to the date of the injury or onset of the illness which results in death if he or she had not retired, or unless he or she was married to the member at least one year prior to his or her retirement if he or she had retired.

Upon the death of a member after retirement and regardless of the cause of death, a death benefit shall be paid to his or her estate or designated beneficiary in the manner and subject to the conditions prescribed by the board of supervisors for the payment of a similar death benefit upon the death of other retired members.

Upon the death of a member after retirement, an allowance, in addition to the death benefit provided in the immediately preceding paragraph, equal to one-half of his or her retirement allowance as it was at his or her death, shall be paid to his or her surviving spouse, until such surviving spouse's death or remarriage. No allowance, however, shall be paid under this paragraph to a surviving spouse unless such surviving spouse was married to said member at least one year prior to his or her retirement. If such retired person leaves no such surviving spouse, or if such surviving spouse should die or remarry before every child of such deceased retired person attains the age of 18 years, the allowance which such surviving spouse would have received had he or she lived and not remarried shall be paid to retired person's child or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any allowance after marrying or attaining the age of 18 years. Should said member leave no surviving spouse and no children, under age of 18 years, but leave a child or children, regardless of age, dependent upon him or her for support because partially or totally disabled and unable to earn a livelihood or a parent or parents dependent upon him or her for support, the child or children and the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving spouse otherwise would have received, during such dependency.

As used in this section "surviving spouse" shall mean and include a surviving spouse, and shall also mean and include a spouse who has remarried since the death of the member, but whose remarriage has been terminated by death, divorce or annulment within five years after the date of such remarriage and who has not thereafter again remarried.

A8.583-6 *BENEFITS UPON TERMINATION OF MEMBERSHIP*

Should any local prosecutor, public defender and public defender investigator member cease to be employed as such a member, through any cause other than death or retirement, all of his or her contributions, with interest credited thereon, shall be refunded to him or her subject to the conditions prescribed by the board of supervisors to cover similar terminations of employment and re-employment with and without redeposit of withdrawn accumulated contributions of other members of the retirement system, provided that, if such member is entitled to be credited with at least five years of service, he or she shall have the right to elect, without right of revocation and within 90 days after said termination of service, or if the termination was by lay-off, 90 days after the retirement board determines the termination to be permanent, whether to allow his or her accumulated contributions to remain in the retirement fund and to receive benefits only as provided in this paragraph. Failure to make such election shall be deemed an irrevocable election to withdraw his or her accumulated contributions. At or after 50 years of age, he or she shall be entitled to receive a retirement allowance which shall be the actuarial equivalent of his or her accumulated contributions and an equal amount of the contributions of the city and county, plus 1.667% (one and two-thirds percent) percent of his or her average final compensation for each year of service credited to him or her as rendered prior to his or her first membership in the retirement system. Upon the death of such member prior to retirement, his or her contributions with interest credited thereon shall be paid to his or her estate or designated beneficiary.

A8.583-7 *COMPUTATION OF SERVICE*

The following time and service shall be included in the computation of the service to be credited to a member for the purpose of determining whether such member qualifies for retirement and calculating benefits:

(a) For local prosecutors, public defenders and public defender investigators on July 1, 2003 credited service shall include all service by a local prosecutor, local public defender or

local public defender investigator, before July 1, 2003, which meets the requirements of section A8.583-1 provided, however, accumulated contributions on account of such service remain with the Retirement System and accumulated contributions previously refunded are redeposited with interest from the date of refund to the date of redeposit, at times and in the manner fixed by the retirement board.

(b) Time during which said member is a member of the retirement system under Section A8.583 and during and for which said member is entitled to receive compensation because of services as a local prosecutor, public defender and public defender investigator.

(c) Uniformed safety service in the police or fire departments provided that accumulated contributions on account of such service remain with the Retirement System and accumulated contributions previously refunded are redeposited with interest from the date of refund to the date of redeposit, at times and in the manner fixed by the retirement board.

(d) Time during which said member is absent from a status included in Subsections (a), (b) or (c) and for which such member is entitled to receive credit as service for the city and county by virtue of contributions made in accordance with the provisions of Section A8.520 or Section A8.521 of the charter.

A8.583-8 SOURCES OF FUNDS

All payments provided for members under Section A8.583 shall be made from funds derived from the following sources, plus interest earned on said funds:

(a) There shall be deducted from each payment of compensation made to a member under Section A8.583 a sum equal to seven percent of such payment of compensation. The sum so deducted shall be paid forthwith to the retirement system. Said contribution shall be credited to the individual account of the member from whose salary it was deducted, and the total of said contributions, together with interest credited thereon in the same manner as is prescribed by the board of supervisors for crediting interest to contributions of other members of the retirement system, shall be applied to provide part of the retirement allowance granted to, or allowance

granted on account of said member under Section A8.583, or shall be paid to said member or his or her estate or beneficiary as provided in Sections A8.583-5 and A8.583-6. A member's individual account under Section A8.583 shall include all monies credited to the member's account under Section A8.509, A8.584, A8.587 or A8.583-7(c).

(b) The City and County of San Francisco shall pay any unfunded liability resulting from the adoption of this section. The city and county shall contribute to the retirement system such amounts as may be necessary, when added to the contributions referred to in Subsection (a) of this Section A8.583-8, to provide the benefits payable to members under Section A8.583. Such contributions of the city and county to provide the portion of the benefits hereunder shall be made in annual installments, and the installment to be paid in any year shall be determined by the application of a percentage to the total compensation paid during said year to persons who are members under Section A8.583, said percentage to be the ratio of the value as of the latest periodical actuarial valuation of the benefits thereafter to be paid to or on account of members under Section A8.583 from contributions of the city and county, less the amount of such contributions, plus accumulated interest thereon, then held by said system to provide said benefits on account of service rendered by respective members after said date, to the value at said respective dates of salaries thereafter payable to said members. Said values shall be determined by the actuary, who shall take into account the interest which shall be earned on said contributions, the compensation experience of members, and the probabilities of separation by all causes, of members from service before retirement and of death after retirement. Said percentage shall be changed only on the basis of said periodical actuarial valuation and investigation into the experience under the system. Said actuarial valuations and investigations shall be made at least every two years.

(c) To promote the stability of the retirement system through a joint participation in the result of variations in the experience under mortality, investment and other contingencies, the contributions of both members and the city and county held by the system to provide benefits

for members under Section A8.583 shall be a part of the fund in which all other assets of said system are included.

A8.583-9 **RIGHT TO RETIRE**

Upon the completion of the years of service set forth in Section A8.583-2 as requisite to retirement, a member shall be entitled to retire at any time thereafter in accordance with the provisions of said Section A8.583-2, and, except as provided in the following paragraph, nothing shall deprive said member of said right.

Any member convicted of a crime involving moral turpitude committed in connection with his or her duties as an officer or employee of the city and county shall, upon his or her removal from office or employment, pursuant to the provisions of this charter, forfeit all rights to any benefits under the retirement system except refund of his or her accumulated contributions; provided, however, that if such member is qualified for service retirement by reason of service and age under the provisions of Section A8.583-2, he or she shall have the right to elect, without right of revocation and within 90 days after his or her removal from office or employment to receive as his or her sole benefit under the retirement system an annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of such removal from office or employment.

A8.583-10 **LIMITATION ON EMPLOYMENT DURING RETIREMENT**

(a) Except as provided in Section A8.511 of this charter and Subsection (b) of this section, no person retired as a member under Section A8.583 for service or disability and entitled to receive a retirement allowance under the retirement system shall be employed in any capacity by the city and county, nor shall such person receive any payment for services rendered to the city and county after retirement.

(b)(1) Service as an election officer or juror, or in the preparation for or giving testimony as an expert witness for or on behalf of the city and county before any court or legislative body shall not be affected by the provisions of Subsection (a) of this section.

(2) The provisions of Subsection (a) shall not prevent such retired person from serving on any board or commission of the city and county and receiving the compensation for such office, provided said service does not exceed 120 working days or 960 hours per fiscal year.

(3) If such retired person is elected or appointed to a position or office which subjects him or her to membership in the retirement system under Section A8.583, he or she shall re-enter membership under Section A8.583 and his or her retirement allowance shall be cancelled immediately upon such re-entry. The provisions of Subsection (a) of this section shall not prevent such person from receiving the compensation for such position or office. The rate of contribution of such member shall be the same as that for other members under Section A8.583. Such member's individual account shall be credited with an amount which is the actuarial equivalent of his or her annuity at the time of his or her re-entry, but the amount thereof shall not exceed the amount of his or her accumulated contributions at the time of his or her retirement. Such member shall also receive credit for his or her service as it was at the time of his or her retirement.

(4) The provisions of Subsection (a) shall not prevent such retired persons from employment that requires coverage under the Public Employees' Retirement System or the State Teachers' Retirement System.

A8.583-11 ADJUSTMENT OF ALLOWANCES

Every retirement or death allowance payable to or on account of any member under Section A8.583 shall be adjusted in accordance with the provisions of Subsection (b) of Section A8.526 of this charter.

A8.583-12 CONFLICTING CHARTER PROVISIONS and severability

Any section or part of any section in this charter, insofar as it should conflict with the provisions of Sections A8.583 through A8.583-13 or with any part thereof, shall be superseded by the contents of said sections. In the event that any word, phrase, clause or section of sections

shall be adjudged unconstitutional or invalidated, the remainder thereof shall remain in full force and effect.

A8.583-13 APPLICATION OF PLAN

The provisions of Section A8.583 and Section A8.583-1 through A8.583-13 shall not apply to any members of the Retirement System under section A8.509, A8.584 or A8.587 who retired or died before July 1, 2003 or to their continuants.

A8.583-14 SOCIAL SECURITY

Consistent with AB 2023 (Assem. Bill No. 2023 (2001-2002 Reg. Sess) as filed with Secretary of State September 30, 2002, the City and its officers shall take all steps necessary to insure that each district attorney, public defender and public defender investigator covered under sections A8.583 through A8.583-13 is considered a "policeman" for purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

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

By: _____
DAN MAGUIRE
Deputy City Attorney