

1 [Administrative Code - Cancer Presumption for Fire and Police Retirement Benefits]

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3 **Ordinance amending the Administrative Code to create a cancer presumption for**
4 **firefighter and police officer industrial disability and death as a result of duty retirement**
5 **benefits.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

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11 Be it ordained by the People of the City and County of San Francisco:

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13 Section 1. Findings.

14 (a) San Francisco firefighters and police officers are exposed to carcinogens, some
15 of which are known to cause cancer, as part of their employment with the City and County of
16 San Francisco.

17 (b) A recently released study by the National Institute for Occupational Safety and
18 Health (“NIOSH”) found that firefighters show a sharply elevated risk of cancer compared to
19 the general population (2009). The study found that firefighters are at an elevated risk of all
20 cancers but that the highest rates of cancers are of the respiratory, digestive, and urinary
21 systems. Additionally, mesothelioma (a cancer that develops from cells of the mesothelium,
22 the protective lining that covers many of the body’s internal organs) was found to be two times
23 greater among firefighters compared to the general population, indicating likely occupational
24 exposures to asbestos, the known cause of mesothelioma. Since the completion of the
25 NIOSH study, the rate of breast cancer in firefighters has doubled, now making breast cancer

1 a statistically significant added risk. Since 2000, over 230 active and retired San Francisco
2 firefighters have succumbed to cancer. Five of those deaths were in the first three months of
3 2014.

4 (c) Police officers as well are exposed to health and safety risks in their occupation,
5 including exposures that have been shown to potentially cause cancer. Several studies show
6 an increased risk for various types of cancer in police officers. Results from three studies
7 suggested possible increased mortality risks for all cancers, and cancers of the colon, kidney,
8 digestive system, esophagus, male breast, and testis, as well as Hodgkin's disease (American
9 Journal of Industrial Medicine). Further, air pollution has been generally recognized as a
10 health hazard. Outdoor workers such as police officers (particularly officers working traffic
11 duty) experience the highest exposure to airborne pollutants. A majority of the police
12 workforce is exposed to various known or suspected carcinogens.

13 (d) California workers' compensation laws, which provide benefits to employees for
14 industrial injuries, include a cancer presumption for firefighters and police officers. Under
15 those laws, specifically Labor Code Section 3212.1, cancer is presumed industrial if it
16 develops or manifests itself during a period in which the member is in the service of a fire or
17 police department, if the member demonstrates that he or she was exposed, while in that
18 service, to a known carcinogen as defined by the International Agency for Research on
19 Cancer. This presumption is disputable and may be controverted by evidence that the
20 primary site of the cancer has been established and that the carcinogen to which the member
21 has demonstrated exposure is not reasonably linked to the disabling cancer.

22 (e) San Francisco Administrative Code Sections 16.85 and 16.86 create a
23 presumption for firefighters and police officers applying for retirement benefits under the San
24 Francisco City and County Employees' Retirement System ("SFERS") who meet certain
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1 eligibility criteria that any “heart trouble” or pneumonia is work related, unless there is
2 evidence to the contrary.

3 (f) Currently a San Francisco firefighter or police officer who applies to SFERS for
4 an industrial disability retirement must establish that his or her injury or illness is industrially
5 caused and that it incapacitates the member for the performance of his or her work duties.
6 When a member seeks an industrial disability retirement based on cancer, currently the
7 member must establish that the cancer is industrially caused, as well as incapacitating. Under
8 the proposed ordinance, if a San Francisco firefighter or police officer with cancer who meets
9 certain eligibility requirements can demonstrate work exposure to a carcinogen as defined by
10 the International Agency for Research on Cancer, the cancer will be presumed work related in
11 the SFERS retirement benefit application process. SFERS can offer specified evidence to
12 rebut the presumption. The rebuttal standard in the proposed ordinance mirrors the standard
13 in the California workers’ compensation cancer presumption. Firefighters and police officers
14 whose retirement benefits are under CalPERS or a public pension plan under the County
15 Employees Retirement Act of 1937 receive the benefit of the workers’ compensation cancer
16 presumption in connection with their retirement benefits, because the workers’ compensation
17 determination of industrial causation (made based on the cancer presumption) is
18 determinative for purpose of the retirement process. The proposed ordinance will give San
19 Francisco’s firefighters and police officers the benefit of the workers’ compensation
20 presumption in the retirement benefit process as is available to those other California
21 firefighters and peace officers.

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23 Section 2. The Administrative Code is hereby amended by adding Section 16.72 to
24 read as follows:

1 **SEC. 16.72. FIREFIGHTER AND POLICE OFFICER INCAPACITATED WITH**
2 **CANCER – WHEN PRESUMED CONTRACTED IN THE COURSE OF EMPLOYMENT.**

3 (a) Subject to the limitations of subsections (b) and (c), whenever any sworn member of the
4 San Francisco Fire Department (“Fire Department”) or San Francisco Police Department (“Police
5 Department”) becomes incapacitated for the performance of his or her duty by reason of cancer that
6 develops or manifests itself while the member is in the service of the Fire Department or Police
7 Department, the cancer shall be presumed to arise out of and in the course of his or her employment.
8 This presumption is disputable and may be controverted by evidence that the primary site of the cancer
9 has been established and that the carcinogen to which the member has demonstrated exposure is not
10 reasonably linked to the disabling cancer.

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

12 (1) Sworn members of the Fire Department or Police Department who have served a
13 total of five or more years in the Fire Department or Police Department. For purposes of determining
14 whether the member has five or more years of service, time served in another fire or police department
15 in the State of California shall be combined with service in the Fire Department or Police Department,
16 provided that the member (A) was entitled to the same cancer presumption in his or her prior
17 employment and (B) became a member of the Fire Department or Police Department within six months
18 of separating from the prior employment.

19 (2) Applications for industrial disability or death as a result of duty benefits under
20 the San Francisco City and County Employees’ Retirement System (“Retirement System”).

21 (3) Applications for benefits in connection with cancer injuries or deaths filed on or
22 after January 1, 2010, provided that the presumption shall not apply to an application if as of the
23 effective date of this Section 16.72, the hearing officer assigned to hear the application under Charter
24 Section 12.102 and Charter Section A8.518 either (A) has rendered his or her initial decision on the
25 application and the member did not request rehearing within the time specified under the Charter, or

1 (B) has rendered an initial decision and the member timely requested rehearing under the Charter, and
2 the hearing officer has issued a decision on rehearing.

3 (c) The presumption in subsection (a) shall apply only if:

4 (1) The member demonstrates exposure, while in the service of the Fire Department
5 or Police Department, to a known carcinogen as defined by the International Agency for Research on
6 Cancer; and

7 (2) There was no evidence of cancer identified in the physical examination of the
8 member conducted as part of his or her initial hire in the Fire Department or Police Department, as
9 applicable.

10 (d) The Retirement System shall use the member's eligible prior safety service in another
11 fire or police department under subsection (b)(1) to measure the date upon which the member would be
12 qualified for service retirement.

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14 Section 3. Effective Date. This ordinance shall become effective 30 days after
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
17 of Supervisors overrides the Mayor's veto of the ordinance.

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

21 By: _____
22 KATHARINE HOBIN PORTER
23 Deputy City Attorney

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