CITY AND COUNTY OF SAN FRANCISCO

TO: Honorable Judge James J. McBride
Presiding Judge of the Superior Court

FROM: Gary Amelio, Employee Retirement System Director
Joanne Hayes-White, Fire Chief
Ben Rosenfield, Controller

DATE: August 23, 2010

SUBJECT: CITY RESPONSE TO 2009-2010 CIVIL GRAND JURY REPORT: "PENSION TSUNAMI The Billion Dollar Bubble"

In accordance with California Penal Code Section 933.05, the City submits its consolidated response to the above-referenced Civil Grand Jury Report as well as the attached individual responses to each finding and recommendation from the designated City entities and departments. The consolidated response does not include the City Attorney's response or the Department of Human Resources' response, which are submitted separately.

The Civil Grand Jury Report presents findings and recommendations in six areas related to the City's employee pension program: 1) Pension Plan; 2) Pension Costs; 3) Prop H (Police & Fire); 4) Pension Spiking; 5) Health Benefits; and 6) SFERS Board Meetings.

Pension Plan. The Civil Grand Jury Report finds that "San Francisco's Defined Benefit Plan retirement benefits are financially unsustainable without significant cutbacks in jobs and city services." The Report recommends that "the City should research other public and private sector data to determine fair pension benefits... to lead to a sustainable plan" and proposes specific amendments to pension benefits and eligibility requirements contained in City's Charter.

The City does not agree that retirement benefits are financially unsustainable. The Retirement System is 97% funded (actuarial value), well above the 80% funding ratio recommended by the Government Accountability Office (GAO). The current required employer contribution rate of 13.56% (up from 9.49% in the prior fiscal year) is lower than most other California public plans. The benefits provided by San Francisco's Employee Retirement System (SFERS), including pension benefits terms and conditions, are established in the City Charter and require voter approval to amend. Also, as the Civil Grand Jury correctly stated, pension benefits for current employees and retirees are guaranteed and protected under the constitutions of the United States and California, changes to these benefits may not be possible.

Notwithstanding the foregoing, the Mayor and Board of Supervisors may make proposals regarding retirement benefits within the current system to put before the voters; any proposals will be informed by many sources, including the findings of the Civil Grand Jury, information and analysis from City departments, third party analysis and data, and discussions with union and City leaders. The Department of Human Resources has compared the retirement benefits provided by the City to those of other cities and counties in California and has determined that our retirements plans for both miscellaneous and safety are on the lower end of those provided across California. It is important to note that the question of what is "fair" is not for the City to determine, it is for the voters to determine.

Pension Costs. The Civil Grand Jury concludes that current pension rules are producing ever-increasing employer contributions, crowding out General Fund spending, which disproportionately affects the poor and needy, and taxes the middle class. The Civil Grand Jury correctly finds that the required employer pension plan contribution rate has increased from 0% in 2004 to 9.49% in FY 09-10. The Civil Grand Jury finding that the City's pension **and** health care benefit costs are expected to be nearly $1 billion dollars in five years, an increase from the projected FY 09-10 cost of $412 million includes conclusions based on worst case rates presented by the SFERS actuary, and should be understood as a possibility in a range of cost scenarios.

The City agrees that the pension costs will increase in the near term as investment losses are realized; in the longer term varying investment returns and benefit payouts will have a significant impact on the pattern and magnitude of actuarially computed employer contribution rates. Under any reasonable economic scenario employer pension contribution rates are expected to increase significantly over the next several years. However, the Jury's finding that the City's contribution rate will be 30% in 2015 is not necessarily correct; the 30% employer contribution rate is a projection, not a certainty, based on assumptions provided by SFERS' actuary. By 2015, while the projected employer contribution rate may be as low as 21% or as high as 33%, the median rate is projected at 25%.

City leadership will consider how to manage retirement costs and benefits as part of its overall financial planning, and, as mentioned previously, the Mayor and Board of Supervisors may make proposals regarding retirement benefits within the current system to put before the voters. Benefits, terms and conditions of SFERS are set in the Charter, and changes to them are a matter for voter approval; the Charter also requires that each year's budget be balanced. Balancing future budgets will require some combination of expenditure reductions and/or additional revenues. Proposition A mandated changes (a two-year budget and a five-year financial plan which forecasts revenues and expenses and summarizes expected public service levels and funding requirements for that period) to the City's budget and financial processes which are likely to stabilize spending through requiring multi-year budgeting and financial planning.

The City Civil Grand Jury issued a specific finding that the Department of Human Resources and Service Employees International Union (SEIU) Local 1021 entered into an agreement that miscellaneous employees would pay their own 7.5% contribution and in return base wages were increased by 6%, effective July 1, 2010. The City agrees with this aspect of the finding. The Report goes on to state that there was no actuarial valuation to estimate the resulting pension liability for the City and therefore this agreement resulted in a substantial increase in pension obligations for the City without voter approval. The City disagrees with this aspect of the finding as it can be interpreted to mean that due to the lack of an actuarial valuation the resulting increase in the City's pension liability was unknown at the time of the agreement—this is not correct. In this case, as with all labor agreements, the fringe benefit costs, including the City retirement contribution cost of the higher wage level and the savings due to the employee pension contribution, were reported in the Controller's estimate and in Department of Human Resource's presentation of the agreements to the Board of Supervisors for their approval. Further, the City (DHR's) has the authority to negotiate labor agreements, including wages and benefits. Voter approval is required for changes to retirement conditions—defined benefits, eligibility, and service requirements.

Prop H (Police & Fire). The Civil Grand Jury found that the "The City and County of San Francisco is not in compliance with the requirements of the City Charter resulting from the passage of Proposition H. There have been no "meet and confer" sessions to establish a "cost-sharing" arrangement." The City disagrees with the Civil Grand Jury's finding and directs the Jury to the City Attorney's letter of August 10, 2010 and the Department of Human Resources cost sharing agreements with safety departments dating back to FY03-04. The Department has successfully negotiated the maximum employee contribution allowed under the City's current cost-sharing arrangements.

The Jury also finds that the current unfunded pension liability for Proposition H as of July 1, 2009 was approximately $276 million and recommends that City and safety employees should establish an arrangement to share the annual $26 million cost to amortize this liability. The City agrees with that there is currently a $276 million liability, which the City will continue to address as part of its ongoing negotiations with labor.

Pension Spiking. The City does not agree with the Civil Grand Jury finding that the soon-to-be retired have been able to increase final pensionable compensation to inflate retirement benefits. There are appropriate controls on assignments, on pay, as well as on retirement calculations to insure that City employees are appropriately compensated and their pensions are determined in accordance with all applicable City Codes and the Charter. SFERS has actively and successfully litigated all cases of attempted pension spiking activities, including class action lawsuits brought on behalf of active and retired Miscellaneous, Police and Fire Plan members and individual members who sued SFERS to allow inclusion of additional components of pay in the calculation of final compensation.

The City agrees that "pension spiking' and "pension-pyramiding" are unfair and costly practices and should be prevented, as noted previously, we are confident that we have appropriate controls and audit programs in place to insure that pensions are determined in accordance with applicable pay practices and procedures. In calculating a SFERS retirement benefit, SFERS staff confirms that all elements of pay included in the calculation of SFERS pensions are paid as provided by City Charter and Memoranda of Understanding (MOUs).

Health Benefits. The City agrees with the Civil Grand Jury finding that the City's retiree annual health care benefit expense has grown significantly in recent years while the City's unfunded liability for retiree health benefits increased to $4 billion as of June 30, 2006. The City acknowledges that is a large and growing liability, which the City has taken steps to address and will continue to address within the voter approved framework.

The City desires to clarify the Jury's finding that for current employees health benefits are "vested" after 10 years. In June 2008, the voters of San Francisco passed Proposition B, the Retiree Health Charter amendment. This measure created a graduated health benefit vesting schedule for employees hired after January 10, 2009 and established a separate Retiree Health Trust Fund in order to pay for future costs related to retiree health care. Employees hired on or after January 10, 2009, contribute up to 2% of their pre-tax pay and the City contributes 1% to the Trust Fund. Employees hired on or after January 10, 2009 vest for retiree health insurance based on the years of service and only after 20 years do employees fully vest with a 100% city contribution. Further, employees must effectuate retirement within 180 days of separation from the City to maintain eligibility for retiree health insurance. Prior to Prop. B, an employee could separate upon vesting and effectuate a retirement decades later and receive retiree health. Prospectively these changes will significantly reduce the City's unfunded liability.

SFERS Board Meetings. The Civil Grand Jury finds that certain members of the SFERS board had poor attendance records and that there are currently vacant Board positions and concludes that the people are not being heard. The City agrees that pursuant to the members' interest as well as the Board's policy all Commissioners appointed to the SFERS Board should attend regular monthly Board meetings and notes that the vacant Board positions have since been filled.

The City disagrees with the Civil Grand Jury's finding that the people are not being heard. First, this finding ignores the Board's statutory role: all seven SFERS Board members bear the fiduciary duty to act solely in the interests of the Plan members and beneficiaries. There are no public representative board positions. Second, this finding fails to recognize that Board members participate in public session at Board meetings and Committee meetings as well. Indeed, the report noted that one Commissioner had 53% attendance at the monthly Board meetings for FY2009-10, but failed to acknowledge that the same Commissioner attended 12 of 14 Committee meeting (86%) for the same period of time.

Respectfully submitted,

OFFICE OF THE CONTROLLER

Ben Rosenfield, Controller

SAN FRANCISCO FIRE DEPARTMENT

Joanne Hayes-White, Fire Chief

SAN FRANCISCO EMPLOYEES' RETIREMENT SYSTEM

Gary Amelio, Executive Director

Response to the 2009-10 Civil Grand Jury Report
"PENSION TSUNAMI The Billion Dollar Bubble"

California Penal Code Sections 933.05(a) and (b) requires the responding party to report for each recommendation of the Civil Grand Jury one of the following actions:

1. Recommendation Implemented	2. Will Be Implemented in the Future	3. Requires Further Analysis	4. Will Not Be Implemented: Not Warranted or Not Reasonable
- Date Implemented - Summary of Implemented Action	- Anticipated Timeframe for Implementation	- Explanation - Timeframe (Not to exceed six months from date of publication of grand jury report)	- Explanation

For each recommendation below, indicate one of the four actions you have taken or plan to take in the "Action Plan" column and provide the required explanation in the "2010 Response Text" column.

CGJ Year	Report Title	Recommendation or Finding Number	Recommendation or Finding Text	Response Required From	Action Plan	2010 Response Text
2009-10	Pension Tsunami The Billion Dollar Bubble	F.A1	San Francisco's Defined Benefit Plan retirement benefits are financially unsustainable without significant cutbacks in jobs and city services	BOS, Mayor	This item is a finding - there will be no action plan in response.	MYR: Disagree. San Francisco's Defined Benefit Plan is one of the most soundly-funded public retirement systems in the United States; the system itself is sustainable, despite the impact of the severe economic downturn. The City has faced similar situations before with other economic downturns and our system will continue to remain financially sound.
2009-10	Pension Tsunami The Billion Dollar Bubble	F.A2	For current employees and retirees, pension benefits are guaranteed by City Charter and protected by Federal and State constitutional provisions prohibiting impairment of contract.	BOS, Mayor	This item is a finding - there will be no action plan in response.	MYR: Agree.
2009-10	Pension Tsunami The Billion Dollar Bubble	R.A1	The San Francisco City Charter should be amended, as follows: For new employees, the pension multiplier should be set at a level to provide fiscally sound future pensions – fair to employees and taxpayers alike. For new Miscellaneous employees, the retirement age to receive full benefits should be comparable to that of Social Security and/or private sector recipients, and be fair to employees and taxpayers alike. The Jury recommends that City officials consider a hybrid retirement plan with components of both Defined Benefit and Defined Contribution, 401(K)-type, in the next negotiated contract in 2012. No cost-of-living or other increase should be awarded to retirees unless the pension fund is found through a multi-year analysis to be actuarially sound and fully funded. SFERS and actuaries for the City should research other public and private sector data to determine fair pension benefits and the results should be reported at SFERS board meetings and to the Board of Supervisors to lead a sustainable plan.	BOS, Mayor	3	MYR:Recommendation Requires Further Analysis. As I have stated, I agree that increased pension cost is a very real concern we face as we not only continue to grapple with the adverse effects of the continuing economic downturn, but as we plan for the future fiscal health of our city. While we have taken a number of important and significant steps toward pension reform, there is still more that can be done. As to the recommendation that the City increase the retirement age for new miscellaneous employees to receive full benefits, I note that the retirement age at which miscellaneous employees receive maximum benefits was recently increased to age 62, which is among the highest in California (the maximum benefit age in a majority of the other jurisdictions is between age 55 and 60). I do not think the City should create a hybrid system that combines elements of a Defined Benefit Plan and a Defined Contribution Plan at this time. Defined Benefit Plans carry certain risks that we have seen too often in the private sector, and it would be imprudent to switch to any new model that is not proven to be dependable in the long run. However, I agree that we should continue to review other models and structures that could be appropriate for the City. As to the Civil Grand Jury's recommendation that no cost-of-living or other increase be awarded unless the pension fund is sound and fully funded—while it is true that cost of living adjustments (COLA) are awarded regardless of the financial stability of the pension fund, the additional supplemental COLA amount of up to 3.5% is only awarded if there is enough excess investment earnings. The cost-of-living adjustments provided under the SFERS plans have been approved by the voters and it would be a violation of the Charter for the City or SFERS to withhold such payments to retirees and beneficiaries entitled to them under the Charter. Nevertheless, I agree that we should further evaluate whether it makes sense to award a COLA in times when the retirement system's investment earnings are flat and the City is required to contribute to the retirement fund in a time of economic downturn. Although I disagree that the SFERS' role is to research data in the public and private sector, I agree that the City should take a look at other pension benefits offered so that we can ensure that those benefits provided by the City are commensurate and appropriate with other comparable plans. Nonetheless, compared to the public sector, the City is consistent, if not better, than other cities and counties. I disagree with any assertion by the Civil Grand Jury that our system is unsustainable and therefore requires these types of changes.

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CGJ Year	Report Title	Recommendation or Finding Number	Recommendation or Finding Text	Response Required From	Action Plan	2010 Response Text
2009-10	Pension Tsunami The Billion Dollar Bubble	F.B1	The City's pension and health benefit costs are expected to increase from approximately $400 million for the current fiscal year to nearly $1 billion in five years, a billion-dollar bubble that the City cannot realistically afford. Current pension rules are producing an ever-increasing employer contribution rate, from 0% in 2004, to 9.49% in 2010 and to 30% by 2015. This will impact the General Fund, and could make it very difficult for the City to sustain funding for police and fire, public health, human services, cultural and artistic programs. It will disproportionately affect the poor and the needy, and tax the middle class.	BOS, Mayor, Controller, SFERS	This item is a finding - there will be no action plan in response.	MYR: Partially Disagree. Although I agree that the City's pensions and health benefit costs will significantly increase over the next several years, the City is working to reduce the impact that these increases will have on important programs and critical services. As the Controller and the SFERS state in their respective responses, the 30% employer contribution rate referenced by the Civil Grand Jury is a projection provided by the SFERS' actuary based on the scenario that the SFERS Trust would earn only 4.5% on investments for the period fiscal year 2009-2010 through fiscal year 2013-14. In fact, the SFERS Trust earned over 12% investment return for fiscal year 2009-2010, well in excess of the assumed 4.5% for this projection and lessening the likelihood that employer contribution rates will climb to the 30% level projected in the scenario selected by the Civil Grand Jury. Please see the Controller's response and the SFERS response. **CON**: The 30% employer contribution rate is a projection, not a certainty, based on assumptions provided by SFERS' actuary Cheiron (2/9/10 "Negative 5-Yr Moderate" Scenario). Under any reasonable economic scenario employer pension contribution rates are expected to increase significantly over the next several years. By 2015, while the projected employer contribution rate may be as low as 21% or as high as 33%, the median rate is projected at 25%. In addition, varying investment returns will have a significant impact on the pattern and magnitude of actuarially computed employer contribution rates. **SFERS**: Partially Disagree. SFERS neither determines pension benefits or benefit levels nor determines the City's funding methods or payment sources. SFERS has no involvement with City health benefits. SFERS administers the City's defined benefit pension and 457 plans. Pursuant to this duty, SFERS engages a consulting actuary to annually determine required employer contributions to maintain the financial soundness of the SFERS pension. The 30% employer contribution rate referenced in the report is merely an estimate - one of various projected future contribution rates based on varied investment return scenarios provided to the SFERS by its consulting actuary.
2009-10	Pension Tsunami The Billion Dollar Bubble	F.B2	The Department of Human Resources and SEIU Local 1021 entered into an agreement that Miscellaneous employees would pay their own 7.5% contribution, and, in return, the base wages were increased by 6%, effective July 1, 2010. There was no actuarial valuation to estimate the resulting pension liability for the City. This agreement resulted in a substantial increase in pension obligations for the City without voter approval.	BOS, Mayor, Controller, SFERS	This item is a finding - there will be no action plan in response.	MYR: Partially Disagree. Although the City did not undertake an actuarial valuation to estimate the resulting pension liability, the Civil Grand Jury's statement that the agreement with SEIU resulted in a substantial increase in pension obligations for the City is incorrect. First, as DHR notes in its response, the City agreed to begin paying the employee pension contribution for most unions in 1995 (not in 2002 as indicated in the Civil Grand Jury report), in lieu of providing wage increases. Therefore, if the City had not paid the employee contribution and instead given employee wage increases at that time, there would have been pension cost increases dating back to 1995. Second, while it is true that SEIU Miscellaneous (non-MTA) employees will receive a base wage increase on July 1, 2011 in exchange for resuming the payment of the employee pension contribution, it will in fact be on a cost-neutral basis to the City. Although it is also true that any increase in pensionable compensation results in a corresponding increase in employer contributions to retirement, the increase is significant only if it occurs at the end of one's career—most SEIU employees will continue working for years after the "swap" takes effect. More importantly, the SFERS pension fund has been funded assuming 4.5% annual wage increases for miscellaneous employees—increases that the City's miscellaneous unions did not receive and are not scheduled to receive—thereby offsetting the impact on pension costs. Please see the SFERS response for more information. Therefore, the increase in benefit liability as a result of the "swap" is not an "unfunded" liability. See DHR's and SFERS' responses to this finding for additional information and further clarification. **CON:** As required under ordinance 92-94, the Controller's Office estimates the cost of labor agreements as they are being negotiated, and reports the costs to the Board of Supervisors when the agreement is submitted for approval. In this case, as with all labor agreements, the fringe benefit costs, including the City retirement contribution cost of the higher wage level and the savings due to the employee pension contribution, were both reported in the Controller's estimate and in DHR's presentation of the agreements to the Board of Supervisors. **SFERS:** Partially Disagree. The negotiated change to having Miscellaneous employees pay their own SFERS employee contributions is "cost neutral" to the Plan. Pensionable income for impacted SFERS members is unchanged regardless of whether the City pays the employee contributions on behalf of the employee or such contributions are paid directly by the employee through payroll deduction. The negotiated 6% wage increase effective July 1, 2011 does not result in a "substantial increase in pension obligations for the City". Based on the actuarial methods and assumptions recommended by the SFERS consulting actuary and approved by the SFERS Board, the annual actuarial valuation of "pension obligation" anticipates wage increases each year which are on average 6% or more (4.5% wage inflation plus merit-based wage adjustments based on years of service). Considering that there are no negotiated wage increases for the two years immediately preceding the July 1, 2011 six percent wage increase, it is in fact likely that the City's pension obligations for these SEIU employees will be less than that anticipated by the SFERS consulting actuary based on the SFERS actuarial assumptions.

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2009-10	Pension Tsunami The Billion Dollar Bubble	F.B3	2,384 retirees receive pensions greater than $75,000.	BOS, Mayor, Controller, SFERS	This item is a finding - there will be no action plan in response.	MYR: Agree. CON: No response necessary. SFERS: Agree
2009-10	Pension Tsunami The Billion Dollar Bubble	R.B1	The Mayor and the Board of Supervisors should prepare a plan within the next year to fund the projected $1 billion in pension costs.	BOS, Mayor, Controller	1	MYR: Agreed; Already Implemented. My office, in conjunction with other city departments, continues to work to address the projected $1 billion pension costs. In addition to the normal budget process, the City is now required to create a two-year budget as well as a five-year financial plan that will address the funding requirements for future years. I am committed to doing more to address our pension costs and I will continue to work with the Board of Supervisors to monitor this issue. CON: City leadership may consider how to manage retirement costs and benefits as part of its overall financial planning, and the Mayor and Board of Supervisors may make proposals regarding retirement benefits within the current system to put before the voters. These considerations already occur through the City leadership's and managers' review of pension costs and contribution rates and their financial impacts in the budget process and in other settings. Benefits, terms and conditions of SFERS are set in the Charter, and changes to them are a matter for voter approval; the Charter also requires that each year's budget be balanced. Balancing future budgets will require some combination of expenditure reductions and/or additional revenues. The Controller is working with City leadership to enact Proposition A mandated changes (a two-year (biennial) budget and a five-year financial plan which forecasts revenues and expenses and summarizes expected public service levels and funding requirements for that period) to the City's budget and financial processes, which are likely to stabilize spending through requiring multi-year budgeting and financial planning. Also, per San Francisco Administrative Code Section 3.6, the Controller, the Mayor's Budget Director, and the Budget Analyst for the Board of Supervisors will issue a three-year budget report.
2009-10	Pension Tsunami The Billion Dollar Bubble	R.B2	The Department of Human Resources (DHR) should not enter into agreements with the employee unions which increase the City's future pension obligations without voter approval. DHR should engage the City's Actuary to investigate any increase in pensionable compensation.	BOS, Mayor, Controller, Human Resources, SFERS	4	MYR: Disagree; Will Not be Implemented. DHR ensures that as it enters into collective bargaining with the City's labor groups, it relies on data furnished by the SFERS and the Controller's Office, which evaluate cost increases to any pensionable compensation. Requiring voter approval of any employee wage increases that would result in an increase in pensions would likely violate both the Charter and State law with regard to collective bargaining. The Civil Grand Jury recommendation fails to recognize that all increases in pension obligations were voter-approved. Without voter approval, DHR cannot change employee retirement plans. DHR has the responsibility to negotiate wages and benefits with the labor groups in accordance with the Charter, and this responsibility cannot be the responsibility of the voters. Please see DHR's response for more information and further clarification. CON: Labor agreements legitimately address wages and benefits and are appropriately and efficiently within the City's (DHR's) authority to negotiate. A wide variety of factors including wage levels, hiring and staffing, attrition, management decisions, and many others, affect the total amount of pensionable compensation and the City's obligations. These factors do not however change the retirement elements that require voter approval such as changes to defined benefits, eligibility, and service requirements. The City, through DHR and the Controller's Office, projects the current and future costs of wage increases and of pensionable compensation as part of its negotiations and budget processes. Actuarial services are not indicated for this purpose. Actuarial analysis is done as part of the annual valuation and contribution rate-setting process at SFERS, and whenever a change to retirement conditions and requirements is proposed. SFERS: The SFERS Board has no role or responsibility in the management of labor, meet and confer, or the City's determination of benefit funding methods or payment sources. SFERS provides data and information to the Mayor's Office and the Department of Human Resources related to the cost impact of any proposed changes to pensionable income that may arise during the City's collective bargaining activities. Each year the SFERS consulting actuary considers plan changes approved by voters as well as changes in pensionable compensation that may have been negotiated by the City through its collective bargaining process in preparing the annual valuation as well as recommending actuarial methods and assumptions to the SFERS Board. The SFERS consulting actuary's role does not include "investigation" of any increase in pensionable compensation negotiated between the City and employee representative organizations. SFERS is not familiar with the report's reference to "the City's professional Actuary". Morevover, the consulting actuary is engaged by SFERS, not the City, and is responsible to SFERS, not the City.

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2009-10	Pension Tsunami The Billion Dollar Bubble	R.B3	DHR should compare the retirement benefits in other California cities to determine whether the pension benefits are excessive. The results should be reported to the Mayor and the Board of Supervisors.	BOS, MYR, Human Resources	1	MYR: Agree; Already Implemented.
2009-10	Pension Tsunami The Billion Dollar Bubble	F.C1	C1. Proposition H, passed by voters in 2002, requires that if the City's contribution rate to the pension fund exceeds 0%, then the City and the Safety employee unions must "meet and confer" to implement a "cost-sharing" arrangement to reduce the cost impact of the employer's contributions on the City's General Fund. The City's contribution rate has exceeded 0% for fiscal 2004-05 to the present. The City and County of San Francisco is not in compliance with the requirements of the City Charter resulting from the passage of Proposition H. There have been no "meet and confer" sessions to establish a "cost-sharing" arrangement. The City Attorney has not mandated that the SFERS Board comply with these requirements of the Charter Amendment resulting from Proposition H.	BOS, Mayor, City Attorney, Controller, Human Resources, SFERS Board	This item is a finding - there will be no action plan in response.	MYR: Disagree. The City has worked with its Police and Fire labor groups to negotiate provisions in their respective collective bargaining agreements to address Charter obligations as to cost-sharing, and has set their pension contributions at the maximum limit allowed by the Charter. Please see DHR's response and the City Attorney's response for more information and further clarification. CON: Please see the Department of Human Resources' response on this item. **SFERS Board:** Partially Agree. The SFERS Board has no role or responsibility in the management of labor, meet and confer, or the City's determination of benefit funding methods or payment sources.
2009-10	Pension Tsunami The Billion Dollar Bubble	F.C2	C2. The unfunded pension liability for Proposition H as of July 1, 2009 was approximately $276 million, amortized over thirteen years to about $26 million annually.	BOS, Mayor, City Attorney, Controller, Human Resources, SFERS Board	This item is a finding - there will be no action plan in response.	MYR: Agree. According to the SFERS, the annual amortization payment for fiscal year 2010-2011 is about $26 million. CON: Confirms that the unfunded pension liability for Proposition H as of July 1, 2009 was approximately $276 million. **SFERS Board**: Agree. The unfunded pension liability for Proposition H as of July 1, 2009 was approximately $276 million and the annual amortization payment for fiscal year 2010-2011 is approximately $26 million.

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2009-10	Pension Tsunami The Billion Dollar Bubble	R.C1	The City Attorney should initiate legal action against the SFERS Board to enforce the requirements of the Charter amendment to "meet and confer" and "cost-sharing" provisions of Proposition H, as stipulated in Charter § A8.595-11(e). The Jury recommends that the City Attorney and/or his representatives present to the Board of Supervisors and SFERS Board the following documents regarding § A8.595-11(e) of the City Charter: 1) A legal opinion on the charter section; 2) Documentation regarding the dates and times that the City and the Police and Firefighters unions met to confer and to implement a cost-sharing arrangement as required in the section; 3) A legal opinion regarding fiduciary duties of the SFERS Board to comply with it; 4) A legal opinion regarding SFERS duty to revise the Safety employee contribution rate to comply with the Charter section; and 5) A legal opinion regarding possible remedies to enforce compliance.	BOS, Mayor, City Attorney, Human Resources, SFERS Board	4	MYR: Disagree; Will Not be Implemented. City Charter §A8.595-11(e) does not require the SFERS to enter into a meet and confer with the City's safety employee unions. Therefore, I believe the City Attorney cannot initiate such legal proceedings to require such action. As the City Attorney's response notes, the City has complied with the cost-sharing provisions of Proposition H and the Civil Grand Jury is mistaken about the role of the SFERS Board in this matter. Please see the City Attorney's response. **SFERS Board:** The SFERS Board has no role, duty or responsibility in the management of labor, meet and confer, or the City's determination of benefit policy or funding methods. Further, the SFERS Board has no role, duty or responsibility in "enforcing" the "meet and confer" and "cost sharing" provisions of Proposition H.
2009-10	Pension Tsunami The Billion Dollar Bubble	R.C2	The City and Safety employees should establish an arrangement to share the annual $26 million cost as required by the City Charter.	BOS, Mayor, City Attorney, Human Resources, SFERS Board	4	MYR: Agree; Already Implemented. Where the City Charter requires the City and its public safety unions to share costs, the City has and will continue to work with the unions on this matter. **SFERS Board:** The SFERS Board has no role or responsibility in the management of labor, meet and confer, or the City's determination of benefit policy or funding methods.
2009-10	Pension Tsunami The Billion Dollar Bubble	F.D1	D1. The soon-to-be retired have been able to increase final pensionable compensation to inflate retirement benefits. The Jury founds instances of nursing supervisors being allowed to have two concurrent jobs and earn pensions on both, sometimes referred to as pension-pyramiding.	BOS, Mayor, SFERS, SFERS Board, SFFD	This item is a finding - there will be no action plan in response.	MYR: Partially Disagree. I agree that practices such as "pension spiking" and "pension-pyramiding" are practices that undermine the credibility of the pension system and the City should prevent such practices. However, while there are some controls on assignments, and on pay and retirement calculations that minimizes the risk of these practices, DHR recently completed an audit and found that there are indeed a handful of instances in which employees at the Department of Public Health (DPH) have been earning pensionable income on multiple appointments. DHR is working with DPH to implement a mechanism in the system to prohibit these anomalies from occurring in the future.The SFERS has also successfully litigated all instances where these practices might have occurred. Please see the SFERS' response, the Controller's response, and the San Francisco Fire Department's response. **SFERS and SFERS Board**: Partially Disagree. SFERS has no role or responsibility in the management of labor, meet and confer, or the City's employment policies and practices. SFERS has actively and successfully litigated all cases where SFERS members have attempted to include non-pensionable compensation in the calculation of SFERS benefits. In calculating a SFERS retirement benefit, SFERS staff confirms that all elements of pay included in the calculation of SFERS pensions are paid as provided by City Charter and Memoranda of Understanding (MOUs). The voters have prohibited a retired SFERS member from "pyramiding" a second SFERS pension after retirement. **SFFD:** Any increases to final pensionable compensation of a retiree in the Fire Department are legitimate and in accordance with established Citywide pay practices and procedures, including applicable MOU provisions and Merit System principles. Increases can be attributed to negotiated contract enhancements (pre- or post-retirement) or promotion in rank pre-retirement through the following MOU or DHR and Civil Service-approved appointment methods: Like Work-Like Pay, Acting Assignment, Provisional or Exempt Appointment, or Permanent Appointment from an eligible list. Increases to final pensionable compensation do not occur for the purpose of inflating or "spiking" retirement benefits.

California Penal Code Sections 933.05(a) and (b) requires the responding party to report for each recommendation of the Civil Grand Jury one of the following actions:

1. Recommendation Implemented	2. Will Be Implemented in the Future	3. Requires Further Analysis	4. Will Not Be Implemented: Not Warranted or Not Reasonable
- Date Implemented - Summary of Implemented Action	- Anticipated Timeframe for Implementation	- Explanation - Timeframe (Not to exceed six months from date of publication of grand jury report)	- Explanation

For each recommendation below, indicate one of the four actions you have taken or plan to take in the "Action Plan" column and provide the required explanation in the "2010 Response Text" column.

CGJ Year	Report Title	Recommendation or Finding Number	Recommendation or Finding Text	Response Required From	Action Plan	2010 Response Text
2009-10	Pension Tsunami The Billion Dollar Bubble	R.D1	D1. San Francisco should take steps to curb abuses from pension spiking by limiting the final pensionable income an employee can claim at retirement and from pension-pyramiding. The Jury suggests the following: - Use a three-year average to determine pensionable income, similar to Federal rules. - Limit final pensionable compensation to 120% of the rank pay rate as determined by the Civil Service job classification. - The Controller should perform an independent review of pensions to determine whether the practice of pension spiking is ongoing. - Disallow employees from drawing pensions from two simultaneous City jobs. - Pensionable compensation should not include pay for two separate pay types, known as pension-pyramiding.	BOS, Mayor, Controller, Human Resources, SFFD	1, 2, 3	MYR: Final year averages • Already Implemented. As a reminder, Supervisor Sean Elsbernd and I introduced a Charter amendment to the Board of Supervisors in 2008, which would have required a three-year average to determine pensionable income; unfortunately, however, the Board of Supervisors voted to reduce that time to two years. The measure, Proposition B on the June 2008 ballot, was passed by an overwhelming majority of the voters (74%). • The Controller should perform an independent review of pensions to determine whether the practice of pension spiking is ongoing. • Recommendation Requires Further Analysis. Although pensionable income is determined by Charter, I will work with DHR, SFERS, and the Controller's Office to limit final pensionable compensation to the extent possible under the Charter and the collective bargaining agreement.• Disallow employees from drawing pensions from two simultaneous City jobs. • Recommendation Requires Further Analysis. I agree with the Civil Grand Jury that employees should not draw from two simultaneous public service jobs and that pensionable compensation should not include pay for two separate pay types. As stated earlier, my office and DHR are working together to ensure that there are systematic controls in place for this purpose. CON: The Controller's Office agrees that "pension spiking' and "pension-pyramiding" are unfair and costly practices and should be prevented. We note that CGJ recommendations 1. and 2. require voter approval and that recommendations 4. and 5. are addressed as part of the Controller's Office's payroll audit program (as well as other City programs), which audits controls on assignments, on pay and on retirement calculations to control the risk of "spiking" and "pyramiding" and insure that City employees are appropriately compensated and their pensions are determined in accordance with all applicable codes. In response to recommendation 3., the Controller's Office includes SFERS as part of its annual risk assessment and considers whether to schedule internal audit(s) for that agency as it does for any city department. SFERS has systems for quality control and audit testing, is relatively lower in risk order than many other city functions, and is not scheduled for an audit in FY10-11 at this time. An internal audit for the Department could be scheduled in FY11-12 or even later in FY10-11; however that will be determined during our workplan and risk assessment process in the spring of 2011, and ongoing prioritization of resources during current FY10-11. SFFD: See prior responses-the City and the Fire Department have controls in place to ensure that pension levels are earned and paid in accordance with the Charter and all codes.
2009-10	Pension Tsunami The Billion Dollar Bubble	F. E1	E1. For current employees and retirees, health benefits are "vested" after 10 years. Unlike pensions, health benefits for most City workers are not pre-funded, but are paid directly out of the City's General Fund. In 2001, the City expended $17 million on retiree health care. By 2007, that amount had grown to $130 million and continues to rise. Mercer Consulting reported on June 30, 2008, that the City's unfunded liability for retiree health benefits was $4 billion.	BOS, Mayor, Controller, Human Resources, SFERS	This item is a finding - there will be no action plan in response.	MYR: Partially Disagree. Current employees who were hired prior to January 10, 2009 receive full employer health care coverage after only five years of City services. Although retiree health benefits have not been pre-funded, the Controller's Office analyzes the City's unfunded retiree health benefit liability and explores funding options to address this issue. Further, the voters have responded to this issuing by passing Proposition B in 2008, which established a Retiree Health Care Trust Fund and created a graduated health benefit vesting schedule for employees hired on or after January 10, 2009. Pursuant to Proposition B, all employees hired on or after January 10, 2009 must contribute 2% of their salary into the City's Retiree Health Care Trust Fund Contribution, and the City contributes an additional 1% for each corresponding 2% contribution. This amount serves to prefunds said employees' retiree health benefits. Nevertheless, I agree that retiree health benefits have not historically been pre-funded, and that the City has a substantial, unfunded retiree health liability. DHR and the City have taken steps, and will continue to takes steps, to address this issue. Please see DHR's response to this Finding and Recommendation E1 for additional information. CON: Through work led by the Controller's Office, the City has been diligent in estimating and reporting its unfunded retiree health benefit liability and exploring funding solutions to replace the pay-as-you-go burden. Some progress has been made in addressing the liability. In June 2008, the voters of San Francisco passed Proposition B, the Retiree Health Charter amendment. This measure created a graduated health benefit vesting schedule for employees hired after January 10, 2009 and established a separate Retiree Health Trust Fund in order to pay for future costs related to retiree health care. Employees hired on or after January 10, 2009, contribute up to 2% of their pre-tax pay and the City contributes 1%. The Controller's Office, with other City leadership, continues to work steadily on this issue. SFERS: SFERS has no role, duty or responsibility in the City's health benefit area.
2009-10	Pension Tsunami The Billion Dollar Bubble	R. E1	E1. Department of Human Resources and collective bargaining units should meet and confer to determine a cost-sharing arrangement to pre-fund the $4 billion unfunded liability for retiree health care obligations.	BOS, Mayor, City Attorney, Controller, Human Resources	4	MYR: Agree; Already Implemented. The City does acknowledge that it has a large unfunded liability for retiree health care obligations. With past propositions, the City has begun to address this issue by requiring the City and its employees to contribute to the Retiree Health Trust Fund. I will continue to work with the Controller's Office and DHR to address this liability. Please see DHR's response for additional information. CON: Please see the Controller's Office response to R.B1 and F.E1.

California Penal Code Sections 933.05(a) and (b) requires the responding party to report for each recommendation of the Civil Grand Jury one of the following actions:

1. **Recommendation Implemented**	2. **Will Be Implemented in the Future**	3. **Requires Further Analysis**	4. **Will Not Be Implemented: Not Warranted or Not Reasonable**
- Date Implemented - Summary of Implemented Action	- Anticipated Timeframe for Implementation	- Explanation - Timeframe (Not to exceed six months from date of publication of grand jury report)	- Explanation

For each recommendation below, indicate one of the four actions you have taken or plan to take in the "Action Plan" column and provide the required explanation in the "2010 Response Text" column.

CGJ Year	Report Title	Recommendation or Finding Number	Recommendation or Finding Text	Response Required From	Action Plan	2010 Response Text
2009-10	Pension Tsunami The Billion Dollar Bubble	F.F1	There are seven SFERS board members: three are elected by the members; three are appointed by the Mayor; and the seventh Commissioner comes from the ranks of the Board of Supervisors. One of the three public members has not been appointed for at least six months.	BOS, Mayor, SFERS Board	This item is a finding - there will be no action plan in response.	MYR: Agree. Please note that since the issuance of this report, I have filled my vacant appointment. **SFERS Board**: Agree.
2009-10	Pension Tsunami The Billion Dollar Bubble	F.F2	Minutes of the SFERS board meetings record attendance of the board members. When the members representing the public are absent, the interest of the public is eroded.	BOS, Mayor, SFERS Board	This item is a finding - there will be no action plan in response.	MYR: Agree. It is important for members of all commissions and boards to attend meetings. **SFERS Board:** The report ignores the Board's statutory role. All seven SFERS Board members bear the fiduciary duty to act solely in the interests of the Plan members and beneficiaries. There are no public representative board positions.
2009-10	Pension Tsunami The Billion Dollar Bubble	R.F1	The Mayor needs to appoint two Commissioners to represent the public's interest.	Mayor	4	MYR: Disagree; Will Not be Implemented. Upon appointment, all commissioners are required to discharge faithfully the duties of the particular commission or board to which they are appointed. In the case of the SFERS, the duty of the commissioners appointed to the SFERS is to represent the interest of the members and their beneficiaries. All seven SFERS Commissioners share the same fiduciary duty, not just those appointed by the Mayor.
2009-10	Pension Tsunami The Billion Dollar Bubble	R.F2	It is important for the public Commissioners appointed by the Mayor to attend the Board meetings. They should attend regular monthly Board meetings or resign.	Mayor, SFERS Board	1	MYR: Agree; Already Implemented. I agree that all Commissioners appointed to the SFERS should attend regular monthly Board meetings. As the SFERS Board states in its response, the Board also has a committee structure that allows its members to discharge its duties even if a member is not able to make every Board meeting. Please see the SFERS' Board response. **SFERS Board**: Board members participate in public session, at not only Board meetings, but Committee meetings as well. The report failed to recognize the existence of the latter. Indeed, the report noted that one Commissioner had 53% attendance at the monthly Board meetings for FY2009-10, but failed to acknowledge that the same Commissioner attended 12 of 14 Committee meeting (86%) for the same period of time. Moreover, the report references "public Commissioners", a reference to those Commissioners appointed by the Mayor. As noted in the response to Finding F.2 above, all seven Commissioners bear the same statutory duty - to act in the sole interest of the Plan members and beneficiaries. There are no "public Commissioners." SFERS agrees that Commissioner attendance at public meetings is encouraged pursuant to the member's interest as well as the Board's policy.