


**CITY AND COUNTY OF SAN FRANCISCO**  
**BOARD OF SUPERVISORS**  
**BUDGET AND LEGISLATIVE ANALYST**

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**TO:** Government Audit and Oversight Committee

**FROM:** Budget and Legislative Analyst 

**SUBJECT:** July 10, 2014 Government Audit and Oversight Committee Meeting

**TABLE OF CONTENTS**

<b>Item</b>	<b>File</b>	<b>Page</b>
1	14-0455 Administrative Code – Cancer Presumption for Fire and Police Retirement Benefits .....	1

<b>Item 1</b> <b>File 14-0455</b>	<b>Department:</b> Retirement System
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>The proposed ordinance would amend the City's Administrative Code to provide that for any sworn member of the Fire Department or Police Department diagnosed with cancer, who meets certain eligibility criteria, the cancer shall be presumed to be work-related for purposes of applying for San Francisco Employee Retirement System (SFERS) industrial disability retirement benefits or survivor death-as-a-result-of-duty benefits.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>San Francisco firefighters and police officers are currently entitled to a presumption that any "heart trouble" or pneumonia is caused by and in the course of their employment for the purposes of applying for industrial disability retirement benefits or survivors' death-as-a-result-of-duty benefits with SFERS. There is no comparable cancer presumption.</li> <li>Under California State law, firefighters and peace officers are entitled to a presumption for purposes of workers' compensation claims that cancer is industrially caused. This workers' compensation statute does not apply to SFERS disability retirement applications.</li> <li>The proposed ordinance would create the cancer presumption for firefighters and police officers who apply for industrial disability retirement benefits and for qualified survivors of firefighters and police officers who apply for death-as-a-result-of-duty retirement benefits.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>The actuarial report, prepared by Cheiron for SFERS, estimated the costs of the cancer presumption under the proposed ordinance for 20 firefighters and police officers, of whom ten were denied industrial disability in the City since 1998 and ten have applications for industrial disability that are currently pending review.</li> <li>According to the actuarial report, the additional costs to SFERS due to the proposed cancer presumption for industrial disability retirement would be minor. The increased costs to SFERS for the 20 cases reviewed would be \$3.0 million, which is an increase of approximately 0.015 percent compared to SFERS total actuarial liability of \$20 billion.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>The costs to SFERS due to the cancer presumption may be higher than Cheiron's cost estimates as more cases may be filed, and granted, if the proposed ordinance is adopted and the presumption applies.</li> <li>Additionally, the proposed ordinance will likely increase costs for SFERS because the types of benefits being paid out to members and eligible beneficiaries are generally costlier to the City. There is no estimate available for these possible cost increases.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>Approval of the proposed ordinance is a policy matter for the Board of Supervisors.</li> </ul>	

**MANDATE STATEMENT / BACKGROUND****Mandate Statement**

In accordance with Charter Section 12.100A8.500, ordinance provisions already existing with respect to the Retirement System shall continue in force until amended or revoked by the Board of Supervisors as provided in this Section. The Board of Supervisors, by a vote of three-fourths of its members, can approve any and all ordinances necessary to carry into effect the provisions of Sections 12.100 to 12.103 and the Retirement System provisions of the Charter, as set forth in Appendix Sections A8.500 et. seq.; provided that the Board of Supervisors shall secure, through the Retirement Board, an actuarial report of the cost and effect of any proposed change in the benefits under the Retirement System, before enacting an ordinance or before voting to submit any proposed Charter amendment providing for such change.

**Background**

San Francisco firefighters and police officers are currently entitled to a presumption that any “heart trouble” or pneumonia are caused by and in the course of their employment, unless there is evidence to the contrary, for the purposes of applying for industrial disability retirement benefits or survivors’ death benefits with the San Francisco Employees’ Retirement System (SFERS). There is no comparable cancer presumption for industrial disability retirement benefits for firefighters and police officers. As it stands, if a firefighter or police officer applies for industrial disability retirement with SFERS for cancer, they must establish that the cancer is industrially caused and that the cancer is incapacitating for the performance of their duties.

Under California State law, California Labor Code Section 3212.1, firefighters and peace officers are entitled to a presumption for purposes of workers’ compensation claims that cancer is industrially caused. The State Labor Code allows for this presumption provided that “[the cancer] develops or manifests itself during a period in which any member...is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer.” This workers’ compensation statute does not apply to SFERS disability retirement applications.

Studies from the scientific community are beginning to demonstrate some relationship between incidences of specific types of cancer and employment as a firefighter. According to “Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950-2009)” published by the National Institute for Occupational Safety and Health, the results of their study provide evidence of a relation between firefighting and cancer. According to the study, while the study relied upon analyses of death certificates for the projected outcomes, this method “may poorly characterize (*sic.*) cancers with relatively high survival (e.g., cancers of the breast, bladder, testes and larynx)”, and therefore, understate the cancer presumption.

According to the proposed ordinance, several studies also show an increased risk for various types of cancer in police officers.

**DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would amend the City's Administrative Code to provide that for any sworn member of the Fire Department or Police Department diagnosed with cancer, who meets certain eligibility criteria, the cancer shall be presumed to be work-related ("cancer presumption") for purposes of applying for SFERS industrial disability retirement benefits or survivor death-as-a-result-of-duty benefits. This would create the cancer presumption for firefighters and police officers employed by the City and County of San Francisco, who apply for industrial disability retirement benefits, and for qualified survivors of firefighters and police officers, who apply for death-as-a-result-of-duty benefits. Under the proposed ordinance, SFERS could offer specified evidence to rebut the presumption, mirroring the rebuttal standard established in California Labor Code, Section 3212.1.

Under the proposed ordinance, in order to be eligible for the cancer presumption when applying for industrial disability retirement benefits or death-as-a-result-of-duty benefits, the sworn member of the Fire Department or Police Department must meet the following criteria:

1. Sworn members of the San Francisco Fire Department or Police Department must have five or more years of service with the Fire Department or Police Department. Eligible members may count years of service in other fire or police departments in California toward the five years of service if (a) those departments also provide the same cancer presumption, and (b) no more than six months lapsed between employment in the other California fire or police department and the San Francisco Fire or Police Department.
2. The applications must be for industrial disability retirement or death-as-a-result-of-duty benefits under the San Francisco City and County Employees' Retirement System.
3. Applications must be for benefits in connection with cancer injuries or deaths filed on or after January 1, 2010. But the presumption would not be applied, as of the effective date of this proposed ordinance, if (1) the hearing officer assigned to hear the application has rendered his or her initial decision on the application and the member did not request a rehearing within the specified timeframe, or (2) the hearing officer has rendered an initial decision, the member requested a rehearing in a timely fashion, and the hearing officer has issued a decision on the rehearing.
4. The cancer presumption only applies if (a) the sworn member demonstrates exposure while in service of the Fire Department or Police Department to a known carcinogen as defined by the International Agency for Research on Cancer; and (b) there was no evidence of cancer identified in the physical examination of the member conducted as part of his or her initial hire in the Fire Department or Police Department.

The Retirement System shall use the member's eligible prior safety service in another California fire or police department to measure the date upon which the members would be qualified for service retirement.

The proposed ordinance would become effective 30 days after enactment, pending the Mayor's signature.

**FISCAL IMPACT**

The actuarial report, prepared by Cheiron for the San Francisco Employees' Retirement System, estimated the costs of the cancer presumption under the proposed ordinance for 20 firefighters and police officers, of whom ten were denied industrial disability in the City since 1998 and ten have applications for industrial disability that are currently pending review. The report assumes that the ten cases that were previously denied industrial disability and the ten cases currently under review would all receive industrial disability retirement benefits under the proposed ordinance, which would presume the cancer is work-related. In order to calculate the costs to SFERS of the 20 industrial disability retirements due to the cancer presumption, Cheiron adjusted benefit costs for present value and for improvements and increases in benefits to members and their beneficiaries since 1998. Additionally, the estimates take into account Qualified Service Retirement (QSR) dates, which allow a member to receive increased benefits thereafter. The facts and information used to comprise the analysis were reportedly collected orally and from SFERS' written records.

According to the report by Cheiron to SFERS, the additional costs to SFERS due to the cancer presumption for industrial disability retirement would be minor. According to the report, and as shown in the table below, the increased costs to SFERS for these 20 cases would be \$3.0 million, which is an increase of approximately 0.015 percent compared to SFERS total actuarial liability of \$20 billion.

**Table: Actuary Estimate of Increased Costs for Industrial Disability due to Cancer Presumption**

<b>Value of Benefits for:</b>	Present Value of Benefits as of July 1, 2014		
	<b>Denied Cases</b>	<b>Pending Cases</b>	<b>Total</b>
Industrial Disability due to Cancer Presumption	\$15,404,699	\$15,258,235	\$30,662,934
Regular Service Retirement	<u>14,492,549</u>	<u>13,128,353</u>	<u>27,620,902</u>
Increase in Benefit Cost due to Cancer Presumption	\$912,150	\$2,129,882	\$3,042,032

Source: June 11, 2014 Cheiron Report to SFERS

The actuarial report assumed, but did not determine, whether the proposed ordinance would impact the decisions in the currently pending cases before SFERS or whether it would have resulted in a different outcome in the ten previously denied cases.

Based on historical data, the report concludes that the costs would be minor to the City to fund this presumption of cancer benefit. According to Mr. Jay Huish, Executive Director of the San Francisco Employees' Retirement System, "Under the City Charter, all administrative costs to process and adjudicate disability applications are paid from the SFERS Trust Fund. All costs related to additional or increased industrial disability benefit payments will also be paid from the SFERS Trust Fund."

**POLICY CONSIDERATION**

The costs to SFERS due to the cancer presumption may be higher than Cheiron's cost estimates. Therefore, the actuarial report may understate the costs associated with the proposed ordinance. More cases may be filed, and granted, if the proposed ordinance is adopted and the cancer presumption applies. While the actuarial report references this likely increase, stating that "while the presumption is disputable under the proposed ordinance, it is likely to result in an increase in the number of disabilities and deaths that are classified as industrial," it does not offer an estimate on cost. In response, Mr. Huish stated "SFERS has no current information that would cause it to believe that the current proposed ordinance will cause a significant increase in the number of industrial disability applications filed in the future."

Also, as noted in the letter from Mr. Huish to the Clerk of the Board of Supervisors on June 24, 2014, the proposed ordinance will likely increase costs for SFERS because: (1) benefits payable to qualified survivors of firefighter and police officer members granted industrial disability retirements are higher than those paid for service pensions, and (2) the minimum industrial disability retirement benefit of 50 percent of final compensation may be higher in certain cases than the service pension benefit for the same member. There is no estimate available for these possible cost increases.

The Budget and Legislative Analyst considers approval of the proposed ordinance to be a policy matter for the Board of Supervisors because the cancer presumption for firefighters and police expands eligibility for industrial disability retirement benefits and the precise costs to the City for offering these benefits is not known.

**RECOMMENDATION**

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.