

[Authorizing tax-deferred transfer of accrued vacation, sick leave and other compensation to employees and authorizing Board of Supervisors to amend Domestic Partnership Ordinance and equalizing Retirement System and other benefits and obligations of domestic partners and spouses.]

CHARTER AMENDMENT

PROPOSITION ____

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by: (a) adding Section A8.599 to authorize the City and County to establish plans for the tax-deferred treatment of accrued compensation payable to employees and (b) adding Section 16.125, authorizing the Board of Supervisors to amend or repeal provisions of the Domestic Partnership Ordinance to effectuate the voters' intent that domestic partners be afforded the same rights.

The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on March 2, 2004, a proposal to amend the Charter of the City and County by adding Section A-8.599, adding Section 16.125 and amending A8.500-2, and amending Section A8.400(h) to read as follows:

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

A8.599 TAX-DEFERRED PLANS FOR ACCUMULATED COMPENSATION

The board of supervisors is empowered to enact, by a vote of three-fourths of its members, such ordinances as it deems necessary to establish a plan or plans, consistent with federal and state requirements, to provide for the deferred taxation of accumulated vacation, sick leave or other compensation earned by and payable to employees on account of and after their separation from City and County employment. The City and County of San Francisco does not and cannot represent or guarantee that any particular federal or state income, payroll or

other tax consequence will occur by reason of an employee's participation in these plans nor whether there will be gains or losses on moneys paid into these plans. The Retirement Board shall administer any such plans. The Retirement Board may contract with a financially responsible independent contractor to serve as the third party administrator of any such plans. The Retirement Board shall manage such plans in compliance with federal and state tax laws and ensure that plan benefits do not conflict with or reduce benefits under the Retirement System. The reasonable and necessary administrative costs of this plan shall not be borne by the City and County but by the participants and by any third party plan administrator appointed hereunder.

SEC. 16.125. DOMESTIC PARTNERSHIP.

The Board of Supervisors may, by a vote of three-fourths of its members, amend or repeal the voter approved Domestic Partnership Ordinance, as codified in Chapter 62 of the San Francisco Administrative Code, as it deems necessary (1) to eliminate any residency requirement for establishing a Domestic Partnership by filing with the County Clerk, (2) to recognize domestic partnerships formed in other jurisdictions to the same extent as marriages formed in other jurisdictions, and (3) to afford domestic partners, to the fullest extent legally possible, the same rights, benefits, responsibilities, obligations and duties as spouses.

A8.500-2 DOMESTIC PARTNER ~~BENEFITS~~ QUALIFIED SURVIVOR BENEFITS

With respect to the retirement system, domestic partnerships shall be treated exactly the same as marriages, domestic partners shall be treated exactly the same as spouses, termination of a domestic partnership shall be treated exactly the same as a dissolution of marriage and qualified surviving domestic partners shall be treated exactly the same as qualified surviving spouses, respectively.

(a) As used in the retirement plans established by this Charter ~~sections A8.428, A8.509, A8.559, A8.584, A8.585, A8.586, A8.587, A8.588, A8.595, A8.596, A8.597 and A8.598,~~ the phrase “surviving wife” shall also mean and include a “surviving spouse.” As used in these sections, the phrases “surviving wife” and “surviving spouse” shall also mean and include a surviving domestic partner, provided that:

~~(1a)~~ there is no surviving spouse, and

~~(2b)~~ the member has designated his or her domestic partner as beneficiary with the retirement system, and

~~(3e)~~ the domestic partnership ~~was~~ established or recognized according to those provisions of Chapter 62 of the San Francisco Administrative Code, as amended from time to time ~~which require the filing of a signed Declaration of Domestic Partnership with the County Clerk.~~ Domestic partners who have formed their domestic partnership only by notarization of a declaration of Domestic Partnership as provided in Chapter 62 of the San Francisco Administrative Code shall not be recognized or treated as a domestic partnership for purposes under the retirement system unless and until the domestic partnership is registered or certified. A certificate of such domestic partnership, civil union, or similar legal relationship issued by another jurisdiction in a form that is equivalent to the records that the retirement system relies upon to verify marriages shall constitute sufficient proof of such legal relationship. ~~In addition, the Certificate showing that the Declaration of Domestic Partnership was filed with the County Clerk must be filed with the Retirement System at least one full year immediately prior to the effective date of the member's retirement or the member's death if the member should die before retirement; provided, however, that~~

(b) ~~Beginning~~ Beginning March 5, 2002, the requirement of filing a Certificate of Domestic Partnership with the Retirement System shall not apply to members who were retired on or before November 8, 1995 and who had filed a signed Declaration of Domestic Partnership with the County Clerk at least one full year prior to the effective date of his or her retirement; and provided further that, as to any such member who was retired on or before November 8, 1995, no adjustment to a retirement allowance and no payments to a qualified surviving domestic partner shall begin before the effective date of this amendment or before the first day of the month in which an application is made to the Retirement System, which ever occurs later.

(c) A monthly allowance equal to what would otherwise be payable to a surviving spouse shall be paid to the said surviving domestic partner, until he or she dies, marries or establishes a new domestic partnership. Establishment of a domestic partnership by a surviving spouse shall be treated exactly the same as a remarriage for retirement purposes.

(d) Notwithstanding subsection (c), no additional continuation allowance shall be paid after March 2, 2004 to a surviving domestic partner who is receiving a continuation allowance as the surviving spouse of another member on or before March 2, 2004.

(e) No continuation allowance shall be payable under the provisions of this section approved by the electorate on March 2, 2004 to the survivor of any member or retired member who died on or before March 1, 2004. Any retirement allowance payable to a person who becomes a qualified surviving domestic partner pursuant to the provisions of this section approved by the electorate on March 2, 2004, shall not begin before April 15, 2004.

(f) The domestic partner benefits under this section will be limited by Section 415 of the Internal Revenue Code of 1986, as amended from time to time. No domestic partner benefits will

be effective if they have an adverse impact on the tax qualified status of the retirement system under Section 401 of the Internal Revenue Code of 1986, as amended from time to time.

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

By: _____
CHERYL ADAMS
Deputy City Attorney