

[Amending Charter Sections A8.409 And A8.590-1 *et seq.* to reclassify deputy sheriffs as safety employees covered under Charter Section A8.590-1 *et seq.*]

## 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 amending Section A8.590-1 *et seq.* to include deputy sheriffs within its collective bargaining provisions. 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 amending Sections A8.409 and A8.590-1 *et seq.* to read as follows:

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

#### **A8.409 DECLARATION OF POLICY**

It is hereby declared to be the policy of the city and county of San Francisco that strikes by city employees are not in the public interest and that, in accordance with Government Code Section 3507(e), a method should be adopted for peacefully and equitably resolving disputes. It is the further purpose and policy of the city and county of San Francisco that the procedures herein adopted, except as otherwise provided herein, shall supersede and displace all other formulae, procedures and provisions relating to wages, hours, benefits and other terms and conditions of employment found in this charter, in the ordinances and resolutions of the city and county of San Francisco, or in the rules, regulations or actions of boards or commissions of the city and county of San Francisco.

If any officer or employee covered by this part engages in a strike as defined by section A8.346(a) of this charter against the City and County of San Francisco, said employee shall be dismissed from his or her employment pursuant to charter section A8.346.

In accordance with applicable state law, nothing herein shall be construed to restrict any legal city rights concerning direction of its work force, or consideration of the merits, necessity, or organization of any service or activity provided by the City. The City shall also have the right to determine the mission of its constituent departments, officers, boards and commissions; set standards of services to be offered to the public; and exercise control and discretion over the city's organization and operations. The City may also relieve city employees from duty due to lack of work or funds, and may determine the methods, means and personnel by which the city's operations are to be conducted.

However, the exercise of such rights does not preclude employees from utilizing the grievance procedure to process grievances regarding the practical consequences of any such actions on wages, hours, benefits or other terms and conditions of employment whenever memoranda of understanding providing a grievance procedure are in full force and effect.

It is the declared intent of the voters that the state statutes referenced in this part be those in effect on the effective date of this part.

#### **A8.409-1 EMPLOYEES COVERED**

These Sections A8.409 through A8.409-6, inclusive, shall apply to all miscellaneous officers and employees *except as set forth in Section A8.590-1 et seq.* and including employees of San Francisco Unified School District and San Francisco Community College District to the extent authorized by state law. The provisions of charter sections 8.400(h), 8.401-1, and 8.407

are hereby repealed and shall be of no further force and effect. Employee organizations representing employees in classifications covered by section A8.403 and A8.404 of this Charter may elect to include those classifications within the coverage of this part as a separate bargaining unit, provided however, that the election shall not become effective without the written approval of the Mayor and Board of Supervisors. The election shall be irrevocable and such employees shall not thereafter be subject to the provisions of section A8.403 and A8.404.

Employees in classifications not represented by a recognized employee organization shall be entitled to represent themselves with the city and county over wages, hours and other terms and conditions of employment to the extent required by state law and shall not be subject to the arbitration provisions of Section A8.409-4 of this charter. The Mayor annually shall propose all forms of compensation for unrepresented employees including salaries, hours, benefits, and other terms and conditions of employment subject to approval or disapproval of the board of supervisors. Consistent with other provisions of this charter, the civil service commission may adopt rules and procedures relating to said unrepresented employees.

Except as otherwise provided by this charter the Civil Service Commission shall set the wages and benefits of all elected officials of the City and County of San Francisco as follows: wages shall be frozen for fiscal year 1994-95 and 1995-96 at the rates in effect on June 30, 1994, thereafter wages and benefits may be adjusted on July 1, of each fiscal year to reflect upward change in the CPI as of the preceding January 1; however, wage increases may not exceed 5%. Benefits of elected officials may equal but may not exceed those benefits provided to any classification of miscellaneous officers and employees as of July 1 of each fiscal year.

In addition, subject to the approval or disapproval of the Board of Supervisors, the Mayor may create, for employees designated as management, a management compensation package that

recognizes and provides incentives for outstanding managerial performance contributing to increased productivity and efficiency in the work force. In formulating such a package, the Mayor shall take into account data developed in conjunction with the civil service commission regarding the terms of executive compensation in other public and private jurisdictions.

**A8.409-2 INTERIM PROVISIONS**

Notwithstanding the provisions of section 8.407 of this charter, from January 3, 1992 through March 31, 1992, in return for acceptance of a wage freeze for fiscal year 1991-1992, all recognized employee organizations representing classifications electing to remain within the coverage of charter sections 8.401 and 8.407 may, on a one time only basis, elect to bargain for no more than two additional paid training or furlough days per year to be effective only in fiscal years 1992-93, 1993-94 and 1994-95, and a dental plan, in recognition of the wage freeze for 1991-92. Such bargaining shall not be subject to the impasse procedures provided herein or any other provision of the charter, ordinance, or state law.

**A8.409-3 OBLIGATION TO BARGAIN IN GOOD FAITH**

Notwithstanding any other ordinances, rules or regulations of the city and county of San Francisco and its departments, boards and commissions, the city and county of San Francisco, through its duly authorized representatives, and recognized employee organizations representing classifications of employees covered by this part shall have the mutual obligation to bargain in good faith on all matters within the scope of representation as defined by Government code section 3504, relating to the wages, hours, benefits and other terms and conditions of city and county employment, including the establishment of procedures for the resolution of grievances

concerning the interpretation or application of any agreement, and including agreements to provide binding arbitration of discipline and discharge; provided, however that, except insofar as they affect compensation, those matters within the jurisdiction of the civil service commission which establish, implement and regulate the civil service merit system shall not be subject to bargaining under this part: the authority, purpose, definitions, administration and organization of the merit system and the civil service commission; policies, procedures and funding of the operations of the civil service commission and its staff; the establishment and maintenance of a classification plan including the classification and reclassification of positions and the allocation and reallocation of positions to the various classifications; status rights; the establishment of standards, procedures and qualifications for employment, recruitment, application, examination, selection, certification and appointment; the establishment, administration and duration of eligible lists; probationary status and the administration of probationary periods, except duration; pre-employment and fitness for duty medical examinations except for the conditions under which referrals for fitness for duty examinations will be made, and the imposition of new requirements; the designation of positions as exempt, temporary, limited tenure, part-time, seasonal or permanent; resignation with satisfactory service and reappointment; exempt entry level appointment of the handicapped; approval of payrolls; and conflict of interest. As to these matters, the Civil Service Commission shall continue to be required to meet and confer pursuant to state law.

Unless and until agreement is reached through bargaining between authorized representatives of the city and county of San Francisco and authorized representatives of recognized employee organizations for the employee classifications covered by this part, or a determination is made through the procedure set forth in section A8.409-4 hereinafter provided,

no existing wages, written terms or conditions of employment, fringe benefits, or long-standing past practices for said employees shall be altered, eliminated or changed except in cases of emergency. This paragraph shall be effective only until the approval of the first memorandum of understanding with a covered employee organization or six months from the effective date of this part whichever occurs sooner.

During the term of an MOU, disputes regarding changes in wages, hours, benefits and other terms and conditions of employment shall not be subject to the impasse procedures provided in this part, but may be subject to grievance arbitration.

No bargaining unit may be included in more than one memorandum of understanding with the city and county of San Francisco. Consistent with charter sections 3.100-2 and 3.103 and subject to the prior written approval of the Human Resources Director which shall not be unreasonably withheld, appointing officers shall have the authority to negotiate agreements with recognized employee representatives. Appointing officers shall consult and coordinate such negotiations with the Human Resources Director. Such memoranda of understanding shall be restricted to non-economic items within the jurisdiction of the department appointing officer which do not conflict with a city-wide memorandum of understanding. Such memoranda of understanding shall come into full force and effect only upon approval by the mayor and thereafter by a majority vote of the board of supervisors or other appropriate governing body. Upon such approval, departmental memoranda of understanding shall be attached as appendices to the employee organization's city-wide memorandum of understanding as negotiated under this part. No memorandum of understanding negotiated pursuant to this paragraph during the term of a city-wide memorandum of understanding shall be subject to the arbitration provisions of this

part until re-negotiation of the employee organization's city-wide memorandum of understanding.

Agreements reached pursuant to this part by the authorized representatives for the city and county of San Francisco, on behalf of its departments, boards and commissions, and the authorized representatives of recognized employee organizations, once adopted by ordinance of the board of supervisors, shall be binding on the city and county of San Francisco, and on its departments, boards, commissions, officers and employees and on the recognized employee organizations and their successors, and all employees in classifications they represent. Except as specifically set forth in this part, said agreements shall supersede any and all other conflicting procedures, provisions and formulae contained in this charter, in the ordinances of the board of supervisors, or in the rules or regulations of the city and county of San Francisco, relating to wages, hours, or other terms and conditions of employment.

#### **A8.409-4 IMPASSE RESOLUTION PROCEDURES**

(a) Subject to Section A8.409-4(g), disputes pertaining to wages, hours, benefits or other terms and conditions of employment which remain unresolved after good faith bargaining between the city and county of San Francisco, on behalf of its departments, boards and commissions, and a recognized employee organization representing classifications of employees covered under this part shall be submitted to a three-member mediation/arbitration board (“the board”) upon the declaration of an impasse either by the authorized representative of the city and county of San Francisco or by the authorized representative of the recognized employee organization involved in the dispute; provided, however, that the arbitration procedures set forth in this part shall not be available to any employee organization that engages in a strike unless the

parties mutually agree to engage in arbitration under this section. Should any employee organization engage in a strike either during or after the completion of negotiations and impasse procedures, the arbitration procedure shall cease immediately and no further impasse resolution procedures shall be required.

(b) Not later than January 20 of any year in which bargaining on an MOU takes place, representatives designated by the city and county of San Francisco and representatives of the recognized employee organization involved in bargaining pursuant to this part shall each select and appoint one person to the board. The third member of the board shall be selected by agreement between the city and county of San Francisco and the recognized employee organization, and shall serve as the neutral chairperson of the board.

In the event that the city and county of San Francisco and the recognized employee organization involved in bargaining cannot agree upon the selection of the chairperson within ten (10) days after the selection of the city and county and employee organization members of the board, either party may then request the American Arbitration Association or California State Mediation Service to provide a list of the seven (7) persons who are qualified and experienced as labor interest arbitrators. If the city and county and the employee organization cannot agree within three (3) days after receipt of such list on one of the seven (7) persons to act as the chairperson, they shall randomly determine which party strikes first, and shall alternately strike names from the list of nominees until one name remains and that person shall then become the chairperson of the board.

(c) Any proceeding convened pursuant to this section shall be conducted in conformance with, subject to, and governed by Title 9 of Part 3 of the California Code of Civil Procedure. The board may hold public hearings, receive evidence from the parties and, at the request of either



party, cause a transcript of the proceedings to be prepared. The board, in the exercise of its discretion, may meet privately with the parties to mediate or mediate/arbitrate the dispute. The board may also adopt other procedures designed to encourage an agreement between the parties, expedite the arbitration hearing process, or reduce the cost of the arbitration process.

(d) In the event no agreement is reached prior to the conclusion of the arbitration hearings, the board shall direct each of the parties to submit, within such time limit as the board may establish, a last offer of settlement on each of the remaining issues in dispute. The board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds by a preponderance of the evidence presented during the arbitration most nearly conforms to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of public and private employment, including, but not limited to: changes in the average consumer price index for goods and services; the wages, hours, benefits and terms and conditions of employment of employees performing similar services; the wages, hours, benefits and terms and conditions of employment of other employees in the city and county of San Francisco; health and safety of employees; the financial resources of the city and county of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst for the board of supervisors; other demands on the city and county's resources including limitations on the amount and use of revenues and expenditures; revenue projections; the power to levy taxes and raise revenue by enhancements or other means; budgetary reserves; and the city's ability to meet the costs of the decision of the arbitration board. In addition, the board shall issue written findings on each and every one of the above factors as they may be

applicable to each and every issue determined in the award. Compliance with the above provisions shall be mandatory.

(e) To be effective the beginning of the next succeeding fiscal year, an agreement shall be reached or the board shall reach a final decision no later than sixty days before the date the Mayor is required to submit a budget to the board of supervisors, except by mutual agreement of the parties. After reaching a decision, the board shall serve by certified mail or by hand delivery a true copy of its decision to the parties. The decision and findings of the arbitration board shall not be publicly disclosed until ten (10) days after it is delivered to the parties. During that ten (10) day period the parties shall meet privately, attempt to resolve their differences, and by mutual agreement amend or modify the decision and findings of the arbitration board. At the conclusion of the ten (10) day period, which may be extended by mutual agreement between the parties, the decision and findings of the arbitration board, as it may be modified or amended by the parties, shall be publicly disclosed for a period of fourteen (14) days after which time the decision shall be final and binding. Except as otherwise provided by this part, the arbitration decision shall supersede any and all other relevant formulae, procedures and provisions of this charter relating to wages, hours, benefits and terms and conditions of employment, and it shall be final and binding on the parties to the dispute. However, the decision of the board may be judicially challenged by either party.

Thereafter, the city and county of San Francisco, its designated officers, employees and representatives and the recognized employee organization involved in the dispute shall take whatever action necessary to carry out and effectuate the final decision.

(f) The expenses of any proceedings convened pursuant to this part, including the fee for the services of the chairperson of the board, the costs of preparation of the transcript of the

proceedings and other costs related to the conduct of the proceedings, as determined by the board, shall be borne equally by the parties. All other expenses which the parties may incur are to be borne by the party incurring such expenses.

(g) The impasse resolution procedures set forth in Section A8.409-4, or in any other provision of the charter, ordinance or state law shall not apply to any rule, policy, procedure, order or practice which relates or pertains to the purpose, goals or requirements of a consent decree, or which is necessary to ensure compliance with federal, state or local laws, ordinances or regulations. In the event the city acts on a matter it has determined relates to or pertains to a consent decree, or in the event the city acts to ensure compliance with federal, state, or local laws, ordinances or regulations, and the affected employee organization disputes said determination, that determination or action shall not be subject to arbitration, but may be challenged in a court of competent jurisdiction.

(h) The impasse resolution procedures set forth in section A8.409-4, or in any other section of the charter, shall not apply to any proposal pertaining to the right to strike.

(i) Charter sections A8.590-1 through A8.590-7 shall remain in full force and effect; provided, however, that the wages and other economic benefits and compensation of all classifications of employees covered by these sections shall be frozen for fiscal year 1995-96 at the rates in effect on June 30, 1995, except that wages and other economic benefits and compensation of all classifications of Airport Police shall be frozen for the fiscal year following expiration of the Memorandum of Understanding covering those classifications in effect on the effective date of this amendment.

(j) Subject to the election provisions of section A8.409-1, Charter sections A8.403 and A8.404 shall remain in full force and effect; provided, however, that the wages and other

economic benefits and compensation of all classifications of employees covered by section A8.404 shall be frozen for fiscal year 1995-96 at the rates in effect on June 30, 1995.

#### **A8.409-5 RETIREMENT BENEFITS**

Notwithstanding any other provision of this part, retirement and death allowances shall continue to be set and adjusted pursuant to Chapter Five of this Article.

However, death benefits and survivor allowances, retirement allowances, adjustments to retirement allowances and adjustments to continuant allowances payable by the retirement system and based on fiscal year 1991-1992 wages and salaries covered by charter section 8.407, shall be calculated for all employees covered by charter sections 8.401 and 8.407 based on the rates certified by the civil service commission to the board of supervisors as though the 1991-1992 salary standardization ordinance vetoed by the mayor had become law. No such payment shall exceed the maximum amount permitted by Section 415 of the Internal Revenue Code of 1986, as amended from time to time, or the maximum amount which would still permit the retirement system to preserve its tax-qualified status under Section 401 of the Internal Revenue Code of 1986, as amended from time to time.

#### **A8.409-6 EMPLOYEE RELATIONS RULES**

Within sixty (60) days of adoption of this amendment, the Mayor shall appoint a panel which after consultation with all parties of interest, shall review the current employee relations ordinance and make recommendations to the Board of Supervisors for such changes as may be necessary to effectuate the purposes of this part.

Such changes shall include the creation of an employee relations board. The duties of the employee relations board shall include hearing and making determinations concerning unfair labor practice charges, disputes regarding representation matters, and unit determinations.

#### **A8.590-1 DECLARATION OF POLICY**

It is hereby declared to be the policy of the City and County of San Francisco that strikes by firefighters, police officers and ~~airport police officers~~ deputy sheriffs are not legally permissible, and that a method should be adopted for peacefully and equitably resolving disputes. It is the further purpose and policy of the City and County of San Francisco that in the event the procedures herein adopted are invoked by the City and County of San Francisco or by a recognized employee organization representing firefighters, police officers or ~~airport police officers~~ deputy sheriffs, that they shall supersede and displace all other formulas, procedures and provisions relating to wages, hours, benefits and other terms and conditions of employment found in this Charter, in the ordinances and resolutions of the City and County of San Francisco, or in the rules, regulations or actions of boards or commissions of the City and County of San Francisco.

#### **A8.590-2 EMPLOYEES COVERED**

These sections A8.590-1 through A8.590-7, inclusive, shall apply to the several ranks of the fire department and police department as provided for in Sections ~~3.542 and 3.531~~ 4.128 and 4.127 of this Charter, respectively, and to all of the classifications of ~~airport police officers~~ deputy sheriffs, jointly referred to in these sections as “firefighters,” “police officers” and ~~“airport police officers.”~~ “deputy sheriffs.”

### **A8.590-3 PROHIBITION AGAINST STRIKES**

If any firefighter, police officer or ~~airport police officer~~ deputy sheriff employed by the City and County of San Francisco engages in a strike as defined by Section A8.346(a) of this charter against the City and County of San Francisco, said employee shall be dismissed from his or her employment pursuant to Charter Section A8.345 and A8.346.

### **A8.590-4 OBLIGATION TO NEGOTIATE IN GOOD FAITH**

Notwithstanding any other provisions of this Charter, or of the ordinances, rules or regulations of the City and County of San Francisco and its departments, boards and commissions, the City and County of San Francisco, through its duly authorized representatives, and recognized employee organizations representing classifications of firefighters, police officers and ~~airport police officers~~ deputy sheriffs shall have the mutual obligation to negotiate in good faith on all matters within the scope of representation as defined by Government Code Sections 3500, et seq., relating to the wages, hours, benefits and terms and conditions of City and County employment, including the establishment of procedures for the resolution of grievances concerning the interpretation or application of any negotiated agreement. Unless and until agreement is reached through negotiations between authorized representatives of the City and County of San Francisco and the recognized employee organization for the classifications of fire department, police department and ~~airport police~~ sheriff department employees, or a determination is made through the impartial arbitration procedure hereinafter provided, no existing benefit, term or condition of employment for said fire department, police department or ~~airport police~~ sheriff department employees shall be altered, eliminated or changed. Agreements

reached by the duly authorized representatives for the City and County of San Francisco, its departments, boards and commissions and the recognized employee organizations pursuant to this Section shall be binding on the City and County of San Francisco, and on its departments, boards, commissions, officers and employees once adopted by the board of supervisors. Said agreements shall supersede any and all other conflicting procedures, provisions and formulas contained in this Charter relating to wages, hours, benefits or terms and conditions of employment.

#### **A8.590-5 IMPASSE RESOLUTION PROCEDURES**

(a) Subject to section A8.590-5(g), disputes or controversies pertaining to wages, hours, benefits or terms and conditions of employment which remain unresolved after good faith negotiations between the City and County of San Francisco, its departments, boards and commissions and a recognized employee organization representing firefighters, police officers or ~~airport police officers~~ deputy sheriffs shall be submitted to a three-member board of arbitrators upon the declaration of an impasse either by the authorized representative of the City and County of San Francisco or by the recognized employee organization involved in the dispute.

(b) Representatives designated by the City and County of San Francisco and representatives of the recognized employee organization involved in the dispute shall each select and appoint one arbitrator to the board of arbitrators within three (3) days after either party has notified the other, in writing, that it desires to proceed to arbitration. The third member of the arbitration board shall be selected by agreement between the City and County of San Francisco and the employee organization, and shall serve as the neutral arbitrator and Chairperson of the Board. In the event that the City and County of San Francisco and the recognized employee

organization involved in the dispute cannot agree upon the selection of the neutral arbitrator within ten (10) days from the date that either party has notified the other that it has declared an impasse, either party may then request the State Mediation and Conciliation Service of the State of California Department of Industrial Relations to provide a list of seven (7) persons who are qualified and experienced as labor arbitrators. If the City and County and the employee organization cannot agree within three (3) days after receipt of such list on one of seven (7) persons to act as the neutral arbitrator, they shall alternately strike names from the list of nominees until one name remains and that person shall then become the neutral arbitrator and chairperson of the arbitration board.

(c) Any arbitration proceeding convened pursuant to this article shall be conducted in conformance with, subject to, and governed by Title 9 of Part 3 of the California Code of Civil Procedure. The arbitration board shall hold public hearings, receive evidence from the parties and cause a transcript of the proceedings to be prepared. The arbitration board, in the exercise of its discretion, may meet privately with the parties, mediate or mede-arb the issues in dispute. The arbitration board may also adopt such other procedures that are designed to encourage an agreement between the parties, expedite the arbitration hearing process, or reduce the costs of the arbitration process.

(d) In the event no agreement is reached prior to the conclusion of the arbitration hearings, the arbitration board shall direct each of the parties to submit, within such time limit as the arbitration board may establish, a last offer of settlement on each of the remaining issues in dispute. The arbitration board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds most nearly conforms to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions



of public and private employment, including, but not limited to: changes in the average consumer price index for goods and services; the wages, hours, benefits and terms and conditions of employment of employees performing similar services; the wages, hours, benefits and terms and conditions of other employees in the City and County of San Francisco; and the formulas provided for in this Charter for the establishment and maintenance of wages, hours, benefits and terms and conditions of employment. The impartial arbitration board shall also consider the financial condition of the City and County of San Francisco and its ability to meet the costs of the decision of the arbitration board.

(e) After reaching a decision, the arbitration board shall mail or otherwise deliver a true copy of its decision to the parties. The decision of the arbitration board shall not be publicly disclosed and shall not be binding until ten (10) days after it is delivered to the parties. During that ten (10) day period the parties shall meet privately, attempt to resolve their differences, and by mutual agreement amend or modify the decision of the arbitration board. At the conclusion of the ten (10) day period, which may be extended by mutual agreement between the parties, the decision of the arbitration board, as it may be modified or amended by the parties, shall be publicly disclosed. Except as limited by Section A8.590-7, the arbitration decision, as it may be modified or amended by the parties, shall supersede any and all other relevant formulas, procedures and provisions of this Charter relating to wages, hours, benefits and terms and conditions of employment; and it shall be final and binding on the parties to the dispute, including the City and County of San Francisco, its commissions, departments, officers and employees. No other actions or procedural steps to confirm or approve the decision of the arbitration board shall be permitted or required; provided, however, that the City and County of San Francisco, its designated officers, employees and representatives and the recognized

employee organization involved in the dispute shall take whatever action that is necessary to carry out and effectuate the decision of the arbitration board.

(f) The expenses of any arbitration proceedings convened pursuant to these Charter sections, including the fee for the services of the chairperson of the arbitration board, the costs of preparation of the transcript of the proceedings and other costs related to the conduct of the proceedings, as determined by the arbitration board, shall be borne equally by the parties. All other expenses which the parties may incur are to be borne by the party incurring such expenses.

(g) The impasse resolution procedures set forth in Section A8.590-5 shall not apply to:

1. any dispute or controversy concerning the San Francisco Police Department's crowd control policies;

2. any procedures or practices relating to the processing and disposition of complaints handled by the Office of Citizens' Complaints; or matters relating to disciplinary procedures that apply to disciplinary actions involving members of the San Francisco police department and fire department covered by these sections; or matters covered by Charter section A8.343; and

3. any rule, policy, procedure, order or practice which relates or pertains to the purpose, goals or requirements of a consent decree, or which is necessary to ensure compliance with federal, state or local anti-discrimination laws, ordinances or regulations.

In the event the City acts on a matter it has determined relates to or pertains to a consent decree, or in the event the City acts to ensure compliance with federal, state, or local anti-discrimination laws, ordinances or regulations, and the affected employee organization disputes said determination, that determination or action shall not be subject to arbitration.

## **A8.590-6 RETIREE BENEFIT ADJUSTMENTS**

No agreement reached by the parties and no decision of the arbitration board shall reduce the vested retirement benefits of retirees or employees of the fire department, police department or of the sheriff department ~~airport police officers~~. Retirement and death allowances shall continue to be set and adjusted pursuant to Chapter Five of this Article, except that the amount to which said allowances are set and adjusted for uniformed employees of the police department and fire department shall not be less than the amount said allowances would be if the salaries of the uniformed forces in the police and fire departments continued to be set pursuant to Charter Section 8.405. Any agreement or decision of the arbitration board altering vested retirement benefits shall be subject to the written approval of the individual beneficiaries thereof.

## **A8.590-7 PRESERVATION OF TAX BENEFITS**

(a) Sections A8.590-1 through A8.590-7, in their entirety, shall be subject to and limited by charter section A8.500 and any ordinances enacted pursuant thereto. Sections A8.590-1 through A8.590-7 shall be effective only to the extent that benefits authorized by or authorized pursuant to those sections do not have an adverse consequence on the tax treatment of benefits provided to any employee of the city and county.

(b) Any agreement reached by the parties or any decision of the arbitration board which authorizes a modification of any aspect of the retirement system or of any aspect of the provision for or delivery of retirement benefits shall not become effective until the following occur:

1. The retirement board, acting in its fiduciary capacity, forwards to the board of supervisors certification that implementation of the modifications presents no risk to the tax-qualified status of the retirement system. Such certification shall be based upon the advice of the

general manager, the actuary of the retirement system, and any outside consultants that they may in their discretion retain; and,

2. After having received the certification referred to in the previous paragraph and after having made its own independent finding based on clear and convincing evidence that implementation of the modifications presents no risk to the tax-qualified status of the retirement system and will not increase the taxes of city and county employees, the board of supervisors, by a three-quarters vote, enacts an ordinance making the modifications effective.

(c) Costs of any outside consultants retained by the city and county pursuant to this section shall be borne equally by the city and county and by the bargaining units concerned.

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

By: \_\_\_\_\_  
MARTIN R. GRAN  
Deputy City Attorney