

1 [Board Response to the 2009-2010 Civil Grand Jury Report Entitled "Pension Tsunami: The
2 Billion Dollar Bubble"]

3 **Resolution responding to the Presiding Judge of the Superior Court on the findings**
4 **and recommendations contained in the 2009-2010 Civil Grand Jury Report entitled**
5 **"Pension Tsunami: The Billion Dollar Bubble" and urging the Mayor to cause the**
6 **implementation of accepted findings and recommendations through the department**
7 **heads and through the development of the annual budget.**

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9 WHEREAS, Under California Penal Code Section 933 et seq., the Board of
10 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
11 Court on the findings and recommendations contained in Civil Grand Jury Reports; and,

12 WHEREAS, In accordance with Penal Code Section 933.05(c), if a finding or
13 recommendation of the Civil Grand Jury addresses budgetary or personnel matters of a
14 county agency or a department headed by an elected officer, the agency or department head
15 and the Board of Supervisors shall respond if requested by the Civil Grand Jury, but the
16 response of the Board of Supervisors shall address only budgetary or personnel matters over
17 which it has some decision making authority; and,

18 WHEREAS, The 2009-2010 Civil Grand Jury Report Entitled "Pension Tsunami: The
19 Billion Dollar Bubble" is on file with the Clerk of the Board of Supervisors in File No. 101131,
20 which is hereby declared to be a part of this resolution as if set forth fully herein; and,

21 WHEREAS, The Civil Grand Jury has requested that the Board of Supervisors respond
22 to Findings A1, A2, B1, B2, B3, C1, C2, D1, E1, F1, and F2 as well as Recommendations A1,
23 B1, B2, B3, C1, C2, D1, and E1 contained in the subject Civil Grand Jury report; and,

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1 WHEREAS, Finding A1 states: “San Francisco’s Defined Benefit Plan retirement
2 benefits are financially unsustainable without significant cutbacks in jobs and city services.”;
3 and,

4 WHEREAS, Recommendation A1 states: “The San Francisco City Charter should be
5 amended, as follows: For new employees, the pension multiplier should be set at a level to
6 provide fiscally sound future pensions – fair to employees and taxpayers alike. For new
7 Miscellaneous employees, the retirement age to receive full benefits should be comparable to
8 that of Social Security and/or private sector recipients, and be fair to employees and
9 taxpayers alike. The Jury recommends that City officials consider a hybrid retirement plan with
10 components of both Defined Benefit and Defined Contribution, 401(k)-type, in the next
11 negotiated contract in 2012. No cost-of-living or other increase should be awarded to retirees
12 unless the pension fund is found through a multi-year analysis to be actuarially sound and
13 fully funded. SFERS and actuaries for the City should research other public and private sector
14 data to determine fair pension benefits and the results should be reported at SFERS board
15 meetings and to the Board of Supervisors to lead to a sustainable plan.”; and,

16 WHEREAS, Finding A2 states: “For current employees and retirees, pension benefits
17 are guaranteed by City Charter and protected by Federal and State constitutional provisions
18 prohibiting impairment of contract.”; and,

19 WHEREAS, Finding B1 states: “The City’s pension and health benefit costs are
20 expected to increase from approximately \$400 million for the current fiscal year to nearly \$1
21 billion in five years, a billion-dollar bubble that the City cannot realistically afford. Current
22 pension rules are producing an ever-increasing employer contribution rate, from 0% in 2004,
23 to 9.49% in 2010 and to 30% by 2015. This will impact the General Fund, and could make it
24 very difficult for the City to sustain funding for police and fire, public health, human services,
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1 cultural and artistic programs. It will disproportionately affect the poor and the needy, and tax
2 the middle class.”; and,

3 WHEREAS, Recommendation B1 states: “The Mayor and the Board of Supervisors
4 should prepare a plan within the next year to fund the projected \$1 billion in pension costs.”;
5 and,

6 WHEREAS, Finding B2 states: “The Department of Human Resources and SEIU Local
7 1021 entered into an agreement that Miscellaneous employees would pay their own 7.5%
8 contribution, and, in return, the base wages were increased by 6%, effective July 1, 2010.
9 There was no actuarial valuation to estimate the resulting pension liability for the City. This
10 agreement resulted in a substantial increase in pension obligations for the City without voter
11 approval.”; and,

12 WHEREAS, Recommendation B2 states: “The Department of Human Resources
13 (DHR) should not enter into agreements with the employee unions which increase the City’s
14 future pension obligations without voter approval. DHR should engage the City’s professional
15 Actuary to investigate any increase in pensionable compensation.”; and,

16 WHEREAS, Finding B3 states: “2,384 retirees receive pensions greater than \$75,000.”;
17 and,

18 WHEREAS, Recommendation B3 states: “DHR should compare the retirement benefits
19 in other California cities to determine whether the pension benefits are excessive. The results
20 should be reported to the Mayor and Board of Supervisors.”; and,

21 WHEREAS, Finding C1 states: “Proposition H, passed by voters in 2002, requires that
22 if the City’s contribution rate to the pension fund exceeds 0%, then the City and the Safety
23 employee unions must “meet and confer” to implement a “cost-sharing” arrangement to
24 reduce the cost impact of the employer’s contributions on the City’s General Fund. The City’s
25 contribution rate has exceeded 0% for fiscal 2004-05 to the present. The City and County of

1 San Francisco is not in compliance with the requirements of the City Charter resulting from
2 the passage of Proposition H. There have been no “meet and confer” sessions to establish a
3 “cost-sharing” arrangement. The City Attorney has not mandated that the SFERS Board
4 comply with these requirements of the Charter Amendment resulting from Proposition H.”;
5 and,

6 WHEREAS, Recommendation C1 states: “The City Attorney should initiate legal action
7 against the SFERS Board to enforce the requirements of the Charter amendment to “meet
8 and confer” and “cost-sharing” provisions of Proposition H, as stipulated in Charter § A8.595-
9 11 (e). The Jury recommends that the City Attorney and/or his representatives present to the
10 Board of Supervisors and SFERS Board the following documents regarding § A8.595-11 (e)
11 of the City Charter:

- 12 1. A legal opinion on the charter section.
- 13 2. Documentation regarding the dates and times that the City and the Police and
14 Firefighters unions met to confer and to implement a cost-sharing arrangement as
15 required in the section.
- 16 3. A legal opinion regarding fiduciary duties of the SFERS Board to comply with it.
- 17 4. A legal opinion regarding SFERS duty to revise the Safety employee contribution rate
18 to comply with the Charter section.
- 19 5. A legal opinion regarding possible remedies to enforce compliance.”; and,

20 WHEREAS, Finding C2 states: “The unfunded pension liability for Proposition H as of
21 July 1, 2009, was approximately \$276 million, amortized over thirteen years to about \$26
22 million annually. “; and,

23 WHEREAS, Recommendation C2 states: “The City and Safety employees should
24 establish an arrangement to share the annual \$26 million cost as required by the City
25 Charter.”; and,

1 WHEREAS, Finding D1 states: “The soon-to-be retired have been able to increase final
2 pensionable compensation to inflate retirement benefits. The Jury found instances of nursing
3 supervisors being allowed to have two concurrent jobs and earn pensions on both, sometimes
4 referred to as pension-pyramiding.”; and,

5 WHEREAS, Recommendation D1 states: “San Francisco should take steps to curb
6 abuses from pension spiking by limiting the final pensionable income an employee can claim
7 at retirement and from pension-pyramiding. The Jury suggests the following:

- 8 • Use a three-year average to determine pensionable income, similar to Federal rules.
- 9 • Limit final pensionable compensation to 120% of the rank pay rate as determined by
10 Civil Service job classification.
- 11 • The Controller should perform an independent review of pensions to determine
12 whether the practice of pension spiking is ongoing.
- 13 • Disallow employees from drawing pensions from two simultaneous City jobs.
- 14 • Pensionable compensation should not include pay for two separate pay types, known
15 as pension-pyramiding.”; and,

16 WHEREAS, Finding E1 states: “For current employees and retirees, health benefits are
17 “vested” after 10 years. Unlike pensions, health benefits for most City workers are not pre-
18 funded, but are paid directly out of the City’s General Fund. In 2001, the City expended \$17
19 million on retiree health care. By 2007, that amount had grown to \$130 million and continues
20 to rise. Mercer Consulting reported on June 30, 2008, that the City’s unfunded liability for
21 retiree health benefits was \$4 billion.”; and,

22 WHEREAS, Recommendation E1 states: “Department of Human Resources and
23 collective bargaining units should meet and confer to determine a cost-sharing arrangement to
24 pre-fund the \$4 billion unfunded liability for retiree health care obligations.”; and,

1 WHEREAS, Finding F1 states: “There are seven SFERS board members: three are
2 elected by the members; three are appointed by the Mayor; and the seventh Commissioner
3 comes from the ranks of the Board of Supervisors. One of the three public members has not
4 been appointed for at least six months. “; and,

5 WHEREAS, Finding F2 states: “Minutes of the SFERS board meetings record
6 attendance of the board members. When the members representing the public are absent, the
7 interest of the public is eroded.”; and,

8 WHEREAS, in accordance with Penal Code Section 933.05(c), the Board of
9 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
10 Court on Findings A1, A2, B1, B2, B3, C1, C2, D1, E1, F1, and F2 as well as
11 Recommendations A1, B1, B2, B3, C1, C2, D1, and E1 contained in the subject Civil Grand
12 Jury report; now, therefore, be it

13 RESOLVED, That the Board of Supervisors reports to the Presiding Judge of the
14 Superior Court that it partially agrees with Finding A1 of the 2009-2010 Civil Grand Jury
15 Report Entitled “Pension Tsunami: The Billion Dollar Bubble” because, although prior voter
16 approved propositions have impacted future pension liabilities, additional solutions will be
17 required in the future to avoid significant trade offs in the City’s budget; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors agrees with Finding A2; and,
19 be it

20 FURTHER RESOLVED, That the Board of Supervisors, partially agrees with Finding
21 B1 because while the Civil Grand Jury correctly reports that the San Francisco Employee
22 Retirement System’s actuary projects employer contribution rates of 30 percent in 2015, such
23 a projection is only one of many projected contribution scenarios provided by the actuary
24 ranging from 21 percent to 33 percent employer contribution in 2015; and, be it

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1 FURTHER RESOLVED, That the Board of Supervisors incorporates and adopts as its
2 own the response of the Mayor on Finding B2; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors agrees with Finding B3; and,
4 be it

5 FURTHER RESOLVED, That the Board of Supervisors incorporates and adopts as its
6 own the response of the Mayor and the Department of Human Resources on Finding C1; and,
7 be it

8 FURTHER RESOLVED, That the Board of Supervisors agrees with Finding C2; and,
9 be it

10 FURTHER RESOLVED, That the Board of Supervisors incorporates and adopts as its
11 own the response of the Mayor on Finding D1; and, be it

12 FURTHER RESOLVED, That the Board of Supervisors incorporates and adopts as its
13 own the response of the Mayor and the Department of Human Resources on Finding E1; and,
14 be it

15 FURTHER RESOLVED, That the Board of Supervisors agrees with Findings F1 and F2
16 and, be it

17 FURTHER RESOLVED, That the Board of Supervisors incorporates and adopts as its
18 own the response of the Mayor on Recommendation A1, except for the third paragraph of the
19 Mayor's response regarding hybrid pension models because the Board of Supervisors
20 considers the hybrid pension model worthy of further consideration; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors agrees with Recommendation
22 B1; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors disagrees with
24 Recommendation B2 and incorporates and adopts the response of the Department of Human
25 Resources; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors agrees with Recommendation
2 B3; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors disagrees with
4 Recommendation C1 and incorporates and adopts as its own the response of the City
5 Attorney; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors agrees with Recommendation
7 C2 and incorporates and adopts as its own the responses of the City Attorney and the
8 Department of Human Resources; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors finds that Recommendation D1
10 requires further analysis; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors agrees with Recommendation
12 E1; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors urges the Mayor to cause the
14 implementation of accepted findings and recommendations through his/her department heads
15 and through the development of the annual budget.

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