

[Changes to Public Utilities Commission related to water and sewer]

CHARTER AMENDMENT

PROPOSITION _____

Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco to amend the Charter of said city and county by creating a new Article VIII B by adding Sections 8B.120 through 8B.128, amending Section 9.111-1 and 4.112 and deleting Section 16.103 to establish exclusive control of water and clean water utilities; rate setting standards and methods; transfer of surplus funds between utilities; independence in contracting, purchasing, hiring and selection of providers; reporting and planning requirements; revenue bonds or other financing methods.

The Board of Supervisors of the City and County of San Francisco hereby submits to the qualified electors of said city and county at an election to be held therein on November 5, 2002, a proposal to amend the Charter of said city and county by creating a new Article VIII B Sections 8B.120 through 8B.128, amending Sections 9.111-1 and 4.112 and deleting Section 16.103 to read as follows:

Note: Additions are single-underline italics Times New Roman;
Deletions are ~~striketrough italics Times New Roman~~.

Section 1. The San Francisco Charter is hereby amended by creating a new Article VIII B: Public Utilities, to read as follows:

SEC. 8B.120. PREAMBLE

The Public Utilities Commission operates the Water, Clean Water and Power Utilities of the City and County of San Francisco. Hetch Hetchy Water and Power System is an irreplaceable asset of the people of the City and County of San Francisco. The system is fundamental to the economic vitality of San Francisco and the Bay Area. The voters of the City and County of San Francisco are committed to preserving and protecting the system and the extraordinary quality of the water from Yosemite. The City's Hetch Hetchy system is one of the few in the country that does not require filtering. The voters find that the protection, maintenance and repair of the system are among their highest priorities.

San Francisco faces an unprecedented challenge: to restore its aging water system to ensure a reliable Bay Area water supply through the next century. Repairs must be accomplished as quickly as possible to avoid system outages, which could be caused by natural disasters such as earthquake. In planning for its future needs and those of its wholesale customers, the City must promote water conservation and responsible stewardship of its natural resources. The effectiveness of the City's Public Utilities Commission, which has jurisdiction over the system, is essential to achieving these goals.

In addition, San Francisco must upgrade and repair its clean water system to meet changes in state and federal water quality requirements, and to ensure reliability of the system, parts of which are outdated or aged. The voters find that the operation of the clean water system should not unnecessarily place a disproportionate environmental burden on any community.

This measure is intended to enhance public confidence in the City's stewardship of public utilities by:

1. Clarifying that the Public Utilities Commission has exclusive control of water, clean water and power assets owned or maintained by the City and County of San Francisco;
2. Establishing rates sufficient to meet operation, maintenance and financial needs of the system based on costs and sound budgeting and auditing procedures to protect retail ratepayers and reduce interest paid on bonds and other indebtedness while ensuring public review;
3. Establishing the Public Utilities Commission as an independent revenue department not subject to undue financial pressures to contribute to the City's general fund;
4. Permitting the Public Utilities Commission to exercise greater control in selecting providers of goods and services;
5. Requiring the development of long term Capital, Financial and Strategic Plans to ensure that the utilities are operated efficiently in accordance with best utility practice;
6. Authorizing the Public Utilities Commission to independently enter into contracts and to purchase supplies and equipment without delay or political interference;
7. Vesting in the General Manager greater discretion in the hiring, compensation, training and assignment of employees and managers so that the system is operated in an efficient and effective manner;
8. Giving the Public Utilities Commission the ability to finance needed capital improvements through revenue bonds or other financing methods consistent with the powers of other major public utilities in California.
9. Promoting labor stability to ensure that the Capital Improvement Plan is

completed expeditiously and efficiently.

SEC. 8B.12I. PUBLIC UTILITIES COMMISSION

(a) The Public Utilities Commission shall have exclusive charge of the construction, management, supervision, maintenance, extension, expansion, operation, use and control of all water, clean water and energy supplies and utilities of the City as well as the real, personal and financial assets, that are under the Commission's jurisdiction or assigned to the Commission under Section 4.132.

(b) Except as expressly provided in this Article, the Public Utilities Commission shall comply with all of the restrictions and requirements imposed by applicable ordinances of the City and County, including ordinances prohibiting discrimination of any kind in employment and contracting, such as Administrative Code Chapters 12B et seq., as amended from time to time.

(c) The Public Utilities Commission may enter into Joint Powers Agreements with other public entities in furtherance of the responsibilities of the Commission.

(d) The Public Utilities Commission may enter into memoranda of understanding with existing City and County departments to carry out any of its powers and duties. Any such memoranda of understanding shall establish performance standards for the department providing the services to the Public Utilities Commission, including measurable standards for the quality, timeliness, and cost of the services provided. The Public Utilities Commission may not exercise any powers and duties of the Controller or the City Attorney and shall enter into memoranda of understanding with the Controller and the City Attorney for such services.

(e) The Public Utilities Commission shall:

(1) Appoint a General Manager, who shall serve at the pleasure of the Commission. The General Manager shall be employed under an individual contract. His or her compensation shall be comparable to the compensation of the chief executive officers of the public water, wastewater and/or power systems in the United States that the Commission, after an independent survey, determines most closely resemble the Public Utilities Commission in size, mission, and complexity. In addition, the Public Utilities Commission shall provide an incentive compensation bonus plan for the General Manager based on performance goals established by the Commission.

(2) Appoint an executive secretary, who shall be responsible for administering the affairs of the Commission and who shall serve at the pleasure of the Commission.

(f) The General Manager shall appoint all subordinate personnel of the Public Utilities Commission. The General Manager shall have the authority to organize and reorganize the department. The General Manager shall adopt rules and regulations governing all matters within the jurisdiction of the department subject to section 4.102 as applicable.

(g) The Public Utilities Commission and its individual members, shall deal with administrative matters solely through the General Manager. The Public Utilities Commission may not dictate, suggest, or otherwise interfere in administrative affairs other than through the General Manager and any violation of this section shall constitute official misconduct; provided, however, that nothing herein contained shall restrict the commissioners' powers of hearing and inquiry.

h) Except to the extent otherwise provided in this Article, the Public Utilities

Commission shall be subject to the provisions of this Charter generally applicable to boards, commissions, and departments of the City and County.

SEC.8B.122. GOALS AND OBJECTIVES RELATED TO WATER AND CLEAN WATER

(a) The Commission shall develop, periodically update and implement programs to achieve goals and objectives consistent with the following:

(1) Provide water and clean water service to San Francisco residents, businesses, City departments and wholesale customers while maintaining stewardship of the system by the voters of the City and County of San Francisco;

(2) Establish rates sufficient to meet operation, maintenance and financial needs of the system based on costs and sound budgeting and auditing procedures to protect retail ratepayers and reduce interest paid on bonds and other indebtedness while ensuring public review;

(3) Provide reliable water and clean water services and optimize the system's ability to withstand natural and manmade disasters;

(4) Protect and manage lands and natural resources used by the Agency to provide utility services consistent with applicable laws. The operation of hydroelectricity facilities shall be conducted in a manner such that generation of hydroelectricity power causes no reasonably anticipated adverse impacts on water service;

(5) Develop and implement programs to increase and to monitor water use efficiency system-wide through a variety of cost-effective programs accompanied by public education/outreach and incentives

(6) Develop and implement a comprehensive set of environmental justice

guidelines to ensure consistency of in-City project and facility siting with environmental justice;

(7) Create opportunities for meaningful community participation in development and implementation of the Commission's policies and programs.

SEC.8B.123. FINANCIAL MANAGEMENT, PLANNING AND REPORTING

The General Manager shall appoint a Chief Financial Officer, who shall serve at the pleasure of the General Manager. The Public Utilities Commission shall be exempt from the budget provisions of Article IX of this Charter.

(A) Planning and Reporting

The Public Utilities Commission shall annually hold public hearings to review, update and adopt:

(1) A Long-Term Capital Improvement Program, which shall include the Commission's best estimate of the capital projects that it intends to begin and complete and projects that will be pending during the next 10-year period; cost estimates for each project; and schedules for planning, environmental review, design, construction and completion. In selecting projects and adopting the Capital Improvement Program, the Commission shall take into account environmental justice issues.

(2) A Long-Range Financial Plan, covering a minimum of the next 10- year period, which shall include its best estimate of operation and maintenance expenses, repair and replacement costs, debt-service, debt service coverage, bond issuance costs, governmental loan obligations and rate increase requirements.

(3) A Long-Term Strategic Plan which shall set forth the strategic goals and objectives necessary to ensure the long-term viability of its enterprises, and the effective delivery of services to the residents of San Francisco and all of its customers. The Plan shall take into account the Goals and Objectives set forth in this Article, and establish performance standards, service levels, initiatives and any other measures, as appropriate.

The Capital Improvement Program and Long-Range Financial Plan shall serve as a basis and supporting documentation for determining the Commission's capital budget and the issuance of revenue bonds, governmental loans and other forms of indebtedness under this Charter.

(B) Citizens' Advisory Committee

The Board of Supervisors, in consultation and in coordination with the General Manager of the Public Utilities Commission, may establish by ordinance one Citizens Advisory Committee to provide recommendations to the General Manager of the Public Utilities Commission and the Board of Supervisors; provided, however, the Committee shall not duplicate the activities of any other advisory committee.

(C) Budget

(1) Not later than March 1 of each year, after professional review and public hearing, the Public Utilities Commission shall submit its proposed operating and capital budget for the next fiscal year to the Mayor and the Board of Supervisors for their review and consideration. The Public Utilities Commission shall propose a base budget that is balanced based upon utility revenues without the need for city general funds, but may include rate increases and decreases, and changes in service. The Mayor shall submit the base budget to the

Board of Supervisors, without change. Should the Public Utilities Commission request any City general funds, it shall submit an augmentation request for those funds in the standard budget process and subject to normal budgetary review and amendment.

(2) At the time the budget is adopted, the Public Utilities Commission shall certify that the budget is adequate in all respects to make substantial progress towards meeting the goals, objectives, and performance standards established for the fiscal year covered by the budget.

(3) No later than July 1, the Board of Supervisors may allow the Public Utilities Commission's base budget to take effect without any action on its part or it may reject but not modify the Public Utilities Commission's base budget by a two-thirds' vote. Any request for augmentation funding shall be approved, modified, or rejected under the general provisions of Article IX.

(D) The Public Utilities Commission may at any time adopt a supplemental budget to modify the base budget based upon utility revenues without the need for City General Funds. The same approval process shall apply to any supplemental budget.

8B.124. WATER AND CLEAN WATER REVENUE BONDS

Notwithstanding, and in addition to, the authority granted under Charter Section 9.107, the Public Utilities Commission is hereby authorized to issue revenue bonds, including notes, commercial paper or other forms of indebtedness, when authorized by resolution of the Board of Supervisors, for the purpose of reconstructing, replacing, expanding, repairing or improving water facilities or clean water facilities or combinations of water, clean water or power facilities under the jurisdiction of the Public Utilities Commission. Notwithstanding any other provision

of this Charter or of any ordinance of the City and County, the Board of Supervisors may take any and all actions necessary to authorize, issue and repay such bonds, including, but not limited to, modifying schedules of rates and charges to provide for the payment and retirement of such bonds, subject to the following conditions;

(a) Certification by an independent engineer retained by the Public Utilities

Commission that:

(1) the projects to be financed by the bonds, including the prioritization, cost estimates and scheduling, meet utility standards; and

(2) that net revenue after payment of operating and maintenance expenses will be sufficient to meet coverage and other indenture or resolution requirements, including debt service on the bonds to be issued and repair and replacement costs.

(b) Certification by the San Francisco Planning Department that facilities under the jurisdiction of the Public Utilities Commission funded with such bonds will comply with applicable requirements of the California Environmental Quality Act.

Except as expressly provided in this Charter, all revenue bonds may be issued and sold in accordance with state law or any procedure provided for by ordinance of the Board of Supervisors.

SEC.8B.125. RATES

Notwithstanding Charter sections 2.109, 3.100 and 4.102 or any ordinance (including, without limitations, Administrative Code Appendix 39), the Public Utilities Commission shall set rates, fees and other charges in connection with providing the utility services under its jurisdiction, subject to rejection -- within 30 days of submission -- by resolution of the Board of

Supervisors. If the Board of Supervisors fails to act within 30 days the rates shall become effective without further action.

In setting retail rates, fees and charges the Commission shall:

1. Establish rates, fees and charges at levels sufficient to improve or maintain financial condition and bond ratings at or above levels equivalent to highly rated utilities of each enterprise under its jurisdiction, meet requirements and covenants under all bond resolutions and indentures, (including, without limitation, increases necessary to pay for the retail water customers' share of the debt service on bonds and operating expenses of any state financing authority such as the Regional Water System Financing Authority), and provide sufficient resources for the continued financial health, including appropriate reserves, operation, maintenance and repair of each enterprise consistent with good utility practice;
2. Retain an independent rate consultant to conduct rate and cost of service studies for each utility at least every five years;
3. Set retail rates, fees and charges based on the cost of service;
4. Conduct all studies mandated by applicable state and federal law to consider implementing connection fees for water and clean water facilities servicing new development;
5. Conduct studies of rate-based conservation incentives and/or lifeline rates and similar rate structures to provide assistance to low income users, and take the results of such studies into account when establishing rates, fees and charges, in accordance with applicable state and federal laws;
6. Adopt annually a rolling 5-year forecast of rates, fees and other charges; and

7. Establish a Rate Fairness Board consisting of seven members: the Treasurer or his or her designee; the Controller or his or her designee; the Director of the Mayor's Office of Public Finance or his or her designee; two residential city retail customers, one appointed by the Mayor and one by the Board of Supervisors; two city retail business customers, a large business customer appointed by the Mayor and a small business customer appointed by the Board of Supervisors. The Rate Fairness Board may:

- i. Review the five-year rate forecast;
- ii. Hold one or more public hearings with respect to annual rate recommendations before the Public Utilities Commission adopts rates;
- iii. Provide a report and recommendations to the Public Utilities Commission on the rate recommendations; and
- iv. In connection with periodic rate studies, submit to the Public Utilities Commission rate policy recommendations for the Commission's consideration, including recommendations to reallocate costs among various retail utility customer classifications, subject to any outstanding bond requirements.

SEC. 8B.126. PERSONNEL AND MERIT SYSTEM

(a) Effective July 1, 2003, the Public Utilities Commission may select an alternate Worker's Compensation provider subject to approval by the Board of Supervisors.

(b) The Public Utilities Commission may create classifications for employees under its jurisdiction. Such classifications shall be subject to the civil service provisions of the Charter unless exempted under Section 10.104 or section (c) below.

(c) The Public Utilities Commission may create new positions exempt from the civil service system for managerial employees in addition to those exempt positions provided in Section 10.104; provided, however, the total number of such exempt new positions shall not exceed 2.5 percent (not to exceed a total of 50 positions or the number of exempt positions provided under 10.104 whichever is higher) of the Public Utilities Commission's total workforce, exclusive of the exempt positions provided in Section 10.104. The Public Utilities Commission may enter into individual employment contracts with any exempt management personnel. Persons serving in exempt managerial positions shall serve at the pleasure of the General Manager. Such exempt management employees, to the extent they request and are entitled to placement in a bargaining unit, shall not be placed in the same bargaining units as non-exempt employees, employees supervised by the exempt management employees; or other exempt employees of other departments of the City. This provision shall not be utilized to eliminate personnel holding existing permanent civil service managerial positions on the effective date of this measure.

(d) In addition to the base pay established in collective bargaining agreements, the Public Utilities Commission shall have authority to negotiate and approve incentive bonuses based upon the achievement of the performance goals and milestones established by the Commission.

(e) For purposes of approving individual employment contracts and incentive pay for any classification of Public Utilities employee, the Public Utilities Commission shall exercise all powers of the City and County, the Board of Supervisors, the Mayor, and the Director of Human Resources under this charter.

SEC. 8B.127. CONTRACTING AND PURCHASING

Notwithstanding Charter Section 9.118 or any ordinance, the Public Utilities Commission shall have the sole authority to enter into agreements for the purchase of water; the sale of water to wholesale customers; and agreements necessary to implement Joint Powers Agreements with any wholesale water customer. The Public Utilities Commission shall have the sole authority to enter into construction related personal services contracts and design/build contracts for projects set forth in an adopted Capital Improvement Program not to exceed 50 million dollars (adjusted annually to reflect any increases necessary to match a published price index to be chosen by the Controller) and a ten year term.

Notwithstanding Charter Sections 9.118 and 3.104 or any ordinance, the Public Utilities Commission shall have the sole authority to make all construction related purchases of equipment and supplies.

Notwithstanding Charter Section 9.118 or any ordinance, the Public Utilities Commission shall have the sole authority to approve change orders and contract amendments of 1 million dollars or 40% of the total amount of the original contract, whichever is greater.

In order to promote labor stability and to ensure the Capital Improvement Program is completed expeditiously and efficiently, the Public Utilities Commission is authorized, to the extent legally appropriate, to enter into project labor agreements covering significant capital projects.

SEC. 8B.128. UTILITY REVENUES AND EXPENDITURES

(a) Receipts from each utility operated by the Public Utilities Commission shall be paid into the City and County treasury and maintained in a separate fund for each such utility.

Appropriations from such funds shall be made for the following purposes for each such utility in the order named:

1. For the payment of operating expenses, pension charges and proportionate payments to such compensation and other insurance and accident reserve funds as the Commission may establish or the Board of Supervisors may require;

2. For repairs and maintenance;

3. For reconstruction and replacements as hereinafter described;

4. For the payment of interest and sinking funds on the bonds issued for acquisition, construction or extension;

5. For extensions and improvements; and

6. For a surplus fund.

For any utility with outstanding bonds for which the bond indenture or bond resolution requires different payment priorities, the indenture or resolution priorities will control over the priorities set forth in this section.

(b) For the purpose of providing funds for reconstruction and replacements due to physical and functional depreciation of each of the utilities under the jurisdiction of the Commission, the Commission must create and maintain a reconstruction and replacement fund for each such utility, sufficient for the purposes mentioned in this section, and in accordance with an established practice for utilities of similar character, which shall be the basis for the amount necessary to be appropriated annually to provide for said reconstruction and replacements.

(c) If, at the end of any fiscal year, the Controller certifies that excess surplus funds of a utility exist, from hydropower assets or water or clean water assets in excess of 25 percent

of the total expenditures of such utility in the previous fiscal year for costs of operation, repair and maintenance, the Public Utilities Commission may transfer that surplus revenue, in whole or in part, to any other utility system under the Commission's jurisdiction on the effective date of this section.

(2) Any surplus revenue which the Public Utilities Commission unanimously finds is not required for utility purposes pursuant to sections (a) and (b) of this section may be transferred to the General Fund by the Public Utilities Commission with the concurrence of three-fourths of the Board of Supervisors upon making all of the following findings of fact and judgment:

(a) That a surplus exists or is projected to exist after meeting the requirements of this section;

(b) That there is no unfunded operating or capital program that by its lack of funding could jeopardize health, safety, water supply or power production;

(c) That there is no reasonably foreseeable operating contingency that cannot be funded without General Fund subsidy; and

(d) That such a transfer of funds in all other respects reflects prudent utility practice.

The Commission shall make such findings having received reports and an affirmative recommendation from the General Manager and a public hearing, which shall have received no less than 30 days of public notice.

(e) The provisions of subsection (c) above shall not be applied in a manner that would be inconsistent with the provisions of any outstanding or future indentures, resolutions, contracts or other agreements of the City and County relating to bonded

indebtedness issued in connection with the utility, or with any applicable state or federal laws.

Section 2. The San Francisco Charter is hereby amended by amending section 9.111-1 and 4.112 as follows:

SEC. 9.111-1. ~~ENVIRONMENT~~ LOANS

Notwithstanding any other provision in the Charter, the City and County and its commissions shall have the authority to enter into loans (or other indebtedness) directly or indirectly with, or have any of its indebtedness guaranteed or subsidized by, the State of California or United States of America. All loans or other indebtedness must comply with the following provisions.

a. proceeds must be used for projects which protect, preserve, or enhance water or clean water facilities or resources or the environment; and

b. must be the most cost-effective method of financing a project; and

c. shall be subject to the approval of the Board of Supervisors; and

~~d. (i) cannot increase the amount of approved debt; or~~

(ii) in the case of a refinancing of revenue or general obligation bonds of the City and County or any commission, must result in net debt service savings to the City and County or commission, calculated as provided by ordinance.

For purposes of this Section 9.111-1, the determination of what constitutes the most cost-effective method of financing shall be certified by the Controller. (Added June 2, 1998).

SEC. 4.112. PUBLIC UTILITIES COMMISSION

The Public Utilities Commission shall consist of five members appointed by the Mayor,

pursuant to Section 3.100, for four-year terms. Members may be removed by the Mayor only pursuant to Section 15.105.

~~The Commission shall have charge of the construction, management, supervision, maintenance, extension, operation, use and control of all water and energy supplies and utilities of the City as well as the real, personal and financial assets, which are under the Commission's jurisdiction on the operative date of this Charter, or assigned pursuant to Section 4.132.~~

Section 3. The San Francisco Charter is hereby amended by deleting section 16.103 as follows:

~~SEC. 16.103. UTILITY REVENUES AND EXPENDITURES~~

~~(a) — Receipts from each utility operated by the Public Utilities Commission shall be paid into the City and County treasury and maintained in a separate fund for each such utility. Appropriations from such funds shall be made for the following purposes for each such utility in the order named, viz.:~~

~~1. — For the payment of operating expenses, pension charges and proportionate payments to such compensation and other insurance and accident reserve funds as the Commission may establish or the Board of Supervisors may require;~~

~~2. — For repairs and maintenance;~~

~~3. — For reconstruction and replacements as hereinafter described;~~

~~4. — For the payment of interest and sinking funds on the bonds issued for acquisition, construction or extension;~~

~~5. — For extensions and improvements; and~~

~~6. — For a surplus fund.~~

~~(b) — For the purpose of providing funds for reconstruction and replacements due to physical and functional depreciation of each of the utilities under the jurisdiction of the Commission, the Commission must create and maintain a reconstruction and replacement fund for each such utility, sufficient for the purposes mentioned in this section, and in accordance with an established practice for utilities of similar character, which shall be the basis for the amount necessary to be appropriated annually to provide for said reconstruction and replacements.~~

~~1. — If, at the end of any fiscal year, the Controller certifies that excess surplus funds of a utility exist, then such excess surplus funds may be transferred by the Board of Supervisors to the General Fund of the City and County, and shall be deposited by the Commission with the Treasurer to the credit of such General Fund. For the purposes of this subsection, excess surplus funds shall exist if the utility has unappropriated, unencumbered funds in excess of 25 percent of the total expenditures of such utility in the previous fiscal year for costs of operation, repair and maintenance.~~

~~2. — If, as part of the budgeting process, the Controller estimates that there will exist, at the end of the budget year, excess surplus funds of a utility, the Board of Supervisors may budget such excess as revenue to the General Fund for that budget year. During the budget year, the Commission shall deposit with the Treasurer a pro rata portion of the then estimated excess surplus funds no less frequently than quarterly. For the purposes of this subsection, excess surplus funds shall exist if the utility has unappropriated, unencumbered funds in excess of 25 percent of the total expenditure of such utility in the previous fiscal year for costs of operation,~~

~~repair and maintenance.~~

~~3. — At any time, the Commission may, with the concurrence of two-thirds of the Board of Supervisors, authorize the transfer of any portion of a utility's surplus funds to the General Fund upon making all of the following findings of fact and judgment:~~

~~(A) — That a surplus exists or is projected to exist after meeting the requirements of this section;~~

~~(B) — That there is no unfunded operating or capital program that by its lack of funding could jeopardize health, safety, water supply or power production;~~

~~(C) — That there is no reasonably foreseeable operating contingency that cannot be funded without General Fund subsidy; and~~

~~(D) — That such a transfer of funds in all other respects reflects prudent utility practice.~~

~~The Commission shall make such findings having received reports from the manager of utilities and a public hearing which shall have received no less than 30 days of public notice.~~

~~4. — The provisions of subsection (b) above shall not be applied in a manner that would be inconsistent with the provisions of any outstanding or future indentures, resolutions, contracts or other agreements of the City and County relating to bonded indebtedness issued in connection with the utility, or with any applicable state or federal laws.~~

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

By: _____
Deputy City Attorney