

File No. 221024

Committee Item No. 2

Board Item No. \_\_\_\_\_

# COMMITTEE/BOARD OF SUPERVISORS

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Committee: Rules Committee

Date Nov. 28, 2022

Board of Supervisors Meeting

Date \_\_\_\_\_

### Cmte Board

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### OTHER (Use back side if additional space is needed)

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Completed by: Victor Young

Date Nov 22, 2022

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

1 [Administrative Code - Special Needs Trusts as Retirement Beneficiaries]

2

3 **Ordinance amending the Administrative Code to permit members of the San Francisco**  
 4 **Employees' Retirement System (SFERS) to designate Special Needs Trusts as**  
 5 **retirement beneficiaries in certain circumstances, and to specify requirements for**  
 6 **those trusts.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
 8 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
 9 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.  
 10 **Board amendment additions** are in double-underlined Arial font.  
 11 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
 12 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
 13 subsections or parts of tables.

11

12 Be it ordained by the People of the City and County of San Francisco:

13

14 Section 1. Chapter 16, Article IV, of the Administrative Code is hereby amended by  
 15 revising Sections 16.29-3, 16.75, 16.79, and 16.80, and adding Section 16.79-1, to read as  
 16 follows:

17 **SEC. 16.29-3. DEFINITIONS – BENEFICIARY.**

18 Beneficiary shall mean any person in receipt of a retirement allowance, a death benefit,  
 19 or any other benefit, from the retirement system, or a Special Needs Trust (as defined in Section  
 20 16.79) in receipt of a death benefit, from the retirement system.

21 **SEC. 16.75. OPTIONAL MODIFICATIONS OF ALLOWANCES.**

22 Until the first payment on account of any retirement allowance is made, a member or a  
 23 retired person, except persons who are members under Section 8.565 of the Charter, may  
 24 elect to receive the actuarial equivalent of ~~his~~their retirement allowance payable throughout  
 25 ~~his~~their life with the provision that:

1 Option 1. If ~~he~~the member dies before ~~he~~ receives ~~ing~~ in lesser annuity payments the  
2 amount of ~~his~~their accumulated contributions as it was at ~~his~~their retirement, the balance of  
3 such accumulated contributions shall be paid to ~~his~~the member's estate or to such person, or  
4 Special Needs Trust, as ~~he~~the member shall nominate by written designation duly executed and  
5 filed with the Retirement Board at the time of ~~his~~their election; or

6 Option 2. Upon ~~his~~the member's death, ~~his~~their lesser retirement allowance shall be  
7 continued throughout the life of and paid to such person, or Special Needs Trust, as ~~he~~the  
8 member shall nominate by written designation duly executed and filed with the Retirement  
9 Board at the time of ~~his~~their election; or

10 Option 3. Upon ~~his~~the member's death, one-half of ~~his~~their lesser retirement  
11 allowance shall be continued throughout the life of and paid to such person, or Special Needs  
12 Trust, as ~~he~~the member shall nominate by written designation duly executed and filed with the  
13 Retirement Board at the time of ~~his~~their election.

14 Said election of option shall be made by signing and filing with the Retirement Board  
15 a notarized election of option on a form provided by the Retirement Board; provided, however,  
16 that if a retired person shall die before the first payment on account of ~~his~~their retirement  
17 allowance is made, such election of option shall be considered void and of no effect and ~~his~~  
18 the member's death shall be considered as that of a member before retirement, unless:

19 (a) Such retired person has elected Option 2 or 3; or

20 (b) Such person was retired on or after April 1, 1966, as a member under Section  
21 A8.507 or A8.509 of the Charter and such person has elected Option 1 and an allowance as  
22 provided in ~~S~~subsection (d) of Section 16.80 of this Code is otherwise payable upon ~~his~~their  
23 death.

24 **SEC. 16.79. BENEFICIARIES.**

1           (a) "Beneficiary" means any person, or Special Needs Trust, as defined in subsection (b),  
2 except a corporation, designated by a member, or a retired member, to receive a benefit  
3 payable on account of the death of a member or a retired member. A member or retired  
4 member may also name the member's estate or trust as a beneficiary for any lump sum death  
5 benefits. If there is no effective beneficiary designation the benefit shall be paid to the estate  
6 of the member.

7           (b) "Special Needs Trust" means an irrevocable trust with all the following characteristics:

8                   (1) The trust satisfies the requirements of Section 1396p(d)(4)(A) of Title 42 of the  
9 United State Code, as amended from time to time.

10                   (2) The trust satisfies Section 1.401(a)(9)-4 of Title 26 of the Code of Federal  
11 Regulations, as amended from time to time.

12                   (3) The trust is for the sole benefit of a single, primary beneficiary.

13                   (4) The trust identifies the beneficiary by name, date of birth, and social security  
14 number.

15                   (5) The trust includes an affirmative duty by the trustee to inform the retirement  
16 system of the death of the trust's beneficiary or any change in the trust's status. The trustee must  
17 immediately return to the retirement system any payments received by the trust following the trust  
18 beneficiary's death or revocation of the trust.

19           **SEC 16.79-1. SPECIAL NEEDS TRUSTS AS BENEFICIARIES – ADDITIONAL**  
20 **REQUIREMENTS.**

21           (a) The member shall certify that the Special Needs Trust complies with all  
22 requirements in clause A-6 of Section 1.401(a)(9)-4 of Title 26 of the Code of Federal Regulations, as  
23 amended from time to time, and requirements and conditions in this subsection (a) and Section  
24 16.79(b). The certification shall be submitted to the retirement system at the time a member elects a  
25 beneficiary, and is required for the election to be valid. The certification shall be in the form of a

1 declaration signed under penalty of perjury by the member and by all then-acting trustees of the  
2 Special Needs Trust.

3 (b) For the purpose of determining eligibility for, and the amount and duration of,  
4 benefits under the plan, the beneficiary of the Special Needs Trust, who is the beneficiary with respect  
5 to the Special Needs Trust's interest in the member's benefit, shall be considered the designated option  
6 beneficiary.

7 (c) The member or trustee of the Special Needs Trust shall provide to the retirement  
8 system a copy of the trust instrument at the time of the beneficiary designation. Failure to do so shall  
9 render the designation invalid.

10 (d) After the member's death, the then-acting trustee or trustees of the Special Needs  
11 Trust shall provide a certification that includes each of the declarations prescribed by clause A-6 of  
12 Section 1.401(a)(9)-4 of Title 26 of the Code of Federal Regulations, as amended from time to time,  
13 and a declaration that the Special Needs Trust meets the requirements and conditions provided in this  
14 subsection (d). The certification by the trustee or trustees of the Special Needs Trust shall be submitted  
15 to the Retirement System upon the member's death and shall additionally certify that the Special Needs  
16 Trust has not been revoked, modified, or amended in any manner which would cause the  
17 representations contained in the certification to be incorrect. The certification shall contain a statement  
18 that it is being signed by all of the then-acting trustees of the Special Needs Trust and shall be in the  
19 form of a declaration signed by all the then-acting trustees.

20 (e) The Retirement Board shall not be required to determine the powers of a trustee  
21 or the validity of a Special Needs Trust or of any of the terms of a Special Needs Trust that is elected as  
22 a beneficiary or option beneficiary. Such a determination by the Retirement Board shall not be inferred  
23 from the fact that a member or trustee has provided a copy of all or part of the trust instrument to the  
24 retirement system. The certification under subsection (a) by the member or trustee must state that the  
25 trustee has the powers declared therein and that the Special Needs Trust meets the enumerated

1 requirements in Section 16.79(b). Payment of benefits to a Special Needs Trust pursuant to the  
2 Retirement Board's determination of the existence, identity, or other facts relating to entitlement of the  
3 Special Needs Trust to receive a benefit under this Chapter 16 constitutes a complete discharge and  
4 release of the Retirement Board, retirement system, and Retirement Plan from liability for the benefit.

5 **SEC 16.80. DEATH BENEFITS.**

6 (a) **Death in Performance of Duty.** Upon the death of any person who is a member  
7 under Section A8.540 or A8.565 of the Charter, if such death shall result from ~~his~~ performance  
8 of duty as prescribed in such sections, respectively, or if such death in the case of members  
9 under Section A8.565 of the Charter shall occur after qualification for service retirement, there  
10 shall be paid to the ~~widow~~ surviving spouse, children, or parents of such member, the benefits  
11 provided in such sections, for members at January 8, 1932, of the Police and Fire  
12 Departments, upon death resulting from the performance of duty and upon death occurring  
13 after qualification for service retirement. If such death after qualification for service retirement  
14 shall not result from the performance of duty and if there be no surviving spouse~~wife~~, children,  
15 or parents to whom benefits are payable under this subsection (a), the benefits provided in the  
16 next following subsection (b) shall be paid to the beneficiary nominated by ~~him~~ the member as  
17 prescribed therein.

18 (b) **Death Not in Performance of Duty.** Upon the death before retirement, if such  
19 death be not included under ~~S~~ subsection (a) of this Section 16.80, of a member while in the  
20 city service, or within four months after the discontinuance of city service, or while physically  
21 or mentally incapacitated for performance of ~~his~~ duty, if such incapacity has been continuous  
22 from discontinuance of city service, the retirement system shall be liable for a death benefit,  
23 which, if an amount be due under ~~Paragraph (3) of this~~ subsection (b)(3), and if there be a  
24 surviving ~~wife~~ spouse or surviving children, shall be paid in monthly installments and to the  
25 surviving ~~wife~~ spouse and children as prescribed therein; otherwise, such death benefit shall be

1 paid to ~~his~~the member's estate, or to such person, or Special Needs Trust, as ~~he~~the member has  
2 nominated or shall nominate by written designation duly executed and filed with the  
3 ~~r~~Retirement bBoard, and such death benefit shall consist of:

4 (1) ~~His~~The member's accumulated contributions, and in addition thereto.;

5 (2) An amount equal to the compensation earnable by ~~him~~the member during the  
6 six months immediately preceding ~~his~~their death, ~~and~~

7 (3) An amount sufficient, when added to the amounts provided in ~~the next preceding~~  
8 ~~Paragraphs subsections (b)(1) and (2)~~, to provide, when applied according to mortality tables  
9 adopted by the Retirement Bboard, a monthly death benefit equal to ½ of the monthly  
10 compensation earnable by such member during the 10 years immediately preceding ~~his~~ the  
11 member's death, to be paid to the surviving ~~wife~~spouse to whom such member was married  
12 prior to sustaining the injury, to continue as long as ~~she~~ the surviving spouse shall live or until ~~her~~  
13 remarriage or subsequent domestic partnership; or, if there be no ~~widow~~surviving spouse, or if the  
14 ~~widow~~spouse die before any child of such deceased member shall have attained the age of 16  
15 years, then to ~~his~~ the member's child or children under such age collectively, to continue until  
16 every such child dies or attains such age. If payment of the allowance be stopped because of  
17 remarriage of the ~~widow~~surviving spouse or attainment of the age of 16 years by a child, before  
18 the sum of monthly payment made shall equal the sum of the amounts provided in ~~the next~~  
19 ~~preceding Paragraphs subsections (b)(1) and (2)~~, then an amount equal to the difference  
20 between such sums shall be paid in one amount to the remarried ~~widow~~surviving spouse; or, if  
21 there be ~~none~~, widow to the surviving children of the deceased member, to share and share  
22 alike.

23 (c) **Designation of Beneficiary.** A member, or a beneficiary who is otherwise eligible  
24 for a monthly allowance after the death of a member, may elect, by written designation duly  
25 executed and filed with the ~~r~~Retirement bBoard, to have the death benefit provided in this

1 Section 16.80 paid in monthly or annual installments instead of in one lump sum, subject to  
2 such rules and regulations as the ~~h~~Board may adopt.

3 (d) **Death After Retirement.** Upon the death of any person, except persons referred  
4 to in Sections A8.542 and A8.566 of the Charter, after retirement and while receiving a  
5 retirement allowance from the retirement system, there shall be paid to ~~his~~the person's estate  
6 or to such person, or Special Needs Trust, as ~~he~~the person shall have nominated by written  
7 designation duly executed and filed with the Retirement Board, the sum of \$100 for each  
8 completed year of city service credited to ~~him~~the person at the time of ~~his~~their retirement, but  
9 the total amount paid shall not exceed \$3,000; provided, that the sum so paid upon the death  
10 of a person who was receiving a retirement allowance under the San Francisco City and  
11 County Employees' Retirement System on January 8, 1932, or of a person who became a  
12 member of the retirement system by reason of ~~his~~ status as an employee of the public utility  
13 acquired by the City shall be not less than \$500, regardless of the City service credited. If  
14 such deceased person was retired as a member under Sections A8.507 or A8.509 of the  
15 Charter and ~~his~~their retirement was first effective on or after April 1, 1966, an allowance shall  
16 be paid to ~~his widow~~the member's surviving spouse, until ~~her~~their death or remarriage, equal to ½  
17 of ~~his~~the member's retirement allowance as it was prior to optional modification and prior to  
18 reduction as provided in Subsection (Aa) of Charter Section A8.514, but exclusive of the part  
19 of such allowance which was provided by additional contributions. No allowance, however,  
20 shall be paid under this Section 16.80 to a ~~widow~~surviving spouse unless ~~she was~~they were  
21 married to, or in a domestic partnership with, the member at least one year prior to the member's  
22 death. If ~~he~~the member leaves no such ~~widow~~surviving spouse, or if ~~she~~the surviving spouse should  
23 die, ~~or~~ remarry, or enter into a subsequent domestic partnership before every child of such  
24 deceased retired person attains the age of 18 years, then the allowance which such  
25 ~~widow~~surviving spouse would have received had ~~she~~they lived and not remarried, or entered into



1 a subsequent domestic partnership, shall be paid to ~~his~~the member's child or children under said  
2 age, collectively, to continue until every such child dies or attains said age, provided that no  
3 child shall receive any allowance after marrying or attaining the age of 18 years. If the  
4 member, at retirement, has no ~~wife~~surviving spouse who upon ~~his~~the member's death would  
5 qualify ~~as a widow~~ to receive the allowance provided in this subsection (d), ~~he~~they may elect an  
6 option, as provided under Section 16.75 of this Code, with respect to all of ~~his~~the member's  
7 allowance but if at ~~his~~ retirement, ~~they have~~he has such a ~~wife~~surviving spouse, ~~he~~the member may  
8 elect such option only with respect to that part of ~~his~~their retirement allowance, prior to  
9 reduction as provided in Charter Section A8.514, which is in excess of the allowance which  
10 would be paid to ~~his widow~~their surviving spouse under this ~~paragraph~~subsection (d). The funds  
11 for payments under this ~~paragraph~~subsection (d) shall be derived:

12 (1) With respect to persons retired as members under Charter Sections  
13 A8.509, A8.544, and A8.568 from reserves held by the retirement system on account of  
14 members under such sections, respectively, and

15 (2) With respect to persons retired as members under Charter Sections  
16 A8.507, A8.543, and A8.567 from the accumulated contributions of the City held to meet the  
17 obligation of the City on account of benefits that have been granted and on account of prior  
18 service of members. Upon the death of any person after retirement and while receiving a  
19 pension under Sections A8.542 or A8.566 of the Charter, as a retired member of the Police or  
20 Fire Department, there shall be paid to ~~his~~their estate or to such person, or Special Needs Trust,  
21 as ~~he~~they shall have nominated by written designation duly executed and filed with the  
22 ~~Retirement~~ Board, the sum of \$3,000. The death benefits provided in this paragraph with  
23 respect to persons retired under Charter Sections A8.542 or A8.565, shall be funded by  
24 contributions to the retirement system by the City which shall not be less in any fiscal year  
25 than the amount of such benefits paid during said year.

1 (e) **Revocation of Nomination of Beneficiary.** A person, while a member or after  
2 retirement, shall have the right to revoke the nomination of a beneficiary made by ~~him~~the  
3 member under the retirement system, and to nominate a beneficiary in lieu thereof, all by  
4 written designation duly executed and filed with the Retirement Board; provided, that this right  
5 shall not extend to beneficiaries nominated under Options 2 and 3 of Section 16.75 of this  
6 Code, nor shall it extend to dependents designated as beneficiaries by State law, the Charter  
7 or this Article IV, to receive benefits payable on account of death or disability incurred in the  
8 performance of duty.

9  
10 Section 2. Effective Date. This ordinance shall become effective 30 days after  
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
13 of Supervisors overrides the Mayor's veto of the ordinance.

14  
15 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
19 additions, and Board amendment deletions in accordance with the "Note" that appears under  
20 the official title of the ordinance.

21 APPROVED AS TO FORM:  
22 DAVID CHIU, City Attorney

23 By: /s/ \_\_\_\_\_  
24 KELLY COLLINS  
25 Deputy City Attorney

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## LEGISLATIVE DIGEST

[Administrative Code - Special Needs Trusts as Retirement Beneficiaries]

**Ordinance amending the Administrative Code to permit members of the San Francisco Employees' Retirement System (SFERS) to designate Special Needs Trusts as retirement beneficiaries in certain circumstances, and to specify requirements for those trusts**

### Existing Law

Members of the San Francisco Employees' Retirement System can currently only name a person as the beneficiary of a survivor annuity after their death.

### Amendments to Current Law

The amendments to Administrative Code Sections 16.29-3, 16.75, 16.79, 16.80, and the addition of 16.79-1 would allow a member of the San Francisco Employees' Retirement System to name a Special Needs Trust as the beneficiary for certain benefits payable upon the member's death.

### Background Information

Members of the San Francisco Employees' Retirement System (SFERS) can only name a person as the beneficiary of a survivor annuity after their death. This leaves SFERS members with limited estate planning options regarding disabled dependents when selecting their death benefits beneficiary. In certain situations, receipt of retirement allowance and death benefit payments by these disabled individuals can cause a loss of public-needs based benefits. Therefore, SFERS members in these situations are left with no method of providing their disabled dependents with retirement allowance and death benefit payments without possible risking the loss of necessary benefits.

A Special Needs Trust is a narrowly defined form of trust designed to manage funds for the benefit of a disabled individual. Funds paid into a Special Needs Trust for a disabled individual are treated differently than funds paid directly to a disabled individual, removing the risk of a loss of public-needs based benefits.

This amendment creates a method for SFERS members to provide retirement allowance and death benefit payments to their disabled dependent through a Special Needs Trust.

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BOARD of SUPERVISORS



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## MEMORANDUM

TO: Alison Romano, CEO/CIO (SFERS)

FROM: Victor Young, Assistant Clerk

A handwritten signature in black ink that reads "Victor Young".

DATE: September 29, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

**File No. 221024**

**Ordinance amending the Administrative Code to permit members of the San Francisco Employees' Retirement System (SFERS) to designate Special Needs Trusts as retirement beneficiaries in certain circumstances, and to specify requirements for those trusts.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [victor.young@sfgov.org](mailto:victor.young@sfgov.org).

cc: Darlena Armanino, SFERS