

1 [Administrative Code - Retirement System Disability/Death Presumptions for Sheriff Members]

2

3 **Ordinance amending the Administrative Code to add cancer and heart/pneumonia**
4 **presumptions for industrial disability and death in the line of duty retirement benefits**
5 **for Sheriff members of the San Francisco City and County Employees' Retirement**
6 **System.**

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.

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

15 Section 1. Findings.

16 (a) Deputized personnel of the Sheriff's Department hired before January 7, 2012 are
17 members of the California Public Employees' Retirement System ("CalPERS"). Sheriffs
18 assuming office thereafter, and undersheriffs and all deputized personnel of the Sheriff's
19 Department hired thereafter (collectively "Sheriff Members"), are members of the San
20 Francisco City and County Employees' Retirement System ("SFERS"). (Charter §A8.608.)

21 (b) Under state law, peace officers – including deputized sheriff personnel – are
22 entitled to cancer, heart, and pneumonia presumptions for workers' compensation claims.
23 (Cal. Labor Code §3212, 3212.1.) If the conditions for the presumption are satisfied and the
24 presumption is not rebutted, the injury, illness, disability, or death is presumed industrial, i.e.,
25 caused by work. A workers' compensation finding that an injury, illness, disability or death is
industrial is determinative on that issue in an application for an industrial disability retirement

1 or a death as a result of duty benefit under CalPERS. Thus, Sheriff Department personnel
2 who are CalPERS members benefit from the workers' compensation cancer, heart and
3 pneumonia presumptions in those retirement applications.

4 (c) Uniformed members of the San Francisco Police and Fire Departments who are
5 SFERS members are entitled to cancer and heart/pneumonia presumptions when certain
6 eligibility requirements are satisfied, in connection with applications for an industrial disability
7 retirement or a death as a result of duty benefit under SFERS. (See Administrative Code
8 §§16.72, 16.85, and 16.86.)

9 (d) Sheriff Members in SFERS are not currently entitled to cancer, heart, or
10 pneumonia presumptions when applying for an industrial disability retirement or a death as a
11 result of duty benefit. Under this ordinance, Sheriff Members will be entitled to these
12 retirement presumptions. Thus, this ordinance ensures parity and fairness in the retirement
13 plan terms related to industrial disability retirement and death as a result of duty presumptions
14 for Sheriff Members, when compared to the comparable plan terms for members of the
15 Sheriff's Department who are CalPERS members; San Francisco police officers and
16 firefighters; and other peace officers in California who are CalPERS members.

17 (e) Peace officers, including Sheriffs, are exposed to health and safety risks in their
18 occupation, including exposures that have been shown to potentially cause cancer. Several
19 studies show an increased risk for various types of cancer in peace officers. Results from
20 three studies suggested possible increased mortality risks for all cancers, and cancers of the
21 colon, kidney, digestive system, esophagus, male breast, and testis, as well as Hodgkin's
22 disease (American Journal of Industrial Medicine).

23
24 Section 2. The Administrative Code is hereby amended by adding Sections 16.72-1
25 and 16.86-1, to read as follows:

1 **SEC. 16.72-1. SHERIFF MEMBER INCAPACITATED WITH CANCER – WHEN**
2 **PRESUMED CONTRACTED IN THE COURSE OF EMPLOYMENT.**

3 (a) For purposes of this Section 16.72-1, the term “Sheriff Member” shall mean (1) any Sheriff
4 who assumed office on and after January 7, 2012, and (2) any undersheriff or deputized personnel of
5 the Sheriff’s Department hired on and after January 7, 2012.

6 (b) Subject to the limitations of subsections (c) and (d), whenever any Sheriff Member becomes
7 incapacitated for the performance of his or her duty by reason of cancer that develops or manifests
8 itself while the Sheriff Member is in the service of the Sheriff’s Department, the cancer shall be
9 presumed to arise out of and in the course of his or her employment. This presumption is disputable
10 and may be controverted by evidence that the primary site of the cancer has been established and that
11 the carcinogen to which the Sheriff Member has demonstrated exposure as required by subsection
12 (d)(1) below is not reasonably linked to the disabling cancer.

13 (c) The presumption in subsection (b) shall apply only to:

14 (1) A Sheriff Member who has served a total of five or more years in the Sheriff’s
15 Department. For purposes of determining whether the Sheriff Member has five or more years of
16 service, time served in a deputized position in another sheriff department in the State of California shall
17 be combined with service in the Sheriff’s Department, provided that the Sheriff Member: (A) was
18 entitled to the same cancer presumption in his or her prior employment; and (B) became a member of
19 the Sheriff’s Department within six months of separating from the prior sheriff department employment.

20 (2) Applications for industrial disability or death as a result of duty benefits under
21 the San Francisco City and County Employees’ Retirement System (“Retirement System”).

22 (3) Applications for benefits in connection with cancer injuries or deaths filed on or
23 after January 7, 2012, except that the presumption shall not apply to such an application if as of the
24 effective date of this Section 16.72-1, the hearing officer assigned to hear the application under Charter
25 Section 12.102 and Charter Section A8.518 either: (A) has rendered his or her initial decision on the

1 application and the Sheriff Member did not request rehearing within the time specified under the
2 Charter: or (B) has rendered an initial decision and the Sheriff Member timely requested rehearing
3 under the Charter, and the hearing officer has issued a decision on rehearing.

4 (d) The presumption in subsection (b) shall apply only if:

5 (1) The Sheriff Member demonstrates exposure, while in the service of the Sheriff's
6 Department, to a known carcinogen as defined by the International Agency for Research on Cancer;
7 and

8 (2) There was no evidence of cancer identified in the physical examination of the
9 Sheriff Member conducted as part of his or her initial hire in the Sheriff's Department.

10 (e) The Retirement System shall use the Sheriff Member's eligible prior safety service in
11 another sheriff department in California under subsection (c)(1) to measure the date upon which the
12 Sheriff Member would be qualified for service retirement.

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14 **SEC. 16.86-1. SHERIFF MEMBER INCAPACITATED WITH HEART TROUBLE OR**
15 **PNEUMONIA – WHEN PRESUMED CONTRACTED IN COURSE OF EMPLOYMENT.**

16 (a) For purposes of this Section 16.86-1, the term "Sheriff Member" shall mean (1) any Sheriff
17 who assumed office on and after January 7, 2012; and (2) any undersheriff or deputized personnel of
18 the Sheriff's Department hired on and after January 7, 2012.

19 (b) Subject to the limitations of subsections (c) and (d), whenever any Sheriff Member becomes
20 incapacitated for the performance of his or her duty on account of heart trouble or pneumonia that
21 develops or manifests itself while the Sheriff Member is in the service of the Sheriff's Department, that
22 heart trouble or pneumonia shall be presumed to arise out of and in the course of his or her
23 employment, unless there is evidence to the contrary.

24 (c) The provisions of this Section 16.86-1 shall apply only to Sheriff Members who have served
25 a total of five or more years:

1 (1) in the Sheriff's Department; or,
2 (2) in a deputized position in another sheriff department in the State of California,
3 provided that the Sheriff Member was: (A) entitled to the same presumption in his or her prior
4 employment; and (B) became a member of the Sheriff's Department within six months of separating
5 from the prior sheriff department employment.

6 (d) The presumption in subsection (b) of this Section 16.86-1 shall apply only to injuries or
7 deaths occurring or after January 7, 2012, and only to applications for benefits under the San
8 Francisco City and County Employees' Retirement System ("Retirement System"). In such cases, the
9 Sheriff Member's prior safety service in another sheriff department in the state of California shall be
10 used by the Retirement System to measure the date upon which the Sheriff Member would have
11 completed at least twenty-five (25) years of service in the aggregate.

12
13 Section 3. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

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

19 By: _____
20 KATHARINE HOBIN PORTER
21 Deputy City Attorney

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