

BOARD of SUPERVISORS



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MEMORANDUM

TO: Jeanine Nicholson, Chief, Fire Department
William Scott, Chief, Police Department
Jay Huish, Executive Director, Retirement Board

FROM: Victor Young, Assistant Clerk
Rules Committee

A handwritten signature in cursive script that reads "Victor Young".

DATE: June 19, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation on June 11, 2019:

File No. 190680

Ordinance amending the Administrative Code to amend heart trouble and pneumonia presumptions for firefighter and police officer industrial disability and death as a result of duty retirement benefits.

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.

c: Theresa Ludwig, Fire Department
Rowena Carr, Police Department
Asja Steeves, Police Department
Deirdre Hussey, Police Department
Darlene Armanino, Retirement Board

1 [Administrative Code - Heart Trouble and Pneumonia Presumptions for Fire and Police
2 Retirement Benefits]

3 **Ordinance amending the Administrative Code to amend heart trouble and pneumonia**
4 **presumptions for firefighter and police officer industrial disability and death as a result**
5 **of duty retirement benefits.**

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

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

14 Section 1. Findings.

15 (a) San Francisco firefighters and police officers are more susceptible to developing
16 heart disease as well as suffering traumatic heart attacks due to the inherent nature of their
17 job duties (including the very high physiological demands) as well as the myriad of chemical
18 agents they are exposed to during the course of their work.

19 (b) A 2012 summary of studies released by the International Association of
20 Firefighters' Division of Occupational Health, Safety, and Medicine, concerning the
21 association of heart disease with the occupation of firefighting supports the premise that
22 firefighters are at an increased risk of cardiovascular disease, particularly acute coronary
23 disease, due to the work they perform.

24 (c) Police officers as well are exposed to health and safety risks in their occupation.
25 Several studies show that police officers have a higher risk of developing heart disease
compared to the general population due to the work they perform. (See e.g., Vasileia
Varvarigou et al., Law Enforcement Duties and Sudden Cardiac Death Among Police Officers

1 in the United States: Case Distribution Study, British Medical Journal (2014), Tara A. Hartley
2 et al., Health Disparities in Police Officers: Comparisons to the U.S. General Population, Int. J.
3 Emerg. Ment. Health (2011).)

4 (d) California workers' compensation laws, which provide benefits to employees for
5 industrial injuries, include a heart trouble and pneumonia presumption for firefighters and
6 police officers. Under those laws, specifically California Labor Code Sections 3212 and
7 3212.5, heart trouble and pneumonia are presumed industrial if either malady develops or
8 manifests itself during a period in which the member is in the service of a fire or police
9 department. This presumption is disputable and may be controverted by other evidence, but
10 unless so controverted, the Workers' Compensation Appeals Board is bound to find in
11 accordance with it. Additionally, heart trouble or pneumonia for firefighters and police officers
12 so developing or manifesting itself cannot be attributed to any disease existing prior to such
13 development or manifestation.

14 (e) Currently, Administrative Code Sections 16.85 and 16.86 create a presumption for
15 firefighters and police officers applying for retirement benefits under the San Francisco City
16 and County Employees' Retirement System (SFERS) who meet certain eligibility criteria that
17 any heart trouble or pneumonia arises out of the course of the member's employment, unless
18 there is evidence to the contrary.

19 (f) Section 16.85, however, sets a more difficult standard of proof for firefighters and
20 police officers than is in the Labor Code because under Section 16.85, SFERS may attribute a
21 prior disease to the disability asserted by a member. Currently a San Francisco firefighter or
22 police officer who applies to SFERS for an industrial disability retirement must establish that
23 his or her injury or illness is industrially caused and that it incapacitates the member for the
24 performance of his or her work duties. When a member seeks an industrial disability
25 retirement based on heart trouble or pneumonia, the member must establish that the heart

1 trouble or pneumonia developed or manifested while in service, is incapacitating, and cannot
2 be attributed to any disease existing prior to such development or manifestation. Under the
3 proposed ordinance, for San Francisco firefighters or police officers who meet certain
4 eligibility requirements, the heart trouble or pneumonia will be presumed in the SFERS benefit
5 application process to arise out of the member's employment. SFERS can offer specified
6 evidence to rebut the presumption but may not attribute the malady to any prior existing
7 disease. The rebuttal and attribution standards in the proposed ordinance mirror the
8 standards in the California workers' compensation heart trouble and pneumonia
9 presumptions.

10 (g) Firefighters and police officers whose retirement benefits are under CalPERS or a
11 public pension plan under the County Employees Retirement Act of 1937 receive the benefit
12 of the workers' compensation heart trouble and pneumonia presumptions in connection with
13 their retirement benefits, because the Workers' Compensation Appeals Board's determination
14 of industrial causation, based on the Labor Code heart trouble and pneumonia presumptions,
15 is determinative for the purpose of the retirement process. This ordinance will give San
16 Francisco's firefighters and police officers the benefit of these worker's compensation
17 presumptions in the retirement benefit process as is available to those other California
18 firefighters and peace officers, as well as deputized members of the San Francisco Sheriff's
19 Department hired before January 7, 2012.

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21 Section 2. Article IV of Chapter 16 of the Administrative Code is hereby amended by
22 revising Section 16.85 and deleting Section 16.86, to read as follows:
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25

1 **SEC. 16.85. ~~POLICEMEN~~ POLICE OFFICERS AND ~~FIREMEN~~ FIREFIGHTERS**
2 **INCAPACITATED WITH HEART TROUBLE OR PNEUMONIA – WHEN PRESUMED**
3 **CONTRACTED IN COURSE OF EMPLOYMENT.**
4

5 (a) Whenever any member of the Police Department or Fire Department shall
6 become incapacitated for the performance of his the member's duty on account of heart trouble
7 or pneumonia, which develops or manifests itself while such member is in the service of his
8 the member's department, such heart trouble and such pneumonia shall be presumed to arise
9 out of and in the course of his the member's employment, ~~unless there is evidence to the contrary~~
10 This presumption is disputable and may be controverted by other evidence, but unless so controverted,
11 the hearing officer assigned to hear the application under Charter Section 12.102 and Charter Section
12 A8.518 is bound to find in accordance with it.

13 (b) Such heart trouble or pneumonia so developing or manifesting itself as described in
14 subsection (a) shall in no case be attributed to any disease existing prior to such development or
15 manifestation.

16 (c) Subsections (a) and (b) apply only to:

17 (1) Sworn members of the Fire Department or Police Department who have served a
18 total of five years or more in the Fire Department or Police Department. For purposes of determining
19 whether the member has five or more years of service, time served in another fire or police department
20 in the State of California shall be combined with service in the Fire Department or Police Department,
21 provided that the member (A) was entitled to the same presumption of subsection (a) and prohibition
22 against attribution of subsection (b) in the member's prior employment and (B) became a member of
23 the Fire Department of Police Department within six months after separating from the prior
24 employment.
25

1 (2) Applications for industrial disability retirement or death as a result of duty benefits
2 under the San Francisco City and County Employees' Retirement System ("Retirement System").

3 (3) Applications for benefits in connection with heart trouble or pneumonia injuries or
4 deaths filed on or after January 1, 2015, provided that the prohibition against attribution of subsection
5 (b) shall not apply to an application if, as of the effective date of the amendment to this Section 16.85 in
6 Board of Supervisors File No. 190680, the hearing officer assigned to hear the application under
7 Charter Section 12.102 and Charter Section A8.518 either (A) has rendered an initial decision on the
8 application and the member did not request rehearing within the time specified under the Charter, or
9 (B) has rendered an initial decision and the member timely requested rehearing under the Charter, and
10 the hearing officer has issued a decision on rehearing.

11 (d) Neither subsection (a) nor subsection (b) shall apply to any of the following:

12 (1) incapacitation on account of heart trouble if there was any evidence of heart trouble
13 identified in the physical examination of the member conducted as part of the member's initial hire in
14 the Fire Department or Police Department, as applicable, and

15 (2) incapacitation on account of pneumonia if there was any evidence of pneumonia
16 identified in the physical examination of the member conducted as part of the member's initial hire in
17 the Fire Department or Police Department, as applicable.

18 (e) The Retirement System shall use the member's eligible prior safety service in another fire or
19 police department under subsection (c)(1) to measure the date upon which the member would be
20 qualified for service retirement.

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23 ~~**SEC. 16.86. POLICEMEN AND FIREMEN INCAPACITATED WITH HEART TROUBLE**~~
24 ~~**OR PNEUMONIA—APPLICATION TO MEMBERS WITH FIVE OR MORE YEARS OF**~~
25 ~~**SERVICE.**~~

1
2 ~~The provisions of the preceding section shall apply only to members of the Police and Fire~~
3 ~~Departments, respectively, who shall have served a total of five or more years:~~
4 ~~(a) in one or both of such departments; or,~~
5 ~~(b) as a San Francisco Airport police officer; or,~~
6 ~~(c) in another police or fire department in the State of California, provided that the member~~
7 ~~was entitled to the same presumption in his or her prior employment, and provided that the member~~
8 ~~became a member of the San Francisco Police or Fire Department within six months of separating~~
9 ~~from such prior employment. The provisions of subsections (b) and (c) of this section shall apply only~~
10 ~~to injuries or deaths occurring after January 1, 2000, and only to applications for benefits under the~~
11 ~~San Francisco City and County Employees' Retirement System. In such cases, the member's prior safety~~
12 ~~service in another police or fire department shall be used by the Retirement System to measure the date~~
13 ~~upon which said member would have completed at least twenty five (25) years of service in the~~
14 ~~aggregate.~~

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16 Section 3. Supermajority Vote. Pursuant to Section A8.500 of the Charter, this
17 ordinance requires enactment by a vote of three-fourths of the members of the Board of
18 Supervisors.

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20 Section 4. Effective Date. This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor's veto of the ordinance.

1 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.
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9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By:


12 ROBERT A. BRYAN
13 Deputy City Attorney

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