



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: August 24, 2010  
To: Members, Ethics Commission  
From: John St. Croix, Executive Director  
Re: Whether Proposed Ballot Measure Will Have A Material Effect  
On Sheriff Department Employees

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## INTRODUCTION

Under Charter Section 13.104.5, the Sheriff is responsible for assisting the Department of Elections (the “Department”) with Election Day security. Among other duties, the Sheriff’s deputies transport all completed ballots from the polls to the Department’s central counting location and ensure their security during the several weeks between Election Day and the Department’s certification of election results. The Charter provides that the Elections Commission must approve an alternative transportation and security plan for any election when “an incumbent sheriff is running for election” or “there is a measure on the San Francisco ballot that would have a *material, financial effect on the Sheriff or the uniformed personnel of the Sheriff’s department* as determined by the Ethics Commission.” (S.F. Charter § 13.104.5 [emphasis added].)

The Director of Elections has asked the Ethics Commission to determine whether Proposition B, a proposed measure on the November 2010 ballot, would have a “material financial effect” on either the Sheriff or the department’s uniformed personnel, as that term is used in section 13.104.5. Measure B would amend the Charter to require larger retirement contributions from most City employees – but not uniformed employees in the Sheriff’s department – and to decrease the City’s contributions to health care benefits for all City employees, including deputy Sheriffs. If the measure passes, it is likely that many City employees, including employees of the Sheriff’s department, will face increased contributions to their health insurance premiums.

As discussed below, staff recommends that an alternative security plan is not required in this circumstance for two reasons. First, although it is foreseeable that Proposition B will have some impact on a large number of City employees, it is difficult to foresee the precise financial effect on any particular employee or any bargaining unit of City

employees. Second, the effects of the measure on Sheriff's Department employees will be proportional to the effects on all City employees. Staff believes that the best interpretation of Charter section 13.104.5 would allow the Sheriff and the Sheriff's employees to assist in the election when there is a measure on the ballot that will affect all City employees without singling out the Sheriff's Department or another small class of employees.

## **BACKGROUND**

### **A. The Proposed Measure: Proposition B**

Proposition B would increase the required employee contributions to the City's Retirement System ("SFERS"), limit the amount the City could contribute to medical and dental health insurance coverage for employees and their dependents, and change rules for arbitration proceedings about City collective bargaining agreements. Because the Sheriff's Department's uniformed personnel are not members of SFERS, the retirement contribution provisions in the measure would not directly impact them. But the measure's provisions regarding health care contributions could affect the Sheriff's employees.

Proposition B would limit the City's contributions to employee insurance premiums as follows:

- For medical plans, the City would pay only a fixed amount based on a ten-county survey of other public sector employers. The City could not agree to pay any additional costs for employee coverage.
- For dependent health care coverage, the City could not agree to pay more than 50% of the cost of the lowest cost plan offered by the Health Services System.
- For dental plans, the City could not agree to pay more than 75% of the cost of employee coverage and 50% of the cost of dependent coverage.

### **B. Financial Impact of Proposition B on Sheriff's Department employees**

Proposition B would increase health care premium payments for many uniformed personnel of the Sheriff's Department, but the magnitude of the effect cannot be precisely determined. The relevant provisions of Proposition B would not apply to Sheriff's employees until after the employees' current collective bargaining agreements expire on June 30, 2012.

After June 2012, the financial impact of Proposition B on any individual uniformed employee of the Sheriff's Department would depend on a number of variables, including: the findings of the ten-county survey, the particular medical and dental plans selected by the employee, how many covered dependents the employee has, and the premiums the selected plans charge. These variables are interdependent and employee-specific, complicating financial projections. It is difficult to predict the precise financial impact of Proposition B on any individual employee in 2012. In an August 12, 2010 memorandum to the Health Service Board, the Director of the Health Service System discussed the impact of the measure, concluding that the immediate impact on employees would vary depending on their union contracts, but on average, employees' health care contributions will likely increase between \$8 and \$419 per month. A copy of that memo is attached.

## ANALYSIS

### A. Under Section 13.104.5, A Material Financial Effect Is One That Interferes With Employees' Loyalty To The City.

The central question posed by the Director of Elections' request is whether Proposition B will have a "material financial effect" on Sheriff's Department employees such that their assistance in the election would create the type of conflict of interest that section 13.104.5 is designed to prevent. Charter section 13.104.5 does not define the term "material financial effect," so the Commission has endeavored in the past to interpret the term in a manner that serves the underlying purpose of the section.

In advance of previous elections, staff has concluded that a measure has a "material financial effect" on Sheriff's Department employees under section 13.104.5 when it (a) has some effect on the employees' finances, and (b) the effect could be significant enough that it could interfere with the employees' duty of loyalty to the City in providing security for the ballots. In a 2004 memo regarding section 13.104.5, staff concluded that this approach "closely adheres to the intent of the voters, which is to remove the Sheriff from providing security in any matter where personal financial interests could conflict significantly with the duty of loyalty to the City."

The Commission has applied this standard three times since the voters amended section 13.104.5 to add the conflict-of-interest provision in 2002:

- In July 2003, the Commission considered the application section 13.104.5 to a proposed measure that the Board was considering placing on the November 2003 ballot. The measure would have required the City to take steps that potentially could have resulted in a merger of the Sheriff's Department and Police Department. The Commission unanimously voted (4-0) that the measure *would not* have a material financial effect on Sheriff's Department employees because the financial effect on Sheriff's employees was too speculative to quantify. The Commission left open the possibility that an eventual merger might have a material financial effect on the Sheriff's employees, but the possibility of a merger was still too remote to quantify.
- Proposition F in March 2004 sought to amend the Charter to subject deputy sheriffs to the same rules and deadlines for labor negotiations that applied to the uniformed members of the Police and Fire Departments. The Commission unanimously voted (5-0) that the measure *would not* have a material financial effect on Sheriff's Department employees. While it was likely that the measure would have some financial effect on deputy Sheriffs, the exact effect was speculative because it would depend on future negotiations between employee organizations and the City. The Commission concluded that the financial impacts would not interfere with the ability of deputy sheriffs to perform their duties in the election.
- Proposition C in November 2006 proposed to change the method of setting salaries for the City's elected officials, including the Sheriff. Because the measure would have had a direct and personal effect on the Sheriff's salary, the Commission concluded that the measure *would* have a material financial effect on the Sheriff –

but no one else in his department. The Commission unanimously voted (3-0) to disallow the Sheriff from personally participating in security for the election. Other personnel in the Sheriff's Department oversaw election security in his stead.

Based on this history, staff concludes that a measure has a "material financial effect" on the Sheriff or employees when the measure has a direct and quantifiable financial effect that will impact the ability of the affected employees to exercise their duties without divided loyalties.

**B. Proposition B Will Not Have A "Material Financial Effect" On Sheriff's Department Employees, As That Term Is Used In Section 13.104.5.**

If it is adopted, Proposition B will likely have some financial effect on all City employees, but staff does not believe the effect will be "material" as that term is used in Charter section 13.104.5. Staff reaches this conclusion for two reasons.

First, the measure's precise financial impact on Sheriff's Department employees is somewhat remote and difficult to quantify. Those employees will not be impacted until June 2012, when their current collective bargaining agreement expires. And at that point the precise impact of the measure will vary for each employee depending on a number of factors, including the employee's bargaining unit, the employee's health plan, and the number of dependents the employee has on the plan. Because it is difficult to quantify the exact financial effect of the measure on any individual employee, it is unlikely that those prospective effects will interfere with deputy sheriffs' ability to do their jobs on Election Day.

Second, Proposition B would not have any special or unique impacts on Sheriff's Department employees. Because the effects of the measure on the Sheriff's employees' health care costs will be proportional to the effects on the costs to City employees across all departments, staff believes the measure will not impede the ability of the Sheriff's uniformed personnel to perform their duties with undivided loyalties to the City. As City employees, the Sheriff's employees are no more conflicted in these circumstances than any of the many City employees tasked with duties related to this election. The staffs of the Department of Elections, Ethics Commission and City Attorney's Office all play critical roles in the City's election system, and as members of the City's Health Service System, they will all be affected by Proposition B. There is no reason to single out the Sheriff's Department employees as having uniquely divided loyalties.

Interpreting State conflict of interest laws, the courts have concluded that there is no significant conflict of interest in analogous situations. For example, last year in *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, the State Supreme Court analyzed whether members of the San Diego City Employees Retirement System violated Government Code section 1090 when they voted on a contract affecting all city employees' retirement benefits, including their own. The Court concluded that there was no conflict of interest when all public employees in the city's retirement system were equally affected by a particular decision. As the Court noted, "providing a benefit equally to a broad segment of an agency's constituency, no less than the public as a whole, may ameliorate conflict of interest concerns." (*Id.* at 1094.) The Court noted that the critical question is whether the decision will affect "a broad class of constituents . . . rather than being targeted or tailored to a select few." (*Id.*) The Court thus concluded that the officials had not violated the conflict of interest law because they "received a pension benefit on

the same terms and conditions as did a broad segment of their constituents, . . . and with no special tailoring or individualized consideration.” (*Id.* at 1099.) The Court also noted that its analysis was consistent with a similar exception to another State conflict-of-interest law, the California Political Reform Act. (*Id.* at 1091-92.) Under the Political Reform Act, an official with a financial interest in a particular decision may participate in the decision-making process if the decision will affect the official in the same way as it affects the “public generally.” (*See* 2 Cal. Code Regs. § 18707.)

The Supreme Court in *Lexin* interpreted a specific statutory scheme that is different from Charter section 13.104.5 in many significant respects. But the Court’s analysis is instructive. Like section 13.104.5, the Government Code provision at issue in *Lexin* was designed to prevent conflicts of interest because “[i]f a public official is pulled in one direction by his financial interest and in another by his official duties, his judgment cannot and should not be trusted, even if he attempts impartiality.” (*Id.* at 1073 [citing *Carson Redevelopment Agency v. Padilla* (2006) 140 Cal. App. 4th 1323, 1330].) As the Court concluded, those concerns about divided loyalties are less pressing when the official in question is just one member of a large affected community. Here, all City employees – not just the Sheriff’s Department employees or another small group of City employees – would be affected by the measure. For that reason, staff recommends that section 13.104.5’s conflict-of-interest rule should not apply

Since the adoption of the conflict of interest rules for the Sheriff’s Department in 2002, several measures affecting the salaries and benefits of San Francisco employees have appeared on the ballot.<sup>1</sup> In none of these instances has the Commission considered whether to invoke section 13.104.5. In fact, as far as staff is aware, no one – either in the Sheriff’s Department, the Department of Elections, the Ethics Commission or the public – even raised the question during those elections. Although the Commission never expressly decided *not* to invoke the rule on those occasions, it is significant that no one even suggested that the Commission should consider the matter. This suggests that the prevailing understanding at the time was that the conflict rule in section 13.104.5 does not apply when a measure affects all City employees equally or proportionally.

Finally, staff acknowledges that invoking the conflict of interest rule in section 13.104.5 would require the Department of Elections to develop an alternative transportation and security plan for the election ballots, which would be at considerable expense to the City. It is unlikely that the voters intended to require an expensive alternative transportation plan every time a measure affecting City employee salaries or benefits appears on the San Francisco ballot.

## **RECOMMENDATION**

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<sup>1</sup> These measures included Proposition F in November 2003 (targeted early retirement for some job classifications), Proposition A in March 2004 (deferred taxation for unused vacation and sick leave for City employees), Proposition D in March 2004 (equal treatment in the retirement system for San Francisco registered domestic partners), Proposition G in March 2004 (supplemental pay for City employees on military duty), Proposition B in June 2008 (changing qualifications for retiree health and pension benefits for new City employees).

For these reasons, staff recommends that the Commission adopt a motion determining that Proposition B will not have a “material financial effect” on the Sheriff or the uniformed personnel of the Sheriff’s Department, as the term is used in section 13.104.5. The financial impacts of Proposition B would not interfere with the ability of the Sheriff’s Department’s uniformed personnel to perform their duties in the election.



# Health Service System

CITY & COUNTY OF SAN FRANCISCO

MYHSS.ORG

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DATE: August 12, 2010

TO: President Scott Heldfond and Health Service Board Commissioners

FROM: Catherine Dodd PhD, RN  
Director, Health Service System

RE: Assessment of the Impact of the Recently Proposed City Charter Amendment, "The Sustainable City Benefits Reform Act"

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The purpose of this memo is to offer the Health Service Board an assessment of the impact of the recently proposed City Charter amendment, "The Sustainable City Benefits Reform Act," on Health Service System (HSS) members and their families.

## Overview of the Proposed City Charter Amendment

The Charter amendment proposes revisions to employee pension benefit contributions and health benefit premium calculations for employees and dependents. This memo addresses only potential health benefits related implications.

The issue of whether this Charter amendment applies only to the City and County and its employees, or all four employers served by the Health Service System – the City and County, the San Francisco Unified School District, the San Francisco Community College District and the Superior Court – is at present unclear and is most likely to be settled in a court of law.

This Charter amendment proposes that the City and County of San Francisco (and potentially other employers) could not agree to pay more than an established limit when funding the following benefits:

- For active single employee health coverage, the City (and potentially other employers) could not agree to pay more than the 10-County contribution. (Section A8.423 of the appendix to the City Charter defines an "average contribution." This is based on an annual calculation of the average employer contribution to employee health premiums made by the county governments of the ten most populous counties in California.)

- For dependent health coverage, the City (and potentially other employers) could not agree to pay more than 50% of the cost of the least expensive plan offered, based on the number of dependents enrolled.
- For employee dental coverage, the City (and potentially other employers) could not agree to pay more than 75% of the cost of coverage.
- For dependent dental coverage, the City (and potentially other employers) could not agree to pay more than 50% of the cost of coverage.

This Charter amendment would also impose the following:

- A penalty on any employee or group of employees who might seek the opinion of a court with regard to the legality of the amendment's provisions.
- Should a court invalidate any portion of the charter amendment, then there shall be no increase in compensation (wages) for the employees covered by the judgment for a period of five years.

### **The San Francisco City Charter and the Health Service Board**

The Charter of the City and County of San Francisco includes specific requirements for the Health Service Board. Among these requirements, Section 12.200 of the San Francisco City Charter mandates that the Board must “apply benefits without special favor or privilege.” Based on this provision, the Health Service Board has historically taken the economic impact of the cost of benefits on employees and retirees into consideration.

While the Board has historically acknowledged that some variation in cost-sharing is necessary, based on factors such as the number of dependents covered, Section 12.200 has been interpreted to mean that access to health benefits should not be weighted significantly in favor of those who have higher salaries and/or smaller families.

Managing the cost of benefits requires difficult but informed and thoughtful decisions. In fall of 2009, acknowledging the challenges of rising premiums, the Board made significant plan design changes. Health Service System employees and retirees agreed to pay \$10 million in higher health benefit costs. These costs were distributed via increased out-of-pocket co-pays. In 2009, retirees also accepted a Medicare Advantage plan that limited Medicare portability, but resulted in \$2.5 million dollars in savings.



The proposed Charter amendment conflicts with the City Charter's Section 12.200 requirement for applying benefits without special favor or privilege. If the proposed amendment becomes law, required employee premium contributions for dependent coverage would increase dramatically. Employees receiving higher wages and employees without dependents would be in a more favorable position when electing health benefits.

If the proposed amendment becomes law:

- Some employees, in particular those with the lowest salaries, may no longer be able to afford dependent coverage – even from the least expensive plan. Research indicates that higher employee contribution rates causes workers to decline coverage.<sup>1</sup>
- Employee contributions for dental coverage are projected to be as high as \$71.77 per month. Due to financial hardship some employees will need to drop dental coverage for their families.
- The premiums for participating in the City Plan PPO are likely to increase significantly. This is currently the only plan offered that does not restrict participants to a closed HMO network of doctors and hospitals. It is likely that a significant number of employees enroll in this plan because they have complex medical needs that are not easily met by the more restricted offerings of an HMO. They currently pay not only higher premiums but also a deductible and 15% of all claims (within network).
- The City Plan PPO is currently a self-insured plan that includes a mixed group of active employees and nearly 30% of the System's retirees. Any migration of active employees out of the City Plan PPO due to rising costs would result in a smaller pool of members in the plan, which will increase the rates for all participants. For employees and retirees who live outside of HMO service areas the City Plan PPO is currently the only option. Individuals who cannot access service via an HMO offering and who can no longer afford the City Plan PPO will have no choice but to drop this coverage.

### **Proposed Amendment Disqualifies HSS For Substantial Federal Subsidy**

If this proposed Charter amendment becomes law, it will disqualify the Health Service System's recent application for as much as \$23 million in funds offered by the federal government through federal health reform legislation. The Early Retiree Reinsurance

Program 3(ERRP) provision in the Patient Protection and Affordable Care Act (PPACA) rewards employers who provide retiree health benefits by allowing employers to apply for financial relief (reinsurance) which will offset the costs of covering retired employees who do not yet qualify for Medicare. By the program's design, any ERRP funds awarded would be returned to the Health Service System Trust Fund and be used to reduce premiums. This would lower the premium contributions paid by the employer and all the individuals covered under the employer's plans – employees as well as retirees. However, a change in the maintenance of effort (the amount that an employer contributes to employee health) such as the increase in employee premiums resulting from the proposed Charter amendment, would void the Health Service System's application for these much needed funds this year and through 2014.

## **Conclusion**

The rising cost of healthcare, for the City & County of San Francisco and HSS members, is an issue of concern to the Health Service Board. The proposed Charter amendment may save an estimated \$50.3 million to the General Fund. However, it does not pass any savings on to the Health Service Trust Fund, which is used exclusively for funding employee and retiree health benefits.

The proposed Charter amendment does not guarantee "sustainability" of employee and retiree health benefits, because it fails to address any issues associated with inflating the costs of healthcare, such as:

- A lack of insurance and health industry transparency that prevents meaningful rate negotiations;
- Medical service business consolidations, which limit choice and set minimum price thresholds;
- Lack of coordinated systems of care;
- And over the long term, the need for employers to partner with vendors and employees to mitigate behavioral choices that help cause disease.

The proposed Charter amendment simply shifts rising health insurance costs to the employees and retirees of the City & County of San Francisco, and, potentially employees and retirees of the San Francisco Unified School District, the San Francisco City College and the San Francisco Superior Court.

## Appendix One: Sample Premium Contribution Rate Increases

This chart shows the anticipated average rate increases, based on current 2010-2011 rates, if the proposed Charter amendment passes.

	2010-2011 Average Employee Contribution per Month <sup>1</sup>		
	Current	Proposed	Cost Increase
<b>Employee Only</b>			
Kaiser	\$0	\$ 8.84	\$8.84
Blue Shield	\$0	\$120.88	\$120.88
City Plan	\$0	\$453.81	\$453.81
Dental	\$0	\$17.95	\$17.95
<b>Employee +1</b>			
Kaiser	\$ 8.84	\$ 249.17	\$ 240.33
Blue Shield	\$120.88	\$ 473.29	\$ 352.41
City Plan	\$679.45	\$1,098.83	\$ 419.38
Dental	\$0	\$ 41.53	\$ 41.53
<b>Employee +2 or more</b>			
Kaiser	\$228.74	\$ 448.64	\$219.90
Blue Shield	\$545.86	\$ 765.76	\$219.90
City Plan	\$1410.21	\$1,630.11	\$219.90
Dental	\$0	\$ 71.77	\$ 71.77

<sup>1</sup> Specific employee contribution rates vary depending on an employee's union contract.

<sup>2</sup> Dental rates reflects a weighted average based on current membership as of 7/1/10.

## Appendix Two: San Francisco City Charter Excerpt

### **SEC 12. 200 - HEALTH SERVICE BOARD.**

There shall be a Health Service Board which shall consist of seven members as follows: one member of the Board of Supervisors, to be appointed by the President of the Board of Supervisors; the City Attorney or designated Deputy City Attorney, except that on May 15, 2005, the City Attorney's tenure on the Health Service Board shall expire and that seat shall be filled by a member elected from the active and retired members of the System from among their number; two members appointed by the Mayor pursuant to Section 3.100, one of whom shall be an individual who regularly consults in the health care field, and the other a doctor of medicine; and three members (in addition to the elected member assuming the seat vacated by the City Attorney) elected from the active and retired members of the System from among their number. Elections shall be conducted by the Director of Elections in a manner prescribed by ordinance. Elected members need not reside within the City and County. The terms of members, other than the ex officio members, shall be five years, and shall expire on May 15 of each year.

A vacancy on the Board appointed by the Mayor shall be filled by the Mayor. A vacancy in an elective office on the Board shall be filled by a special election within 90 days after the vacancy occurs unless a regular election is to be held within six months after such vacancy shall have occurred.

The Health Service Board shall:

1. Establish and maintain detailed historical costs for medical and hospital care and conduct an annual review of such costs;
2. Apply benefits without special favor or privilege;
3. Put such plans as provided for in Section A8.422 into effect and conduct and administer the same and contract therefor and use the funds of the System;
4. Make rules and regulations for the administration of business of the Health Service System, the granting of exemptions and the admission to the System of persons who are hereby made members, and such other officers and employees as may voluntarily become members with the approval of the Board; and
5. Receive, consider and, within 60 days after receipt, act upon any matter pertaining to the policies of, or appeals from, the Health Service System submitted to it in writing by any member or any person who has contracted to render medical care to the members.

Except as otherwise specifically provided, the Health Service Board shall have the powers and duties and shall be subject to the limitations of Charter Sections 4.102, 4.103 and 4.104.

Subject to the requirements of state law and the budgetary and fiscal provisions of the Charter, the Health Service Board may make provision for health or dental benefits for residents of the City and County of San Francisco as provided in Section A8.421 of Appendix A of the Charter.

(Amended November 2004)

## Appendix Three: Proposed Charter Amendment

### **A.8.490 EMPLOYEE CONTRIBUTIONS TO PENSION AND MEDICAL PLANS**

- (a) Notwithstanding any provision of this Charter, all active employees who are uniformed members of the police and fire departments shall contribute 10% of each payment of compensation from participating Retirement System employers to the Retirement System, to be credited to the individual account of the member.
- (b) Notwithstanding any provision of this Charter, all active miscellaneous employees who are members of the Retirement System shall contribute 9% of each payment of compensation from participating Retirement System employers to the Retirement System to be credited to the individual account of the member.
- (c) This section shall govern any memorandum of understanding (MOU) or collective bargaining agreement (CBA) between the City and County of San Francisco (City) and any employee organization representing actively employed members of the system reached after the November 2010 general election. The City may not pay or otherwise "pick up" any portion of the employee contribution to the Retirement System.
- (d) The increase in pension contributions for uniformed ranks of police and fire departments from a current level of 7.5% shall not exceed the increase in cost (including amortization of increased actuarially accrued liability) resulting from the voters' enhancement of police and fire retirement benefits effective January 1, 2003. For the purpose of this paragraph, additional cost shall be calculated for uniformed police and fire employees separately from miscellaneous employees. The calculation shall include both "normal" costs and actuarially accrued liability.
- (e) In addition, the voters declare that, with respect to employer contributions for employee medical care coverage, Charter sections A8.423, A8.428 (b)(2), and related provisions concerning the "ten county survey" shall prevail over Charter sections A8.409 et seq. and A8.590 et seq., and that the employer contribution determined pursuant to section A8.423 shall constitute the sole contribution for medical care made by the City in the Health Service System for active employees who are members of the system. For dependents, in any MOU or CBA between the City and employee organizations representing members of the Health Service System reached after the November 2010 general election, or any arrangement with unrepresented officers or employees, the City is authorized to pay or otherwise "pick-up" no more than 50% of the cost at each level of dependent coverage. The maximum amount of coverage for dependents of active employees paid by the City in the Health Service System pursuant to this subsection shall be determined based upon the lowest cost plan offered by the Health Service System.
- (f) In any MOU or CBA between the City and employee organizations representing City employees reached after the November 2010 general election, or any arrangement with unrepresented officers or employees, the City may contribute no more than 75% of the cost of employee dental coverage and 50% of dependent dental coverage.
- (g) Except as specifically provided herein, this section shall become effective January 1, 2011. This section shall apply to all then current employee members of the Retirement and Health Service Systems, as well as to employees hired on or after passage; provided, however, that any adjustments to the medical plan rate charged to employees resulting from this provision shall be made in conjunction with a regularly scheduled open enrollment period. To the extent any provision of this section is contrary to the terms of a MOU or CBA executed on or before November 2, 2010 between a participating employer and a recognized employee organization, any increased employee contribution to the retirement system or for medical care shall become effective for employees covered by such MOU or CBA immediately upon expiration of such MOU or CBA.
- (h) In any arbitration involving employees of the City and County of San Francisco under Charter section A.8.409-4 or A8.590-5, the arbitrator shall be bound by the above provisions. In addition, the arbitrator shall make specific findings regarding the actual annual costs to the City of pension, health and retiree health benefits attributable to employees at issue for each year of the prior agreement and projected costs for each year of the successor agreement. In determining wages and other forms of compensation pursuant to this section, the arbitrator shall

consider as increased compensation any increase in the cost of pension, health and retiree health contributions paid or projected to be paid by the City. Compliance with this provision shall be mandatory.

(i) It is the express intent of the voters that employers participating in the Health Service System and Retirement System, as well as active employees who are members of those systems, each pay an equitable share of pension and medical care costs. With respect to City employees, should a court of competent jurisdiction render a final judgment determining that any portion of this section cannot be enforced, then there shall be no increase in the cost of bargained compensation for a period of five years after the expiration of any memorandum of understanding in effect as of November 2, 2010 covering employees covered by such judgment. If, notwithstanding the voters' intent, an arbitrator awards an increase in wages or other economic benefits for employees under section A8.409-4 or A8.590-5, or the City is otherwise compelled to negotiate or arbitrate wage or benefit increases, such increases shall be presented to the voters for approval before they may become effective, for a period of five years after the expiration of any memorandum of understanding in effect as of November 2, 2010 covering such employees.

**Section 3: Severability.** This Charter Amendment shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, or clause ("portion") of this Amendment is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this Amendment. The voters hereby declare that this Amendment, and each portion of the Amendment, would have been adopted irrespective of whether any one or more portions of the Amendment are found invalid. If any portion of this Amendment is held invalid as applied to any person, circumstance, employee or category of employee, such invalidity shall not affect any application of this Amendment which can be given effect. If any portion of the Amendment is held invalid as to existing employees, it shall not affect its application to employees hired after the effective date of this measure. This Amendment shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Amendment be interpreted or implemented in a manner that facilitates the purposes set forth herein.

**Section 4: Effective date.** Except as specifically set forth in the text, this Charter Amendment shall be effective January 1, 2011.