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August 10, 2010

Hon. Katherine Feinstein  
Presiding Judge  
San Francisco Superior Court  
400 McAllister Street, Room 008  
San Francisco, CA 94102

**Re: City Attorney Office's Response To The June 24, 2010 Civil Grand Jury Report  
Entitled "Pension Tsunami – The Billion Dollar Bubble"**

Dear Judge Feinstein:

Under Penal Code Sections 933 and 933.05, the City Attorney's Office submits the following response to the Civil Grand Jury Report entitled "Pension Tsunami – The Billion Dollar Bubble" and issued on June 24, 2010. The Grand Jury requested that this Office respond to the report.

For each Civil Grand Jury finding for which you ask a response from the City Attorney's Office, you asked that we either:

1. agree with the finding; or
2. disagree with it, wholly or partially, and explain why.

For each Civil Grand Jury recommendation for which you ask a response from the City Attorney's Office, you asked that we report one of the following:

1. that the recommendation has been implemented, with a summary explanation of how it was implemented;
2. that the recommendation has not been implemented, but will be implemented in the future, with a time frame for the implementation;
3. that the recommendation requires further analysis, with an explanation of the scope of that analysis and a time frame for the officer or agency head to be prepared to discuss it (less than six months from the release of the report); or
4. that the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (California Penal Code §§933, 933.05)

Of the ten findings and corresponding recommendations in the Civil Grand Jury Report, the City Attorney's Office has been asked to respond to the Findings and Recommendations listed below.

**Finding C1.**

*Proposition H, passed by voters in 2002, requires that if the City's contribution rate to the pension fund exceeds 0%, then the City and the Safety employee unions must "meet and confer" to implement a "cost-sharing" arrangement to reduce the cost impact of the employer's*

Letter to Hon. Katherine Feinstein  
Page 2  
August 10, 2010

*contributions on the City's General Fund. The City's contribution rate has exceeded 0% for fiscal 2004-05 to the present.*

*The City and County of San Francisco is not in compliance with the requirements of the City Charter resulting from the passage of Proposition H. There have been no "meet and confer" sessions to establish a "cost-sharing" arrangement.*

*The City Attorney has not mandated that the SFERS Board comply with these requirements of the Charter Amendment resulting from Proposition H.*

#### **City Attorney's Office Response to Finding C1.**

Partially disagree. The San Francisco Employees' Retirement System (the "Retirement System") has confirmed to us that, as the Grand Jury Report states, the City's contribution rate to the Retirement System has exceeded 0% for every fiscal year since the fiscal year beginning July 1, 2004. Accordingly, we agree that the meet and confer and cost-sharing provisions in Charter Sections A8.595-11(e) and A8.596-11(e) (Proposition H November 2002) were first triggered in July 2004 and have continued to be triggered since then. (We note that while the Civil Grand Jury Report refers to the meet and confer and cost-sharing language in Charter Section A8.595-11(e), which governs the police plan, it omitted reference to the identical language in Charter Section A8.596-11(e), which applies to the firefighter plan. References to "Proposition H" here include both of these Charter provisions.)

But we disagree that the City has not complied with Proposition H. The conclusion of the Civil Grand Jury Report that there have been no meet and confer sessions to establish a cost-sharing arrangement appears to be based on incorrect facts and on a misinterpretation of the law.<sup>1</sup> For the reasons we explain below, the City has met the requirement that it negotiate with representatives of police officers and firefighters to effect a material reduction in General Fund costs in years in which it faces a positive contribution to the Retirement System. But, as we describe further in this response, the City can and should do a better job of implementing Proposition H by conducting the process annually and making the process more transparent to the public. And the Civil Grand Jury Report touches upon serious policy questions about whether the City needs to take other actions to ensure the long-term viability of its Retirement and Health Systems and protect its General Fund. As described below in our response to Recommendation C2, we are prepared to provide legal advice to the City policy-makers should they wish to examine taking such actions.

Before analyzing the City's legal compliance with the cost-sharing provisions of Proposition H, we first explain how these Charter provisions fit into the City's collective bargaining process, and the context of the collective bargaining agreements at the time the voters approved Proposition H in 2002.

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<sup>1</sup> In this regard, as expressed in the City Attorney's June 14, 2010 letter to Presiding Judge McBride, we are concerned that there is at least an appearance that the author of the Civil Grand Jury Report might have reached a policy decision that drove the conclusions in the report, without regard to an objective analysis of the facts or the law. The author of the report was listed as a co-sponsor of a proposed initiative measure to amend the Charter to address funding City employee pension and health benefits. That measure includes an express finding that the City "has failed to achieve a material reduction of the cost impact of employer contributions to the City's general fund as required by the 2002 Charter Amendment [Proposition H]." The sponsors circulated that measure for signature and submitted it before the Grand Jury issued its report.

Letter to Hon. Katherine Feinstein  
Page 3  
August 10, 2010

*Overview Of The City's Collective Bargaining Process*

Generally, the City and the unions representing its employees agree on the salary, benefits and the terms of employment through a labor negotiation process. The City's Charter and the California Meyers-Milias-Brown Act ("MMBA") (Gov. Code §§3500 et seq.) govern that process. The MMBA's purpose is to "promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment . . .," as well as to promote good employer-employee relations. (Gov. Code §3500.)

The focus of the labor negotiation process is collective bargaining to reach an agreement embodied in a Memorandum of Understanding ("MOU"), between the City and the unions representing City employees. Under the Charter, the City and a representative of its safety employees must "negotiate in good faith" to agree upon the terms of an MOU. (Charter §§A8.409-3 (non-safety employees), A8.590-4 (safety employees).) This Charter requirement complies with the City's obligation under the MMBA to "meet and confer in good faith regarding wages, hours and other terms and conditions of employment." (Gov. Code §3505.) Typically, MOUs are lengthy documents covering a variety of topics and are the product of substantial give and take on numerous points. The current MOUs between the City and representatives of its safety employees are posted online by the Department of Human Resources ("DHR"). (See <http://www.sfdhr.org>.)

The Charter vests in the Mayor, acting through the Director of Human Resources, and in consultation with the Board of Supervisors, the exclusive responsibility for meeting and conferring with all employee representatives about the terms of its MOUs. (See Charter §§11.100 and 11.101.) More particularly, DHR develops, in conjunction with other City agencies such as the Controller's Office, the economic and wage data used in the collective bargaining process. Under the City Charter, the Mayor's Office and DHR determine the City's negotiating position and attempt to reach agreement with the unions over wages, hours and other terms and conditions of employment as part of the collective bargaining process.

If the negotiators for the City and the union reach agreement, DHR prepares the MOU reflecting the terms of that proposed agreement. If instead the City and a union cannot agree on all terms of an MOU, an arbitration panel decides disputed terms through binding interest arbitration. (Charter §§A8.409-4 (non-safety employees), A8.590-5 (safety employees).) Once the terms of the MOU are decided, whether by agreement or by arbitration, DHR submits the proposed MOUs to the Board of Supervisors for its approval by ordinance. Once ratified by the union membership and approved by Board ordinance, the MOUs become binding agreements.

Like other contracts, our Office approves those final MOUs as to form. (Charter §6.102(6).) Approval as to form, as mandated by the City's Charter, reflects the City Attorney's determination that the contract is in an acceptable legal form and contains the provisions required under the Charter and Municipal Codes, and that there is a legal basis for the City to enter into and perform the contract and for the City to realize the basic benefits of its bargain. But approval as to form does not extend to making any judgment about how good a bargain the City has struck – the Charter vests the responsibility for making that determination in the City's policy-makers.

Letter to Hon. Katherine Feinstein  
Page 4  
August 10, 2010

*Historical Context, Including Post-Proposition H Negotiations With Public Safety Employee Representatives*

Labor negotiations are complex and take into account many economic factors that may not appear in the text of MOUs. For that reason, one must also examine Proposition H in its historical context. When the Board of Supervisors unanimously approved placing on the ballot the measure enhancing police and fire employee retirement benefits that became Proposition H and when the voters approved that measure, the City Retirement System had a surplus. The City was not making any employer contribution to the Retirement System, and the Controller and the Retirement System determined that it was unlikely that the City would be required to do so for at least the next ten years. An underlying premise of Proposition H was that the surplus would cover the City's share of the cost of the enhanced benefits. Unfortunately, these predictions proved to be incorrect and, within two years after the passage of Proposition H, the Retirement System informed the City that it would need to make contributions to the Retirement System. This turn of events triggered the cost-sharing provisions of Proposition H.

When the City's Retirement System had a surplus, the City had agreed, through negotiated MOUs, to pay, or "pick up," the employees' full share of their retirement contributions, in lieu of other economic concessions, such as wage increases. DHR informs us that in 2003, in the face of the need to achieve budget savings in a recessionary period and in anticipation for the first time after the adoption of Proposition H that the City would have to make an employer contribution to the Retirement System, the safety employee organizations entered into an agreement with the City to eliminate this benefit for the duration of the MOUs.

The MOU covering police employees for the period July 1, 2003 through June 30, 2007 stated that the employees' agreement to pay their retirement contributions satisfied the cost-sharing requirements of Proposition H. The MOU covering firefighters for the period July 1, 2003 through June 30, 2005 provided that the City pick up would be eliminated only until June 30, 2004, when the parties would return to the "status quo ante," and the City would resume the pick up. But the parties amended the firefighters' MOU to continue elimination of the City pick up, omit the language that the parties would ever return to the status quo ante, to extend the term of the MOU to June 30, 2007, and acknowledge that the firefighters' payment of their own retirement contributions satisfied the cost-sharing requirements of Proposition H.

Thus, the safety employees resumed paying their employee contributions to the Retirement System. During this period, other non-safety employees agreed in their MOUs to forego the City's pick up of their retirement contributions temporarily, but the City agreed with those other employees to resume the pick up after a specified period of time, depending on the specific MOU. As to these non-safety employees, when the City became obligated to resume the employee pick up, in negotiations the City offered non-safety employee unions the choice to have the City continue the pick up or to receive a wage increase in lieu of the City's resumption of the pick up. Many of these unions selected the wage increase, which was reflected in City MOUs as a wage increase in recognition of the employees' agreement to continue paying the employee retirement contribution. But, we understand that the City did not offer to police or firefighters this wage increase in recognition of continued payment of the employee retirement contribution.

As the City and unions representing safety employees negotiated new or amended MOUs for the fiscal years beginning July 1, 2008 and after, the safety employees agreed to continue this concession. The DHR informs us that since the safety employees' agreement in 2003, they have continued to pay the full employee contribution. The MOUs that the City negotiated for safety

Letter to Hon. Katherine Feinstein  
Page 5  
August 10, 2010

employees expressly state that the parties intended this concession to satisfy the cost-sharing requirements in Charter Sections A8.595-11(e) and A8.596-11(e). Also, DHR informs us that the safety employees agreed to additional wage concessions, beyond the payment of the employee contribution, in Fiscal Years 2008-2009, 2009-2010, and the fiscal year that began July 1, 2010, that resulted in substantial General Fund savings.

With that background we turn back to the findings in the Grand Jury Report that the City has not complied with the meet and confer and cost-sharing requirements of Proposition H.

*Analysis Of City's Compliance With Meet And Confer And Cost-Sharing Requirements*

First, as indicated above, we understand that meet and confer negotiations took place in the context of bargaining over the terms of MOUs established during the relevant period. Those negotiations resulted in safety employees agreeing to MOUs that would require employees to pay their full retirement contribution, which the City had been paying in full before Fiscal Year 2003-2004. And we further understand from DHR that meet and confer sessions also resulted in further wage concessions by the safety employees. The MOUs between the safety employee unions and the City state that the employment concessions met the requirements of Charter Sections A8.595-11(e) and A8.596-11(e). (We note that the MOU with the Police Officers Association includes a misreference to Section A8.595-11(d) instead of A8.595-11(e), but from the context it is clear that this reference was a typographical error and the intended reference was to cost-sharing provisions of subsection e.)

While specific sessions to negotiate cost-sharing did not occur in each year since the City first faced a positive retirement contribution in Fiscal Year 2004-2005, in fact, the City and the safety employees maintained cost-sharing arrangements, reflected in the negotiated MOUs, which cover every fiscal year in which a cost-sharing arrangement was required. We conclude that Proposition H allows the City to enter into multi-year agreements providing for cost-sharing arrangements in each year of the term of such agreements where the City faces a positive contribution rate. Such multi-year arrangements comply with Proposition H. They also operate in conjunction with the City's obligations under collective bargaining laws and avoid the uncertainty that year-to-year negotiations in changing economic times would inject into the City's budgetary process.

Second, we understand from information that DHR has recently made public in the memorandum from DHR entitled "City Response: Inquiry on Prop H Obligations" (a copy of which is attached as Attachment A to this response) that these cost-sharing arrangements resulted in a material reduction in General Fund costs. In particular, DHR estimates that the total dollar amount of the savings to the City's General Fund under the MOUs requiring public safety employees to assume responsibility for paying their contribution rate is substantial. The savings from that agreement alone nearly equals the increases to the City for the police and fire enhanced pension benefits arising under Proposition H for the relevant period, Fiscal Year 2004-2005 to the present. The reported wage concessions resulted in additional savings to the General Fund.

Some have argued that the City and the unions may not agree that General Fund savings resulting from the public safety employees' resuming to pay their contribution rate to the Retirement System and from the later wage concessions satisfy the cost-sharing provisions of Proposition H because the concessions were driven by the need to achieve budget savings due to the economic recession. But under the circumstances described above, we disagree. As previously mentioned, labor negotiations involve a wide range of matters, and it is difficult to disaggregate the causes of various concessions and benefits. As described in our response to

Letter to Hon. Katherine Feinstein  
Page 6  
August 10, 2010

Recommendation C2 below, we have concluded that going forward the City could improve the Proposition H implementation process so that MOUs more clearly tie General Fund savings to the cost-sharing requirements. Still, it is beyond doubt that the various MOU concessions that DHR has identified from Fiscal Year 2004-2005 to the present have resulted in substantial General Fund savings. Also, as mentioned above, the MOUs themselves specify that the City agreed that the public safety employees' resuming payment of their contributions to the Retirement System satisfied the Proposition H cost-sharing obligation.

Importantly, from a legal standpoint the plain language of Proposition H does not mandate a dollar-for-dollar offset to the General Fund; it requires negotiations to implement a "cost-sharing" arrangement that effects a "material" reduction in General Fund costs. Nor does Proposition H define what is cost-sharing or what is material. The common definition of "share" is to divide or parcel out in shares or apportion. The word suggests that both sides contribute a share. Also, under the common law, the term "material" does not import a rigorous standard. Generally the word "material," when used in connection with contracts and or other monetary terms, means something of significant value. Nevertheless, the figures provided by the DHR in Attachment A show that the concessions that the police and firefighters agreed to were of significant value, *nearly equaling* the cost to the City of providing the enhanced retirement benefits over the relevant period.

When the plain meaning of a Charter provision is not clear, courts examine its legislative history to interpret the measure. Here, the legislative history of Proposition H's cost-sharing provision does not particularly illuminate what the voters intended through the materiality requirement. The digest in the ballot pamphlet for Proposition H did not even mention the cost-sharing provisions. The Controller's Statement in the ballot pamphlet for Proposition H characterized the cost-sharing concept as an obligation to "negotiate a cost-sharing agreement with the police officers and firefighters to cover *all or part* of the cost of providing the additional retirement benefits through employee contributions." (Emphasis added.) In fact, as described above, that sharing agreement is just what occurred when the police and firefighters' agreed to amend their MOUs to pay their retirement contribution. And, also as described above, that agreement differs significantly from MOUs with other City employees in which those employees agreed to continue paying their retirement contribution in exchange for a wage increase. Police officers and firefighters agreed to pay their own retirement contributions as a concession without requiring the City to give them an alternative benefit in exchange.

The cost-sharing requirements of Proposition H stand in contrast to other Charter provisions. For instance, in March 2004 the voters approved Proposition B, a Charter amendment that authorized the City to contract with the California Public Retirement System ("CALPERS") for increased retirement benefits for District Attorneys, Public Defenders and Public Defender Investigators but only if there is no change in costs to the City. Charter Section A8.506-5, added by Proposition B, states that "The power to enter into a contract . . . [with CALPERS] shall be limited to a contract that is *cost-neutral to the City*." (Emphasis added.) So, under this provision the City may not even agree to provide the increased benefits unless it first achieves cost-neutrality. Proposition H does not require cost-neutrality.

Finally, we disagree with the assertion that the City Attorney has not mandated the Retirement Board to comply with Proposition H. As noted below in our response to Recommendation C1, the Retirement Board must determine and inform City policy-makers each fiscal year about whether the City will have a positive contribution rate to the Retirement System. Retirement System staff inform us it did so. But the Retirement Board does not have any responsibility or authority under the Charter to determine how to allocate the burden of that

Letter to Hon. Katherine Feinstein  
Page 7  
August 10, 2010

contribution between the City and its employees, much less to negotiate a cost-sharing arrangement.

In sum, the City has satisfied the materiality standard of Proposition H's cost-sharing provisions. Whether the City can or should do more to achieve further concessions from its public safety employees, or take other steps to help ensure the long-term viability of its pension or health systems, are other, more difficult policy questions. As mentioned in our response to Recommendation C2, we are prepared to provide legal advice to the City policy-makers about options should they wish to pursue them.

**Finding C2.**

*The unfunded pension liability for Proposition H as of July 1, 2009 was approximately \$276 million, amortized over thirteen years to about \$26 million annually.*

**City Attorney's Office Response to Finding C2.**

The City Attorney's Office is unable to agree or disagree with this Finding because the subject matter does not present a legal issue. We defer to the Retirement System and the Controller's Office for a response.

**Recommendation C1.**

*The City Attorney should initiate legal action against the SFERS Board to enforce the requirements of the Charter amendment to "meet and confer" and "cost-sharing" provisions of Proposition H, as stipulated in Charter §A8.595-11(e).*

*The Jury recommends that the City Attorney and/or his representatives present to the Board of Supervisors and SFERS Board the following documents regarding §A8.595-11(e) of the City Charter:*

- 1. A legal opinion on the charter section.*
- 2. Documentation regarding the dates and times that the City and the Police and Firefighters unions met to confer and to implement a cost-sharing arrangement as required in the section.*
- 3. A legal opinion regarding fiduciary duties of the SFERS Board to comply with it.*
- 4. A legal opinion regarding SFERS duty to revise the Safety employee contribution rate to comply with the Charter section.*
- 5. A legal opinion regarding possible remedies to enforce compliance.*

**City Attorney's Office Response to Recommendation C1.**

*Recommendation to sue the Retirement Board:*

The City Attorney's Office will not initiate legal action against the Retirement Board for two reasons. First, as described above, the City has complied with the cost-sharing provisions of Proposition H. Second, the Grand Jury Report recommendation misconceives the role of the Retirement Board in this area. The cost-sharing provisions under Charter Sections A8.595-11(e) and A8.596-11(e) impose no duty on the Retirement Board to implement the meet and confer requirements; that is a City responsibility. The Retirement Board's responsibility is limited to informing the City of the amount of the employer contribution that the City must pay to keep the

Letter to Hon. Katherine Feinstein  
Page 8  
August 10, 2010

Retirement System funded and of the cost to the City of providing the enhanced benefits to the police and fire employees under Proposition H. The Charter specifies contribution obligations of employees as percentages (depending on the plan) of pay. The City pays the balance. The extent to which the City may agree to pay all or part of the employees' contributions is a matter of negotiation between the City and representatives of employees, through the collective bargaining process. As described in our response to Finding C1, the Retirement Board has no authority and plays no direct role in this collective bargaining process.

*Legal opinion on the Charter section (Proposition H cost-sharing provisions):*

Please refer back to our response to Civil Grand Jury Finding C1, above, in this letter.

*Documentation regarding meet and confer:*

The City Attorney's Office does not maintain records pertaining to the dates and times that the City and the safety employee unions met and conferred to negotiate a cost-sharing arrangement under Charter Sections A8.595-11(e) and A8.596-11(e). Accordingly, we are not in a position to implement that recommendation. But, as stated above and evidenced by the express statement in the MOUs, DHR informs us that negotiations did take place resulting in economic concessions that the City and representatives of the police officers and firefighters agreed to for the purpose of satisfying the Charter's cost-sharing requirements.

*Legal opinion regarding fiduciary duties of the Retirement System under Proposition H:*

Please refer to our response above regarding the recommendation to sue the Retirement Board. As stated above, the Retirement System's duties under the cost-sharing provisions of Proposition H are limited.

*Legal opinion regarding the Retirement System's obligation to revise contribution rates:*

Since, as described above, the City has complied with Proposition H, the factual premise of this opinion request does not exist. We recognize that arguments have been raised that the City has the authority to increase the current employee contribution rates above 7.5%, to as high as 10%. DHR's position has been that the Charter limits employee contribution rates to 7.5%. For purposes of analyzing the City's legal compliance with Proposition H, we need not resolve the issue of whether the City could further increase employee contribution rates because the cost-sharing arrangements to date have met the materiality threshold.

*Legal opinion regarding remedies:*

Because, as described above, the City has complied with Proposition H, the factual premise of this opinion request does not exist.

Finally, we note that it is for the City's policy-makers in labor negotiations (i.e., DHR, the Mayor and the Board of Supervisors) to decide how cost-sharing should best be achieved so long as that arrangement at least meets the Charter's materiality standard. This Office does not play a policy-making role in that process. But, in our capacity as legal advisor to the City, we offer suggestions to improve transparency of the cost-sharing agreement process in the future and, as discussed in our response to Recommendation C2 below, we will consider providing a confidential written opinion to the Mayor, the Board of Supervisors, the Retirement Board and

Letter to Hon. Katherine Feinstein  
Page 9  
August 10, 2010

the Director of Human Resources about the legal issues and options associated with further possible cost-sharing arrangements, as appropriate.

### **Recommendation C2.**

*The City and Safety employees should establish an arrangement to share the annual \$26 million cost as required by the City Charter.*

### **City Attorney's Office Response to Recommendation C2.**

As discussed above, the MOUs with the City's safety employees do establish a cost-sharing arrangement that has satisfied the requirements of Proposition H. If through this recommendation the Grand Jury intends to mean that going forward the City should secure greater cost-sharing concessions from its employees, then that recommendation raises policy issues for the City agencies and officials vested with authority in the City's labor negotiation processes to address. As legal advisors to the City we are not in a position to respond to that recommendation.

But, the City Attorney's Office intends to continue advising the City's policy-makers of their legal obligations in the context of their consideration of any specific negotiation proposal and, if the policy-makers wish to pursue other options regarding additional concessions, of any significant legal issues that those options present. Likewise, in anticipation of the City's possible consideration of such options, the City Attorney's Office will consider addressing in a confidential memorandum the legal issues that this Recommendation C2 generally poses, if such a confidential memorandum is appropriate. (Here we note that while we often give public legal advice to the City's policy-makers, this Office sometimes must give confidential legal advice, which is protected by the attorney-client privilege, on matters that could compromise the City's negotiating strategy or could expose the City to possible litigation.)

Also, the City Attorney's Office recommends that DHR improve its implementation of the cost-sharing provisions of Proposition H. Even though we conclude that the City has satisfied those provisions through its collective bargaining process, we recommend that the City's labor negotiators meet and confer annually over cost-sharing with the unions representing the public safety employees. DHR should document those meetings and should issue a public report that includes:

- estimates from the Retirement System of the City's contribution to the Retirement System for the upcoming fiscal year and the projected costs of providing the enhanced benefits under Proposition H for that year;
- a specific statement in the MOUs about how the City is effecting the cost-sharing obligation for the applicable year;
- if the parties determine that they do not need to amend the MOU provisions regarding cost sharing for that fiscal year, a statement about why that is the case; and
- an estimate of the total dollar amount in General Fund savings that the City is allocating for that fiscal year to the cost-sharing provisions of Proposition H.

Letter to Hon. Katherine Feinstein  
Page 10  
August 10, 2010

**Recommendation E1.**

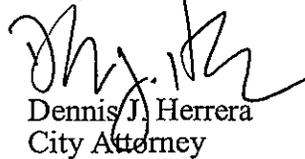
*Department of Human Resources and collective bargaining units should meet and confer to determine a cost-sharing arrangement to pre-fund the \$4 billion unfunded liability for retiree health care obligations.*

**City Attorney's Office Response to Recommendation E1.**

The City has taken steps to implement this recommendation. Proposition B, a Charter amendment that the Board of Supervisors placed on the ballot and that the San Francisco electorate approved in June 2008, requires all newly hired employees to contribute 2% of compensation to defray retiree health care costs. DHR informs us that approximately 10% of the current workforce is making that contribution. Over time that percentage will grow until 100% of the City's workforce is contributing toward retiree health care costs. The City Charter now also requires that the City contribute annually to the Retiree Health Care Trust Fund 1% of payroll for newly hired employees. Eventually that contribution should also cover all of the City's workforce. DHR informs us that the City's authorized representatives continue to engage in discussions with all of the employee unions to pursue contributions to the Retiree Health Care Trust Fund from the remainder of the workforce.

We hope this information is helpful.

Very truly yours,



Dennis J. Herrera  
City Attorney

cc: Mayor Gavin Newsom  
Angela Calvillo, Clerk of the Board of Supervisors  
Members of the Retirement Board, San Francisco Employees' Retirement System  
Gary Amelio, Executive Director, San Francisco Employees' Retirement System  
Micki Callahan, Director of Human Resources  
Controller Ben Rosenfield

# **ATTACHMENT A**



Gavin Newsom  
Mayor

Micki Callahan  
Human Resources Director

**City Response: Inquiry on Prop H Obligations**

The City met with the Police and Fire groups in the spring of 2003, during the first round of labor negotiations following passage of Proposition H, and negotiated provisions in the collective bargaining agreements covering police officers and firefighters to address Charter obligations as to cost-sharing. At that time both the Police and Fire unions agreed to pay the maximum employee pension contribution allowed under the Charter (7.0% (old plan) or 7.5% (new plan)). These agreements were reached in recognition of the parties' cost-sharing obligations, the fact that the City's pension costs were projected to increase above 0%, and to facilitate balancing the City's budget. Proposition H specifically provides that, "Such cost sharing arrangement shall not require an employee contribution in excess of the limits set elsewhere in this Charter." The Charter specifically provides that employee contributions are limited to 7.5% for new plan members.

During the 1990's, the City and virtually all of its labor organizations had negotiated an Employer-Paid Member Contribution (EPMC), under which the City "picks up" the employee pension contribution. During the early 2000's, the City negotiated a temporary elimination of the EPMC for its unions, to achieve budget savings during a recessionary period. By July 2006, the City's miscellaneous employee unions had had the EPMC restored, or received a wage increase in lieu of that restoration. However, the police and fire labor agreements did not include a restoration of the EPMC, nor did they provide for a wage increase in lieu thereof. Instead, their labor agreements provided that the obligation to pay the employee pension contribution would continue, in recognition of the Charter's cost-sharing obligations. As reflected in both the Police and Fire collective bargaining agreements (located on the Department of Human Resources' website at [www.sfgov.org/DHR](http://www.sfgov.org/DHR)):

**San Francisco Firefighters Union, Local 798 (Section 11):**

*Employees shall pay their own employee retirement contributions in an amount equal to 7.0% (old plan) or 7.5% (new plan) of covered gross salary. The parties acknowledge that said contributions satisfy the requirements of Charter Sections A8.596-11(e) and A8.598-11(d).*

**San Francisco Police Officers' Association (Section 9):**

*For the duration of this Agreement, employees shall pay their own retirement contributions. Tier 1 employees will contribute an amount equal to 7% of covered gross salary; Tier 2 employees and Harbor Police Officers will contribute an amount equal to 7.5% of covered gross salary. The parties acknowledge that said contributions satisfy the requirements of Charter Sections A8.595-11(d) and A8.597-11(d) for the duration of this Agreement.*

Not only have these contributions had "a material reduction of the cost impact of employer contributions on the City's general fund" as required by Prop H, they have actually almost completely covered the increased costs under Prop H.

According to the San Francisco Employee Retirement System's estimations, increased costs since Fiscal Year 2004-2005 (the year that the City's rate first exceeded 0%) attributable to the Police and Fire pension improvements under Proposition H amount to \$205,693,993. However, the retirement contributions by Police and Fire (7.5% for new plan members, 7.0% for old plan members) during the period since 2003 amount to approximately \$202,042,321. See the chart below for further details.

| Fiscal Year | Approximate Retirement Contributions by Police and Fire |                 |                           | Prop H Increased Costs |
|-------------|---|-----------------|---------------------------|------------------------|
|             | Police  | Fire            | Total for Police and Fire |                        |
| FY03-04     | \$13,275,000.00   | \$ 9,750,000.00 | \$ 23,025,000.00          |                        |
| FY04-05     | \$14,043,750.00   | \$10,200,000.00 | \$ 24,243,750.00          | \$30,792,593           |
| FY05-06     | \$14,798,407.35   | \$11,025,221.85 | \$ 25,823,629.20          | \$32,418,548           |
| FY06-07     | \$16,580,467.65   | \$12,021,110.78 | \$ 28,601,578.43          | \$35,643,372           |
| FY07-08     | \$16,871,911.20   | \$12,542,837.10 | \$ 29,414,748.30          | \$35,920,662           |
| FY08-09     | \$20,805,085.50   | \$14,382,645.60 | \$ 35,187,731.10          | \$37,467,254           |
| FY09-10     | \$21,655,563.30   | \$14,090,321.25 | \$ 35,745,884.55          | \$33,451,564           |
| FY10-11     | \$21,391,609.80   | \$14,271,636.08 |                           |                        |
|             |   | <b>Totals</b>   | <b>\$ 202,042,321.58</b>  | <b>\$205,693,993</b>   |

(See notes on following page.)

\* Notes:

- The Prop H figures are based on information provided by SFERS.
- The Prop H increased cost in FY09-10 is an estimate.
- The retirement contribution amounts for FY02-03, FY03-04 and FY04-05 are estimates, since DHR does not have payroll data for those years at this time.
- The retirement contribution rates for FY05-06 to FY10-11 are estimates based on the Controller's Office payroll data.
- Contribution rates are calculated based on adjusted base and premiums.

(FYI- the 7.5% amount of the Police and Fire pension contribution during FY 2011-12 will be \$35,663,245. Extrapolating from the downward trend in increased costs under Prop H, we assume that the 7.5% employee pension contribution will actually exceed the cost of Prop H pension improvements for Police and Fire in that period).

In addition, the City was able to renegotiate provisions of closed labor contracts with Police and Fire unions which achieve additional savings in the fiscal years 2008-09 through 20012-13. As these agreements reduce pensionable income, the City's pension costs also reduce during the period. Labor concessions this fiscal year alone amount to \$18 million from Police and \$11.5 million from Fire.

| <b>Additional Give-Backs from Closed Contracts</b> |                      |                      |                                  |
|--|----------------------|----------------------|----------------------------------|
| <b>Fiscal Year</b>                                 | <b>Police</b>        | <b>Fire</b>          | <b>Total for Police and Fire</b> |
| FY08-09  | -                    | \$ 4,000,000         | \$ 4,000,000                     |
| FY09-10  | \$ 10,000,000        | \$ 7,000,000         | \$ 17,000,000                    |
| FY10-11  | \$ 18,000,000        | \$ 11,500,000        | \$ 29,500,000                    |
| <b>Totals</b>                                      | <b>\$ 28,000,000</b> | <b>\$ 22,500,000</b> | <b>\$ 50,500,000</b>             |

Finally, while our Police Officer wages are at or slightly above market for the region, (less than 0.5% above market, actually), our retirement benefit is much lower than that of other jurisdictions. Safety employees throughout California receive a "3% at 50" benefit, while San Francisco's safety members receive "3% at 55."

| <u>Jurisdictions</u> | <u>Safety</u><br><i>Age at Which 3%<br/>Benefit is Received</i> |
|----------------------|---|
| San Francisco        | 55  |
| State of California  | 50  |
| Alameda County       | 50  |
| Contra Costa County  | 50  |
| Marin County         | 50  |
| Sacramento County    | 50  |
| San Mateo County     | 50  |
| Santa Clara County   | 50  |
| Solano County        | 50  |
| Sonoma County        | 50  |
| Oakland              | 50  |
| San Jose             | 50  |