



City Clerk

CITY OF SAN JOSÉ, CALIFORNIA

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STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 29879**", the original copy of which is attached hereto, was passed for publication of title on the **14th day of February, 2017**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **28th day of February, 2017**, by the following vote:

AYES: ARENAS, CARRASCO, DAVIS, DIEP, JIMENEZ, JONES, KHAMIS, T. NGUYEN, PERALEZ, ROCHA; LICCARDO.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

VACANT: NONE.

Said Ordinance is effective as of **31st day of March, 2017**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **28th day of February, 2017**.

(SEAL)

TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 29879

AN ORDINANCE OF THE CITY OF SAN JOSE REPEALING SECTION 3.04.490 OF CHAPTER 3.04, ADDING A NEW CHAPTER 3.57, AND AMENDING VARIOUS SECTIONS OF CHAPTERS 3.32, 3.36 AND 3.44 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE, TO IMPLEMENT THE TERMS OF THE ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK AGREEMENT WITH THE SAN JOSE POLICE OFFICERS' ASSOCIATION AND INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 230

WHEREAS, on November 8, 2016, San José voters approved Measure F, which modified provisions of Title 3 of the San José Municipal Code which were previously adopted by Measure B, approved by San José voters on June 5, 2012; and

WHEREAS, in order to implement Measure F, the following changes are required to be made to Title 3; and

WHEREAS, the ordinance will also include modifications to Title 3 to allow re-enrollment after alternative health coverage and flexibility in designation of death benefit;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 3.04.490 of Chapter 3.04 of Title 3 of the San José Municipal Code is hereby repealed.

SECTION 2. Section 3.32.010 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.010 Established - Name - Membership

- A. There is hereby continued, maintained and administered, as provided in this Chapter 3.32, a retirement plan for officers and employees receiving a monthly compensation for service as members of the Police or Fire Department of the City, to be known as the "Police and Fire Department Retirement Plan". All officers and employees shall be required to be members of said Retirement Plan.
- B. Under the City Council's authority pursuant to Article XV, Section 1500 of the City Charter, the provisions of Article XV-A of the City Charter are hereby implemented into the San José Municipal Code. To the extent there is any

conflict between Article XV-A of the City of San José's Charter and the provisions of the Police and Fire Department Retirement Plan, Article XV-A will supersede any conflicting provision in the Police and Fire Department Retirement Plan, except as provided in Section 3.32.300A.2. and 3.32.320B.

SECTION 3. Section 3.32.090 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.090 Service Retirement - Upon Member's Request - Conditions

Any member of the Fire or Police Department who has served an aggregate of twenty (20) years in either or both departments, or in any other department of the City, and who has fulfilled all conditions as provided in this Chapter, and is fifty-five (55) or more years of age, shall, upon his own request, be retired by the board from further service in such department, and such member shall thereafter, during his lifetime, be paid in equal monthly installments from the pension fund a pension equal to fifty percent (50%) of the average monthly pay received by said member during the three (3) years immediately preceding the request for retirement.

SECTION 4. Section 3.32.100 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.100 Service Retirement - Upon Vote of Board - Conditions

Any member of the Fire or Police Department who has served an aggregate of twenty (20) years in either or both departments, or in any other department of the City, and who has fulfilled all conditions as provided in this Chapter, and if fifty-five (55) or more years of age, may be retired by a four-fifths' vote of the board of administration from further service in such department, and such member shall thereafter be paid the same monthly pension as provided in Section 3.32.090.

SECTION 5. Section 3.32.110 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.110 Disability Retirement - Conditions

Any member of the Fire or Police Department who has served an aggregate of twenty (20) years in either or both departments, or in any other department of the City, and who has fulfilled all conditions as provided in this Chapter, but has not reached the age of fifty-five (55) years, and who is disabled from any cause, may apply to said board of administration for retirement, or the board may, on its own motion, retire said member. Any member so retired under the provisions of Section 3.32.110, 3.32.120 or 3.32.140 shall thereafter be paid the same monthly pension as provided in the immediately preceding sections. No member of the Police or Fire Department may be retired by order of the board of administration, as provided in this Chapter, unless said order is

voted by a majority vote of the members of the board of administration after thirty (30) days' notice to the employee of such meeting, said notice to recite the time and place of meeting of the board of administration for consideration of the disability retirement.

SECTION 6. Section 3.32.160 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.160 Period of Service – Determination

In determining the period of service necessary to render any such member of the Police Department or Fire Department eligible for retirement allowance under the provisions considered, dating from the date when such employee was placed upon the payroll in the Police Department or Fire Department as shown by City records. Such service need not be continuous and may be in any capacity and in either the Police Department or Fire Department, and any rights acquired by service shall not be lost by reason of resignation or withdrawal from the service except as otherwise expressly provided. Aggregate service, for the purposes of this chapter, shall likewise include time served the City as an officer or employee in any other department, or time on leave of absence while engaged in the performance of military or naval duty for the United States of America in time of war.

SECTION 7. Section 3.32.170 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.170 Period of Service - Contributions on Leave of Absence

Any members requesting that time served in any other department, or time on leave of absence while engaged in the performance of military or naval duty for the United States of America in time of war, count as part of the member's aggregate service in the Police or Fire Department, shall pay into the retirement fund such contributions as said member should have been required to pay had said person been a member of or on active duty with the Police or Fire Department for the period of years served in another department, or for the period of leave of absence while engaged in the performance of military or naval duty for the United States of America in time of war. Any contributions paid into the retirement fund by a member of the Police or Fire Department as provided in this section shall be matched by the City in the proportion set forth in Section 3.32.300 of this Chapter.

SECTION 8. Section 3.32.210 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.210 Disability Retirement - Basis of Allowance

The annual allowance provided for in this Chapter shall be determined upon the following basis: For an injury occurring after twenty (20) years of service, the injured

party is entitled to compensation equal to fifty percent (50%) of the average monthly pay received by the member during the three (3) years immediately preceding the request for retirement; therefore, for an injury occurring prior to twenty (20) years of service, an allowance shall be made based on the proportion that the number of years of actual service bears to twenty (20) years. For example: If said service has been for five (5) years, said allowance shall be 5/20ths of said fifty percent (50%) of the average monthly pay received by him during the three (3) years immediately preceding the request for retirement.

SECTION 9. Section 3.32.220 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.220 Disability Retirement - Ordered When - Basis of Allowance

Should any member of the Police or Fire Department who has been a member of the Retirement Plan at least ten (10) years suffer any bodily injury or sickness which is not service-connected, and as a result thereof become so physically or mentally disabled as to render necessary his retirement from active service, the board of administration shall order and direct that said person be paid during the period of such disability a limited annual allowance not to exceed fifty percent (50%) of the amount provided in this Chapter for a limited annual allowance for members retired on service-connected disability. The amount of the allowance herein provided for shall be determined by the board of administration within thirty (30) days from the hearing of the petition for retirement. In determining said amount the board shall take into consideration the circumstances of the injury, the nature of the disability, whether total or partial, and make its order accordingly.

SECTION 10. Section 3.32.230 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.230 Restoration to Duty - Termination of Allowance

Any allowance granted to any such member of the Police or Fire Department for disability shall cease when the disability ceases, and such person shall, subject to then existing rules and the provisions of the chapter governing the employment of members of the Police and Fire Department, be restored to active service in the position in which he was serving at the time of his disability, and while receiving a retirement allowance under this Chapter shall be computed in calculating his aggregate service for all purposes under the provisions hereof.

SECTION 11. Section 3.32.280 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.280 Retirement Rights

No member who has completed twenty (20) years of service shall be deprived of retirement rights for any cause whatsoever, except treason or conviction of a felony.

SECTION 12. Section 3.32.290 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.290 Monthly Salary Defined

The monthly salary subject to contribution by the members of the Police and Fire Department Retirement Plan and the City is that monthly salary or base pay established by the City salary ordinance for the class to which the member's position is allocated, or to which he was appointed if such member is in the unclassified service of the City. Any additional compensation paid on account of work performed on holidays or in excess of the official work week is hereby excluded from monthly salary, as above defined, and is not subject to retirement contributions by the member or the City.

SECTION 13. Section 3.32.300 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.300 Contributions

- A. For the purpose of establishing and maintaining the retirement fund on a reserve basis, the City Council shall make provision in the budget each fiscal year, beginning with the fiscal year December 1, 1946 to November 30, 1947, for the payment by the Director of Finance monthly into said fund of an amount equal to eight percent (8%) of the monthly payroll of all such members of the Police Department and Fire Department as the City's contribution, and the Director of Finance shall deduct three percent (3%) of the monthly pay from the salary of each member of the Plan from and after the first day of October, 1946, as the contribution of the individual members thereof. Within six (6) months after the effective date of Ordinance 3254, adopted October 21, 1946, and at least every five (5) years thereafter, the board of administration shall cause to be made an actuarial investigation into the mortality, service and compensation experiences of the members and beneficiaries, and shall further cause an actuarial valuation of the assets and liabilities of the Retirement Plan, and upon the basis of such investigation and valuation shall:
1. Adopt for the Retirement Plan such mortality, annuity, service and other tables as may be deemed necessary;

2. In order to make said Retirement Plan actuarially sound in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act"), revise or change the rates of contributions by members on the basis of such actuarial investigation and such mortality, annuity, service and other tables, but at all times maintaining the eight percent (8%) and three percent (3%) ratio of contributions on behalf of the City and the members of the Plan as set forth in this Section.
- B. Every member of the Police Department or Fire Department shall be deemed to consent and agree to the deductions from salary or compensation as provided herein, and payments less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such employees during the period covered by such payment except the right to the benefits to which they shall be entitled under the provisions hereof.
- C. The said deductions from salary or compensation shall continue until membership ceases or until the member retires on a retirement allowance.

SECTION 14. Section 3.32.340 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.340 Separation From Service - Contributions

If any such member of the Police or Fire Department shall become separated from the service, either voluntarily or involuntarily, then and in that event all moneys paid into said fund by such member shall be returned to him, together with interest earned by said fund, not exceeding two percent (2%) per year. In the event that he shall thereafter reenter the service as such member of the Police or Fire Department in any capacity, he shall repay into such fund, upon such reentry, an amount equal to the sum returned to him at the time of his separation from the service, and he shall not be entitled to any benefits under this Chapter until said amount has been repaid into the fund.

SECTION 15. Section 3.32.370 of Chapter 3.32 of Title 3 of the San José Municipal Code is amended to read as follows:

3.32.370 Separation From Service - Following Resignation or Discharge

Any member of the Police or Fire Department with more than twenty (20) years aggregate service, and who is not fifty-five (55) years of age, who resigns or is discharged, may elect either to receive from the retirement fund the amount of his contributions to the fund plus interest in excess of two percent (2%) per year on his contributions; or said member may elect to contribute monthly to said retirement fund, until eligible for retirement, the sum total of the monthly contributions of both the City

and the member that would have been contributed to said retirement fund by both the City and the member had the member so elected to pay both contributions continued as a member of the Police or Fire Department until eligible for retirement.

SECTION 16. Section 3.36.010 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.010 Establishment - Name - Scope

- A. There is hereby established a retirement plan for all persons, hereinafter in this Chapter specified, who may become members thereof pursuant to the provisions of this Chapter 3.36. This plan shall be known as the "1961 Police and Fire Department Retirement Plan," and includes all provisions of this Chapter.
- B. The 1961 Police and Fire Department Retirement Plan is established as a qualified governmental defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue Code as applicable and applicable treasury regulations and other guidance of the Internal Revenue Service. The board shall be authorized to adopt rules and regulations which are appropriate or necessary to maintain the qualified status of the Plan.

SECTION 17. Section 3.36.020.3 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.020.3 Compensation

- A. "Compensation" means the monthly remuneration paid in cash out of funds controlled by the City to a member in payment for his or her services to the City, excluding the monetary value, if any, of living quarters, board, lodging, fuel, laundry or other advantages of any nature furnished a member in payment of his or her services. Also, when the compensation of a member is a factor in any computation to be made under this Chapter, there shall be excluded from such compensation any payments based on overtime put in by a member, any travel or uniform or expense allowance, any insurance or medical or surgical or hospital benefits, any workers' compensation benefits except as expressly provided in subsection G. below, peace officer standards training pay except as expressly provided in subsection H. below, any retirement or death or survivorship benefits, any payments paid on a per diem, per hour or any other basis than a monthly basis, and any and all other fringe benefits.
- B. "Compensation" shall include holiday pay or any compensation paid to a member in lieu of holiday pay in the case of:

1. Any member who retires under the provisions of this Chapter, either for service or disability, on or after July 5, 1992; and
 2. Any former member who separates from City service on or after July 5, 1992, and elects to allow his or her accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640.
- C. "Compensation" shall include premium pay paid pursuant to the Fair Labor Standards Act (FLSA) for regularly scheduled hours for employees who are assigned to a work week averaging fifty-six (56) hours per week over a twelve (12)-month period, subject to the following limitations:
1. "Compensation" shall only include FLSA premium pay which is earned and payable on or after December 28, 1997.
 2. "Final compensation" including FLSA premium pay shall not exceed the one hundred eight percent (108%) limitation imposed by Section 3.36.020.5.B.2.
 3. This subsection C. shall apply only in the case of:
 - a. A member who retires under the provisions of this Chapter, either for service or disability, on or after July 5, 1998; and
 - b. A former member who separates from City service on or after July 5, 1998, and elects to allow his or her accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640; and
 - c. A member who dies on or after July 5, 1998, while in City service for which the member receives service credit in this Plan.
- D. "Compensation" shall include incentive pay for successful completion, on an annual basis, of training in Police Anti-Terrorist Tactics as certified by the Police Department to the City Finance Department.
- E. "Compensation" shall include incentive pay for completing and maintaining an Emergency Medical Technician (EMT) certificate, but only such EMT incentive pay which is earned and payable on or after July 7, 1991.
- F. "Compensation" shall include anti-terrorism training pay received by members of the Plan who are employed in the Fire Department, but only such pay which is earned and payable on or after July 1, 2006.
- G. "Compensation" shall include disability leave payments paid by the City to a member pursuant to which a member continues to receive full monthly

compensation, including but not limited to, disability leave payments made pursuant to Labor Code Section 4850.

- H. "Compensation" shall include Peace Officer Standards Training (POST) payments paid by the City to a member except that only POST payments received by such Tier 2 member on or after March 31, 2017 shall be a factor for any computation made under this Chapter.

SECTION 18. Section 3.36.020.15 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.020.15 Tier 2 Member

"Tier 2 member" means:

- A. Any person who is hired, rehired, or reinstated by the City as an employee of the Police Department in a position covered by this Plan on or after August 4, 2013; or
- B. Any person who is hired, rehired, or reinstated by the City as an employee of the Fire Department in a position covered by this Plan on or after January 2, 2015.
- C. Notwithstanding the foregoing, the following persons shall not be considered Tier 2 members under this Plan and their benefits shall be determined under the same terms as those members hired prior to the dates specified in subsections A. and B. of this Section:
1. Any person who was a member of this Plan as an employee of the Police Department prior to August 4, 2013, and terminated employment with the City, and returned to employment with the City in a position covered by this Plan on or after August 4, 2013; or
 2. Any person who was a member of this Plan as an employee of the Fire Department prior to January 2, 2015, and terminated employment with the City, and returned to employment with the City in a position covered by this Plan on or after January 2, 2015; or
 3. Any person accepting employment in the Police Department or Fire Department of the City on or after January 1, 2013 who is otherwise eligible for this Plan and who was an active member in another California public retirement system with which this Plan has reciprocity under Part 16, and who has a break in service of less than six (6) months from that covered employment and employment with the City, other than those who meet the definition of new members as defined by Government Code Section 7522.04(f) as may be amended.

SECTION 19. A new Section 3.36.020.16 is added to Chapter 3.36 of Title 3 of the San José Municipal Code, to be numbered, entitled and to read as follows:

3.36.020.16 "Independent Medical Panel"

"Independent medical panel" means the independent medical review panel or disability review panel appointed by the retirement board as specified in Section 3.36.380 of this Chapter.

SECTION 20. A new Section 3.36.020.20 is added to Chapter 3.36 of Title 3 of the San José Municipal Code, to be numbered, entitled and to read as follows:

3.36.020.20 "New Employee"

"New Employee" means any employee initially hired to the Police Department on or after August 4, 2013, or initially hired to the Fire Department on or after January 2, 2015.

SECTION 21. Section 3.36.170 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.170 Persons Appointed On or After Effective Date to Positions in Police Department

- A. Subject to and except as otherwise provided by other provisions of this Chapter, each person appointed on or after the effective date of this Chapter to any of the following positions or classes of positions in the Police Department shall be a member of the Plan as described in this Chapter, and shall be subject to the provisions of this Chapter, as of the date of such appointment to such position, as follows: Chief of Police; Assistant Chief of Police; Deputy Chief; Chief of Uniform Division; Chief of Detectives; Inspector of Operations; Chief of Technical Services; Chief of Prevention and Control Division; Police Captain; Police Lieutenant; Police Sergeant (Detective); Police Sergeant; Juvenile Officer; Police Officer; Police Woman; Assistant Police Woman; and Automotive Registration Technician, but only if the person appointed to the latter position held the position of Senior Identification Officer on February 1, 1962, and became a member of this Retirement Plan as of February 1, 1962, and was also a member of this Plan immediately prior to his appointment to the position of Automotive Registration Technician. If an individual is hired, rehired or appointed to one of the above specified positions on or after August 4, 2013, and meets the definition of a Tier 2 member under Section 3.36.020.15, such individual will be a Tier 2 member.
- B. A person retired for disability prior to the effective date of this Chapter pursuant to the provisions of Chapter 3.32 of this Code who is restored to active duty upon

cessation of his or her disability after the effective date of this Chapter, shall not be deemed to be a "person who is appointed on or after the effective date of this Chapter," as such words are used in this Section; provided, however, if such person is rehired or reappointed on or after August 4, 2013, such person shall become a Tier 2 member except as otherwise provided in Section 3.36.020.15.

- C. Anything hereinabove to the contrary notwithstanding, no person shall be deemed to have become a member of this Retirement Plan because of his or her appointment to any of the above-specified positions on or after the effective date of this Chapter if as of the date of such appointment he or she is a member of the Police and Fire Department Retirement Plan established by Chapter 3.32, unless he or she has been or is given and has exercised or exercises pursuant to other provisions of this Chapter an option to become subject to the provisions of this Chapter in lieu of remaining subject to the provisions of Chapter 3.32 of this Code.

SECTION 22. Section 3.36.175 of Chapter 3.36 of Title 3 of the San José Municipal Code is hereby repealed.

SECTION 23. Section 3.36.200 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.200 Persons Appointed On or After Effective Date to Positions in Fire Department

- A. Subject to and except as otherwise provided by other provisions of this Chapter, each person appointed on or after the effective date of this Chapter to any of the following positions or classes of positions in the Fire Department shall be a member of the Plan as described in this Chapter, and shall be subject to the provisions of this Chapter, as of the date of such appointment to such position, as follows: Fire Chief; Deputy Fire Chief; Assistant Fire Chief; Fire Prevention Chief; Fire Marshal; Battalion Chief; District Chief; Fire District Chief; Fire Training Officer; Assistant Fire Marshal; Fire Captain; Assistant Fire Training Officer; Senior Fire Prevention Inspector; Fire Engineer; Firefighter; Fire Master Mechanic; and Assistant Fire Master Mechanic. If an individual is hired, rehired or appointed to one of the above specified positions on or after January 2, 2015, and meets the definition of a Tier 2 member under Section 3.36.020.15, such individual will be a Tier 2 member.
- B. A person retired for disability prior to the effective date of this Chapter pursuant to the provisions of Chapter 3.32 of this Code who is retired to active duty upon cessation of his or her disability after the effective date of this Chapter shall not be deemed to be a "person who is appointed on or after the effective date of this Chapter" as such words are used in this Section; however if such person is

rehired or reappointed on or after January 2, 2015, such person shall become a Tier 2 member except as otherwise provided in Section 3.36.020.15.

- C. Anything hereinabove to the contrary notwithstanding, no person shall be deemed to have become a member of this Retirement System because of his or her appointment to any of the above-specified positions on or after the effective date of this Chapter if as of the date of such appointment he or she is a member of the Police and Fire Department Retirement Plan established by Chapter 3.32 unless he or she has been or is given and has exercised or exercises pursuant to other provisions of this Chapter an option to become subject to the provisions of this Chapter in lieu of remaining subject to the provisions of Chapter 3.32 of this Code.

SECTION 24. Section 3.36.240 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.240 Persons Retired For Disability Prior to Effective Date, Who Return to Active Duty After Effective Date

Except as may otherwise be provided in this Chapter, each person who was appointed to and held, prior to the effective date of this Chapter, any of the positions or classes of positions designated in Sections 3.36.170 and 3.36.200 and who, prior to the effective date of this Chapter, received a disability retirement from such position or class of position pursuant to the provisions of Chapter 3.32, shall have the option of becoming subject to the provisions of this Chapter, subject to all provisions of this Chapter, if such person's disability should cease, and if in addition such person should be restored to active service pursuant to the provisions of Chapter 3.32 in the position which he or she held at the time of his or her disability retirement, provided and upon condition, however, that such person at the time he or she is restored to active duty is not fifty-five (55) years or more of age. No such person shall become subject to the provisions of this Chapter if, at the time of such restoration to duty in said position, he or she is fifty-five (55) or more years of age. Each of said persons, in order to exercise this option, shall file with the Secretary of the Retirement Board a written statement, on a form to be furnished to him or her, upon request, by said Board, declaring that he or she elects to become subject to the provisions of this Chapter. Said statement shall be filed on or before, and no later than, the ninetieth (90th) day immediately following the date of such person's restoration to active duty. Upon filing said statement in the manner and time specified in this Section, such person shall be deemed to be a member of the Retirement Plan and shall be subject to the provisions of this Chapter as of the date of his or her restoration to duty. Each such person so electing to become subject to the provisions of this Chapter shall cease being subject to the provisions of Chapter 3.32 as of the effective date of the election made pursuant to this Section. Anything elsewhere to the contrary notwithstanding, no such person shall become subject to the provisions of this Chapter unless he or she exercises this option in the time and manner specified by this Section.

SECTION 25. Section 3.36.250 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.250 Persons Holding Positions in Police or Fire Department Not Included in Membership on Effective Date Who Become Entitled to Membership Later - Option

- A. Any person who has been appointed to and holds on the effective date of this Chapter any position in the Police Department or Fire Department not included within the list of positions set forth in Sections 3.36.180 or 3.36.210, and who subsequent to said effective date is appointed to a position in the Police Department or Fire Department included within the list of positions set forth in Sections 3.36.170 or 3.36.200 without a break in service, and who immediately prior to his or her appointment to such new position is a member of the Police and Fire Department Retirement Plan as described in Chapter 3.32, shall have the option of becoming subject to the provisions of this Chapter.
- B. Each of said persons, in order to exercise said option, shall file with the Secretary of the Retirement Board a written statement, on a form to be furnished to him or her, upon request by said Board, declaring that he or she elects to be subject to the provisions of this Chapter 3.36. Said statement shall be filed as on or before, and no later than, the ninetieth (90th) day immediately following such person's appointment to the position entitling him or her to be subject to the provisions of this Chapter. Upon filing said written statement in the manner and time hereinabove specified, such person shall become subject to the provisions of this Chapter as of the date of said new appointment. Each person so electing to become subject to the provisions of this Chapter shall cease being subject to the provisions of Chapter 3.32 as of the effective date of the election made pursuant to this Section. Anything elsewhere to the contrary notwithstanding, no such person shall become subject to the provisions of this Chapter unless he or she exercises this option in the time and manner specified by this Section.

SECTION 26. Section 3.36.270 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.270 Persons Retired Pursuant to This Chapter for Disability Who Return to City Service in Position Other Than Position Included in Membership of This Plan

A member who is retired for disability after the effective date of this Chapter pursuant to the provisions of this Chapter and who, in addition, after receiving such disability retirement, is appointed to a full-time position in the City service, appointment to which would not otherwise entitle him or her to the benefits of this Chapter, in which new position monthly compensation is paid, shall, if and while said disability continues during

the period of such new service, be a member of the Retirement Plan, and shall be subject to the provisions of this Chapter.

SECTION 27. Section 3.36.370 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.370 Determination of Employee Eligibility and Determination and Modification of Benefits

The Board, subject to the provisions of this Chapter 3.36, shall determine who are employees of the City eligible for membership in this Retirement System. Except as provided in Section 3.36.380 regarding decisions of the independent medical panel (or where the independent medical panel's determination is appealed, the administrative law judge), the Board is the sole judge of the conditions under which persons may be admitted to and receive or continue to receive benefits under this System, and shall determine, modify or terminate benefits for service or disability, or any other benefits provided for in this Chapter.

SECTION 28. Section 3.36.380 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.380 Medical Service and Advice

- A. The Board may enter into contractual arrangements for such medical services and advice, and may secure and pay reasonable compensation for independent medical examiners, as the Board deems necessary to effectuate the terms of this Chapter. Such contracts for medical services shall be entered into in the name of the Board of Administration for the Police and Fire Department Retirement Plan. The cost of obtaining such medical services and advice, and any cost for appeals therefrom to an administrative law judge shall be administrative expenses of the Plan.

- B. Effective as of March 31, 2017 with respect to applications for disability benefits under the Plan, the Board shall appoint an independent medical panel of three (3) medical experts to evaluate and approve or deny, by a majority vote, all disability applications. The Board shall establish processes and procedures by which the independent medical panel shall carry out and document its responsibilities. Once the independent medical panel is formed, responsibility for reviewing disability applications and making disability determinations will solely be the responsibility of the independent medical panel, or if the decision of the independent medical panel is appealed, an administrative law judge. The independent medical panel may, upon its own initiative or upon request, reassess the status of a disability retirement recipient to confirm whether the recipient's disability continues. The individuals who may be appointed to such panel by the Board shall be determined as follows:

1. Individuals shall be recruited to serve on the independent medical panel by the Board using the City's established request for proposal process.
2. Each individual selected to serve on the independent medical panel shall be approved by a vote of no less than six (6) of the nine (9) members of the Board and shall serve for a four (4)-year term.
3. Individuals serving on the independent medical panel shall have experience in varying fields of medicine and shall meet the following minimum qualifications:
 - a. Ten (10) years of practice after completion of residency; and
 - b. Practicing or retired Board Certified physician; and
 - c. No current or previous employment with the City; and
 - d. Except for prior service on the independent medical panel established under this 3.36.380, is not providing or has not provided medical services to the City or retirement boards; and
 - e. No prior experience as a Qualified Medical Evaluator or Agreed Medical Evaluator.

SECTION 29. Section 3.36.410 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.410 Mortality, Service and Other Tables - Revision of Rates of Contribution

- A. Upon the basis of any or all of such investigations, evaluations and determinations, the Board shall adopt such mortality, service and other tables as may be necessary, and shall fix and from time to time change the rates of monthly contribution required of members and of the City as may be necessary to make this System at all times actuarially sound in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act") and to provide the benefits provided for in this Retirement Plan; provided that, as may be otherwise provided elsewhere in this Chapter, the proportionate share of contributions on behalf of the City and members who are not Tier 2 members shall at all times be in the ratio of three to eight (3:8). For Tier 2 members, except as provided in Section 3.36.410.B, the proportionate share of contributions on behalf of the City and Tier 2 members shall at all times be in the ratio of one for the City to one for the Tier 2 members (1:1) (sharing equally), including any unfunded actuarially accrued liability.

1. Notwithstanding the foregoing, the following shall apply to the manner of determining contributions on behalf of the City and members who prior to August 4, 2013 for Police and prior to January 1, 2015 for Fire were non-Tier 2 members of this Plan and then became Tier 2 members prior to March 31, 2017 but on and after March 31, 2017 remain in the Plan but are no longer considered Tier 2 members as defined under Section 3.36.020.15. Any cost, including but not limited to any unfunded actuarial accrued liability, associated with benefit changes adopted on March 31, 2017 for such members and any amounts associated with moving such members from Tier 2 status to non-Tier 2 status, will be amortized as a separate liability over sixteen (16) years or other period determined by the Board. Notwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of Section 3.36.410.A above, the costs described in this subsection 3.36.410.A.1. shall at all times be shared in the ratio of one for the City and one for the affected member (1:1) and will be reflected as soon as practicable in the monthly contribution rates for such members.

 2. Notwithstanding the foregoing, the following shall apply to the manner of determining contributions on behalf of the City and members who accept employment in the Police Department or Fire Department of the City on or after January 1, 2013 who is otherwise eligible for this Plan and who was an active member in another California public retirement system, with which this Plan has reciprocity under Part 16, and who has a break in service of less than six (6) months from that covered employment and employment with the City, other than those who meet the definition of new members as defined by Government Code Section 7522.04(f) as may be amended, but on and after March 31, 2017 remain in the Plan but are no longer considered Tier 2 members under the definition of Tier 2 member under Section 3.36.020.15. Any cost, including but not limited to any unfunded actuarial accrued liability, associated with benefit changes adopted on March 31, 2017 for such members and any amounts associated with moving such members from Tier 2 status to non-Tier 2 status, will be amortized as a separate liability over sixteen (16) years or other period determined by the Board. Notwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of Section 3.36.410.A above, the costs described in this subsection 3.36.410.A.2. shall at all times be shared in the ratio of one for the City and one for the affected member (1:1) and will be reflected as soon as practicable in the monthly contribution rates for such members.
- B. Notwithstanding Section 3.36.410.A, the following shall apply to the manner of determining contributions on behalf of the City and members who are Tier 2 members on or after March 31, 2017:

1. The costs, including any unfunded actuarial accrued liability, associated with the Tier 2 benefit changes adopted on March 31, 2017 for members who were Tier 2 members prior to March 31, 2017, will be amortized as a separate liability over sixteen (16) years or other period determined by the Board and will be reflected as soon as practicable in contribution rates to be shared equally among the City and impacted Tier 2 members and such increased rates shall not be subject to the incremental increases in amounts associated with unfunded actuarial accrued liability described in Section 3.36.410.B.2.
2. Other than provided in Section 3.36.410.A, in determining member contribution rates, to the extent an unfunded actuarial accrued liability is determined to exist with respect to the Plan, Tier 2 members will contribute toward the amount of such amortized unfunded actuarial accrued liability by increasing the Tier 2 member contribution rate by one-third of one percent (0.33%) of compensation each year until such time as the cost of the unfunded actuarial accrued liability is being shared equally by the Tier 2 members and the City. Until such time as the Tier 2 members and the City are sharing such cost equally, the City will include in its contribution rate the amount of the amortized unfunded actuarial accrued liability that would otherwise have been paid by the Tier 2 members in such year.

SECTION 30. Section 3.36.450 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.450 Hearings - Authorized When

The Board may in its discretion hold hearings for the purpose of determining any question presented to it involving any right, benefit or obligation of a person under this Chapter, provided that any such person aggrieved by such determination may, if the Board has not held a hearing with regard to such determination, petition the Board in writing for a hearing. Such request for a hearing must be filed within thirty (30) days from and after the determination of the Board. The Board shall within thirty (30) days from and after such request hold a hearing, after which hearing the Board may affirm, reverse or modify its prior determination. Notwithstanding the foregoing, any decisions regarding a determination related to a member's disability shall be subject to review only in accordance with the process described in Section 3.36.960.

SECTION 31. Section 3.36.575 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.575 Separate Medical Benefits Account

- A. There is hereby established as of July 1, 1995, the medical benefits account as a separate account within the retirement fund. The medical benefits account shall be maintained in compliance with Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. Monies in the medical benefits account may be commingled with other monies in the retirement fund solely for the purposes of investment.
- B. All contributions made to the retirement fund to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of Part 14 and Part 15 of this Plan, and all earnings and interest attributable to such contributions to the retirement fund, shall be placed in the medical benefits account. All contributions to the medical benefits account shall be reasonable and ascertainable. At the time the City makes a contribution to the medical benefits account, the City shall designate in writing that such contribution is solely for the medical benefits account.
- C. Contributions to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of Part 14 and Part 15 this Plan, and earnings and interest attributable to such contributions may be made to the medical benefits account or to the Trusts established by Chapters 3.54 and 3.56.
- D. Contribution rates to fund the benefits for sickness, accident, hospitalization, dental or medical expenses for those members eligible for benefits under Part 14 and 15 of this Plan shall be established by the Board as determined by the Board's actuary and shall be borne by the City and the eligible members of the Plan as follows:
 - 1. Contributions for dental benefits shall be made by the City and the members in the ratio of three-to-one (3:1).
 - 2. Contributions for other benefits provided through the medical benefits account shall be made by the City and the members in the ratio of one-to-one (1:1).
- E. Except as otherwise provided in this Section 3.36.575, all funds in the medical benefits account shall be used only for the payment of benefits and expenses allowed under Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. The medical benefits account shall be used to provide

medical and dental benefits in accordance with Parts 14 and 15 of this Chapter. Prior to the satisfaction of all liabilities under this Plan to provide such benefits, no funds in the medical benefits account shall be used for, or diverted to, any other purpose.

- F. All benefits provided through the medical benefits account, plus any life insurance protection provided under the Plan, shall be subordinate to the retirement and survivors' benefits provided by the Plan. Accordingly, at all times after the date on which the medical benefits account is established, the aggregate of the City's contributions to the medical benefits account shall not exceed twenty-five percent (25%) of its total aggregate contributions to the Plan (other than contributions to fund prior service). For the purpose of this limitation, City contributions include any contributions which are "picked-up" pursuant to Internal Revenue Code Section 414(h).
- G. Upon the satisfaction of all liabilities under this Plan to provide the benefits described in this Section, any amount remaining in the medical benefits account shall be paid to the City.
- H. In the event that a member's interest in the medical benefits account is forfeited prior to the termination of the Plan, an amount equal to the forfeiture shall be applied as soon as practicable to reduce the City contributions, if any, to the medical benefits account.
- I. City and member contributions to the medical benefits account shall be made on the same periodic basis as City and member contributions are made to the retirement fund. City contributions and member contributions to the medical benefits account may be paid on different payment schedules, as may be determined by the Board.

SECTION 32. A new Section 3.36.576 is added to Chapter 3.36 of Title 3 of the San José Municipal Code, to be numbered, entitled and to read as follows:

3.36.576 Contributions to Fund Retiree Healthcare Benefits

- A. Subject to IRS approval of the ability of Tier 1 members to elect out of the Part 14 and 15 coverage, on or soon after the date determined by the City once the VEBA is established, members who would otherwise be eligible for coverage under Parts 14 and 15 of this Plan shall be provided a one-time irrevocable election to instead be covered under Chapter 3.57, in accordance with the process described in Chapter 3.57. Upon opting into Chapter 3.57, such member's Chapter 3.57 account shall receive a credit for all prior contributions made by the member under Parts 14 and 15 of this Plan and such member's contribution rate shall be determined under Chapter 3.57.

- B. Effective on the date determined by the City once the VEBA is established, contributions to fund the healthcare benefits for qualified members and qualified survivors who are eligible for benefits to be provided under the terms of Parts 14 and 15 of this Plan who do not make the one-time irrevocable election described in subsection 3.36.576.C will be eight percent (8.0%) of compensation as defined under Section 3.36.020.3 for members and such percentage of covered compensation for City contributions as determined by the actuary to be necessary to fund the amount of the annual required contribution each year; provided, however, that if the City's portion of the required contribution is determined to be eleven percent (11.0%) of covered compensation or greater for a year, the City may in its discretion choose to only contribute a maximum of eleven percent (11.0%) of covered compensation for such year.
- C. The City Manager shall have the discretion to terminate the existing Tier 2 retiree medical benefits plan. In that event, Tier 2 members shall not be provided benefits or make contributions under Parts 14 and 15 of this Plan.
- D. Effective on the date determined by the City once the VEBA is established, Tier 2 members shall be subject to the provisions of Chapter 3.57 of this Plan with respect to healthcare benefits and Tier 2 members shall contribute the amount specified under Chapter 3.57 and shall not be provided benefits under or make contributions under Parts 14 and 15 of this Plan.

SECTION 33. A new Section 3.36.580 is added to Chapter 3.36 of Title 3 of the San José Municipal Code, to be numbered, entitled and to read as follows:

3.36.580 Guaranteed Purchasing Power Provision

Effective January 1, 2016, and each January 1 thereafter, the annual retirement benefit of each member who is not a Tier 2 member will be reviewed by the Board to determine if the member's retirement allowance (including any cost of living adjustments) is equal to at least seventy-five percent (75%) of the purchasing power of the member's retirement allowance calculated as of the member's retirement date, adjusted for inflation by reference to the most current consumer price index for all urban consumers (CPI-U), San Francisco-Oakland-San José metropolitan area. If the value of the member's retirement allowance falls below seventy-five percent (75%) of purchasing power, the member shall receive an annual lump sum payment of the difference between the member's current retirement allowance and the amount required to achieve seventy-five percent (75%) purchasing power in a separate check as of February 1, 2016, and each February 1 thereafter.

SECTION 34. Section 3.36.610 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.610 Service Defined

Except as may be otherwise expressly provided elsewhere in this Chapter, "service" means and includes the following service of a member of this Retirement System and none other:

- A. Service as officer or employee of Police or Fire Department, rendered by member after becoming and while a member of this System. Service rendered by a member of this Retirement System, where such service was rendered as an officer or employee of the Police Department or Fire Department of the City, for monthly compensation, and only while such officer or employee is receiving such compensation for such service from the City.
- B. Service as officer or employee of Police or Fire Department, rendered prior to effective date of this System by a person who becomes a member pursuant to provisions of Sections 3.36.180, 3.36.210 or 3.36.260. Service rendered prior to the effective date of this Retirement System by any person who becomes a member of this Retirement System pursuant to the provisions of Sections 3.36.180, 3.36.210 or 3.36.260 where such service was rendered as an officer or employee of the Police Department or Fire Department of the City for monthly compensation, if and to the extent such person received credit for such service pursuant to the provisions of the Police and Fire Department Retirement Plan established by Chapter 3.32 of this Code.
- C. Service as officer or employee of Police or Fire Department rendered prior to the effective date of membership in this System by a person who becomes a member pursuant to the provisions of Sections 3.36.240 or 3.36.250. Service rendered prior to the effective date of his or her membership in this Retirement System by any person who becomes a member of this Retirement System pursuant to the provisions of Sections 3.36.240 or 3.36.250, where such service was rendered as an officer or employee of the Police Department or Fire Department of the City, for monthly compensation, if and to the extent that such person received credit for such service pursuant to the provisions of the Police and Fire Department Retirement Plan established by Chapter 3.32, if the following condition is satisfied:
 1. On or before the ninetieth (90th) day immediately following the day he or she becomes a member of this Retirement System, the member has filed with the Retirement Board a written election to have such service so credited to him or her and to pay into the retirement fund, at times and in the manner fixed by the Board, the amount necessary to make the accumulated contributions standing to the credit of the member's

individual account equal to the amount they would be had he or she been a member of or on active duty with the Police Department or Fire Department in the position or class of position in the Police Department or Fire Department to which he or she shall have been appointed, during the time between the effective date of this Chapter and the date he or she became a member of this System.

- D. Certain service for which certain persons were previously entitled to credit under certain other City retirement plans.
1. Service rendered prior to the effective date of membership in this Retirement System, by a person who becomes a member of this Retirement System pursuant to the provisions of Sections 3.36.170 or 3.36.200, if all of the following conditions are satisfied:
 - a. Such service consisted of service rendered by said person to the City as an officer or employee of the City, in a position or positions not included in this System, without any break, gap or cessation in the rendering of such service from the time such service was rendered to the time the person rendering such service became a member of this System pursuant to Sections 3.36.170 or 3.36.200; and
 - b. Such service was rendered for monthly compensation and only while the person was receiving such monthly compensation for such service; and
 - c. The person was entitled to credit for such service, immediately prior to the time he or she became a member of this System, under and pursuant to the provisions of the San José Federated City Employees' Retirement System established by the provisions of Chapter 3.24 or Chapter 3.28 of this Code or the provisions of the Police and Fire Department Retirement Plan established by Chapter 3.32 of this Code; and
 - d. Except as provided in paragraph 2., paragraph 3., or paragraph 4 below, the member files with the Retirement Board, on or before the ninetieth (90th) day immediately following the day he or she becomes a member of this System, a written notice of election re: Federated City Service to have such service credited to him or her; and
 - e. The member pays into the retirement fund, at the time or times and in the manner specified by the Retirement Board, an amount of money sufficient to make the accumulated contributions standing to

the credit of the member's individual account in this System equal to the amount such contributions would be if he or she had been a member of or on active duty with the Police Department or Fire Department in the position or class of position in the Police Department or Fire Department to which he or she was appointed and because of which appointment he or she became a member of this System pursuant to Sections 3.36.170 or 3.36.200, during the time he or she was rendering the previous service for which he or she seeks to get credit, and if the contributions payable by him or her to this System under such circumstances had been deducted from his or her compensation and paid into the retirement fund during all of such time; and

- f. The member ceases to be a member of, or have any membership rights under, any other retirement plan or system of the City, other than Social Security or the City's deferred compensation plan.
2. A person who became a member of this Retirement System pursuant to Sections 3.36.170 or 3.36.200 prior to September 1, 1995, and who failed to elect to have the previous service in the Federated City Employees Retirement System credited under this Retirement System within the time specified in D.1.d. above, may elect to have the previous service credited under this Retirement System if:
 - a. The person satisfies the requirements of D.1.a., b., c., e., and f. above; and
 - b. The person files with the Retirement Board a written election for such service credit on or before August 15, 1996.
 3. On or after July 1, 2006, a person who became a member of this Retirement System pursuant to Section 3.36.170, and who does not meet the requirements of D.1. above, may elect to have the previous service credited under this Retirement System if:
 - a. The person satisfies the requirements of D.1.a., b., c., and f. above; and
 - b. Prior to the person's retirement the person files with the Retirement Board a written election for such service credit; and
 - c. Prior to the person's retirement, the person pays into the retirement fund at such times and in such manner as specified by the Retirement Board:

- i. An amount of money sufficient to make the accumulated contributions standing to the credit of the member's individual account in this System equal to the amount the accumulated contributions would be if he or she had been a member of this Plan employed in the Police Department during the time he or she was rendering the prior City service for which he or she seeks service credit and if the contributions payable to this Retirement System had been deducted from his or her compensation and paid into the retirement fund during all of such time; plus
 - ii. An amount equal to the interest that would have been earned on the accumulated contributions, at the actual rate earned by the Retirement Plan, as of the date the member files the election for service credit had the contributions been deducted and paid into the retirement fund; plus
 - iii. Interest on the unpaid balance of all such moneys, at the actuarially assumed interest rate in effect on the date the member files the election, from the date the member files the election to redeposit to the date all such moneys are fully paid into the retirement fund.
4. On or after March 31, 2017, a person who became a member of this Retirement System pursuant to Section 3.36.200 as applicable, and who does not meet the requirements of D.1. above, may elect to have the previous service credited under this Retirement System if:
 - a. The person satisfies the requirements of D.1.a., b., c., and f. above; and
 - b. Prior to the person's retirement the person files with the Retirement Board a written election for such service credit; and
 - c. Prior to the person's retirement, the person pays into the retirement fund at such times and in such manner as specified by the Retirement Board:
 - i. An amount of money sufficient to make the accumulated contributions standing to the credit of the member's individual account in this System equal to the amount the accumulated contributions would be if he or she had been a member of this Plan employed in the Fire Department during the time he or she was rendering the prior City service for which he or she seeks service credit and if the contributions

payable to this Retirement System had been deducted from his or her compensation and paid into the retirement fund during all of such time; plus

- ii. An amount equal to the interest that would have been earned on the accumulated contributions, at the actual rate earned by the Retirement Plan, as of the date the member files the election for service credit had the contributions been deducted and paid into the retirement fund; plus
 - iii. Interest on the unpaid balance of all such moneys, at the actuarially assumed interest rate in effect on the date the member files the election, from the date the member files the election to redeposit to the date all such moneys are fully paid into the retirement fund.
- E. Service in Department of Communications. Service rendered prior to or during membership in this Retirement System by a person who becomes a member of this System pursuant to the provisions of Section 3.36.260, where such service was or is rendered as an officer or employee of the Department of Communications, for monthly compensation and only while the holder of such position is receiving such compensation for such service from the City.
- F. Military Leave of Absence. Subject to the provisions of Sections 3.36.620 and 3.36.625, time on leave of absence from City employment, while engaged in the performance of military or naval duty for the United States of America in time of war that constitutes qualified military service as defined under Internal Revenue Code section 414(u)(5).
- Anything herein to the contrary notwithstanding, no person shall be entitled to or be given credit for any such time served prior to the effective date of this Chapter if he or she shall have heretofore been given reasonable time to claim credit for such service and pay contributions therefor and has failed within such reasonable time to claim the same or pay contributions therefor.
- G. Leave of Absence from Position in Police or Fire Department to Perform Other City Services. Should a member, during membership in this Retirement System and while holding any position in the Police Department or Fire Department for active service in which monthly compensation is paid, receive, after the effective date of this Chapter, a temporary leave of absence from active duty in such position in order to perform any other service for the City as an officer or employee of the City, for monthly compensation, time served with the City in such other service during said temporary leave of absence shall be considered as time served in the position from which he or she is on temporary leave of absence; provided that the member contributes while on such leave of absence,

to the retirement fund for such time the same as if he or she were on active duty in his or her position in the Police Department or Fire Department.

- H. Leave of Absence of Member from Position in Communications Department to Perform Other City Service. Should any member, during membership in this Retirement System and while holding a position in the Department of Communications for active service in which monthly compensation is paid, receive, after the effective date of this Chapter, a temporary leave of absence from active duty in such position in order to perform any other service for the City as an officer or employee of the City, for monthly compensation, time served with the City in such other service during said temporary leave of absence shall be considered as time served in the position from which he or she is on temporary leave of absence; provided that the member contributes, while on such leave of absence, to the retirement fund for such time the same as if he or she were on active duty in his or her position in the Department of Communications.
- I. City service, after disability retirement, other than in position in Police or Fire Department included within membership of this Plan. A member who is retired for disability after the effective date of this Chapter, pursuant to the provisions of this Chapter, and who after receiving such disability retirement is appointed to a full-time position in the City service, appointment to which would not otherwise entitle him or her to membership in this Retirement System, in which a monthly compensation is paid, shall receive credit for such service which is so rendered during such disability, and shall make contributions into the retirement fund at the same rates established for other members.
- J. Eligible Prior Military Service. Eligible prior military service purchased by a member in accordance with Part 18 of this Chapter.
- K. Service for Time on Unpaid Leave. Time on unpaid leave of absence purchased by a member in accordance with Section 3.36.717 of this Chapter.

Notwithstanding the foregoing, members who make service credit purchases under this Section 3.36.610, except service credit purchases related to military leaves of absence in accordance with Section 3.36.620, shall be responsible for paying the entire cost of such service credit purchases. In this case, the entire cost is an actuarially determined amount that includes any amounts that would otherwise result in an actuarial loss to the City.

SECTION 35. Section 3.36.615 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.615 Purchase of Service Credit for Federated City Service

- A. Subject to the limitations set forth in this Section, a person may purchase service credit in this Plan for service described in subsection D. of Section 3.36.610, that was previously credited under the Federated City Employees' Retirement System.
- B. In the event there is any dispute regarding a member's eligibility to purchase such service credit, the amount of eligible service credit, the contributions and interest to be paid for the purchase of service credit, or the amount of service to be credited to a member, the Board shall determine the issue based on the relevant information presented to the Board.
- C. In order to purchase such service credit, the member must file a written notice of election re: Federated City Service in accordance with subsection D.1.d. of Section 3.36.610.
- D. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, a member who elects to purchase credit for prior Federated City Service may pay the contributions:
 - 1. In one lump sum within sixty (60) days from and after the date the member files the written notice of election re: Federated City Service to purchase such service credit; or
 - 2. For elections made on or before January 31, 2011, in monthly or biweekly installments by pre- or post-tax payroll deductions, paid over a period of time not to exceed eight (8) years; or
 - 3. For elections made on after February 1, 2011, in monthly or biweekly installments by post-tax payroll deductions, paid over a period of time not to exceed eight (8) years; or
 - 4. In a combination of a lump sum and installments.
- E. Any member electing to pay contributions in installments or to make the lump sum payment by pre-tax payroll deduction, on or before January 31, 2011, shall execute a binding irrevocable payroll authorization form authorizing the payment of the required contributions by payroll deduction. The payroll authorization form shall be filed with the Director of Finance. Such election executed on or before January 31, 2011 for payroll deductions shall be irrevocable. During the time the irrevocable election is in effect, no direct payments from the member to the

retirement fund for the purchase of such service credit shall be made by the member or accepted by this Plan.

- F. Any member electing to pay contributions in installments or to make the lump sum payment by payroll deduction on or after February 1, 2011 shall execute a payroll authorization form authorizing the payment of the required contributions by post-tax payroll deduction. The payroll authorization form shall be filed with the Director of Finance. Such election executed on or after February 1, 2011 shall be revocable. During the time the revocable election is in effect, the member may make additional direct payments to the retirement fund for the purchase of such service credit.
- G. All contributions under subsections D.2. and E. shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).
- H. If a member elects to purchase credit for prior Federated City Service and make the contributions specified in subsection D. of Section 3.36.610, and subsequently does pay all such moneys as provided in this Section, such member shall be credited under this Plan for the prior Federated City Service.
- I. If a member elects to purchase credit for prior Federated City Service and make the contributions specified in subsection D. of Section 3.36.610, but fails to complete the redeposit, then:
 - 1. If the failure to complete the redeposit is because of death of the member, while a member of this Plan but prior to retirement, the member shall be credited with the amount of service which is determined by the Board to be attributable to the amount of accumulated contributions paid as of the date of the member's death.
 - 2. If the failure to complete the redeposit is for any reason other than the death of the member prior to retirement, any contributions made pursuant to the election shall be credited to the member's accumulated normal contributions account but the member shall receive no credit for any prior Federated City Service.

SECTION 36. Section 3.36.710 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.710 Reentry Into Police or Fire Department After Withdrawal or Repayment of Contributions - Option for Prior Service Credit

- A. Except as provided in this Section 3.36.710 and in Sections 3.36.715 and 3.36.3030, no person who, for any reason whatsoever, has withdrawn or has been paid, or withdraws or is paid, his or her accumulated contributions in the

retirement fund pursuant to the provisions of this Chapter or of Chapter 3.32 of this Code, and who subsequently is reemployed in the Police Department or Fire Department of the City and becomes a member of this Plan, shall be entitled to or be given credit for any service rendered by him or her prior to such reemployment, to which credit he or she might otherwise be entitled under the provisions of this Chapter.

- B. Upon any person becoming a member of this Plan because of reemployment in the Police Department or Fire Department of the City, the Retirement Board shall cause written notice to be personally delivered or mailed to such member, informing such member of his or her rights under this Section. If such notice is personally delivered, the person delivering such notice shall forthwith file with the Secretary of the Retirement Board a declaration attesting to the time and place of such delivery. If mailed, such notice shall be sent by certified mail, return receipt requested, to such member at the latest address as shown in the records of the Human Resources Department of the City.
- C. Except as provided in subsection I. below, if the member wishes to have such prior service credited to him or her, the member shall file a written notice of election to redeposit with the Secretary to the Retirement Board within ninety (90) days from and after the date that written notice of rights under this Section is personally delivered or deposited in the mail to the member, and no later. If the member does not file the notice of election to redeposit within such time, the member shall be deemed to have elected not to have such prior service credited to him or her.
- D. The member shall not be entitled to prior service credit unless the member redeposits and pays into the retirement fund:
 - 1. All of the accumulated contributions previously withdrawn by or returned to said member; plus
 - 2. Interest on the accumulated contributions at the rate of two percent (2%) per year from the date said contributions were withdrawn by or paid to said member to the date the member repays such contributions to the retirement fund.
- E. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code, any member who elects to have prior service credited to him or her shall redeposit and pay into the retirement fund the moneys specified in subsection D. or subsection I.:
 - 1. In one lump sum within sixty (60) days from and after the date the member files with the Secretary of the Retirement Board the notice of election to redeposit; or

2. For elections made on or before January 31, 2011, in monthly or biweekly installments, paid pre-tax over a period of time not to exceed eight (8) years; or
 3. For elections made on or after February 1, 2011, in monthly or biweekly installments, paid post-tax over a period of time not to exceed eight (8) years; or
 4. A combination of a lump sum and installments.
- F. Any member electing to pay the contributions in installments or to make the lump sum payment by pre-tax payroll deduction on or before January 31, 2011 shall execute a binding irrevocable payroll authorization form authorizing the payment of the required contributions by payroll deduction. The payroll authorization form shall be filed with the Director of Finance.
- The election to redeposit accumulated contributions in the retirement fund and the authorization to redeposit by payroll deductions shall be irrevocable. During the time the irrevocable election is in effect, no direct payments from the member to the retirement fund shall be made by the member or accepted by this Plan.
- G. Any member electing to pay contributions in installments or to make the lump sum payment by payroll deduction on or after February 1, 2011 shall execute a payroll authorization form authorizing the payment of the required contributions by post-tax payroll deduction. The payroll authorization form shall be filed with the Director of Finance. Such election executed on or after February 1, 2011 shall be revocable. During the time the revocable election is in effect, the member may make additional direct payments to the retirement fund for the purchase of such service credit.
- H. All contributions under subsections E.2. and F. shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).
- I. On or after July 1, 2006, for a member who is employed in the Police Department, and on or after March 31, 2017 for a member who is employed in the Fire Department, wishes to have such prior service credited to him or her, and the member does not otherwise qualify under this Section 3.36.710, the member shall file a written notice of election to redeposit with the Secretary to the Retirement Board and, prior to his or her retirement, shall redeposit and pay into the retirement fund:
1. All of the accumulated contributions previously withdrawn by or returned to said member; plus

2. An amount equal to the interest that would have been earned on the accumulated contributions, at the actual rate earned by the Retirement Plan, as of the date the member files the election to redeposit if the contributions had not been withdrawn by or returned to the member; plus
 3. Interest on the unpaid balance of all such moneys, at the actuarially assumed interest rate in effect on the date the member files the election, from the date the member files the election to redeposit to the date all such moneys are fully paid into the retirement fund.
- J. If a member elects to redeposit and pay the moneys specified in subsection D. or subsection I. above, and subsequently does redeposit all such moneys as provided in this Section, such member shall be credited under this Plan for all the service for which he or she lost credit upon the withdrawal or return of the accumulated contributions.
- K. If a member elects to redeposit and pay the moneys specified in subsection D. or subsection I. above, but fails to complete the redeposit, then:
1. If the failure to complete the redeposit is because of death of the member, while a member of this Plan but prior to retirement, the member shall be credited with the amount of service which is determined by the Board to be attributable to the amount of accumulated contributions redeposited as of the date of the member's death.
 2. If the failure to complete the redeposit is for any reason other than the death of the member prior to retirement, any amounts redeposited pursuant to the election provided by this Section shall be credited to the member's accumulated normal contributions account but the member shall receive no credit for any service lost because of the previous withdrawal or return of contributions.
- L. Members who make a redeposit under this Section 3.36.710 shall be responsible for paying the entire cost of such service credit purchase. In this case, the entire cost is an actuarially determined amount that includes any amounts that would otherwise result in actuarial loss to the City.

SECTION 37. Section 3.36.715 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.715 Special Window Period For Repurchase of Prior Service Credit

- A. Notwithstanding the provisions of subsections B. and C. of Section 3.36.710, any member who withdrew or was paid his or her accumulated contributions and was subsequently reemployed in the Police Department or Fire Department of this

City and who failed to elect to have prior service credited to him or her, may make such election by filing with the Secretary of the Retirement Board on or before August 30, 1985, and no later, a written statement declaring such election and by redepositing and repaying all accumulated contributions previously withdrawn by or paid to said member, together with interest thereon as provided in subsection D. of Section 3.36.710, within the time and in the manner provided by the Retirement Board.

- B. If such member does not file such statement on or before August 30, 1985, or does not redeposit and repay said moneys within the time and in the manner provided by the Retirement Board, said member shall be deemed to have elected not to have prior service credited to him or her.
- C. To be eligible for the election provided in this Section 3.36.715, such member must be a member of this Retirement Plan on the date he or she files said written statement with the Secretary of the Retirement Board. No prior service shall be credited to any person who, on the date said written statement is filed with the Secretary, is not or was not a member of this Retirement Plan because of retirement or because of termination or suspension of membership under the provisions of this Code.

SECTION 38. Section 3.36.717 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.717 Service Credit for Time on Unpaid Leave of Absence

- A. Subject to the conditions, limitations and requirements of this Section 3.36.717, on or after July 1, 2006, a member of this Plan who is employed in the Police Department may purchase service credit in this Plan for eligible time on unpaid leave of absence as provided in this Section 3.36.717.
- B. Subject to the conditions, limitations and requirements of this Section 3.36.717, on and after March 31, 2017, a member of this Plan who is employed in the Fire Department may purchase service credit in this Plan for eligible time on unpaid leave of absence as provided in this Section 3.36.717.
- C. For the purpose of this Section, "eligible time on unpaid leave of absence" means time for which the member was on leave of absence from his or her employment in the Police Department, or, on or after March 31, 2017, the Fire Department, and for which the member received no compensation from the City, but does not include:
 - 1. Any time prior to the date the person first became a member of this Plan;

2. Time in military service that would otherwise be eligible for service credit under any other provision of this Plan;
 3. Time for which the member receives any service credit in a reciprocal system (as described in Part 16 of this Chapter); or
 4. Any time for which the person was absent from service because of suspension or other disciplinary action.
- D. In the event there is any dispute regarding a member's eligibility to purchase service credit for eligible time on unpaid leave of absence, the contributions required, or the amount of service to be credited to a member, the Board shall determine the issue based on the relevant information presented to the Board.
- E. If a member wishes to purchase service credit for time on unpaid leave of absence, the member shall file a written notice of election to purchase such service credit with the Secretary to the Retirement Board and shall submit to the Secretary an amount of money determined by the Secretary to be the cost of the actuarial services necessary to determine the cost of the additional benefits to be purchased. In addition, prior to his or her retirement, the member shall pay into the retirement fund the full cost of any and all additional benefits that accrue to the member and the member's survivors as a result of the purchase of service credit for time on unpaid leave of absence, as follows:
1. The cost of the additional benefits shall be actuarially determined as the difference between (a) the value of the benefits calculated including service credit for the time on unpaid leave of absence and (b) the value of the benefits calculated without service credit for the time on unpaid leave of absence.
 2. The cost of the additional benefits shall be determined using the most current interest rate and life expectancy tables used to value benefits in the most recent actuarial valuation.
 3. The cost of the additional benefits shall include any cost-of-living-adjustments provided under Chapter 3.44.
 4. If the member elects the installment payment option described below, member shall also pay interest on the outstanding balance at the actuarially assumed interest earnings rate.
- F. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code, any member who elects to purchase service credit for unpaid leave of absence shall pay into the retirement fund the moneys specified in subsection E:

1. In one lump sum within sixty (60) days from and after the date the member files with the Secretary of the Retirement Board the election to purchase service credit; or
 2. On or before January 31, 2011, in monthly or biweekly installments, paid pre-tax over a period of time not to exceed eight (8) years; or
 3. On or after February 1, 2011, in monthly or biweekly installments, paid post-tax over a period of time not to exceed eight (8) years; or
 4. A combination of a lump sum and installments.
- G. Any member electing to pay the contributions required by this Section 3.36.717 in installments or to make the lump sum payment by pre-tax payroll deduction on or before January 31, 2011 shall execute a binding irrevocable payroll authorization form authorizing the payment of the required contributions by payroll deduction. The payroll authorization form shall be filed with the Director of Finance. The election to purchase service credit for time on unpaid leave of absence and the authorization to redeposit by payroll deductions shall be irrevocable. During the time the irrevocable election is in effect, no direct payments from the member to the retirement fund shall be made by the member or accepted by this Plan.
- H. Any member electing to pay contributions in installments or to make the lump sum payment by payroll deduction on or after February 1, 2011 shall execute a payroll authorization form authorizing the payment of the required contributions by post-tax payroll deduction. The payroll authorization form shall be filed with the Director of Finance. Such election executed on or after February 1, 2011 shall be revocable. During the time the revocable election is in effect, the member may make additional direct payments to the retirement fund for the purchase of such service credit.
- I. All contributions under subsections F.2. and G. shall be treated as pre-tax salary reductions pursuant to Internal Revenue Code Section 414(h)(2).
- J. If a member elects to purchase service credit for unpaid leave of absence and pay the moneys specified in subsection E. above, and subsequently does pay all such moneys as provided in this Section, such member shall receive service credit under this Plan for the time on unpaid leave of absence.
- K. If a member elects to purchase service credit for time on unpaid leave of absence and pay the moneys specified in subsection E., but fails to complete the payment because of a separation from City service whether by reason of retirement or death or otherwise, then the member shall be credited with the amount of service that is determined by the Board to be attributable to the

amount of money paid as of the date of the member's separation from City service.

- L. Under no circumstances shall the service credit for time on unpaid leave of absence be included in the determination of service credit for qualification for medical benefits provided under Part 14 of this Chapter or for the qualification for dental benefits provided under Part 15 of this Chapter.

SECTION 39. Section 3.36.747 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.747 Vesting

- A. A member shall be one hundred percent (100%) vested in his or her service retirement benefit upon attaining eligibility for a service retirement benefit under the applicable provisions of the Retirement System.
- B. A Plan member shall be one hundred percent (100%) vested in his or her accumulated contributions at all times.
- C. An affected Plan member shall be one hundred percent (100%) vested in his or her accrued benefit, to the extent then funded, in the event the Retirement System is terminated in whole or in part or contributions are completely discontinued.
- D. For the purpose of this Section 3.36.747 "vested" shall mean the nonforfeitable right to the benefit the member has accrued.
- E. Nothing contained in this Section 3.36.747 shall be construed or interpreted to limit modification of benefits, to the extent that such modification is otherwise allowed under federal and state law.
- F. Any changes to Tier 2 retirement or post-employment benefits enacted after those adopted March 31, 2017 that result in benefit increases or decreases shall only be applied prospectively and except for the changes adopted on March 31, 2017 shall not have retroactive effect. All such changes shall be subject to applicable California pension and other laws. Without limitation of any type, the City shall have the right to make any modifications, alterations or amendments necessary or appropriate to maintain the tax qualification of the benefits provided under this Retirement Plan to Tier 2 members.

SECTION 40. Section 3.36.750 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.750 Voluntary Retirement For Service

- A. Prior to August 1, 1968, a member shall be retired for service, upon his written application to the Retirement Board, if he has attained fifty-five (55) years of age and is entitled to be credited with twenty (20) or more years of service.
- B. On or after August 1, 1968, subject to the provisions of this Chapter, a member, other than a Tier 2 member, shall be retired for service, upon his written application to the Retirement Board, if he has attained fifty (50) years of age and is entitled to be credited with twenty (20) or more years of service, or if he is entitled to be credited with thirty (30) or more years of service regardless of whether he has attained fifty (50) years of age.
- C. On or after August 4, 2013, subject to the provisions of this Chapter, a Tier 2 member shall be retired for service, upon his written application to the Retirement Board, if:
 - 1. Such Tier 2 member has attained fifty-seven (57) years of age and is entitled to be credited with five (5) or more years of service; or
 - 2. Such Tier 2 member has attained fifty (50) years of age and is entitled to be credited with five (5) or more years of service. However, the Tier 2 member's benefit shall be reduced by a factor of seven percent (7%) for each year the Tier 2 member retires before age fifty-seven (57), prorated to the closest month. The reduced benefit shall be determined by the actuary for the Police and Fire Retirement Plan. The early retirement reduction factors used are shown below:

Retirement Age	Early Retirement Factor
57	1.00
56	0.93
55	0.86
54	0.79
53	0.72
52	0.65
51	0.58
50	0.51

SECTION 41. Section 3.36.755 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.755 Reinstatement From Retirement for Service

- A. A person who has been retired for service pursuant to the provisions of this Part 6 may apply to the Retirement Board, in writing, for reinstatement from such retirement for the purpose of reentering City service. The Board may reinstate the person from retirement if it finds that his or her age at the date of his application is at least six (6) months less than seventy (70) years of age. Upon such reinstatement, said person may be reemployed by the City, in the same manner as it employs persons who have not been retired hereunder, to render City service.
- B. Upon reinstatement from service retirement as aforesaid, the service retirement allowance of the reinstated person shall be canceled forthwith, and the person shall again become a member of this Plan as of the date of the reinstatement. If reinstatement occurs on or after August 4, 2013 and the individual meets the definition of Tier 2 member under Section 3.36.020.15, the person will re-enter the Plan as a Tier 2 member with respect to benefits that will be accrued as of his/her reinstatement date. Upon reinstatement, if the person has attained age fifty (50) and has at least ten (10) years of service credit, the person shall regain credit for those years of service for which the person was entitled to credit as of the time he or she retired for service in the manner described in subsection C. below.
- C. If a person with City service prior to August 4, 2013, who has been retired is reinstated to City service on or after August 4, 2013 and meets the definition of Tier 2 member in Section 3.36.020.15, upon subsequent retirement the amount of that Tier 2 member's retirement allowance shall be calculated by applying the accrual rate or rates for the number of years of City service earned prior to becoming a Tier 2 member and applying the accrual rates described in Section 3.36.808 or 3.36.809, as applicable, corresponding with the number of years as a Tier 2 member using the Tier 2 member's final compensation as a Tier 2 member and applying all other provisions applicable to Tier 2 members in determining the benefit.

SECTION 42. Section 3.36.807 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.807 Service Retirement Allowance - Retirement On or After February 4, 2000 But Before July 1, 2008 For Members Employed With the Fire Department and Before July 1, 2006 For Members Employed With the Police Department

- A. Subject to the provisions of this Chapter 3.36, if a member retired or retires for service on or after February 4, 2000 but before July 1, 2008 for members employed with the Fire Department and before July 1, 2006 for members employed with the Police Department, pursuant to the provisions of Section 3.36.750, 3.36.770 or 3.36.780, then he or she shall be paid from the retirement fund a monthly service retirement allowance equal to two and one-half percent (2.5%) of his or her final compensation for each of the first twenty (20) years of service, plus three percent (3%) of his or her final compensation for each of the next five (5) full years of service, plus four percent (4%) of his or her final compensation for each full year of service in excess of the first twenty-five (25) years of service; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of eighty-five percent (85%) of the member's final compensation.
- B. For the purposes of this Section 3.36.807, "service" means service performed for the City and for which the member is entitled to credit under the provisions of this Chapter. "Service" shall not include service as an officer or employee of a reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.
- C. In computing the amount of allowance payable for service in excess of the first twenty (20) years, pro rata credit shall be given for a fraction of a full year.

SECTION 43. Section 3.36.808 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.808 Service Retirement Allowance For Members Employed in Fire Department - Retirement On or After February 4, 2000

- A. Subject to the provisions of this Chapter 3.36, if a member employed in the Fire Department retired or retires for service on or after February 4, 2000, but prior to July 1, 2008, pursuant to the provisions of Section 3.36.750, 3.36.770 or 3.36.780, then he or she shall be paid from the retirement fund a monthly service retirement allowance calculated in accordance with Section 3.36.807.
- B. Subject to the provisions of this Chapter 3.36, if a member employed in the Fire Department retired or retires for service on or after July 1, 2008, pursuant to the provisions of Section 3.36.750, 3.36.770 or 3.36.780, then:

1. If the person was credited with less than twenty (20) years of service credit at the time of retirement, he or she shall be paid from the retirement fund a monthly service retirement allowance equal to two and one-half percent (2.5%) of his or her final compensation for each year of service credit.
2. If the person was credited with twenty (20) or more years of service credit at the time of retirement, he or she shall be paid from the retirement fund a monthly service retirement allowance equal to three percent (3%) of his or her final compensation for each year of service credit; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety percent (90%) of the member's final compensation.
3. A Tier 2 member who retires for service on or after August 4, 2013, shall be paid from the retirement fund a monthly service retirement allowance determined based on an annual benefit equal to two and two-fifths percent (2.4%) of final compensation for each of the first twenty (20) full years of City service, plus three percent (3%) of his or her final compensation for each full year of service between twenty-one (21) and twenty-five (25) years of City service, plus three and two-fifths percent (3.4%) of his or her final compensation for each full year of service in excess of twenty-five (25) years of City service; provided, however that in no event shall the annual service retirement allowance exceed a maximum of eighty percent (80%) of such Tier 2 member's final compensation. If the Tier 2 member has attained age fifty (50) but not reached age fifty-seven (57), the Tier 2 member's benefit shall be reduced by a factor of seven percent (7%) for each year the Tier 2 member retires before age fifty-seven (57), prorated to the closest month. The reduced benefit shall be determined by the actuary for the Police and Fire Plan. The early retirement reduction factors used are shown below:

Retirement Age	Early Retirement Factor
57	1.00
56	0.93
55	0.86
54	0.79
53	0.72
52	0.65
51	0.58
50	0.51

- C. For the purposes of this Section 3.36.808, "service" means service performed for the City and for which the member is entitled to credit under the provisions of this

Chapter. "Service" shall not include service as an officer or employee of a reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.

- D. In computing the amount of the allowance payable for service in excess of the first twenty (20) years, pro rata credit shall be given for a fraction of a full year.
- E. Tier 2 members shall be credited with one (1) year of service for two thousand eighty (2,080) or more hours of service rendered by the Tier 2 member in any calendar year. The maximum service credit for a Tier 2 member in a calendar year shall not exceed one (1) year. If a Tier 2 member renders less than two thousand eighty (2,080) hours in a calendar year, the Tier 2 member shall be given credit for that portion of one (1) year which the hours of service rendered by the member in such year bear to two thousand eighty (2,080) hours of regular time worked (including paid leave and military leave, but not overtime).

SECTION 44. Section 3.36.809 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.809 Service Retirement Allowance For Members Employed in Police Department - Retirement On or After February 4, 2000

- A. Subject to the provisions of this Chapter 3.36, if a member employed in the Police Department retired or retires for service on or after February 4, 2000, but prior to July 1, 2006, pursuant to the provisions of Section 3.36.750, 3.36.770 or 3.36.780, then he or she shall be paid from the retirement fund a monthly service retirement allowance calculated in accordance with Section 3.36.807.
- B. Subject to the provisions of this Chapter 3.36, if a member employed in the Police Department, other than a Tier 2 member, retired or retires for service on or after July 1, 2006, pursuant to the provisions of Section 3.36.750, 3.36.770 or 3.36.780, then he or she shall be paid from the retirement fund a monthly service retirement allowance equal to two and one-half percent (2.5%) of his or her final compensation for each of the first twenty (20) years of service plus four percent (4%) of his or her final compensation for each full year of service in excess of the first twenty (20) years of service; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety percent (90%) of the member's final compensation. A Tier 2 member who retires for service on or after August 4, 2013, shall be paid from the retirement fund a monthly service retirement allowance determined based on an annual benefit equal to two and two-fifths percent (2.4%) of final compensation for each of the first twenty (20) full years of City service, plus three percent (3%) of his or her final compensation for each full year of service between twenty-one (21) and twenty-five (25) years of City service, plus three and two-fifths percent (3.4%) of his or her final compensation for each full year of service in excess of twenty-five

(25) years of City service; provided, however that in no event shall the annual service retirement allowance exceed a maximum of eighty percent (80%) of such Tier 2 member's final compensation. If the Tier 2 member has attained age fifty (50) but not reached age fifty-seven (57), the Tier 2 member's benefit shall be reduced by a factor of seven percent (7%) for each year the Tier 2 member retires before age fifty-seven (57), prorated to the closest month. The reduced benefit shall be determined by the actuary for the Police and Fire Plan. The early retirement reduction factors used are shown below:

Retirement Age	Early Retirement Factor
57	1.00
56	0.93
55	0.86
54	0.79
53	0.72
52	0.65
51	0.58
50	0.51

- C. For the purposes of this Section 3.36.809, "service" means service performed for the City and for which the member is entitled to credit under the provisions of this Chapter. "Service" shall not include service as an officer or employee of a reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.
- D. In computing the amount of allowance payable for service in excess of the first twenty (20) years for other than Tier 2 members, pro rata credit shall be given for a fraction of a full year.
- E. Tier 2 members shall be credited with one (1) year of service for two thousand eighty (2,080) or more hours of service rendered by the Tier 2 member in any calendar year. The maximum service credit for a Tier 2 member in a calendar year shall not exceed one (1) year. If a Tier 2 member renders less than two thousand eighty (2,080) hours in a calendar year, the Tier 2 member shall be given credit for that portion of one (1) year which the hours of service rendered by the member in such year bear to two thousand eighty (2,080) hours of regular time worked (including paid leave and military leave, but not overtime).

SECTION 45. Section 3.36.810 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.810 Service Retirement Allowance – Retirement On or After August 1, 1968, at Age Fifty (50) to Fifty-Seven (57)

- A. If a member, other than a Tier 2 member, retires or is retired for service on or after August 1, 1968, and such member has attained fifty (50) years of age but has not attained fifty-five (55) years of age as of the date of commencement of his or her retirement, then he or she shall be paid as a monthly service retirement allowance from the retirement fund, from and after the date of his or her retirement and during the remainder of his or her lifetime, a reduced monthly allowance, as calculated pursuant to subsection B. of this Section, whenever such member meets either of the following conditions:
1. The member retired on or after August 1, 1968, but prior to July 5, 1992, and as of the date of commencement of his or her retirement such member is entitled to be credited with twenty (20) or more years of service but less than thirty (30) years of service; or
 2. The member retired on or after July 5, 1992, and as of the date of commencement of his or her retirement, such member is entitled to be credited with twenty (20) or more years of service but less than twenty-five (25) years of service.
- B. The reduced monthly service retirement allowance for a member described in subsection A. of this Section shall be calculated using the interest rate and life expectancy tables used to value benefits in determining the actuarial equivalents of the optional settlements provided under Part 9.5 of this Chapter and determined as follows:
1. First, there shall be determined the monthly retirement allowance to which the member would be entitled if he or she were to continue his or her employment and defer retirement until he or she attained the age of fifty-five (55) years, assuming for such purpose that such member's final compensation upon retirement at age fifty-five (55) were the same as his or her compensation at the time of his or her actual early retirement. The result is hereinafter referred to as the member's "unreduced allowance."
 2. Second, there shall be determined, as of the date of the member's early retirement, the amount of such member's unreduced allowance, assuming that notwithstanding his or her early retirement such member does not become entitled to commence drawing his or her allowance until he or she attains the age of fifty-five (55) years. Such amount shall be deemed to be equal to that proportion of the member's unreduced allowance which the

amount of service for which he or she is entitled to credit at the time of his or her early retirement bears to the amount of service for which he or she would be entitled to credit if he or she were to continue his or her employment and defer retirement until he or she attained the age of fifty-five (55) years. The result is hereinafter referred to as the member's "partially reduced allowance."

3. Finally, said member's *partially reduced allowance* shall be further reduced by that amount which the value of such partially reduced allowance as deferred to age fifty-five (55) will purchase at the actual age of retirement. The result is the reduced monthly service retirement allowance which the member is entitled to receive from and after the date of his or her early retirement.
- C. Also, if a member retires or is retired for service before attaining the age of fifty-five (55) years, any and all death, survivorship and other allowances, benefits or payments to which a person, persons or estate may become entitled, after such member's death, under the provisions of Part 8 of this Chapter, shall be reduced as provided in Section 3.36.1340 of Part 8.
 - D. Notwithstanding the foregoing provisions regarding reduced monthly service allowances, any member who is not a Tier 2 member, and retires or is retired for service on or after August 1, 1968, and who is entitled to be credited with thirty (30) years or more of service, shall not be subject to the provisions regarding reduced monthly service allowances regardless of age.
 - E. Notwithstanding the foregoing provisions regarding reduced monthly service allowances, any member who is not a Tier 2 member and retires or is retired for service on or after July 5, 1992, and at the time of retirement has attained fifty (50) years of age but has not attained fifty-five (55) years and is entitled to be credited for twenty-five (25) or more years of service but less than thirty (30) years of service, shall not be subject to the provisions regarding reduced monthly service allowances.
 - F. If a Tier 2 member retires or is retired for service on or after August 4, 2013, and such Tier 2 member has attained fifty (50) years of age but has not attained fifty-seven (57) years of age as of the commencement of his or her retirement, then he or she shall be paid a monthly service retirement allowance that is reduced by a factor of seven percent (7%) for each year between age fifty-seven (57) and the Tier 2 member's age at retirement, prorated to the closest month. The reduced benefit shall be determined by the actuary for the Police and Fire Retirement Plan. The early retirement reduction factors used are shown below:

Retirement Age	Early Retirement Factor
57	1.00
56	0.93
55	0.86
54	0.79
53	0.72
52	0.65
51	0.58
50	0.51

- G. If a Tier 2 member retires or is retired for service before attaining age fifty-seven (57), any and all death survivorship and other allowances, benefits or payments to which a person, persons or estate may become entitled, after such Tier 2 member's death, under this Chapter shall be reduced as provided in Section 3.36.1340.

SECTION 46. Section 3.36.900 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.900 Definitions

As used in this Chapter:

- A. "Disability," "incapacity for the performance of duty," and "incapacitated for the performance of duty," as a basis for retirement, means disability of a member, short of death, of permanent or extended and uncertain duration, occurring while such member is a member of this System, as a result of injury or disease, which renders a person physically or mentally incapable of assuming the responsibilities and performing the duties of the position then held by him and of any other position in the same classification of positions to which the City may offer to transfer him, as determined by the independent medical panel or, upon appeal, by the administrative law judge, on the basis of competent medical opinion. It does not mean or include mere inability to assume said responsibilities or perform said duties.
1. "Disability," "incapacity for the performing of duty," and "incapacitated for the performance of duty," as a basis for retirement, also means disability of a member, short of death, of permanent or extended and uncertain duration, occurring while such member is a member of this System, not as a result of injury or disease, which renders a person mentally incapable of assuming the responsibilities and performing the duties of the position then held by him and of any other person in the same classification of positions to which the City may offer to transfer him, as determined by the independent medical panel or, upon appeal, by the administrative law

judge on the basis of competent medical opinion. It does not mean or include mere inability to assume said responsibilities or perform said duties; provided, however, that notwithstanding any other provisions of this Chapter 3.36, including Sections 3.36.990, 3.36.1000 and 3.36.1010, no member shall be deemed disabled or incapacitated within the meaning of this Section unless at the time such disability occurs he shall be entitled to credit for at least ten (10) years of service in this System.

2. The provisions of this Section shall be deemed to cover any member of this System whose disability or incapacity for the performance of duty occurred on or after the first day of April, 1968; provided that no benefits shall be payable hereunder for any period prior to the filing of an application for disability retirement or prior to the date upon which the Retirement Board makes a motion pursuant to Section 3.36.940. If any person whose disability or incapacity for the performance of duty, as said terms are defined in this Section, occurred on or after the first day of April, 1968, files or has filed an application for disability retirement prior to the effective date of this Section, the Retirement Board may, subject to other provisions of this Chapter, grant a disability retirement allowance commencing on the date of the filing of such application with the Retirement Board.

- B. "Nonservice-connected disability" means disability of a member other than a "service-connected disability."
- C. "Service-connected disability" means disability of a member as a result of injury or disease arising out of and in the course of such member's employment with the City.

SECTION 47. Section 3.36.920 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.920 Situations Where Member is Not Entitled to Disability Retirement or Disability Retirement Allowance

- A. Anything elsewhere in this Chapter to the contrary notwithstanding, no person shall be entitled to any disability retirement or to any disability retirement allowance under the provisions of this Chapter in any of the following situations as determined by the independent medical panel or, upon appeal, by the administrative law judge:
 1. Where the person's disability occurred before he or she became a member of this Retirement System; or

2. Where the person's disability occurs after he or she ceases to be a member of this Retirement System or after he or she ceases to be an employee of the City; or
 3. Where the person's disability occurs while he or she is on leave of absence from City employment for any purpose, except as provided in subsections B. and C. of this Section 3.36.920; or
 4. Where the person separated from City service on or after February 4, 2000, the person files an application for disability retirement on or after September 1, 2002, and the person has been separated from City service for more than one (1) year as of the date the person's application for disability retirement is filed with the Secretary to the Board, except in the case where the person demonstrates by a preponderance of the evidence that the disability is due to diseases and/or conditions caused by exposure to workplace factors and/or conditions that at the time of separation from City service had no previous medical basis to be considered harmful; or
 5. Where the person separates from City service on or after March 31, 2017, and the person does not file an application for disability retirement within one (1) month of separation from City service, except in the case where the person demonstrates by a preponderance of the evidence that the disability is due to diseases and/ or conditions caused by exposure to workplace factors and/ or conditions that at the time of separation from City service had no previous medical basis to be considered harmful .
- B. In the case of a member who otherwise satisfies the requirements of this Chapter for a nonservice-connected disability retirement, subsection A. of this Section 3.36.920 shall not apply and the independent medical panel or, upon appeal, the administrative law judge may grant a nonservice-connected disability retirement if the member's disability occurs while such person is on leave of absence for the purpose of engaging in military or naval duty for the United States of America in time of war or national emergency as proclaimed by the president or congress. The monthly retirement allowance for such nonservice-connected disability shall be reduced by the amounts received by the member pursuant to the United States Social Security Act or pursuant to any other federal disability benefits program where such amounts are paid to the member because of disability incurred while on leave of absence to engage in military or naval duty.
- C. The provisions of this Section shall not apply where the person's disability occurs while such person is on leave of absence with full City compensation and pay.

SECTION 48. Section 3.36.960 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.960 Medical Examinations

- A. The Retirement Board on its own motion at any time may, and upon receipt of an application for disability retirement shall transfer the application to the independent medical panel to determine whether the member is disabled or incapacitated for the performance of duty, and to determine whether such disability or incapacity for performance of duty is a service-connected or nonservice-connected disability in those situations where the member's eligibility for disability retirement, or the amount of disability retirement allowance to which he or she may be entitled, is dependent upon such determination.
- B. In addition, the member may submit a medical report from his or her own physician or surgeon. Where application for disability retirement is made by the member or on his or her behalf, a medical report by the member's private physician or surgeon shall be submitted with the application unless otherwise authorized by the independent medical panel. The independent medical panel may require additional medical examinations, or procure or require additional or other evidence before determining a member's disability.
- C. Unless the independent medical panel extends the filing deadline:
 - 1. Within one year of separation from service, members must submit medical documentation indicating the initial nature of their disability, including but not limited to, the current level of disability, any treatment underway at the time of application, and affected body parts where applicable; and
 - 2. Applications for disability may not be deferred beyond four (4) years from the date the disability application was submitted. The independent medical panel may only extend deadlines in the case of a deferred application when in the independent medical panel's opinion extenuating circumstances exist.
- D. Where application for disability retirement is made by a member and one (1) or more panel proceedings are held for the purpose of determining questions involving any right, benefit or obligation of a person under this Part 7, both the applicant and the City may have legal counsel present at any hearings. In addition, any decision made by the independent medical panel to approve or deny an application for disability retirement may be appealed to an administrative law judge pursuant to the provisions governing hearings by the State of California Office of Administrative Hearings, General Jurisdictional Division by the City or member. The request for appeal must be made in writing within forty-five (45) days of the independent medical panel's decision. The hearing before the

administrative law judge must be scheduled within ninety (90) days of the notice of appeal unless a later date is agreed upon by the City and the member and approved by the administrative law judge. The administrative law judge's decision, or the independent medical panel's decision in the absence of an administrative law judge's decision, will be a binding determination within the meaning of California Code of Civil Procedure Section 1094.5 and shall be based on the information and documentation presented to the independent medical panel.

SECTION 49. Section 3.36.970 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.970 Disability Retirement – Eligibility

If the medical reports and other available evidence and information presented show to the satisfaction of the independent medical panel or, upon appeal, the administrative law judge that the member is incapacitated for the performance of his duty, and if such member is otherwise eligible to retire for disability pursuant to the provisions of this Chapter, the Board shall retire him for disability as soon as practicable after any appeal period has expired or been waived by the relevant party.

SECTION 50. Section 3.36.980 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.980 Determination as to Whether Disability is Service-Connected

If the medical examination and other available evidence and information presented show to the satisfaction of the independent medical panel or, upon appeal, the administrative law judge that the disability is service-connected, it shall so find and declare such determination to the Retirement Board. If the medical examination and other available information presented shows to the satisfaction of the independent medical panel or, upon appeal, the administrative law judge that the disability is nonservice-connected, it shall so find and declare such determination to the Retirement Board. Based on such finding and declaration, the independent medical panel or, upon appeal, the administrative law judge shall instruct the Board whether to retire the member for service-connected or nonservice-connected disability.

SECTION 51. Section 3.36.995 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.995 Nonservice-Connected Disability Benefits

- A. Subject to the provisions of this Chapter, a person who is retired for nonservice-connected disability, pursuant to Section 3.36.990, shall be paid from the retirement fund while the member is incapacitated for the performance of duty as

a result of the nonservice-connected disability, a monthly allowance calculated in accordance with this Section.

- B. A member, other than a Tier 2 member, who is entitled to credit for at least two (2) but less than twenty (20) years of service at the time the nonservice-connected disability occurs shall receive a monthly allowance equal to thirty-two percent (32%) of the member's final compensation, plus one percent (1%) of said final compensation for each full year of service for which the member is entitled to credit in excess of the first two (2) years of service; provided, however, that in no event shall the total monthly allowance exceed fifty percent (50%) of the member's final compensation.
- C. A member, other than a Tier 2 member, who is entitled to credit for twenty (20) or more years of service at the time the nonservice-connected disability occurs shall receive a monthly allowance as follows:
1. If such member's nonservice-connected disability retirement occurred prior to January 1, 1970, the monthly allowance shall be equal to fifty percent (50%) of such member's final compensation.
 2. If such member's nonservice-connected disability retirement occurred on or after January 1, 1970, but prior to February 4, 1996, the monthly allowance shall be:
 - a. From and after the date of such member's retirement to September 1, 1970, the monthly allowance shall be equal to fifty percent (50%) of such member's final compensation plus one and two-thirds percent (1.67%) of said final compensation for each full year of service in excess of the first twenty (20) years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement allowance during said period of time exceed a maximum of sixty-six and two-thirds percent (66.67%) of such member's final compensation; and
 - b. From and after September 1, 1970, while so retired for disability, the monthly allowance shall be equal to fifty percent (50%) of such member's final compensation plus two and one-half percent (2.5%) of said final compensation for each full year of service in excess of the first twenty (20) years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement allowance exceed a maximum of seventy-five percent (75%) of such member's final compensation.
 3. If such member's nonservice-connected disability retirement occurred or occurs on or after February 4, 1996, but prior to February 4, 2000, the

monthly allowance shall be equal to fifty percent (50%) of such member's final compensation, plus three percent (3%) of said final compensation for each full year of service in excess of the first twenty (20) years of service for which such member is entitled to credit; provided, however:

- a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty percent (80%) of such member's final compensation.
 - b. This paragraph C.3. shall not apply in the case where the member was retired for service prior to February 4, 1996, was not reemployed by the City for any period on or after February 4, 1996, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph C.1. or C.2., above, as applicable.
4. Except as provided in paragraph C.5. or paragraph C.6. below, if such member's nonservice-connected disability retirement occurred or occurs on or after February 4, 2000, the monthly allowance shall be equal to fifty percent (50%) of such member's final compensation for up to the first twenty (20) years of service, plus three percent (3%) of said final compensation for each of the next five (5) full years of service in excess of twenty (20) years, plus four percent (4%) of his or her final compensation for each full year of service in excess of the first twenty-five (25) years of service; provided, however:
- a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty-five percent (85%) of such member's final compensation.
 - b. This paragraph C.4. shall not apply in the case where the member was retired for service prior to February 4, 2000, was not reemployed by the City for any period on or after February 4, 2000, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph C.1., C.2. or C.3. above, as applicable.
 - c. This paragraph C.4. shall not apply to a Tier 2 member.
5. With respect to those members of the Plan who are employed in the Police Department:

- a. If such member's nonservice-connected disability retirement occurred or occurs on or after February 4, 2000, but prior to July 1, 2006, and the member is not a Tier 2 member the monthly allowance shall be calculated in accordance with paragraph C.4. above.
 - b. If such member is not a Tier 2 member and such member's nonservice- connected disability retirement occurred or occurs on or after July 1, 2006, the monthly allowance shall be equal to two and one-half percent (2.5%) of his or her final compensation for each of the first twenty (20) years of service, plus four percent (4%) of his or her final compensation for each full year of service in excess of the first twenty (20) years of service; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety percent (90%) of the member's final compensation.
 - c. This paragraph C.5. shall not apply in the case where the member was retired for service prior to July 1, 2006, was not reemployed by the City for any period on or after July 1, 2006, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph C.1., C.2., C.3. or C.4. above, as applicable.
6. With respect to those members of the Plan who are employed in the Fire Department:
- a. If such member's nonservice-connected disability retirement occurred or occurs on or after February 4, 2000, but prior to July 1, 2008, the monthly allowance shall be calculated in accordance with paragraph C.4. above.
 - b. If such member's nonservice-connected disability retirement occurred or occurs on or after July 1, 2008:
 - i. If the member was credited with less than twenty (20) years of service credit on the date of retirement, the monthly allowance shall be calculated in accordance with paragraph C.4. above.
 - ii. If the member was credited with twenty (20) or more years of service credit on the date of retirement, the monthly allowance shall be equal to three percent (3%) of his or her final compensation for each year of service credit; provided,

however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety percent (90%) of the member's final compensation.

- c. This paragraph C.6. shall not apply in the case where the member was retired for service prior to July 1, 2008, was not reemployed by the City for any period on or after July 1, 2008, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph C.1., C.2., C.3. or C.4. above, as applicable.
- D. For the purposes of this Section 3.36.995, "service" means service performed for the City, and for which the member is entitled to credit under the provisions of this Chapter. "Service" shall not include service as an officer or employee of a reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.
- E. Notwithstanding any other provision of this Section, in computing the amount of allowance payable under this Section for service in excess of the first twenty (20) years, pro rata credit shall be given for a fraction of a full year.
- F. A Tier 2 member who is approved by the independent medical panel or, upon appeal, by the administrative law judge for a nonservice-connected disability and is entitled to credit for five (5) or more years of service credit at the time the nonservice-connected disability occurs shall receive a monthly allowance calculated as follows:
 1. If the Tier 2 member has not attained age fifty (50), the monthly allowance is determined based on an annual benefit equal to one and four-fifths percent (1.8%) of final compensation times years of City service.
 2. If the Tier 2 member has attained at least age fifty (50), the monthly allowance is determined in accordance with Section 3.36.808 for those who are Fire members and 3.36.809 for those who are Police members.
 3. If the Tier 2 member is credited with less than five (5) years of service credit on the date of retirement, the Tier 2 member is not entitled to a nonservice-connected disability.

SECTION 52. Section 3.36.1020 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1020 Service-Connected Disability Benefits

- A. Any member retired for service-connected disability pursuant to the provisions of Section 3.36.1000 shall thereafter be paid from the retirement fund, while incapacitated for the performance of duty as a result of such disability, subject to all other provisions of this Chapter, a monthly disability retirement allowance in the following amount:
1. If such member's service-connected disability retirement occurred prior to January 1, 1970, the monthly allowance shall be equal to fifty percent (50%) of such member's final compensation.
 2. If such member's service-connected disability retirement occurred on or after January 1, 1970, but prior to February 4, 1996, the monthly disability retirement allowance shall be as follows:
 - a. From and after the date of such member's retirement prior to September 1, 1970, the monthly allowance shall be equal to fifty percent (50%) of such member's final compensation plus one and two-thirds percent (1.67%) of said final compensation for each full year of service in excess of the first twenty (20) years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement allowance during said period of time exceed a maximum of sixty-six and two-thirds percent (66.67%) of such member's final compensation; and
 - b. From and after September 1, 1970, while so retired for disability, the monthly allowance shall be equal to fifty percent (50%) of such member's final compensation plus two and one-half percent (2.5%) of said final compensation for each full year of service in excess of the first twenty (20) years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement allowance exceed a maximum of seventy-five percent (75%) of such member's final compensation.
 3. If such member's service-connected disability retirement occurred or occurs on or after February 4, 1996, but prior to February 4, 2000, the monthly allowance shall be equal to fifty percent (50%) of such member's final compensation plus three percent (3%) of said final compensation for each full year of service in excess of twenty (20) years of service for which such member is entitled to credit; provided, however:

- a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty percent (80%) of such member's final compensation.
 - b. This paragraph A.3. shall not apply in the case where the member was retired for service prior to February 4, 1996, was not reemployed by the City for any period on or after February 4, 1996, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph A.1. or A.2., above, as applicable.
4. Except as provided in paragraph A.5. or paragraph A.6. below, if such member is not a Tier 2 member and such member's service-connected disability retirement occurred or occurs on or after February 4, 2000, the monthly allowance shall be equal to fifty percent (50%) of such member's final compensation, plus three percent (3%) of said final compensation for each year of the first five (5) full years of service in excess of twenty (20) years, plus four percent (4%) of his or her final compensation for each full year of service in excess of twenty-five (25) years of service; provided, however:
- a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty-five percent (85%) of such member's final compensation.
 - b. This paragraph A.4. shall not apply in the case where the member was retired for service prior to February 4, 2000, was not reemployed by the City for any period on or after February 4, 2000, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph A.1., A.2. or A.3. above, as applicable.
5. With respect to those members of the Plan who are employed in the Police Department:
- a. If such member's service-connected disability retirement occurred or occurs on or after February 4, 2000, but prior to July 1, 2006, the monthly allowance shall be calculated in accordance with paragraph A.4. above.
 - b. If such is not a Tier 2 member and such member's service-connected disability retirement occurred or occurs on or after July 1, 2006, the monthly allowance shall be equal to fifty percent (50%)

of his or her final compensation, plus four percent (4%) of his or her final compensation for each full year of service in excess of twenty (20) years; provided, however, that in no event shall the monthly allowance exceed a maximum of ninety percent (90%) of the member's final compensation.

- c. This paragraph A.5. shall not apply in the case where the member was retired for service prior to July 1, 2006, was not reemployed by the City for any period on or after July 1, 2006, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph A.1., A.2., A.3. or A.4. above, as applicable.
- d. A Tier 2 member whose service-connected disability retirement occurs on or after August 4, 2013 and is approved by the independent medical panel or, upon appeal, by the administrative law judge, is entitled to a monthly allowance equal to the greater of:
 - i. fifty percent (50%) of his or her final compensation; or
 - ii. an allowance calculated under the formula provided under Section 3.36.809 if the Tier 2 member qualifies for a service retirement; or
 - iii. if the member does not qualify for a service retirement under Section 3.36.809, a benefit that is actuarially reduced by the Plan's actuary for each quarter year that the member's service age is less than age fifty (50) multiplied by the number of years of safety service subject to the applicable retirement formula.

6. With respect to those members of the Plan who are employed in the Fire Department:

- a. If such member's service-connected disability retirement occurred or occurs on or after February 4, 2000, but prior to July 1, 2008, the monthly allowance shall be calculated in accordance with paragraph A.4. above.
- b. If such member's service-connected disability retirement occurred or occurs on or after July 1, 2008, the monthly allowance shall be equal to fifty percent (50%) of his or her final compensation; and, if the member had twenty (20) or more years of service, an additional ten percent (10%) of said final compensation, plus three percent

(3%) of his or her final compensation for each full year of service in excess of twenty (20) years; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety percent (90%) of the member's final compensation.

- c. This paragraph A.6. shall not apply in the case where the member was retired for service prior to July 1, 2008, was not reemployed by the City for any period on or after July 1, 2008, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph A.1., A.2., A.3. or A.4. above, as applicable.
 - d. A Tier 2 member whose service-connected disability retirement occurs on or after January 2, 2015 and is approved by the independent medical panel, or, upon appeal, by the administrative law judge, is entitled to a monthly allowance equal to the greater of:
 - i. fifty percent (50%) of his or her final compensation; or
 - ii. an allowance calculated under the formula provided under Section 3.36.808 if the Tier 2 member qualifies for a service retirement; or
 - iii. if the member does not qualify for a service retirement under Section 3.36.808, a benefit that is actuarially reduced by the Plan's actuary for each quarter year that the member's service age is less than age fifty (50) multiplied by the number of years of safety service subject to the applicable retirement formula.
- B. For the purposes of this Section 3.36.1020, "service" means service performed for the City, and for which the member is entitled to credit under the provisions of this Chapter. "Service" shall not include service as an officer or employee of a reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.
- C. Notwithstanding any other provision of this Section, in computing the amount of allowance payable under this Section for service in excess of the first twenty (20) years, pro rata credit shall be given for a fraction of a full year.

SECTION 53. Section 3.36.1030 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1030 Deduction of Workers' Compensation Benefit Amounts

- A. Notwithstanding anything else in this Chapter, except as provided in Sections 3.36.1030.B and 3.36.1330 with respect to Tier 2 members, from and after January 1, 1964, the amount of any monthly disability retirement allowance payable to any person under and by virtue of other provisions of this Chapter shall be computed and determined as provided by other applicable sections of this Chapter without any deduction being made because of any provisions of this Section. Nothing herein contained, however, shall be deemed to authorize or require the recomputation or increase of the amount of any disability retirement allowance computed and paid prior to January 1, 1964, pursuant to the provisions of this Section as it read prior to said date, it being the intent that the present provisions of this Section shall operate prospectively as herein provided and not retroactively. No allowance or benefits payable under this System shall be modified because of any workers' compensation benefits which may become payable under the laws of the State of California to any member or to any recipient of any allowance or benefit payable under this System except as provided in Sections 3.36.1030.B and 3.36.1330.
- B. In the event a Tier 2 member is retired for a service-connected disability pursuant to Part 7 of this Chapter and receives both a service-connected disability retirement allowance and a workers' compensation benefit for temporary disability, permanent disability or vocational rehabilitation temporary disability pursuant to Division 1 or Division 4 of the California Labor Code, then the service-connected disability retirement allowance shall be offset by such workers' compensation benefits in the same ratio as the City's contributions bear to the total contributions made to the Plan on behalf of the member but shall up to a maximum aggregate amount of ten thousand dollars (\$10,000.00) as follows:
1. The applicable amount of the workers' compensation benefits shall be converted to a monthly equivalent. The ratio equal to the amount the City's contributions bear to the total contributions made to the Plan on behalf of the member will be determined and applied to the monthly equivalent. The monthly service-connected disability retirement allowance shall be reduced by the portion of the workers' compensation benefit monthly equivalent determined in the prior sentence.
 2. The offset shall be in effect only during such times as concurrent retirement allowances and workers' compensation benefits are paid. In the case of the payment of a lump sum workers' compensation benefit (excluding payments for medical treatment), the offset shall apply only for

such period of time as concurrent payments would have been made had the workers' compensation benefit been paid in installments.

3. In no case shall the offset reduce the service-connected disability retirement allowance to an amount less than the sum of the maximum retired member contributions for medical, dental life, and accidental death insurance premiums, as determined by the City, plus one dollar (\$1.00). This limitation shall apply regardless of whether the retired member actually contributes towards the payment of such premiums. The maximum aggregate total of the workers' compensation offset will not be more than ten thousand dollars (\$10,000) per employee.
4. No offset shall be made for permanent disability benefits paid to any retired Tier 2 member of this System who has received a workers' compensation permanent disability rating of one hundred percent (100%).
5. The offset shall not apply with respect to workers' compensation benefits paid for any injury or illness which did not cause or contribute to the disability, as determined by the independent medical panel or, upon appeal, by the administrative law judge, for which the service-connected disability retirement was granted.
6. There shall be no delay in the payment of retirement benefits pending resolutions of a workers' compensation claim. All awards shall be offset in accordance to 3.36.1030.B at the time of disability retirement payment. Should a pending or new workers' compensation claim be resolved after commencement of a disability retirement benefit, the calculation of the new offset will be made by the Plan as soon as practically possible after notification of the award(s) and any disability retirement benefit overpayment resulting from the workers' compensation award(s) shall be paid back the Plan.

SECTION 54. Section 3.36.1080 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1080 Medical Examination of Recipients - Allowance Cancellation Conditions

The independent medical panel may at any time, or upon a request from the Retirement Board shall, require any recipient of a disability retirement allowance to undergo medical examination for that purpose at a reasonable time and place to be determined by the independent medical panel. Upon any such recipient's application for reinstatement to active duty, the independent medical panel shall order and cause a medical examination to be made of such recipient by the physicians or surgeons appointed or engaged by the independent medical panel. Any such order may be served upon said

recipient either by personal service or by depositing the same in the United States mail, postage prepaid, addressed to the member at his latest address on file in the office of the Secretary of the Board, at least ten (10) days prior to the date upon which he is to report to the physician or surgeon for examination. The recipient of the disability allowance may submit a medical report by his own physician or surgeon. Upon the basis of such examination, the independent medical panel shall determine whether the recipient is still incapacitated for the performance of duty, and if it finds that he is not, it shall so declare, whereupon, unless otherwise expressly provided elsewhere in this Chapter, the disability retirement and disability allowance shall thereupon immediately cease and be deemed terminated.

SECTION 55. Section 3.36.1090 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1090 Reinstatement to Duty

- A. If the independent medical panel determines that a recipient of a disability allowance granted pursuant to the provisions of this Chapter is no longer incapacitated for performance of duty, and if as of the date of such determination such person is not yet fifty-five (55) years of age (fifty-seven (57) years of age for a Tier 2 member), such person shall, subject to the civil service provisions of the City, and subject to the provisions of this Chapter, be reinstated either:
1. In the position held by him or her at the time retired for disability; or
 2. In another position in the same classification of positions as the one held by him or her at the time he or she was retired, with duties within his or her capacities; provided however, that if such reinstatement occurs on or after August 4, 2013, and the employee meets the definition of Tier 2 member under Section 3.36.020.15, such reinstated employee shall become a Tier 2 member and any subsequent retirement or disability retirement allowance payable after the reinstatement shall be computed under the provisions applicable to Tier 2 members.
- B. If a recipient of a disability allowance granted pursuant to the provisions of this Chapter should, upon attaining the age of fifty-five (55) years (fifty-seven (57) years for a Tier 2 member), still be incapacitated to perform the duties of the position held by him or her at the time of retirement, and of any other position in the same classification of positions as the one held by him or her at the time of retirement pursuant to the provisions of this Chapter, the recipient shall no longer be subject to recall to duty.
- C. Notwithstanding subsection B., the recipient of a disability allowance granted pursuant to this Chapter may, subject to the civil service provisions of the City, be voluntarily reinstated to a position in the same classification of positions as the

one held by him or her at the time of retirement. Upon reinstatement from disability retirement, the disability retirement allowance shall be canceled and the person shall again become a member of this Retirement Plan with credit for those years of service for which the person was entitled at the time of retirement; provided, however, that if the reinstatement occurs on or after August 4, 2013 and the person meets the definition of Tier 2 member under, Section 3.36.020.15, such person shall become a Tier 2 member, and any subsequent retirement allowance payable on or after August 4, 2013, shall be computed under the provisions applicable to Tier 2 members.

SECTION 56. Section 3.36.1100 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1100 Refusal to Accept Reinstatement

If the independent medical panel finds that the recipient of a disability allowance is no longer incapacitated for duty, and if such person is entitled to reinstatement to duty as provided in Section 3.36.1090, but such person fails to report for duty upon reinstatement or rejects an offer of reinstatement, all rights granted him by this Chapter shall thereupon be cancelled and neither he nor his survivors shall be entitled to any benefits provided by this Chapter.

SECTION 57. Section 3.36.1120 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1120 Failure or Refusal to Submit to Medical Examination

If any recipient of a disability retirement allowance fails or refuses to submit to medical examination or examinations as ordered or required by the independent medical panel or administrative law judge, upon certification by the panel to the board, the Board shall thereupon terminate said person's disability retirement and disability retirement allowance, in which event, subject to the following provisions, such person shall have no right to restoration to duty under or by virtue of any provisions of this Chapter, nor shall he or any of his survivors nor his estate thereafter be entitled to any allowances or benefits under this System; provided, however, that if said person should apply for reinstatement of said disability retirement within one (1) year from and after the date of termination of said retirement, and if he should prove to the satisfaction of the independent medical panel that his disability continues and has not ceased, upon certification by the independent medical panel to the Board, the Board may reinstate said disability retirement and disability allowance as of the date of the order of such reinstatement or as of such prior date which the Board should find to be just and reasonable; and provided further, that if said person should die before having said disability retirement and disability retirement allowance reinstated as aforesaid and within one (1) year from and after the date that the Board terminated said disability retirement, then in that event the surviving spouse or surviving child or children of said

deceased person or his estate may, within said one (1) year from and after the date the Board terminated the retirement allowance, apply to the Board for such survivor's or death benefits, if any, as they would be entitled to if the deceased person's disability retirement had not been terminated as aforesaid, and if they should prove to the satisfaction of the independent medical panel that the deceased person's original disability continued to the time of his death, the Board upon a determination by the independent medical panel may grant to them such survivorship or death allowances or benefits as they would have been entitled to if the abovementioned disability retirement had not been terminated as aforesaid. In no event shall said disability retirement or disability retirement allowance be reinstated unless application therefor has been made within one (1) year from and after the Board terminated such retirement; and in no event shall any survivorship allowances or death benefits be granted to anyone pursuant to the provisions of this Section unless application therefor has been made within one (1) year from and after the date the Board terminated said disability retirement.

SECTION 58. Section 3.36.1200 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1200 Death Before Receipt of Retirement Allowance - When Contributions, Full Allowances and Minimum Payments Are Payable

- A. The benefits specified in this Section shall be payable in accordance with this Section in each of the following situations:
1. Where a member who is entitled to immediate retirement for service under the provisions of this Chapter dies on or after August 6, 1970, while a member of this Plan and before being retired for service or disability;
 2. Where a person who is entitled to immediate retirement for service under the provisions of this Chapter is granted a leave of absence without full compensation and pay and such person dies on or after August 6, 1970, while on such leave of absence and before being retired for service or disability;
 3. Where a person who has been retired for service under the provisions of this Chapter dies on or after August 6, 1970, before receiving any service retirement allowance or pay;
 4. Where a person who has been retired for a service-connected disability under the provisions of this Chapter dies on or after August 6, 1970, during the service-connected disability retirement and before receiving any disability retirement allowance or pay;
 5. Where a member dies on or after August 6, 1970, while a member of this Plan, but before being retired hereunder for service or disability, if the

death arises out of and in the course of his or her employment with the City.

- B. Definitions. For the purposes of this Section, the following terms shall have the following meanings:
1. "Surviving spouse" means the person to whom the deceased person described in subsection A. above was married at the time of the deceased person's death and who survives the deceased person's death, and none other.
 2. "Surviving domestic partner" means the person with whom the deceased person described in subsection A. above, at the time of the deceased person's death had established a domestic partnership and who survives the deceased person's death, and none other.
 3. "Surviving child" and "surviving children" mean the natural or adopted child or children of the deceased person described in subsection A. above that meets all of the following requirements:
 - a. The child survives the deceased person's death; and
 - b. The child is neither married nor a member of a domestic partnership at the time of the deceased person's death; and
 - c. The child is under the age of eighteen (18) years at the time of the deceased person's death; and
 - d. The child is in existence or conceived at the time of the deceased person's death; and
 - e. If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to the deceased person's death.
- C. Contributions and Interest Payable to Surviving Spouse or Surviving Domestic Partner. If the deceased person described in subsection A. above (other than a Tier 2 member) leaves a surviving spouse or surviving domestic partner, the surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the retirement fund a sum of money equal to all contributions of the deceased person to the retirement fund which have not previously been withdrawn from the retirement fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent (2%) per annum.

D. Contributions and Interest Payable to Surviving Children Where No Surviving Spouse and No Surviving Domestic Partner.

1. If the deceased person described in subsection A. above is not a Tier 2 member and leaves no surviving spouse and no surviving domestic partner, but leaves a surviving child or surviving children, the eligible surviving child or children shall be entitled to receive and shall be paid from the retirement fund a sum of money equal to all contributions of the deceased person to the retirement fund which have not previously been withdrawn from the retirement fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent (2%) per annum. The sum to be paid to each eligible child shall be determined by dividing the total amount of unwithdrawn contributions plus interest thereon, by the number of eligible surviving children.
2. In the event that the estate of the deceased person establishes by appropriate court action a legal claim to all or any part of the contributions and interest paid to the surviving child or children under this subsection D. because of the provisions of San José Municipal Code Section 2903.250(d) as it existed on August 6, 1970 (as originally adopted by Ordinance No. 9506), monthly allowances or benefits which would otherwise be payable to any surviving child or surviving children under and by virtue of subsection G. of this Section shall be withheld and not paid to such surviving child or children until such time as the total amount of allowances so withheld equals the total amount which the court establishes is due to the estate. In the event such withholding is insufficient to pay such amount due the estate, the City may recover by suit that portion of the amount due the estate which cannot be recovered by withholding such monthly allowances or benefits.

E. Contributions and Interest Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children. If the deceased person described in subsection A. above leaves no surviving spouse, no surviving domestic partner and no eligible surviving child or children, the deceased person's estate shall be entitled to receive and shall be paid from the retirement fund a sum of money equal to all contributions of the deceased person to the retirement fund which have not previously been withdrawn from the retirement fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent (2%) per annum.

F. Survivorship Allowance Payable to Surviving Spouse or Surviving Domestic Partner. If the deceased person described in subsection A. above who is not a Tier 2 member leaves a surviving spouse or a surviving domestic partner, such surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the retirement fund a monthly survivorship allowance in the amount specified in Section 3.36.1270 of this Chapter, subject to the provisions of subsection H. of this Section and to the following:

1. If the deceased person died prior to October 1, 1999, the monthly allowance payable to the surviving spouse shall be paid for the remainder of the surviving spouse's life.
2. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an optional settlement pursuant to Part 9.5 of this Chapter, if the deceased person died on or after October 1, 1999, but prior to January 1, 2005, the monthly allowance payable to the surviving spouse shall be paid until the surviving spouse marries or dies, whichever is the earlier date, and no longer.
3. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an optional settlement pursuant to Part 9.5 of this Chapter, if the deceased person died on or after January 1, 2005, the monthly allowance payable to the surviving spouse or surviving domestic partner shall be paid until the surviving spouse or surviving domestic partner marries, establishes a domestic partnership or dies, whichever is the earlier date, and no longer.

G. Survivorship Allowance Payable to Surviving Child or Children. If the deceased person described in subsection A. above is not a Tier 2 member and leaves a surviving child or children, the eligible surviving child, or each of the eligible surviving children if there is more than one surviving child, shall be entitled to receive and shall be paid from the retirement fund, subject to the provisions of and except as provided in subsection H. of this Section, until he or she marries, establishes a domestic partnership, attains the age of eighteen (18) years or dies, whichever is the earlier date, and no longer, a monthly survivorship allowance in the amount specified in Section 3.36.1300 of this Chapter.

H. Deduction from survivorship allowances.

1. Anything elsewhere in this Section or this Part to the contrary notwithstanding, all of the monthly allowances or benefits which would otherwise be payable to any surviving spouse, surviving domestic partner, eligible surviving child or surviving children pursuant to the provisions of subsections F. and G. of this Section shall be withheld and not paid to the

persons who would otherwise be entitled to the same until such time as the total amount of allowances so withheld equals the total amount paid or payable to a surviving spouse or surviving domestic partner of the deceased person or to the surviving child or children of the deceased person or to the estate of the deceased person pursuant to the provisions of subsections C., D. or E. of this Section, and the allowances so withheld shall never be paid to the persons who would otherwise have been entitled to the same, it being the intention that the monthly survivorship allowances described in subsections F. and G. shall not be owing or payable and shall not commence until such time as there shall have elapsed from and after the death of the deceased person a number of months equal to that number obtained by dividing the total amount of money which is payable or paid to the surviving spouse or surviving domestic partner of the deceased person or to the surviving child or children of the deceased person or to the estate of the deceased person pursuant to the provisions of the above subsections C., D. or E. by the sum of the monthly survivorship allowances which would otherwise be payable to a surviving spouse or surviving domestic partner and to a surviving child or children pursuant to the provisions of subsections F. and G. of this Section. By way of explanation, if the deceased person should die leaving a surviving spouse or surviving domestic partner and surviving children, and if the amount payable to the spouse or domestic partner pursuant to the provisions of subsection C. were nine hundred dollars (\$900.00) and the monthly amount payable to the spouse or domestic partner pursuant to subsection F. were two hundred dollars (\$200.00) and the amount payable to surviving children pursuant to subsection G. were one hundred dollars (\$100.00), none of the allowances provided for in subsections F. and G. would become due or payable until there shall have elapsed from and after the deceased person's death a number of months equal to nine hundred dollars (\$900.00) divided by three hundred dollars (\$300.00), or three (3) months. No such allowance shall be paid or be payable to a surviving spouse or surviving domestic partner if, at the time such allowance becomes payable, the surviving spouse or surviving domestic partner shall have died, remarried or established a domestic partnership; and no such allowance shall be paid or payable to any surviving child if at the time such allowance becomes payable to such child he or she shall have died, married, established a domestic partnership or attained the age of eighteen (18) years.

2. Notwithstanding any of the foregoing to the contrary, contributions and interest payable under subsections C., D. and E., at the option of the eligible recipient thereof, either shall be payable in a lump sum or shall be payable monthly in an amount equal to the amount of the monthly survivorship allowance payable pursuant to the provisions of subsections F. and G. of this Section, until the contributions and interest are

exhausted, at which time payment of the monthly survivorship allowance shall commence. In the event that all the eligible recipients die before receiving the total amount of contributions and interest, the amount remaining to be paid shall be paid to the estate of the eligible recipient or, if more than one, the estate of the eligible recipient who dies last. In no event shall the eligible recipient who elects not to receive a lump sum payment of contributions and interest receive any less or more than the monthly survivorship allowance in any month even though the contributions and interest are exhausted within a month.

3. The particular recipient or parent or guardian, in the case of a minor, or representative of an estate, in the case of an estate, shall exercise the above option in writing no later than thirty (30) days after death of the deceased person on a form to be furnished by this System. Failure to make such election in writing shall be deemed an election to receive the contributions and interest in a lump sum payment.
- I. Minimum Amount Payable to Estate Where No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children. If the deceased person described in subsection A. is not a Tier 2 member and should leave no surviving spouse, no surviving domestic partner and no eligible surviving child or children, and if, in addition, the amount payable to the deceased person's estate pursuant to the provisions of subsection E. of this Section should be less than one thousand dollars (\$1,000.00), then in that event there shall be paid from the retirement fund to the estate such additional amount as would, when added to the amount payable to the estate under the provisions of subsection E., equal one thousand dollars (\$1,000.00).
- J. Anything herein in this part to the contrary notwithstanding, no persons other than those above specified shall be entitled to or receive any benefits or allowances whatsoever because of or as a result of the death of any person described in subsection A. above, and no moneys other than those above specified shall be paid or payable to the survivors or estate of the deceased person.
- K. Notwithstanding any other provision of this Part 8, survivor benefits with respect to a Tier 2 member are payable as provided in Section 3.36.1205.

SECTION 59. Section 3.36.1205 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1205 Tier 2 Members: Death Before Receipt of Retirement Allowance - When Contributions, Full Allowances and Minimum Payments Are Payable

If the deceased person was a Tier 2 member on or after March 31, 2017 and died prior to retirement, the Tier 2 member shall receive the same death benefits as provided to other members of this Plan under this Part 8; provided, however, that in no event shall any such benefit exceed a maximum of eighty percent (80%) of the Tier 2 member's final compensation.

SECTION 60. Section 3.36.1210 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1210 Death Before Receipt of Retirement Pay - When Contributions, Smaller Allowance and Minimum Benefits Are Payable

- A. The benefits specified in this Section shall be payable in accordance with this Section in each of the following situations:
1. Where a member who is not entitled to immediate retirement for service dies on or after August 6, 1970, while a member of this Plan and prior to being retired for service or disability, if such member, at the time of his or her death, is entitled to credit for not less than two (2) years' service and if, in addition, the death does not arise out of and in the course of his or her employment with the City;
 2. Where a person who has been retired under this Plan for a nonservice-connected disability dies on or after August 6, 1970, during his or her nonservice-connected disability retirement before receiving any disability allowance or pay.
- B. Definitions. For the purposes of this Section, the following terms shall have the following meanings:
1. "Surviving spouse" means the person to whom the deceased person described in subsection A. above was married at the time of said deceased person's death, and who survives said deceased person's death, and none other.
 2. "Surviving domestic partner" means the person with whom the deceased person described in subsection A. above, at the time of the deceased person's death, had established a registered domestic partnership and who survives the deceased person's death, and none other.

3. "Surviving child" and "surviving children" mean the natural or adopted child or children of the deceased person described in subsection A. above that meets all of the following requirements:
 - a. The child survives the deceased person's death; and
 - b. The child is neither married nor a member of a domestic partnership at the time of the deceased person's death; and
 - c. The child is under the age of eighteen (18) years at the time of the deceased person's death; and
 - d. If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to the deceased person's death.

- C. Contributions and Interest Payable to Surviving Spouse or Surviving Domestic Partner. If the deceased person described in subsection A. above leaves a surviving spouse or surviving domestic partner, the surviving spouse or surviving domestic partner shall be entitled to receive and shall be paid from the retirement fund a sum of money equal to all contributions of the deceased person to the retirement fund which have not previously been withdrawn from the retirement fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent (2%) per annum.

- D. Contributions and Interest Payable to Surviving Children Where No Surviving Spouse and No Surviving Domestic Partner.
 1. If the deceased member leaves no surviving spouse and no surviving domestic partner but leaves a surviving child or surviving children, the eligible surviving child or children shall be entitled to receive and shall be paid from the retirement fund a sum of money equal to all contributions of the deceased person to the retirement fund which have not previously been withdrawn from the retirement fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent (2%) per annum. The sum to be paid to each child shall be determined by dividing the total amount of unwithdrawn contributions plus interest thereon, by the number of surviving children.

 2. In the event that the estate of the deceased person establishes by appropriate court action a legal claim to all or any part of the contributions

and interest paid to the surviving child or children under this subsection D. because of the provisions of San José Municipal Code Section 2903.251 (d) as it existed on August 6, 1970 (as originally adopted by Ordinance No. 9506), monthly allowances or benefits which would otherwise be payable to any surviving child or surviving children pursuant to subsection G. of this Section shall be withheld and not paid to such surviving child or children until such time as the total amount of allowances so withheld equals the total amount which the court establishes is due to the estate. In the event such withholding is insufficient to pay such amount due the estate, the City may recover by suit that portion of the amount due the estate which cannot be recovered by withholding such monthly allowances or benefits.

- E. Contributions and Interest Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children. If the deceased person described in subsection A. above leaves no surviving spouse, no surviving domestic partner and no eligible surviving child or children, the deceased person's estate shall be entitled to receive and shall be paid from the retirement fund a sum of money equal to all contributions of the deceased person to the retirement fund which have not previously been withdrawn from the retirement fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent (2%) per annum.
- F. Survivorship Allowance Payable to Surviving Spouse Or Surviving Domestic Partner. If the deceased member leaves a surviving spouse or surviving domestic partner, such surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the retirement fund a monthly survivorship allowance in the amount specified in Section 3.36.1280 of this Chapter, subject to the provisions of subsection H. of this Section and to the following:
1. If the deceased person died prior to October 1, 1999, the monthly allowance payable to the surviving spouse shall be paid for the remainder of the surviving spouse's life.
 2. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an optional settlement pursuant to Part 9.5 of this Chapter, if the deceased person died on or after October 1, 1999, but prior to January 1, 2005, the monthly allowance payable to the surviving spouse shall be paid until the surviving spouse marries or dies, whichever is the earlier date, and no longer.
 3. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an optional settlement pursuant to Part

9.5 of this Chapter, if the deceased person died on or after January 1, 2005, the monthly allowance payable to the surviving spouse or surviving domestic partner shall be paid until the surviving spouse or surviving domestic partner marries, establishes a domestic partnership or dies, whichever is the earlier date, and no longer.

G. Survivorship Allowance Payable to Surviving Child or Children. If the deceased person described in subsection A. above leaves a surviving child or surviving children, the eligible surviving child, or each of the eligible surviving children, if there is more than one surviving child, shall be entitled to receive and shall be paid from the retirement fund, subject to the provisions of and except as provided in subsection H. of this Section, until he or she marries, establishes a domestic partnership, attains the age of eighteen (18) years or dies, whichever is the earlier date, and no longer, as a monthly survivorship allowance, the amount of monthly survivorship allowance specified in Section 3.36.1300 of this Chapter.

H. Deduction from Survivorship Allowance.

1. Anything elsewhere in this Section of this Part to the contrary notwithstanding, all of the monthly allowances or benefits which would otherwise be payable to any surviving spouse, surviving domestic partner, eligible surviving child or surviving children, pursuant to the provisions of subsections F. and G. of this Section, shall be withheld and not paid to the persons who would otherwise be entitled to the same until such time as the total amount of allowances so withheld equals the total amount paid or payable to a surviving spouse or surviving domestic partner of the deceased person or to the surviving child or children of the deceased person or to the estate of the deceased person pursuant to the provisions of subsections C., D. or E. of this Section, and the allowances so withheld shall never be paid to the persons who would otherwise have been entitled to the same, it being the intention that the monthly survivorship allowances described in subsections F. and G. shall not be owing or payable and shall not commence until such time as there shall have elapsed from and after, the death of the deceased person a number of months equal to that number obtained by dividing the total amount of money which is payable or paid to the surviving spouse or surviving domestic partner of the deceased person or to the surviving child or children of the deceased person or to the estate of the deceased person pursuant to the provisions of the above subsections C., D. or E. by the sum of the monthly survivorship allowances which would otherwise be payable to a surviving spouse or surviving domestic partner or to a surviving child or children pursuant to the provisions of subsections F. and G. of this Section. By way of explanation, if the deceased person should die leaving a surviving spouse or surviving domestic partner and surviving children, and if the amount payable to the spouse or domestic partner pursuant to the provisions of subsection C. were nine hundred dollars

(\$900.00) and the monthly amount payable to the spouse or domestic partner pursuant to subsection F. were two hundred dollars (\$200.00) and the amount payable to surviving children pursuant to subsection G. were one hundred dollars (\$100.00), none of the allowances provided for in subsections F. and G. would become due or payable until there shall have elapsed from and after the deceased person's death a number of months equal to nine hundred dollars (\$900.00) divided by three hundred dollars (\$300.00), or three (3) months. No such allowance shall be paid or be payable to a surviving spouse or surviving domestic partner if, at the time such allowance becomes payable, the surviving spouse or surviving domestic partner shall have died; and no such allowance shall be paid or payable to any surviving child if, at the time such allowance becomes payable to such child, he or she shall have died, married or attained the age of eighteen (18) years.

2. Notwithstanding any of the foregoing to the contrary, contributions and interest payable under subsections C., D. and E., at the option of the eligible recipient thereof, either shall be payable in a lump sum or shall be payable monthly in an amount equal to the amount of the monthly survivorship allowance payable pursuant to the provisions of subsections F. and G. of this Section, until the contributions and interest are exhausted, at which time payment of the monthly survivorship allowance shall commence. In the event that all the eligible recipients die before receiving the total amount of contributions and interest, the amount remaining to be paid shall be paid to the estate of the eligible recipient or, if more than one, the estate of the eligible recipient who dies last. In no event shall the eligible recipient who elects not to receive a lump sum payment of contributions and interest receive any less or more than the monthly survivorship allowance in any month even though the contributions and interest are exhausted within a month.
 3. The particular recipient or parent or guardian, in the case of a minor, or representative of an estate, in the case of an estate, shall exercise the above option in writing no later than thirty (30) days after the death of the deceased person on a form to be furnished by this System. Failure to make such election in writing shall be deemed an election to receive the said contributions and interest in a lump sum payment.
- I. Minimum Amount Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children. If the deceased person described in subsection A. above is not a Tier 2 member and should leave no surviving spouse, no surviving domestic partner and no eligible surviving child or children, and if, in addition, the amount payable to the deceased person's estate pursuant to the provisions of subsection E. of this Section should be less than one thousand dollars (\$1,000.00), then in that event there shall be paid from the

Retirement Fund to the estate such additional amount as would, when added to the amount payable to the estate under the provisions of subsection E., equal one thousand dollars (\$1,000.00).

- J. Anything herein in this part to the contrary notwithstanding, no persons other than those above specified shall be entitled to or receive any benefits or allowances whatsoever because of or as a result of the death of any person described in subsection A. above, and no moneys other than those above specified shall be paid or payable to the survivors or estate of the deceased person.
- K. If the deceased person was a Tier 2 member who died on or after March 31, 2017, survivor benefits shall be payable following the Tier 2 member's death in accordance with Section 3.36.1205.

SECTION 61. Section 3.36.1230 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1230 Death After Receipt of Retirement Pay - When Full Allowance and Minimum Benefits Are Payable

- A. The benefits specified in this Section shall be payable in accordance with this Section in each of the following situations:
 - 1. Where a person who has been retired for service under the provisions of this Chapter dies after receiving any service retirement allowance or pay;
 - 2. Where a person who has been retired for a service-connected disability under the provisions of this Chapter dies during his or her service-connected disability retirement after receiving any disability retirement allowance or pay.
- B. Definitions. For the purposes of this Section, the following terms shall have the following meanings:
 - 1. "Surviving spouse" means the person who survives the deceased person and who was married to the deceased person both at the time of the deceased person's death and at the time the deceased person was retired for service or disability, and no other person. A person married to the deceased person at the time of the deceased person's death or at the time the deceased person was retired is not a "surviving spouse" unless he or she was married to the deceased person at both times.
 - 2. "Surviving domestic partner" means the person with whom the deceased person described in subsection A. above, both at the time of the deceased

person's death and at the time the deceased person was retired for service or disability, had established a domestic partnership and who survives the deceased person's death, and no other person. A person in a domestic partnership with the deceased person at the time of the deceased person's death or at the time the deceased person was retired is not a "surviving domestic partner" unless he or she was a domestic partner of the deceased person at both times.

3. "Surviving child" or "surviving children" means the natural or adopted child or children of such deceased person that meets all of the following requirements:

- a. The child survives the deceased person's death; and
- b. The child is neither married nor a member of a domestic partnership at the time of the deceased person's death; and
- c. The child is under the age of eighteen (18) years at the time of the deceased person's death; and
- d. The child is in existence or conceived at the time of the deceased person's death; and
- e. If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to the time of the deceased person's death.

C. Survivorship Allowance Payable to Surviving Spouse or Surviving Domestic Partner. If the deceased person described in subsection A. above leaves a surviving spouse or a surviving domestic partner, the surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the retirement fund a monthly survivorship allowance in the amount specified in Section 3.36.1270, subject to the following:

1. If the deceased person retired or died prior to October 1, 1999, the monthly allowance payable to the surviving spouse shall be paid for the remainder of the surviving spouse's life.
2. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an optional settlement pursuant to Part 9.5 of this Chapter, if the deceased person retired or died on or after October 1, 1999, but prior to January 1, 2005, the monthly allowance payable to the surviving spouse shall be paid until the surviving spouse marries or dies, whichever is the earlier date, and no longer.

3. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an optional settlement pursuant to Part 9.5 of this Chapter, if the deceased person died on or after January 1, 2005, the monthly allowance payable to the surviving spouse or surviving domestic partner shall be paid until the surviving spouse or surviving domestic partner marries, establishes a domestic partnership or dies, whichever is the earlier date, and no longer.
 4. If the deceased person was a Tier 2 member who died on or after March 31, 2017, notwithstanding any other provisions of this Section 3.36.1230, benefits shall be payable following the Tier 2 member's death, in accordance with Section 3.36.1235.
- D. Survivorship Allowance Payable to Surviving Child or Children. If the deceased person described in subsection A. above leaves a surviving child or surviving children, the eligible surviving child, or each of the eligible surviving children if there is more than one (1) surviving child, shall be entitled to receive and shall be paid from the retirement fund until he or she marries, establishes a domestic partnership, attains the age of eighteen (18) years or dies, whichever is the earlier date, and no longer, as a monthly survivorship allowance, the amount of monthly survivorship allowance specified in Section 3.36.1300. This subsection D. shall not apply to Tier 2 members.
- E. Minimum Amount Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children. If the deceased person described in subsection A. above should die leaving no surviving spouse, no surviving domestic partner and no surviving child or children, there shall be paid from the retirement fund to the deceased person's named beneficiary or estate as a death benefit the sum of one thousand dollars (\$1,000.00) and no more. This subsection E. shall not apply to Tier 2 members.
- F. Anything in this Chapter to the contrary notwithstanding, no persons other than those specified above shall be entitled to or receive any benefits or allowances whatsoever because of or as a result of the death of a person described in subsection A. of this Section, and no moneys other than those specified above shall be paid or payable to the survivors or estate of the deceased person.

SECTION 62. A new Section 3.36.1235 is added to Chapter 3.36 of Title 3 of the San José Municipal Code, to be numbered, entitled and to read as follows:

3.36.1235 Tier 2 Members – Death After Receipt of Retirement Pay – When Full Allowance and Minimum Benefits Are Payable

- A. Effective March 31, 2017, the benefits specified in this Section shall be payable in accordance with this Section where a Tier 2 member who has been retired for

service under the provisions of this Chapter dies after receiving any service retirement allowance or pay, or where a Tier 2 member has retired for a service-connected disability under the provisions of the Chapter dies during his or her service-connected disability retirement after receiving any disability retirement allowance or pay.

B. Definitions. For the purposes of this Section, the following terms shall have the following meanings:

1. "Surviving spouse" means the person who survives the deceased person and who was married to the deceased person both at the time of the deceased person's death and at the time the deceased person was retired for service or disability, and no other person. A person married to the deceased person at the time of the deceased person's death or at the time the deceased person was retired is not a "surviving spouse" unless he or she was married to the deceased person at both times.

2. "Surviving domestic partner" means the person with whom the deceased person described in subsection A. above, both at the time of the deceased person's death and at the time the deceased person was retired for service or disability, had established a domestic partnership and who survives the deceased person's death and no other person. A person in a domestic partnership with the deceased person at the time of the deceased person's death or at the time the deceased person was retired is not a "surviving domestic partner" unless he or she was a domestic partner of the deceased person at both times.

C. Survivorship Allowance Payable to Surviving Spouse or Surviving Domestic Partner. Except where the deceased person had elected an applicable optional settlement option, the monthly allowance payable to the surviving spouse or surviving domestic partner shall be paid until the surviving spouse or surviving domestic partner marries, establishes domestic partnership or dies, whichever is the earlier date, and no longer; if the deceased person described in subsection A. above leaves a surviving spouse or surviving domestic partner, the surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the retirement fund a monthly survivorship allowance equal to fifty percent (50%) joint and survivor annuity as determined by the Plan's actuaries.

D. Anything in this Chapter to the contrary notwithstanding, no person other than those specified above shall be entitled to or receive any benefits or allowances whatsoever because of or as a result of the death of a person described in subsection A of this Section, and no money other than those specified above shall be paid or payable to the survivors or estate of the deceased person.

SECTION 63. Section 3.36.1240 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1240 Death After Receipt of Retirement Pay - When Smaller Allowance and Minimum Benefits Are Payable

- A. The benefits specified in this Section shall be payable in accordance with this Section in the following situation:
1. Where a person who has been retired for a nonservice-connected disability under the provisions of this Chapter dies while on such nonservice-connected disability retirement after receiving any disability retirement allowance or pay without becoming a Tier 2 member.
 2. This Section 3.36.1240 shall not apply to Tier 2 members.
- B. Definitions. For the purposes of this Section, the following terms shall have the following meanings:
1. "Surviving spouse" means the person who survives the deceased person described in subsection A. above and who was married to the deceased person both at the time of the deceased person's death and at the time the deceased person was retired for disability, and no other person. A person married to the deceased person at the time of the deceased person's death or at the time such deceased person was retired for disability is not a "surviving spouse" unless he or she was married to the deceased person at both times.
 2. "Surviving domestic partner" means the person with whom the deceased person described in subsection A. above, both at the time of the deceased person's death and at the time the deceased person was retired for disability, had established a domestic partnership and who survives the deceased person's death, and no other person. A person in a domestic partnership with the deceased person at the time of the deceased person's death or at the time the deceased person was retired is not a "surviving domestic partner" unless he or she was a domestic partner of the deceased person at both times.
 3. "Surviving child" or "surviving children" means the natural or adopted child or children of the deceased person described in subsection A. above that meets all the following requirements:
 - a. The child survives the deceased person's death; and

- b. The child is neither married nor a member of a domestic partnership at the time of the deceased person's death; and
 - c. The child is under the age of eighteen (18) years at the time of the deceased person's death; and
 - d. The child is in existence or conceived at the time of the deceased person's death; and
 - e. If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to the time of the deceased person's death.
- C. Survivorship Allowance Payable to Surviving Spouse or Surviving Domestic Partner. If the deceased person described in subsection A. above leaves a surviving spouse or a surviving domestic partner, the surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the retirement fund a monthly survivorship allowance in the amount specified in Section 3.36.1280, subject to the following:
- 1. If the deceased person retired or died prior to October 1, 1999, the monthly allowance payable to the surviving spouse shall be paid for the remainder of the surviving spouse's life.
 - 2. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an optional settlement pursuant to Part 9.5 of this Chapter, if the deceased person retired or died on or after October 1, 1999, but prior to January 1, 2005, the monthly allowance payable to the surviving spouse shall be paid until the surviving spouse marries or dies, whichever is the earlier date, and no longer.
 - 3. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an optional settlement pursuant to Part 9.5 of this Chapter, if the deceased person died on or after January 1, 2005, the monthly allowance payable to the surviving spouse or surviving domestic partner shall be paid until the surviving spouse or surviving domestic partner marries, establishes a domestic partnership or dies, whichever is the earlier date, and no longer.
- D. Survivorship Allowance Payable to Surviving Child or Children. If the deceased person described in subsection A. above leaves a surviving child or surviving children, the eligible surviving child, or each of the eligible surviving children if there is more than one surviving child, shall be entitled to receive and shall be paid from the retirement fund until he or she marries, establishes a domestic partnership, attains the age of eighteen (18) years or dies, whichever is the

earlier date, and no longer, as a monthly survivorship allowance, the amount of monthly survivorship allowance specified in Section 3.36.1300.

- E. Minimum Amount Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children. If the deceased person described in subsection A. above leaves no surviving spouse, no surviving domestic partner and no surviving child or children, there shall be paid from the retirement fund to the deceased person's named beneficiary or estate as a death benefit the sum of one thousand dollars (\$1,000.00) and no more.
- F. Anything in this Chapter to the contrary notwithstanding, no persons other than those specified above shall be entitled to or receive any benefits or allowances whatsoever because of or as a result of the death of a person described in subsection A. of this Section, and no moneys other than those specified above shall be paid or payable to the survivors or estate of the deceased person. For Tier 2 members, survivor benefits are payable as specified in Section 3.36.1205 or 3.36.1235, as applicable.

SECTION 64. Section 3.36.1310 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1310 Limitation of Total Amount Payable To Surviving Spouse and Children

- A. Anything in the preceding provisions of this Part 8 to the contrary notwithstanding, the total amount of survivorship or other allowances payable monthly to a surviving spouse or surviving domestic partner pursuant to the provisions of this Part, together with and in addition to the total amount of allowances payable monthly to any and all eligible surviving children pursuant to the provisions of this Part, shall not exceed the following maximum amounts:
1. Where deceased died or retired prior to August 1, 1968. If the person because of whose death the surviving spouse or children are entitled to a monthly allowance or allowances died or retired from City service prior to August 1, 1968, the maximum amount of all monthly allowances payable to a surviving spouse and children shall not exceed fifty-six and twenty-five hundredths (56.25) percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330; provided and excepting, however, that if the death because of which said allowances are payable arose out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, while the deceased person was an employee of the City and a member of this Plan and before he or she was retired for service or disability, then in that event the maximum amount of all of said allowances

shall not exceed seventy-five percent (75%) of the deceased person's final compensation, less the amounts specified in Section 3.36.1330.

2. Where deceased did not die or retire prior to August 1, 1968. If the person because of whose death the surviving spouse, surviving domestic partner or children are entitled to a monthly allowance or allowances did not die or retire from City service prior to August 1, 1968, the maximum amount of all monthly allowances payable to a surviving spouse or surviving domestic partner and children from and after the death shall not exceed seventy-five percent (75%) of the deceased person's final compensation, less the amounts specified in Section 3.36.1330.
 3. Where deceased is a Tier 2 member. Survivor benefits with respect to a Tier 2 member who dies before the receipt of retirement benefits are payable as provided in Section 3.36.1205.
- B. In the event that the monthly amount payable to a surviving spouse or surviving domestic partner, together with or in addition to the monthly amounts payable to the eligible surviving children should exceed the applicable maximum, the amounts payable to the children shall be reduced to such amounts as will not, when added to the sum payable to the surviving spouse or surviving domestic partner, exceed the monthly maximum.

SECTION 65. Section 3.36.1330 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1330 Deduction of Certain Amounts of Workers' Compensation Benefits

Notwithstanding anything else in this Chapter to the contrary, except to the extent provided in Section 3.36.1030 with respect to the benefits paid to the survivor or beneficiary of Tier 2 members, from and after January 1, 1964 the amount of any monthly survivorship or death allowance or benefit payable to any person or to any estate under and by virtue of other provisions of this Chapter shall be computed and determined as provided by other applicable sections of this Chapter without any deduction being made because of any provision of this Section. Nothing herein contained, however, shall be deemed to authorize or require the recomputation or increase of the amount of any survivorship or death allowance or benefit computed and paid prior to January 1, 1964, pursuant to the provisions of this Section as it read prior to said date, it being the intent that the present provisions of this Section shall operate prospectively as herein provided and not retroactively. No survivorship or death allowances or benefits payable under this System shall be modified because of any workers' compensation benefits which may become payable under the laws of the State of California to any member or to any recipient of any allowances or benefit payable under this System except as provided in Section 3.36.1030.B and this Section 3.36.1330.

SECTION 66. Section 3.36.1340 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1340 Reduction of Benefits if Member Retires Before Attaining Age Fifty-Five (55) (Before Age Fifty-Seven (57) for Tier 2 Members)

- A. If a member should retire for service pursuant to the provisions of Part 6 of this Retirement Plan prior to July 5, 1992, and before attaining the age of fifty-five (55) years, and if said member is entitled to be credited with twenty (20) or more years of service but less than thirty (30) years of service, then each allowance, benefit or other payment to which any person, persons or estate would otherwise be or become entitled to under or by virtue of the preceding sections of this Part 8 shall be reduced to an amount which bears the same relationship to the unreduced allowance, benefit or payment as the partially reduced allowance defined and referred to in subsection B.2. of Section 3.36.810 bears to the unreduced allowance defined and referred to in subsection B.1. of Section 3.36.810.
- B. If a member, other than a Tier 2 member, should retire for service pursuant to the provisions of Part 6 of this Retirement Plan on or after July 5, 1992, and before attaining the age of fifty-five (55) years, and if said member is entitled to be credited with twenty (20) or more years of service but less than twenty-five (25) years of service, then each allowance, benefit or other payment to which any person, persons or estate would otherwise be or become entitled to under or by virtue of the preceding provisions of this Part 8 shall be reduced to an amount which bears the same relationship to the unreduced allowance, benefit or payment as the partially reduced allowance defined and referred to in subsection B.2. of Section 3.36.810 bears to the unreduced allowance defined and referred to in subsection B.1. of Section 3.36.810.
- C. If a Tier 2 member should retire for service pursuant to the provisions of Part 6 of this retirement Plan before attaining the age of fifty-seven (57) years, and if said Tier 2 member is entitled to be credited with five (5) or more years of service, then each allowance, benefit or other payment to which any person, persons or estate would otherwise be or become entitled to under or by virtue of the preceding provisions of this Part 8 shall be reduced to an amount which bears the same relationship to the unreduced allowance, benefit or payment as the reduced allowance described in Section 3.36.810.

SECTION 67. Section 3.36.1455 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1455 Tier 2 Members

Notwithstanding any other provisions of this retirement Plan, Part 9 shall apply to Tier 2 members; provided, however, the allowance paid to the child or children of a Tier 2 member shall be limited to eighty percent (80%) of the allowance determined under Section 3.36.1450.

SECTION 68. Section 3.36.1460 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1460 Election to Change Retirement Allowance

Subject to the provisions of this Chapter, and subject particularly to the provisions of Section 3.36.1463 of this Part, a member of this Plan may elect, in the manner and within the time specified in Section 3.36.1461, to have the actuarial equivalent of any retirement allowance and survivorship allowance to which such member (the term "member" in Part 9.5 includes Tier 2 member, unless specifically stated otherwise) and such member's eligible spouse or domestic partner are entitled under this Plan applied in accordance with any of the optional settlements specified in this Part.

SECTION 69. Section 3.36.1462 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1462 Optional Settlements

- A. Optional Settlement One consists of an election to have the actuarial equivalent of any retirement allowance and survivorship allowance to which the member and the member's eligible spouse or eligible domestic partner are entitled under this Plan applied to provide a lesser retirement allowance to the member until the member's death and, thereafter, subject to the provisions of Section 3.36.1463, to have such percentage of the member's reduced retirement allowance as the member may select paid to the member's surviving spouse or surviving domestic partner for the life of the surviving spouse or surviving domestic partner. In the event the member's spouse or domestic partner predeceases the member, the reduced retirement allowance shall continue to be paid to the member until the member's death.
- B. Optional Settlement Two consists of an election to have the actuarial equivalent of any retirement allowance and survivorship allowance to which the member and the member's eligible spouse or eligible domestic partner are entitled under this Plan applied to provide a lesser retirement allowance to the member until the member's death and, thereafter, subject to the provisions of Section 3.36.1463,

to have such percentage of the member's reduced allowance as the member may select paid to the member's surviving spouse or surviving domestic partner for the life of the surviving spouse or surviving domestic partner. In the event the member's spouse or domestic partner predeceases the member, the member shall be paid thereafter, until the member's death, a retirement allowance in an amount equal to the retirement allowance that would have been paid to the member had no optional settlement been elected.

SECTION 70. Section 3.36.1463 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1463 Limitations on Optional Settlements

- A. In no case shall the percentage paid to the surviving spouse or surviving domestic partner be greater than one hundred percent (100%) or be less than fifty percent (50%) of the reduced retirement allowance paid to the member.
- B. The percentage paid to the surviving spouse or surviving domestic partner of a member shall be a multiple of five percent (5%) (e.g., fifty percent (50%), fifty-five percent (55%), sixty percent (60%), sixty-five percent (65%)). .
- C. In no case shall an optional settlement be selected that would result in the payment of an allowance to a surviving spouse or surviving domestic partner that is less than the allowance that would be payable to the surviving spouse or surviving domestic partner if no optional settlement had been selected.
- D. In no case shall any allowance be paid to a retired member that is greater than the allowance that would have been paid had no optional settlement been selected.
- E. The optional settlements provided in this Part shall be paid only to the person who was married to the member both at the time of the member's retirement and at the time of the member's death or to the person who was the member's domestic partner both at the time of the member's retirement and at the time of the member's death, whichever is applicable.
- F. In no case shall the total of the monthly allowance payable to a surviving spouse or surviving domestic partner under an optional settlement plus the monthly allowances payable to any surviving children under the provisions of this Chapter exceed a maximum of seventy-five percent (75%) of the deceased member's final compensation. In the event the total of such monthly allowances would exceed said maximum, the amounts payable to the children shall be reduced to such amounts as, when added to the amount payable to the surviving spouse or surviving domestic partner, will not exceed said maximum.

SECTION 71. Section 3.36.1464 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1464 Automatic Revocation of Election of Optional Settlement

- A. In the event a member elects an optional settlement and the member's spouse or domestic partner predeceases the member prior to the effective date of the member's retirement, the election shall be automatically revoked, and benefits shall be paid to the member as though no optional settlement had been elected.
- B. In the event a member elects an optional settlement and the member dies leaving an eligible surviving spouse who is not the person named in the election or leaving an eligible surviving domestic partner who is not the person named in the election, the election shall be automatically revoked, and no benefits shall be paid pursuant to the election.
- C. In the event the application for retirement is withdrawn before being acted upon by the Board, the election shall be automatically revoked, and no benefits shall be paid pursuant to the election.
- D. In the event the application for retirement is denied by the Board, the election shall be automatically revoked, and no benefits shall be paid pursuant to the election in any case where:
 - 1. No timely appeal of the Board's decision is filed; or
 - 2. The Board's decision is upheld by a final decision of a court of competent jurisdiction.

SECTION 72. Section 3.36.1466 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1466 Actuarial Equivalent

For the purposes of this Part, "actuarial equivalent" means a benefit of equal value when computed upon the basis of the interest rate, inflation rate and annuity tables and other relevant assumptions on the most recent actuarial valuation and adopted by resolution of the Board upon the advice of the Board's actuary provided that such interest rate, inflation rate, and annuity tables and other relevant assumptions comport with reasonable standards applicable to governmental retirement plans. For purposes of this Section, the most recent actuarial valuation shall be the valuation performed as of June 30th in the calendar year prior to the effective date of the actuarial equivalence calculation.

SECTION 73. Section 3.36.1468 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1468 Marriage or Domestic Partnership After Commencement of Monthly Allowance

- A. Notwithstanding any provision in this Part 9.5 to the contrary, a person who is receiving a monthly retirement allowance or is receiving a monthly allowance from the retirement fund pursuant to Section 3.36.1640 and who marries or establishes a domestic partnership after beginning to receive such monthly allowance may elect an optional settlement under this Section by filing a written election with the Retirement Board on a form provided by the Secretary to the Board.

- B. The election for an optional settlement must be filed within the time specified in this subsection B.
 - 1. The election must be filed on or before January 15, 2003, in the case of a person who, as of July 12, 2002:
 - a. Is receiving a monthly allowance; and
 - b. Has married after first receiving the monthly allowance; and
 - c. Has been married to that spouse for at least thirty (30) days.
 - 2. The election must be filed on or before January 31, 2007, in the case of a person who, as of July 1, 2006:
 - a. Is receiving a monthly allowance; and
 - b. Entered into a domestic partnership on or after January 1, 2005, and after first receiving the monthly allowance; and
 - c. Has been in a domestic partnership with that domestic partner for at least thirty (30) days.
 - 3. The election must be filed within thirty (30) days after the date of the marriage or the establishment of the domestic partnership, in the case of any person not described in paragraph 1. or paragraph 2. above.

- C. The optional settlement consists of either:
 - 1. An election to have the actuarial equivalent of any monthly allowance to which the former member (including a Tier 2 member) is entitled under

this Plan applied to provide a lesser monthly allowance to the former member until the former member's death and, thereafter, subject to the provisions of subsection D. below, to have such percentage of the former member's reduced retirement allowance as the former member may select paid to the former member's spouse or domestic partner named in the election for the optional settlement for the life of that spouse or domestic partner. The reduction in the former member's monthly allowance shall begin with the first monthly allowance payable after the effective date of the optional settlement. In the event the former member's spouse or domestic partner predeceases the former member, the reduced retirement allowance shall continue to be paid to the former member until the former member's death.

2. An election to have the actuarial equivalent of any monthly allowance to which the former member (including a former Tier 2 member) is entitled under this Plan applied to provide a lesser monthly allowance to the former member until the former member's death and, thereafter, subject to the provisions of subsection D. below, to have such percentage of the former member's reduced allowance as the former member may select paid to the former member's spouse or domestic partner named in the election for the optional settlement for the life of that spouse or domestic partner. The reduction in the former member's monthly allowance shall begin with the first monthly allowance payable after the effective date of the optional settlement. In the event the former member's spouse or domestic partner predeceases the former member, the former member shall be paid thereafter, until the former member's death, a monthly allowance in an amount equal to the monthly allowance that would have been paid to the former member had no optional settlement been elected.

D. For the purposes of this Section 3.36.1468:

1. In no case shall the percentage paid to the named spouse or domestic partner be greater than one hundred percent (100%) or be less than fifty percent (50%) of the reduced retirement allowance paid to the member (including a Tier 2 member).
2. The percentage paid to the named spouse or domestic partner shall be a multiple of five percent (5%) (e.g., fifty percent (50%), fifty-five percent (55%), sixty percent (60%), sixty-five percent (65%).)
3. In no case shall any monthly allowance be paid to a former member (including a Tier 2 member) that is greater than the monthly allowance that would have been paid had no optional settlement been elected.

4. The optional settlements provided in this Section shall be paid only to the person who was married to the former member (including a Tier 2 member) both at the time of the former member's election of the optional settlement and at the time of the former member's death or to the person who was the member's domestic partner both at the time of the member's retirement and at the time of the member's death, whichever is applicable.
 5. In no case shall the total of the monthly allowance payable to a named spouse or domestic partner under an optional settlement plus the monthly allowances payable to any surviving children under the provisions of this chapter exceed a maximum of seventy-five percent (75%) of the deceased former member's final compensation. In the event the total of such monthly allowances would exceed said maximum, the amounts payable to the children shall be reduced to such amounts as, when added to the amount payable to the named spouse or domestic partner, will not exceed said maximum.
 6. "Actuarial equivalent" shall have the meaning set out in Section 3.36.1466. In determining the actuarial equivalent, a former member who is receiving a benefit pursuant to Section 3.36.1640 shall be treated as though retired for service.
- E. Unless revoked within the time specified in subsection F. or unless automatically revoked as provided in subsection G., any optional settlement elected pursuant to this Section shall become effective:
1. In the case of a person described in paragraph 1. of subsection B., the later of six (6) months from the date the election is made or one (1) year from the date of the marriage or the establishment of the domestic partnership; or
 2. In the case of a person described in paragraph 2. of subsection B., one (1) year from the date of the marriage or the establishment of the domestic partnership.
- F. Any election made pursuant to this Section may be amended or revoked by the former member (including a Tier 2 member) who made the election provided that the amendment or revocation is made in writing and is filed with the Retirement Board within the time specified in subsection B. If an election is revoked, a new one may be made in the manner and time specified in subsections A. and B. of this Section.
- G. Any election made pursuant to this Section that is not amended or revoked within the time specified in subsection B. shall be irrevocable and benefits shall be paid

in accordance with such election and the provisions of this Section except under the following circumstances:

1. In the event the former member (including a Tier 2 member) is reemployed by the City and becomes a member of this Plan, any election made pursuant to this Section prior to such reemployment shall be automatically revoked, and no benefits shall be paid pursuant to such election.
2. In the event a former member (including a Tier 2 member) elects an optional settlement and the former member's spouse or domestic partner predeceases the member prior to the effective date of the optional settlement, the election shall be automatically revoked, and benefits shall be paid to the member as though no optional settlement had been elected.
3. In the event a former member (including a Tier 2 member) elects an optional settlement and the former member dies leaving an eligible surviving spouse who is not the person named in the election or leaving an eligible surviving domestic partner who is not the person named in the election, the election shall be automatically revoked, and no benefits shall be paid pursuant to the election.

SECTION 74. Section 3.36.1505 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1505 Benefit and Contributions Limits - Service Purchases, Redeposits and Aggregation of Limits

- A. Service purchases under Section 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the Retirement Plan, then the requirements of Section 415(n) of the Internal Revenue Code shall be treated as met only if:
 1. The requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code; or
 2. The requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.
 3. For purposes of applying this Section, the Retirement Plan shall not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue

Code solely by reason of this paragraph and shall not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this Section.

4. For purposes of this Section the term "permissive service credit" means service credit:
 - a. Recognized by the Retirement Plan for purposes of calculating a member's benefit under the Retirement Plan;
 - b. Which such member has not received under the Retirement Plan; and
 - c. Which such member may receive only by making a voluntary additional contribution, in an amount determined under the Retirement Plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding subparagraph b, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the Retirement Plan.

5. The Retirement Plan shall fail to meet the requirements of this Section if:
 - a. More than five (5) years of nonqualified service credit are taken into account for purposes of this subsection A.; or
 - b. Any nonqualified service credit is taken into account under this subsection A. before the member has at least five (5) years of participation under the Retirement Plan.
6. For purposes of Paragraph 5., effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:
 - a. Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code);

- b. Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in subparagraph a. of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade twelve (12)), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;
- c. Service as an employee of an association of employees who are described in subparagraph a.,; or
- d. Military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the Retirement Plan.

In the case of service described in subparagraph a., b., or c., such service shall be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

- 7. In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):
 - a. The limitations of Paragraph 5. shall not apply in determining whether the transfer is for the purchase of permissive service credit; and
 - b. The distribution rules applicable under federal law to the Retirement Plan shall apply to such amounts and any benefits attributable to such amounts.
- 8. For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the Retirement Plan as in effect on August 5, 1997. For purposes of this paragraph, an eligible member is an individual who first became a member in the Retirement Plan before January 1, 1998.

9. Tier 2 members shall be permitted to purchase service credit, except with respect to the purchase of credit associated with disciplinary suspension time.
- B. Modification of contributions for 415(c) and 415(n) purposes. Notwithstanding any other provision of law to the contrary, the Retirement Plan may modify a request by a member to make a contribution to the Retirement Plan if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:
1. If the law requires a lump sum payment for the purchase of service credit, the Retirement Plan may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.
 2. If payment pursuant to Paragraph 1. shall not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the Retirement Plan may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.
- C. Repayments of Cashouts. Any repayment of contributions (including interest thereon) to the Retirement Plan with respect to an amount previously refunded upon a forfeiture of service credit under the Retirement Plan or another governmental plan maintained by the City shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable treasury regulations.
- D. Participation in Other Qualified Plans; Aggregation of Limits.
1. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the City shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.
 2. The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the City shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

SECTION 75. Section 3.36.1520 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1520 Current Service Contributions

- A. The Retirement Board shall determine and fix, and from time to time it may change, the amount of monthly or biweekly contributions for current service which must be required of the City of San José and of members of this Plan to make and keep this Plan and the Retirement System at all times actuarially sound as provided under Section 3.36.540B. For the purpose of this Section, "contributions for current service" for members employed in the Fire Department shall mean the sum of the normal costs for each actively employed member in the Fire Department as determined under the entry age normal actuarial cost method, divided by the aggregate current compensation of such members, and "contributions for current service" for members employed in the Police Department shall mean the sum of the normal costs for each actively employed member in the Police Department as determined under the entry age normal actuarial cost method, divided by the aggregate current compensation of such members. Rates for current service shall not include any amount required to make up any deficit resulting from the fact that previous rates of contribution made by the City and members were inadequate to fund benefits attributable to service rendered by such members prior to the date of any change of rates, and shall not include any amount required for payment of medical or dental insurance benefits. Notwithstanding the foregoing, members subject to this subsection A shall be responsible for any additional contributions described in Section 3.36.410, to the extent applicable to such member.
- B. For the purposes of this Section, the "entry age normal actuarial cost method" means the actuarial calculation which divides the actuarial present value of a member's future benefits, determined as of the date of the member's employment by the actuarial present value of the member's future salaries, determined as of the date of the member's employment in order to determine the member's normal cost rate. The "current year normal cost" for a member is the member's normal cost rate multiplied by the member's current compensation.
- C. The City of San José and the members of this Plan shall make and pay all such monthly or biweekly contributions as are found necessary and as are fixed by the Retirement Board; provided that, for members other than Tier 2 members, the monthly or biweekly contributions required of members, as compared to the monthly or biweekly contributions required of the City, shall at all times be in the ratio of three to eight (3:8). For Tier 2 members, the monthly or biweekly contributions required of Tier 2 members and the City shall at all times be in the ratio of one for the City to one for the members (1:1) (sharing equally).

- D. With respect to monthly or biweekly contributions required of members, the Retirement Board shall determine and fix, and from time to time change, the rate of contribution as a percentage of a member's monthly or biweekly compensation. The rate of contribution may be different for members employed in the Fire Department and members employed in the Police Department, depending on the benefits provided to such members, but it shall be the same percentage for all members in the Fire Department and shall be the same percentage for all members in the Police Department, except as otherwise provided under Section 3.36.410 or another provision of this Chapter 3.36. For Tier 2 members, the rate of contribution may be different than for other non-Tier 2 members, but it shall be the same percentage for all Tier 2 members in any department, except as otherwise provided under Section 3.36.410 or another provision of this Chapter 3.36. The Retirement Board shall furnish such information to the Director of Finance so that payroll deductions may be made as provided in Section 3.36.1510.
- E. There shall be no offset to normal cost contribution rates in the event Plan funding exceeds one hundred percent (100%). Both the City and employees shall always make the full annual required Plan contributions as calculated by the Retirement Board actuaries which will be in compliance with applicable laws and will ensure the qualified status under the Internal Revenue Code.

SECTION 76. Section 3.36.1525 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1525 Additional Employee Contributions and Employer Contribution Offset

The City and Tier 2 members shall share in all costs of Tier 2 of the Retirement Plan, including but not limited to administrative expenses, normal cost, and unfunded actuarial liability in the manner described in Section 3.36.410. The employee contributions for Tier 2 members for each month (or for each two (2) weeks, if compensation is paid biweekly by the City) shall represent the member's portion of the shared cost for such period.

SECTION 77. Section 3.36.1550 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1550 Contributions for Prior Service Benefits

- A. If any person who is a member of or a recipient of or entitled to any benefits under the Police and Fire Department Retirement Plan established by Chapter 3.32, or who has made any contributions thereto, elects, pursuant to and as may be authorized by the provisions of this Chapter, to become a member of this System or to receive any benefits provided by this System, in lieu of being a member of or receiving any benefits pursuant to the provisions of the Police and

Fire Department Retirement Plan established by Chapter 3.32, any and all contributions theretofore made by said member or person to the Police and Fire Department Plan established by Chapter 3.32 and therein credited to him or her shall be paid or transferred to this System and credited to such member or person as a contribution made by him or her to this System for or on account of all service rendered by said member or person prior to the time he or she becomes a member of or elects to receive any benefits under this System for which service such member or person is given credit under this System, and for payment of benefits required by this System to be paid because of service rendered by such member or person prior to the time he or she becomes a member of or elects to receive any benefits under this System. Anything elsewhere in this Chapter to the contrary notwithstanding, no person who has been or is a member of, or is entitled to receive or is receiving any benefits under the Police and Fire Department Retirement Plan established by Chapter 3.32 may become a member of this System or be entitled to any benefits hereunder unless he or she agrees to the above, and such transfers or contributions are made or paid as above provided. Any such member or person shall be deemed to have agreed to the above upon electing to become a member of this System or upon electing to receive any benefits thereunder.

- B. In addition, all contributions heretofore or hereafter made by the City of San José to the Police and Fire Department Retirement Plan established by Chapter 3.32 for or on account of service rendered by any of the above-mentioned members or persons prior to the time they became members of this System or elected to receive any benefits hereunder for which service such members or persons are given credit under this System, shall be transferred to this System and credited to the City of San José as part of its contributions to this System for or on account of said prior service rendered by said members or persons prior to the time they became members of or elected to receive any benefits under this System and for the payment of benefits required to be paid by this System because of such prior service of said members or persons.
- C. In addition, the City of San José shall contribute to the retirement fund, monthly, all such amounts as the Retirement Board shall find must be contributed to the fund, on account of service rendered by members or other persons prior to the effective date of this Chapter and on account of benefits payable because of such prior service to make this Plan actuarially sound as provided under Section 3.36.540B., to the extent that such amounts are not provided by such members' or persons' accumulated prior service contributions and said City's prior contributions for such prior service.
- D. In addition, except as provided in subsection E. below and Section 3.36.1555, the City of San José shall contribute to the retirement fund, monthly, all such amounts as the Retirement Board shall find must be contributed to the fund, to make this Plan actuarially sound as provided under Section 3.36.540B., to the

extent that such amounts are not provided by member and City's current service contributions as provided for in Section 3.36.1520.

- E. To the extent this Section 3.36.1550 implicates the benefits of a Tier 2 member or a member who, prior to August 4, 2013 for Police and prior to January 1, 2015 for Fire were non-Tier 2 members of this Plan and then became Tier 2 members prior to March 31, 2017 but on and after March 31, 2017 remain in the Plan but are no longer considered Tier 2 members under the definition of Tier 2 member under Section 3.36.020.15, The rates of contribution for such members and the City shall be determined in accordance with Section 3.36.410, including any amount designed to recover the difference between the amount of normal contributions theretofore actually required to be paid by members and the city and any greater amount which, because of amendments hereafter made to this System or as a result of experience under this System, said members or the City should have theretofore been required to pay in order to make the abovementioned pensions, allowances and other benefits which are or will become payable to such members.

SECTION 78. Section 3.36.1570 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1570 Administrative Expenses

From and after July 12, 1987, all administrative expenses of this Retirement Plan, as determined and approved by the Board, including staff salaries and indirect labor costs, shall be paid from the retirement fund. The payment of said expenses shall be subject to such limitations on said expenses as may be agreed upon by the City and the employee organizations representing members of this Plan and set forth in the appropriate memoranda of agreement. Expenses in excess of said limitations, if any, shall be paid by the City.

All administrative costs related to providing benefits for Tier 2 members of the System, as determined and approved by the Board, shall be reflected in contribution rates so that such costs are shared equally by the Tier 2 members and the City in accordance with Section 3.36.410.

SECTION 79. Section 3.36.1600 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1600 Suspension of Membership - Conditions - Award of Benefits Prohibited

- A. A person's membership in this Retirement System shall be deemed automatically suspended for and during any and each of the following periods of time:

1. Any period of time for or during which such person is temporarily suspended from City service, unless such person is entitled to credit for such time as service pursuant to the provisions of Section 3.36.640;
 2. Any period of time for or during which such person is temporarily laid off from City service because of lack of sufficient work requiring his or her services;
 3. Any period of time for or during which such person has received or is on a leave of absence without full monthly compensation, regardless of whether or not such person may be entitled to credit for such time as service under and by virtue of other provisions of this Chapter, excepting those leaves of absence to perform other City service which are specified in subsections G. and H. of Section 3.36.610.; and excepting those leaves of absence for the performance of military or naval duty for the United States of America in time of war or national emergency pursuant to Section 3.36.620 or as qualified military service as defined under Internal Revenue Code section 414(u)(5);
 4. Any other period of time for or during which such person is not receiving or entitled to receive such full monthly compensation as is otherwise provided for such person's class of position, regardless of whether or not such person may be entitled to credit for such time, as service, under and by virtue of other provisions of this Chapter, excepting those leaves of absence to perform other City service which are specified in subsections G. and H. of Section 3.36.610; and excepting those leaves of absence for the performance of military or naval duty for the United States of America in time of war or national emergency pursuant to Section 3.36.620 or as qualified military service as defined under Internal Revenue Code Section 414(u)(5);
 5. Any other period of time for which such person is not entitled to credit as service under and by virtue of other provisions of this Chapter.
- B. Upon expiration of any such period of time, and upon return of such person to active full-time duty in the service of the City, such person's membership in this System shall be automatically reinstated as of the day he or she returns to such City service; provided, however, that if any member is hired or rehired or reinstated to employment with the City on or after August 4, 2013, and meets the definition of a tier 2 member under Section 3.36.020.15, such member shall become a Tier 2 member.
- C. Anything elsewhere to the contrary notwithstanding, no person shall be entitled to any disability retirement or to any disability retirement allowance because of any disability which occurs or arises during any period of time for or during which his

or her membership is suspended by virtue of the provisions of this Section, nor to the return of any contributions or interest thereon because of the suspension of his or her membership or while his or her membership is suspended. Also, except as may be otherwise specifically provided by the provisions of subsection A.2. of Section 3.36.1200 and subsection A.2. of Section 3.36.12, no surviving spouse, surviving domestic partner, surviving child or children, nor any estate, nor any other person, shall be entitled to any survivorship, death or other allowance or benefit under or by virtue of any provisions of this Chapter because of any person's death if such death occurs during any time for or during which such deceased person's membership was suspended.

- D. In the event survivorship benefits are paid pursuant to subsection A.2. of Section 3.36.1200 or subsection A.2. of Section 3.36.1250. because of the death of a member while on leave of absence to perform military or naval duty in time of war or national emergency, the monthly survivorship allowance shall be reduced by the amounts received by the survivor to whom the allowance is paid pursuant to the United States Social Security Act or other federal benefits program where such amounts are received by the survivor because of death of the member incurred while on such leave of absence.

SECTION 80. Section 3.36.1620 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1620 Return of Contributions Upon Resignation, Discharge or Permanent Discontinuance of Service - Less Than Twenty (20) Years' Service (Less Than Five (5) Years' Service For Tier 2 Members)

- A. Any person entitled to credit for less than twenty (20) years aggregate service (five (5) years aggregate service in the case of a Tier 2 member) whose membership is terminated for any of the reasons set forth in in subsections C. or D. of Section 3.36.1610 shall receive from the retirement fund all contributions made by him to the fund which have not theretofore been withdrawn by him, plus interest thereon as earned by said fund during the period of his aggregate service, but in no event shall any member receive interest on his accumulated contributions in excess of two percent (2%) per year. Neither said person or any survivor or estate of such person shall thereafter be entitled to any other allowance or benefit under this System. In any case, under the terms of this Plan where a person is entitled to a return of employee contributions, such return of contributions shall include an amount equal to the amount of the employee contributions to the medical benefits account, plus interest accrued thereon at the rate of two percent (2%) per annum; provided, however, that no such return of contributions shall be paid from the medical benefits account.
- B. If, on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than one thousand

dollars (\$1,000.00), and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the System shall pay the distribution in a direct rollover to an individual retirement plan designated by the Board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

SECTION 81. Section 3.36.1640 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1640 Monthly Allowance or Return of Contributions to Certain Persons with Ten (10) or More Years of Service Whose Membership Terminates Before Retirement

- A. Any person credited with ten (10) or more years of service on or after July 1, 1976, in this Retirement Plan whose membership is terminated after July 1, 1976, before such person retires, by reason of resignation or discharge, layoff or leave of absence deemed by the Board to have resulted in permanent discontinuance (unless such permanent discontinuance is to accept transfer to or appointment to another position covered by the Plan) shall have the right to elect in writing, on a form to be furnished by this Plan, not later than ninety (90) days after the date upon which notice of said right is mailed by this Plan to the person's latest address on file in the office of this Plan, whether to allow his or her accumulated contributions to remain in the retirement fund or to withdraw such contributions. Failure to make such election in writing shall be deemed an irrevocable election to withdraw his or her accumulated contributions. In the event of an election to withdraw, such person shall receive from the retirement fund the amount of such person's accumulated contributions to the fund, plus interest thereon as earned by the fund during the period of such person's service, but in no case shall the interest exceed two percent (2%) per annum. Thereafter, neither such person nor the surviving spouse, domestic partner, child or children, or estate of such person shall be entitled to any allowance or benefit whatsoever under the provisions of this Chapter.
- B. If on or after March 28, 2005, the member is to receive a distribution of an eligible rollover distribution, with a present value greater than one thousand dollars (\$1,000.00), and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by member in a direct rollover or to receive the distribution directly, then the System shall pay the distribution in a direct rollover to an individual retirement plan designated by the Board in accordance with Section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.
- C. When both of the following conditions have been satisfied, a person (other than a Tier 2 member) who has elected to allow his or her accumulated contributions to

remain in the retirement fund may apply for a monthly allowance to be paid from the retirement fund:

1. Such person attains fifty-five (55) years of age; and
 2. Twenty (20) years have elapsed from the time such person first became a member.
- D. A person who separates from City service on or after July 5, 1992, and is not a Tier 2 member may apply for a monthly allowance to be paid from the retirement fund if the conditions of subsection B. are satisfied or if both of the following conditions are satisfied:
1. The person has attained fifty (50) years of age; and
 2. At the time the person separated from City service, the person was entitled to not less than twenty-five (25) years of service credit in this Plan.
- E. The monthly allowance payable pursuant to this Section shall be calculated as follows:
1. For a person who separated from City service prior to February 4, 1996, the monthly allowance shall be equal to two and one-half percent (2.5%) of the person's final compensation for each full year of service. In no event shall the person's monthly allowance exceed a maximum of seventy-five percent (75%) of his or her final compensation.
 2. For a person who separated from City service on or after February 4, 1996, but prior to February 4, 2000, the monthly allowance shall be equal to two and one-half percent (2.5%) of the person's final compensation for each of the first twenty (20) years of service plus three percent (3%) of the person's final compensation for each full year of service in excess of twenty (20) years of service. In no event shall the person's monthly allowance exceed a maximum of eighty percent (80%) of his or her final compensation.
 3. For a person who separated from City service on or after February 4, 2000, the monthly allowance shall be equal to two and one-half percent (2.5%) of his or her final compensation for each of the first twenty (20) years of service plus three percent (3%) of his or her final compensation for each of the next five (5) full years of service plus four percent (4%) of the person's final compensation for each full year of service in excess of the first twenty-five (25) years of service; provided, however that in no event shall the monthly allowance exceed a maximum of eighty-five percent (85%) of the member's final compensation.

4. For a person who was employed in the Police Department and who separated from City service on or after July 1, 2006, the monthly allowance shall be equal to two and one-half percent (2.5%) of his or her final compensation for each of the first twenty (20) years of service plus four percent (4%) of the person's final compensation for each full year of service in excess of twenty (20) years of service; provided, however that in no event shall the monthly allowance exceed a maximum of ninety percent (90%) of the member's final compensation.
5. For a person who was employed in the Fire Department and who separated from City service on or after July 1, 2008:
 - a. If the person was credited with less than twenty (20) years of service credit at the time of separation from service, he or she shall be paid from the retirement fund a monthly allowance equal to two and one-half percent (2.5%) of his or her final compensation for each year of service credit.
 - b. If the person was credited with twenty (20) or more years of service credit at the time of separation from service, he or she shall be paid from the retirement fund a monthly allowance equal to three percent (3%) of his or her final compensation for each year of service credit; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety percent (90%) of the member's final compensation.
- F. For the purposes of this Section 3.36.1640, "service" means service performed for the City and for which the member is entitled to credit under the provisions of this Chapter. "Service" shall not include service as an officer or employee of a reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.
- G. In computing the amount of allowance payable, pro rata credit shall be given for a portion of a full year.
- H. At any time after electing to allow his or her accumulated contributions to remain in the retirement fund, the person may submit a written request for a return of such contributions, in which event such contributions shall be returned to such person plus interest thereon as earned by the fund to the date such contributions are returned, but in no case shall interest exceed two percent (2%) per annum. Thereafter, neither such person nor the surviving spouse, domestic partner, child or children, or estate of such person shall be entitled to any allowance or benefit whatsoever under the provisions of this Chapter.

- I. For a person who is a Tier 2 member and at the time the person separated from City service was entitled to not less than five (5) years of service credit in this Plan: Upon attaining a minimum age of fifty (50), he or she may apply for a retirement benefit from this Retirement Plan. The Tier 2 member shall be paid from the retirement fund a monthly allowance determined, as applicable, under Section 3.36.808 or Section 3.36.809; provided, however, that in no event shall the annual amount of the service retirement allowance exceed a maximum of eighty percent (80%) of the member's final compensation. If the former Tier 2 member applies for a benefit prior to attaining age fifty-seven (57), such retirement allowance shall be reduced by a factor seven percent (7%) for each year the Tier 2 member retires before age fifty-seven (57), prorated to the closest month. The reduced benefit shall be determined by the actuary for the Police and Fire Retirement Plan. The early retirement reduction factors used are shown below:

Retirement Age	Early Retirement Factor
57	1.00
56	0.93
55	0.86
54	0.79
53	0.72
52	0.65
51	0.58
50	0.51

At any time prior to commencing a benefit, in lieu of receiving a retirement benefit from the Retirement Plan, a Tier 2 member may submit a written request for a return of his or her contributions, in which event such contributions shall be returned to such person plus interest thereon as earned by the fund to the date such contributions are returned, but in no case shall interest exceed two percent (2%) per annum. Thereafter, neither such person nor the surviving spouse, domestic partner, child or children, or estate of such person shall be entitled to any allowance or benefit whatsoever under the provisions of this Chapter.

SECTION 82. Section 3.36.1660 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1660 Survivorship Benefits Payable Where Person Eligible For Monthly Allowance Under Section 3.36.1640 Dies Before Receiving Same

- A. If after a person becomes entitled to the monthly allowance provided for in Section 3.36.1640, he or she should die before receiving any such allowance:

1. Such deceased person's surviving spouse, surviving domestic partner, eligible surviving child or children (as said terms are defined in Section 3.36.1200), shall be entitled:
 - a. Under the conditions described in subsections C. and D. of Section 3.36.1200, to a sum of money equal to all contributions of the deceased person to the retirement fund plus interest thereon as earned by the fund to the deceased person's death, but in no case shall the interest exceed two percent (2%) per annum; and
 - b. Under the conditions described in subsections F. and G. of Section 3.36.1200, and subject to the withholding provided for in subsection H. of Section 3.36.1200, if a lump sum return of contributions and interest is chosen, a monthly allowance in the amount specified in subsection B. of this Section.
2. Such deceased person's estate shall be entitled, under the conditions described in subsection E. of Section 3.36.1200, to a return of the deceased person's contributions together with interest thereon to the date of death, but in no case shall the interest exceed two percent (2%) per annum.

B. The amount of a monthly allowance payable under this Section shall be:

1. To a surviving spouse or surviving domestic partner, one and eight hundred seventy-five thousandths (1.875) percent of the deceased person's final compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of thirty-seven and five tenths percent (37.5%) of such final compensation. Pro rata credit shall be given for a portion of a full year. The monthly allowance shall be paid for the life of the surviving spouse or surviving domestic partner.
2. To one (1) eligible surviving child, one and twenty-five hundredths (1.25) percent of the deceased person's final compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of twenty-five percent (25%) of such final compensation. Pro rata credit shall be given for a portion of a full year.
3. To each of two (2) eligible surviving children, one-half (1/2) of the amount specified in the following paragraph. a below, or one-half (1/2) of the amount specified in the following paragraph b., below, whichever is the lesser amount:

- a. One and eight hundred seventy-five thousandths (1.875) percent of such deceased person's final compensation for each full year of service; provided, however, that in no event shall the combined monthly allowance payable to the children exceed a maximum of fifty percent (50%) of such final compensation. Pro rata credit shall be given for a portion of a full year.
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person will not exceed a total of seventy-five percent (75%) of such final compensation.
4. To each of three (3) or more eligible surviving children, the amount specified in the following paragraph a. or the amount specified in the following paragraph b., whichever is the lesser amount:
 - a. Two and five-tenths percent (2.5%) of such deceased person's final compensation for each full year of service, divided by the number of children entitled to receive an allowance; provided, however, that in no event shall the combined monthly allowance paid to the children exceed a maximum of seventy-five percent (75%) of such final compensation. Pro rata credit shall be given for a portion of a full year.
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person will not exceed a total of seventy-five percent (75%) of such final compensation, divided by the number of children entitled to receive an allowance.
- C. Each child who, if he or she were under the age of eighteen (18) years, would be a surviving child as defined in Section 3.36.1200, and entitled to payment of contributions and monthly allowance hereunder, shall, if he or she otherwise meets the eligibility requirements of Part 9, it being assumed for purposes of such part that such child would be entitled to a surviving child's monthly survivorship allowance under Part 8 if he or she were under eighteen (18) years of age, be entitled to a child's school allowance for the time set forth in Section 3.36.1440 in the same amount, including return of contributions and monthly survivorship allowance as set forth above for surviving child and children.
- D. The aggregate benefit amount paid to the surviving spouse and surviving children of a Tier 2 member under this Section 3.36.1660 shall not exceed eighty percent (80%) of the Tier 2 member's final compensation.

SECTION 83. Section 3.36.1670 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1670 Survivorship Benefits Payable Where Person Eligible For Monthly Allowance Under Section 3.36.1640 Dies After Receiving Same

- A. If after a person becomes entitled to the monthly allowance provided for in Section 3.36.1640, he or she should die after receiving any such allowance, such person's surviving spouse, surviving domestic partner, surviving child or children (as said terms are defined in Section 3.36.1230) shall be entitled to a monthly allowance under the conditions described in subsections C and D of Section 3.36.1320, the amount of such monthly allowance to be as set forth in subsection B of this Section, and such deceased person's estate shall be entitled to a payment of one thousand dollars (\$1,000.00) under the conditions described in Section 3.36.1230E.
- B. The amount of such monthly allowance payable under this Section shall be:
1. To a surviving spouse or surviving domestic partner, one and eight hundred seventy-five thousandths (1.875) percent of the deceased person's final compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of thirty-seven and one-half percent (37.5%) of such final compensation. Pro rata credit shall be given for a portion of a full year. The monthly allowance shall be paid for the life of the surviving spouse or surviving domestic partner.
 2. To one (1) eligible surviving child, one and twenty-five hundredths (1.25) percent of the deceased person's final compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of twenty-five percent (25%) of such final compensation. Pro rata credit shall be given for a portion of a full year;
 3. To each of two (2) eligible surviving children, one-half (1/2) of the amount specified in the following paragraph a, or one-half (1/2) of the amount specified in the following paragraph b., whichever is the lesser amount:
 - a. One and eight hundred seventy-five thousandths (1.875) percent of the deceased person's final compensation for each full year of service; provided, however, that in no event shall the combined monthly allowance payable to the children exceed a maximum of fifty percent (50%) of such final compensation. Pro rata credit shall be given for a portion of a full year;

- b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of the deceased person, will not exceed a total of seventy-five percent (75%) of such final compensation;
4. To each of three (3) or more eligible surviving children, the amount specified in the following paragraph a., or the amount specified in the following paragraph b., whichever is the lesser amount:
 - a. Two and one-half percent (2.5%) of the deceased person's final compensation for each full year of service, divided by the number of children entitled to receive an allowance; provided, however, that in no event shall the combined monthly allowance paid to the children exceed a maximum of seventy-five percent (75%) of such final compensation. Pro rata credit shall be given for a portion of a full year.
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five percent (75%) of such final compensation, divided by the number of children entitled to receive an allowance.
- C. Each child who, if he or she were under the age of eighteen (18) years, would be a surviving child as defined in Section 3.36.1230 and entitled to payment of a monthly survivorship allowance hereunder shall, if he or she otherwise meets the eligibility requirements of this Part 9, it being assumed for purposes of such part that such child would be entitled to a surviving child's monthly survivorship allowance under Part 8 if he or she were under eighteen (18) years of age, be entitled to a child's school allowance for the time set forth in Section 3.36.1440 in the same amount, including return of contributions and monthly survivorship allowance, as set forth above for surviving child and children.
- D. Such deceased person shall, for the purpose of the definition of spouse, domestic partner, child or children contained in this Section, be deemed to have retired as of the date such deceased person first receives a monthly allowance hereunder.
- E. If a Tier 2 member becomes entitled to the monthly allowance provided for in Section 3.36.1640 and he or she should die after receiving any such allowance, such person's surviving spouse, surviving domestic partner, surviving child or children (as said terms are defined in Section 3.36.1230) shall be entitled to benefits under this Section 3.36.1670 provided; however, such benefits shall not

exceed an amount equal to eighty percent (80%) of the Tier 2 member's final compensation.

SECTION 84. Section 3.36.1680 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1680 Return of Contributions to Certain Survivors of Person Who Dies Before Reaching Fifty-Five (55) and Before Twenty (20) Years Have Elapsed From the Time Such Person First Became a Member

If such person mentioned in Section 3.36.1640 should die before he or she reaches fifty-five (55) years of age and before twenty (20) years have elapsed from the time such person first became a member of this System, such deceased person's surviving spouse, surviving domestic partner, surviving child or children (as such terms are defined in Section 3.36.1250), or such deceased person's estate shall be entitled under the condition described in subsections C., D. or E. of Section 3.36.1250, whichever is applicable, either (i) to the return from the retirement fund of a sum of money equal to such deceased person's contributions to the retirement fund, plus interest thereon to the date of death, as earned by such fund, but in no case shall the interest exceed two percent (2%) per year, or (ii) to the sum of one thousand dollars (\$1,000.00), whichever is greater. A surviving spouse or surviving domestic partner shall be paid benefits under this Section regardless of whether the spouse or domestic partner is married or has established a domestic partnership at the time the benefits become payable.

If the survivor benefit paid under this Section 3.36.1680 with respect to a Tier 2 member is the sum of one thousand dollars (\$1,000.00), such amount shall be reduced to the extent it exceeds eighty percent (80%) of the Tier 2 member's final compensation.

SECTION 85. Section 3.36.1900 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1900 Medical Benefits For Retired Members

Subject to the provisions of this Chapter, a member or former member may be entitled to medical insurance coverage in an eligible medical plan as specified in Section 3.36.1940 if the requirements of subsection A., B., C., or D. of this Section 3.36.1900 are satisfied.

Effective March 31, 2017, this Part 14 shall not be applicable to Tier 2 members and new employees and they shall not be eligible for medical insurance coverage under this Part 14. Notwithstanding the preceding sentence, the City Manager has the authority and discretion to terminate Tier 2 retiree medical benefits under this Part 14 prior to the implementation of Chapter 3.57. In the event the City Manager exercises this authority, Tier 2 members shall not be entitled to any benefits or make any additional contributions under this Part 14. Unless expressly stated otherwise, the term "member" or "former

member” includes a Tier 2 member and former Tier 2 member for purposes of this Part 14. Effective March 31, 2017, Tier 2 members and new employees shall be covered under the provisions of Chapter 3.57. Subject to IRS approval of the ability of Tier 1 members to elect out of the Part 14 and 15 coverage, effective on the date IRS approval is obtained, members who would otherwise be eligible for coverage under this Part 14 shall be provided a one-time irrevocable election to instead be covered under Chapter 3.57, in accordance with the process described in Chapter 3.57. The contributions to the Plan by members and the City shall be as determined under Section 3.36.576.

- A. The member is retired for service under Part 6 of this Chapter or for disability under Part 7 of this Chapter and at the time of such retirement either:
 - 1. Is entitled to credit for fifteen (15) or more years of service; or
 - 2. Receives a retirement allowance equal to at least thirty-seven and one-half percent (37.5%) of such member's final compensation.
- B. The member is retired pursuant to Section 3.36.760 of this Chapter; or
- C. The former member separates from City service on or after July 5, 1992, prior to retirement, and satisfies all of the following requirements:
 - 1. At the time of separation from City service, the former member is entitled to credit for twenty (20) or more years of service; and
 - 2. The former member elects to allow his or her accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640; and
 - 3. The former member receives a monthly allowance pursuant to Section 3.36.1640.
- D. The former member separated from City service prior to July 5, 1992, and prior to retirement, and satisfies all of the following requirements:
 - 1. At the time of separation from City service the former member was entitled to credit for twenty (20) or more years of service; and
 - 2. The former member elected to allow his or her accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640; and
 - 3. As of April 1, 2002, the former member was receiving a monthly allowance pursuant to Section 3.36.1640; and

4. The former member is receiving a monthly allowance pursuant to Section 3.36.1640 at the time the former member applies for medical insurance coverage.
- E. Any member who meets the requirements of subsection A, B, C or D of this Section 3.36.1900 and is thereby eligible for coverage but instead elects to participate in the "In Lieu" premium credit option described in Section 3.36.1955, and later elects to again be covered under the City's medical coverage during the annual open enrollment period or upon the occurrence of another event identified by the medical plans as providing such individuals with an opportunity to elect to be covered under the City's medical coverage shall be required to pay the full cost of the member's portion of coverage under this Part 14.
- F. Notwithstanding the exclusion of Tier 2 members and new employees from coverage under Part 14, if a Tier 2 member or new employee covered under Chapter 3.57 meets the requirements of Section 3.57.300, such person shall be entitled to receive a benefit as described under Section 3.57.310. The benefit described under Section 3.57.310 shall be paid from the assets set aside to provide benefits under this Part 14. Such benefits shall cease at the time the Tier 2 member or new employee becomes eligible for coverage under Medicare.

SECTION 86. Section 3.36.1910 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1910 Medical Benefits For Survivors of Members

Subject to the provisions of this Chapter, the surviving spouse, surviving domestic partner, child and/or children, as those terms are defined in Section 3.36.1200 of this Chapter, may be entitled to medical insurance coverage in an eligible insurance plan as specified in Section 3.36.1940 if the requirements of subsection A., B., or C. of this Section 3.36.1910 are satisfied. Effective March 31, 2017, this Part 14 shall not be applicable to the surviving spouse, surviving domestic partner, child and/or children, of new employees and they shall not be eligible for medical insurance coverage under this Part 14.

- A. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly allowance pursuant to Part 8 of this Chapter because of the death of a member and:
1. The member either died before receiving retirement pay or was retired for service under Part 6 of this Chapter or for disability under Part 7 of this Chapter; and
 2. At the time of the member's death:

- a. The member was entitled to credit for fifteen (15) or more years of service; or
 - b. The member was retired pursuant to Section 3.36.760 of this Chapter; or
 - c. The surviving spouse, surviving domestic partner, surviving child and/or children were entitled to a survivorship allowance of at least thirty-seven and one-half percent (37.5%) of the member's final compensation.
- B. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly allowance pursuant to Part 11 of this Chapter because of the death of a former member who separated from City service on or after July 5, 1992, and who was entitled to credit for twenty (20) or more years of service at the time of such separation from service.
- C. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly allowance pursuant to Part 11 of this Chapter because of the death of a former member who separated from City service prior to July 5, 1992, and who met all of the requirements of subsection D. of Section 3.36.1900.
- D. Any survivor who meets the requirements of subsection A, B or C of this Section 3.36.1910 and is thereby eligible for coverage but instead elects to participate in the "In Lieu" premium credit option described in Section 3.36.1955, and later elects to again be covered under the City's medical coverage during the annual open enrollment period or the occurrence of another event identified by the medical plans as providing such survivors with an opportunity to elect to be covered under the City's medical coverage shall be required to pay the full portion of the member's cost of coverage under this Part 14.

SECTION 87. Section 3.36.1920 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1920 Requirements for Participation in Medical Insurance Plan

- A. A member or former member, as specified in Section 3.36.1900, above, is eligible to participate in a medical insurance plan sponsored by the City provided that the member or former member satisfies the following requirements:
1. The member retires for service or disability pursuant to the provisions of this Chapter and at the time of retirement the member applies for medical insurance coverage in accordance with the applicable provisions of the medical insurance plan and agrees to pay any applicable premiums; or

2. The former member receives a monthly allowance pursuant to Section 3.36.1640 and within thirty (30) days of first receiving such monthly allowance the former member applies for medical insurance coverage in accordance with the applicable provisions of the medical insurance plan and agrees to pay any applicable premiums; or
 3. The member retires for service or disability pursuant to the provisions of this Chapter and waives coverage in the form and manner prescribed by the City indicating that he or she has medical coverage at the time of retirement other than coverage under the City's medical insurance coverage and later applies for medical insurance coverage upon the occurrence of an event identified by the medical plans as providing such individuals with an opportunity to elect to be covered under the City's medical coverage, or if there is no qualifying event, applies for medical insurance coverage during the annual open enrollment period, and agrees to pay any applicable premiums within thirty (30) days of the termination of the prior coverage or the commencement of coverage following open enrollment as applicable; or
 4. The former member receives a monthly allowance pursuant to Section 3.36.1640 and executes a waiver of coverage in the form and manner prescribed by the City indicating that he or she has medical coverage at the time he or she first receives such monthly allowance other than coverage under the City's medical insurance coverage and later applies for medical insurance coverage upon the occurrence of an event identified by the medical plans as providing such individuals with an opportunity to elect to be covered under the City's medical coverage, or if there is no qualifying event, applies for medical insurance coverage during the annual open enrollment period, and agrees to pay any applicable premiums within thirty (30) days of the termination of the prior coverage or the commencement of coverage following open enrollment as applicable.
- B. A survivor, as specified in Section 3.36.1910, above, is eligible to participate in a medical insurance plan sponsored by the City provided that the following conditions are satisfied:
1. At the time of the death of the member or former member, the member or former member and the survivor were both enrolled in one (1) of the medical insurance plans sponsored by the City; and
 2. The survivor applies to continue medical insurance coverage within sixty (60) days of the death of the member or former member; and
 3. The survivor agrees to pay any applicable premiums.

4. Notwithstanding the foregoing, if at the time of member's or former member's death, the survivor was not enrolled in a medical insurance plan sponsored by the City, but the survivor would have been eligible to have been enrolled at the time of the member or former member's death, and the survivor applies to continue medical insurance coverage within sixty (60) days of the death of the member or former member and the survivor agrees to pay any applicable premiums, such survivor shall be treated as if the survivor had been enrolled in a medical insurance plan sponsored by the City at the time of the member or former member's death for purposes of continued coverage under the City's medical insurance coverage.
- C. A member or former member may secure medical insurance coverage for a spouse under the following conditions:
1. The spouse and member are married at the time of said member's retirement for service or disability; or
 2. The spouse and the former member are married at the time the former member first begins receiving a monthly allowance pursuant to Section 3.36.1640; or
 3. The member marries subsequent to his or her retirement and applies to add such spouse in accordance with the terms of the eligible medical plan; or
 4. The former member marries while receiving monthly allowances pursuant to Section 3.36.1640 and applies to add such spouse in accordance with the terms of the eligible medical plan.
- D. A member or former member may secure medical insurance coverage for a domestic partner under the following conditions:
1. The domestic partner and the member are members of a domestic partnership at the time of said member's retirement for service or disability; or
 2. The domestic partner and the member are members of a domestic partnership at the time the former member first begins receiving a monthly allowance pursuant to Section 3.36.1640; or
 3. The member establishes a domestic partnership subsequent to his or her retirement and applies to add such domestic partner in accordance with the terms of the eligible medical plan; or

4. The former member establishes a domestic partnership while receiving monthly allowances pursuant to Section 3.36.1640 and applies to add such domestic partner in accordance with the terms of the eligible medical plan.
- E. A surviving spouse or surviving domestic partner shall be eligible for single coverage only, except as follows:
1. A surviving spouse or surviving domestic partner shall be eligible for family coverage if a surviving child or children as defined in Section 3.36.1200, or an eligible surviving child for purposes of receiving a school allowance pursuant to Part 9 of this Chapter, are surviving the death of the member.
 2. A surviving spouse or surviving domestic partner shall be eligible for family coverage if the surviving spouse or the surviving domestic partner is the court-appointed guardian of the person of a minor child or children and such minor child or children are eligible for coverage under the terms of the eligible medical plan. A surviving spouse or surviving domestic partner may continue family coverage after such child reaches the age of majority in any case where, if such child had been a surviving child of the member or former member, such child would be an eligible surviving child for purposes of receiving a school allowance pursuant to Part 9 of this Chapter.
- F. Notwithstanding the provisions of subsections A. and B. of Section 3.36.1920, members or their survivors who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this Part 14, but who, at the time of retirement or death, could not enroll because the benefits provided in this Part 14 were not available at the time of the member's retirement for service or disability or death of the member, may enroll in an eligible insurance plan as provided for in this Part 14 until or on August 31, 1984, only; said members or their survivors must otherwise comply with the coverage limitations provided in subsections C. and D. of Section 3.36.1920 and with all provisions of this Part 14.
- G. Notwithstanding the provisions of Section 3.36.1920.C., a spouse who married a member subsequent to the member's retirement and would otherwise qualify for participation in a medical insurance plan pursuant to this Part 14 but who, at the time of marriage, could not enroll because the benefits provided in this Part 14 were not available for spouses married subsequent to a member's retirement, may enroll in an eligible insurance plan as provided in this Part 14 until or on December 30, 1991, only. Such spouse must otherwise comply with all other provisions of this Part 14.

- H. Notwithstanding the provisions of Section 3.36.1920.D., a domestic partner who established a domestic partnership with a member subsequent to the member's retirement and would otherwise qualify for participation in a medical insurance plan pursuant to this Part 14 but who, at the time of establishing the domestic partnership, could not enroll because the benefits provided in this Part 14 were not available for domestic partnerships where the partnership was established subsequent to a member's retirement, may enroll in an eligible insurance plan as provided in this Part 14 until or on January 31, 2007, only. Such domestic partner must otherwise comply with all other provisions of this Part 14.
- I. Notwithstanding the provisions of subsections A. and B. of Section 3.36.1920, a member who retired pursuant to Section 3.36.760, or survivors of such member, who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this Part 14 but who, at the time of retirement or death, could not enroll because the benefits provided in this Part 14 were not available to such member or such survivors at the time of such member's retirement or death, may enroll in an eligible insurance plan as provided for in this Part 14 until or on December 30, 1991, only. Said member or survivors must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.
- J. A surviving spouse who would otherwise qualify for family coverage because the surviving spouse is the court-appointed guardian of the person of a minor child or children but who, at the time of the member's or former member's death, could not enroll because the family coverage provided in this Part 14 was not available to such surviving spouse at the time of the member's or former member's death, may enroll in family coverage in an eligible insurance plan as provided for in this Part 14 until June 30, 2002, only. Said surviving spouse must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.
- K. A domestic partner who would otherwise qualify for family coverage because the domestic partner is the court-appointed guardian of the person of a minor child or children but who, at the time of the member's or former member's death, could not enroll because the family coverage provided in this Part 14 was not available to such surviving domestic partner at the time of the member's or former member's death, may enroll in family coverage in an eligible insurance plan as provided for in this Part 14 until January 31, 2007, only. Said surviving domestic partner must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.
- L. Notwithstanding the provisions of subsection A. of Section 3.36.1920, a former member who meets the requirements of subsection D. of Section 3.36.1900 but who, within thirty (30) days of first receiving a monthly allowance, could not enroll in a medical insurance plan because the benefits provided in this Part 14 were

not then available to such former member, may enroll in an eligible insurance plan as provided for in this Part 14 until or on December 31, 2002, only. Upon the death of such former member, the former member's survivors shall be eligible for continued medical insurance coverage. Such former member or survivors must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.

- M. Effective March 31, 2017, a member and/or dependent and/ or survivor who is eligible for retiree healthcare benefits in this Plan and who is eligible for Medicare coverage shall be required to enroll in Medicare Part A and B during the individual's "initial enrollment period" under the applicable federal rules. The initial enrollment period shall begin three (3) months before the Plan member and/ or dependent and/ or survivor's sixty-fifth (65th) birthday (or other event providing eligibility for enrollment in Medicare) and concludes four (4) months after the Plan member and/ or dependent and/ or survivor's sixty-fifth (65th) birthday (or other event providing eligibility for enrollment in Medicare). However, if a member is already retired and age sixty-five (65) or older on the date this Section of the Ordinance becomes effective for such member and is eligible for Medicare coverage then the member shall be required to enroll in Medicare Part A and B by July 1, 2017. Additionally, the Plan member and/or dependent and/or survivor who is eligible for Medicare shall be required to enroll in a Medicare Plan provided by the City under this Part 14 and assign Medicare Parts A and B benefits to the Medicare Plan if required by the healthcare coverage provider. If any member who retires for service or disability pursuant to the provisions of this Chapter or is a former member receiving a monthly allowance pursuant to Section 3.36.1640 waives coverage, he or she will not be required to enroll in Medicare Parts A or B. However, if such member or former member later joins a City plan, he or she will be required to enroll in Medicare Parts A and B and any charges or penalties associated with enrollment outside the "initial enrollment period" shall be borne by such member or former member.

If a member is not eligible for Medicare Part A at no cost or a Plan member for any reason is not eligible for Medicare, the member shall be required to provide such verification from the U.S. Social Security Administration to the Department of Retirement Services. Unless such verification is provided, Plan members shall be required to enroll in a Medicare Plan provided by this Plan upon reaching age sixty-five (65). This provision shall not apply to those who waive coverage,

If a member fails to meet the requirements set forth above within the member's (or dependent or survivor's) "initial enrollment period" which begins three (3) months before the Plan member and/or dependent and/or survivor's sixty-fifth (65th) birthday (or other event providing eligibility for enrollment in Medicare) and concludes four (4) months after the Plan member and/or dependent and/or survivor's sixty-fifth (65th) birthday (or other event providing eligibility for enrollment in Medicare), the Plan shall cease to provide retiree healthcare

benefits until the Plan member (or dependent or survivor) completes such requirements. This means that the member and any qualifying dependents shall not receive retiree healthcare benefits. The Plan member and qualifying dependents shall be re-enrolled in retiree healthcare benefits beginning the first day of the following month after such requirements have been completed.

If the member dies during the period which the Plan member failed to complete the requirements set forth above, the eligible spouse or domestic partner and any qualifying child(ren) shall be re-enrolled in a health insurance plan. When the spouse or domestic partner is age sixty-five (65), the requirements described above regarding enrollment in Medicare Parts A and B and enrollment in a Medicare Plan provided for City retirees and dependents, and assignment of Medicare Parts A and B benefits to the Medicare Plan must be fulfilled, unless verification is provided that the spouse or domestic partner is not eligible for Medicare coverage as described in this Section. If such requirements are not met, retiree healthcare coverage will cease until such requirements are completed, in the same manner set forth above with respect to members.

- N. Subject to the provisions of this Chapter, effective March 31, 2017 and upon IRS approval of the VEBA, a member of the VEBA who meets the requirements of Section 3.57.300 may be entitled to receive a benefits similar to those established under Parts 14 and 15 of Chapter 3.36. These provisions entitle a VEBA member to a benefit equal to the amount of the premium for single coverage under the lowest cost medical insurance coverage available under the City's retiree medical program. Such benefit shall cease at the time that such member is eligible for coverage under Medicare and subject to the provisions of Section 3.57.320. The catastrophic disability healthcare benefit provided under Chapter 3.57 shall be paid from the Police Department Healthcare Trust Fund or the Fire Department Healthcare Trust Fund, as applicable.

SECTION 88. Section 3.36.1930 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1930 Allocation of Costs of Providing Medical Insurance Coverage to Members or Survivors

- A. The costs of premiums for medical insurance coverage in an eligible medical plan shall be paid from the medical benefits account established by Section 3.36.575 or from the trust funds established by Chapters 3.54 and 3.56 and by deductions from monthly allowances paid by the Plan in accordance with this Section 3.36.1930. Unless otherwise determined by the Trustees, payment shall be made out of the medical benefits account until the account is exhausted and thereafter out of the Trust Funds established by Chapters 3.54 and 3.56.

- B. For members who retired prior to February 4, 1996, for former members described in subsection C. of Section 3.36.1900 who separated from City service prior to February 4, 1996, and for survivors of said members and former members who satisfy the requirements of Section 3.36.1910:
1. For coverage through July 1998, the member, former member or survivor shall be required to pay a premium for medical insurance coverage under this Part in the same amount as is currently paid by an employee of the City in the classification from which the member retired, which the member held at the time of death, or which the former member held at the time of separation from City service. The remaining portion of the premium shall be paid from the medical benefits account.
 2. Effective for coverage beginning in the month of August 1998, the portion of the premium to be paid from the medical benefits account shall be that portion which is equivalent to the premium for the "lowest cost medical plan", but shall not exceed the actual premium for the eligible medical plan in which the member, former member or survivor enrolls. The portion to be paid by deductions from monthly allowances paid to the member, former member, or survivor shall be that portion of the premium for the selected medical plan that exceeds the portion payable from the medical benefits account.
- C. For members who retired on or after February 4, 1996, for former members described in subsection C. of Section 3.36.1900 who separated from city service on or after February 4, 1996, and for survivors of said members and former members who satisfy the requirements of Section 3.36.1910:
1. For coverage through November 1997, the member, former member or survivor shall be required to pay a premium for medical insurance coverage under this part in the same amount as was then paid by an employee of the City in the classification from which the member retired, which the member held at the time of death, or which the former member held at the time of separation from City service. The remaining portion of the premium shall be paid from the medical benefits account.
 2. Effective for coverage beginning in the month of December 1997, the portion of the premium to be paid from the medical benefits account shall be the lesser of (a) an amount which is equivalent to the premium for the "lowest cost medical plan" or (b) the actual premium for the eligible medical plan in which the member, former member or survivor enrolls. The portion to be paid by deductions from monthly allowances paid to the member, former member, or survivor shall be that portion of the premium for the selected medical plan that exceeds the portion payable from the medical benefits account.

- D. For the purposes of this Section, "lowest cost medical plan" means that medical plan (single or family coverage as applicable to the coverage selected by the member, former member or survivor):
1. Which is an eligible medical plan as defined in Section 3.36.1940; and
 2. Which has the lowest monthly premium of all eligible medical plans then in effect, determined as of the time the premium is due and owing. The "lowest cost plan" for any current or future retiree in the defined benefit retirement healthcare plan shall be permanently set such that it would qualify for "silver" level as specified by the Affordable Healthcare Act (ACA) in effect in July 2015. This specifically includes the provision that the healthcare plan must be estimated to provide at least 70% (the "floor") but no more than 79% (the "ceiling") of healthcare expenses (actuarial valuation) as per the current ACA "silver" definition.

SECTION 89. A new Section 3.36.1955 is added to Chapter 3.36 of Title 3 of the San José Municipal Code, to be numbered, entitled and to read as follows:

3.36.1955 "In Lieu" Premium Credit Option

- A. Effective March 31, 2017, members and their surviving spouses, surviving domestic partners, and/or children who are eligible for medical insurance coverage under Section 3.36.1900 or 3.36.1910 may instead of receiving such coverage choose to receive a credit for an amount equal to twenty-five percent (25.0%) of the monthly premium of the lowest cost medical plan as defined under Section 3.36.1930.D and the lowest cost dental plan under the coverage provided under Part 15. Such credited amounts must be used only for application toward the cost of such person's healthcare premiums actually incurred in future years under Part 14 and Part 15 of this Plan.
- B. Each year during the annual open enrollment period during which qualifying individuals covered under this Part 14 and Part 15 are provided the opportunity to elect healthcare coverage under this Part 14, or upon the occurrence of another event identified by the medical plans as providing qualifying individuals with an opportunity to elect coverage under this Part 14, such individuals may again elect such coverage and pay the full cost of the member's portion of coverage or instead elect to have the credit described in Section 3.36.1955.A again credited to be used only for application toward the cost of such person's healthcare premiums actually incurred in future years under Part 14 and Part 15 of this Plan.
- C. Individuals receiving credits in lieu of premiums for greater than the cost of single coverage must annually submit substantiation that they continue to be eligible for coverage at greater than the cost of single coverage.

- D. To the extent a member and/ or the member's eligible dependents selects to receive the credits under Section 3.36.1955.A or 3.36.1955.B and the member and his surviving dependents do not use the accumulated credits while eligible for healthcare coverage under this Part 14, any remaining credits will be forfeited. In no event can a member, surviving spouse, surviving domestic partner, and/ or eligible dependent receive the credits in lieu of coverage under this Part 14 as cash and such credits may only be applied to the cost of future premiums for coverage provided under this Part 14 and Part 15.
- E. Any member who retires for service or disability pursuant to the provisions of this Chapter or is a former member receiving a monthly allowance pursuant to Section 3.36.1640 waives coverage, he or she will not be required to enroll in Medicare Parts A or B. However, if such member or former member later joins a City plan, he or she will be required to enroll in Medicare Parts A and B and any charges or penalties associated with enrollment outside the "initial enrollment period" shall be borne by such member or former member.

SECTION 90. Section 3.36.2000 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.2000 Dental Benefits For Retired Members

Subject to the provisions of this Chapter, a member or former member of this Plan may be entitled to dental insurance coverage in an eligible dental plan as specified in Section 3.36.2040 if the requirements of subsection A., B., C., or D. of this Section 3.36.2000 are satisfied. Effective March 31, 2017, this Part 15 shall not be applicable to new employees and they shall not be eligible for dental insurance coverage under this Part 15. Notwithstanding the preceding sentence, for Tier 2 members who were or are eligible for benefits under this Part 15, the City Manager has the authority and discretion to terminate dental benefits under this Part 15 with respect to those Tier 2 members prior to the implementation of Chapter 3.57. In the event the City Manager exercises this authority, affected Tier 2 members shall not be entitled to any benefits or make any additional contributions under this Part 15.

- A. The member became a member of this Plan prior to July 1, 1998, and is retired for service or disability under the provisions of this Chapter; or
- B. The member became a member of this Plan on or after July 1, 1998, and is retired for service under Part 6 of this Chapter or for disability under Part 7 of this Chapter and at the time of such retirement either:
1. Is entitled to credit for fifteen (15) or more years of service; or

2. Receives a retirement allowance equal to at least thirty-seven and one-half percent (37.5%) of such member's final compensation; or
- C. The former member separates from City service on or after July 5, 1992, prior to retirement, and satisfies all of the following requirements:
1. At the time of separation from City service, the former member is entitled to credit for twenty (20) or more years of service; and
 2. The former member elects to allow his or her accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640; and
 3. The former member receives a monthly allowance pursuant to Section 3.36.1640.
- D. The former member separated from City service prior to July 5, 1992, and prior to retirement, and satisfies all of the following requirements:
1. At the time of separation from City service the former member was entitled to credit for twenty (20) or more years of service; and
 2. The former member elected to allow his or her accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640; and
 3. As of April 1, 2002, the former member was receiving a monthly allowance pursuant to Section 3.36.1640; and
 4. The former member is receiving a monthly allowance pursuant to Section 3.36.1640 at the time the former member applies for dental insurance coverage.

Any member who is eligible for dental coverage but instead elects to participate in the "In Lieu" premium credit option described in Section 3.36.1955, and later elects to again be covered under the City's medical and dental coverage during the annual open enrollment period or the occurrence of another event identified by the dental plans as providing such individuals with an opportunity to elect to be covered under the City's dental coverage shall be required to pay the full portion of the member cost of coverage under this Part 15.

SECTION 91. Section 3.36.2010 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.2010 Dental Benefits For Survivors of Members

Subject to the provisions of this Chapter, the surviving spouse, surviving domestic partner, surviving child and/or children, as those terms are defined in Section 3.36.1200 of this Chapter, may be entitled to dental insurance coverage in an eligible dental plan as specified in Section 3.36.2040 if the requirements of subsection A., B., C. or D. are satisfied. Effective March 31, 2017, this Part 15 shall not be applicable to the surviving spouse, surviving domestic partner, surviving child and/or children of new employees and they shall not be eligible for dental insurance coverage under this Part 15.

- A. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly survivorship allowance pursuant to Part 8 of this Chapter because of the death of a member who became a member of this Plan prior to July 1, 1998, and:
 - 1. Was retired for service or disability; or
 - 2. Died before receiving retirement pay.

- B. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly survivorship allowance pursuant to Part 8 of this Chapter because of the death of a member who became a member of this Plan on or after July 1, 1998, and:
 - 1. The member either died before receiving retirement pay or was retired for service under Part 6 of this Chapter or for disability under Part 7 of this Chapter; and
 - 2. At the time of the member's death:
 - a. The member was entitled to credit for fifteen (15) or more years of service; or
 - b. The surviving spouse, surviving domestic partner, surviving child and/or children were entitled to a survivorship allowance of at least thirty-seven and one-half percent (37.5%) of the member's final compensation.

- C. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly allowance pursuant to Part 11 of this Chapter because of the death of a former member who separated from City service on or after July 5,

1992, and who was entitled to credit for twenty (20) or more years of service at the time of such separation from service.

- D. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly allowance pursuant to Part 11 of this Chapter because of the death of a former member who separated from City service prior to July 5, 1992, and who met all of the requirements of subsection D. of Section 3.36.2000.

Any survivor who is eligible for dental coverage but instead elects to participate in the "In Lieu" premium credit option described in Section 3.36.1955, and later elects to again be covered under the City's medical and dental coverage during the annual open enrollment period or the occurrence of another event identified by the dental plans as providing such individuals with an opportunity to elect to be covered under the City's dental coverage shall be required to pay the full portion of the member's cost of coverage under this Part 15.

SECTION 92. Section 3.36.2020 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.2020 Requirements For Participation in Dental Insurance Plan

- A. A member or former member, as specified in Section 3.36.2000 above, is eligible to participate in a dental insurance plan sponsored by the City provided that the member or former member satisfies the following requirements:
1. The member retires for service or disability pursuant to the provisions of this Chapter and at the time of retirement the member applies for dental insurance coverage in one (1) of the dental insurance plans sponsored by the City; or
 2. The former member receives a monthly allowance pursuant to Section 3.36.1630 or Section 3.36.1640 and within thirty (30) days of first receiving such monthly allowance the former member applies for dental insurance coverage in one (1) of the dental insurance plans sponsored by the City; or
 3. The member retires for service or disability pursuant to the provisions of this Chapter and executes a waiver of coverage in the form and manner prescribed by the City indicating that he or she has dental coverage at the time of retirement other than coverage under the City's dental insurance coverage and later applies for dental insurance coverage due to the occurrence of another event identified by the dental plans as providing such individuals with an opportunity to elect to be covered under the City's dental coverage, or if there is no qualifying event, applies for dental insurance coverage during the annual open enrollment period, and agrees

to pay any applicable premiums within thirty (30) days of the termination of the prior coverage or the commencement of coverage following open enrollment as applicable; or

4. The former member receives a monthly allowance pursuant to Section 3.36.1640 and executes a waiver of coverage in the form and manner prescribed by the City indicating that he or she has dental coverage at the time he or she first receives such monthly allowance other than coverage under the City's dental insurance coverage and later applies for dental insurance coverage due to the occurrence of another event identified by the dental plans as providing such individuals with an opportunity to elect to be covered under the City's dental coverage, or if there is no qualifying event, applies for dental insurance coverage during the annual open enrollment period, and agrees to pay any applicable premiums within thirty (30) days of the termination of the prior coverage or the commencement of coverage following open enrollment as applicable.
- B. A survivor, as specified in Section 3.36.2010 above, is eligible to participate in a dental insurance plan sponsored by the City provided that the survivor satisfies the following requirements:
1. At the time of the death of the member or former member, the member or former member and the survivor were enrolled in one (1) of the dental insurance plans sponsored by the City; and
 2. The survivor applies to continue dental insurance coverage within thirty (30) days of the death of the member or former member.
 3. Notwithstanding the foregoing, if, at the time of the death of the member or former member, the survivor was not enrolled in a dental insurance plan sponsored by the City, but the survivor would have been eligible to have been enrolled at the time of the member or former member's death, and the survivor applies to continue dental insurance coverage within sixty (60) days of the death of the member or former member and the survivor agrees to pay any applicable premiums, such survivor shall be treated as if the survivor had been enrolled in a dental insurance plan sponsored by the City at the time of the member or former member's death for purposes of continued coverage under the City's dental insurance coverage.
- C. Notwithstanding the provisions of subsections A. and B. of this Section, all retired members and survivors who receive a retirement or survivorship allowance for the month of July 1986 shall automatically be enrolled in an eligible dental insurance plan as specified in this Part.

- D. If a member marries subsequent to his or her retirement or if a former member marries while receiving monthly allowances pursuant to Section 3.36.1630 or Section 3.36.1640, the member or former member may secure dental insurance coverage for his or her spouse only if the member or former member applies to add such spouse in accordance with the terms of the eligible dental insurance plan.
- E. If a member establishes a domestic partnership subsequent to his or her retirement or if a former member establishes a domestic partnership while receiving monthly allowances pursuant to Section 3.36.1630 or Section 3.36.1640, the member or former member may secure dental insurance coverage for his or her domestic partner only if the member or former member applies to add such domestic partner in accordance with the terms of the eligible dental insurance plan.
- F. Notwithstanding the provisions of subsection A. of this Section, a former member who meets the requirements of subsection D. of Section 3.36.2000 but who, within thirty (30) days of first receiving a monthly allowance, could not enroll in a dental insurance plan because the benefits provided in this Part 15 were not then available to such former member, may enroll in an eligible insurance plan as provided for in this Part 15 until or on December 31, 2002, only. Upon the death of such former member, the former member's survivors shall be eligible for continued dental insurance coverage. Such former member or survivors must otherwise comply with all other provisions of this Part 15.
- G. Subject to the provisions of this Chapter, effective March 31, 2017 and upon IRS approval of the VEBA, a member of the VEBA who meets the requirements of Section 3.57.300 may be entitled to receive a benefits similar to those established under Parts 14 and 15 of Chapter 3.36. These provisions entitle a VEBA member to a benefit equal to the amount of the premium for single coverage under the lowest cost medical insurance coverage available under the City's retiree medical program. Such benefit shall cease at the time that such member is eligible for coverage under Medicare and subject to the provisions of 3.57.320. The catastrophic disability healthcare benefit provided under Chapter 3.57 shall be paid from the Police Department Healthcare Trust Fund or the Fire Department Healthcare Trust Fund, as applicable.

SECTION 93. Section 3.36.3030 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.3030 Special Redeposit Provisions

- A. A former member of this Retirement Plan who terminated City employment, other than for retirement or death, and who withdrew his or her accumulated contributions and the accrued interest may redeposit such withdrawn

contributions and accrued interest and become eligible for the benefits under this Part 16 if the following requirements are satisfied:

1. The former member meets the requirements of Section 3.36.3010.
 2. The former member redeposits all contributions and accrued interest previously withdrawn plus the interest that would have been earned by such contributions and interest, at the retirement fund's actual earnings rate, had they remained on deposit in the retirement fund.
 3. Such redeposit is made within the time and in the manner prescribed by the Board, such time not to extend beyond the date of such former member's retirement from this Retirement Plan or from a reciprocal system, whichever first occurs.
- B. In the event the former member begins redeposit under this Section but before all the amounts specified in paragraph 2. of subsection A. above have been redeposited, the former member dies or retires from this Retirement Plan or a reciprocal system:
1. Such amounts as have been redeposited shall be paid to the former member's estate in the event of the member's death; or
 2. Such amounts as have been redeposited shall be paid to the former member in the event of the member's retirement.

SECTION 94. Section 3.36.3070 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.3070 Costs to be Borne by City

- A. For other than Tier 2 members, the City shall contribute to the retirement fund such amounts as are actuarially determined to be necessary to provide funding for all additional costs incurred by this Retirement Plan because of the payment of benefits provided by this Part 16 to any members which would not have been provided absent the adoption of this part. For Tier 2 members, such costs shall be shared equally between the City and Tier 2 members.
- B. The contributions required of the City, if any, and of Tier 2 members (as applicable) shall be determined beginning with the actuarial valuation performed as of July 1, 1997, or, if no valuation is performed as of that date, the first valuation performed thereafter, except that an earlier actuarial valuation date may be used if the Retirement Board determines that earlier contributions are required to maintain the actuarial soundness of this Retirement Plan.

- C. Except as provided in Section 3.36.410, in determining the contributions required under this Section 3.36.3070, there shall be no offset to normal cost contribution rates in the event Plan funding exceeds one hundred percent (100%). Both the City and employees shall always make the full annual required Plan contributions as calculated by the Retirement Board actuaries which will be in compliance with applicable laws and will ensure the qualified status under the Internal Revenue Code.

SECTION 95. Section 3.36.3620 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.3620 Participant's Redeposit of Contributions Refunded to Alternate Payee

If an alternate payee receives a refund under Section 3.36.3610, the participant may elect to redeposit the accumulated contributions and interest refunded to the alternate payee and to receive credit for the service that had been allocated to the alternate payee.

- A. Such election shall be made within five (5) years after notice to the participant from the Secretary to the Board of the participant's option to redeposit the contributions.
- B. The participant shall make such election by filing, a written statement of election with the Secretary to the Board on a form provided by the Secretary.
- C. Except as provided in paragraph 1. of subsection F. below, the participant shall not be entitled to receive credit for the service that had been allocated to the alternate payee unless, prior to the date the participant retires the participant redeposits:
1. All contributions and interest distributed to the alternate payee; plus
 2. All additional interest which would have been earned on the distributed contributions and interest at the actual rate earned by the retirement fund, as of the date the participant elects to redeposit, if the contributions and interest had not been distributed to the alternate payee; plus
 3. Interest on the unpaid balance of all such moneys, at the interest rate in effect on the date the participant files the election, from the date the participant elects the redeposit to the date all such moneys and interest are fully redeposited into the retirement fund.
- D. Such redeposit shall be made within the time and in the manner provided by the Board.

- E. If the participant does not make the election within the time provided herein, the participant shall be deemed to have elected not to have such service credited to the participant.
- F. If the participant elects to redeposit contributions and interest refunded to the alternate payee but does not redeposit all required amounts plus interest within the time and in the manner provided by the Board, then:
 - 1. If the failure to complete the redeposit is because of the death of the participant, while a member of this Plan but prior to retirement, the participant shall be credited with the amount of service which is determined by the Board to be attributable to the amount of payments made as of the date of the participant's death.
 - 2. If the failure to complete the redeposit is for any reason other than the death of the participant prior to retirement, any payments made pursuant to the election shall be credited to the participant's accumulated contributions account, but the participant shall receive no service credit that had been allocated to the alternate payee.

SECTION 96. Section 3.36.3630 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.3630 Monthly Allowance For Alternate Payee

- A. An alternate payee who has been awarded a separate account shall be paid a monthly allowance from the retirement fund, for the life of the alternate payee, if all of the following conditions are satisfied:
 - 1. The alternate payee has not received a refund of accumulated contributions.
 - 2. Notwithstanding any service credit awarded to the alternate payee as of the date the alternate payee files an application for monthly benefits:
 - a. The participant is eligible to retire for service under provisions of this Plan; or
 - b. In the case where the participant retired for disability or died prior to becoming eligible for service retirement, the participant would have been eligible to retire for service had the participant continued working; or
 - c. In the case of a participant who left City service without retiring, the participant is eligible to receive a monthly allowance under Section

3.36.1640, or would have been eligible had the participant not elected a refund of his or her accumulated contributions.

3. The alternate payee has attained at least fifty (50) years of age.
 4. The alternate payee files a written application for monthly benefits with the Secretary to the Board on a form provided by the Secretary.
 5. The Board approves the payment of such monthly allowance.
- B. The monthly allowance to the alternate payee shall begin to accrue on the later of the date designated in the alternate payee's application or the day following the date of the court order dividing the community property of the participant and the alternate payee. In no event shall the monthly allowance begin to accrue earlier than the first day of the month in which the alternate payee's application is received by the Secretary to the Board.
- C. Subject to the provisions of Section 3.36.3650 and 3.36.3660 and subsection D., unless a different calculation is expressly provided in the domestic relations order:
1. In the case where the participant separated from service prior to February 4, 2000, and subject to a maximum of forty percent (40%) of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:
 - a. Two and one-half percent (2.5%) of the participant's final compensation for each of the first ten (10) years of service credit credited to the alternate payee's separate account; plus
 - b. Three percent (3%) of the participant's final compensation for each year of service credit credited to the alternate payee's separate account that is in excess of ten (10) years.
 2. Except as provided in paragraph 3. or paragraph 4. below, in the case where the participant is not a Tier 2 member and separates from service on or after February 4, 2000, and subject to a maximum of forty-two and one-half percent (42.5%) of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:
 - a. Two and one-half percent (2.5%) of the participant's final compensation for each of the first ten (10) years of service credit credited to the alternate payee's separate account; plus

- b. Three percent (3%) of the participant's final compensation for each of the next two and one-half (2.5) years of service credit credited to the alternate payee's separate account; plus
 - c. Four percent (4%) of the participant's final compensation for each year of service credit credited to the alternate payee's separate account that is in excess of twelve and one-half (12.5) years.
 3. In the case where the participant is not a Tier 2 member and was employed in the Police Department and separates from service on or after July 1, 2006, and subject to a maximum of forty-five percent (45%) of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:
 - a. Two and one-half percent (2.5%) of the participant's final compensation for each of the first ten (10) years of service credit credited to the alternate payee's separate account; plus
 - b. Four percent (4%) of the participant's final compensation for each year of service credit credited to the alternate payee's separate account that is in excess of ten (10) years.
 4. In the case where the participant is not a Tier 2 member and was employed in the Fire Department and separates from service on or after July 1, 2008, and subject to a maximum of forty-five percent (45%) of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:
 - a. In the case where the alternate payee's account is credited with less than ten (10) years of service credit, two and one-half percent (2.5%) of the participant's final compensation for each year of service credit credited to the alternate payee's separate account.
 - b. In the case where the alternate payee's account is credited with ten (10) or more years of service credit, three percent (3%) of the participant's final compensation for each year of service credit credited to the alternate payee's separate account.
 5. In the case where a Tier 2 member separates from service and is subject to a maximum of eighty percent (80%) of the Tier 2 participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be determined based on an annual allowance equal to two and two-fifth percent (2.4%) of his or her final compensation for each of the first twenty (20) full years of service, plus three percent (3%) of his or her final compensation for each of the next five full years of service,

plus three and two-fifths percent (3.4%) of his or her final compensation for each full year of service in excess of the first twenty-five (25) years of service for each year of service credit credited to the alternate payee's separate account.

- D. In the event the alternate payee of participant other than a Tier 2 member elects to receive a monthly benefit before the nonmember spouse reaches age fifty-five (55), the alternate payee's monthly benefit shall be reduced by an amount calculated in the same manner as the reduced monthly service retirement allowance of a member under subsection B. of Section 3.36.810. In the event the alternate payee of a Tier 2 member elects to receive a monthly benefit before the nonmember spouse reaches age fifty-seven (57), the alternate payee's monthly benefit shall be reduced by an amount calculated in the same manner as the reduced monthly service retirement allowance of a member under subsection F. of Section 3.36.810.
- E. For the purposes of this Section:
1. If the alternate payee elects to receive a monthly allowance prior to the date the participant retires, "final compensation" means the monthly final compensation of the participant as of the effective date of the first payment of the alternate payee's allowance.
 2. If the participant retired either for service or disability prior to the effective date of the payment of the alternate payee's allowance, "final compensation" means the monthly final compensation used in calculating the participant's retirement allowance.
- F. Monthly allowances payable to the alternate payee shall be increased by cost-of-living adjustments in accordance with Chapter 3.44.

SECTION 97. Section 3.36.3700 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.3700 Eligible Prior Military Service

- A. Subject to the conditions, limitations and requirements of this Part 18, a member of this Plan may purchase service credit in this Plan for eligible prior military service.
- B. For the purpose of this Part, "eligible prior military service" means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation purely for educational purposes, where all of the following conditions are satisfied:

1. The military service was performed prior to the member's first employment by the City of San José.
 2. The military service is not eligible for service credit in this Plan under any provisions other than this Part 18.
 3. The member does not receive any service credit toward a military pension for the same period of time.
 4. The member does not receive any service credit in a reciprocal system (as described in Part 16 of this Chapter) for the same period of time.
 5. The military service is continuous; provided, however, that a member may select which of two (2) or more periods of continuous military service for which the member elects to purchase service credit in this Plan.
 6. The military service for which the member elects to purchase service credit does not exceed four (4) years.
- C. In the event there is any dispute regarding a member's eligibility to purchase prior military service, the amount of eligible prior military service, the contributions required or the actuarial reduction in the monthly retirement benefit required for the purchase, or the amount of service to be credited to a member, the Board shall determine the issued based on the relevant information presented to the Board.

SECTION 98. Section 3.44.090 of Chapter 3.44 of Title 3 of the San José Municipal Code is amended to read as follows:

3.44.090 Funding of Increases in Allowances - Police and Fire Plans

Such increases in retirement allowances and in survivorship allowances as shall become payable under and pursuant to the provisions of this Chapter 3.44 to City retirees who are members or former members of the 1961 Police and Fire Department Retirement Plan established by Chapter 3.36 of the San José Municipal Code; City retirees who are members or former members of the Police and Fire Department Retirement Plan established by Chapter 3.32 of this Code; and survivors of members or former members of the above specified Police and Fire Department Retirement Plans, together with all other payments required to be made to said City retirees and survivors under the provisions of this Chapter 3.44, shall be funded as follows:

- A. Special Fund. The special fund heretofore created and now existing in the City treasury as the "Police and Fire Cost-of-Living Fund" shall continue in existence. All moneys in said fund, and all moneys hereafter transferred, paid into, earned

by and credited to said fund shall be used to pay such increases in the above-mentioned allowances as shall become payable under and pursuant to the provisions of this Chapter.

B. Members' Contributions.

1. For each calendar month or two (2)-week period from and after the first day of April, 1970, each person who is required by the provisions of either of the two above-mentioned Police and Fire Department Retirement Plans to make contributions to the above-mentioned Police and Fire Cost-of-Living Fund. Until changed by the Board of Administration for Police and Fire Department Retirement Plan referred to in Section 3.36.300 of this Code, hereinafter referred to in this Chapter 3.44 as the Police and Fire Retirement Board, the cost-of-living contribution required to be made each month or biweekly by each contributor, other than the City, shall be an amount equal to that percentage of the contribution required to be made by such person to either or both of the Police and Fire Department Retirement Plans or systems established by Chapters 3.32 and 3.36 of this Code, which was in effect on June 30, 1975, under the provisions of this Chapter 3.44 as they read on said date; provided, however, that cost-of-living contributions shall be made by Tier 2 members equal to that amount of such Tier 2 member's earned monthly (or biweekly if contributions are made biweekly) compensation as shall be required to provide for the equal sharing of the cost of any cost-of-living increases for Tier 2 members between the City and the Tier 2 members.
2. From time to time and as often as may be reasonably necessary to keep the plan established by this Chapter 3.44 actuarially sound, but not less frequently than once each five (5) years, the above specified Police and Fire Retirement Board shall review the percentage rate of monthly or biweekly cost-of-living contribution required of contributors other than the City to determine whether it should be reestablished or changed and, subject to the requirements set forth in this Section, shall reestablish such rate or make such change therein as may be reasonably necessary to comply with the provisions of this Section. The percentage rate of the cost-of-living contributions so established from time to time by said Retirement Board for contributors other than the City shall be such as will be sufficient, on the average with moneys, if any, already then in the above-mentioned special fund and with cost-of-living contributions required of the City and with anticipated earnings of said fund:
 - a. To make up any deficits then existing in the above-mentioned special fund;

- b. To pay all increases in retirement allowances and in survivorship allowances which, on the basis of actuarial and other relevant information can reasonably be expected to become payable under and pursuant to the provisions of this Chapter; and
 - c. To make such other payments as may be required by the provisions of this Chapter and to provide a reasonable reserve for contingencies.
 - 3. The rate of monthly cost-of-living contribution required of each contributor other than the City shall always be a percentage of the monthly contribution which such contributor is required by the provisions of Chapter 3.32 or 3.36 of this Code to make to either or both of the said Police and Fire Department Retirement Plans established by said Chapters 3.32 and 3.36; and said percentage rate shall always be the same for all such contributors other than Tier 2 members. With respect to Tier 2 members, the rate of monthly or biweekly cost-of-living contributions required of each Tier 2 contributor shall always be an amount of each Tier 2 member's earned monthly (or biweekly, if contributions are made biweekly) compensation that shall be required to produce an equal sharing of the cost of any cost-of-living increases between the City and the Tier 2 members, and the rate of such contributions shall always be the same for all such Tier 2 contributors.
- C. City Contributions. For each month, respectively, from and after the first day of April, 1970, the City shall contribute to the above-mentioned Police and Fire Cost-of-Living Fund the sum of eight dollars (\$8.00) for each three dollars (\$3.00) contributed to said fund for each such month, respectively, by persons other than the City who are not Tier 2 members pursuant to the provisions of the immediately preceding subsection B. of this Section. With respect to the Police and Fire Cost-of-Living for Tier 2 members, for each month (or for each two (2)-week period if biweekly contributions are required of members), respectively, the City shall contribute an amount intended to provide equal sharing of the costs of any cost-of-living increases with Tier 2 members.
- D. Except as provided in Section 3.36.1520.E of Chapter 3.36, in determining any cost-of-living contributions that may be due under this Chapter 3.44, there shall be no offset to cost-of-living contribution rates in the event Plan funding exceeds one hundred percent (100%). Both the City and employees shall always make the full annual required Plan contributions as calculated by the Retirement Board actuaries which will be in compliance with applicable laws and will ensure the qualified status under the Internal Revenue Code.

SECTION 99. Section 3.44.150 of Chapter 3.44 of Title 3 of the San José Municipal Code is amended to read as follows:

3.44.150 Chapter 3.36 Police and Fire Plan - Effective February 1, 2002 and For Tier 2 Members Effective March 31, 2017

- A. Notwithstanding the other provisions of this Chapter to the contrary, effective February 1, 2002, the following provisions shall apply to those persons who receive monthly allowances pursuant to the provisions of the Police and Fire Department Retirement Plan set forth in Chapter 3.32 or Chapter 3.36 of the San José Municipal Code:
1. "Subject year" shall mean the consecutive twelve (12) months from February 1 of one calendar year to January 31 of the following calendar year, respectively, commencing with the twelve (12)-month period from February 1, 2002, to January 31, 2003.
 2. Each retirement allowance and each survivorship allowance which is payable under Chapter 3.32 or Chapter 3.36 in any subject year which begins on or after February 1, 2002, together with any increases or decreases in the amount of any such allowance which were previously made pursuant to this Chapter 3.44, shall be increased by three percent (3%) per annum in lieu of the increase otherwise provided in this Chapter. The first such three percent (3%) increase shall be made on February 1, 2002. With respect to Tier 2 members, effective March 31, 2017, the Retirement Board of the Retirement Plan pursuant to which the retirement allowances and survivorship allowances under Chapter 3.32 or 3.36 specified in the preceding sections of this Chapter are payable, shall within the first three (3) calendar months of each subject year, beginning with the first three (3) months of the calendar year 2014, determine the percentage of increase or decrease in the cost of living during the index-year next preceding the subject year. Such shall be done by reference to the most current consumer price index for all urban consumers (CPI-U), San José-San Francisco-Oakland metropolitan area, all items (1967 = 100), as published by the United States Department of Labor's Bureau of Labor Statistics, showing the cost-of-living increase or decrease during the month of December of such index-year over or below the cost of living during the month of December of the calendar year immediately preceding such index-year. Each retirement allowance and each survivorship allowance which is payable to a Tier 2 member (or survivor of such Tier 2 member) shall be increased by the lower of (i) the percentage of such increase in the CPI-U, or (ii) two percent (2.0%). A Tier 2 member's first COLA after retirement shall be prorated based on the number of months retired.

3. Each increase (if any for Tier 2 members) shall become effective beginning with the allowance payable for the month of February in each subject year.
 4. The accumulation of the excess of cost-of-living percentages as provided in Section 3.44.040 shall not apply.
- B. The provisions of this Chapter 3.44 which are not inconsistent with the provisions of subsection A. shall continue to apply with respect to the persons described in subsection A.
- C. Except as provided in Section 3.36.1520.E of Chapter 3.36, in determining any cost-of-living contributions that may be due under this Chapter 3.44, any amount of unfunded actuarial accrued liability shall not be used to offset the normal cost rate.

SECTION 100. A new Chapter 3.57 is added to Title 3 of the San José Municipal Code, to be numbered, entitled and to read as follows:

Chapter 3.57
POLICE AND FIRE DEPARTMENTS VOLUNTARY EMPLOYEES' BENEFICIARY
ASSOCIATION

Part 1
DEFINITIONS

3.57.010 Definitions - Rules of Construction

Unless the context otherwise requires, the definitions and general provisions set forth in this Part 1 govern the construction of Chapter 3.57.

3.57.020.01 "Dependent"

"Dependent" means a surviving spouse, surviving domestic partner, or surviving child of a member or a Tier 2 member eligible for benefits under the terms of the VEBA established pursuant to this Chapter 3.57.

3.57.020.02 "Governmental Accounting Standards Board" or "GASB"

"Governmental Accounting Standards Board" or "GASB" means the organization funded and monitored by the financial accounting foundation (FAF), or successor organization, whose main purpose is to improve and create accounting reporting standards or generally accepted accounting principles (GAAP), which makes it easier for users to understand and use the financial records of both state and local governments.

3.57.020.03 "Health and Welfare Benefit"

"Health and Welfare Benefit" means a medical, prescription drug, or dental benefit, including a premium subsidy for the same for retirees and dependents, which is considered a post-retirement benefit other than pension under the applicable GASB requirements or statements. Such a benefit is limited to medical care expenses, including premium subsidies as defined in Section 213(d), which may be provided under the VEBA for eligible retirees and dependents.

3.57.020.04 "IRC"

"IRC" means the Internal Revenue Code of 1986, as amended.

3.57.020.05 "Member"

"Member" means a new employee as defined under Section 3.57.020.08 or a Tier 2 member as defined under Section 3.57.020.10. "Member" also means a member defined under Section 3.36.020.6 of Title 3 of the San José Municipal Code who is not a Tier 2 member but has made an irrevocable election pursuant to the procedures established under this Chapter 3.57 to be covered under the terms of this VEBA and is no longer eligible for insurance coverage under Parts 14 and 15 of Chapter 3.36 of Title 3 of the San José Municipal Code.

3.57.020.06 "New Employee"

"New Employee" means any employee initially hired to the Police Department on or after August 4, 2013, or initially hired to the Fire Department on or after January 2, 2015.

3.57.020.07 "Retiree"

"Retiree" means a former employee of the City who was employed in the Police Department or the Fire Department of the City of San José and who is retired and is entitled to health and welfare benefits under the terms of the VEBA established under this Chapter 3.57.

3.57.020.08 "Tier 2 Member"

"Tier 2 member" means a Tier 2 member as defined under Section 3.36.020.15 of Title 3 of the San José Municipal Code who is eligible for benefits to be provided under this Chapter 3.57 through the VEBA.

3.57.020.09 "VEBA"

"VEBA" means a voluntary employees' beneficiary association meeting the requirements of Internal Revenue Code section 501(c)(9), as approved by the Internal Revenue Service, which shall be established by the City, the San José Police Officers' Association and the San José Fire Fighters, IAFF Local 230, to provide post-retirement healthcare benefits to Tier 2 members and, upon approval of the Internal Revenue Service, to those members of the Plan other than Tier 2 members who make a one-time irrevocable election to be covered under this Chapter 3.57 rather than continuing to be covered under Parts 14 and 15 of Chapter 3.36 of title 3 of the San José Municipal Code.

3.57.030 "Rules of Construction"

Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate. Accounting terms and principles used herein or applicable hereto shall be as defined and described from time to time by pronouncements and other guidance of the Governmental Accounting Standards Board ("GASB"), or any successor organization.

Part 2

VEBA – ESTABLISHMENT, PURPOSE AND FUNDING

3.57.100 VEBA Established – Purpose

Effective March 31, 2017, pursuant to applicable agreements between the City, the San José Police Officers' Association, and the San José Fire Fighters, IAFF Local 230, a VEBA meeting the requirements of IRC section 501(c)(9), as approved by the Internal Revenue Service, shall be established to provide post-retirement healthcare benefits to new employees and, upon approval of the Internal Revenue Service, to those members other than Tier 2 members who make a one-time irrevocable election to be covered under this Chapter 3.57 rather than continuing to be covered under Parts 14 and 15 of Chapter 3.36 of Title 3 of San José Municipal Code. Such irrevocable election shall be executed as provided under the procedures established under this Chapter 3.57.

3.57.200 VEBA Funding

The VEBA established under this Chapter 3.57 shall have the following sources of funding:

- A. Effective on the date established by the City, Tier 2 members and new employees shall make mandatory contributions equal to four percent (4.0%) of base salary.

- B. Effective on the date established by the City, members other than members described in Section 3.57.200.A., shall make mandatory contributions equal to five percent (5.0%) of base pay.
- C. There are no required contributions by the City to the VEBA.
- D. Effective upon IRS approval of one-time irrevocable election process for Tier 1 members and upon IRS approval of the ability to transfer funds in such manner, including ability to transfer funds from the Police & Fire Plan and the applicable 115 trust to the VEBA and upon completing the irrevocable election process to become covered under the VEBA, an amount determined to equal the member's prior retiree healthcare contributions under the terms of Parts 14 and 15 of Chapter 3.36 of Title 3 of the San José Municipal Code, without any interest on such amounts, shall be contributed by the City to the member's account under the VEBA.

3.57.210 Administration of the Plan (Subject to IRS Review and Approval)

- A. The Plan and the Trust established by this Chapter shall be administered by the VEBA advisory committee which shall be the sole authority to enforce the Plan and the Trust.
- B. The advisory committee shall be responsible for the operation of the Plan in accordance with its terms, and shall determine all the questions arising out of the administration, interpretation, and application of the Plan and the Trust, including making decisions on behalf of the City as to the choice and nature of investments to be available under the Plan. All such determinations shall be conclusive and binding on all persons.
- C. The advisory committee shall have the authority to enter into agreements on behalf of the City and membership for the administration of the Plan, for custodial agreements for funds, and for investments under the Plan where the fees to be paid under such an agreement are to be paid by the participants or where there is no amount to be paid by the City under the agreement.
- D. The advisory committee shall be selected by Plan members. The number of members on the committee, qualifications, selection process and term of office shall be established by a negotiated agreement among between the City and all labor groups participating in the Plan, including unrepresented members. Agreement shall be reached no later than by June 1, 2017. Once agreement is reached, the matter shall be referred to and adopted by resolution of the City Council in the form of a resolution.

Part 3
CATASTROPHIC DISABILITY HEALTHCARE PROGRAM

3.57.300 Eligibility for Catastrophic Disability Healthcare Benefits under VEBA

Subject to the provisions of this Chapter, effective March 31, 2017 and upon IRS approval of the VEBA, a member who is covered by the VEBA shall be entitled to receive a benefit as described under Section 3.57.310 if the requirements of subsections A, B, and C of this Section 3.57.300 are satisfied.

- A. The member is receiving a service-connected disability retirement benefit under the terms of Chapter 3.36; and
- B. The member is not eligible for an unreduced service retirement under Chapter 3.36; and
- C. The member must have exhausted all funds credited to his or her VEBA account.

3.57.310 Catastrophic Disability Healthcare benefit Under VEBA

Subject to the provisions of this Chapter, effective March 31, 2017 and upon IRS approval of the VEBA, a member who meets the requirements of Section 3.57.300 may be entitled to receive a benefit similar to those established under Parts 14 and 15 of Chapter 3.36. These provisions entitle a member to a benefit equal to the amount of the premium for single coverage under the lowest cost medical insurance coverage available under the City's retiree medical program. Such benefit shall cease at the time that such member is eligible for coverage under Medicare. This catastrophic disability healthcare benefit shall be paid from the Police Department Healthcare Trust Fund or the Fire Department Healthcare Trust Fund, as applicable.

3.57.320 Limitations on Payment of Catastrophic Healthcare Benefit From Defined Benefit Plan

Subject to the provisions of this Chapter, effective March 31, 2017 and upon IRS approval of the VEBA, a member who is receiving a catastrophic healthcare benefit from the Plan under Section 3.57.310, shall be subject to the following limitations with respect to eligibility to receive such benefit:

- A. The member must submit, on an annual basis, an affidavit in the form prescribed by the administrator of the VEBA verifying that the member has no other employment which provides healthcare coverage; and
- B. If it is determined that the member has other employment which provides healthcare coverage, the member's eligibility for benefits under this Part 3 of Chapter 3.57 shall automatically cease, subject to the ability for the member to

again qualify under this Part 3 if the member subsequently loses such employment-provided healthcare coverage.

PASSED FOR PUBLICATION of title this 14th day of February, 2017, by the following vote:

AYES: ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ, KHAMIS, T. NGUYEN, PERALEZ, ROCHA; LICCARDO.

NOES: NONE.


ABSENT: NONE.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST



TONI J. TABER, CMC
City Clerk