

1 JOHN McBRIDE, ESQ., SBN 36458  
2 CHRISTOPHER E. PLATTEN, ESQ., SBN 111971  
3 MARK S. RENNER, ESQ., SBN 121008  
4 Wylie, McBride, Platten & Renner  
5 2125 Canoas Garden Avenue Suite 120  
San Jose, CA 95125  
Telephone: 408.979.2920  
Facsimile: 408.979.2934  
cplatten@wmpirlaw.com

6 Attorney for Plaintiffs and Petitioners  
7 ROBERT SAPIEN, MARY KATHLEEN McCARTHY,  
THANH HO, RANDY SEKANY and KEN HEREDIA

**ENDORSED**

**FILED**

JUN 06 2012

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY \_\_\_\_\_ DEPUTY

M. Rawson

9  
10 **IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SANTA CLARA**

11  
12 ROBERT SAPIEN, MARY KATHLEEN  
13 McCARTHY, THANH HO, RANDY  
SEKANY and KEN HEREDIA

14 Plaintiffs and Petitioners,

15 vs.

16 CITY OF SAN JOSE, DEBRA FIGONE, in  
17 her official capacity as City Manager of  
the CITY OF SAN JOSE, and Does 1  
through 15,

18 Defendants and Respondents.

19 THE BOARD OF ADMINISTRATION FOR  
20 THE 1961 SAN JOSE POLICE AND FIRE  
DEPARTMENT RETIREMENT PLAN,

21 Necessary Party in Interest

Case No. 112CV225928

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND PETITION FOR  
WRIT OF MANDATE/PROHIBITION OR  
OTHER APPROPRIATE WRIT RELIEF**

22  
23 By this action, plaintiffs and petitioners, active and retired members of the  
24 1961 San Jose Police and Fire Department Retirement Plan (Plan), seek injunctive,  
25 declaratory and writ relief to invalidate certain amendments to the San Jose City  
26 Charter as violations of their vested contract rights.  
27

28 \ \ \

Plaintiffs and petitioners allege:

**PUBLIC EMPLOYEE PENSION RIGHTS ARE PROTECTED UNDER CALIFORNIA LAW**

1  
2  
3  
4 1. Under California law, when a public entity creates a pension system, the  
5 right to that pension immediately vests when an employee accepts employment. A  
6 pension system may be modified prior to employee retirement for the limited purpose  
7 of keeping the system flexible and to maintain the integrity of the system. Before  
8 employee pension rights can be detrimentally affected, commensurate benefits must  
9 be given the employee to prevent an unconstitutional impairment of pension  
10 entitlements. When governmental action impairs vested pension rights, the courts are  
11 required to enjoin such conduct.  
12

13  
14 2. Firefighters employed by the City since 1961 have participated in the  
15 Plan provided under San Jose Municipal Code (SJMC), Chapter 3.36, §§ 3.36.010 et  
16 seq., a true and correct copy of the Plan is attached as Exhibit A. On June 5, 2012, San  
17 Jose voters enacted Local Measure B, a true and correct copy of which is attached as  
18 Exhibit B. It amends the City Charter to impose various changes and limitations to  
19 Plan benefits for active and retired firefighters. These changes and limitations  
20 unconstitutionally impair Plaintiffs' and Petitioners' vested contract rights. These  
21 impairments include, but are not limited to: (a) eliminating disability retirement  
22 benefits by redefining eligibility to require that a firefighter be unable to perform as a  
23 firefighter *and* "any other jobs described in the City's classification plan" in the Fire  
24 Department because of the firefighter's medical condition, even if no such jobs are  
25 available which the disabled firefighter can perform; (b) permitting the City Council  
26 upon a declaration of a "fiscal and service level emergency" to suspend and forfeit  
27  
28

1 annual cost of living adjustments (COLAs) to retirees; (c) forcing employees to make  
2 additional contributions for up to 50% of the pension plan's unfunded actuarially  
3 accrued liability (UAAL); (d) forcing employees to make additional contributions for up  
4 to 50% of the retiree medical plan's unfunded UAAL; and, (e) eliminating the  
5 Supplemental Retiree Benefit Reserve (SRBR) which funds supplemental benefits to  
6 annuitants and survivors.  
7

## 8 PARTIES

9

10 3. Plaintiff and petitioner Robert Sapien is a resident, taxpayer, and  
11 registered voter of the County of Santa Clara, California. Plaintiff and Petitioner  
12 Sapien is a San Jose firefighter and an active participant in the Plan.

13 4. Plaintiff and petitioner Mary Kathleen McCarthy is a San Jose firefighter  
14 and an active participant in the Plan.  
15

16 5. Plaintiff and petitioner Thanh Ho is a San Jose firefighter and an active  
17 participant in the Plan.

18 6. Plaintiff and petitioner Randy Sekany worked as a San Jose firefighter for  
19 the San Jose Fire Department (SJFD) for more than 28 years before retiring in 2008.  
20 Plaintiff and Petitioner Sekany is a retired annuitant of the Plan.  
21

22 7. Plaintiff and petitioner Ken Heredia worked as a San Jose firefighter for  
23 the SJFD for more than 29 years before retiring in 1999. Plaintiff and Petitioner  
24 Heredia is a retired annuitant of the Plan.

25 8. Defendant and respondent City of San Jose (City) is a municipal  
26 corporation in the State of California that operates under the authority of the California  
27 Constitution and the City Charter.  
28



## JURISDICTION AND VENUE

1  
2 12. Plaintiffs and petitioners bring this action for declaratory relief pursuant to  
3 Code of Civil Procedure §1060 to determine the constitutionality and validity of  
4 Measure B. Plaintiffs and Petitioners bring this action for injunctive relief pursuant to  
5 Code of Civil Procedure §§526 and 527 and Civil Code §52.1 to enjoin the  
6 implementation of Measure B because it violates plaintiffs' and petitioners'  
7 constitutional and contract rights. Plaintiffs and petitioners also bring this action as a  
8 petition for appropriate writ relief under Code of Civil Procedure §1085 to block  
9 implementation of Measure B as an unconstitutional impairment of contract under art.  
10 I, §9, an unconstitutional violation of substantive due process under art. I, §7 and an  
11 unconstitutional taking of property without just compensation under art. I, §19,  
12 respectively, of the California Constitution and the existing terms of the Plan. This  
13 action is properly filed in the County of Santa Clara pursuant to Code of Civil  
14 Procedures §§394 and 395 and Civil Code §52.1.  
15  
16

## FACTS COMMON TO ALL CAUSES OF ACTION

17  
18  
19 13. Membership in the Plan is compulsory and a condition of employment for  
20 SJFFs. Retirement benefits under the Plan are funded by contributions from both the  
21 pension Plan's members and the City, which contributions are in turn invested for the  
22 benefit of the Plan members. Employee contributions for normal service cost and for  
23 COLAs are credited to member participation accounts. Employees make no  
24 contributions towards prior service cost, except for that portion of the contributions  
25 provided by SJMC. §§3.36.1555. This Plan provision requires member contributions  
26 because of the increased benefits provided by SJMC §§3.36.805 and  
27  
28

1 §3.36.1020.B.3 The contributions under these Plan provisions cover the member  
2 cost for benefits improvements retroactively provided by an interest arbitration award  
3 under Charter §1111; the contributions represent the amount of normal service  
4 contributions members would have made from the effective date of the benefit  
5 increase (i.e., February 4, 1996) to the date of the interest arbitration award,  
6 amortized like prior service costs. In contrast, the City's contributions are credited to  
7 the Plan as a whole. When investments exceed the actuarially assumed investment  
8 growth rate, the City's unfunded actuarially accrued liability (UAAL) for prior service  
9 costs is reduced. Moreover, when the funding ratio with the Plan's assets to liabilities  
10 exceeds 100%, the positive UAAL (or over-funding of the Plan) serves as a credit in  
11 favor of the City by reducing its normal cost contributions.  
12  
13

14 14. As adopted, Measure B amends the City Charter to alter provisions of the  
15 Pension Plan as it affects contribution rates and benefits for participants and  
16 annuitants. Measure B reduces, changes or eliminates existing retirement benefits  
17 enjoyed by current employees and retirees and reduces retirement benefits for San  
18 Jose firefighters in pertinent part, as follows:  
19

20 a. Disability Retirement. Under SJMC §3.36.900 et seq., active  
21 firefighters are entitled to a disability pension benefit if they can no longer work as  
22 firefighters. The Board determines entitlement for a disability retirement upon proof of  
23 "incapacity for the performance of duty," whether service-connected or nonservice-  
24 connected if under SJMC §3.36.970 the firefighter is "incapable of assuming the  
25 responsibilities and performing the duties of the position then held by him [sic] or of  
26 any other person in the same classification of positions [i.e., firefighter classifications]  
27 to which the city may offer to transfer him" (SJMC §3.36.900). Among other things,  
28

1 Measure B, §1509-A subd. (a) and (b) limits disability retirements for current and  
2 future firefighters to instances where the SJFF is unable to perform any other job  
3 within the SJFD, whether such job is available and whether or not the City offers  
4 such a job to the firefighter. Thus, under Measure B, if a disabled firefighter is  
5 capable of performing secretarial duties in the SJFD, but no such positions are  
6 available, or such position is not offered, the firefighter is ineligible for disability  
7 retirement benefits. Measure B, §1509-A subd. (c) displaces the responsibility for  
8 determining eligibility for disability retirement benefits from the Board, and instead  
9 vests that responsibility in "an independent panel of medical experts" subject to "a  
10 right of appeal to an administrative judge." Measure B does not define a "medical  
11 expert" nor does it define "an administrative judge". Measure B does not afford any  
12 offsetting or comparable benefit or advantage to the Plan participants for §1509-A.  
13  
14

15 b. Cost-of-Living Adjustments. Under SJMC §3.44.150 San Jose  
16 firefighter annuitants receive an annual COLA of 3% to their monthly allowance,  
17 effective each February 1<sup>st</sup>. Measure B, §1510-A authorizes the Council to suspend  
18 costs of living adjustment paid to current and future retirees for up to five years, if the  
19 Council adopts a resolution declaring a fiscal and service level emergency based on  
20 unidentified criteria. There is no requirement under Measure B to repay annuitants for  
21 the suspension or forfeiture of the COLAs. Measure B does not afford any offsetting  
22 or comparable benefit or advantage to Plan participants for §1510-A.  
23  
24

25 c. Contributions. Under SJMC §3.36.1500 et seq., the Plan requires  
26 the City and SJFFs to make contributions towards the normal cost of the Plan in a  
27 ratio of eight (City) to three (SJFF). Absent specific exceptions resulting from  
28 collective bargaining, under SJMC §3.36.1550, the City is required to make 100% of

1 the contributions toward the UAAL that results from insufficient Plan assets to pay  
2 projected retirement costs. Under Measure B, §1506-A subd. (b), beginning July 23,  
3 2013, employees will be required to make additional contributions to pay the Plan's  
4 UAAL. San Jose firefighters will contribute from 4% of pay, up to a maximum of  
5 16% of pay per year, but no more than half the yearly cost to pay the UAAL. There is  
6 no provision for a reduction in firefighter contributions in the event that the UAAL  
7 declines to less than current amounts. Moreover, under Measure B, §1514-A, if a  
8 court determines that the provisions of §1506-A subd. (b) are unenforceable,  
9 equivalent monetary "savings" will be imposed on employees by "pay reductions".  
10 Measure B does not afford any offsetting or comparable benefit or advantage to Plan  
11 participants for §1506-A.  
12

13  
14 d. Retiree Health Benefits. Under SJMC §3.36.575, the Plan  
15 establishes medical benefit accounts within the retirement fund to provide retiree  
16 medical benefits, including benefits for sickness, accident, hospitalization, dental or  
17 medical expenses. Contributions for the normal cost of these benefits are made by  
18 the City and the firefighters for dental benefits in the ratio of three (City) to one  
19 (firefighter) and for medical benefits in the ratio of one (City) to one (firefighter).  
20 SJMC 3.36.1900 et seq. sets out eligibility criteria for medical benefits annuitants and  
21 allocates the costs of premiums for medical benefits. Under Measure B, §1512-A, the  
22 cost burden for unfunded liabilities for these benefits is shifted from the City to the  
23 firefighters since they "must contribute a minimum of 50% of the cost of retiree  
24 healthcare, including both normal cost and unfunded liabilities." Measure B does not  
25 afford any offsetting or comparable benefit or advantage to Plan participants for  
26 §1512-A.  
27  
28

1 e. Supplemental Retirement Benefits. Under SJMC §3.36.580 a  
2 "gain sharing" segregated fund called the Supplemental Retiree Benefits Reserve  
3 (SRBR) is established which requires the allocation of a portion of excess Plan  
4 investment income to fund supplemental benefits to annuitants. Measure B, §1511-A  
5 discontinues the SRBR, and returns the SRBR segregated funds to the Plan's general  
6 fund and prohibits the payment of supplemental benefits out of the SRBR or other Plan  
7 assets. Measure B does not afford any offsetting or comparable benefit or advantage  
8 to Plan participants for §1511-A.  
9

10 15. Plaintiffs and petitioners have no plain, speedy and adequate remedy in  
11 the ordinary course of law, other than the relief sought in this complaint and petition,  
12 because the constitutional violations at issue cannot be protected against and  
13 plaintiffs' and petitioners' rights cannot be preserved absent injunctive or writ relief.  
14

15 16. Defendants and respondents implementation of the foregoing provisions  
16 of Measure B is wrongful conduct, and unless and until enjoined and restrained by  
17 order of this court, will cause great and irreparable injury to plaintiffs and petitioners  
18 by impairing provision of vested pension rights.  
19

20 17. Plaintiffs and petitioners have no adequate remedy at law for the  
21 wrongful implementation of the foregoing provisions of Measure B because it will be  
22 impossible to determine the precise measure of damages that will be suffered if  
23 defendants' and respondents' conduct is not restrained, and plaintiffs and petitioners  
24 will be forced to institute a multiplicity of suits to obtain adequate compensation for  
25 each individual's injuries.  
26

27 18. Defendants and respondents have a non-discretionary legal, constitutional  
28 and contractual duty to continue in effect all vested Plan provisions, rights and

1 benefits to plaintiffs and petitioners. At all times herein mentioned, defendants and  
2 respondents have been able to provide all provisions, rights and benefits under the  
3 Plan in effect as of June 4, 2012 to plaintiffs and petitioners.

4  
5 **FIRST CAUSE OF ACTION**  
6 **REQUEST FOR DECLARATORY RELIEF**

7 19. Plaintiffs and petitioners hereby incorporate by reference the preceding  
8 paragraphs.

9 20. Article I, §7 of the California Constitution prohibits the taking of property  
10 without due process.

11 21. Article I, §9 of the California Constitution prohibits laws that impair  
12 contracts.

13 22. Article I, §19 of the California Constitution prohibits the taking of private  
14 property for public use in the absence of just compensation.

15 23. An actual controversy has arisen and now exists between plaintiffs and  
16 petitioners and defendants and respondents relative to their respective rights and  
17 duties in that plaintiffs and petitioners contend that Measure B is unconstitutional,  
18 invalid and unenforceable, both on its face and as construed by defendants and  
19 respondents, because it impermissibly impairs vested contract rights to pension  
20 benefits under the Plan. The impairment is neither reasonable nor material to the  
21 theory of the pension system and its successful operation. It changes pension plan  
22 benefits in a manner which results in a disadvantage to employees and annuitants  
23 without comparable new advantages.  
24  
25  
26  
27  
28



**THIRD CAUSE OF ACTION**  
**SUBSTANTIVE DUE PROCESS**  
**[CALIFORNIA CONSTITUTION ARTICLE I, §7]**

1  
2  
3  
4       30. Plaintiffs and petitioners hereby incorporate by reference the preceding  
5 paragraphs.

6       31. Article I, §7 of the California Constitution prohibits the taking of property  
7 for a public purpose without due process of law.

8  
9       32. Plaintiffs and petitioners have vested property right in the benefits  
10 provided by the Plan, and in the Plan itself, in place when they began working for the  
11 City, as well as any enhancements made during their service with the City.

12       33. By taking these protected benefits without giving plaintiffs and  
13 petitioners any comparable advantage, commensurate benefit or compensation,  
14 Measure B violates Article I, §7 of the California Constitution.  
15

**FOURTH CAUSE OF ACTION**  
**TAKING**  
**[CALIFORNIA CONSTITUTION ARTICLE I, §19]**

16  
17  
18  
19  
20       34. Plaintiffs and petitioners hereby incorporate by reference the preceding  
21 paragraphs.

22       35. Article I, §19 of the California Constitution prohibits the taking of private  
23 property for public use in the absence of just compensation.

24       36. Plaintiffs and petitioners have vested property right in the benefits  
25 provided by the Plan, and in the Plan itself, in place when they began working for the  
26 City, as well as any enhancements made during their service with the City. In  
27  
28

1 addition, the retirement benefits are a form of promise for compensation.

2 37. By taking these protected benefits without giving plaintiffs and  
3 petitioners any comparable advantage, commensurate benefit or compensation, the  
4 provisions of Measure B violates Article I, §19 of the California Constitution as to the  
5 taking of property for a public purpose without just compensation.  
6

7 **FIFTH CAUSE OF ACTION**

8 **PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE WRIT  
RELIEF**

9 1. Plaintiffs and petitioners hereby incorporate by reference the preceding  
10 paragraphs.

11 2. Plaintiffs and petitioners are informed and believe, and upon such  
12 information and belief allege that upon the effective date of Measure B, if not before,  
13 defendants and respondents will implement the provisions Measure B and will not  
14 abide by all Plan provisions, rights and benefits in effect as of June 4, 2012.  
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiffs and petitioners pray for the following relief:

18 1. A declaration that:

19 a. The provisions of Measure B cannot be applied to plaintiffs and  
20 petitioners because it violates their constitutional and contractual rights; and,

21 b. The defendants and respondents were and are required to provide  
22 plaintiffs and petitioners with the Plan provisions, rights and benefits in place when  
23 they began working for the City, as well as any enhancements made during their  
24 service with the City.  
25

26 \ \ \

27 \ \ \

28 \ \ \

1           2.    A preliminary and permanent injunction prohibiting the defendants and  
2 respondents and the Board from applying or otherwise enforcing any part of Measure  
3 B to plaintiffs and petitioners, inclusive of the admonition required under Civil Code,  
4 §52.1;

5           3.    A preemptory writ mandating defendants and respondents and the Board  
6 apply all Plan provisions, rights and benefits in effect as of June 4, 2012 to plaintiffs  
7 and petitioners and prohibiting the defendants and respondents from applying or  
8 otherwise implementing Measure B to plaintiffs and petitioners;

9           4.    Any and all actual, consequential and incidental damages according to  
10 proof, including but not limited to damages that have been or made be suffered by  
11 plaintiffs and petitioners and all costs incurred by plaintiffs and petitioners in an  
12 attempt to enforce the constitutional, statutory and contractual rights and described  
13 herein;

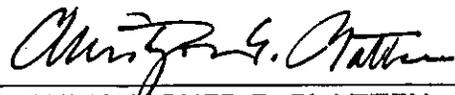
14           5.    For attorneys' fees pursuant to California Civil Code §52.1, Code of Civil  
15 Procedure §1021.5, Government Code §800 or otherwise;

16           6.    For costs of suit herein incurred; and

17           7.    For such costs and further relief as the Court deems just and proper.

18 Dated: June 5, 2012

19                                   WYLIE, McBRIDE,  
20                                   PLATTEN & RENNER

21                                   

22                                   CHRISTOPHER E. PLATTEN  
23                                   Attorneys for Plaintiffs and Petitioners  
24                                   ROBERT SAPIEN, MARY KATHLEEN McCARTHY,  
25                                   THANH HO, RANDY SEKANY and KEN HEREDIA

26  
27  
28 l:\0230\72256\pnd\complaint #2.doc x

respect to the board's policies of investing and reinvesting of moneys in the retirement fund. Such contracts shall be entered into in the name of the board of administration for the police and fire department retirement plan.

B. Any person or association who provides services to the board with regard to financial securities:

1. Shall be a person or association whose principal business consists of investment counseling services; and

2. Shall be registered as an investment adviser under such laws as may require such registration.

C. With respect to real estate advisors, the board shall enter into contractual arrangements only with persons or associations whose principal officers are engaged in the business of advising and evaluating commercial, industrial or residential real estate investments, mortgage banking, or property management, and which are licensed as real estate brokers by the State of California.

(Ords. 21607, 25084, 25553.)

**Chapter 3.36**  
**1961 POLICE AND FIRE DEPARTMENT RETIREMENT PLAN.**

Parts:

- 1 General Provisions and Definitions
- 2 Membership
- 3 Retirement Board and Other Officers
- 4 Retirement Fund
- 5 Service
- 5.5 Benefits Generally
- 6 Retirement for Service
- 7 Retirement for Disability
- 8 Survivorship and Death Benefits
- 9 Surviving Child's School Allowance
- 9.5 Optional Settlements
- 10 Contributions
- 11 Suspension or Termination
- 12 Increased Benefits for Certain Persons

A

- 13 Death While on Military Leave of Absence
- 14 Medical Benefits for Certain Persons
- 15 Dental Benefits for Retired Members and Survivors
- 16 Reciprocity
- 17 Plan-Approved Domestic Relations Orders
- 18 Purchase of Eligible Prior Military Service

**Part 1**  
**GENERAL PROVISIONS AND DEFINITIONS**

Sections:

- 3.36.010 Establishment - Name - Scope.
- 3.36.020 Definitions and construction of terms.
  - 3.36.020.1 "Accumulated contributions".
  - 3.36.020.2 "City".
  - 3.36.020.3 "Compensation".
  - 3.36.020.4 "Employee".
  - 3.36.020.5 "Final compensation".
  - 3.36.020.6 "Member".
  - 3.36.020.7 "Month".
  - 3.36.020.8 "Plan Year".
  - 3.36.020.9 "Retirement" or "retired".
  - 3.36.020.10 "Retirement allowance".
  - 3.36.020.11 "Retirement board" or "board".
  - 3.36.020.12 "Retirement fund" or "fund".
  - 3.36.020.13 "Retirement system", "retirement plan", "this system", or "this plan".
  - 3.36.020.14 "Domestic Partnership", "Domestic Partner" or "Domestic Partnership".

- 3.36.030 Use of masculine or feminine gender.
- 3.36.040 Effective date of this chapter.
- 3.36.050 Notices or orders deemed effective when.
- 3.36.060 Biweekly references to contributions and membership.
- 3.36.070 Grounds for termination of allowances or benefits.
- 3.36.080 Benefits exempt from execution.
- 3.36.090 Claimant to bear burden of proof.
- 3.36.100 Invalidity of portion of chapter.
- 3.36.110 Identification of system.
- 3.36.120 Termination of plan.
- 3.36.130 Plan year.
- 3.36.140 Limitation year.

### **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.

(Prior code § 2903.50; Ord. 28886.)

### **3.36.020 Definitions and construction of terms.**

Unless the context otherwise requires, the definitions and general provisions set forth in this Part 1 govern the construction of this Chapter 3.36.

(Prior code §§ 2903.51 - 2903.63; Ords. 24094, 24200, 25914.)

#### **3.36.020.1 "Accumulated contributions".**

"Accumulated contributions" means the sum of all contributions made by a member and standing to the credit of a member's individual account.

(Prior code §§ 2903.51 - 2903.63; Ords. 24094, 24200, 25914.)

### **3.36.020.2 "City".**

"City" means the City of San José, a municipal corporation of the state of California.

(Prior code §§ 2903.51 - 2903.63; Ords. 24094, 24200, 25914.)

### **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 worker's compensation benefits except as expressly provided in subsection G. 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 hours per week over a twelve-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 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 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.

(Prior code §§ 2903.51- 2903.63; Ords. 24094, 24200, 25914, 26693, 28164, 28830.)

### **3.36.020.4 "Employee".**

"Employee" means any person in the employ of the city, or who holds a city office, whose compensation is paid out of funds directly controlled by the city. "Funds directly controlled by the city" includes funds deposited in and disbursed from the city treasury in payment of compensation, regardless of their source. The word "employee" shall be deemed to include the word "officer."

(Prior code §§ 2903.51 - 2903.63; Ords. 24094, 24200, 25914.)

### **3.36.020.5 "Final compensation".**

A. For a member of this plan who retires, either for service or disability, before January 1, 1970, "final compensation" means the highest average monthly compensation of the member during any period of thirty-six consecutive months of city service for which such member receives service credit in this plan.

B. For a member of this plan who retires, either for service or disability, on or after January 1, 1970, "final compensation" means:

1. For the purpose of determining the amount of monthly retirement allowance or monthly survivorship allowance payable for any month or portion of a month prior to September 1, 1970, the highest average monthly compensation of the member during any period of thirty-six consecutive months of city service for which the member receives service credit in this plan.

2. For the purpose of determining the amount of monthly retirement allowance or monthly survivorship allowance payable for any month or portion of a month on or after September 1, 1970, the highest average monthly compensation of the member during any period of twelve consecutive months of city service for which the member receives service credit in this plan; provided and excepting, however, that in determining such final compensation no consideration or credit shall be given to or for that portion, if any, of the compensation paid or payable by the city to said member for service rendered during the last twelve months of said member's city service which exceeds one hundred eight percent of the compensation paid or payable to the member for city service rendered during the twelve months immediately preceding the last twelve months of the member's city service.

C. If an employee leaves city service and subsequently returns to city service, months of service before and after the absence from service may be cumulated to constitute the period of thirty-six

consecutive months or twelve consecutive months, whichever is applicable, notwithstanding the absence from service.

D. If any benefit is dependent upon the amount of service of a member, and the member has less than thirty-six months of city service or less than twelve months of city service, whichever is applicable, then the amount of service the member actually has shall be used in the calculation of the member's final compensation.

(Prior code §§ 2903.51 - 2903.63; Ords. 24094, 24200, 25914, 28831.)

### **3.36.020.6 "Member".**

"Member" means any person included in the membership of this system, and includes those persons only who are specified as such in Part 2 of this chapter.

(Prior code §§ 2903.51 - 2903.63; Ords. 24094, 24200, 25914.)

### **3.36.020.7 "Month".**

Except as otherwise expressly provided, "month" means a calendar month.

(Prior code §§ 2903.51 - 2903.63; Ords. 24094, 24200, 25914.)

### **3.36.020.8 "Plan year".**

"Plan year" means July 1 to June 30.

(Ord. 28886.)

### **3.36.020.9 "Retirement" or "retired".**

"Retirement" or "retired" means withdrawal from city service pursuant to an order of the retirement board with a retirement allowance granted under this chapter.

(Prior code §§ 2903.51- 2903.63; Ords. 24094, 24200, 25914, 28886.)

### **3.36.020.10 "Retirement allowance".**

"Retirement allowance" means the service retirement allowance or the disability retirement allowance.

(Prior code §§ 2903.51- 2903.63; Ords. 24094, 24200, 25914, 28886.)

### **3.36.020.11 "Retirement board" or "board".**

"Retirement board" or "board" means the board of administration referred to and specified in Section 3.36.300 of this chapter.

(Prior code §§ 2903.51- 2903.63; Ords. 24094, 24200, 25914, 28886.)

**3.36.020.12 "Retirement fund" or "fund".**

"Retirement fund" or "fund" means the retirement fund specified in Section 3.36.500.

(Prior code §§ 2903.51- 2903.63; Ords. 24094, 24200, 25914, 28886.)

**3.36.020.13 "Retirement system", "retirement plan", "this system", or "this plan".**

"Retirement system", "retirement plan", "this system", or "this plan" means the City of San José Police and Fire Department Retirement Plan described in Section 3.36.110.

(Prior code §§ 2903.51- 2903.63; Ords. 24094, 24200, 25914, 27768, 28886.)

**3.36.020.14 "Domestic Partnership", "Domestic Partner" or "Domestic Partnership".**

A. "Domestic partnership" means:

1. A registered domestic partnership that has been established by filing a Declaration of Domestic Partnership with the Secretary of State pursuant to Division 2.5 of the California Family Code; or

2. A legal union of two (2) persons of the same sex, other than a marriage, that was validly formed in a jurisdiction other than California if such union is recognized as a domestic partnership pursuant to California Family Code Section 299.2.

B. "Domestic partner" means a person who has entered into a domestic partnership.

(Ords. 27712, 28886.)

**3.36.030 Use of masculine or feminine gender.**

Unless the context requires otherwise, as used in this chapter the masculine gender includes the feminine and the feminine includes the masculine.

(Prior code § 2903.69; Ord. 23807.)

**3.36.040 Effective date of this chapter.**

The effective date of this chapter and of this retirement plan is and shall be the first day of February, 1962; and the words "effective date of this chapter," as used in this chapter, shall be deemed to mean and refer to said first day of February, 1962.

(Prior code § 2903.68.)

**3.36.050 Notices or orders deemed effective when.**

Any notice or order given by the retirement board to any person shall be effective upon the deposit of such notice or order in the United States mail, postage prepaid, addressed to such person at the address of such member as said address is shown on the records of the retirement board.

(Prior code § 2903.64.)

### **3.36.060 Biweekly references to contributions and membership.**

Notwithstanding anything in Chapters 3.16 through 3.44 to the contrary, whenever monthly references are used in connection with contributions or membership under the police and fire department retirement plan and/or the 1961 police and fire department retirement plan, such references shall be deemed to mean biweekly from and after the effective date of the ordinance codified herein. The purpose and intention of this amendment is to change the time at which contributions are to be made to the police and fire department retirement plan and/or the 1961 police and fire department retirement plan and to assure that no one is deprived of membership in either of said plans because of receiving salary on a biweekly basis.

(Prior code § 2903.71.)

### **3.36.070 Grounds for termination of allowances or benefits.**

A. In addition to any other grounds which the retirement board may have by virtue of other provisions of this chapter for terminating or canceling any allowance or benefit which would otherwise be payable to any person or persons pursuant to the provisions of this chapter the board may, in its discretion, permanently terminate or temporarily suspend any allowance or benefit, or portion of any allowance or benefit, which would otherwise be payable to any person or persons under and by virtue of the provisions of this chapter if the person or persons to whom such allowance or benefit should otherwise be payable should wilfully disobey any lawful order of the retirement board or wilfully violate any provisions of this chapter. The board, in suspending any allowance or benefit, or any portion thereof, may suspend the same for such period of time as it may deem just or reasonable, and may impose such conditions as it may deem just or reasonable for reinstatement of any such allowance or benefit.

B. In the event any service retirement allowance or disability retirement allowance otherwise payable to any person under and by virtue of the provisions of this chapter should be permanently terminated pursuant to the provisions of this section, and if the person who would have otherwise been entitled to such allowance should die thereafter, neither his surviving spouse nor his surviving child or children nor his estate shall be entitled to any allowances or benefits whatsoever under the provisions of this system.

(Prior code § 2903.67.)

### **3.36.080 Benefits exempt from execution.**

A. The right of a person to a pension, an annuity or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefits, any other right or benefit accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created herein shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall not be assignable except as herein specifically provided or as specified in Subsection B.

B. Voluntary deductions which are permitted by rules and regulations approved by the board of administration of the police and fire department retirement plan may be made from pension benefits payments where authorized in writing by the benefit payee.

(Prior code § 2903.65; Ord. 29035.)

**3.36.090 Claimant to bear burden of proof.**

Each and every claimant of any allowance or benefit under this chapter shall at all times bear the burden of proving all such facts, circumstances and conditions as must be established or otherwise proved to entitle such claimant to any allowance or benefit under this chapter.

(Prior code § 2903.70.)

**3.36.100 Invalidity of portion of chapter.**

If any section, subsection, paragraph or portion of this chapter is for any reason declared to be invalid or unconstitutional, such decision shall not affect the validity of the remainder or remaining portion of this chapter. The city council does hereby declare that it is its intention to enact and pass each section, subsection, paragraph and portion of this chapter independently of each and every other part.

(Prior code § 2903.66.)

**3.36.110 Identification of system.**

Notwithstanding anything to the contrary in Chapters 3.32 and 3.36 of Title 3 of the San José Municipal Code, the elements of the plan set forth in Chapter 3.32 and the elements of the plan set forth in Chapter 3.36 are components of a single retirement system known as the City of San José Police and Fire Department Retirement Plan.

(Ord. 27768.)

**3.36.120 Termination of plan.**

A. Upon the termination of this plan or upon the complete discontinuance of contributions under the plan, the rights of each member, former member and beneficiary to benefits accrued to the date of such termination or discontinuance shall be nonforfeitable.

B. Upon the complete termination of this plan, the board shall perform all of the following:

1. Liquidate the assets of the retirement fund.
2. Pay all of the accrued administrative expenses of the plan, including the expenses of liquidation.
3. Determine the rights of each member, former member and beneficiary to benefits accrued to the date of termination, and ensure that all such benefits have been or are paid to the respective persons.
4. Allocate any assets in the supplemental retiree benefit reserve established pursuant to Section 3.36.580 to the then existing retired members, survivors of members, and survivors of retired members using the distribution methodology most recently approved by the city council.

C. Upon the termination of this plan and the satisfaction of all liabilities described in Subsection B. above, the board shall allocate any remaining assets of the retirement fund to the members of the plan on the basis of years of service and final compensation credited to the member at the time of termination of the plan.

(Ord. 27768.)

**3.36.130 Plan year.**

"Plan year" means the consecutive twelve-month period beginning on July 1 and ending on June 30 of the following calendar year.

(Ord. 28773.)

**3.36.140 Limitation year.**

"Limitation year" means the calendar year.

(Ord. 28773.)

**Part 2  
MEMBERSHIP**

Sections:

- 3.36.150 Members designated.
- 3.36.160 Exclusions from membership.
- 3.36.170 Persons appointed on or after effective date to positions in police department.
- 3.36.180 Persons holding position in police department on effective date - Option.
- 3.36.185 Reserved.
- 3.36.190 Reserved.
- 3.36.200 Persons appointed on or after effective date to positions in fire department.
- 3.36.205 Exclusion of fire chief and police chief with no prior service credit in police and fire department retirement plan.
- 3.36.210 Persons holding position in fire department on effective date - Option.
- 3.36.220 New option for persons who failed to exercise option given them by Sections 3.36.180 and 3.36.210.
- 3.36.230 Option for fire training officer who was drill master on February 1, 1962.
- 3.36.240 Persons retired for disability prior to effective date, who return to active duty after effective date.

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.

3.36.260 Persons holding positions in department of communication on effective date - Option.

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.

3.36.280 Membership in prior plan continued when.

### **3.36.150 Members designated.**

Except as may be otherwise provided in this chapter, all of the persons hereinafter specified in this Part 2 and none other, shall be members of this retirement system and shall be subject to its provisions:

(Prior code § 2903.75.)

### **3.36.160 Exclusions from membership.**

Anything in this chapter to the contrary notwithstanding, the following persons are excluded from membership in this system:

- A. Independent contractors who are not employees of the city.
- B. Persons in city service principally for training or educational purposes, whether or not they receive any compensation.
- C. Auxiliary or voluntary police officers or fire fighters, whether or not they receive any compensation.
- D. Persons serving or employed on a part-time basis. An employee is serving on a part-time basis when the employee engages in his or her duties for less time than is required of employees serving on full-time basis, even though the employee is subject to call at any time.
- E. Persons serving or employed or paid on a per diem, per hour, or any other basis other than a monthly basis.
- F. Except as provided in Part 16 of this chapter, persons who are members of any other retirement or pension system and who are receiving credit in such other system for services are, as to such service, excluded from this system. For purposes of this subsection, persons who merely are receiving pensions or retirement allowances or other payments, from any source whatever, on account of service rendered to an employer other than the City of San José and while they were not in city service, are not, because of such receipt, members of another retirement system.

(Prior code § 2903.85; Ord. 24681.)

### **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.

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.

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.

(Prior code § 2903.76; Ord. 27768.)

### **3.36.180 Persons holding position in police department on effective date - Option.**

A. Except as may otherwise be provided in this chapter, each person who on the effective date of this chapter holds any of the following positions or classes of positions in the police department by virtue of an appointment made prior to the effective date of this chapter, and who, in addition, is on such date a member of the police and fire department retirement plan established by Chapter 3.32, shall have the option of becoming subject to the provisions of this chapter. Said positions are: chief of police, chief of detectives, inspector of operations, police captain, Assistant chief of police, police lieutenant, police sergeant (detective), juvenile officer, police officer, police woman, traffic analyst, senior identification officer, and identification officer.

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 by said board upon his or her request, declaring that he or she elects to be subject to the provisions of the retirement plan as described in this chapter. Said statement shall be filed as aforesaid on or before and no later than the ninetieth day immediately following the effective date of this chapter; excepting, however, that any such person who on the effective date of this chapter is on temporary leave because of active service in the Armed Forces of the United States may file said statement electing to be subject to the provisions of this chapter with the secretary on or before and no later than the ninetieth day immediately following the date of expiration of his or her leave or his or her return to duty, whichever is earlier. Upon filing said written statement with the secretary in the manner and within the time hereinabove specified, such person shall be deemed to be subject to the provisions of this chapter as of the effective date of this chapter. Each such person so electing to become subject to the provisions of this chapter shall cease being subject to the provisions of the retirement system as established by Chapter 3.32 of this Code as of the date he or she becomes subject to the provisions of this chapter and shall have no further rights under Chapter 3.32. Anything elsewhere to the contrary notwithstanding, no such person shall become entitled to the benefits provided under this chapter unless he or she exercises said option as aforesaid.

(Prior code § 2903.78; Ord. 27768.)

**3.36.185 Reserved.**

**Editor's note:** Ord. 27768, § 6, adopted June 20, 2006, repealed § 3.36.185, which pertained to withdrawal from plan by chief of police.

**3.36.190 Reserved.**

**Editor's note:** Ord. 27768, § 7, adopted June 20, 2006, repealed § 3.36.190, which pertained to withdrawal of contributions by chief of police.

**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.

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.

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.

(Prior code § 2903.77; Ord. 27768.)

**3.36.205 Exclusion of fire chief and police chief with no prior service credit in police and fire department retirement plan.**

Notwithstanding the provisions of Section 3.36.200, any person who is appointed to the position of fire chief or police chief, with an effective employment start date on or after August 1, 2010, shall not become or be a member of this retirement system if on the effective date of such person's appointment:

A. The person is not entitled to credit for service in this retirement system; and

B. The person is not entitled to redeposit withdrawn accumulated contributions pursuant to Section 3.36.710.

(Ord. 28749.)

**Editor's note:** Ord. 27768, § 9, adopted June 20, 2006, repealed former § 3.36.05, which pertained to exclusion of fire chief with no prior service credit.

### **3.36.210 Persons holding position in fire department on effective date - Option.**

A. Except as may otherwise be provided in this chapter, each person who on the effective date of this chapter holds any of the following positions or classes of positions in the fire department by virtue of an appointment made prior to the effective date of this chapter and who, in addition, is on such date a member of the police and fire department retirement plan established by Chapter 3.32 of this Code, shall have the option of becoming subject to the provisions of this chapter. Said positions are: fire chief, assistant fire chief, fire prevention chief, battalion chief, fire captain, firefighter, and fire master mechanic.

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 by the board upon his or her request, declaring that he or she elects to be subject to the provisions of the retirement plan as described in this chapter. Said statement shall be filed as aforesaid on or before and no later than the ninetieth day immediately following the effective date of this chapter, excepting, however, that any such person who on the effective date of this chapter is on temporary leave because of active service in the Armed Forces of the United States may file said statement electing to be subject to the provisions of this chapter with the secretary on or before and no later than the ninetieth day immediately following the date of expiration of his or her leave or his or her return to duty, whichever is earlier. Upon filing said written statement with the secretary in the manner and within the time hereinabove specified, such person shall be deemed to be subject to the provisions of this chapter as of the effective date of this chapter. Each such person so electing to become subject to this chapter shall cease being subject to the provisions of the retirement plan as established by Chapter 3.32 as of the date he or she becomes subject to the provisions of this chapter and shall have no further rights under Chapter 3.32. Anything elsewhere to the contrary notwithstanding, no such person shall become entitled to the benefits provided under this chapter unless he or she exercises said option as aforesaid.

(Prior code § 2903.79; Ord. 27768.)

### **3.36.220 New option for persons who failed to exercise option given them by Sections 3.36.180 and 3.36.210.**

A. Any person who was given by Section 3.36.180 or Section 3.36.210 of this chapter an option to become subject to the provisions of this chapter but failed for any reason to exercise such option, is hereby given a new option to become subject to the provisions of this chapter if he or she has continuously, from February 1, 1962 (the effective date of this chapter) to and including the date of exercise of such new option, held a position which would have entitled him or her to be subject to this chapter during all such time had he or she exercised such original option.

B. Each of said persons, in order to exercise said option, shall on or before November 15, 1968:

1. File with the secretary of the retirement board a written statement, on a form to be furnished to him or her on his request by the board, declaring that he or she elects to be subject to the provisions of the retirement system as described in by this chapter; and

2. At the time of filing said written statement pay into the retirement fund:

a. A sum equal to the difference between what he or she would have paid had he been subject to the provisions of this chapter from the effective date of this chapter to the date upon which he or she exercises such option and what he or she actually paid during said period pursuant to Chapter 3.32; plus

b. Such interest thereon as the retirement board may deem reasonable. Only that sum designated in subdivision a. above shall be credited to such person's account and be considered accumulated contributions.

C. Upon filing said written statement within the time and in the manner hereinabove specified, said person shall be deemed to be subject to the provisions of this chapter, as of the effective date of this chapter. Such person, upon electing to become subject to the provisions of this chapter, shall cease being subject to the provisions of the retirement plan as established by Chapter 3.32 as of the date he or she becomes subject to the provisions of this chapter and shall have no further rights under Chapter 3.32. Anything elsewhere to the contrary notwithstanding, such person shall not become entitled to the benefits provided under this chapter unless he or she exercises said option as aforesaid.

(Prior code § 2903.86; Ord. 27768.)

### **3.36.230 Option for fire training officer who was drill master on February 1, 1962.**

That certain person who on February 1, 1962 held the position of drill master in the fire department and upon abolition of such position was appointed to the position of fire training officer, is hereby given an option to become subject to the provisions of this chapter if he or she has continuously from February 1, 1962, to and including the date of exercise of the option granted by this section, held such positions of drill master and fire training officer. Said person, in order to exercise said option, shall on or before November 15, 1968, file with the secretary of the retirement board a written statement on a form to be furnished to him, upon request, by said board declaring that he or she elects to become subject to the provisions of this chapter and elects to pay into the retirement fund a sum equal to the difference between what he would have contributed under this chapter had he or she been subject to the provisions of this chapter from February 1, 1962, to the date upon which he or she exercises this option and what he or she has actually paid during said period of time pursuant to the provisions of Chapter 3.32 of this Code. Upon being paid said sum shall be credited to such person's account and be considered accumulated contributions. Payment of said sum shall be made in such installments, at such times, and in the manner prescribed by the retirement board. If such person or his or her survivors become entitled to any benefit under this chapter prior to the time that all of said sum has been paid, such benefits shall be reduced by the amount of said sum still remaining unpaid.

(Prior code § 2903.87; Ord. 27768.)

### **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.

(Prior code § 2903.80; Ord. 27768.)

**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.

(Prior code § 2903.81; Ord. 27768.)

**3.36.260 Persons holding positions in department of communication on effective date - Option.**

Except as may otherwise be provided in this chapter, each person who, prior to the effective date of this chapter, was transferred from a permanent appointment in any position or class of positions in the police department or fire department to one (1) of the following positions or classes of positions in the department of communications: superintendent of communications, chief radio-telephone operator and radio-telephone technician, and who in addition is on the effective date of this chapter a member of the police and fire department retirement plan as described in Chapter 3.32 of this Code, shall have the option, if he or she holds any such position in the department of communications on the effective date of this chapter, and not otherwise, of becoming subject to the provisions of this Chapter 3.36. 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. Said statement shall be filed on or before, and no later than, the ninetieth (90th) day immediately following the effective date of this section, excepting, however, that any such person who on the effective date of this section is on temporary leave because of active service in the Armed Forces of the United States may file said statement electing to be subject to the provisions of this chapter with the secretary on or before, and no later than, the ninetieth (90th) day immediately following the date of expiration of his or her leave or his or her return to duty, whichever is earlier. Upon filing said written statement with the secretary in the manner and within the time

specified in this section, such person shall be deemed to be subject to the provisions of this chapter as of the effective date of this section. Each person so electing to become subject to 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. 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 in this section.

(Prior code § 2903.82; Ord. 27768.)

**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.

(Prior code § 2903.83; Ord. 27768.)

**3.36.280 Membership in prior plan continued when.**

All persons who, on the effective date of this chapter, are members of the police and fire department retirement plan described in Chapter 3.32 and do not exercise in the manner and within the time hereinabove specified their option of becoming subject to the provisions of this chapter, or who are not hereinabove given any such option or who are otherwise excluded from membership in the retirement plan as described in this chapter, are not and shall not be deemed to be subject to the provisions of this chapter and shall not be entitled to any benefits paid pursuant to this chapter. All such persons, however, shall remain members of the police and fire department retirement plan as described in Chapter 3.32 of this Code, subject to the provisions of said chapter and applicable provisions of the charter of the city, and the benefits being paid on the effective date hereof to or on account of any persons pursuant to Chapter 3.32 shall be continued at their existing rates in accordance with the provisions of said Chapter 3.32, and shall be paid from the retirement fund maintained in accordance with this chapter. Notwithstanding anything in this Code or in any ordinance to the contrary, no persons appointed to any position or class of positions on or after the effective date of this chapter shall become subject to Chapter 3.32 or be entitled to any benefits payable pursuant to Chapter 3.32.

(Prior code § 2903.84; Ord. 27768.)

**Part 3  
RETIREMENT BOARD AND OTHER OFFICERS**

Sections:

- 3.36.300 Retirement board - Administration and control authority.
- 3.36.310 Retirement board - Powers and duties.
- 3.36.320 Retirement board - Additional powers and duties.
- 3.36.330 Retirement board - Meetings - Quorum - Voting.

- 3.36.340 Retirement board - Secretary - Retirement and benefits administrator duties.
- 3.36.350 Rules and regulations - Scope.
- 3.36.360 Duties of other city officers.
- 3.36.370 Determination of employee eligibility and determination and modification of benefits.
- 3.36.380 Medical service and advice.
- 3.36.385 Authority to secure other contractual services.
- 3.36.400 Actuarial evaluation and investigation - Interest rates.
- 3.36.410 Mortality, service and other tables - Revision of rates of contribution.
- 3.36.420 Determination of age, service or compensation where records are inadequate.
- 3.36.430 Accounts and recordkeeping.
- 3.36.440 Annual report.
- 3.36.450 Hearings - Authorized when.
- 3.36.460 Power to administer oaths and issue subpoenas.
- 3.36.470 Hearings - Rules and procedures.
- 3.36.480 Direct transfers of eligible rollover distributions.
- 3.36.485 Review of proposed amendments.
- 3.36.490 Direct trustee-to-trustee transfers.

### **3.36.300 Retirement board - Administration and control authority.**

The retirement system established pursuant to the provisions of this Chapter 3.36 and the retirement fund provided for in this Chapter 3.36 shall be managed, administered and controlled by that certain board of administration entitled "board of administration for police and fire department retirement plan" which has been established pursuant to the provisions of Chapter 2.08, Part 12 of the San José Municipal Code.

(Prior code § 2903.100.)

### **3.36.310 Retirement board - Powers and duties.**

The retirement board shall have all the powers and duties given to it in this Chapter 3.36, including

but not limited to, the powers and duties specified in this Part 3. Notwithstanding anything in this part to the contrary, the retirement board shall not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

(Prior code § 2903.101; Ord. 28886.)

### **3.36.320 Retirement board - Additional powers and duties.**

The retirement board shall have any and all other powers imposed upon or granted to it by the provisions of Article XV of the Charter of the city, or by any other provisions of this Chapter 3.36.

(Prior code § 2903.113.)

### **3.36.330 Retirement board - Meetings - Quorum - Voting.**

The retirement board shall hold regular meetings monthly at a time and place to be determined by the board. Special meetings may be held at any time and place upon the call of its president or of a quorum of the members of the board. Until at least seven seats on the board are filled for the first time after adoption of the ordinance increasing the board to nine members, four members of the board shall be necessary to constitute a quorum for the board to take action, although a lesser number may adjourn from time to time. Once seven seats on the board have been filled for the first time after adoption of the ordinance increasing the board to nine members, a majority of the total number of member seats, filled or vacant, shall be necessary to constitute a quorum, although a lesser number may adjourn from time to time. The board shall act by resolution, order or motion. All meetings shall be open and public.

(Prior code § 2903.114; Ord. 28787.)

### **3.36.340 Retirement board - Secretary - Retirement and benefits administrator duties.**

The director of retirement services shall be the secretary of the retirement board. The director shall keep a record of all proceedings of the board in the same manner as is required for the keeping of records of all proceedings of the city council.

(Prior code § 2903.115; Ords. 21624, 26034.)

### **3.36.350 Rules and regulations - Scope.**

Subject to the provisions of this Chapter 3.36 and to all applicable provisions of the Charter of the city, the board may make and enforce reasonable rules and regulations for the administration, management and control of the provisions of this chapter and of the retirement system and fund provided for herein; and each member of this system, each person retired thereunder and each person or estate entitled to or receiving any benefits under the provisions of this chapter is and shall be subject to the provisions of this chapter and to said rules and regulations.

(Prior code § 2903.102.)

### **3.36.360 Duties of other city officers.**

The city treasurer and the city auditor shall perform such duties with respect to this retirement system and the retirement fund as the board of administration may from time to time direct, and all such other duties as may be required of such officers by other provisions of this chapter or by the Charter of the city. No additional compensation shall be received by any of said officers for said services.

(Prior code § 2903.116.)

**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. 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.

(Prior code § 2903.103.)

**3.36.380 Medical service and advice.**

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 discharge its duties respecting matters involving disability or death or both. 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.

(Prior code § 2903.104; Ord. 25084.)

**3.36.385 Authority to secure other contractual services.**

A. In addition to the authority to enter into contractual arrangements for medical services as provided in Section 3.36.380 and the authority to enter into contractual arrangements for investment related services as provided in Part 4 of this chapter, the board is authorized to select, enter into contractual arrangements with, and pay reasonable compensation to persons to perform the following services for the board:

1. Actuarial services.
2. Auditing services.
3. Investment manager search services.
4. Investment performance evaluation services.
5. Proxy voting services.
6. Other consultant services which the board deems necessary to carry out its duties and responsibilities under this retirement plan.

B. The contracts described in subsection A. shall be entered into in the name of the board of administration for the police and fire department retirement plan.

(Ords. 24723, 25084.)

**3.36.400 Actuarial evaluation and investigation - Interest rates.**

The board shall keep in convenient form such data as is necessary for actuarial evaluation of this system. As of April 1, 1962, and thereafter at the end of periods not to exceed five years, the retirement board shall cause to be made an actuarial investigation into the mortality, disability, service and compensation experience of members and persons receiving benefits and an actuarial evaluation of the assets and liabilities of this system.

(Prior code § 2903.105.)

### **3.36.410 Mortality, service and other tables - Revision of rates of contribution.**

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 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 shall at all times be in the ratio of three to eight (3:8).

(Prior code § 2903.106.)

### **3.36.420 Determination of age, service or compensation where records are inadequate.**

Whenever it is impractical for the retirement board to determine from the records of the city, and from other evidence before it, the length of service, the compensation or the age of any member of this retirement system, then in such event the board may estimate for the purposes hereof such length of service, compensation or age. Each employee shall file with the board such information respecting his age, length of service or compensation as the board may require.

(Prior code § 2903.107.)

### **3.36.430 Accounts and recordkeeping.**

The retirement board shall keep any and all records and accounts reasonably necessary for the management, administration or control of this retirement system, including, but not limited to:

- A. Records of all contributions made by any and all members of the system or made by the city;
- B. Records of all moneys in the retirement fund and of the investment and disposition of such moneys; and
- C. The names of all persons receiving benefits under the retirement system, the nature of such benefits and the amounts paid to each therefor.

(Prior code § 2903.108; Ord. 25992.)

### **3.36.440 Annual report.**

A. Within ninety days after the end of each fiscal year, or if later, within thirty days after submission to the city council of an audited annual fiscal report of the retirement system's funds, the board shall submit to the city council and city manager an annual report for such preceding fiscal year. The report shall contain a statement of the board's work for such period, and shall show all receipts and disbursements and the balance remaining in the retirement fund after such payments. The report may contain recommendations for or against changes in the retirement system.

B. A copy of such annual report shall also be sent to the headquarters of the police department and to each city firehouse within the city.

(Prior code § 2903.110; Ords. 18767 § 2, 1977, 25992.)

### **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 days from and after the determination of the board. The board shall within thirty days from and after such request hold a hearing, after which hearing the board may affirm, reverse or modify its prior determination.

(Prior code § 2903.112.)

### **3.36.460 Power to administer oaths and issue subpoenas.**

The retirement board shall have the power to administer or require oaths and affirmations, to issue subpoenas to compel the attendance of witnesses, or to compel by subpoena the production of books, papers and documents and to take and hear testimony concerning any matter or thing pending before the board. If any person so subpoenaed neglects or refuses to appear or to produce any book, paper or document as required by said subpoena, or shall refuse to testify before the board or answer any questions which a majority of such board shall decide to be proper and pertinent, the board shall have the power to initiate proceedings in the proper courts to have such person be declared guilty of contempt. The chief of police shall, upon request of the board, have such subpoenas served by a police officer or officers.

(Prior code § 2903.111.)

### **3.36.470 Hearings - Rules and procedures.**

Whenever the board in its discretion holds any hearing or hearings on any matter, or is required by any of the provisions of this chapter to hold any hearing or hearings shall be conducted in accordance with rules or regulations adopted by the board. The rules of evidence generally applicable in the courts shall not be binding upon the board; hearsay and any and all other evidence which the board deems relevant and proper may be admitted and considered. No person shall have any right to demand or require that any or all evidence be sworn, although the board may permit or require all or any evidence to be sworn if it so desires. No person shall have any right to subpoena, nor to require the board to subpoena, any witness or witnesses nor any evidence, although the board may subpoena witnesses or evidence if it so desires. No person shall have any right to cross-examine any witness or witnesses, although the board may permit, in its discretion, such cross-examination as it deems necessary or advisable. Any and all rights or privileges granted to any and all persons by the provisions of this chapter are and shall be subject to the provisions and limitations of this Section.

(Prior code § 2903.117.)

### **3.36.480 Direct transfers of eligible rollover distributions.**

A. If, under the provisions of this chapter, a person becomes entitled to a distribution which is an eligible rollover distribution, the person may elect to have the distribution or any portion thereof paid

directly to an eligible retirement plan specified by the person.

B. The election made pursuant to this section shall be in accordance with the terms and conditions established by the board.

C. Upon the exercise of the election by a person pursuant to this section, the distribution from the retirement fund of the amount designated by the person, once distributable under the provisions of this chapter, shall be made in the form of a direct transfer to the eligible retirement plan so specified.

D. For the purposes of this section, "eligible rollover distribution" means a distribution from the retirement fund which constitutes an eligible rollover distribution within the meaning of Section 401(a)(31)(C) of the Internal Revenue Code, consisting of any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Section 415 of the Internal Revenue Code or any distribution that is reasonably expected to total less than two hundred dollars during the year. Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only: (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. For purposes of this Section 3.36.480, "spouse" has the meaning set forth in federal law.

E. For purposes of this section, "eligible retirement plan" means a plan which constitutes an eligible retirement plan within the meaning of Section 401(a)(31)(D) of the Internal Revenue Code, consisting of one or more of the following:

1. An individual retirement account described in Section 408(a) of the Internal Revenue Code;
2. An individual retirement annuity described in Section 408(b) of the Internal Revenue Code;
3. An annuity plan described in Section 403(a) of the Internal Revenue Code;
4. A qualified trust described in Section 401(a) of the Internal Revenue Code;
5. Effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;
6. Effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan

from the retirement plan; or

7. Effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

F. For purposes of this section, "distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective July 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

(Ords. 24814, 28886.)

### **3.36.485 Review of proposed amendments.**

A. Except as provided in subsection B., prior to the adoption of any ordinance amending the police and fire department retirement plan, a copy of the proposed ordinance shall be provided to the board for the board's review and recommendation.

1. The board may, but is not required to, submit a report or recommendation on the proposed amendment to the city council.

2. If the board declines or fails to submit a report or recommendation on a proposed amendment within sixty days of receipt of the proposed ordinance by the secretary to the board, the city council may proceed to adopt or not adopt the ordinance without first receiving a report or recommendation from the board.

3. Nothing in paragraph 2. shall be deemed to preclude the board from thereafter submitting a report or recommendation to the city council.

B. In any case where the city council finds that there is a need to adopt an ordinance amending the system within a time period which would not allow for a sixty-day review period, the council may act on the ordinance without first submitting it to the board, and the following procedures shall apply:

1. At the time the council passes the ordinance for publication of title or, in the case of an urgency ordinance, at the time the council adopts the ordinance, the council shall refer the ordinance to the board for study and consideration.

2. Following its study, the board may submit to the council a recommendation that the council take one or more of the following actions:

a. Repeal the ordinance.

b. Readopt the provisions of the ordinance with such amendments, additions or changes, if any, as the board may wish to recommend.

c. Make such other changes or provisions as the board may recommend.

3. Upon receipt of the board's recommendation, the council may implement or disapprove the

recommendation.

(Ords. 24922, 24979.)

### **3.36.490 Direct trustee-to-trustee transfers.**

A. If a member of this plan becomes eligible to purchase permissive service credit in this plan and elects to make such purchase through a lump sum deposit, the plan will accept a direct trustee-to-trustee transfer of funds from an eligible deferred compensation plan as defined in Section 457(b) of the Internal Revenue Code if such transfer is:

1. For the purchase of permissive service credit as defined in Section 415(n)(3)(A) of the Internal Revenue Code; or

2. A redeposit of withdrawn contributions pursuant to Section 3.36.710.

B. If required by the provisions of the Internal Revenue Code or the regulations promulgated under the Internal Revenue Code, the plan will account separately for funds received through a direct trustee-to-trustee transfer from an eligible deferred compensation plan.

(Ord. 26829.)

## **Part 4 RETIREMENT FUND**

Sections:

3.36.500 Establishment - Name - Continuation of Chapter 3.32 fund.

3.36.510 Administration and investment - Board authority.

3.36.520 Custodian.

3.36.530 Investment of funds - Delegation of authority.

3.36.540 Investment of funds - Conditions and limitations.

3.36.545 Investment - Security loan agreements - Conditions.

3.36.550 Investments - Real estate.

3.36.560 Unclaimed or canceled checks.

3.36.570 Investment counseling - Restrictions.

3.36.575 Separate medical benefits account.

3.36.580 Supplemental retiree benefit reserve.

**3.36.500 Establishment - Name - Continuation of Chapter 3.32 fund.**

In order to continue in force and make effectual pensions and retirements already existing or that may be granted in the future in favor of members of the retirement plan heretofore established pursuant to the provisions of Chapter 3.32, and in order to carry out the provisions of this chapter, the retirement fund heretofore created and existing pursuant to Chapter 3.32, and pursuant to Section 78a of the City Charter, is hereby continued, and is hereby made a combined or common fund for the police and fire department retirement plan established by this Chapter 3.36 and by Chapter 3.32, with the elements of the plan in each chapter being a component of a single retirement plan. All contributions, income and other moneys which are required, pursuant to the provisions of this chapter, to be paid to this retirement plan or into the retirement fund, shall be paid into and held in said fund; and all benefits or allowances payable to any member or beneficiary under this retirement plan shall be paid from said fund. Said combined or common fund shall be known as the "police and fire department retirement fund."

(Prior code § 2903.125; Ords. 25084; 27768.)

### **3.36.510 Administration and investment - Board authority.**

The retirement board shall have the exclusive control of the administration and investment of the retirement fund.

(Prior code § 2903.126; Ord. 25084.)

### **3.36.520 Custodian.**

A. Except as provided in subsection B., the city director of finance is and shall be the custodian of the retirement fund, subject to the exclusive control of the board as to the administration and investment of the same.

B. The board may enter into contractual arrangements with California banks or with national banking associations to provide master custody services with respect to the assets of the retirement fund. Such contracts shall be entered into in the name of the board of administration for the police and fire department retirement plan.

C. All payments from the fund shall be made by the city director of finance upon demands made by the retirement board.

D. All amounts received by the board or by the system under the provisions of this chapter shall be deposited with the custodian bank or the city director of finance to the credit of the retirement fund, including but not limited to any and all contributions, any and all interest earned on bank deposits, and any and all other income of this system or of the fund.

(Prior code § 2903.127; Ord. 25084.)

### **3.36.530 Investment of funds - Delegation of authority.**

A. Without limiting the authority of the board itself to invest and reinvest the moneys of the retirement fund as provided in Section 3.36.540, the board may adopt an investment resolution or resolutions containing detailed investment guidelines, consistent with Section 3.36.540. While the resolution or resolutions are in effect, investments consistent with such guidelines may be made by an officer of the board, an officer or employee of the city, or a qualified investment advisor who has entered into a contractual arrangement pursuant to Section 3.36.560, provided that such officer, employee or advisor has been delegated such authority by the board and such officer, employee or advisor has been designated by name in the investment resolution or resolutions. Any transactions made pursuant to the foregoing provisions of this section shall be reported to the board on a monthly basis.

B. Without limiting the authority of the board itself to invest and reinvest the moneys in the retirement fund as provided in Section 3.36.540 or to delegate authority for investment and reinvestment as provided in subsection A. of this section, the board may, by resolution, designate a person by name to make short-term investments and reinvestments of moneys in the retirement fund and to purchase, sell, or exchange such short-term investments and reinvestments of moneys in the retirement fund and to purchase, sell, or exchange such short-term investments. For purposes of this subsection, "short-term investments" shall consist of the following:

1. Repurchase agreements and reverse repurchase agreements;
2. Short-term investment fund;
3. Investments which are in commercial paper, United States Treasury bills, bankers' acceptances, negotiable certificates of deposit, or similar evidences of indebtedness; and
  - a. Which are of no more than one year in duration; and
  - b. Which are liquid in nature; and
  - c. Which are not investments in bonds or preferred or common stock.

The person to be so designated by the board shall be either a member of the board, a qualified investment advisor who has entered into a contractual arrangement pursuant to Section 3.36.560, or an officer or employee of the city. The person so designated shall serve in said capacity at the pleasure of the board and shall report monthly to the board on such short-term investments.

Moneys to be invested pursuant to this Subsection B. shall be only those moneys not then required for investments made pursuant to Section 3.36.540 and Subsection A. of this section.

(Prior code § 2903.129; Ords. 20115, 21076, 21305, 23560, 25084.)

### **3.36.540 Investment of funds - Conditions and limitations.**

The board shall invest and reinvest the moneys in the retirement fund in accordance with the following standards:

A. The assets of the retirement plan are trust funds and shall be held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the plan. The assets of the retirement plan must not revert, and no contributions shall be permitted to be returned to the employers, except as permitted by Revenue Ruling 91-4.

B. The board shall discharge its duties with respect to the plan solely in the interest of, and for the exclusive purposes of providing benefits to, members of the plan and their beneficiaries, maintaining the actuarial soundness of the plan, and defraying reasonable expenses of administering the plan. The board's duty to the members and their beneficiaries shall take precedence over any other duty.

C. The board shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.

D. The board shall diversify the investments of the plan so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances, it is clearly prudent not to do so.

E. The retirement plan may participate under Section 401(a)(24) of the Internal Revenue Code in a qualified group trust that meets the requirements of Section 401(a) of the Internal Revenue Code in accordance with Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67.

(Prior code § 2903.128; Ords. 19989, 21145, 21607, 22509, 23560, 25084, 28886.)

### **3.36.545 Investment - Security loan agreements - Conditions.**

A. The retirement board may enter into contractual arrangements with broker-dealers and with California or national banks for such brokers-dealers or banks to provide security lending services pursuant to security loan agreements. Such contracts shall be entered into in the name of the board of administration for the police and fire department retirement plan.

B. For the purposes of this section, "security loan agreement" and "marketable securities" shall be defined as follows:

1. "Security loan agreement" means a written contract whereby a legal owner, the lender, agrees to lend specific marketable corporate or government securities for a period not to exceed one year. The lender retains the right to collect from the borrower all dividends, interest, premiums, rights, and any other distributions to which the lender would otherwise have been entitled. The lender waives the right to vote the securities during the term of the loan. The lender may terminate the contract upon not more than five business days' notice as agreed and the borrower may terminate the contract upon not less than two business days' notice as agreed. The borrower shall provide collateral to the lender in the form of cash, bonds or other interest-bearing notes and obligations of the United States or irrevocable letters of credit from California or national banks approved by the board. Such collateral shall be in an amount equal to at least one hundred two percent of the market value of the loan securities as agreed. The lender shall monitor the market value of the loaned securities daily. The loan agreement shall provide for payment of additional collateral on a daily basis, or at such times as the value of the loaned securities increases, to agreed-upon ratios. In no event shall the amount of the collateral be less than the market value of the loaned securities.

2. "Marketable securities" means securities that are freely traded on recognized exchanges or market places.

C. Any contractual arrangements entered into pursuant to this section shall require all of the following:

1. Maintenance of detailed records of all security loans.

2. Development of controls and reports to monitor the conduct of the transactions.

3. Publication of the net results of the security loan transactions separate from the results of other investment activities.

(Ords. 21864, 25084.)

### **3.36.550 Investments - Real estate.**

A. The board may:

1. Acquire, hold for investment or sell commercial, industrial and residential real estate, and real estate related debt instruments in the following forms:

- a. In its own name;
- b. In common ownership with the Federated City Employees Retirement System;
- c. Through a title holding corporation or trust satisfying the requirements of Internal Revenue Code Section 501(c)(25);
- d. Through a title holding corporation satisfying the requirements of Internal Revenue Code Section 501(c)(2); or
- e. Through a Limited Liability Company;

2. Lease real property owned by the board for any lawful purpose and for terms which may extend beyond the duration of this retirement plan;

3. Create restrictions and easements affecting the real property owned by the board; and

4. Exercise all other rights, privileges and powers which an owner of real property would have, unless otherwise prohibited by the terms of this retirement plan or by other applicable law.

B. The board shall take title as follows:

1. Title to all commercial, industrial and residential real estate and all real estate related debt instruments acquired by the board on behalf of this retirement plan shall be taken and held in one of the following forms:

a. Directly by the board of administration in the name of board of administration as trustee for the police and fire department retirement fund;

b. Through a title holding corporation or trust satisfying the requirements of Internal Revenue Code Section 501(c)(25);

c. Through a title holding corporation satisfying the requirements of Internal Revenue Code Section 501(c)(2); or

d. Through a Limited Liability Company.

2. Title to all commercial, industrial and residential real estate and all real estate related debt instruments acquired by the board on behalf of this retirement plan to be held in common ownership with the Federated City Employees Retirement System shall be taken and held in the following name: board of administration as trustee for the Federated City Employees Retirement Fund, as to an undivided fifty percent interest, and the board of administration, as trustee for the police and fire department retirement fund, as to an undivided fifty percent interest, together as tenants in common.

C. For the purposes of this Section 3.36.550, a title holding corporation or trust satisfying the requirements of Internal Revenue Code Section 501(c)(25), a title holding corporation satisfying the requirements of Internal Revenue Code Section 501(c)(2), or a Limited Liability Company may be such a corporation, trust or company established by the board.

(Prior code § 2903.130; Ords. 25084, 25951, 27595, 28088.)

### **3.36.560 Unclaimed or canceled checks.**

Notwithstanding any provisions in this Code to the contrary, whenever any check drawn against the retirement fund in payment of accumulated contributions or any benefits remains unclaimed or the claimant cannot be found, the proceeds of such check shall be redeposited in the retirement fund and held for the claimant without any further accumulation of interest, and such redeposit shall not operate to reinstate the membership of the claimant in this system. If such proceeds, whether heretofore or hereafter redeposited, are not claimed within four years after the date of redeposit, they shall revert to and become a part of the accumulated contributions of the city, held in the retirement fund to meet the liabilities of the city to the retirement system. The board may at any time, after revision of said proceeds to the city, and upon receipt of proper information satisfactory to it, return such proceeds so held for the city, to the credit of the claimant, to be administered in the manner provided under this system.

(Prior code § 2903.130; Ord. 25084.)

### **3.36.570 Investment counseling - Restrictions.**

A. The board may enter into contractual arrangements with any person or persons or association or associations, who meet the requirements of subsection B. or C., to provide counsel to the board with respect to the board's policies of investing and reinvesting of moneys in the retirement fund. Such contracts shall be entered into in the name of the board of administration for the police and fire department retirement plan.

B. Any person or association who provides services to the board with regard to financial securities:

1. Shall be a person or association whose principal business consists of investment counseling services; and
2. Shall be registered as an investment adviser under such laws as may require such registration.

C. With respect to real estate advisors, the board shall enter into contractual arrangements only with persons or associations whose principal officers are engaged in the business of advising and evaluating commercial, industrial or residential real estate investments, mortgage banking, or property management, and which are licensed as real estate brokers by the State of California.

(Ords. 21607, 25084, 25553.)

### **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 this plan, and all earnings and interest attributable to such contributions, 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. Contribution rates to fund the benefits for sickness, accident, hospitalization, dental or medical expenses shall be established by the board as determined by the board's actuary and shall be borne by

the city and the 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.
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.

D. 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.

E. 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 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).

F. 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.

G. 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 to the medical benefits account.

H. 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.

(Ords. 27768, 28332, 28886.)

### **3.36.580 Supplemental retiree benefit reserve.**

#### **A. Establishment and Purpose.**

1. The board shall establish a reserve in the retirement fund to be known as the supplemental retiree benefit reserve or SRBR.
2. The purpose of the SRBR shall be to provide a source of funding for benefits to supplement those benefits otherwise provided by this plan or the Chapter 3.32 plan to former members of such plans who are receiving benefits, survivors of such former members, and survivors of members who die prior to receiving benefits from this plan.

#### **B. Funding.**

1. The initial amount allocated to the SRBR shall be ten percent of the plan's prefunded actuarial accrued liability as of June 30, 1999, as determined by the board's actuary. The board's actuary shall calculate the initial funding amount without regard to any plan amendments that became



the distribution date and survivors (of such former members or of members who died prior to receiving benefits from this plan) who are receiving benefits as of said June 30.

5. The board shall develop a methodology for distributions from the SRBR such that supplemental benefits provide a greater benefit for those persons who have been in benefit status for a longer period of time and those persons receiving the lowest monthly benefit payments. Upon the approval of the methodology by the city council, the board shall make distributions in accordance with such methodology.

6. Except as required by Subsection C. or in the case of the termination of this plan, the board shall not transfer or distribute funds in the SRBR if such transfer or distribution would reduce the SRBR principal.

E. Definitions. For the purpose of this Section 3.36.580, the terms listed herein shall have the following meanings:

1. "Excess earnings" means the earnings of the retirement fund that remain after interest has been credited to the SRBR as provided in Paragraph B.2. and the actuarial assumed earnings rate adopted by the board (and in effect on June 30 of the year in which the SRBR calculation is performed) has been credited to other reserves.

2. "Former member" means a person who has retired under the provisions of this chapter or Chapter 3.32 or a person who separated from city service without retiring but left his or her contributions on deposit in the retirement fund.

3. "Investment earnings" means the earnings of the retirement fund during the twelve months ending June 30 as determined by the board's actuary using the same methodology used to determine the value of assets for the actuarial valuation. In the case of investment earnings attributable to the SRBR, the application of the methodology shall begin as of July 1, 1999.

(Ords. 26416, 26536, 28848, 28915, 29059.)

## Part 5 SERVICE

### Sections:

- 3.36.600 Definitions and construction of provisions.
- 3.36.610 Service defined.
- 3.36.615 Purchase of service credit for federated city service.
- 3.36.620 Military leave of absence.
- 3.36.625 Compliance with USERRA and the HEART Act.
- 3.36.630 Credit for holidays, sick leave, vacation, or leave of absence.
- 3.36.640 Suspensions.
- 3.36.650 Exclusions - Part-time service.

- 3.36.660 Exclusions - Service performed on nonmonthly basis.
- 3.36.670 Exclusions - Absence without compensation.
- 3.36.680 Exclusions - Time on retirement.
- 3.36.690 Credit in two retirement systems.
- 3.36.700 Maximum annual credit.
- 3.36.710 Reentry into police or fire department after withdrawal or repayment of contributions - Option for prior service credit.
- 3.36.715 Special window period for repurchase of prior service credit.
- 3.36.717 Service credit for time on unpaid leave of absence.

### **3.36.600 Definitions and construction of provisions.**

Unless the context otherwise requires, the definitions set forth in this Part 5 govern the construction of Chapter 3.36.

(Prior code § 2903.150.)

### **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 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. or paragraph 3., below, the member files with the retirement board, on or before the ninetieth day immediately following the day he or she becomes a member of this system, a written notice of election re Federated 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, 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.** Time on leave of absence from city employment for monthly compensation, while engaged in the performance of military or naval duty for the United States of America in time of war; provided, however, that no member shall be entitled to credit for such time unless such member heretofore, or on or before the ninetieth day immediately following the effective date of this plan, or on or before the ninetieth day immediately following termination of such leave of absence or on or before the ninetieth day immediately following the date such person becomes a member of this system, whichever date is later, has filed or files with the retirement board a written election to have such time so credited to him or her and pays into the retirement fund, at the time 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 the amount they would be if he or she had been a member of and on active duty with the police department or fire department, in the class of position in the police department or fire department to which he or she shall have been appointed, during 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, and if the contributions payable by him or her as such member had been deducted from

his or her compensation and paid into the retirement fund during all such times.

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.

(Prior code § 2903.151; Ords. 23491, 25061, 26005, 26464, 28030.)

**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 service in accordance with Subsection D.4. 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 service may pay the contributions:

1. In one lump sum within sixty days from and after the date the member files the written notice of election re: federated 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 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 years; or
4. In a combination of a lump sum and installments.

E. Any member electing to pay contributions in installments to make the lump sum payment by pre-tax payroll deduction, 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 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 service.

I. If a member elects to purchase credit for prior federated 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 service.

(Ords. 26005, 28886.)

### **3.36.620 Military leave of absence.**

A. Anything elsewhere in this Part 5 to the contrary notwithstanding, if in time of war or national emergency as proclaimed by the President or Congress, or when any of the Armed Forces of the United States are serving outside of the United States or their territories, pursuant to order or request of the United Nations, or while any National Conscription Act is in effect, a member of this retirement system leaves or has left his city office or position prior to the end of the war or the termination of the national emergency, or during the effective period of such order or request of the United Nations, or prior to the expiration of the National Conscription Act, to join the Armed Forces of the United States and does or did without unreasonable and unnecessary delay join the Armed Forces or, being a member of any reserve force or corps of any of the Armed Forces of the United States or of the militia of the State of California, is or was ordered to duty therewith by competent military authority and served or serves in compliance with such orders, then in that event, subject to the conditions and limitations hereinafter set forth, the term "service," as used in this Chapter 3.36, means and includes the period of time from the date he leaves or has left his city office or position for said purpose to the date he returns to and reenters upon the office or position theretofore left by him or any other city office or position, the holding of which entitles a city employee to become a member of this retirement system; provided and upon condition that:

1. He is released, separated or discharged under conditions other than dishonorable; and
2. He does, in fact, return to and reenter upon his said office or position or any other city office or position the holding of which entitles a person to become a member of this retirement system, within three months after termination of his active service with the armed forces, but not later than six months after the end of the war or national emergency or military or police operations under the United Nations or after the Governor finds and proclaims that, for the purposes of Section 395.1 of the Military and Veterans Code of the state, the war, national emergency or United Nations military or police operation no longer exists, or after the expiration of the National Conscription Act; and
3. He does not fail to return to and reenter upon said city office or position within twelve months after the first date upon which he could terminate or cause to be terminated his active service with the Armed Forces of the United States or of the militia of the state;
4. He was a member of this retirement system at the time he left his above-mentioned city office or position to join said armed forces; and
5. He was not entitled to receive full compensation from the city during his said absence; and
6. Said absence occurs or occurred on or after December 8, 1941.

B. Upon his return to and reentry upon the abovementioned city office or position, or within ninety days from and after the effective date of this section, if said person returned and reentered prior to the effective date of this section, the city shall contribute to the retirement fund an amount of money equal to the amount of all contributions which city and said person would have had to pay into said fund if said person had not been so absent. For the sole purpose of calculating said amount of money, the amount of monthly compensation which said person would have received from the city during said period of absence if he had not been absent as aforesaid shall be deemed to be the monthly compensation which said person was earning immediately prior to the commencement of his absence plus any increase in compensation which said person was earning immediately prior to the commencement of his absence plus any increase in compensation which he would have received during said time for such work under any applicable ordinances or resolutions. No moneys contributed or paid by city pursuant to this section shall be deemed to be contributions or accumulated contributions of said person, and in no event shall

said employee ever be entitled to all or any part of them upon withdrawing his accumulated contributions.

C. A person who leaves or has left, in the abovementioned times and circumstances, his city office or position for the above-mentioned purpose shall be deemed, for the purpose of this retirement system, to be on military leave of absence without compensation during the above-specified period of time, during which he is absent, which is to be included, as above prescribed, in the definition of such person's "service"; and such person's membership in this system, during such period of time, shall be deemed suspended as provided in Part 11 of this chapter, it being the intention that, anything hereinabove to the contrary notwithstanding, the suspension and other provisions of Part 11 shall still apply in the above situation.

D. Any abovementioned person who shall have made any contributions to the retirement system for any abovementioned periods of absence occurring in or after December 8, 1941, shall be reimbursed from the retirement fund the amount of contributions so made by him for such periods of absence.

(Prior code § 2903.151a.)

### **3.36.625 Compliance with USERRA and the HEART Act.**

A. Effective December 12, 1994, notwithstanding any other provision of the retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

B. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in 38 U.S.C. 43), to the extent required by Section 401 (a)(37) of the Internal Revenue Code, survivors of a member in the retirement plan, are entitled to any additional benefits that the retirement plan would provide if the member had resumed employment and then died (as a non-service connected death) that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes, but such period of service shall not be counted for benefit accrual purposes.

C. Beginning January 1, 2009, to the extent required Section 414(u)(12) of the Internal Revenue Code, an individual receiving a differential wage payment (as defined under Section 3401(h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(Ord. 28886.)

### **3.36.630 Credit for holidays, sick leave, vacation, or leave of absence.**

Except as otherwise provided in this chapter, in computing the service with which a member is entitled to be credited under this chapter, time during which the member is excused from working because of holidays, sick leave or disability leave during which he receives compensation under Section 3.12.010, vacation or leave of absence during which he continues to receive full monthly compensation, shall be included; provided, however, that the time during which a person is retired for service or disability shall not constitute service as said term is used in this chapter, and no person shall be entitled to credit with service for or during such time.

(Prior code § 2903.152.)

**3.36.640 Suspensions.**

Time, occurring after the effective date of this chapter, during which a member is temporarily suspended from city service for misconduct, incompetency or failure to perform his duties under or observe the rules and regulations of the department or office in which he is employed, shall be credited to such member as service, provided and upon condition that such member, or his surviving spouse, child or children or estate, shall contribute and pay into the retirement fund, for such time, on or before the sixtieth day from and after the date he returns to duty, or the date he resigns or is discharged or dies if he does not return to duty, any and all contributions which he would have been required to pay into or contribute to the said fund during such time if he were not suspended but was still actively employed for full compensation in the position from which he was temporarily suspended, together with an additional amount equal to what the city would have contributed for and during such time, because of his service during such time, if he had not been suspended. If such member shall return to duty, the abovementioned contributions shall be deducted, with or without his consent, from his salary. In no event shall a member be credited with more than thirty days' service for any one suspension, nor more than forty-five days' service for all suspensions in any one year.

(Prior code § 2903.156.)

**3.36.650 Exclusions - Part-time service.**

The word "service," as used in the chapter, does not and shall not be deemed to include any service rendered on a part-time basis. An employee is serving on a part-time basis when he engages in his duties for less time than is required of employees serving on a full-time basis, even though he is subject to call at any or all times.

(Prior code § 2903.153.)

**3.36.660 Exclusions - Service performed on nonmonthly basis.**

The word "service," as used in this chapter, does not and shall not be deemed to include any service rendered or paid for on a per diem, per hour or any other basis other than a monthly basis, even though the person rendering such service may be subject to call at any or all times.

(Prior code § 2903.154.)

**3.36.670 Exclusions - Absence without compensation.**

Except as otherwise provided in Section 3.36.640, and except for disability leave of absences for which compensation is paid under Section 3.12.010, time during which a member is absent from city service without full monthly compensation, including, but not by way of limitation, leaves of absence without full monthly compensation and layoffs, shall not be allowed or credited to a member in computing service:

(Prior code § 2903.155.)

**3.36.680 Exclusions - Time on retirement.**

Except as may be otherwise expressly provided elsewhere in this chapter, time during which a person is on retirement for service or for disability shall not be allowed or credited to a member in computing service.

(Prior code § 2903.157.)

### **3.36.690 Credit in two retirement systems.**

The word "service," as used in this chapter shall not include any service for which a member receives any credit under any other retirement system or plan supported wholly or in part by any funds of the City of San José.

(Prior code § 2903.158.)

### **3.36.700 Maximum annual credit.**

Credit for more than twelve months of service shall not be allowed for service rendered in any calendar or fiscal year.

(Prior code § 2903.159.)

### **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 1. 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 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 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 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 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 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, if a member who is employed in the police 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, 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.

(Prior code § 2903.160; Ords. 22017, 26005, 28030, 28886.)

### **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.

(Ord. 26005.)

### **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.

B. 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 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.

C. 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.

D. 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 interest rate and life expectancy tables used in determining the actuarial equivalents of the optional settlements provided under Part 9.5 of this chapter.

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.

E. 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 D:

1. In one lump sum within sixty 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 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 years; or

4. A combination of a lump sum and installments.

F. 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.

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. If a member elects to purchase service credit for unpaid leave of absence and pay the moneys specified in Subsection D. 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.

J. If a member elects to purchase service credit for time on unpaid leave of absence and pay the moneys specified in Subsection D., 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.

K. 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.

(Ords. 28030, 28886.)

## Part 5.5 BENEFITS GENERALLY

### Sections:

- 3.36.730 Benefit limitations.
- 3.36.735 Compensation limitation.
- 3.36.740 Service credit eligibility under plan-approved domestic relations orders.
- 3.36.745 Benefit clarifications.
- 3.36.746 Minimum distributions.
- 3.36.747 Vesting.

### 3.36.730 Benefit limitations.

A. General. Notwithstanding any other law, the benefits payable to any person who becomes a member of this plan on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code as applicable to governmental plans and as set forth in this Section 3.36.730.

B. Prior to January 1, 1990. Notwithstanding any other law, the benefits payable to any person who became a member of this plan prior to January 1, 1990, shall be limited as provided in Section 415 (b)(10) of the Internal Revenue Code to be no less than the accrued benefit of the member determined without regard to any benefit increases pursuant to any amendment of this plan adopted after October 14, 1987.

C. Participation in other qualified plans: aggregation of limits. 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 member's employer in this plan 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.

D. Basic 415(b) limitation.

1. Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

2. For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with treasury regulations.

E. Adjustments to basic 415(b) limitation for form of benefit.

1. If the benefit under the plan is other than the form specified in Subsection D.2., then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in treasury regulations.

2. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date as specified in Subsection c. below, or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

a. For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply (i.e., a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

i. The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

ii. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code);

b. For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies (i.e., a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

i. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

ii. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one-half percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

iii. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the thirty-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

c. The actuary may adjust the 415(b) limit at the annuity starting date in accordance with the above Subsections a. and b.

F. Benefits for which no adjustment of 415(b) limit is required. For purposes of this section, the following benefits shall not be taken into account in adjusting these limits:

1. Any ancillary benefit which is not directly related to retirement income benefits;
2. That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
3. Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and treasury regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

**G. Other adjustments in 415(b) limitation.**

1. In the event the member's retirement benefits become payable before age sixty-two, the limit prescribed by this section shall be reduced in accordance with treasury regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (as adjusted) annual benefit beginning at age sixty-two.

2. In the event the member's benefit is based on at least fifteen years of service as a full-time employee of any police or fire department, on fifteen years of military service, or on any combination of these two types of service, the adjustments provided for in Subsection 1. above shall not apply.

3. The reductions provided for in Subsection 1. above, shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

**H. Less than ten years of service adjustment for 415(b) limitations.** The maximum retirement benefits payable to any member who has completed less than ten years of participation shall be the amount determined under Subsection D. multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

**I. Ten thousand dollar limit.** Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

**J. Effect of COLA without a lump sum component on 415(b) testing.** Effective on and after January 1, 2008, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "limit") to a member with no lump sum benefit, the following shall apply:

1. A member's applicable limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under Section 3.44.150;

2. To the extent that the member's annual benefit equals or exceeds the limit, the member shall no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the limit; and

3. Thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under Section 3.44.150, shall be tested under the then applicable benefit limit, including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

**K. Reduction of benefits priority.** Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits, and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the

agreement of the plan and the plan administrator of all other plans covering such member.

L. Notwithstanding Subsections A. and B. above, in the event Section 415 of the Internal Revenue Code is repealed, amended or qualified, by statute or otherwise, to permit all or any members of this plan or such members' beneficiaries to receive benefits that are not subject to the limitations set forth in Section 415, then immediately thereupon, such benefits shall be paid to such members or their beneficiaries.

M. Section 415(c) limitations on contributions and other additions. After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of forty thousand dollars (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or one hundred percent of the member's compensation. Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to picked-up employee contributions that are paid to the retirement system.

"Compensation" for purposes of this section, subject to annual limits under Section 401(a)(17) of the Internal Revenue Code, shall be as defined under Treasury Regulation Section 1.415(c).

(Ords. 23284, 23316, 28773, 28886.)

### **3.36.735 Compensation limitation.**

A. Notwithstanding any other law, except as provided in Subsection A.3 and B. below, for any person who becomes a member of this plan on or after January 1, 1996, the annual compensation taken into account under this plan shall be subject to the limitation set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended.

1. Effective with respect to plan years beginning on and after January 1, 1996, and before January 1, 2002, the annual compensation of a plan member which exceeds one hundred fifty thousand dollars (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code), shall be disregarded for purposes of computing employee contributions to or benefits due from the retirement plan. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen before the close of the year.

2. Effective with respect to plan years beginning on and after January 1, 2002, the annual compensation of a plan member which exceeds two hundred thousand dollars (as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code), may not be taken into account in determining benefits or employee contributions due for any plan year. "Annual compensation" means compensation during the plan year or such other consecutive twelve-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

3. As used in this Paragraph 3., the term "eligible member" means a person who first became a

member of the retirement plan prior to January 1, 1996. Pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that section, eligible members are not subject to the limits of Section 401(a)(17) of the Internal Revenue Code.

B. In the event Section 401(a)(17) of the Internal Revenue Code is repealed, amended or qualified, by statute or otherwise, to relieve all or any members of this plan described in Subsection A. from the limitation set forth in Section 401(a)(17), then, for those members no longer subject to the limitation, the annual compensation taken into account under the plan shall be calculated without such limitation.

(Ords. 25000, 28886.)

### **3.36.740 Service credit eligibility under plan-approved domestic relations orders.**

A. This section shall apply only in a case in which a court has ordered an amount or percentage of the service credit of a participant to be credited to an alternate payee's separate account pursuant to a plan-approved domestic relations order which meets the requirements of Section 3.36.3600 of this chapter.

B. Solely for the purpose of meeting the minimum service requirements for a participant's or eligible survivor's qualification for retirement benefits, monthly allowances, survivors' benefits, medical benefits and dental benefits under this Plan, the service credit of the participant shall be aggregated with the service credit awarded the alternate payee.

C. Solely for the purpose of determining whether the participant is eligible to retire in order that an alternate payee may begin distribution from the alternate payee's separate account under Section 3.36.3630, the service credit of the participant shall be aggregated with the service credit awarded the alternate payee.

D. For the purposes of this section, the terms "participant" and "alternate payee" shall have the meanings set forth in Part 17 of this chapter.

(Ords. 25989, 27712.)

### **3.36.745 Benefit clarifications.**

A. The purpose of the plan is to secure contributions for the city and from employees, and to distribute plan assets only to members, retired members, and their beneficiaries, pursuant to the plan's plan of benefits and to pay reasonable expenses of administration.

B. Prior to the satisfaction of all liabilities with respect to members, former members and their beneficiaries, no part of the plan's assets or income may be used for, or diverted to, purposes other than for the exclusive benefit of members, former members, or their beneficiaries.

C. In conformity with Section 410(a)(8) of the Internal Revenue Code, forfeitures arising from termination of employment, death, or for any other reason will not be applied to increase the benefits any member, former member, or beneficiary would otherwise have received from the plan at any time prior to the termination of the plan.

D. Upon termination of the plan or upon the complete discontinuance of contributions to the plan, the rights of each member, former member and beneficiary to benefits accrued to the date of such termination or discontinuance are non-forfeitable.

(Ords. 27768, 28886.)

### 3.36.746 Minimum distributions.

Notwithstanding any other provision of this chapter, the distribution of a retirement allowance shall be subject to a good faith interpretation of the minimum distribution rules of Section 401(a)(9) of the Internal Revenue Code and the regulations promulgated thereunder, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. In addition, payment of a member's retirement allowance shall commence no later than the later of the following:

- A. The April 1 following the end of the calendar year in which the member attains age seventy and one-half; or
- B. The April 1 following the end of the calendar year in which the member retires. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit in the form provided under the applicable provision of Part 6 of Chapter 36.
- C. The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member, or of the member and a designated beneficiary.
- D. For purposes of this section, the retirement plan pursuant to a qualified domestic relations order, may establish separate benefits for a member and nonmember.
- E. If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.
- F. If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be distributed within five years of his death, unless it is to be distributed in accordance with the following rules:
  - 1. If the member's surviving spouse is the sole designated beneficiary, the member's remaining interest in the plan is distributed or begins to be distributed by December 31 of the calendar year immediately following the calendar year in which the member died or by December 31 of the calendar year in which the participant would have attained age seventy and one-half, if later, and if the surviving spouse dies before the distribution to the surviving spouse begins, this section shall be applied as if the surviving spouse were the plan member; or
  - 2. If the member's surviving spouse is not the sole designated beneficiary, the member's remaining interest is to be distributed over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary; and such distribution begins no later than December 31 of the calendar year immediately following the calendar year of the member's death.
- G. The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.
- H. The death and disability benefits provided by the retirement system are limited by the incidental benefit requirement set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. These incidental death and disability benefits include any lump sum death benefits and any disability benefits. As a result, the total death or disability benefits payable may not exceed twenty-five percent of the cost for all of the members' benefits received from the retirement plan.

I. Notwithstanding the other provisions of this rule or the provisions of the treasury regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

(Ords. 27768, 28886.)

### **3.36.747 Vesting.**

A. A member shall be one hundred percent 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 vested in his or her accumulated contributions at all times.

C. An affected plan member shall be one hundred percent 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.

(Ord. 28886.)

## **Part 6 RETIREMENT FOR SERVICE**

### Sections:

3.36.750 Voluntary retirement for service.

3.36.760 Service retirement for members by reason of contract with county of Santa Clara Central Fire Protection District.

3.36.770 Involuntary retirement for service - Discretion of board.

3.36.780 Compulsory retirement for service at age seventy.

3.36.790 Service retirement allowance - Retirement prior to August 1, 1968.

3.36.800 Service retirement allowance - Retirement on or after August 1, 1968, or on or after January 1, 1970, at age fifty-five or more, but prior to February 4, 1996.

3.36.805 Service retirement allowance - Retirement on or after February 4, 1996, but prior to February 4, 2000.

3.36.807 Service retirement allowance - Retirement on or after February 4,

2000.

3.36.808 Service retirement allowance for members employed in fire department - Retirement on or after February 4, 2000.

3.36.809 Service Retirement Allowance for Members Employed in Police Department - Retirement on or after February 4, 2000.

3.36.810 Service retirement allowance - Retirement on or after August 1, 1968, at age fifty to fifty-five.

3.36.820 Eligibility conditions.

3.36.830 Termination of service retirement benefits for treason or conviction of felony.

### **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 years of age and is entitled to be credited with twenty or more years of service.

B. On or after August 1, 1968, subject to the provisions of this chapter, a member shall be retired for service, upon his written application to the retirement board, if he has attained fifty years of age and is entitled to be credited with twenty or more years of service, or if he is entitled to be credited with thirty or more years of service regardless of whether he has attained fifty years of age.

(Prior code § 2903.175; Ord. 21686.)

### **3.36.760 Service retirement for members by reason of contract with county of Santa Clara Central Fire Protection District.**

Notwithstanding any other provisions of this chapter and Chapters 3.20 through 3.32, 3.40 and 3.44, any person who does not qualify for service retirement under any other provisions of this chapter and Chapters 3.20 through 3.32, 3.40 and 3.44 and becomes a member of this system pursuant to an "Agreement Between the City of San José and the Santa Clara County Central Fire Protection District Providing for the Furnishing by City of Certain Fire Services Within a Portion of the Service Area of said District," dated August 16, 1977, shall be retired for service, upon his written application to the retirement board, if he has attained fifty-five years of age, and shall be paid from the retirement fund a monthly allowance equal to 2.5 percent of his final compensation for each full year of service; provided, however, that in no event shall his monthly allowance exceed a maximum of seventy-five percent of his final compensation. In computing the amount of allowance payable, pro rata credit shall be given for a portion of a full year. If the said person qualifies for service retirement or is eligible for retirement benefits under any other provision of this chapter and Chapters 3.20 through 3.32, 3.40 and 3.44, he or his beneficiaries may avail themselves of such other provisions at their option in place of the benefits herein provided by this section and Sections 3.36.1260, 3.36.1350, 3.36.1360 and 3.44.140; provided, that if said person is credited with less than twenty years of service at the time he wishes to retire for service or at the time his beneficiaries are eligible for benefits, said person must retire under this section and receive benefits pursuant to Sections 3.36.1260, 3.36.1350, 3.36.1360 and 3.44.140.

(Prior code § 2903.175(a); Ord. 19123.)

### **3.36.770 Involuntary retirement for service - Discretion of board.**

Subject to the provisions of this chapter, the retirement board, on its own motion, by a vote of not less than four-fifths of the total authorized membership of the board, may retire a member for service, notwithstanding the fact that such member may not have requested or consented to or is opposed to such retirement, if such member has attained fifty-five years of age and is entitled to be credited with twenty or more years of service, or if such member is entitled to be credited with thirty or more years of service regardless of whether he has attained fifty-five years of age.

(Prior code § 2903.176; Ord. 21686.)

### **3.36.780 Compulsory retirement for service at age seventy.**

A. Subject to the provisions of this Chapter 3.36, a member shall and must be retired for service upon attaining the age of seventy years regardless of the number of years of service for which such member is entitled to credit. Each such retirement shall be effective as of the date such member attains the age of seventy years.

B. Nothing hereinabove contained in this section shall be deemed to deprive a member of such right, if any, as he may have to retire at age seventy for disability under and pursuant to the provisions of the following Part 7 of this chapter if he qualifies and is eligible for disability retirement under the provisions of said Part 7; provided, however, that if he retires pursuant to the provisions of Part 7, he shall be entitled only to such retirement benefits as are provided by the provisions of said Part 7, and shall not be entitled to any benefits whatsoever under the provisions of this section of this Part 6.

(Prior code § 2903.177; Ord. 21732.)

### **3.36.790 Service retirement allowance - Retirement prior to August 1, 1968.**

Subject to the provisions of this Chapter 3.36, if a member retired for service prior to August 1, 1968, pursuant to the provisions of Sections 3.36.750, 3.36.770 or 3.36.780, he shall be paid from and after the date of his retirement and during the remainder of his lifetime, from the retirement fund, a monthly service retirement allowance equal to fifty percent of his final compensation.

(Prior code § 2903.178.)

### **3.36.800 Service retirement allowance - Retirement on or after August 1, 1968, or on or after January 1, 1970, at age fifty-five or more, but prior to February 4, 1996.**

A. Subject to the provisions of this Chapter 3.36, if a member retired for service on or after August 1, 1968, but before January 1, 1970, pursuant to the provisions of Section 3.36.750, 3.36.770 or 3.36.780, and if in addition such member had attained the age of fifty-five years as of the date of commencement of retirement, then he or she shall be paid from the retirement fund, from and after the date of retirement and during the remainder of his or her lifetime, a monthly service retirement allowance equal to fifty percent of his or her final compensation plus one and two-thirds percent of his or her final compensation for each full year of service in excess of the first twenty years of service for which the member is entitled to credit; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of sixty-six and two-thirds percent of the member's final compensation. In computing the amount of allowance payable for service in excess of the first twenty years, pro rata credit shall be given for a fraction of a full year.



A. Subject to the provisions of this Chapter 3.36, if a member retired or retires for service on or after February 4, 2000, 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 of his or her final compensation for each of the first twenty years of service plus three percent of his or her final compensation for each of the next five full years of service plus four percent of his or her final compensation for each full year of service in excess of the first twenty-five years of service; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of eighty-five percent 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 years, pro rata credit shall be given for a fraction of a full year.

(Ord. 26229.)

### **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 (2 1/2) percent 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 (3) percent 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 (90) percent of the member's final compensation.

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 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.

(Ord. 28300.)

### **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 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 (2 1/2) percent of his or her final compensation for each of the first twenty (20) years of service plus four (4) percent 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 (90) percent of the member's final compensation.

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, pro rata credit shall be given for a fraction of a full year.

(Ord. 27721.)

### **3.36.810 Service retirement allowance - Retirement on or after August 1, 1968, at age fifty to fifty-five.**

A. If a member retires or is retired for service on or after August 1, 1968, and such member has attained fifty years of age but has not attained fifty-five 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 or more years of service but less than thirty 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 or more years of service but less than twenty-five years of service.

B. The reduced monthly service retirement allowance for a member described in subsection A. of this section shall be calculated 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 years, assuming for such purpose that such member's final compensation upon retirement at age fifty-five 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 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 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 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 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 retires or is retired for service on or after August 1, 1968, and who is entitled to be credited with thirty 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 retires or is retired for service on or after July 5, 1992, and at the time of retirement has attained fifty years of age but has not attained fifty-five years and is entitled to be credited for twenty-five or more years of service but less than thirty years of service, shall not be subject to the provisions regarding reduced monthly service allowances.

(Prior code § 2903.180; Ords. 21686, 24092.)

### **3.36.820 Eligibility conditions.**

No person shall be retired for service unless he is eligible therefor under and pursuant to the above sections of this Part 6.

(Prior code § 2903.181.)

### **3.36.830 Termination of service retirement benefits for treason or conviction of felony.**

Any and all service retirement allowances otherwise payable to a person may be cancelled and terminated by the retirement board, in its sole discretion, if the recipient thereof should commit treason or be convicted of a felony. Such cancellation and termination shall not affect survivors' benefits and death benefits set forth in Part 8 of this chapter if such benefits would otherwise be payable. At any time after cancellation and termination of retirement allowances pursuant to this section, the board may in its sole discretion pay to the spouse and/or minor children under the age of eighteen of the convicted person all or any portion of the retirement allowance which would have been payable to the convicted person, for such periods and subject to such conditions as the board in its sole discretion imposes and subject to the further right and power of the board to cancel such payments to the spouse and/or minor children at any time, in its sole discretion, with or without notice. Such payment to the spouse or minor children shall not be made until and unless application therefor shall have been made and the board shall have determined that the allowance or a portion thereof is required to provide the spouse or minor children with necessities of life.



3.36.1130 Payment of disability allowances to constitute return and withdrawal of contributions.

3.36.1140 Failure to reinstate recipient of a disability allowance to duty on cessation of disability.

3.36.1150 Termination of disability retirement benefits for treason or conviction of felony.

### 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 retirement board, on the basis of competent medical opinion. It does not mean or include mere inability to assume said responsibilities or perform said duties.

B. 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 retirement board 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 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.

C. "Nonservice-connected disability" means disability of a member other than a "service-connected disability."

D. "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.

(Prior code §§ 2903.200, 2903.200a, 2903.201, 2903.202.)

### 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:

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.
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 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.

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 board 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.

(Prior code § 2903.225; Ords. 24081, 26633.)

**3.36.930 Member not to receive both service retirement and disability retirement benefits.**

Notwithstanding anything contained in this chapter to the contrary, no member who is retired for service pursuant to the provisions of Part 6 of this chapter shall be eligible for or be entitled to retirement for any disability or for or to any benefits or allowances pursuant to the provisions of this Part 7 while he is so retired for service. Any and all disability retirement allowances otherwise payable to a person shall cease and terminate upon such person being retired for service.

(Prior code § 2903.217.)

**3.36.940 Disability retirement - On board's motion.**

A member who is eligible to retire for disability may be retired for disability, pursuant to and subject to the provisions of this chapter, on the retirement board's own motion, without a request or application

therefor being made by the member or any other person.

(Prior code § 2903.203.)

### **3.36.950 Disability retirement - By request or application.**

A member who is eligible to retire for disability shall be retired for disability, pursuant to and subject to the provisions of this chapter, by the retirement board upon application being made therefor by any of the following persons:

- A. The city manager;
- B. The head of the office or department in which the member is or was last employed;
- C. The member, or any authorized person on his behalf.

(Prior code § 2903.204.)

### **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, order a medical examination of a member 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. Such medical examination shall be made by one or more physicians or surgeons appointed by the board.

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 board. The board may require additional medical examinations, or procure or require additional or other evidence before retiring a person for disability.

(Prior code § 2903.205; Ords. 19282, 26901.)

### **3.36.970 Disability retirement - Eligibility.**

If the medical reports and other available evidence and information show to the satisfaction of the retirement board 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 forthwith retire him for disability.

(Prior code § 2903.206.)

### **3.36.980 Determination as to whether disability is service-connected.**

If the medical examination and other available evidence and information show to the satisfaction of the retirement board that the disability is service-connected, it shall so find and declare. If the medical examination and other available information shows to the satisfaction of the board that the disability is nonservice-connected, it shall so find and declare. Such finding and declaration shall govern in determining whether a disability is service-connected or nonservice-connected.

(Prior code § 2903.207.)

### **3.36.990 Retirement for nonservice-connected disability.**

A. Subject to other provisions of this chapter, any member who is entitled to credit for two or more years of service and who, during his or her membership in this system, is disabled and incapacitated for the performance of duty as a result of a nonservice-connected disability, may be retired by the retirement board pursuant to the provisions of this section for nonservice-connected disability, and shall be so retired at such member's request, regardless of such member's age.

B. No member disabled or incapacitated for the performance of duty as a result of a nonservice-connected disability shall be entitled to any disability allowance or other benefits under the provisions of this retirement system if at the time such disability occurred the member was entitled to credit for less than two full years of service.

(Prior code § 2903.211; Ord. 26901.)

### **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 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 (32) percent of the member's final compensation, plus one (1) percent 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 (50) percent of the member's final compensation.

C. A 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 (50) percent 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 (50) percent of such member's final compensation plus one and two-thirds ( $1 \frac{2}{3}$ ) percent 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 ( $66 \frac{2}{3}$ ) percent 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 (50) percent of such member's final compensation plus two and one-half ( $2 \frac{1}{2}$ ) percent 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 (75) percent 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 (50) percent of such member's final compensation, plus three (3) percent 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 (80) percent 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 5. or paragraph 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 (50) percent of such member's final compensation for up to the first twenty (20) years of service, plus three (3) percent of said final compensation for each of the next five (5) full years of service in excess of twenty (20) years, plus four (4) percent 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 (85) percent 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.

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, 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, 2006, the monthly allowance shall be equal to two and one-half (2 1/2) percent of his or her final compensation for each of the first twenty (20) years of service plus four (4) percent 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 (90) percent 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 (3) percent 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 (90) percent 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.

(Ords. 26901, 27721, 28300.)

### **3.36.1000 Retirement for service-connected disability.**

Subject to other provisions of this chapter, any member who, during his or her membership, is disabled and incapacitated for the performance of duty as a result of a service-connected disability may be retired by the retirement board pursuant to the provisions of this section for service-connected disability, regardless of such member's age and regardless of such member's number of years of service credit.

(Prior code § 2903.209; Ord. 26901.)

### **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 (50) percent 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 (50) percent of such member's final compensation plus one and two-thirds ( $1 \frac{2}{3}$ ) percent 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 ( $66 \frac{2}{3}$ ) percent 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 (50) percent of such member's final compensation plus two and one-half ( $2 \frac{1}{2}$ ) percent 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 (75) percent 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 (50) percent of such member's final compensation plus three (3) percent 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 (80) percent 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 5. or paragraph 6. below, if such member's service-connected disability retirement occurred or occurs on or after February 4, 2000, the monthly allowance shall be equal to fifty (50) percent of such member's final compensation, plus three (3) percent of said final compensation for each year of the first five (5) full years of service in excess of twenty (20) years, plus four (4) percent 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 (85) percent 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 member's service-connected disability retirement occurred or occurs on or after July 1, 2006, the monthly allowance shall be equal to fifty (50) percent of his or her final compensation, plus four (4) percent 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 (90) percent 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.

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 (50) percent of his or her final compensation; and, if the member had twenty (20) or more years of service, an additional ten (10) percent of said final compensation, plus three (3) percent 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 (90) percent 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.

E. 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.

F. 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.

(Prior code § 2903.208; Ords. 23070, 25614, 26229, 26901, 27721, 28300, 28330.)

### **3.36.1030 No deduction after January 1, 1964, of amount of workmen's compensation benefits.**

Anything elsewhere in this chapter to the contrary notwithstanding, 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.

(Prior code § 2903.212.)

### 3.36.1035 Reports of earnings from outside occupation.

A. Except as provided in subsection E., as a condition of payment of a disability retirement allowance from the retirement fund, a person who has been retired for disability shall file written statements with the board which conform to the requirements of subsection B. below.

B. A recipient described in subsection A. shall file statements as described either in subsection A.1. or in subsection A.2.:

#### 1. Monthly and annual statements.

a. Within ten days after the end of each calendar month, the recipient shall file a monthly statement of the total income and earnings received by the recipient during the reporting month from any gainful occupation, other than service as an officer or employee of the city, and the sources of such income and earnings; and

b. On or before May 1 of each year, the recipient shall file a notarized declaration under penalty of perjury, in a form approved by the board, of the total income and earnings received by the recipient during the preceding calendar year, or any portion thereof, from any gainful occupation outside city service and the sources of such income and earnings.

#### 2. Income tax returns.

a. Instead of the statements described in subsection A.1., the recipient may file copies of the recipient's federal and state income tax returns and the recipient's W-2 and/or 1099 forms showing the total income and earnings received by the recipient from any gainful occupation, other than service as an officer or employee of the city, and the sources of such income and earnings. Such tax returns and forms shall be filed on or before the first day of May following the tax reporting period.

b. If a recipient elects to file tax returns, the recipient shall provide written notice of such election to the board not later than the date the next monthly statement would otherwise be due.

c. If a recipient elects to file tax returns, the recipient shall file with the board a written statement of the recipient's projected reportable income and earnings for each calendar year, and the sources of such income and earnings. Such statement shall be filed on or before the tenth day of January in the applicable calendar year. The recipient may file an amended statement in any case where there is a change in the projected income and earnings.

C. For the purposes of this section, income and earnings shall not include interest, dividends or rent.

D. If a recipient described in subsection A. fails to furnish the information required by this section, the disability retirement allowance shall be discontinued until such time as the required information is furnished. When the required information is furnished, the disability retirement allowance shall be reinstated and allowances withheld pending receipt of the required information shall be paid, less any applicable deductions.

E. This section shall not apply to any recipient of a disability retirement allowance when either of the following conditions is satisfied:

1. The recipient retired for disability with at least twenty years of service credit in this plan; or

2. The recipient's service credit in this retirement plan plus the time the recipient has been retired for disability equals at least twenty years.

(Ords. 24915, 26901.)

**3.36.1040 Deductions of recipient's earnings from outside occupation.**

A. In any case where the recipient of a disability retirement allowance meets the following conditions, the recipient's disability retirement allowance shall be reduced as provided in subsection B. below:

1. The recipient retired for disability with less than twenty years of service credit in this retirement plan and the sum of the recipient's service credit plus the time the recipient has been retired for disability is less than twenty years; and
2. The recipient is still incapacitated for the performance of duty; and
3. The recipient is engaged in a gainful occupation other than service as an officer or employee of the city.

B. During the period the recipient is engaged in gainful employment, the recipient's disability retirement allowance shall be reduced to the amount which, when added to the recipient's income or earnings from such gainful occupation and when also added to all other applicable deductions, if any, required by other provisions of this Chapter 3.36, shall not exceed the amount of the maximum compensation earnable in such period by a person holding the position which the recipient held at the time of retirement, or, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition. In no event, however, shall the disability retirement allowance payable for any period exceed the amount of disability retirement allowance to which the recipient would have been entitled for such period in the absence of this section.

C. For the purposes of this section, income and earnings shall not include interest, dividends or rent.

D. Any overpayment of disability retirement allowance made to a recipient may be deducted from future allowances payable to the recipient or any beneficiary of the recipient or shall otherwise be collected from the recipient.

E. The following conditions shall apply in any case where, pursuant to Section 3.36.1035, the recipient has elected to file tax returns in lieu of monthly statements of income and earnings:

1. Reductions in disability retirement allowances shall be made based upon the statement of projected reportable income and earnings filed by the recipient.

2. Any overpayment of disability retirement allowance made during the applicable tax reporting period may be deducted from future allowances in substantially equal monthly deductions over a period not to exceed twelve months. If the deductions are made as provided in this subsection E., the deductions shall include interest on the outstanding overpayment at the actuarial rate adopted by the board.

3. Any underpayment of disability retirement allowance made during the applicable tax reporting period shall be paid to the disability retirement allowance recipient in one lump sum within thirty days of the verification of the underpayment by the secretary to the board.

F. When the sum of the recipient's service credit in this retirement plan plus the time the recipient has been retired for disability reaches twenty years, the deductions described in this section shall cease except to the extent necessary to recover any overpayment.

(Prior code § 2903.213; Ord. 24915.)

### **3.36.1050 - 3.36.1070 Reserved.**

**Editor's note:** Ord. 27768, §§ 22 - 24, adopted June 20, 2006, repealed §§ 3.36.1050 - 3.36.1070, which pertained to reemployment of recipient in city service in new class of position - Deduction of earnings; refusal of reemployment with city; and disability while reemployed in new class of city positions.

### **3.36.1080 Medical examination of recipients - Allowance cancellation conditions.**

The retirement board may at any time order and require any recipient of a disability retirement allowance to undergo medical examination by the city health officer and by one or more physicians or surgeons appointed or engaged by the board for that purpose at a reasonable time and place to be determined by the board. Upon any such recipient's application for reinstatement to active duty, the board shall order and cause a medical examination to be made of such recipient by the physicians or surgeons appointed or engaged by the board. 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 days prior to the date upon which he is to report to the health officer, 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 board 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.

(Prior code § 2903.218.)

### **3.36.1090 Reinstatement to duty.**

A. If the board shall determine 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 years of age, 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.

B. If a recipient of a disability allowance granted pursuant to the provisions of this chapter should, upon attaining the age of fifty-five years, 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.

(Prior code § 2903.219; Ord. 26901.)

### **3.36.1100 Refusal to accept reinstatement.**

If, after the board 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.

(Prior code § 2903.220.)

### **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 retirement board, the board may 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 year from and after the date of termination of said retirement, and if he should prove to the satisfaction of the board that his disability continues and has not ceased, 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 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 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 board that the deceased person's original disability continued to the time of his death, the board 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 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 year from and after the date the board terminated said disability retirement.

(Prior code § 2903.223.)

### **3.36.1130 Payment of disability allowances to constitute return and withdrawal of contributions.**

Anything elsewhere in this chapter to the contrary notwithstanding, the payment to and receipt by any person of any disability retirement allowance or allowances shall constitute and be deemed to be a return to and withdrawal by such person, to the extent of the amount of such allowance or allowances so paid to and received by him, of any and all contributions theretofore made by such person to the retirement fund prior to the date he was retired for disability, and the amount of such allowance or

allowances so paid to and received by him shall be deducted from the amount of accumulated contributions in the fund which are credited to him. Nothing herein contained, however, shall be deemed to restrict the amount of disability allowances payable to any such person to the amount of contribution theretofore contributed by him to the fund, it being the intent that such allowances shall continue to be paid to such person as provided by and subject to other provisions of this chapter even after all contributions standing to his credit shall have been so withdrawn and exhausted.

(Prior code § 2903.226.)

### **3.36.1140 Failure to reinstate recipient of a disability allowance to duty on cessation of disability.**

Anything elsewhere in this chapter to the contrary notwithstanding, if the disability for which a person has been granted a disability retirement or disability retirement allowance pursuant to the provisions of this chapter should cease, and if, in addition, such person should be then ready, willing and able to be reinstated to duty in and to assume and perform the responsibilities and duties of the position from which he was retired for disability and of any other position in the same class or positions, then in that event such person shall nonetheless continue to be deemed retired for this disability which no longer exists and continue to be entitled to such disability retirement allowance, if any, as he would be entitled to under the provisions of this chapter if the disability for which he was retired had not ceased, until he is reinstated to duty in the position from which he was retired or in any other position in the same class or positions, or until he rejects an offer of reinstatement in any such position, or until he refuses or fails to report to duty in any such position when requested to do so, or until he becomes unable for any reason to accept reinstatement to duty in or to assume and perform the responsibilities and duties of the position from which he was retired or of any other position in the same class of positions, whichever is the sooner; provided, however, that nothing contained in this section shall be deemed to deprive the retirement board of any rights which it might otherwise have under other provisions of this chapter to cancel, terminate, suspend or reduce said retirement or retirement allowance for any reason or reasons other than the fact said disability has ceased.

(Prior code § 2903.227.)

### **3.36.1150 Termination of disability retirement benefits for treason or conviction of felony.**

Any and all disability retirement allowances otherwise payable to a person may be cancelled and terminated by the retirement board, in its sole discretion, if the recipient thereof should commit treason or be convicted of a felony. Such cancellation and termination shall not affect survivors' benefits and death benefits set forth in Part 8 of this chapter if such benefits would otherwise be payable. At any time after cancellation and termination of retirement allowances pursuant to this section, the board may in its sole discretion pay to the spouse and/or minor children under the age of eighteen of the convicted person all or any portion of the retirement allowance which would have been payable to the convicted person, for such period and subject to such conditions as the board in its sole discretion determines or imposes, and subject to the further right and power of the board to cancel such payments to the spouse and/or minor children at any time, in its sole discretion, with or without notice. Such payment to the spouse or minor children shall not be made until and unless application therefor shall have been made and the board shall have determined that the allowance or a portion thereof is required to provide the spouse or minor children with necessaries of life.

(Prior code § 2903.224; Ord. 23807.)

## **Part 8 SURVIVORSHIP AND DEATH BENEFITS**

## Sections:

- 3.36.1200 Death before receipt of retirement allowance - When contributions, full allowances and minimum payments are payable.
- 3.36.1210 Death before receipt of retirement pay - When contributions, smaller allowance and minimum benefits are payable.
- 3.36.1220 Death of a person while on disability retirement and while reemployed by city - When not deemed before receipt of pay.
- 3.36.1230 Death after receipt of retirement pay - When full allowance and minimum benefits are payable.
- 3.36.1240 Death after receipt of retirement pay - When smaller allowance and minimum benefits are payable.
- 3.36.1250 Minimum death benefits - When payable.
- 3.36.1260 Return of contributions to certain survivors of person who dies before reaching fifty-five.
- 3.36.1270 Amount of survivorship allowance to surviving spouse or surviving domestic partner when such is determinable by Section 3.36.1270.
- 3.36.1280 Amount of survivorship allowance to surviving spouse or surviving domestic partner when such is determinable by Section 3.36.1280.
- 3.36.1290 Marriage or domestic partnership of surviving spouse or surviving domestic partner - When return of contributions and monthly survivorship allowance are payable.
- 3.36.1295 Reinstatement of terminated allowances.
- 3.36.1300 Amount of survivorship allowance payable to surviving child or children.
- 3.36.1305 Amount of survivorship allowance payable to surviving child or children when member had less than twenty years service credit earned while employed by city.
- 3.36.1310 Limitation of total amount payable to surviving spouse and children.
- 3.36.1320 Surviving children's allowances - How paid.
- 3.36.1325 Surviving children's allowances - Payment to custodian or trustee.
- 3.36.1330 No deduction after January 1, 1964, of amount of workmen's compensation benefits.

3.36.1340 Reduction of benefits if member retires before attaining age fifty-five.

3.36.1350 Survivorship benefits payable where person eligible for monthly allowance under Section 3.36.760 dies before receiving same.

3.36.1360 Survivorship benefits payable where person eligible for monthly allowance under Section 3.36.760 dies after receiving same.

3.36.1370 Termination of allowances or benefits for treason or conviction of a felony.

**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 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 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 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 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 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 per annum.

**F. 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, 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 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 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 and the monthly amount payable to the spouse or domestic partner pursuant to Subsection F. were two hundred dollars and the amount payable to surviving children pursuant to Subsection G. were one hundred dollars, 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

divided by three hundred dollars, or three 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 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 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. 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, 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.

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.

(Prior code § 2903.250; Ords. 19478, 23807, 25936, 26901, 27711, 27712, 27768.)

### **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 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 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 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 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 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 per annum.

**F. Survivorship Allowance 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, 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 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 and the monthly amount payable to the spouse or domestic partner pursuant to Subsection F. were two hundred dollars and the amount payable to surviving children pursuant to Subsection G. were one hundred dollars, 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 divided by three hundred dollars, or three 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 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 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 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, 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.

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.

(Prior code § 2903.252; Ords. 23807, 25936, 27711, 27712, 27768.)

**3.36.1220 Death of a person while on disability retirement and while reemployed by city - When not deemed before receipt of pay.**

If a member of this system is retired hereunder for disability and has received any disability retirement allowance or pay, but such person, while on such disability retirement is reemployed by the city, without termination of the disability retirement, in a position or class from which he or she was retired for disability, and if such person should die while he or she is both on such disability retirement and while he or she is so reemployed by the city, his or her death shall be deemed to have occurred after such person has received retirement pay and neither his or her surviving spouse, surviving child or children nor estate shall be entitled to receive or be paid any benefits under and by virtue of the provisions of Sections 3.36.1200 or 3.36.1210 of this chapter.

(Prior code § 2903.252; Ord. 23807)

**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

- and
- c. The child is under the age of eighteen years at the time of the deceased person's death;
  - 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.

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 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 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 estate as a death benefit the sum of one thousand dollars 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.

(Prior code § 2903.253; Ords. 23807, 25936, 27711, 27712, 27768.)

**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.

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 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 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 estate as a death benefit the sum of one thousand dollars 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.

(Prior code § 2903.254; Ords. 23807, 25936, 27711, 27712, 27768.)

### **3.36.1250 Minimum death benefits - When 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 credit for less than two (2) years of service dies on or after August 6, 1970 while a member of this plan and prior to being retired for service or disability and prior to receiving any service or disability retirement allowance or pay, if his or her death does not arise out of and in the course of his or her employment with the city;
2. If a member of this plan is granted a leave of absence from city service without full city compensation and pay before being retired for service or disability, and if in addition such member is not entitled at the time he or she receives such leave of absence to immediate retirement for service, and if such person should die on or after August 6, 1970 while on such leave of absence prior to being retired for disability or service and prior to receiving any service or disability retirement allowance or pay.

B. 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 at the time of the deceased person's death, and no other person.
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 no other person.
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 such deceased person's death.

**C. Contributions and Interest Payable to Surviving Spouse or Surviving Domestic Partner; Minimum Amount Payable.**

1. 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 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 (2) percent per annum.

2. If the total of the unwithdrawn contributions plus interest thereon should be less than one thousand dollars (\$1,000.00), then in that event there shall be paid from the retirement fund to the surviving spouse such additional amount as would, when added to the unwithdrawn contributions and interest thereon, equal one thousand dollars (\$1,000.00).

**D. Contributions and Interest Payable to Surviving Child or Children; Minimum Amount Payable.**

1. If the deceased person described in subsection A. above 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 by the deceased person's period of aggregate service, but in no case shall the interest be in excess of two (2) percent per annum. The sum to be paid to each surviving child shall be determined by dividing the total amount of unwithdrawn contributions plus interest thereon, by the number of surviving children.

2. If the total of the unwithdrawn contributions plus interest thereon should be less than one thousand dollars (\$1,000.00), then in that event there shall be paid from the retirement fund to the surviving child or children such additional amount as would, when added to the unwithdrawn contributions and interest thereon, equal one thousand dollars (\$1,000.00). The additional sum to be paid to each surviving child shall be determined by dividing the additional amount by the number of surviving children.

E. 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 2903.255(b) as it existed on August 6, 1970 (as originally adopted by Ordinance No. 9506), the contributions and interest thereon which would otherwise be payable to any surviving child or surviving children pursuant to subsection D.1. above shall be withheld and not paid to such surviving child or children until such time

as the total amount of contributions and interest thereon so withheld equals the total amount of contributions and interest which the court action establishes is due 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 contributions and interest thereon.

**F. Contributions and Interest Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children; Minimum Amount Payable.**

1. If the deceased person described in subsection A. above leaves no surviving spouse, no surviving domestic partner and no 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 said 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 (2) percent per annum.

2. If the total of the unwithdrawn contributions plus interest thereon should be less than one thousand dollars (\$1,000.00), then in that event there shall be paid from the retirement fund to the deceased person's estate such additional amount as would, when added to the unwithdrawn contributions and interest thereon, equal one thousand dollars (\$1,000.00).

**G.** 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 surviving spouse, surviving domestic partner surviving child or children, or estate of the deceased person.

(Prior code § 2903.255; Ords. 23807, 27712, 27768.)

**3.36.1260 Return of contributions to certain survivors of person who dies before reaching fifty-five.**

**A.** If a person who becomes a member of this Plan because of the reason set forth in Section 3.36.760 should die before he or she reaches fifty-five (55) years of age, such person's surviving spouse, surviving domestic partner, surviving child or children (as such terms are defined in Section 3.36.1200) or estate shall be entitled under the conditions described in subsection C., D. or E. of Section 3.36.1250, whichever is applicable, to one (1) of the following:

1. Either to the return from the retirement fund of a sum of money equal to the deceased person's contributions to the retirement fund, plus interest thereon to the date of death, as earned by such fund, said interest not to exceed two (2) percent per annum, or to the sum of one thousand dollars (\$1,000.00), whichever is greater; or

2. If the death because of which the survivorship allowance is payable arose out of and in the course of the deceased person's employment with the city, as a result of injury or disease arising out of and in the course of the deceased person's employment with the city, while the person was an employee of the city and a member of this plan, and a survivorship allowance is not payable pursuant to any other provision of this chapter, either the return from the retirement fund of a sum of money equal to the deceased person's contributions to the retirement fund, plus interest thereon to the date of death, as earned by such fund, said interest not to exceed two (2) percent per annum, or to the sum of one thousand dollars (\$1,000.00), whichever is greater.

**B.** For the purposed of this section, if a surviving spouse or surviving domestic partner marries or

establishes a domestic partnership, such marriage or domestic partnership shall not deprive the surviving spouse or surviving domestic partner of payment hereunder, provided he or she either is married to the deceased person at the time of the deceased person's death or is a domestic partner of the deceased person at the time of the deceased person's death.

(Prior code § 2903.255a; Ords. 19123, 23807, 26901, 27712.)

**3.36.1270 Amount of survivorship allowance to surviving spouse or surviving domestic partner when such is determinable by Section 3.36.1270.**

Whenever in any other section of this Part 8 it is stated that a surviving spouse or surviving domestic partner shall be entitled to receive and be paid from the retirement fund the monthly survivorship allowance specified in this section, the surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid, subject to other provisions of this chapter including Sections 3.36.1200 and 3.36.1230, the following monthly survivorship allowance:

A. Where Deceased Died or Retired Prior to August 1, 1968. If the person because of whose death the surviving spouse is entitled to a monthly survivorship allowance died or retired from city service prior to August 1, 1968, the amount of monthly survivorship allowance payable to the surviving spouse shall be:

1. An amount equal to twenty-eight and one hundred twenty-five thousandths (28.125) percent of the deceased person's final compensation as defined in Section 3.36.020.5, less the amount specified in Section 3.36.1340; or

2. If the deceased was retired for service-connected disability, an amount equal to twenty-eight and one hundred twenty-five thousandths (28.125) percent of the deceased person's final compensation, as defined in Section 3.36.020.5; or

3. If the death because of which the survivorship allowance is 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 such event the amount of the monthly survivorship allowance shall be an amount equal to thirty-seven and one-half (37 1/2) percent of the deceased person's final compensation as defined in Section 3.36.020.5.

B. Where Deceased Did Not Die or Retire Prior to August 1, 1968. If the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance did not die or retire from city service prior to August 1, 1968, then, except as provided in subsection C., D. or E. of this section and subject to the optional settlement provisions of Part 9.5 of this chapter, the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be:

1. An amount equal to thirty-seven and five tenths (37.5) percent of the deceased person's final compensation as defined in Section 3.36.020.5, less the amounts specified in Section 3.36.1340; or

2. If the deceased was retired for service-connected disability, an amount equal to thirty-seven and one-half (37 1/2) percent of the deceased person's final compensation as defined in Section 3.36.020.5; or

3. If the death because of which the survivorship allowance is 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 such event the amount of the monthly survivorship allowance shall be an amount equal to thirty-seven and one-half (37 1/2) percent of the deceased person's final compensation as defined in Section 3.36.020.5.

C. Where Deceased Died or Retired On or After August 1, 1968, With Less Than Twenty (20) Years Service Credit as a Member of this Plan . If the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance died or retired from city service on or after August 1, 1968, the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be an amount equal to one and eight hundred seventy-five thousandths (1.875) percent of the deceased person's final compensation for each year of service or portion thereof, less the amounts specified in Section 3.36.1340, subject to a maximum of thirty-seven and one-half (37 1/2) percent of such final compensation, in any case where:

1. At the time of the person's death the person had earned less than twenty (20) years of service credit in this plan while employed by the city; and
2. The benefit is payable under this Section 3.36.1270 for any reason other than:
  - a. The death of a person before retirement where the death arises out of and in the course of the person's employment with the city; or
  - b. The death of a person who has been retired for service-connected disability but who dies before receipt of retirement pay; or
  - c. The death of a person who has been retired for service-connected disability, who is not reemployed by the city at the time of death and who dies during the disability retirement after receiving any disability retirement allowance.

D. Where Deceased Retired On or After February 4, 2000; or Deceased Died On or After February 4, 2000, But Prior to Receipt of Retirement Allowance. Notwithstanding subsection B. above, if the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance retired from city service on or after February 4, 2000, or died on or after February 4, 2000, but before receiving any retirement allowance, then the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall, subject to a maximum of forty-two and one-half (42 1/2) percent of the deceased person's final compensation, be an amount equal to one (1) of the following, as applicable:

1. Thirty-seven and one-half (37 1/2) percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1340, if at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of less than seventy-five (75) percent of the deceased person's final compensation.
2. Thirty-seven and one-half (37 1/2) percent of the deceased person's final compensation, if at the time of the deceased person's death the deceased person was entitled to a retirement allowance of less than seventy-five (75) percent of the deceased person's final compensation and either:
  - a. The deceased person was retired for service-connected disability; or
  - b. The deceased person died prior to retirement and the death arose out of and in the course of the person's employment with the city.
3. Fifty (50) percent of the deceased person's retirement allowance, less the amounts specified

in Section 3.36.1340, if at the time of the deceased person's death the deceased person was entitled to a retirement allowance of at least seventy-five (75) percent of the deceased person's final compensation.

4. Fifty (50) percent of the deceased person's retirement allowance, if at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of at least seventy-five (75) percent of the deceased person's final compensation and either:

- a. The deceased person was retired for service-connected disability; or
- b. The person died prior to retirement and the death arose out of and in the course of the person's employment with the city.

For the purposes of this subsection D., if the deceased person died prior to retirement, references to the "deceased person's retirement allowance" or to the deceased's entitlement to a retirement allowance shall mean the retirement allowance that would have been paid had the deceased person retired on the day immediately preceding his or her death.

E. Where Deceased Was Employed in the Fire Department and Either Retired On or After July 1, 2008; or Died On or After July 1, 2008, But Prior to Receipt of Retirement Allowance. Notwithstanding subsection B. above, if the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance was employed in the fire department and either (a) retired from city service on or after July 1, 2008, or (b) died on or after July 1, 2008, but before receiving any retirement allowance, then the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall, subject to a maximum of forty-five (45) percent of the deceased person's final compensation, be an amount equal to one (1) of the following, as applicable:

1. Thirty-seven and one-half (37 1/2) percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1340, if at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of less than seventy-five (75) percent of the deceased person's final compensation.

2. Thirty-seven and one-half (37 1/2) percent of the deceased person's final compensation, if at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of less than seventy-five (75) percent of the deceased person's final compensation and either:

- a. The deceased person was retired for service-connected disability; or
- b. The deceased person died prior to retirement and the death arose out of and in the course of the person's employment with the city.

3. Fifty (50) percent of the deceased person's retirement allowance, less the amounts specified in Section 3.36.1340, if at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of at least seventy-five (75) percent of the deceased person's final compensation.

4. Fifty (50) percent of the deceased person's retirement allowance, if at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of at least seventy-five (75) percent of the deceased person's final compensation and either:

- a. The deceased person was retired for service-connected disability; or
- b. The person died prior to retirement and the death arose out of and in the course of the person's employment with the city.

For the purposes of this subsection E., if the deceased person died prior to retirement, references to the "deceased person's retirement allowance" or to the deceased's entitlement to a retirement allowance shall mean the retirement allowance that would have been paid had the deceased person retired on the day immediately preceding his or her death.

F. Nothing in this section shall be deemed to entitle any person to any survivorship allowance that was not provided by this chapter as this chapter existed at the time of the deceased person's death, except that the surviving spouse surviving domestic partner benefits described in subsection D. shall be payable retroactive to the date of the deceased person's death.

(Prior code § 2903.256; Ords. 23807, 25616, 25936, 26565, 26901, 27712, 28331.)

**3.36.1280 Amount of survivorship allowance to surviving spouse or surviving domestic partner when such is determinable by Section 3.36.1280.**

Whenever in any other section of this Part 8 it is stated that a surviving spouse or surviving domestic partner shall be entitled to receive and be paid from the retirement fund the monthly survivorship allowance specified in this section, the surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid, subject to other provisions of this chapter including Sections 3.36.1210 and 3.36.1240, the following monthly survivorship allowance:

A. Where Deceased Died or Retired Prior to August 1, 1968. If the person because of whose death the surviving spouse is entitled to a monthly survivorship allowance died or retired from city service prior to August 1, 1968, the amount of monthly survivorship allowance payable to the surviving spouse shall be equal to eighteen (18) percent of the deceased person's final compensation as defined in Section 3.36.020.5; plus five thousand six hundred twenty-five ten-thousandths (0.5625) percent of such final compensation for each full year of service for which the deceased person was entitled to credit under the provisions of this plan in excess of the first two (2) years of service, less the amounts specified in Section 3.36.1330, but in no event shall such monthly survivorship allowance exceed twenty-eight and one hundred twenty-five thousandths (28.125) percent of the final compensation of the deceased person less the amounts specified in Section 3.36.1340.

B. Where Deceased Did Not Die or Retire Prior to August 1, 1968. If the person because of whose death the surviving spouse is entitled to a monthly survivorship allowance did not die or retire prior to August 1, 1968, then except as provided in subsection C. or D of this section, the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be an amount equal to twenty-four (24) percent of the deceased person's final compensation, as defined in Section 3.36.020.5, plus seventy-five hundredths (0.75) percent of such final compensation for each year of service for which the deceased person was entitled to credit under the provisions of this plan in excess of the first two (2) years of service, less the amounts specified in Section 3.36.1340, but in no event shall such monthly allowance exceed thirty-seven and one-half (37 1/2) percent of the final compensation of the deceased person less the amounts specified in Section 3.36.1340.

C. Where Deceased Retired on or after February 4, 2000; or Deceased Died on or after February 4, 2000, but Prior to Receipt of Retirement Allowance. If the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance retired from city service on or after February 4, 2000, or died on or after February 4, 2000, but before receiving any retirement allowance, then:

1. In the case where, at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of up to seventy-five (75) percent of the deceased person's final compensation, the amount of the monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be an amount equal to twenty-four (24) percent

of the deceased person's final compensation, as defined in Section 3.36.020.5, plus seventy-five hundredths (0.75) percent of such final compensation for each year of service for which the deceased person was entitled to credit under the provisions of this plan in excess of the first two (2) years of service, less the amounts specified in Section 3.36.1340, but in no event shall such monthly allowance exceed thirty-seven and five-tenths (37.5) percent of the final compensation of the deceased person, less the amounts specified in Section 3.36.1340.

2. In the case where, at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of at least seventy-five (75) percent of the deceased person's final compensation, the amount of the monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be an amount equal to fifty (50) percent of the deceased person's retirement allowance, less the amounts specified in Section 3.36.1340, but in no event shall such monthly allowance exceed forty-two and five-tenths (42.5) percent of the final compensation of the deceased person, less the amounts specified in Section 3.36.1340.

For the purposes of this subsection C., if the deceased person died prior to retirement, the "deceased person's retirement allowance" shall mean the retirement allowance that would have been paid had the deceased person retired on the day immediately preceding his or her death.

D. Where Deceased Was Employed in the Fire Department and Retired on or after July 1, 2008; or Deceased Died on or after July 1, 2008, but Prior to Receipt of Retirement Allowance. If the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance was employed in the fire department and either (a) retired from city service on or after July 1, 2008, or died on or after July 1, 2008, but before receiving any retirement allowance, then:

1. In the case where, at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of up to seventy-five (75) percent of the deceased person's final compensation, the amount of the monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be an amount equal to twenty-four (24) percent of the deceased person's final compensation, as defined in Section 3.36.020.5, plus seventy-five hundredths (0.75) percent of such final compensation for each year of service for which the deceased person was entitled to credit under the provisions of this plan in excess of the first two (2) years of service, less the amounts specified in Section 3.36.1340, but in no event shall such monthly allowance exceed thirty-seven and five-tenths (37.5) percent of the final compensation of the deceased person, less the amounts specified in Section 3.36.1340.

2. In the case where, at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of at least seventy-five (75) percent of the deceased person's final compensation, the amount of the monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be an amount equal to fifty (50) percent of the deceased person's retirement allowance, less the amounts specified in Section 3.36.1340, but in no event shall such monthly allowance exceed forty-five (45) percent of the final compensation of the deceased person, less the amounts specified in Section 3.36.1340.

For the purposes of this subsection D., if the deceased person died prior to retirement, the "deceased person's retirement allowance" shall mean the retirement allowance that would have been paid had the deceased person retired on the day immediately preceding his or her death.

(Prior code § 2903.257; Ords. 23807, 25936, 26836, 27712, 28331.)

### **3.36.1290 Marriage or domestic partnership of surviving spouse or surviving domestic partner - When return of contributions and monthly survivorship allowance are payable.**

A. Anything in this chapter to the contrary notwithstanding, from and after the effective date of this

section, if the surviving spouse or surviving domestic partner of a deceased member who, at the time of death is fifty-five (55) years of age and is entitled to credit for twenty (20) years of service, or who is entitled to be credited with thirty (30) years of service regardless of whether such member has attained the age of fifty-five (55), marries or establishes a domestic partnership, such marriage or domestic partnership shall not deprive the surviving spouse or the surviving domestic partner of the return of contributions, plus interest thereon, and monthly survivorship allowances for which he or she is eligible at the time of the member's death under Sections 3.36.1200, 3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280. Such surviving spouse or surviving domestic partner shall, despite such marriage or domestic partnership, be entitled subject to the provisions of this section to receive and shall be paid from the retirement fund, until such surviving spouse or surviving domestic partner dies, such contributions plus interest there on, and such monthly survivorship allowance to which he or she would be entitled pursuant to Sections 3.36.1200, 3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280, as if he or she had not married or established a domestic partnership. In the event that any surviving spouse or surviving domestic partner of any such member has, at any time before the effective date of this section, remarried or established a domestic partnership and for such reason has been deprived of any such contributions, plus interest thereon, and monthly survivorship allowances because of the provisions of Sections 3.36.1200, 3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280, the return of such contributions, and interest thereon (in the event the full return of such contributions, and interest thereon, has not been made at the time of such remarriage or establishment of a domestic partnership), and payment of the monthly survivorship allowance shall be recommenced as of the effective date of this Section and shall be thereafter paid in accordance with Sections 3.36.1200, 3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280, until such surviving spouse or surviving domestic partner dies, and no longer, but no return of contributions plus interest thereon shall be made, and no survivorship allowance shall be paid, for any period between the date such return of contributions plus interest thereon and monthly survivorship allowance was terminated by such remarriage or establishment of a domestic partnership and the effective date of this section, it being the intention that this section shall operate prospectively and not retroactively.

B. As used in this section:

1. For the purposes of Sections 3.36.1200 and 3.36.1210:

a. "Surviving spouse" means the person to whom the deceased member was married at the time of the deceased member's death and who survives the deceased member's death.

b. "Surviving domestic partner" means the person with whom the deceased member, at the time of the deceased member's death, had established a domestic partnership and who survives the deceased member's death.

2. For the purposes of Section 3.36.1230 and 3.36.1240:

a. "Surviving spouse" means the person to whom the deceased member was married at the time of the deceased member's death and at the time the deceased member was retired for service or disability and who survives such deceased member's death.

b. "Surviving domestic partner" means the person with whom the deceased member, both at the time of the deceased person's death and at the time the deceased member was retired for service or disability, had established a registered domestic partnership and who survives the deceased member's death.

3. For the purposes of Sections 3.36.1270 and 3.36.1280:

a. "Surviving spouse" means whichever of the following is applicable for the purposes of Sections 3.36.1270 and 3.36.1280:

i. The person to whom the deceased member was married at the time of the deceased member's death and who survives the deceased member's death; or

ii. The person to whom the deceased member was married at the time of the deceased member's death and at the time the deceased member was retired for service or disability and who survives the deceased member's death.

b. "Surviving domestic partner" means whichever of the following is applicable for the purposes of Sections 3.36.1270 and 3.36.1280:

i. The person with whom the deceased member, at the time of the deceased member's death, had established a domestic partnership and who survives the deceased person's death; or

ii. The person with whom the deceased member, both at the time of the deceased person's death and at the time the deceased member was retired for service or disability, had established a domestic partnership and who survives the deceased member's death.

(Prior code § 2903.257a; Ords. 21686, 23807, 27712.)

### **3.36.1295 Reinstatement of terminated allowances.**

A. If the monthly allowance of the surviving spouse of any person who retired or died prior to October 1, 1999, was terminated pursuant to the provisions of Chapter 3.36 of the San José Municipal Code as such Chapter read before the effective date of Ordinance No. 25936, because the surviving spouse remarried, the monthly allowance shall be reinstated effective the later of:

1. October 1, 1999; or

2. The first month after the surviving spouse provides documentation satisfactory to the Secretary to the Board showing the surviving spouse's eligibility for reinstatement, of the allowance.

B. The reinstatement of the monthly allowance shall be prospective only and no payments shall be made for the months during which the allowance was terminated pursuant to the prior provisions of Chapter 3.36. Any cost-of-living adjustments pursuant to Chapter 3.44 of the San José Municipal Code shall also be prospective only and no cost-of-living adjustments shall be made for any time during which the monthly allowance was terminated.

C. The reinstated monthly allowance shall be paid to the eligible surviving spouse for the remainder of the surviving spouse's life.

(Ord. 25936; 27712.)

### **3.36.1300 Amount of survivorship allowance payable to surviving child or children.**

Subject to and except as otherwise provided by other provisions of this Chapter, if and whenever any survivorship allowance is payable to any surviving child or children pursuant to other provisions of this Part 8, the surviving child, or each of the surviving children if there is more than one (1) surviving child of the deceased member or person, shall be entitled to receive and shall be paid from the retirement fund, until the surviving child marries, establishes a domestic partnership, attains the age of eighteen (18) years or dies, whichever is the earlier time, and no longer, the following monthly survivorship allowance:

A. Death or Retirement Prior to August 1, 1968 - One Eligible Surviving Child. If the person because of whose death the surviving child is entitled to a monthly survivorship allowance died or retired

from city service prior to August 1, 1968, and if in addition, there is only one (1) eligible surviving child of the deceased person entitled to receive a monthly survivorship allowance, then in that event while there is only one (1) eligible surviving child of the deceased person entitled to receive a monthly survivorship allowance, the monthly allowance payable to such child shall be:

1. An amount equal to eighteen and seventy-five hundredths (18.75) percent of the deceased person's final compensation less the amounts specified in Section 3.36.1330; or

2. If the death because of which the survivorship allowance is payable arose out of and in the course of the deceased person's employment with the city, or as a result of 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 amount of the monthly survivorship allowance payable to one (1) surviving child shall be twenty-five (25) percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330.

3. If the deceased was retired for service-connected disability, an amount equal to eighteen and seventy-five hundredths (18.75) percent of the deceased person's final compensation.

B. Death or retirement not prior to August 1, 1968; one eligible surviving child. If the person because of whose death the surviving child is entitled to a monthly survivorship allowance did not die or retire from city service prior to August 1, 1968, and if, in addition, there is only one (1) eligible surviving child of the deceased person entitled to receive a monthly survivorship allowance, then in that event, while there is only one (1) eligible surviving child of the deceased person entitled to receive a monthly survivorship allowance, the amount of such monthly survivorship allowance payable to such child shall be:

1. An amount equal to twenty-five (25) percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330; or

2. If the death 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, an amount equal to twenty-five (25) percent of the deceased person's final compensation.

3. If the deceased was retired for service-connected disability, an amount equal to twenty-five (25) percent of the deceased person's final compensation.

C. Death or retirement prior to August 1, 1968 - two eligible surviving children. If the person because of whose death the surviving children are entitled to a monthly survivorship allowance died or retired from city service prior to August 1, 1968, and if in addition there are only two (2) eligible surviving children of the deceased person entitled to receive a monthly survivorship allowance, then in that event while there are only two (2) such surviving children of the deceased person entitled to receive a monthly survivorship allowance, the allowance payable to each child shall be:

1. If the death did not arise 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, the monthly retirement allowance payable to each of the surviving children shall be an amount equal to one-half ( 1/2) of the amount specified in paragraph a below, or one-half ( 1/2) of the amount specified in paragraph b below, whichever is the lesser amount:

a. Twenty-eight and one hundred twenty-five thousandths (28.125) percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330; or

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 of such deceased person, will not exceed a total of fifty-six and twenty-five hundredths (56.25) percent of such final compensation, less the amounts specified in Section 3.36.1330.

2. If the death 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 system and before he or she was retired for service or disability, the monthly survivorship allowance payable to each of the two (2) surviving children shall be one-half ( 1/2) of the amount specified in paragraph a below, or one-half ( 1/2) of the amount specified in paragraph b below, whichever is the lesser amount:

a. Fifty (50) percent of the deceased person's final compensation less the amounts specified in Section 3.36.1330; or

b. That percentage of the deceased person's final compensation which, when added to the percentage of such compensation which is paid or payable to a surviving spouse of such deceased person, will not exceed a total of seventy-five (75) percent of such final compensation, less the amounts specified in Section 3.36.1330.

3. If the deceased was retired for service-connected disability, the monthly retirement allowance payable to each of the surviving children shall be an amount equal to one-half ( 1/2) of the amount specified in paragraph a. below, or one-half ( 1/2) of the amount specified in paragraph b. below, whichever is the lesser amount:

a. Twenty-eight and one hundred twenty-five thousandths (28.125) percent of the deceased person's final compensation; or

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 of such deceased person, will not exceed a total of fifty-six and twenty-five hundredths (56.25) percent of such final compensation.

D. Death or retirement not prior to August 1, 1968 - two eligible surviving children. If the person because of whose death the surviving children are entitled to a monthly survivorship allowance did not die or retire from city service prior to August 1, 1968, and if in addition there are only two (2) eligible surviving children of the deceased person entitled to receive a monthly survivorship allowance, then in that event, while there are only two (2) eligible surviving children of the deceased person entitled to receive a monthly survivorship allowance, the monthly survivorship allowance payable to each of the two (2) surviving children shall be:

1. If the death did not arise 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, the monthly allowance payable to each of the surviving children shall be an amount equal to one-half ( 1/2) of the amount specified in paragraph a below, or one-half ( 1/2) of the amount specified in paragraph b below, whichever is the lesser amount:

a. Thirty-seven and five tenths (37.5) percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330; or

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 (75) percent of such

final compensation, less the amounts specified in Section 3.36.1330.

2. If the death because of which said survivorship 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 amount of such monthly survivorship allowance payable to each of said two (2) children from and after said death, while entitled to the same, shall be one-half ( 1/2) of the amount specified in paragraph a below, or one-half ( 1/2) of the amount specified in paragraph b below, whichever is the lesser amount:

a. Fifty (50) percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330; or

b. That percentage of the deceased person's final compensation which, when added to the percentage of such 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 (75) percent of such final compensation, less the amounts specified in Section 3.36.1330.

3. If the deceased person was retired for service-connected disability, the monthly allowance payable to each of the surviving children shall be an amount equal to one-half ( 1/2) of the amount specified in paragraph a. below, or one-half ( 1/2) of the amount specified in paragraph b. below, whichever is the lesser amount:

a. Thirty-seven and five-tenths (37.5) percent of the deceased person's final compensation; or

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 (75) percent of such final compensation.

E. Death or retirement prior to August 1, 1968; three or more eligible surviving children. If the person because of whose death the surviving children are entitled to a monthly survivorship allowance died or retired from city service prior to August 1, 1968, and if, in addition, there are three (3) or more eligible surviving children of the deceased person entitled to receive a monthly survivorship allowance, the monthly survivorship allowance payable to each child while he is entitled to the same shall be:

1. If the death did not arise 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, the monthly allowance payable to each of the surviving children shall be the amount specified in paragraph a below, or the amount specified in paragraph b below, whichever is the lesser amount:

a. Thirty-seven and five-tenths (37.5) percent of the deceased person's final compensation less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance; or

b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or is payable to a surviving spouse of such deceased person, will not exceed a total of fifty-six and twenty-five hundredths (56.25) percent of such final compensation less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance.

2. If the death because of which said survivorship 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 amount of such monthly survivorship allowance payable to each child while he or she is entitled to same shall be the amount specified in the following paragraph a., or the amount specified in the following paragraph b., whichever is the lesser amount:

a. Seventy-five (75) percent of the deceased person's final compensation, less the amounts specified by Section 3.36.1330, divided by the number of children entitled to receive an allowance; or

b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation paid or payable to a surviving spouse of such deceased person, will not exceed a total of seventy-five (75) percent of such final compensation, less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance.

3. If the deceased person was retired for service-connected disability, the monthly allowance payable to each of the surviving children shall be the amount specified in paragraph a. below, or the amount specified in paragraph b. below, whichever is the lesser amount:

a. Thirty-seven and five-tenths (37.5) percent of the deceased person's final compensation, divided by the number of children entitled to receive an allowance; or

b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or is payable to a surviving spouse of such deceased person, will not exceed a total of fifty-six and twenty-five hundredths (56.25) percent of such final compensation, divided by the number of children entitled to receive an allowance.

F. Death or retirement not prior to August 1, 1968 - three or more eligible surviving children. If the person because of whose death the surviving children are entitled to a monthly survivorship allowance did not die or retire from city service prior to August 1, 1968, and if, in addition, there are three (3) or more eligible surviving children of the deceased person entitled to receive a monthly survivorship allowance, then in that event, while there are three (3) or more such surviving children of the deceased person entitled to receive a monthly survivorship allowance, the monthly survivorship allowance payable to each child shall be:

1. If the death did not arise 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, the monthly allowance payable to each of the surviving children shall be the amount specified in the following paragraph a., or the amount specified in the following paragraph b., whichever is the lesser amount:

a. Fifty (50) percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance; or

b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or is payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five (75) percent of such final compensation, less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance.

2. If the death because of which said survivorship 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 amount of such monthly survivorship allowance payable to each child from and after said death while he or she is entitled to the same shall be the amount specified in the following paragraph a., or the amount specified in the following paragraph b., whichever is the lesser amount:

a. Seventy-five (75) percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance; or

b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation paid or payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five (75) percent of such final compensation, less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance.

3. If the deceased person was retired for service-connected disability, the monthly allowance payable to each of the surviving children shall be the amount specified in the following paragraph a., or the amount specified in the following paragraph b., whichever is the lesser amount:

a. Fifty (50) percent of the deceased person's final compensation, divided by the number of children entitled to receive an allowance; or

b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or is payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five (75) percent of such final compensation, divided by the number of children entitled to receive an allowance.

G. Nothing in this section shall be deemed to entitle any person to any survivorship allowance that was not provided by this chapter as this chapter existed at the time of the deceased person's death.

(Prior code § 2903.258; Ords. 23807, 26901, 27712.)

**3.36.1305 Amount of survivorship allowance payable to surviving child or children when member had less than twenty years service credit earned while employed by city.**

Except as provided in subsection E. below, if and whenever any survivorship allowance is payable to any eligible surviving child or children pursuant to the provisions of this Part 8 because of the death of a member who, at the time of the member's death, had earned less than twenty (20) years of service credit in this plan while employed by the city, then instead of any other survivorship allowance provided to eligible surviving children under this Part 8, the surviving children's monthly survivorship allowances shall be as follows:

A. 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 earned in this plan while employed by the city, subject to a maximum of twenty-five (25) percent of such final compensation. Pro rata credit shall be given for a portion of a full year of service.

B. To each of two (2) eligible surviving children, one-half ( 1/2) of the amount specified in the following paragraph 1. or one-half ( 1/2) of the amount specified in the following paragraph 2., whichever is the lesser amount:

1. One and eight hundred seventy-five thousandths (1.875) percent of such deceased person's final compensation for each full year of service earned in this plan while employed by the city; provided, however, that in no event shall the combined monthly allowance payable to the children exceed a

maximum of fifty (50) percent of such final compensation. Pro rata credit shall be given for a portion of a full year of service.

2. 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 (75) percent of such final compensation.

C. To each of three (3) or more eligible surviving children, the amount specified in the following paragraph 1. or the amount specified in the following paragraph 2., whichever is the lesser amount:

1. Two and five-tenths (2.5) percent of such deceased person's final compensation for each full year of service earned in this plan while employed by the city, 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 (75) percent of such final compensation. Pro rata credit shall be given for a portion of a full year.

2. 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 (75) percent of such final compensation, divided by the number of children entitled to receive an allowance.

D. The benefits payable pursuant to this Section 3.36.1305 shall be payable to each eligible surviving child until that surviving child marries, establishes a domestic partnership, attains the age of eighteen (18) years, or dies, whichever first occurs. Thereafter, no benefits shall be payable to such child.

E. This Section 3.36.1305 shall not apply, and benefits payable to the deceased person's eligible surviving child or surviving children shall be calculated as provided in Section 3.36.1300, in any case where benefits are payable on account of:

1. The death of a person before retirement where the death arises out of and in the course of the person's employment with the city; or

2. The death of a person who has been retired for service-connected disability but who dies before receipt of retirement pay; or

3. The death of a person who has been retired for service-connected disability, who is not reemployed by the city at the time of death and who dies during the disability retirement after receiving any disability retirement allowance.

(Ord. 25616; 27712.)

### **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 (75) percent 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 (75) percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330.

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.

(Prior code § 2903.259; Ords. 23807, 27712.)

### **3.36.1320 Surviving children's allowances - How paid.**

A. Except as otherwise provided in this chapter, any survivorship allowance which is payable under the provisions of this chapter to any surviving child or children shall be paid to such parent or parents of such child or children as have custody of such child or children, for the benefit of such child or children, or if a guardian or guardians have been appointed for such child or children, and the board shall have received notice thereof, to the guardian or guardians of such child or children, for the benefit of such child or children.

B. Notwithstanding the above, however, the board, in its discretion, may at any time or from time to time pay said allowances to any other person or persons, for the benefit of such child or children, or directly to the child or children, if it finds that such will be in the best interest of the children. In addition, the board may, if it has reason to believe that such allowances are not being used for the benefit of the child or children entitled thereto, suspend such payments, or any of them, until such time as it receives assurance, satisfactory to the board, that such payments will be used for the benefit of the children entitled thereto.

C. No person shall have any claim against the board or any member thereof because of or by reason of the board's suspension of any payments or by reason of the board's changing the person or persons to whom such payments are made.

(Prior code § 2903.260; Ords. 23807, 27712.)

### **3.36.1325 Surviving children's allowances - Payment to custodian or trustee.**

A. A member of this plan or any person who has retired from this plan may designate, on a beneficiary designation form approved by the board, that any survivorship allowance which is payable under the provisions of this chapter to any surviving child or children of the member or retired person

shall be paid to any of the following:

1. A named custodian for such child under the California Uniform Transfers to Minors Act.
2. A trustee of a trust created for the benefit of such child or children under such member's or retired person's will.
3. A trustee of an inter vivos trust created for the benefit of such child or children.

B. Payment to custodian. Such survivorship allowance shall be paid to a custodian under the California Uniform Transfers to Minors Act named in a beneficiary designation form if all of the following conditions are met:

1. The board is provided with proof to the board's satisfaction that such person is in fact the custodian named in the beneficiary designation form; and
2. The board is provided with written acknowledgement of receipt of payment as custodian, as provided by California Probate Code Section 3908, on such form as the board may provide, together with execution of such additional waivers, indemnification, or other documents as the board may require.

C. Payment to trustee of testamentary trust. Such survivorship allowance shall be paid to a trustee named in a member's or retired person's will if all of the following conditions are met:

1. Such member's or retired person's beneficiary designation form specifically designates a trust created under such person's will as beneficiary; and
2. Such member's or retired person's will contains provisions specifically creating such trust or trusts for the benefit of such member's or retired person's surviving child or children.
3. The trustee is named in such member's or retired person's will.
4. The board is provided with a filed, endorsed, and certified copy of a court order which determines the validity of such trust or trusts and orders the establishment of such trust or trusts.

D. Payment to trustee of inter vivos trust. Such survivorship allowance shall be paid to the trustee of an inter vivos trust if all of the following conditions are met:

1. Such trust is clearly identified to the board's satisfaction on such member's or retired person's beneficiary designation form on file with the board.
2. Such trust contains provisions specifically creating a trust or trusts for the benefit of such member's or retired person's surviving child or children.
3. The board is provided with a filed, endorsed, and certified copy of a court order pursuant to California Probate Code Section 1138.1 or similar statute authorizing and approving payment of such benefit to such trust.

E. Unless and until the conditions of either B., C., or D. of this Section 3.36.1325 are met, the payment of such survivorship allowance shall be made in accordance with Section 3.36.1320 of this chapter.

(Ords. 22342, 23807, 27712.)

**3.36.1330 No deduction after January 1, 1964, of amount of workmen's compensation benefits.**

Anything elsewhere in this chapter to the contrary notwithstanding, 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.

(Prior code § 2903.261; Ords. 23807, 27712.)

**3.36.1340 Reduction of benefits if member retires before attaining age fifty-five.**

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 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.

(Prior code § 2903.263; Ords. 21686, 23807, 24092, 27712.)

**3.36.1350 Survivorship benefits payable where person eligible for monthly allowance under Section 3.36.760 dies before receiving same.**

A. If a person who becomes a member of this plan because of the reason set forth in Section 3.36.760 and has reached fifty-five (55) years of age should die before receiving any monthly allowance provided for in Section 3.36.760, such person's surviving spouse, surviving domestic partner, child or children (as these terms are defined in Section 3.36.1200), shall be entitled to:

1. Under the conditions described in subsections C. and D. of Section 3.36.1200, 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 (2) percent per annum; and

2. 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, the amount of such allowance to be as specified in subsection C. of this section.

B. If a person who becomes a member of this system because of the reason set forth in Section 3.36.760 and has reached fifty-five (55) years of age should die before receiving the monthly allowance provided for in Section 3.36.760, then under the conditions described in subsection E. of Section 3.36.1200 such deceased person's estate shall be entitled to a return of his contributions together with interest thereon to the date of death, but in no case shall the interest exceed two (2) percent per annum.

C. The amount of a monthly allowance payable under this section shall be:

1. To a surviving spouse or surviving domestic partner for the surviving spouse's or surviving domestic partner's life, 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 monthly allowance exceed a maximum of thirty-seven and five tenths (37.5) percent of such final compensation. Pro rata credit shall be given for a portion of a full year.

2. To one (1) eligible surviving child, one and twenty-five one hundredths (1.25) percent of such 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 (25) percent 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 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 such children exceed a maximum of fifty (50) percent 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 (75) percent 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 (2.5) percent 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 (75) percent 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 (75) percent of such final compensation, divided by the number of children entitled to receive an allowance.

D. 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 of this chapter, 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.

(Prior code § 2903.263a; Ords. 19478, 23807, 27712.)

**3.36.1360 Survivorship benefits payable where person eligible for monthly allowance under Section 3.36.760 dies after receiving same.**

A. If a person who becomes a member of this plan because of the reason set forth in Section 3.36.760 and has reached fifty-five (55) years of age should die after receiving any such allowance, such person's surviving spouse, surviving domestic partner, and surviving child or children (as these 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 3.36.1230, the amount of such monthly allowance to be as specified in subsection B. of this section, and the deceased person's estate shall be entitled to a payment of one thousand dollars (\$1,000.00) under the conditions described in subsection E. of Section 3.36.1230.

B. The amount of such monthly allowance payable under this section shall be:

1. To a surviving spouse or surviving domestic partner for the surviving spouse's or surviving domestic partner's life, 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 monthly allowance exceed a maximum of thirty-seven and five tenths (37.5) percent of such final compensation. Pro rata credit shall be given for a portion of a full year.

2. To one (1) eligible surviving child, one and twenty-five hundredths (1.25) percent of such 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 (25) percent 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 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 said children exceed a maximum of fifty (50) percent 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 (75) percent 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 (2.5) percent 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 (75) percent 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 (75) percent 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 Part 9 of this chapter, it being assumed for purpose 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 received a monthly allowance under this chapter.

(Prior code § 2903.263b; Ords. 19123, 23807, 27712.)

### **3.36.1370 Termination of allowances or benefits for treason or conviction of a felony.**

Any and all allowances or benefits payable to any person under and by virtue of any of the provisions of this Part 8 may be cancelled and terminated by the retirement board, in its sole discretion, if the recipient thereof should commit treason or be convicted of a felony.

(Prior code § 2903.262; Ords. 23807, 27712.)

## **Part 9 SURVIVING CHILD'S SCHOOL ALLOWANCE**

### Sections:

- 3.36.1400 Administration and enforcement - Retirement board authority.
- 3.36.1410 Definitions.
- 3.36.1430 When period of nonattendance is deemed full-time attendance.
- 3.36.1440 Duration of entitlement.
- 3.36.1450 Child's school allowance - Amount.

### **3.36.1400 Administration and enforcement - Retirement board authority.**

A. The retirement board referred to in Part 3 of this Chapter 3.36 is hereby authorized and empowered to adopt, administer and enforce all such rules and regulations, not inconsistent with the provisions of this part, as it may deem reasonably necessary for the proper administration, management, implementation, carrying out, enforcement or control of the provisions of this part or of the program provided for by the provisions of this part.

B. In addition, the retirement board is hereby authorized and empowered to make inquiries and investigations, hold hearing, and make administrative or factual findings and determinations where it

finds such to be reasonably necessary for the proper administration, management, implementation, carrying out, enforcement or control of the provisions of this part or of the program provided for by the provisions of this part. Any and all such findings and determinations of the retirement board shall be deemed final and conclusive.

(Prior code § 2903.270k.)

### **3.36.1410 Definitions.**

As used in this Part 9:

A. "Educational Institution" Defined. "Educational institution" means a school (including a technical, trade or vocational school), junior college, college or university:

1. Which is operated or directly supported by the United States, or by any state of the United States, or by any local government or political subdivision thereof; or

2. Which is approved by a state or accredited by a state-recognized or nationally recognized accrediting agency or body. A nationally recognized accrediting agency or body is an agency or body that has been determined to be such by the United States commissioner of education. A state-recognized accrediting agency or body is an agency or body designated or recognized by a state as a proper authority for accrediting schools, colleges or universities as meeting educational standards. Approval by a state includes approval of a school, college or university as an educational institution, or of one (1) or more of the school's, college's or university's courses by a state agency or subdivision of the state. This approval may be indirect, as for example, if attendance at the school satisfies the state's compulsory educational laws, or if the school has tax exemption as a school, or if the school receives financial aid, loans or scholarship allowances; or

3. Whose credits are accepted, on transfer, by not less than three (3) institutions which have been accredited by a state recognized or nationally recognized accrediting agency or body, for credit on the same basis as if transferred from an institution so accredited. Acceptance of credits on transfer includes, in addition to acceptance of laterally transferred credits between similar institutions, acceptance of credits completed in an institution at a lower grade level for entrance into an institution at a higher grade level.

B. "Eligible Surviving Child" Defined. "Eligible surviving child" means a surviving child, as defined in subsection E. of this section, who meets and satisfies all of the following conditions:

1. Such surviving child must have attained the age of eighteen (18) years; and
2. Such surviving child must not have attained the age of twenty-two (22) years; and
3. Such surviving child must be neither married nor a member of a domestic partnership; and
4. Such surviving child must be a full-time student, as such term is defined in subsection D. of this section.

C. "Full-Time Attendance" Defined.

1. "Full-time attendance" at an educational institution means:

a. Enrollment in a junior college, college or university in a day or evening noncorrespondence course of at least thirteen (13) school weeks' duration which is full-time under the

school's standards and practices for day students; or

b. Enrollment in any other educational institution in a day or evening noncorrespondence course of at least thirteen (13) school weeks' duration which is full-time under the school's standards and practices for day students with scheduled attendance at the rate of twenty (20) hours per week or more.

2. The thirteen-school-week duration requirement is met if the course lasts for thirteen (13) weeks including the beginning and ending weeks.

3. The thirteen-school-week duration requirement refers to the entire course of study (e.g., a four-year high school or college course, a two-year junior college course), and not a semester, trimester, summer school session, or other segment of the course. If a student attending a course of at least thirteen (13) school weeks' duration drops out or is dropped before completing the thirteen school weeks, he or she may still qualify for the months of full-time attendance.

4. A student whose full-time attendance begins or ends in a month is in full-time attendance for that month.

D. "Full-Time Student" Defined. "Full-time student" means a student who is in full-time attendance, as such term is defined in subsection C. of this section, as a student at an educational institution as such term is defined in subsection A. of this section, except that no student shall be deemed to be a full-time student if he or she is paid by his or her employer for attending an educational institution at the employer's request or pursuant to a requirement of the employer.

E. "Surviving Child" Defined. "Surviving child" means a child who, if he or she were under the age of eighteen (18) years, would be deemed to be a surviving child as such term is defined in Part 8 of Chapter 3.36 and, as such, would be entitled, if he or she were under eighteen (18) years of age, to a surviving child's survivorship allowance under and pursuant to the provisions of said Part 8.

(Prior code § 2903.270a-e, h; Ords. 20202, 23807, 27712.)

### **3.36.1430 When period of nonattendance is deemed full-time attendance.**

A. A student who has been in full-time attendance at an educational institution is deemed to be in full-time attendance during a period of nonattendance at an educational institution if the period of nonattendance is four consecutive calendar months or less, and the student:

1. Establishes that he intends to be in full-time attendance at an educational institution in the month immediately following such period of nonattendance; or

2. Is in full-time attendance at an educational institution in the month immediately following the period of nonattendance.

B. A period of nonattendance is any period in which a student is not a full-time student (i.e., he is not attending school, he is attending school less than full-time, or he is attending a school that is not an educational institution).

C. A period of nonattendance begins on the first day of the month following the last month in which the student was in full-time attendance, and ends on the last day of the month preceding the month in which the student resumes full-time attendance.

D. A student or individual shall not be deemed a full-time student or in full-time attendance during any period of nonattendance if the nonattendance is due to expulsion or suspension from school,

notwithstanding that such student or individual intends to resume or actually does resume full-time attendance within four calendar months after the beginning of such period of nonattendance or later.

(Prior code § 2903.270f; Ord. 20202.)

### **3.36.1440 Duration of entitlement.**

An eligible surviving child is entitled to a surviving child's school allowance under the provisions of this Part 9 for each calendar month, after January 1, 1968, in which all the conditions of entitlement described in the preceding provisions of this part are met. The last month for which such child is entitled to a surviving child's school allowance under the provisions of this part is the month before the month, in which any of the following events first occurs:

- A. The child dies; or
- B. The child marries; or
- C. The child becomes a member of a domestic partnership; or
- D. The child attains the age of twenty-two (22) years; or
- E. The first month during no part of which the child is a full-time student.

(Prior code § 2903.270i, 27712.)

### **3.36.1450 Child's school allowance - Amount.**

An eligible surviving child shall be entitled to receive, for each calendar month after January 1, 1968, in which all of the conditions of entitlement described in the preceding provisions of this Part 9 are met by him, and in no event for any period longer than the duration of his entitlement as specified in Section 3.36.1440, a child's allowance. The amount of such allowance for each calendar month for which said child is eligible for the same shall be the same as the amount which would be payable to him for each such month as a surviving child's survivorship allowance under and by virtue of the provisions of Part 8 of this chapter if he were under the age of eighteen years and otherwise entitled to a surviving child's survivorship allowance under the provisions of Part 8. Anything in said Part 8 or elsewhere in this chapter to the contrary notwithstanding, for the purpose of determining and computing the amount of the child's survivorship allowance which would be payable to such child under the provisions of Part 8 if he were under the age of eighteen years and otherwise entitled to such survivorship allowance, and also for the purpose of determining and computing the amount of child's survivorship allowance payable under the provisions of Part 8 to other surviving children of the parent because of whose death said child is entitled to a school allowance, the child claiming the school allowance shall be deemed and considered to be one of the surviving children entitled to a child's survivorship allowance under the provisions of Part 8.

(Prior code § 2903.270j.)

## **Part 9.5 OPTIONAL SETTLEMENTS**

Sections:

3.36.1460 Election to change retirement allowance.

- 3.36.1461 Manner and time of election.
- 3.36.1462 Optional settlements.
- 3.36.1463 Limitations on optional settlements.
- 3.36.1464 Automatic revocation of election of optional settlement.
- 3.36.1465 Special provisions.
- 3.36.1466 Actuarial equivalent.
- 3.36.1467 Additional window period for election of optional settlement.
- 3.36.1468 Marriage or domestic partnership after commencement of monthly allowance.

### **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 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.

(Ords. 24170, 27712.)

### **3.36.1461 Manner and time of election.**

- A. A member of this plan may elect an optional settlement described in this part by filing a written election with the retirement board on a form provided by the secretary to the board.
- B. An election of an optional settlement must be filed no earlier than the time the application for retirement is filed and no later than thirty (30) days after the effective date of retirement.
- C. Any election made pursuant to the provisions of this part may be amended or revoked by the member who made the election provided that the amendment or revocation is made in writing and is filed with the retirement board on or before the effective date of the member's retirement. If an election is revoked, a new one (1) may be made in the manner and time specified in subsections A. and B. of this section.
- D. Except as provided in subsection E. of this section and in Section 3.36.1464, any election made pursuant to this part that is not amended or revoked on or before the thirtieth day after the effective date of the member's retirement shall be irrevocable, and benefits shall be paid in accordance with such election and the provisions of this part.
- E. In the event the member is reinstated from retirement and becomes a member of this plan, any election made pursuant to this part prior to such reinstatement shall be automatically revoked, and no benefits shall be paid pursuant to such election.

(Ords. 24170, 27712.)

### 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.

(Ords. 24170, 27712.)

### 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 (100) percent or be less than fifty (50) percent of the reduced retirement allowance paid to the member.

B. The percentage paid to the surviving spouse or surviving domestic partner shall be a multiple of five (5) percent (e.g., fifty (50) percent, fifty-five (55) percent, sixty (60) percent, sixty-five (65) percent).

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 (75) percent 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.

(Ords. 24170, 27712.)

### **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.

(Ords. 24170, 27712.)

### **3.36.1465 Special provisions.**

A. Notwithstanding the time limitations for filing an election set forth in Section 3.36.1461.B., a person who was employed in city service and was a member of this plan on June 1, 1991, may file a written election for an optional settlement on or before January 31, 1993, and such election shall be deemed filed in accordance with Section 3.36.1461.B. for the purposes of this part.

B. Notwithstanding the other provisions of this part, the surviving spouse or surviving domestic partner of a deceased member may elect an optional settlement and receive benefits as though the optional settlement had been elected by the deceased member in accordance with this part if all of the following conditions are satisfied:

1. On or after June 1, 1991, the deceased member either:
  - a. Retired pursuant to the provisions of this chapter; or
  - b. Began receiving an allowance pursuant to Section 3.36.1640; and
2. The deceased member died prior to February 1, 1993, without having made an election for an optional settlement; and
3. The surviving spouse or surviving domestic partner files a written election for the optional settlement on or before January 31, 1993.

C. For the purposes of this part, "retirement allowance" includes:

1. The retirement allowance that would have been paid to a member who retired but died before receipt of retirement pay.
2. The monthly allowance paid to a former member of this plan pursuant to Section 3.36.1640.

D. For the purposes of this part, "member" includes a person who has elected to allow accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640. With respect to such person, "effective date of retirement" means the date such person begins receiving payments pursuant to Section 3.36.1640.

(Ord. 24170; Ords. 27712, 27768.)

### **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:

- A. An interest rate of eight (8) percent;
- B. An annual cost-of-living increase of three (3) percent; and
- C. The following mortality tables, used irrespective of the gender of the member and the member's spouse or domestic partner:
  1. For spouses and domestic partners of members, the 1983 Group Annuity Mortality Table for females, without margins.
  2. For members who retire for service under the provisions of Part 6 of this chapter and for former members who receive allowances pursuant to Section 3.36.1630 or Section 3.36.1640, the 1983 Group Annuity Mortality Table for males, without margins.
  3. For members who retire for disability pursuant to Part 7 of this chapter, the California Public Employees' Retirement System Table for duty-disability mortality from 1982-86 Experience.

(Ords. 24170, 27712.)

### **3.36.1467 Additional window period for election of optional settlement.**

A. Notwithstanding the time limitations for filing an election set forth in Section 3.36.1461.B. or in Section 3.36.1465, a person who was employed in city service and was a member of this plan on June 1, 1991, and who retired pursuant to the provisions of this chapter or began receiving a monthly benefit pursuant to Section 3.36.1640 prior to October 23, 1992, may file a written election for an optional settlement on or before December 31, 1997, and such election shall be deemed filed in accordance with Section 3.36.1461.B. for the purposes of this part. Such election shall be subject to the requirements of subsection C. below.

B. Notwithstanding the other provisions of this part, and subject to the requirements of subsection C. below, the surviving spouse or surviving domestic partner of a deceased member or deceased former member may elect an optional settlement and receive benefits as though the optional settlement had been elected by the deceased member or former member in accordance with this part if all of the following conditions are satisfied:

1. On or after June 1, 1991, but prior to October 23, 1992, the deceased member or former member either:

- a. Retired pursuant to the provisions of this chapter; or
- b. Began receiving an allowance pursuant to Section 3.36.1640; and

2. The deceased member or former member died prior to October 2, 1997, without having made an election for an optional settlement; and

3. The surviving spouse or surviving domestic partner files a written election for the optional settlement on or before December 31, 1997.

C. Any election for an optional settlement made pursuant to the provisions of this section shall be subject to the following requirements:

1. The actuarial equivalent of the retirement allowance and the surviving spouse allowance shall be calculated as of the date of the member's retirement or as of the date the former member first began receiving monthly benefits, whichever is applicable.

2. If the total amount of the benefits paid from the plan (including both monthly benefits paid to the retired member or former member plus any benefits paid to a surviving spouse or surviving domestic partner) as of the date of the election made under subsection A. or B. exceeds the amount of the benefits that would have been paid under the selected optional settlement, then the retired member, former member, surviving spouse, or surviving domestic partner as applicable, shall repay the excess benefits, plus any cost-of-living adjustments attributable to such excess payments, to the retirement fund in such manner and at such times as approved by the board in order that the additional time in which persons may elect an optional settlement under this Section 3.36.1467 shall be cost-neutral to the retirement fund.

3. In the event the retired member or former member dies before all overpayments have been repaid to the retirement fund as required by paragraph 2. Above, any remaining overpayment shall be deducted from any survivorship or death benefits which otherwise would become payable upon the death of the retired member or former member.

D. For the purposes of this section, "retirement allowance" includes:

1. The retirement allowance that would have been paid to a member who retired but died before receipt of retirement pay; and

2. The monthly benefit paid to a former member of this plan pursuant to Section 3.36.1640.

(Ords. 25439, 27712.)

### **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

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 in the case of a person who, as of July 1, 2006, 2005:

- 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 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 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 (100) percent or be less than fifty (50) percent of the reduced retirement allowance paid to the member.

2. The percentage paid to the named spouse or domestic partner shall be a multiple of five (5) percent (e.g., fifty (50) percent, fifty-five (55) percent, sixty (60) percent, sixty-five (65) percent).

3. In no case shall any monthly allowance be paid to a former 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 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 (75) percent 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 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 (1) 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 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 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 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.

(Ords. 26643, 27712.)

## Part 10 CONTRIBUTIONS

### Sections:

- 3.36.1500 Requirements generally.
- 3.36.1505 Benefit and contributions limits - Service purchases, redeposits and aggregation of limits.
- 3.36.1510 Payroll deductions and other collections.
- 3.36.1520 Current service contributions.
- 3.36.1525 Additional employee contributions and employer contribution offset.
- 3.36.1530 Crediting of city contributions to city.
- 3.36.1540 Crediting of members' contributions to individual accounts - Discharge of claims.
- 3.36.1550 Contributions for prior service benefits.
- 3.36.1555 Special member prior service contribution provision.
- 3.36.1560 Other contributions.
- 3.36.1565 No credit to city upon the withdrawal of member's accumulated contributions.
- 3.36.1570 Administrative expenses.
- 3.36.1580 City pickup of member contributions.
- 3.36.1590 Time of payment of city contributions.

### **3.36.1500 Requirements generally.**

Any and all members of this retirement system, and any and all other persons authorized or required by the provisions of this chapter to contribute to this system, and the City of San José, shall contribute to this retirement system, and to the retirement fund, all moneys or sums required of them in this chapter in the manner and at the times provided in this chapter.

(Prior code § 2903.275.)

**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 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 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), 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.

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.

(Ord. 28886.)

**3.36.1510 Payroll deductions and other collections.**

The retirement board shall furnish to the director of finance the rates of contributions for, and the amounts of any other contributions payable by each member or other person. The director of finance shall apply such rates of contribution to the compensation of each member, and deduct from such compensation the contributions so determined and payable by each member. All other contributions authorized to be made or required of members or other persons shall be paid by such members or persons to the director of finance. The director of finance shall furnish to the board, upon request therefor, a statement of such contributions so deducted or credited with respect to each member or other person, together with such other information as the board may require. All contributions shall be placed in the retirement fund.

(Prior code § 2903.276; Ord. 27768.)

**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. 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.

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

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.

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. 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.

(Prior code § 2903.280; Ords. 19690, 23432, 27721.)

### **3.36.1525 Additional employee contributions and employer contribution offset.**

A. Notwithstanding any other provisions of this Part 10 or of Chapter 3.44, members of this plan who are not subject to the provisions of City Charter Section 1111 shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit.

B. Notwithstanding any other provisions of this Part 10, members of this plan who are subject to the provisions of City Charter Section 1111 shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration.

C. Notwithstanding any other provision of this Part 10, the city shall be entitled to an offset of a percentage, as is determined to be appropriate by the actuary for the police and fire department retirement plan, of the additional employee retirement contributions that are made under subsection A. of this Section 3.36.1525 against the retirement contributions that the city would otherwise be required to make under this Part 10.

(Ord. 28753.)

### **3.36.1530 Crediting of city contributions to city.**

The city shall be credited with any and all contributions made by it to the retirement system or fund pursuant to this chapter.

(Prior code § 2903.278.)

### **3.36.1540 Crediting of members' contributions to individual accounts - Discharge of claims.**

Each member's or other person's contribution deducted or otherwise paid to the director of finance shall be credited by the director of finance to an individual account of the member or other person for whom the contribution was made. Payment of salaries or wages less such contributions is in full discharge of all claims and demands whatsoever for the service rendered by the members during the period covered by such payment, except the benefits afforded by this chapter.

(Prior code § 2903.277; Ord. 25084.)

### **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 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 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 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.

(Prior code § 2903.279; Ords. 19690, 25614.)

### **3.36.1555 Special member prior service contribution provision.**

A. The members of this plan shall contribute to the retirement fund that portion of the contributions for prior service which is attributable to the contributions that would have been made as contributions for current service by members of this plan because of the increased benefits provided by Section 3.36.805 and Section 3.36.1020.B.3 had the members made such contributions from February 4, 1996, to the effective date of the contribution rates adjustments to implement such benefits. The rate of contribution

for such prior service, expressed as a percentage of payroll, shall be the same percentage for all members.

B. The members of this plan who are employed in the police department shall contribute to the retirement fund that portion of the contributions for prior service which is attributable to the contributions that would have been made as contributions for current service by such members because of the increased benefits provided by Ordinance No. 27721 had the members made such contributions from July 1, 2006, to the effective date of the contribution rates adjustments to implement such benefits. The rate of contribution for such prior service, expressed as a percentage of payroll, shall be the same percentage for all members who are employed in the police department.

C. The prior service costs payable by members of this plan pursuant to subsections A. and B. shall be amortized over the same period of time as the city's contributions for prior service costs for the benefits referenced in subsections A. and B., respectively, are amortized.

(Ord. 25614, 27992.)

### **3.36.1560 Other contributions.**

If any other contributions are required of a person or persons under provisions of other parts of this chapter, either as a condition to becoming a member of this system; or as a condition to receiving any benefit hereunder, or for any other reason the same shall be paid by such person or persons as provided by said other provisions.

(Prior code § 2903.281.)

### **3.36.1565 No credit to city upon the withdrawal of member's accumulated contributions.**

Except as provided in Section 3.36.190, if the membership of a member of this system terminates for any reason other than death or retirement and his accumulated contributions are returned to him or withdrawn by him, the city shall not receive a refund of its contributions made for such member nor receive a credit for such contributions against other contributions required to be made by the city.

(Ord. 20276.)

### **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.

(Prior code § 2903.282; Ords. 20065, 20849, 21164, 21243, 22678, 22704.)

### **3.36.1580 City pickup of member contributions.**

A. For the purposes of this section, contributions "picked up" by the city means contributions to this plan which are designated as employee contributions but are treated as employer contributions for income tax purposes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414

(h)(2)).

B. Notwithstanding any other provisions of law, the city may pick up, for the sole and limited purpose of deferring taxes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414(h)(2)) and Section 17501 of the California Revenue and Taxation Code, all or a portion of the contributions required to be paid by a member of this plan.

C. Nothing herein shall be construed to mean that any contributions so picked up by the city are to be treated as city contributions for any purpose other than the sole and limited purpose specified herein. Any contributions so picked up by the city shall be paid into the retirement fund and shall be treated in the retirement fund in the same manner as such contributions would be treated if they had not been picked up by the city. The member shall have no right to receive such picked up contributions directly but instead they must be paid to the retirement fund.

D. Subject to applicable laws relating to meet and confer requirements, the city shall retain the authority periodically to increase, reduce or eliminate the pickup by the city of all or a portion of the contributions required to be paid by a member of this plan.

(Ords. 22458, 26005, 28030, 28886.)

### **3.36.1590 Time of payment of city contributions.**

A. Such monthly or biweekly contributions as are required of the city by the provisions of this Part 10 shall be paid by the city within ten (10) days from and after the end of the month or two-week period for which they are made.

B. In lieu of making the monthly or biweekly contributions specified in this Part 10 for the pay periods commencing with the third pay period in fiscal year 2008-09, the city shall have the option to make, on or before August 1, 2008, an advance lump sum payment of the city's contributions to the medical benefits account and the retirement fund. The amount of such advance lump sum payment for fiscal year 2008-09 shall be as determined by the board to be actuarially equivalent to the monthly or biweekly payments that would otherwise have been the city's required contributions to the medical benefits account and the retirement fund for the pay periods commencing with the third pay period in fiscal year 2008-09.

C. Commencing with fiscal year 2009-10, the city shall have an annual option to select the advance periodic basis on which city contributions to the medical benefits account and to the retirement fund for that fiscal year will be paid; provided that such payment schedule shall be no less frequent than quarterly. Except as may otherwise be agreed to by the board, the notice of intent to exercise the option, including the advance periodic basis selected and the payment date(s) (the "notice of intent"), shall be provided by the city manager to the board on or before April 30th of the fiscal year prior to the fiscal year in which city may wish to exercise the option. The amount of the advance periodic payment(s) contained in city's notice of intent shall be as determined by the board to be actuarially equivalent to the monthly or biweekly payment that would otherwise have been required.

D. In the event that written notice of intent to exercise the option to select an alternative periodic payment schedule, has not been given by the city manager to the board on or before April 30th, or such other date as may be approved by the board, of each fiscal year, or if subsequent to the giving of such notice and prior to the commencement of the fiscal year, city elects not to exercise the option to select an alternative periodic payment schedule, city's payment of the city's contributions to the medical benefits account and to the retirement fund shall be made monthly or biweekly as otherwise specified in this Part 10.

E. Such alternative periodic payments as are made by the city pursuant to the provisions of this

Part 10 shall be paid by the city within ten (10) days of the payment date(s) specified in city's notice of intent.

F. No later than the end of the second pay period in the fiscal year immediately following a fiscal year in which city has made a lump sum payment as specified in paragraph B. and C., city shall provide to the board a statement showing the actual amount of the city's payroll for members of the plan for the prior fiscal year. The board shall then determine whether the lump sum advance payment(s) and the payment(s) that would otherwise have been required in the absence of the lump sum advance payment (s) are actuarially equivalent. The city shall pay any underpayment by the earlier of ten (10) days following receipt of the board's notice of determination or city's next contribution due date. The city shall receive credit for any overpayment in the form of an offset against the next payment(s) due by the city.

G. In the event that a city elected lump sum payment is made later than the payment date specified in the city's notice of intent, city's contribution to the medical benefits account and to the retirement fund will be recalculated by the board's actuary, at the city's expense, to reflect the timing difference. The city will pay the difference within ten (10) days of the date that the board's notice of the amount due is received.

H. Any late payment to be made later than ten (10) days after the payment date specified in the city's notice of intent is subject to approval by the board.

(Ord. 28332.)

## Part 11 SUSPENSION OR TERMINATION

### Sections:

- 3.36.1600 Suspension of membership - Conditions - Award of benefits prohibited.
- 3.36.1610 Termination of membership.
- 3.36.1620 Return of contributions upon resignation, discharge or permanent discontinuance of service - Less than twenty years' service.
- 3.36.1630 Reserved.
- 3.36.1640 Monthly allowance or return of contributions to certain persons with ten or more years of service whose membership terminates before retirement.
- 3.36.1650 Reserved.
- 3.36.1660 Survivorship benefits payable where person eligible for monthly allowance under Section 3.36.1640 dies before receiving same.
- 3.36.1670 Survivorship benefits payable where person eligible for monthly allowance under Section 3.36.1640 dies after receiving same.
- 3.36.1680 Return of contributions to certain survivors of person who dies before reaching fifty-five and before twenty years have elapsed from the time such person first became a member.

3.36.1690 Cost of living increases.

3.36.1700 Transfer of contributions to federated city employees' retirement system in time and manner specified in Section 3.24.1080 or 3.28.650.

3.36.1710 Transfer of contributions to federated city employees' retirement system, in the manner and time specified in section 3.24.1090 or 3.28.660.

**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;

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;

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.

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 3.36.1250, 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.

(Prior code § 2903.300; Ords. 23807, 24081, 27712.)

### **3.36.1610 Termination of membership.**

A person's membership in this retirement system shall be deemed automatically terminated upon the occurrence of any of the following events:

- A. Retirement of such person, under the provisions of this plan, for service or disability;
- B. Death of such person, where his membership has not already been terminated for some other reason;
- C. Resignation or discharge of such person from, or transfer of such person from, any position specified in Sections 3.36.170 or 3.36.200 which is held by him, unless he resigns or is transferred from such position to accept appointment to, or to be appointed to, and is immediately upon such resignation or transfer appointed to another position specified in said Sections 3.36.170 or 3.36.200, or discontinuance of such person's service in any such position so held by him because of abolition or discontinuance of such position, unless such person is immediately transferred upon discontinuance or abolition of such position to a position specified in Sections 3.36.170 or 3.36.200;
- D. Resignation or discharge of such person from, or transfer of such person from, any position specified in Sections 3.36.180, 3.36.210 or 3.36.260 which is held by him, unless he resigns or is transferred from such position to accept appointment to, or to be appointed to, and is immediately upon such resignation or transfer appointed to, a position specified in Sections 3.36.170 or 3.36.200, or discontinuance of such person's service in any such position, unless such person is immediately transferred upon discontinuance or abolition of such position to a position specified in Sections 3.36.170 or 3.36.200;
- E. Any discontinuance of such person's service in any position specified in Sections 3.36.170, 3.36.180, 3.36.200, 3.36.210 or 3.36.260 which is held by him, by reason of any suspension, layoff or leave of absence which is found by the retirement board to have resulted in permanent discontinuance of such service, as of the date of such finding by said retirement board, unless such permanent discontinuance of service is to accept appointment or transfer to, and such person is immediately upon such discontinuance transferred or appointed to, another position specified in Sections 3.36.170 or 3.36.200.

(Prior code § 2903.301.)

### **3.36.1620 Return of contributions upon resignation, discharge or permanent discontinuance of service - Less than twenty years' service.**

A. Any person entitled to credit for less than twenty years aggregate service whose membership is terminated for any of the reasons set forth 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 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 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, 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.

(Prior code § 2903.302; Ord. 28886.)

### **3.36.1630 Reserved.**

**Editor's note:** Ord. 27768, § 32, adopted June 20, 2006, repealed § 3.36.1630, which pertained to right of member under fifty-five years of age with more than twenty years' service to withdraw contributions or to continue contributions upon resignation, discharge or permanent discontinuance of service.

### **3.36.1640 Monthly allowance or return of contributions to certain persons with ten or more years of service whose membership terminates before retirement.**

A. Any person credited with ten 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 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 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, 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 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 years of age; and

2. Twenty 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, 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 years of age; and
2. At the time the person separated from city service, the person was entitled to not less than twenty-five 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 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 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 of the person's final compensation for each of the first twenty years of service plus three percent of the person's final compensation for each full year of service in excess of twenty years of service. In no event shall the person's monthly allowance exceed a maximum of eighty percent 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 of his or her final compensation for each of the first twenty years of service plus three percent of his or her final compensation for each of the next five full years of service plus four percent of the person's final compensation for each full year of service in excess of the first twenty-five years of service; provided, however that in no event shall the monthly allowance exceed a maximum of eighty-five percent 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 of his or her final compensation for each of the first twenty years of service plus four percent of the person's final compensation for each full year of service in excess of twenty years of service; provided, however that in no event shall the monthly allowance exceed a maximum of ninety percent 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 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 of his or her final compensation for each year of service credit.

- b. If the person was credited with twenty 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 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 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 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.

(Prior code § 2903.303a; Ords. 23807, 24200, 25614, 26229, 26836, 27712, 27721, 28300; 28886.)

**3.36.1650 Reserved.**

**Editor's note:** Ord. 27768, § 33, adopted June 20, 2006, repealed § 3.36.1650, which pertained to required election under Section 3.36.1630 or Section 3.36.1640.

**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 (2) percent 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 (2) percent 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 (37.5) percent 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 (25) percent 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 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 (50) percent 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 (75) percent 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 (2.5) percent 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 (75) percent 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 (75) percent 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.

(Prior code § 2903.303b; Ords. 19478, 23807, 26836, 27712.)

**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 3.36.1230 E.

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 (37.5) percent 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 (25) percent 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 (50) percent 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 (75) percent 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 (2.5) percent 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 (75) percent 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 (75) percent 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.

(Prior code § 2903.303c; Ords. 23807, 26836, 27712.)

**3.36.1680 Return of contributions to certain survivors of person who dies before reaching fifty-five and before twenty 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 (2) percent 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.

(Prior code § 2903.303d; Ords. 23807, 27712.)

**3.36.1690 Cost of living increases.**

All monthly allowances and monthly survivorship allowances payable under Sections 3.36.1640, 3.36.1660 and 3.36.1670 shall be eligible for and entitled to the cost of living increases or decreases set forth in Chapter 3.44 of this Code. For purposes of Section 3.44.040, such person shall be deemed to have retired as of the first day of the first period for which he receives a monthly allowance.

(Prior code § 2903.303e; Ord. 18378.)

**3.36.1700 Transfer of contributions to federated city employees' retirement system in time and manner specified in Section 3.24.1080 or 3.28.650.**

A. Subject to the provisions of Subsection B., in the event a person's membership in this plan is terminated because of the abolition or discontinuance of the office or position held by him or her in the police or fire department, but such person is transferred, without a break in service and without being requested to take any civil service examination therefor, to a new office or position in a department other than the police or fire department, and the functions and duties of his or her new office or position are substantially the same as those performed by him or her in the former office or position in the police or fire department, and if in addition he or she thereby becomes a member of the retirement plan established by Chapter 3.24 or Chapter 3.28 of this Code and elects and becomes entitled to receive credit under such plan for service to which he or she was entitled to credit under this plan, then in such event:

1. The person may elect, in lieu of receiving or being entitled to any other rights, benefits or moneys under this plan, to have all of his or her accumulated contributions in this retirement fund, with interest thereon, transferred and paid to the retirement fund established pursuant to Chapters 3.24 and 3.28. Such election shall be made in the manner and time specified in Section 3.24.1080 or 3.28.650.

2. Upon such election being made, said accumulated contributions and interest earned thereon, plus all contributions made by the city to this plan because of such person's membership herein, shall be transferred and paid to the retirement fund established pursuant to Chapters 3.24 and 3.28 of this Code, and thereafter, neither the person making such election nor any survivor or estate of such person shall be entitled to any rights, benefits, allowance or moneys under this plan.

B. In the event the accumulated contributions in this retirement fund of a person who makes the election described in Subsection A. exceed the contributions required for the purchase of service credit in the Chapter 3.24 or 3.28 retirement plan and there is no provision in the Chapter 3.24 or 3.28 retirement plan for a credit against future contributions, then that portion of the accumulated contributions in this retirement fund that is in excess of the contributions required for such purchase of service credit shall remain in this retirement fund and shall be refunded, plus accrued interest at the rate of two percent (2%) per annum, to the person at the time the person separates from city service,

(Prior code § 2903.304; Ord. 27768.)

**3.36.1710 Transfer of contributions to federated city employees' retirement system, in the manner and time specified in Section 3.24.1090 or 3.28.660.**

A. Subject to the provisions of Subsection B., in the event a person's membership in this plan is terminated, and if in addition he or she thereafter becomes a member of the retirement plan established by Chapter 3.24 or Chapter 3.28 of the San José Municipal Code and elects and becomes entitled under Section 3.24.1090, 3.28.650 or 3.28.660 to receive credit under such plan for service to which he or she was entitled to credit under this plan, then in such event:

1. The person must elect to have all of his or her accumulated contributions in this Plan, with interest thereon, transferred and paid to the retirement fund established pursuant to Chapters 3.24 and 3.28 of this Code. Such election shall be made in the manner and time specified in Section 3.24.1090 or 3.28.660 of this Code.

2. Upon such election being made, said accumulated contributions, and interest earned thereon, in accordance with said election, shall be transferred and paid to the retirement fund established pursuant to Chapters 3.24 and 3.28 of this Code, and thereafter, neither the person making such election nor any survivor or estate of such person, shall be entitled to any rights, benefits, allowance or moneys under this plan.

3. Also, upon said election being made, all contributions made by the city to this retirement fund because of said person's membership herein shall be transferred and paid to the retirement fund established pursuant to Chapters 3.24 and 3.28 of this Code.

B. In the event the accumulated contributions in this retirement fund of a person who makes the election described in Subsection A. exceed the contributions required for the purchase of service credit in the Chapter 3.24 or 3.28 retirement plan and there is no provision in the Chapter 3.24 or 3.28 retirement plan for a credit against future contributions, then that portion of the accumulated contributions in this retirement fund that is in excess of the contributions required for such purchase of service credit shall remain in this retirement fund and shall be refunded, plus accrued interest at the rate of two percent (2%) per annum, to the person at the time the person separates from city service.

(Prior code § 2903.305; Ord. 27768.)

**Part 12  
INCREASED BENEFITS FOR CERTAIN PERSONS**

Sections:

3.36.1750 Increased benefits to persons retired for service on or after April 12, 1960, to effective date of this chapter.

3.36.1760 Increased benefits for survivors of certain persons who died after

April 12, 1960, but before effective date for this system, while members of plan established by Chapter 3.32.

**3.36.1770** Increased benefits to persons retired for disability from April 12, 1960, to effective date.

**3.36.1780** Persons with more than twenty years' service, under fifty-five years of age, who resigned or were discharged on or after April 12, 1960 and prior to the effective date of this chapter.

**3.36.1790** Termination of allowances or benefits for treason or conviction of felony.

**3.36.1750 Increased benefits to persons retired for service on or after April 12, 1960, to effective date of this chapter.**

A. Each person who, on or after April 12, 1960 but prior to the effective date of this chapter held any position in the police department or fire department in one of the classes of positions designated in Sections 3.36.170 or 3.36.200 of this chapter, and who, in addition, on or after April 12, 1960, and prior to the effective date of this chapter was retired for service from such position under the provisions of the police and fire department retirement plan established by Chapter 3.32 of this Code, shall have the option of hereafter receiving the benefits provided by this chapter, subject to all the provisions of this chapter, including survivorship and death benefits, the same as though he were retired for service pursuant to the provisions of this chapter in lieu of receiving or being entitled to any benefits or rights under the provisions of the police and fire department retirement plan established by Chapter 3.32 of this Code.

B. Each of said persons in order to exercise his option, shall file with the secretary of the retirement board a written statement, on a form to be furnished to him on his request by said board, declaring that he elects to hereafter receive the benefits provided by this chapter in lieu of such benefits or rights as he may have under the provisions of the police and fire department retirement plan established by Chapter 3.32. Said statement shall be filed as aforesaid on or before and no later than the ninetieth day immediately following the effective date of this chapter. Upon filing said statement in the manner and time hereinabove specified, such person shall hereafter be entitled to benefits provided by this chapter, and shall be subject to all the provisions and conditions of this chapter, the same as if he had retired for service hereunder. Each such person so electing to receive the benefits provided by this chapter shall cease being a member of the retirement system established by Chapter 3.32 of this Code as of the date he exercises such option, and shall thereafter not be entitled to any of the benefits provided by the system established by said Chapter 3.32.

(Prior code § 2903.325.)

**3.36.1760 Increased benefits for survivors of certain persons who died after April 12, 1960, but before effective date for this system, while members of plan established by Chapter 3.32.**

A. The surviving widow and surviving child or children of any person who on or after April 12, 1960, but prior to the effective date of this chapter held any position in the police department or fire department in one of the classes of positions designated in Sections 3.36.170 or 3.36.200 of this chapter and who, in addition, on or after April 12, 1960, and prior to the effective date of this chapter died while holding such a position, shall have the option of receiving the survivorship and death benefits, if any, provided by this chapter, subject to all the provisions of this chapter, the same as if the deceased person were a member of this retirement system at the time of his death, in lieu of receiving or being entitled to any benefit or

rights under the provisions of the police or fire department retirement plan established by Chapter 3.32 of this Code; provided, that if such surviving widow has already received the deceased person's contributions to the retirement system established by Chapter 3.32, plus interest on said contributions, pursuant to Section 3.32.350, the monthly allowances payable to such widow and or child or children shall be withheld and not paid to the persons entitled to the same until such time as the total amount of allowances so withheld should equal the total amount paid to such surviving widow pursuant to said Section 3.32.350 in the same manner and to the same extent as provided for in subsection A.6.i. of Section 3.36.1200 of this chapter. If said contributions and interest thereon have not been paid to such widow, then all of the provisions of this chapter shall be applicable thereto.

B. Said option shall be exercised by such surviving widow on her own behalf and on behalf of all such children; and if there be no surviving widow, such option shall be exercised by the duly appointed guardian or guardians of all such surviving children.

C. In order to exercise said option, such person shall file with the secretary of the retirement board a written statement on a form to be furnished by said board to such person on his request, declaring that he elects to receive the benefits provided by this chapter in lieu of any benefit or right as he may have under the provisions of the police and fire department retirement plan established by Chapter 3.32. Said statement shall be filed as aforesaid within sixty days from and after the effective date of the ordinance codified herein, and no later. Upon filing said statement in the manner and time hereinabove specified such person shall thereafter be entitled to make application for and receive the benefits, if any, provided by this chapter, and subject to all the provisions and conditions of this chapter. Each such person so electing to receive the benefits provided by this chapter shall thereafter have no right to any of the benefits provided by the retirement system established by Chapter 3.32 of this Code.

(Prior code § 2903.325a.)

**3.36.1770 Increased benefits to persons retired for disability from April 12, 1960, to effective date.**

A. Each person who, on or after April 12, 1960 but prior to the effective date of this chapter held any position in the police department or fire departments in one of the classes of positions designated in Section 3.36.170 or 3.36.200 of this chapter, and who, in addition, on or after April 12, 1960 and prior to the effective date of this chapter was retired for service-connected or nonservice-connected disability from such position under the provisions of the police and fire department retirement plan established by Chapter 3.32 of this Code, shall have the option of hereafter receiving the benefits provided by this chapter, including survivorship and death benefits, subject to all the provisions of this chapter, for such service-connected or nonservice-connected disability, as the case may be, in lieu of receiving or being entitled to any benefits or rights under the provisions of the police and fire department plan established by Chapter 3.32 of this Code. In no event, however, shall any disability retirement allowance paid to him under the provisions of this chapter cover or be for any period of time preceding the effective date of this chapter.

B. Each of said persons, in order to exercise his option, shall file with the secretary of the retirement board a written statement, on a form to be furnished to him on his request by said board, declaring that he elects to hereafter receive the benefits provided by this chapter in lieu of such benefits or rights as he may have under the provisions of the police and fire department plan established by Chapter 3.32 of this Code. Said statement shall be filed as aforesaid on or before and no later than the ninetieth day immediately following the effective date of this plan. Upon filing said statement in the manner and time hereinabove specified, such person shall hereafter be entitled to the benefits provided by this chapter, and shall be subject to all the provisions and conditions of this chapter, the same as if he had been retired for said disability hereunder. Each such person so electing to receive the benefits provided by this chapter shall cease being a member of the retirement system established by Chapter 3.32 as of the date he exercises such option, and shall thereafter not be entitled to any of the benefits

provided by said system established by Chapter 3.32.

(Prior code § 2903.326.)

**3.36.1780 Persons with more than twenty years' service, under fifty-five years of age, who resigned or were discharged on or after April 12, 1960 and prior to the effective date of this chapter.**

A. Each person who held on or after April 12, 1960 but prior to the effective date of this chapter any position in the police department or fire department of the city which is included in the list of positions specified in Sections 3.36.170 or 3.36.200 of this chapter and who, in addition, on or after April 12, 1960 but prior to the effective date of this chapter resigned or was discharged from such position and who in addition at the time of such resignation or discharge had not yet attained fifty-five years of age but was entitled to credit for not less than twenty years of service under the police and fire department retirement plan established by Chapter 3.32 of this Code, and who in addition at or prior to the time he or she exercises the option hereinafter given to him or her has not yet withdrawn from the retirement fund any contributions theretofore made by him or her under the provisions of the police and fire department retirement plan established by Chapter 3.32, shall have the right, if he or she so elects within the time and in the manner hereinafter specified, to have all his or her said contributions transferred to an account maintained under the provisions of this chapter and left in the retirement fund as contributions made by him or her under this chapter.

B. Each of said persons, in order to exercise the option to have his or her contributions transferred to an account maintained under the provisions of this chapter as provided for in this section, shall file with the secretary of the retirement board a written statement, on a form to be furnished by said board upon his or her request, declaring that he or she elects to have all contributions theretofore made by him or her under the police and fire department retirement plan established by Chapter 3.32 transferred to an account maintained under this chapter and left in the retirement fund as contributions made by him or her under this chapter. Said statement shall be filed as aforesaid on or before and no later than the ninetieth day immediately following the effective date of this plan. In no event may said statement be filed, and in no event may any such person elect to continue contributions under this section and have any rights under this section if the person has already withdrawn from the retirement fund all contributions theretofore made by him or her to said fund.

(Prior code § 2903.327; Ord. 27768.)

**3.36.1790 Termination of allowances or benefits for treason or conviction of felony.**

Any and all allowances or benefits payable under and by virtue of the provisions of this Part 12 may be cancelled and terminated by the retirement board; in its discretion, if the recipient thereof should commit treason or be convicted of a felony.

(Prior code § 2903.328.)

**Part 13  
DEATH WHILE ON MILITARY LEAVE OF ABSENCE**

Sections:

3.36.1800 Definitions.

3.36.1810 Survivor's benefit - Amount determination.

3.36.1820 Times for and during which survivor's benefit is payable.

3.36.1830 Benefits or allowances - Conditions.

### 3.36.1800 Definitions.

As used in this Part 13:

A. "Armed forces of the United States" means the United States Air Forces, Army, Navy, Marine Corps, Coast Guard, and the Army and Navy Nurse Corps, and no other forces or service.

B. "Social Security Act" means those provisions of the Federal Social Security Act which are set forth in Subchapter II of Chapter 7 of Title 42 of the United States Code Annotated.

C. "State Militia" and "Militia of the state of California" mean the California National Guard or California National Guard Reserve, and no other forces, or service.

D. "Survivor of suspended member who dies in military service" means the widow, widower, surviving divorced wife, child, mother or parent, specified in Section 402 of the Social Security Act, if any, of the "suspended member who dies in military service," surviving after the death of the "suspended member who dies in military service", who:

1. Is or will be entitled, upon or at any time after and because of the death of the "suspended member who dies in military service," to collect from the Federal Social Security Program, under and by virtue of the provisions of Section 402 of the Federal Social Security Act, and subject to the provisions of said Social Security Act, the widow's, widower's, surviving divorced wife's, child's, mother's or parents' survivors monthly insurance benefits (other than hospital insurance benefits, annuities, Medicare benefits or other nonmonthly survivors insurance benefits) specified in Section 402 of said Social Security Act; or

2. Would be entitled, upon or at any time after and because of the death of the "suspended member who dies in military service," to collect from the Federal Social Security Program, under and by virtue of the provisions of the above specified Section 402 of the Federal Social Security Act and subject to the provisions of said Social Security Act, the widow's, widower's, survivor's, surviving divorced wife's, child's, mother's or parents' survivors monthly insurance benefits (other than hospital insurance benefits, annuities, Medicare benefits or other nonmonthly survivors insurance benefits) specified in Section 402 of said Social Security Act if the "suspended member who dies in military service" has been entitled to credit, under the provisions of said Federal Social Security Act, for period of city service rendered on or after July 1, 1958 only, for which such "suspended member who dies in military service" was entitled to credit under the provisions of the retirement system established by the provisions of this Chapter 3.36.

E. "Suspended member who dies in military service" means a person whose membership in this retirement system is suspended in time of war involving the United States as a belligerent under and by virtue of the provisions of Section 3.36.1600, because of the grant to him of a leave of absence without pay, from city employment for monthly compensation, for the purpose of joining the armed forces of the United States or for the purpose of serving with any reserve force or corps of the armed forces of the United States or with the Militia of the state of California, if, being a member of such reserve force or corps or of such State Militia he is ordered by competent military authority to active duty with such reserve force or corps or State Militia, and who does in fact without unreasonable and unnecessary delay join such armed forces of the United States during the existence of said war or does in fact serve in active duty during the existence of said war with said reserve forces, corps or State Militia, and who in addition dies between the first day of October, 1967 and the thirtieth day of January, 1970, inclusive, during said suspension and leave of absence and while in active service in such armed forces of the United States, reserve forces or corps or State Militia and while said war still exists. Said term does not

mean or include any such person who died or dies prior to October 1, 1967 or after January 30, 1970.

F. "War involving the United States as a belligerent" shall be deemed to exist:

1. Whenever Congress has declared war until peace has been formally restored or until Congress or the President proclaims or declares that such war or hostilities therein have ceased or terminated, whichever is earlier:
2. Whenever the United States is engaged in active military operations against any foreign power, whether or not war has been formally declared; or
3. Whenever the United States is assisting the United Nations, in actions involving the use of armed force, to maintain or restore international peace and security.

(Prior code §§ 2903.350 - 2903.355.)

### **3.36.1810 Survivor's benefit - Amount determination.**

Subject to the conditions, limitations and restrictions set forth in this section and those set forth in other sections of this Part 13, each survivor of a suspended member who dies in military service, defined in Section 3.36.1800D, shall be entitled to receive, and shall be paid, from the retirement fund established and maintained pursuant to the other parts of this Chapter 3.36, for and during the time or times only which are hereinafter specified in Section 3.36.1820, a monthly survivorship allowance equal to the difference between:

A. The amount of monthly survivors insurance benefit (other than hospital insurance benefits, annuities, Medicare benefits or other nonmonthly survivor's insurance benefits), if any, which such survivor is or will be entitled to collect from the social security program, for and during the time or times specified in Section 3.36.1820, because of death of the suspended member who dies in military service, under and pursuant to the provisions of Section 402 of and subject to the provisions of the Federal Social Security Act; and

B. The amount of monthly survivors insurance benefit (other than hospital, insurance benefits, annuities, Medicare benefits or other nonmonthly survivor's insurance benefits) which survivor would be entitled to collect from the social security program, for and during the time or times hereinafter specified in Section 3.36.1820, because of the death of the suspended member who dies in military service, under and pursuant to the provisions of Section 402 of and subject to the provisions of the Federal Social Security Act, if the suspended member who dies in military service had been entitled to credit, under the provisions of the Federal Social Security Act, for the periods of city service rendered on or after July 1, 1958 only, for which the suspended member who dies in military service was entitled to credit as city service under the provisions of the retirement system established by this Chapter 3.36.

(Prior code § 2903.356.)

### **3.36.1820 Times for and during which survivor's benefit is payable.**

Any monthly allowance which is payable to a survivor of a suspended member who dies in military service under and pursuant to the preceding Section 3.36.1810 is and shall be payable only for and during the month or months for and during which such survivor would be entitled to a monthly survivor's insurance benefit (other than hospital insurance benefits, annuities, Medicare benefits or other nonmonthly survivor's insurance benefits) under and by virtue of the provisions of Section 402 of and subject to the provisions of the Federal Social Security Act, because of the death of the suspended member who dies in military service, if the suspended member who dies in military service had been

entitled to credit, under the provisions of the Federal Social Security Act, for the periods of city service rendered on or after July 1, 1958 only, for which the suspended member who dies in military service was entitled to credit as city service under the provisions of the retirement system established by this Chapter 3.36.

(Prior code § 2903.357.)

### **3.36.1830 Benefits or allowances - Conditions.**

Anything elsewhere to the contrary notwithstanding, no person shall be entitled to or be paid any benefit or allowance whatever under and by virtue of any of the provisions of this Part 13 if:

- A. The membership of the suspended member who dies in military service in this retirement system shall have already been terminated, prior to his death, by retirement for service or disability, resignation, discharge, discontinuance of service, or by the occurrence of any other event, under and by virtue of the provisions of Section 3.36.1610 of this chapter; or
- B. Said suspended member who dies in military service was entitled, at or prior to his death, to immediate retirement for service under the provisions of the retirement system established by this Chapter 3.36; or
- C. Said suspended member who dies in military service, at the time of commencement of the leave of absence specified in Section 3.36.1800E, was not entitled to credit, under the provisions of this retirement system, for at least two years of service under this retirement system; or
- D. Any survivor or estate of said suspended member who dies in military service is entitled to any allowance or other benefit under and by virtue of the provisions of other parts of this Chapter 3.36 as a result of the death of the suspended member who dies in military service, unless each such survivor and estate waives his or its right to receive any and all allowances or benefits payable to them or either of them under the provisions of other parts of this chapter; or
- E. Said suspended member who dies in military service after joining the armed forces of the United States, or after reporting to active duty with a reserve force or corps of such armed forces, or with the State Militia, pursuant to orders of competent military authority, and before dying, voluntarily requested or agreed to an extension of his original term of enlistment, service or tour of duty or to an additional term of enlistment, service or tour of duty, or otherwise continued his active service with said armed forces or militia beyond the first date that he could have terminated or left active service or could have caused his active service to be terminated; or
- F. Said suspended member who dies in military service had actively served in any of the armed forces of the United States, or in any reserve force or corps of such armed forces of the United States, or in any reserve force or corps of such armed forces or with the State Militia, within two years immediately preceding the date of commencement of the leave of absence because of which his membership in this retirement system was suspended under and by virtue of the provisions of Section 3.36.1600, for any period of time in excess of thirty days' duration; or
- G. Said suspended member who dies in military service died prior to October 1, 1967 or after January 30, 1970.

(Prior code § 2903.358.)

## **Part 14 MEDICAL BENEFITS FOR CERTAIN PERSONS**

## Sections:

- 3.36.1900 Medical benefits for retired members.
- 3.36.1910 Medical benefits for survivors of members.
- 3.36.1920 Requirements for participation in medical insurance plan.
- 3.36.1925 Reimbursement for Medicare Part B payments.
- 3.36.1930 Allocation of costs of providing medical insurance coverage to members or survivors.
- 3.36.1935 Payment of family coverage premiums in the case of guardianship of minor children.
- 3.36.1940 Eligible medical plan.
- 3.36.1950 Limitation on medical benefits.

**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:

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 or more years of service; or
2. Receives a retirement allowance equal to at least thirty-seven and one-half percent 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 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 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.

(Ords. 21686, 23889, 24093, 25615, 26641.)

### **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:

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 (37.5) percent 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.

(Ords. 21686, 23807, 23889, 24093, 26641, 27712.)

### **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.

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.

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 member's 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.

(Ords. 21686, 23807, 23889, 24093, 25615, 26566, 26641, 27712.)

### **3.36.1925 Reimbursement for Medicare Part B payments.**

A. The plan will reimburse members, former members and survivors for the amounts paid by them for Medicare Part B coverage, subject to the following limitations:

1. The member, former member or survivor must be eligible for medical insurance coverage under the provisions of the plan and must be enrolled in an eligible medical plan.
2. The total amount paid by from the medical benefits account for medical benefits pursuant to Section 3.36.1930 plus the Medicare Part B reimbursement shall not exceed the premium for the lowest cost medical plan, as defined in Section 3.36.1930 D, available to the member, former member or survivor.
3. The reimbursement shall be only for Medicare Part B payments made after February 4, 2000.
4. The member, former member or survivor must submit proof of payment for Medicare Part B. Except for Medicare Part B payments made during calendar year 2000, proof of payment must be submitted no later than the April 1st immediately following the calendar year for which reimbursement is sought. For Medicare Part B payments made during calendar year 2000, proof of payment must be submitted no later than November 30, 2001.
5. The reimbursement shall not exceed the amount of the Medicare Part B payments for which proof of payment is submitted.
6. The reimbursement may be reduced or eliminated pursuant to Section 3.36.1950.

B. All reimbursements for Medicare Part B payments shall be made from the medical benefits account established by Section 3.36.575.

(Ord. 27768.)

### **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 and by deductions from monthly allowances paid by the plan in accordance with this Section 3.36.1930.

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.

(Ords. 21686, 25615, 26566, 26641, 27768.)

### **3.36.1935 Payment of family coverage premiums in the case of guardianship of minor children.**

A. A surviving spouse who is otherwise eligible only for single coverage, but who elects family coverage pursuant to paragraph 2. of subsection D. of Section 3.36.1920, shall be required to pay that portion of the medical premium which exceeds the amounts payable for single coverage by the surviving spouse and the Medical Benefits Account as provided in Section 3.36.1930.

B. The portion of the premium required to be paid by the surviving spouse shall be deducted from the monthly allowances otherwise payable to the surviving spouse.

(Ord. 26566.)

### **3.36.1940 Eligible medical plan.**

For purposes of this Part 14, members or their survivors may only be entitled to secure medical insurance coverage from an eligible medical plan with which the city has entered into a contract for the provision of hospital, medical, surgical and related benefits as part of the city's benefits to city employees.

(Ord. 21686.)

### **3.36.1950 Limitation on medical benefits.**

A. It is intended that the medical benefits provided by this plan meet the requirements of Internal Revenue Code Section 401(h). Subject to the requirements of the Meyers-Milius-Brown Act (California Government Code Section 3500 et seq.) and Section 1111 of the San José City Charter, the City reserves the right to amend this Part to limit medical benefits as necessary to satisfy the requirements of said Section 401(h).

B. In the event the contributions required to fund the benefits provided by this Part 14 and the dental benefits provided by Part 15, as determined by the board's actuary, would exceed the contribution limit permitted by Internal Revenue Code Section 401(h) and the applicable regulations, the allocation of costs set forth in Section 3.36.1930 shall be adjusted as needed so that the contributions made to fund the portion paid from the medical benefits separate account comply with Section 401(h). The board, in consultation with its actuary, shall determine the adjustment to be implemented until this part is amended pursuant to subsection A. above.

(Ord. 26416.)

## **Part 15**

### **DENTAL BENEFITS FOR RETIRED MEMBERS AND SURVIVORS**

Sections:

- 3.36.2000 Dental benefits for retired members.
- 3.36.2010 Dental benefits for survivors of members.
- 3.36.2020 Requirements for participation in dental insurance plan.
- 3.36.2030 Costs of dental insurance.
- 3.36.2040 Eligible dental plan.
- 3.36.2050 Limitation on dental benefits.

### **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:

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 or more years of service; or

2. Receives a retirement allowance equal to at least thirty-seven and one-half percent 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 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 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.

(Ords. 22279, 24093, 25617, 26641.)

### **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:

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 (37.5) percent 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.

(Ords. 22279, 23807, 24093, 25617, 26641, 27712.)

### **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.

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.

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.

(Ords. 22279, 23889, 24093, 26641, 27712.)

### **3.36.2030 Costs of dental insurance.**

The cost of providing dental insurance coverage under this part shall be borne by and paid from the medical benefits account established by Section 3.36.575.

(Ords. 22279, 27768.)

### **3.36.2040 Eligible dental plan.**

For the purposes of this part, members or their survivors may secure dental insurance coverage only from an eligible dental plan with which the city has entered into a contract for the provision of dental benefits as part of the city's benefits to city employees.

(Ord. 22279.)

### **3.36.2050 Limitation on dental benefits.**

A. It is intended that the dental benefits provided by this plan meet the requirements of Internal Revenue Code Section 401(h). Subject to the requirements of the Meyers-Millias-Brown Act (California Government Code Section 3500 et seq.) and Section 1111 of the San José City Charter, the City reserves the right to amend this part to allocate costs of providing dental medical benefits as necessary to satisfy the requirements of said Section 401(h).

B. In the event the contributions required to fund the benefits provided by this Part 15 and the

medical benefits provided by Part 14; as determined by the board's actuary, would exceed the contribution limit permitted by Internal Revenue Code Section 401(h) and the applicable regulations, then Section 3.36.2030 notwithstanding, all or a portion of the costs set forth in Section 3.36.2030 may be allocated to the retiree, former member or survivor covered by the dental plan as needed so that the contributions made to fund the portion paid from the medical benefits account comply with Section 401 (h). The board, in consultation with its actuary, shall determine the allocation to be implemented until this part is amended pursuant to subsection A. above.

(Ord. 26416.)

## **Part 16 RECIPROCITY**

### Sections:

- 3.36.3000 Purpose.
- 3.36.3010 Limitations on application of this part.
- 3.36.3020 Benefits.
- 3.36.3030 Special redeposit provisions.
- 3.36.3040 Information and data.
- 3.36.3050 Interpretation of this part.
- 3.36.3060 Modification of rights.
- 3.36.3070 Costs to be borne by city.

### **3.36.3000 Purpose.**

The purpose of this Part 16 is to extend to the members of other public agency retirement systems which adopt similar reciprocal provisions into their retirement ordinances or plans pursuant to Sections 20042, 20043, 31840.2, or 45310.5 of the California Government Code or pursuant to the charter of a city or a city and county or pursuant to the authority vested in any other public agency of the state of California (hereafter "reciprocal systems"), and which have entered into an agreement to establish a reciprocal retirement system with the California Public Employees' Retirement System, the rights in this retirement plan set forth in this Part 16.

(Ord. 24681.)

### **3.36.3010 Limitations on application of this part.**

A. Subject to Section 3.36.3060, the provisions of this Part 16 shall only apply to a person who satisfies the requirements of paragraph 1. or paragraph 2. of this subsection A.:

1. The person is a member of this retirement plan, terminates his or her employment with the city, and:

a. In the case where such termination of employment occurs prior to January 1, 1976, becomes a member of a reciprocal system within ninety days of such termination of employment; or

b. In the case where such termination of employment occurs on or after January 1, 1976, becomes a member of a reciprocal system within six months of such termination of employment.

2. The person is a member of a reciprocal system, terminates his or her employment pursuant to which he or she was a member of such reciprocal system, and:

a. In the case where such termination of employment occurs prior to January 1, 1976, becomes a member of this retirement plan within ninety days of such termination of employment; or

b. In the case where such termination of employment occurs on or after January 1, 1976, becomes a member of this retirement plan within six months of such termination of employment.

B. Except as provided in subsection C. below, the provisions of this Part 16 shall apply only to a member whose termination and entry into employment resulting in a change in membership from this retirement plan to a reciprocal system, or from a reciprocal system to this retirement plan, as provided in subsection A. above, occurred after the effective date of September 30, 1994, specified in the agreement for reciprocal benefits between the board of administration of the public employees retirement system and the city council of the City of San José.

C. The provisions of this Part 16 relating to computation of final compensation shall apply to a member if such provisions would have applied had the member's termination and entry into employment occurred after the effective date of the agreement for reciprocal benefits.

(Ord. 24681.)

### **3.36.3020 Benefits.**

The following provisions shall apply to a member who meets the requirements of Section 3.36.3010:

A. Notwithstanding Sections 3.36.1630 and 3.36.1640, the member shall have the right to elect to leave his or her accumulated contributions on deposit in the police and fire department retirement fund irrespective of the amount of such contributions or the length of service credited to the member under this retirement plan. Such election shall be irrevocable while membership in the reciprocal system continues.

B. For the purpose of the calculation of contribution rates of the city and the members, the age of entry for a person entering this retirement plan from a reciprocal system shall be such person's age at entry into the reciprocal system.

C. The average monthly salary during any period of service as a member of a reciprocal system shall be considered compensation to a member of this retirement plan for the purpose of computing final compensation for such member if all of the following conditions are satisfied:

1. The member has attained the age of fifty years; and

2. The member retires concurrently under both this retirement plan and the reciprocal system; and

3. At the time of retirement, the member is credited with such period of service under the reciprocal system.

D. Solely for the purpose of meeting the minimum service requirements for qualification for benefits and retirement allowances under this retirement plan, service shall also include service as an officer or employee of a reciprocal system, if all of the following conditions are satisfied:

1. The member has attained the age of fifty years; and
2. The member retires concurrently under both this retirement plan and the reciprocal system;  
and
3. The salary for service in the reciprocal system constitutes compensation of a member of this retirement plan for purposes of calculating final compensation.

However, under no circumstances shall such service in a reciprocal system be included in the determination of service credit for qualification for medical benefits provided under Part 14 of this chapter or for qualification for dental benefits provided under Part 15 of this chapter.

E. A member shall be retired for disability and receive a retirement allowance based on the service credited to the member at the time of retirement during any period in which the member receives a disability retirement allowance under a reciprocal system, subject to the following limitations:

1. Such allowance shall not exceed an amount which when added to the allowance paid under the reciprocal system equals the allowance which would be paid for a nonservice-connected (nonindustrial) disability if all the member's service had been credited under the reciprocal system; and
2. Such allowance shall in no event be less than an annuity which is the actuarial equivalent of the member's contributions plus interest accumulated thereon at the rate of two percent per annum calculated as of the retirement date, whether or not the disability is for service-connected (industrial) reasons.

F. The survivorship benefits or death benefits for a member who dies from nonservice-connected (nonindustrial) causes as a member of a reciprocal system shall not exceed an amount which when added to the survivorship and death benefits paid for such member under the reciprocal system equals the maximum death benefit payable under that system, subject to the following limitations:

1. Such survivorship and death benefits shall be at least the amount of the member's accumulated contributions plus the interest accrued thereon at the rate of two percent per annum calculated as of the date of death; and
2. If death is caused by service-connected (industrial) injury or disease in the reciprocal system, the survivorship and death benefits shall be the amount of the member's accumulated contributions plus interest accrued thereon at the rate of two percent per annum calculated as of the date of death.

(Ord. 24681.)

### **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.

(Ord. 24681.)

### **3.36.3040 Information and data.**

On the request of a reciprocal system, the board shall supply information and data necessary for administration of the reciprocal system as it is affected by membership in and service credited under this retirement plan.

(Ord. 24681.)

### **3.36.3050 Interpretation of this part.**

Interpretations of the provisions of this Part 16 shall be made with reference to interpretations that have been made relative to the California Public Employees' Retirement System - 1937 Act County Employees' Retirement reciprocal provisions upon which these provisions are based.

(Ord. 24681.)

### **3.36.3060 Modification of rights.**

All rights under this Part 16 are subject to modification as may be necessary to conform to amendments to the Public Employees' Retirement Law or the County Employees' Retirement Law of 1937 as provided in California Government Code Section 20042.

(Ord. 24681.)

### **3.36.3070 Costs to be borne by city.**

A. 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.

B. The contributions required of the city, if any, 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.

(Ord. 24681.)

**Part 17**  
**PLAN-APPROVED DOMESTIC RELATIONS ORDERS\***

---

**\*Editor's note:** Ord. 27712, § 16, adopted May 16, 2006 amended Part 17, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Part 17 pertained to similar subject matter. See also the Code Comparative Table.

---

Sections:

- 3.36.3500 Purpose and applicability.
- 3.36.3510 Compliance with plan-approved domestic relations orders.
- 3.36.3520 "Domestic relations order" defined.
- 3.36.3530 "Participant" defined.
- 3.36.3540 "Alternate payee" defined.
- 3.36.3550 "Plan-approved domestic relations order" defined.
- 3.36.3560 Dissolution, termination or legal separation before the participant has separated from city service.
- 3.36.3570 Dissolution, termination or legal separation after the participant has separated from city service.
- 3.36.3580 Combined account option.
- 3.36.3590 Alternate distribution option for alternate payee.
- 3.36.3600 Separate account option.
- 3.36.3610 Distribution of accumulated contributions in separate account.
- 3.36.3620 Participant's redeposit of contributions refunded to alternate payee.
- 3.36.3630 Monthly allowance for alternate payee.
- 3.36.3640 Monthly allowance for participant.

- 3.36.3650 Designation of beneficiary by alternate payee.
- 3.36.3655 No payments resulting in increased benefits.
- 3.36.3660 Disability retirement of participant.

### **3.36.3500 Purpose and applicability.**

A. The purpose of this Part 17 is to set forth the requirements for plan-approved domestic relations orders that may be awarded by a court in a dissolution of marriage, termination of domestic partnership, or legal separation action with respect to community property rights in benefits provided by this plan.

B. This part shall apply only in those dissolution of marriage, termination of domestic partnership, or legal separation proceedings which are pending on January 14, 2000, in which the court has reserved jurisdiction over the retirement benefits or has not yet awarded the benefits, or in which the court issues a supplemental order with respect to the division of the community property rights in benefits provided by this plan.

C. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in Section 414(p) of the Internal Revenue Code, then the applicable requirements of Section 414(p) of the Internal Revenue Code shall be followed by the retirement plan.

(Ords. 27712, 28886.)

### **3.36.3510 Compliance with plan-approved domestic relations orders.**

The board of administration shall comply only with domestic relations orders that are plan-approved domestic relations orders pursuant to this Part. The board shall not authorize payments to an alternate payee pursuant to any order that does not meet the requirements of a plan-approved domestic relations order.

(Ord. 27712.)

### **3.36.3520 "Domestic relations order" defined.**

"Domestic relations order" or "DRO" means any judgment, decree or order (including court approval of a property settlement agreement) which relates to community property rights in the case of a marital dissolution, termination of domestic partnership, or legal separation and which is made pursuant to a state domestic relations law.

(Ord. 27712.)

### **3.36.3530 "Participant" defined.**

"Participant" means a member of this plan, a retired member of this plan, or a former member of this plan who separated from city service but left his or her accumulated contributions on deposit with the plan.

(Ord. 27712.)

**3.36.3540 "Alternate payee" defined.**

A. "Alternate payee" means the spouse, domestic partner, former spouse or former domestic partner of a participant of this plan who, as a result of petitioning a court of competent jurisdiction for the division of community property, has been awarded an interest in the benefits payable to a participant in this plan.

B. A spouse, domestic partner, former spouse or former domestic partner who is awarded an interest in such benefits shall not be or become a participant of this plan by virtue of such award or the payment of such benefits.

(Ord. 27712.)

**3.36.3550 "Plan-approved domestic relations order" defined.**

A. "Plan-approved domestic relations order" means a domestic relations order which:

1. Sets forth an alternate payee's right to receive a portion of the benefits payable to a participant of this plan;
2. Pursuant to Section 2610 of the California Family Code, orders the division of the community interest in the benefits payable to a participant; and
3. Meets the requirements of this part.

B. A DRO is a plan-approved domestic relations order only if the plan has been joined in the dissolution of marriage, termination of domestic partnership, or legal separation action pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the California Family Code.

C. A DRO is a plan-approved domestic relations order only if the order clearly specifies that it:

1. Does not require the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan; and
2. Does not require the plan to provide benefits (determined on the basis of actuarial value) in excess of those provided by the plan.

D. A DRO is not a plan-approved domestic relations order if it provides for any of the following:

1. Payment from this plan to an alternate payee at any time prior to the date the participant has both separated from city service and begun to receive payments from this plan, except as provided in Section 3.36.3600, Section 3.36.3620, or Section 3.36.3630.
2. Payment from this plan because of the disability of the alternate payee, except as provided in Section 3.36.3580 or Section 3.36.3660.
3. Payment from this plan of any premium, or portion thereof, for medical or dental insurance coverage for the alternate payee.
4. Designation of the alternate payee as a surviving spouse or surviving domestic partner for the purpose of receiving any surviving spouse benefit, surviving domestic partner benefit, or death

benefit provided under this plan on account of the death of the participant.

5. The alternate payee to make any contributions to the plan or the retirement fund or to purchase service credit in the plan.

(Ord. 27712.)

**3.36.3560 Dissolution, termination or legal separation before the participant has separated from city service.**

If the marital dissolution, termination of domestic partnership or legal separation occurs before the participant has separated from city service, and the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, then the DRO will be a plan-approved domestic relations order if it meets the requirements of Section 3.36.3580 or Section 3.36.3600.

(Ord. 27712.)

**3.36.3570 Dissolution, termination or legal separation after the participant has separated from city service.**

If the marital dissolution, termination of domestic partnership, or legal separation occurs after the participant has separated from city service, whether for retirement, resignation or any other reason, and the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, then:

A. In order to be a plan-approved domestic relations order the DRO must satisfy the requirements of Section 3.36.3580.

B. The separate account option set forth in Section 3.36.3600 shall not be available, and the DRO shall not order the establishment of a separate account for the alternate payee.

C. The DRO shall not in any way change any election made by the participant at the time of retirement or other separation from city service.

(Ord. 27712.)

**3.36.3580 Combined account option.**

A. If the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, the board will comply with a DRO which divides the community property interests of a participant and the participant's alternate payee, provided that the DRO meets all of the following requirements:

1. Is a plan-approved domestic relations order under Section 3.36.3550.
2. Includes the date of the marriage or the date of establishing the domestic partnership and the date on which the parties separated.
3. Includes the last known mailing address of the alternate payee covered by the order.
4. Specifies the amount or percentage of the participant's monthly benefit, or the participant's accumulated contributions in the event the participant elects a withdrawal of accumulated contributions,

which is to be paid to the alternate payee or specifies the manner in which such amount or percentage is to be determined.

5. Subject to Sections 3.36.3650 and 3.36.3660, specifies the portion of the participant's monthly disability benefits which is to be paid to the alternate payee and the time when such payment to the alternate payee is to commence:

a. In the event the participant retires for disability after the date of the dissolution of marriage or legal separation but prior to the time the participant is eligible to retire for service; or

b. In the event the participant has already retired for disability as of the date of the dissolution of marriage or legal separation.

6. Specifies that the plan shall pay the alternate payee's portion of the benefits to the alternate payee only at such time or times as the plan makes payments to the participant.

7. Specifies that, unless the alternate payee has elected a life annuity option pursuant to Section 3.36.3590, payments by the plan to the alternate payee shall terminate when payments to the participant (or the participant's eligible surviving spouse or eligible surviving domestic partner) terminate.

8. Specifies that the alternate payee shall not be entitled to payment from the plan of any premium, or portion thereof, for medical or dental insurance coverage.

9. Specifies that the alternate payee shall not be deemed an eligible surviving spouse or eligible surviving domestic partner under the terms of the plan.

10. Specifies that the plan may offset any payments made by the plan to either party for any amounts to which the other party was entitled, but which were erroneously paid to the party against whom the offset is made.

B. In addition to the requirements of subsection A., the DRO may address the rights of the alternate payee with respect to the following:

1. In accordance with Section 3.36.3640, the right to designate a beneficiary.

2. The right to elect an alternate distribution option pursuant to Section 3.36.3590.

(Ord. 27712.)

### **3.36.3590 Alternate distribution option for alternate payee.**

A. In the event the alternate payee is awarded a combined account, the alternate payee may elect an alternate distribution option as provided in this section by filing a written election with the retirement board on a form provided by the secretary to the board. The election must be filed no earlier than the time the participant files an application for retirement and no later than thirty (30) days after the effective date of the participant's retirement.

B. Any election made pursuant to the provisions of this section may be revoked by the alternate payee provided that the revocation is made in writing and is filed with the retirement board no later than thirty (30) days after the effective date of the participant's retirement. If the election is not revoked within thirty (30) days of the effective date of the participant's retirement, the election shall be irrevocable and benefits shall be paid in accordance with the election and the provisions of this plan.

C. The alternate distribution option consists of an election to have the actuarial equivalent of any allowance payable to the alternate payee from the combined account applied to provide a lesser monthly allowance to the alternate payee until the participant's death and, thereafter, to continue such lesser monthly allowance to the alternate payee for the life of the alternate payee.

D. Any age factor used in the calculation of benefits payable under the alternate distribution option shall be based on the ages of the participant and the alternate payee as of the date benefits first become payable to the participant.

(Ord. 27712.)

### **3.36.3600 Separate account option.**

A. If the court orders the division of the community interest in this plan pursuant to Section 2610 of the Family Code, and the participant has not separated from city service at the time of the entry of the DRO, the court may order that the accumulated employee contributions and service credit attributable to periods of the participant's service during the marriage shall be divided into two (2) separate and distinct accounts in the name of the participant and alternate payee, respectively.

B. Any accumulated contributions or service credit that are not explicitly awarded by the DRO shall be deemed to be the exclusive property of the participant.

C. The board will comply with a DRO which orders the establishment of separate accounts provided that the DRO meets all of the following requirements:

1. Is a plan-approved domestic relations order under Section 3.36.3550.
2. Includes the date of the marriage or date of establishing the domestic partnership and the date on which the parties separated.
3. Includes the last known mailing address of the alternate payee covered by the order.
4. Specifies the amount or percentage of the accumulated contributions and service credit to be credited to the alternate payee's separate account or specifies the manner in which such amount or percentage is to be determined.
5. Specifies the rights of the alternate payee with respect to the following:
  - a. In accordance with Section 3.36.3610, the right to a refund of accumulated employee contributions and interest.
  - b. In accordance with Section 3.36.3630, the right to receive a monthly allowance.
  - c. In accordance with Section 3.36.3640, the right to designate a beneficiary.
6. Specifies that, in the capacity of alternate payee, the alternate payee shall not be entitled to any of the following:
  - a. Payment from the plan because of the disability of the alternate payee.
  - b. Payment from the plan of any death benefit or survivor's benefit payable because of the death of the participant.

c. Payment from the plan of any premium, or portion thereof, for medical or dental insurance coverage.

(Ord. 27712.)

**3.36.3610 Distribution of accumulated contributions in separate account.**

A. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date of entry of the DRO with the court, the participant is entitled to less than ten (10) years of service credit in this plan, the alternate payee shall receive a distribution of the accumulated contributions and credited interest placed in the alternate payee's account.

B. If, as of the date of entry of the DRO with the court, the participant is entitled to ten (10) or more years of service credit in this plan, the alternate payee may elect to receive a distribution of the accumulated contributions and credited interest placed in the alternate payee's account.

1. The alternate payee may make such election at any time after the establishment of the alternate payee's separate account.

2. The alternate payee shall make such election by filing an application for distribution with the secretary to the board on a form provided by the secretary.

C. Any distribution of accumulated contributions made to an alternate payee shall be effective when the plan deposits in the United States mail a warrant drawn in favor of the alternate payee and addressed to the latest address for the alternate payee on file with the plan, or to such other address as is specified in writing by the alternate payee.

D. Once a distribution made pursuant to this section becomes effective:

1. The alternate payee may not cancel the refund or revoke the election for distribution.

2. The alternate payee shall be deemed to have permanently waived all rights in this Plan and all rights to the payment of any other benefits pertaining to the service credit or accumulated contributions, or both, in the alternate payee's separate account; and

3. The alternate payee shall have no right to redeposit the distributed accumulated contributions.

(Ord. 27712.)

**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 from the date the participant elects the redeposit to the date all such moneys and interest are fully redeposited into the retirement fund, at the actuarial rate in effect on the date the participant files the election.

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.

(Ord. 27712.)

### **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 (40) percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:

a. Two and one-half (2 1/2) percent 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 (3) percent 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 separates from service on or after February 4, 2000, and subject to a maximum of forty-two and one-half (42 1/2) percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:

a. Two and one-half (2 1/2) percent 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 (3) percent of the participant's final compensation for each of the next two and one-half (2 1/2) years of service credit credited to the alternate payee's separate account; plus

c. Four (4) percent 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 1/2) years.

3. In the case where the participant was employed in the police department and separates from service on or after July 1, 2006, and subject to a maximum of forty-five (45) percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:

a. Two and one-half (2 1/2) percent 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 (4) percent 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 was employed in the fire department and separates from

service on or after July 1, 2008, and subject to a maximum of forty-five (45) percent 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 (2 1/2) percent 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 (3) percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account.

D. In the event the alternate payee 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.

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.

(Ords. 27712, 27721, 28300.)

### **3.36.3640 Monthly allowance for participant.**

A. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date the participant separates from service, the alternate payee has not received a distribution pursuant to Section 3.36.3610, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be:

1. The monthly allowance that would be payable to the participant if no separate account had been established, less

2. The monthly allowance payable to the alternate payee pursuant to subsection C. of Section 3.36.3630.

B. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date the participant separates from service, the alternate payee has received a distribution pursuant to Section 3.36.3610 but the participant has received credit pursuant to Section 3.36.3620 for the service that had been allocated to the alternate payee, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be the monthly allowance that would be payable to the participant if no separate account had been established.

C. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date the participant separates from service, the alternate payee has received a distribution

pursuant to Section 3.36.3610 and the participant has not made a redeposit pursuant to Section 3.36.3620, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be:

1. The monthly allowance that would be payable to the participant if no separate account had been established, less
2. The monthly allowance that would have been payable to the alternate payee pursuant to subsection C. of Section 3.36.3630 if the alternate payee had not received a distribution.

(Ord. 27712.)

### **3.36.3650 Designation of beneficiary by alternate payee.**

A. The alternate payee who has been awarded a combined account may designate a beneficiary to receive amounts which would be payable to the alternate payee but for the death of the alternate payee.

B. The alternate payee who has been awarded a separate account may designate a beneficiary:

1. To receive the accumulated contributions in the alternate payee's account in the case where the alternate payee dies prior to receipt of payment.
2. To receive any accumulated contributions remaining in the alternate payee's separate account or to receive any unpaid allowance payable at the time of the alternate payee's death.

C. The beneficiary shall be a natural person or persons. The designation may be by class, in which case the members of the class living at the time of the alternate payee's death shall be entitled as beneficiaries and shall take in equal shares unless otherwise specified by the alternate payee.

D. A designation of a beneficiary shall be filed with the secretary to the board on a form provided by the secretary.

E. The alternate payee may revoke or change the designation of a beneficiary at any time prior to the nonmember spouse's death. Any revocation or change of a designation of a beneficiary shall be in writing on a form provided by the secretary to the board, shall be notarized by a notary public, and shall be filed with the secretary.

F. If the alternate payee does not designate a beneficiary or if all designated beneficiaries predecease the alternate payee:

1. In the case of a alternate payee who has been awarded a combined account, any payments which would have been made to the alternate payee but for the death of the alternate payee shall be paid to the alternate payee's estate.
2. In the case of an alternate payee who has been awarded a separate account, any accumulated contributions remaining in alternate payee's separate account and any unpaid monthly allowance payable at the time of the alternate payee's death shall be paid to the alternate payee's estate.

G. Nothing in this section shall be deemed to mean that any alternate distribution option elected by an alternate payee shall continue beyond the death of the alternate payee. Payments of any amounts under an alternate distribution option cease upon the death of the alternate payee. Payment of any such

amount to the alternate payee's beneficiary or estate is expressly limited to the monthly allowance, or portion thereof due but unpaid for the month in which the death of the alternate payee occurs.

(Ord. 27712.)

### **3.36.3655 No payments resulting in increased benefits.**

A. Under no circumstances shall the board or this plan be required to make payments in any manner that would result in an increase in the amount of benefits provided under this plan.

B. All benefits payable from this plan shall be determined on the basis of the actuarial assumptions and interest rates that are specifically set forth in this plan, or the economic and demographic actuarial assumptions and interest rates adopted by the board in those instances where the board has such authority under the provisions of this plan.

C. Any age factor used in calculation of benefits to the alternate payee shall be based on the age of the alternate payee at the time benefits commence or, in the case where the alternate payee elects an alternate distribution option pursuant to Section 3.36.3590, as of the date benefits first become payable to the participant.

(Ord. 27712.)

### **3.36.3660 Disability retirement of participant.**

A. If the participant retires for disability, the combined benefit payments to both the participant and the alternate payee shall not exceed the amount that would otherwise have been paid to the participant alone.

B. In the case where the alternate payee has been awarded a separate account, no payment shall be made to the alternate payee until such time as the participant would have been eligible for a service retirement had the participant continued working. Disability benefits shall be allocated between the participant and the alternate payee as follows:

1. Until the date the participant would have been eligible for a service retirement or the date the alternate payee applies to receive a monthly allowance, whichever date is later, disability retirement benefits shall be paid to the participant without regard to the service credit awarded to the alternate payee.

2. Once the participant would have been eligible for a service retirement had the participant continued working and the alternate payee applies to receive a monthly allowance from the retirement fund, the amount of the monthly allowance payable to each party shall be determined as though the participant had retired for service.

(Ord. 27712.)

## **Part 18 PURCHASE OF ELIGIBLE PRIOR MILITARY SERVICE**

Sections:

3.36.3700 Eligible prior military service.

- 3.36.3710 Eligibility requirements.
- 3.36.3720 Cost of additional benefit for military service.
- 3.36.3730 Method of payment.
- 3.36.3740 Service credit.
- 3.36.3750 Limitations.
- 3.36.3760 Costs of actuarial determinations.

### **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 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 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.

(Ord. 26464.)

### **3.36.3710 Eligibility requirements.**

In order to purchase service credit for eligible prior military service, the member must satisfy all of the following conditions:

A. The member must separate from city service by reason of retirement on or after August 21, 2001. A person who separates from city service for any reason other than retirement shall not be eligible to purchase service credit for eligible prior military service, regardless of whether the person elects to leave his or her contributions on deposit with the retirement fund.

B. The member must file with the secretary to the retirement board a written notice of election to purchase service credit for eligible prior military service.

C. Within thirty days after filing the notice of election, the member must retire for service or disability under the provisions of this chapter.

D. The member must make an irrevocable election to pay the full cost of the additional benefit to the member as determined pursuant to Section 3.36.3720.

(Ord. 26464.)

### **3.36.3720 Cost of additional benefit for military service.**

A. The member shall pay the full cost of any and all additional benefits that accrue to the member or the member's survivors as a result of the purchase of service credit for eligible prior military service.

B. 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 eligible prior military service and (b) the value of the benefits calculated without service credit for the eligible prior military service.

C. The cost of the additional benefits shall be determined using the interest rate and life expectancy tables used in determining the actuarial equivalents of the optional settlements provided under Part 9.5 of this chapter.

D. The cost of the additional benefits shall include cost-of-living-adjustments provided under Chapter 3.44.

E. For any member who, at the time the notice of election is filed, would not be eligible for a service retirement pursuant to this chapter unless the member received service credit for the eligible prior military service, the cost of the additional benefits shall be determined assuming that the member's final compensation would remain unchanged from the date of the member's retirement to the date the member would have first been eligible for a service retirement had the member not elected to purchase service credit for eligible prior military service.

F. If the member elects the installment payment option under Section 3.36.3730.A.2, the calculation of the cost of the additional benefits shall include an interest factor on the outstanding balance. The interest factor shall be at the interest rate used in determining the actuarial equivalents of the optional settlements provided under Part 9.5 of this chapter.

(Ord. 26464.)

### **3.36.3730 Method of payment.**

A. The member must pay the full cost of the additional benefit:

1. By making a lump sum payment to the retirement fund prior to the member's retirement; provided, however, that this option shall not be permitted if such payment would exceed the limitations of Section 415 of the Internal Revenue Code; or

2. By making installment payments by executing an irrevocable written election to have the member's monthly retirement benefit actuarially reduced for a period of time selected by the member; provided that such period shall not exceed eight years from the effective date of the member's retirement, and provided that the payments do not exceed the limitations of Section 415 of the Internal Revenue Code; or

3. By making a combination of a lump sum payment and installment payments as described in paragraphs 1. and 2. above.

B. No person shall be permitted to purchase service credit for eligible prior military service by making installment payments if:

1. The required actuarial reduction would exceed the monthly retirement benefit otherwise payable to the member; or

2. The required deduction from a surviving spouse's benefit under Section 3.36.3740.B. would exceed the monthly benefit otherwise payable to the surviving spouse.

(Ord. 26464.)

### **3.36.3740 Service credit.**

A. Upon the member's retirement, the member shall be given service credit for the eligible prior military service the member has elected to purchase.

B. If a member elects to purchase service credit for eligible prior military service and pay the contributions and interest specified in this part by making installment payments but fails to complete the required payments because of death before the end of the installment payment period, the unpaid contributions and interest shall be deducted from any benefits paid to an eligible surviving spouse. Such deductions shall be in the same dollar amount as the amount of the actuarial reduction in the member's benefit and shall be made for the time remaining in the installment payment period elected by the member.

(Ord. 26464.)

### **3.36.3750 Limitations.**

Under no circumstances shall the service credit for eligible prior military service 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.

(Ord. 26464.)

### **3.36.3760 Costs of actuarial determinations.**

The retirement plan shall bear the cost of one calculation of the full cost of the additional benefits. In the event the member fails to retire within thirty days of filing the notice of election described in Section 3.36.3710, cost of the additional benefits shall be recalculated so that it is determined within not more than thirty days prior to the effective date of the member's retirement and the member shall bear the cost of such calculation.

(Ord. 26464.)

**Disclaimer:**

This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality. American Legal Publishing Corporation provides these documents for informational purposes only. These documents should not be relied upon as the definitive authority for local legislation. Additionally, the formatting and pagination of the posted documents varies from the formatting and pagination of the official copy. The official printed copy of a Code of Ordinances should be consulted prior to any action being taken.

For further information regarding the official version of any of this Code of Ordinances or other documents posted on this site, please contact the Municipality directly or contact American Legal Publishing toll-free at 800-445-5588.

© 2011 American Legal Publishing Corporation  
[techsupport@amlegal.com](mailto:techsupport@amlegal.com)  
1.800.445.5588.

## San José, CA Code of Ordinances

**Chapter 3.40**  
**INCREASE IN CERTAIN MONTHLY ALLOWANCES**

## Sections:

3.40.010 Increases in certain monthly retirement allowances payable for any month after December 31, 1968.

3.40.020 Increases payable to certain survivors of certain deceased members or former members of certain city retirement plans who retired on or prior to December 31, 1966.

3.40.030 Increases payable to certain survivors of certain deceased members of certain city retirement plans or systems who died on or prior to December 31, 1966, while still in the service of the city and prior to retirement.

3.40.040 Increases payable for any month after December 31, 1968, pursuant to Section 3.36.1630 or 3.36.1790 to certain survivors of certain deceased former members of the city retirement system of which the above sections are a part, who died on or before December 31, 1966, after leaving the service of the city and before becoming entitled to any allowance under said sections.

3.40.050 Determination of time of retirement.

3.40.060 Limitations and exceptions.

3.40.070 Increased costs to be charged to city.

3.40.080 Reserved power of council to amend, modify or repeal provisions of Chapter 3.40.

3.40.081 Increases in certain monthly retirement allowances and survivorship allowances payable for any month after July 1, 1980.

**3.40.010 Increases in certain monthly retirement allowances payable for any month after December 31, 1968.**

Subject to and except as otherwise provided by other provisions of this Chapter 3.40, each monthly retirement allowance which becomes payable under any retirement plan or system of the city (excepting the Federal Old Age and Survivor's Insurance System or any other federal or state social security system) for any month after December 31, 1968, to any member or former member of any such city retirement plan or system because of his retirement under such city plan or system on or before December 31, 1966, from or on account of his service to the city, shall be increased by the percentage set forth in the following Table 1 opposite the period of time within which such member or former member retired from or because of service to the City of San José, as follows:

Table 1

Period of Time	Percentage
Jan. 1, 1939, to Dec. 31, 1941	154.8
Jan. 1, 1942, to Dec. 31, 1942	115.2
Jan. 1, 1943, to Dec. 31, 1943	98.1
Jan. 1, 1944, to Dec. 31, 1945	97.2
Jan. 1, 1946, to Dec. 31, 1946	85.2
Jan. 1, 1947, to Dec. 31, 1948	62.1
Jan. 1, 1949, to Dec. 31, 1949	48.6
Jan. 1, 1950, to Dec. 31, 1950	51.4
Jan. 1, 1951, to Dec. 31, 1951	39.7

Jan. 1, 1952, to Dec. 31, 1955	33.3
Jan. 1, 1956, to Dec. 31, 1956	30.6
Jan. 1, 1957, to Dec. 31, 1957	25.2
Jan. 1, 1958, to Dec. 31, 1958	20.7
Jan. 1, 1959, to Dec. 31, 1959	19.8
Jan. 1, 1960, to Dec. 31, 1960	17.1
Jan. 1, 1961, to Dec. 31, 1961	16.2
Jan. 1, 1962, to Dec. 31, 1962	14.4
Jan. 1, 1963, to Dec. 31, 1963	12.6
Jan. 1, 1964, to Dec. 31, 1964	10.8
Jan. 1, 1965, to Dec. 31, 1965	9.0
Jan. 1, 1966, to Dec. 31, 1966	7.2

(Prior code § 2904.400.)

**3.40.020 Increases payable to certain survivors of certain deceased members or former members of certain city retirement plans who retired on or prior to December 31, 1966.**

Subject to and except as otherwise provided by other provisions of this Chapter 3.40, each monthly survivorship allowance which becomes payable under and pursuant to the provisions of Part 8, survivorship and death benefits of Chapter 3.36 of this Code, or under and pursuant to the provisions of Part 19, Optional Settlements of Chapter 3.24 of this Code, or under and pursuant to the provisions of Section 3.36.1630 or 3.36.1790 or for any month after December 31, 1968, to any beneficiary (designated pursuant to Section 3.24.1920, 3.24.1930 or 3.24.1940 of this Code), or any survivor, of any deceased member or deceased former member of the city retirement plan or system of which the above provisions of the San José Municipal Code are a part who retired on or prior to December 31, 1966, under and pursuant to such retirement plan or system from or on account of his service to the city, shall be increased by the percentage specified in Table 1 set forth in the preceding Section 3.40.010 opposite the period of time within which such member or former member retired from or on account of service to the city.

(Prior code § 2904.401.)

**3.40.030 Increases payable to certain survivors of certain deceased members of certain city retirement plans or systems who died on or prior to December 31, 1966, while still in the service of the city and prior to retirement.**

Subject to and except as otherwise provided by other provisions of this Chapter 3.40, each monthly survivorship allowance which becomes payable under and pursuant to the provisions of Part 8, Survivorship and Death Benefits of Chapter 3.36 of this Code, or under and pursuant to the provisions of Section 3.24.2040 of the San José Municipal Code, for any month after December 31, 1968, to any survivor of any deceased member, of the city retirement system or plan of which the above provisions of the San José Municipal Code are a part, who died on or prior to December 31, 1966, while still in the service of the city and prior to retirement, shall be increased by the percentage specified in Table 1 set forth in Section 3.40.010 of this chapter opposite the period of time within which said deceased member died.

(Prior code § 2904.402.)

**3.40.040 Increases payable for any month after December 31, 1968, pursuant to Section 3.36.1630 or 3.36.1790 to certain survivors of certain deceased former members of the city retirement system of which the above sections are a part, who died on or before December 31, 1966, after leaving the service of the city and before becoming entitled to any allowance under said sections.**

Subject to and except as otherwise provided by other provisions of this Chapter 3.40, each monthly survivorship allowance which becomes payable under and pursuant to the provisions of Section 3.36.1790 of this Code for any month after December 31, 1968, to any survivor of any deceased former member of the city retirement plan or system of which the above code provisions are a part, who died on or prior to December 31, 1966, after leaving the service of the city and before becoming entitled to any allowance under Section 3.36.1630 or Section 3.36.1790 of this Code, shall be increased by the percentage specified in Table 1 set forth in Section 3.40.010 opposite the period of time within which such former member died.

(Prior code § 2904.403.)

### **3.40.050 Determination of time of retirement.**

For purposes of this Chapter 3.40, a member or former member of any retirement plan or system of the city whose employment by the city was terminated by his retiring therefrom pursuant to such plan or system shall be deemed to have retired from service of the city as of the day immediately following the last day of his employment by the city; and a member or former member of any such retirement plan or system whose employment by the city was terminated by resignation, layoff or discharge prior to the time he became eligible under monthly retirement allowance, but who subsequently became eligible under said plan or system to receive a monthly allowance pursuant to the provisions of Section 3.24.510, 3.36.1630 or 3.36.1790 of this Code or any other provision of any retirement plan or system of the city which permits a member of any such plan or system, upon termination of his employment with the city, to leave his contributions in the plan or system, pay subsequent additional contributions as may be required and subsequently, upon reaching a specified age, receive a monthly allowance under such plan or system on account of his previous service with the city, shall be deemed to have retired on account of his service to the city as of the first day of the first month for which he receives or is entitled to receive, a monthly allowance pursuant to the above-specified sections or provisions, and in such case his said monthly allowance shall be deemed to be a monthly retirement allowance.

(Prior code § 2904.404.)

### **3.40.060 Limitations and exceptions.**

A. Anything elsewhere in this Chapter 3.40 to the contrary notwithstanding, none of the provisions of this Chapter 3.40 shall be deemed to authorize or provide for:

1. Any increase in the amount of any monthly allowance which was, is or may become payable under any retirement plan or system for any month, or portion thereof, preceding January 1, 1969;
2. Any increase in the amount of any monthly allowance which was, is or may become payable to any member or former member of any retirement plan who did not retire thereunder on or prior to December 31, 1966, or who, if he did retire thereunder on or prior to said date, is not living as of January 1, 1969; or
3. Any increase in the amount of any monthly allowance which was, is or may become payable to any survivor or survivors of any member or former member of any retirement plan who retired or retired thereunder after December 31, 1966; or
4. Any increase in the amount of any monthly allowance or portion thereof purchased by additional contributions of any employee pursuant to the provisions of Section 3.20.400, 3.20.410, 3.24.590 or 3.24.740, or other similar sections of the San José Municipal Code; or
5. Any increase in the amount of any allowance or payment paid, payable or made pursuant to the Workmen's Compensation Act of the state or other similar law, ordinance or regulation; or

B. Any increase in the amount of any allowance or payment paid, payable or made pursuant to the provisions of Section 3.24.510 of this Code unless the member or former member because of whose service such an allowance is payable has or had to his credit in the retirement system of which said section is a part, at the time of commencement of his retirement, at least five years of service.

(Prior code § 2904.405.)

### **3.40.070 Increased costs to be charged to city.**

The respective retirement boards of the city shall, for those retirement plans or systems over which they have jurisdiction, compute the amounts by which the increased monthly retirement allowances and increased monthly survivorship allowances paid pursuant to the provisions of this Chapter 3.40 exceed the monthly retirement allowances and monthly survivorship allowances which would otherwise be payable under such plans or systems in the absence of this Chapter 3.40, and shall charge any such increase to the city, so that there shall be no increase in contributions required from employees or from those entitled to such increases. The city shall, each quarter year, reimburse each retirement system for the amount of such increases in the preceding quarter years because of the provisions of this Chapter 3.40.

(Prior code § 2904.406.)

**3.40.080 Reserved power of council to amend, modify or repeal provisions of Chapter 3.40.**

The city council may amend, modify or repeal all or any of the provisions of this Chapter 3.40 any time or from time-to-time in order to increase, reduce or extinguish the increase in monthly allowances herein provided for, and the enactment of this chapter shall not in any way be deemed to give any person any irrevocable or vested right to the increases herein provided for, such increases being granted subject to the reservations herein mentioned.

(Prior code § 2904.407.)

**3.40.081 Increases in certain monthly retirement allowances and survivorship allowances payable for any month after July 1, 1980.**

Subject to the provisions of Section 3.40.080, each monthly retirement allowance and each monthly survivorship allowance which becomes payable to any person by reason of the provisions of any retirement plan or system of the city, not including this section, by reason of the retirement or death of a member, on or before June 30, 1975, in the case of a member of the retirement systems embraced by Chapters 3.16, 3.20, 3.24 and 3.28 of the San José Municipal Code, and on or before June 30, 1972, in the case of a member of the systems embraced by Chapters 3.32 and 3.36 of the San José Municipal Code, shall be increased each month from and after July 1, 1980, in the case of retirement allowances by the amount of four dollars and eighty-eight cents times the full years of service of the member to whom payment is made, and in the case of survivorship allowances by the amount of two dollars and forty-four cents times the full years of service of the deceased member to whose survivor payment is made. Notwithstanding the foregoing, if monthly survivorship allowances are to be paid to more than one survivor of a deceased member, in no event shall the total of all monthly retirement allowances to be paid to all such survivors exceed the sum of two dollars and forty-four cents times the full years of service of the deceased member, and the monthly survivorship allowance of each survivor shall be increased in accordance with the following formula:

Amount of monthly survivorship allowance to be paid to a particular survivor	= \$2.44 x	Full years of service of deceased member	x	Amount of monthly survivorship allowance paid to the particular survivor in question Total monthly survivorship allowance paid to all survivors of the deceased member
--	------------	--	---	---

In no event shall any such increase provided for herein apply or be paid to any member who retires for service with less than five years of service or to the survivor of any such member. Any increases provided for hereunder shall be funded pursuant to Section 3.40.070.

(Ord. 20316.)

**Chapter 3.41  
SURVIVORSHIP ALLOWANCES FOR SURVIVING SPOUSES OF FORMER MEMBERS OF POLICE OR  
FIRE DEPARTMENT**

Sections:

- 3.41.010 Definitions.
- 3.41.020 Regular survivorship allowance.
- 3.41.030 Cost-of-living increases or decreases.
- 3.41.040 Costs to be borne by city.
- 3.41.050 Reserved power of council to amend, modify or repeal provisions of this chapter.

**3.41.010 Definitions.**

Unless the context otherwise requires, as used in this chapter the following terms have the following meanings:

1. "Chapter 3.32 plan" means the police and fire department retirement plan established under Chapter 3.32 of Title 3, including any retirement plan continued in existence under said Chapter 3.32.
2. "Former member" means a former member of the police department or fire department who retired (for service or disability) under the Chapter 3.32 plan prior to April 12, 1960, and died after December 31, 1979.
3. "Surviving spouse" means the person surviving a former member to whom such former member was married both at the time of such former member's retirement and at the time of such former member's death, and no other person.
4. "Former member's retirement allowance" means the amount of monthly retirement allowance which a former member was entitled to receive under the Chapter 3.32 plan, including increases therein up to the time of his death authorized under the provisions of Chapter 3.40 and Chapter 3.44 of Title 3:

(Prior code § 2904.420; Ord. 20041.)

#### **3.41.020 Regular survivorship allowance.**

Upon the death of a former member, the surviving spouse of the former member shall, upon the death of the decedent and until the death of such surviving spouse, be entitled to receive, and shall be paid, a monthly survivorship allowance equal to fifty-six and twenty-five hundredths percent of the former member's retirement allowance.

(Prior code § 2904.421; Ord. 20041.)

#### **3.41.030 Cost-of-living increases or decreases.**

The survivorship allowance payable under the provisions of Section 3.41.020 shall be increased or decreased in the same way that survivorship allowances subject to the provisions of Chapter 3.44 of Title 3 are increased or decreased under the provisions of said Chapter 3.44; provided that in no event shall any survivorship allowance authorized under this chapter ever be decreased below the amount the recipient is entitled to under Section 3.41.020. To this end, the provisions of said Chapter 3.44 shall be deemed to apply to the survivorship allowance provided for under this chapter, but only to the extent necessary to effectuate the purposes of the preceding sentence. To the extent that any of the provisions of said Chapter 3.44 are not required to effectuate said purposes, they shall not be deemed to apply to this chapter; and to the extent that any of the provisions of said Chapter 3.44 are inconsistent with the provisions of this chapter, the provisions of this chapter shall govern and control. (For example, and without limiting the generality of the preceding sentence, the provisions of Section 3.44.020 shall not be deemed to apply to this chapter.)

(Prior code § 2904.422; Ord. 20041.)

#### **3.41.040 Costs to be borne by city.**

The cost of the survivorship allowance provided under Sections 3.41.020 and 3.41.030 shall be borne entirely by the city and shall not be charged to the police and fire department retirement fund or to the police and fire cost-of-living fund. However, although the cost of such allowance shall not be borne by said funds, such allowance may, at the option of the city, be disbursed through said funds, provided that the city contributes and pays into said funds the full amount of the moneys required for the payment of such allowance.

(Prior code § 2904.423; Ord. 20041.)

#### **3.41.050 Reserved power of council to amend, modify or repeal provisions of this chapter.**

The city council of the City of San José may amend, modify or repeal all or any of the provisions of this Chapter 3.41 at any time or from time to time in order to increase, reduce or extinguish the monthly allowances herein provided for, and the enactment of this part shall not in any way be deemed to give any person any irrevocable or vested right to the monthly allowances herein provided for, such allowances being granted subject to the reservations herein mentioned.

(Prior code § 2904.424; Ord. 20041.)

**Chapter 3.42**  
**INCREASE IN CERTAIN MONTHLY ALLOWANCES PAYABLE FROM THE POLICE AND FIRE**  
**DEPARTMENT RETIREMENT PLAN**

## Parts:

- 1 Increase Based on Benefit Years
- 2 Increase Based on Initial Allowance

**Part 1**  
**INCREASE BASED ON BENEFIT YEARS**

## Sections:

- 3.42.010 Definitions.
- 3.42.020 Increase in allowance payable for any month after September 1, 1986.
- 3.42.030 Cost of increase.
- 3.42.040 Cost of living increases or decreases.
- 3.42.050 Reserved power of council to amend, modify or repeal provisions of this part.

**3.42.010 Definitions.**

For the purposes of this Part 1, certain words and phrases are defined in this section and shall be construed as set forth herein unless it is apparent from the context that a different meaning is intended.

A. "Monthly allowance" means the monthly retirement allowance or the monthly survivorship allowance payable pursuant to the provisions of Chapter 3.32 or Chapter 3.36 of this Code, including any increase in any monthly allowance payable pursuant to Chapter 3.40, Chapter 3.41 or Chapter 3.44 of this Code.

B. "Benefit years" means the years a former member or the survivor of a former member has received a monthly allowance, calculated as follows:

1. In the case of a retirement allowance paid to a former member, the benefit years are those complete years calculated from the date of retirement to and including July 1, 1985.

2. In the case of a survivorship allowance paid to the survivor of a former member who died prior to retirement, the benefit years are those complete years calculated from the date of the death of the former member to and including July 1, 1985.

3. In the case of a survivorship allowance paid to the survivor of a former member who died after retirement, the benefit years are those complete years calculated from the date of the former member's retirement to and including July 1, 1985.

C. "Former member" means a person who was a member of the police and fire department retirement plan set forth in Chapter 3.32 or Chapter 3.36 of this Code and who, on or before July 1, 1984, retired from city employment for service or disability pursuant to the provisions of said plan or who, on or before July 1, 1984, died during his or her employment with the city.

(Ords. 22279, 24095.)

**3.42.020 Increase in allowances payable for any month after September 1, 1986.**

Subject to the provisions of Section 3.42.050, each monthly retirement allowance and each monthly survivorship

allowance which becomes payable on or after July 1, 1986, to any person pursuant to the provisions of Chapter 3.32 or Chapter 3.36 by reason of the retirement or death of a former member of the police and fire department retirement plan on or before July 1, 1984, shall be increased in accordance with the following formula:

$$\text{Amount of increase in monthly allowance} = 0.01 \times \text{Monthly allowance} \times \text{Number of benefit years as defined in Section 3.42.010.B.}$$

(Ords. 22279, 24095.)

### **3.42.030 Costs of increase.**

The costs of the increases in monthly allowances provided by Section 3.42.020 shall be borne by and paid from the police and fire department retirement plan.

(Ords. 22279, 24095.)

### **3.42.040 Cost of living increases or decreases.**

A. Except as otherwise provided in this section, the allowance payable pursuant to Section 3.42.020 shall be increased or decreased in the same way that allowances subject to the provisions of Chapter 3.44 of Title 3 of this Code are increased or decreased pursuant to said Chapter 3.44.

B. In no event shall the allowance payable pursuant to Section 3.42.020 be decreased below the amount which the recipient is to receive under Section 3.42.020 as of July 1986.

C. To the extent any provisions of said Chapter 3.44 are inconsistent with the provisions of this Part 1, the provisions of this Part 1 shall govern and control.

(Ords. 22279, 24095.)

### **3.42.050 Reserved power of council to amend, modify or repeal provisions of this part.**

The city council of the City of San José may amend, modify or repeal any or all of the provisions of this Part 1 at any time or from time to time in order to increase, reduce or extinguish the monthly allowance herein provided for, and the enactment of this Part 1 shall not in any way be deemed to give any person any irrevocable or vested right to the monthly allowances herein provided, such allowances expressly being granted subject to the reservations of this section.

(Ords. 22279, 24095.)

## **Part 2 INCREASE BASED ON INITIAL ALLOWANCE**

Sections:

- 3.42.100 Definitions.
- 3.42.110 Increase in allowance payable for any month after July 1992.
- 3.42.120 Cost of increase.
- 3.42.130 Cost of living increases or decreases.

### **3.42.100 Definitions.**

For the purposes of this Part 2, certain words and phrases are defined in this section and shall be construed as set forth herein unless it is apparent from the context that a different meaning is intended.

A. "Initial allowance" means:

1. With respect to a former member, the monthly retirement allowance payable at the time the former member retired.
2. With respect to the surviving spouse of a former member who dies after receiving retirement pay:
  - a. The monthly survivorship allowance that would have been payable to such spouse if the former member had died the day immediately following the first payment of the retirement pay; or
  - b. In the case where surviving spouses' allowances were not available at the time the member retired, a monthly allowance equal to fifty-six and twenty-five-hundredths percent of the initial allowance of the former member.
3. With respect to the surviving spouse of a former member who dies prior to receiving any retirement pay, the monthly survivorship allowance payable to such spouse at the time the former member dies.

B. "Adjusted initial allowance" means the initial allowance adjusted using the Consumer Price Index for All Urban Consumers (CPI-U), San Francisco-Oakland-San José metropolitan area, all items (1967 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics, showing the December-to-December change from the December of the commencement year to December 1991. By way of formula:

$$\begin{array}{rcll} \text{Adjusted Initial} & = & \text{CPI for December 1992} & \times & \text{Initial Allowance} \\ \text{Allowance} & & \text{CPI for December of} & & \\ & & \text{Commencement Year} & & \end{array}$$

C. "Commencement year" means:

1. With respect to a former member or the former surviving spouse of a former member who died after receiving retirement pay, the calendar year in which the former member retired.
2. With respect to the surviving spouse of a former member who died prior to receiving any retirement pay, the calendar year in which the former member died.

D. "Total monthly allowance" means the monthly retirement allowance payable to a former member as of July 5, 1992, or the monthly survivorship allowance payable to a surviving spouse as of July 5, 1992, including all benefit adjustments payable from the retirement fund or the cost-of-living fund and all supplemental benefits payable from the city's general fund but excluding the costs of any medical or dental insurance premiums paid by the plan or the city.

E. "Former member" means a person who was a member of the plan and who, prior to July 5, 1992:

1. Retired from city employment for service or disability pursuant to the provisions of the plan; or
2. Began receiving payments from the plan pursuant to Section 3.36.1630 or Section 3.36.1640; or
3. Died during his or her employment with the city while a member of the plan.

F. "Surviving spouse" means the spouse of a deceased former member who receives a surviving spouse's allowance pursuant to the provisions of Chapter 3.32 or Chapter 3.36 of this Code.

G. "Plan" means the police and fire department retirement plan set forth in Chapter 3.32 or Chapter 3.36 of this Code.

(Ord. 24095.)

**3.42.110 Increase in allowance payable for any month after July 1992.**

A. If the total monthly retirement allowance payable to a former member for the month of July 1992 is less than seventy-five percent of such former member's adjusted initial allowance, then the monthly retirement allowance shall be increased, effective August 1, 1992, by the amount necessary to make the monthly retirement allowance equal to seventy-five percent of the former member's adjusted initial allowance.

monthly allowances herein provided, such allowances expressly being granted subject to the reservations of this section.

(Ord. 22809.)

### Chapter 3.44 COST-OF-LIVING ADJUSTMENTS

Sections:

- 3.44.010 Definitions.
- 3.44.020 Initial cost-of-living increase in survivorship allowance payable to survivor of recipient of retirement allowance who dies after April 1, 1970.
- 3.44.030 Cost-of-living increases or decreases - Amount - Exceptions.
- 3.44.040 Determination of percentage of increase or decrease in cost of living.
- 3.44.045 Offset of accumulated increases or decreases.
- 3.44.050 Cost-of-living increases - Members by reason of certain contract with county.
- 3.44.060 Determination of time of retirement.
- 3.44.070 Limitations and exceptions.
- 3.44.080 Limitation on decreases in amounts of allowances.
- 3.44.090 Funding of increases in allowances - Police and fire plans.
- 3.44.095 Additional employee contributions - Police and fire plans.
- 3.44.100 Funding of increases in allowances - Federated employee plans.
- 3.44.105 Additional employee contributions.
- 3.44.110 Payroll deductions.
- 3.44.120 Crediting of contributions and interest thereon to individual accounts.
- 3.44.130 Return of contributions and interest.
- 3.44.140 Investment of funds.
- 3.44.150 Chapter 3.36 police and fire plan - Effective February 1, 2002.
- 3.44.160 Federated city employees retirement system - Effective April 1, 2006.

#### 3.44.010 Definitions.

As used in and for purposes of this Chapter 3.44:

- A. "Index-year" means each calendar year, respectively, next preceding each "subject year."
- B. Subject to the exceptions hereinafter specified in this Chapter 3.44, the term "retirement allowance" means and includes any of the biweekly or monthly service-retirement or disability-retirement allowances, or any of the biweekly or monthly installments of any monthly or annual service-retirement or disability-retirement allowances, specified in the

following subdivisions:

1. Those specified in Chapter 3.16, Chapter 3.20, Chapter 3.32, Parts 6 and 7 and Sections 3.36.1630 and 3.36.1790 of Chapter 3.36 of the San José Municipal Code, to any of the following persons:

2. Those specified in Section 3.24.510, Part 15 or 16 and Part 17 or 18 of Chapter 3.24 of the San José Municipal Code; and

3. Those specified in Parts 9, 10 and 13 of Chapter 3.28 of the San José Municipal Code; which are or may become payable on or after April 1, 1970, under and pursuant to any of the provisions of Chapters 3.16, 3.20, 3.24, 3.28, 3.32 or 3.36 of the San José Municipal Code, to any member or former member of any of the city retirement plans established by said Chapters 3.16, 3.20, 3.24, 3.28, 3.32 or 3.36, including any increases therein, if any, authorized by the provisions of Chapter 3.40 of this code.

C. "Subject year" means each consecutive twelve-month period, from April 1st of one calendar year to March 31st of the following calendar year, respectively, commencing with the twelve-month period from April 1, 1970, to March 31, 1971, for which retirement allowances and survivorship allowances are to be increased or decreased as hereinafter provided in this Chapter 3.44.

D. Subject to the exceptions hereinafter specified in this Chapter 3.44, the term "survivorship allowance" means and includes any of the biweekly or monthly allowances, and any of the biweekly or monthly installments of any monthly or annual allowance, which are or may become payable on or after April 1, 1970, under and pursuant to the provisions of Section 3.24.2040 and Part 19 of Chapter 3.24; Sections 3.28.1480 and 3.28.1490 of Part 11 and Sections 3.28.1500, 3.28.1590, 3.28.1600 of Part 12, or Parts 13 or 14 of Chapter 3.28; and Sections 3.36.1630, 3.36.1790 and Parts 8, 9 and 9.5 of Chapter 3.36 of the San José Municipal Code, to any of the following persons:

1. To any "surviving spouse", "surviving domestic partner" or "surviving child" as such terms are defined in Part 8 of Chapter 3.36; or

2. To any "eligible surviving child" as such term is defined in Part 9 of Chapter 3.36; or

3. To any beneficiary under Part 19 of Chapter 3.24; or

4. To a "surviving wife", "surviving husband" or "surviving child" under Section 3.24.2040 of Chapter 3.24; or

5. To any "surviving spouse", "surviving child" or "surviving children" as such are defined in Part 11 of Chapter 3.28; or

6. To any "surviving spouse", "surviving child" or "surviving children" as defined in Part 12 of Chapter 3.28; or

7. To any "beneficiary" under Part 13 of Chapter 3.28; or

8. To any "eligible surviving child" as defined in Part 14 of Chapter 3.28; including any increases, if any, authorized by the provisions of Chapter 3.40 of the San José Municipal Code.

9. To any "spouse" or "domestic partner" receiving benefits pursuant to an election made under Part 9.5 of Chapter 3.36

(Prior code §§ 2904.500 - 2904.503; Ords. 26417, 26902, 27521, 27712.)

**3.44.020 Initial cost-of-living increase in survivorship allowance payable to survivor of recipient of retirement allowance who dies after April 1, 1970.**

Upon the death, after April 1, 1970, of the recipient of a "retirement allowance," any "survivorship allowance" (including the increase therein, if any, authorized by the provisions of Chapter 3.40 of this Code) which may become payable to a survivor of said deceased person upon his death, shall be increased, as of the date said survivorship allowance first becomes payable, by a percentage equal to the percentage of increase, if any, in the amount of retirement allowance which the deceased had become entitled to, under the provisions of this Chapter 3.44 from April 1, 1970, to the date of his death. Such survivorship allowances as so increased shall thereafter be subject to further increase, or to decrease as hereinafter provided in this Chapter 3.44.

(Prior code § 2904.504.)

### 3.44.030 Cost-of-living increases or decreases - Amount - Exceptions.

Subject to and except as otherwise provided by the provisions of this section or of other sections of this Chapter 3.44, each retirement allowance and each survivorship allowance which is or may become payable, under and pursuant to those provisions of Chapters 3.16, 3.20, 3.24, 3.28, 3.32 and 3.36 of this Code which are hereinabove specified in subsections B. and D. of Section 3.44.010, for any month or two-week period in any subject year subsequent to March 31, 1970, together with such increases, if any, in the amount of any such allowance as have been authorized by the provisions of Chapter 3.40 of this Code, plus such increase, if any, as may have been given pursuant to the provisions of Section 3.44.020 of this chapter, plus or minus such increases or decreases, if any, in the amounts of such allowances as shall have been theretofore made pursuant to the provisions of this Chapter 3.44 in preceding subject years, shall be increased or decreased by a percentage which equals, to the nearest one-tenth of one percent, the percentage by which the cost of living for the month of December of the index-year immediately preceding said subject year shall have increased over or decreased below the cost of living for the month of December of the calendar year immediately preceding such index-year, determined in the manner hereinafter specified in this Chapter 3.44, provided and excepting however, that:

A. No allowances shall be increased or decreased, pursuant to the provisions of this section or any of the following sections of this chapter, for any month or two-week period in a subject year by a percentage in excess of three percent over, or below, the amount of such allowance payable in any month or two-week period of the immediately preceding subject year.

B. No retirement allowance payable to a particular person shall be increased or decreased, pursuant to the provisions of this section or any of the following sections of this chapter, for any month or two-week period in a particular subject year unless the person to whom such allowance is payable retired and became entitled to receive a retirement allowance on or prior to March 31st of the index-year immediately preceding said particular subject year.

C. No survivorship allowance, including any increase therein provided for by Section 3.44.020, payable to a particular person shall be increased or decreased, pursuant to the provisions of this section or any of the following sections of this chapter, for any month or two-week period in a particular subject year unless the deceased person on account of whose death such survivorship allowance is payable died on or prior to March 31st of the index-year immediately preceding said particular subject year.

D. Notwithstanding subsection B. above, with respect to persons who retire on or after April 1, 1980, the retirement allowance payable to such persons for the period beginning on the first anniversary of the first day of the month immediately following the month in which such retirement occurs and ending at the end of the subject year in which such anniversary occurs shall be increased or decreased, but such increase or decrease for such period shall be on pro rata basis calculated on the percentage (not exceeding three percent) of increase or decrease in the cost of living for the index-year next preceding the subject year in which such period occurs over or below the cost of living for the calendar year immediately preceding such index-year and determined by multiplying such percentage by a fraction, the denominator of which is twelve and the numerator of which is the number of months in such period. Thereafter, such retirement allowances as so increased or decreased shall be increased or decreased in succeeding subject years in accordance with the other provisions of this section and chapter.

E. Notwithstanding subsection C. above, with respect to persons whose survivorship allowance is payable pursuant to Chapter 3.32 or Chapter 3.36 of this Code on account of the death of a person who dies on or after April 1, 1980, the survivorship allowance payable to such persons for the period beginning on the first anniversary of the first day of the month immediately following the month in which such death occurs and ending at the end of the subject year in which such anniversary occurs shall be increased or decreased, but such increase or decrease for such period shall be on a pro rata basis calculated on the percentage (not exceeding three percent) of increase or decrease in the cost of living for the index-year next preceding the subject year in which such period occurs over or below the cost of living for the calendar year immediately preceding such index-year and determined by multiplying such percentage by a fraction, the denominator of which is twelve and the numerator of which is the number of months in such period. Thereafter, such survivorship allowances as so increased or decreased shall be increased or decreased in succeeding subject years in accordance with the other provisions of this section and chapter.

F. Notwithstanding subsection C. above, with respect to persons whose survivorship allowance is payable pursuant to Chapter 3.24 or Chapter 3.28 of this Code on account of the death of a person who dies on or after June 26, 1988, the survivorship allowance payable to such persons shall be increased or decreased as follows:

1. Death of Member Prior to Retirement. In the case of the death of a member of the federated city employees retirement system which occurs before such member's retirement, the increase or decrease in the survivorship

allowance shall occur at the time the member's retirement allowance would have increased or decreased in accordance with subsection D. above had the member not died but instead had retired effective on the date of death.

2. **Death of Member After Retirement.** In the case of the death of a person who had retired from the federated city employees retirement system, the increase or decrease in the survivorship allowance shall occur at the time the decedent's retirement allowance would have increased or decreased pursuant to this section had the decedent not died but instead had continued to receive a retirement allowance.

(Prior code § 2904.505; Ords. 20479, 20653, 22808.)

### **3.44.040 Determination of percentage of increase or decrease in cost of living.**

Within the three calendar months immediately preceding the commencement of each subject year, respectively, beginning with the first three months of the calendar year 1970, the retirement board of each of the retirement plans or systems pursuant to which the retirement allowances and survivorship allowances specified in the preceding sections of this chapter are payable, shall determine the percentage of increase or decrease in the cost of living during the index-year next preceding the commencement of the immediately following subject year, over or below the cost of living in the calendar year immediately preceding such index-year. Such shall be done by reference to the most current consumer price index for all urban consumers (CPI-U), 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.

The percentage by which the cost of living for the month of December of such index-year, as shown by said index, shall have increased or decreased over or below the cost of living for the month of December of the calendar year immediately preceding such index-year, as shown by said index, shall be the percentage used, subject to the three percent limitation hereinabove contained in Section 3.44.030 of this chapter, to determine the amount of increases or decreases in retirement allowances and in survivorship allowances which are to be made in the following subject year as above provided for in Section 3.44.030 of this chapter.

If the percentage by which the cost of living for the month of December of any index-year shall have increased or decreased over or below the cost of living for the month of December of the calendar year immediately preceding such index-year is in excess of three percent, the excess shall be accumulated from year to year and included in the determination of the increases or decreases in cost of living in succeeding index-years the same as if they occurred in such succeeding index-years; provided and excepting, however, that:

A. No retirement allowance shall be increased or decreased because of such accumulated increases or decreases in cost of living unless and except to the extent that such accumulated increases or decreases occurred either:

1. During or after the index-year within which the recipient of such allowance retired from city service if he retired from such service within the first three months of a calendar year; or

2. During or after the index-year following the index-year within which the recipient of such allowance retired from city service if he retired from such service within the last nine months of a calendar year, but in no event shall such accumulated increases or decreases include any increases or decreases occurring in any index-year prior to the 1969 index-year.

B. No survivorship allowance shall be increased or decreased because of such accumulated increases or decreases in cost of living unless and except to the extent that such accumulated increases or decreases occurred either:

1. During or after the index-year within which the member or former member of an above-mentioned retirement plan or system, because of whose death the survivorship allowance is payable, either retired from city service or died (whichever occurred earlier) if he died or retired within the first three months of a calendar year; or

2. During or after the index-year following the index-year within which he retired from city service or died (whichever occurred earlier) if he died or retired within the last nine months of a calendar year, but in no event shall such accumulated increases or decreases include any increases or decreases occurring in any index-year prior to the 1969 index-year.

C. No accumulated increases or decreases shall include any increases or decreases which occurred in any index-year prior to the 1969 index-year.

D. Increases and decreases in the amounts of allowances for each subject year, respectively, shall still be subject to the three percent limitation set forth in Section 3.44.030.

(Prior code § 2904.506; Ord. 20064.)

#### **3.44.045 Offset of accumulated increases or decreases.**

The accumulated percentage increases or decreases in cost of living set forth in Section 3.44.040 shall be offset by the increase in monthly allowance payable pursuant to Chapter 3.42 of this Code as follows:

A. The increase in monthly allowance set forth in Section 3.42.020 or Section 3.42.110 shall be expressed as a percentage increase and the percentage shall be subtracted from the accumulated percentage increases or decreases set forth in Section 3.44.040.

B. The remaining accumulated percentage increases or decreases shall be included in the determination of increases or decreases of retirement allowances and survivorship allowances as provided in Section 3.44.040.

C. If the increase in monthly allowance percentage calculated pursuant to subsection A. above is greater than the accumulated increases or decreases, the accumulated increases or decreases shall be set at zero for the index-year in which the offset occurs.

(Ords. 22279, 24095.)

#### **3.44.050 Cost-of-living increases - Members by reason of certain contract with county.**

All monthly allowances and monthly survivorship allowances payable under Sections 3.36.760, 3.36.1350 and 3.36.1360 shall be eligible for and entitled to the cost of living increases or decreases set forth in this chapter. For purposes of Section 3.44.040, such person shall be deemed to have retired as of the first day of the first period for which he receives a monthly allowance.

(Prior code § 2904.516.)

#### **3.44.060 Determination of time of retirement.**

For purposes of this Chapter 3.44, a member or former member of any retirement plan or system of the city whose employment by the city was terminated by his retiring therefrom pursuant to such plan or system shall be deemed to have retired from service of the city as of the day immediately following the last day of his employment by the city; and a member or former member of any such retirement plan or system whose employment by the city was terminated by resignation, layoff, discharge or other means excepting retirement, but who subsequently becomes eligible under said plan or system to receive a monthly, biweekly or annual allowance pursuant to the provisions of Section 3.24.510, 3.24.590, 3.36.1630 or 3.36.1790 of this Code, shall be deemed to have retired on account of his service to the City of San José as of the first day of the first period for which he receives such allowance pursuant to the above specified sections or provisions, and in such case his said allowance shall be deemed to be a retirement allowance.

(Prior code § 2904.507.)

#### **3.44.070 Limitations and exceptions.**

Anything elsewhere in this Chapter 3.44 to the contrary notwithstanding, none of the provisions of this Chapter 3.44 shall be deemed to authorize or provide for:

A. Any increase or decrease in the amount of any retirement allowance or survivorship allowance, or portion thereof, purchased by additional contributions of an employee pursuant to the provisions of Sections 3.20.400, 3.20.410, 3.24.590, 3.24.740, or other similar sections of the San José Municipal Code; or

B. Any increase or decrease in the amount of any allowance or payment paid, payable or made pursuant to the Workers' Compensation Act of the state, or other similar law, ordinance or regulation; or

C. Any increase or decrease in the amount of any retirement allowance or survivorship allowance paid, payable or made pursuant to the provisions of Section 3.24.510, 3.28.580 or 3.28.590 of the San José Municipal Code unless the

member or former member because of whose service such an allowance is payable has or had to his credit in the retirement system of which said section is a part, at the time of commencement of retirement, at least five years of such service.

(Prior code § 2904.508; Ords. 21371, 23485.)

### **3.44.080 Limitation on decreases in amounts of allowances.**

Anything elsewhere to the contrary notwithstanding, no retirement allowance and no survivorship allowance shall ever be decreased pursuant to the provisions of this Chapter 3.44 below the amount which the recipient is entitled to under applicable provisions of Chapters 3.16, 3.20, 3.24, 3.28, 3.32 or 3.36 of this Code, plus such increases, if any, as he may be entitled to under the provisions of Chapter 3.40 of the San José Municipal Code.

(Prior code § 2904.509.)

### **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-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.

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 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.

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 for each three dollars contributed to said fund for each such month, respectively, by persons other than the city pursuant to the provisions of the immediately preceding subsection B. of this section.

(Prior code § 2904.510; Ord. 20276.)

### **3.44.095 Additional employee contributions - Police and fire plans.**

Notwithstanding any other provisions of this Chapter 3.44, the city shall be entitled to an offset of a percentage, as is determined to be appropriate, by the actuary for the police and fire department retirement plan, of the additional employee retirement fund contributions that are made under subsections A. and B. of Section 3.36.1525, against the COLA fund contributions that the city would otherwise be required to make under this Chapter 3.44.

(Ord. 28753.)

### **3.44.100 Funding of increases in allowances - Federated employee plans.**

Such increases in monthly retirement allowances and in monthly 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 federated city employees' retirement system, established by Chapters 3.24 and 3.28 of the San José Municipal Code; and survivors of members or former members of said federated city employees' retirement system, 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, known and designated as the "federated employees' cost-of-living fund," shall continue in existence. All moneys in such fund on the effective date of this section, as amended, and all moneys thereafter 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 3.44.

#### **B. Members' contributions.**

1. Each person who is required by the provisions of the above-mentioned 1975 federated employees' retirement system, established by Chapter 3.28 of this Code, to make contributions to such retirement system shall make cost-of-living contributions to the above-mentioned federated employees' cost-of-living fund. Such cost-of-living contributions shall be made monthly if other contributions required of members by said 1975 federated employees' retirement system are made monthly or biweekly if other contributions required of said members by said retirement system are made biweekly. Until changed by the federated retirement board on the basis of subsequent actuarial valuation, the cost-of-living contributions required to be made in each month or biweekly period by each contributor, other than the city, shall be an amount equal to that percentage of such member's earned monthly (or biweekly if contributions are made biweekly) compensation which was in effect on June 30, 1975, under the provisions of this Chapter 3.44 as they read on said date.

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 years, the above-specified federated retirement board shall review the percentage rate of the 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 contribution so established from time to time by said retirement board for contributors other than the city shall be such as will be sufficient, with moneys already 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 to said city retirees and survivors as may be required by the provisions of said Chapter 3.44 and to provide a reasonable reserve for contingencies.

3. The rate of monthly or biweekly cost-of-living contribution required of each contributor other than the city shall always be a percentage of each member's earned monthly (or biweekly, if contributions are made biweekly) compensation, and said percentage rate shall always be the same for all such contributors.

C. *City contributions.* For each month (or for each two-week period if biweekly contributions are required of members), respectively, the City of San José shall contribute to the above-mentioned federated city employees' cost-of-living fund the sum of eight dollars per three dollars contributed to said fund for each such month or two-week period, respectively, by persons other than the city, pursuant to the immediately preceding subsection B, of this section.

(Prior code § 2904.511; Ords. 20276, 20596.)

#### **3.44.105 Additional employee contributions.**

Notwithstanding any other provisions of this Chapter 3.44, the city shall be entitled to an offset of a percentage, as is determined appropriate by the actuary for the federated city employees retirement system, of the additional employee retirement contributions that are made under Section 3.28.755 against the COLA fund contributions that the city would otherwise be required to make under this Chapter 3.44.

(Ord. 28752.)

#### **3.44.110 Payroll deductions.**

Any and all cost-of-living contributions required of persons other than the city by the provisions of this Chapter 3.44 shall be paid to and collected by the city's director of finance, and deposited by him in the city treasury to the credit of the special cost-of-living fund entitled thereto. Said director of finance shall, to the fullest extent possible, collect all cost-of-living contributions required of such persons by deducting the amount of such contributions from the monthly or biweekly compensation payable by the city to such persons for services rendered by them to the city.

(Prior code § 2904.512.)

#### **3.44.120 Crediting of contributions and interest thereon to individual accounts.**

Each cost-of-living contribution made by each contributor other than the city pursuant to this Chapter 3.44 shall be credited by the director of finance to an individual account established for such person for such purpose; and accumulated cost-of-living contributions of each such person shall be credited with interest earned thereon at a reasonable rate fixed by the police and fire retirement board with respect to contributions who are members of the above-mentioned police and fire department plans, and fixed by the federated retirement board with respect to members of the federated retirement systems established by Chapter 3.24 and Chapter 3.28 of the San José Municipal Code.

(Prior code § 2904.513.)

#### **3.44.130 Return of contributions and interest.**

A. In each of the following situations, and none other, cost-of-living contributions, and interest thereon, credited to the individual account of a contributor shall be returned as follows:

1. If the contributor is a member of the police and fire department retirement plan established by Chapter 3.32 of the San José Municipal Code, the cost-of-living contributions, and interest thereon, credited to such contributor shall be returned to him if and when he becomes entitled to the return of and is paid, under and pursuant to the provisions of Sections 3.32.340, 3.32.350 or 3.32.360 of this Code, those accumulated contributions contributed by him to the police and fire department plan established by said Chapter 3.32.

2. If the contributor is a member of the police and fire department retirement plan established by Chapter 3.32 of the San José Municipal Code, the cost-of-living contributions, and interest thereon, credited to such contributor shall be returned to his widow or estate, as the case may be, if and when such widow or estate becomes entitled to the return

of and is paid, under and pursuant to the provisions of Sections 3.32.340, 3.32.350 or 3.32.360 of this Code, those accumulated contributions contributed by him to the police and fire department plan established by said Chapter 3.32.

3. If the contributor is a member of the police and fire department plan established by Chapter 3.36 of the San José Municipal Code, the cost-of-living contributions, and interest thereon, credited to such contributor shall be returned to him if and when he becomes entitled to receive and elects to receive and is paid, under and pursuant to the provisions of Sections 3.36.1620 or 3.36.1630 of this Code, those accumulated contributions contributed by him to the police and fire department plan established by said Chapter 3.36.

4. If the contributor is a member of the police and fire department retirement plan established by Chapter 3.36 of the San José Municipal Code, the cost-of-living contributions, and interest thereon, credited to such contributor shall be returned to the survivor or survivors or estate of such contributor if and when such survivor or survivors or estate becomes entitled to receive and is paid, under and pursuant to the provisions of said Chapter 3.36, those accumulated contributions contributed by said contributor to the police and fire department retirement plan established by Chapter 3.36; provided and excepting, however, that said cost-of-living contributions and interest shall not be so returned and paid to said survivor, survivors or estate if any of said survivors or said estate is or becomes or may become entitled to receive any monthly or biweekly allowance under and pursuant to the provisions of said Chapter 3.36.

5. If the contributor is a member of the federated city employees retirement plan established by Chapter 3.24 or Chapter 3.28 of the San José Municipal Code, the cost-of-living contributions, and interest thereon, credited to him shall be returned to him if and when he becomes entitled to receive and does receive, under and pursuant to the provisions of said Chapter 3.24 or Chapter 3.28 the return of all accumulated contributions contributed by him to the federated city employees retirement plan established by said Chapter 3.24 or Chapter 3.28.

6. If the contributor at the time he retired or died was a member of the retirement plan established by Chapter 3.24 or Chapter 3.28 of the San José Municipal Code, the cost-of-living contributions and interest thereon which are credited to him shall be paid to such survivor, beneficiary or estate of such contributor as may become entitled to receive, under the provisions of said Chapter 3.24 or Chapter 3.28 plan, all or any of the accumulated contributions contributed by said contributor to such plan, but only if and when such survivor, beneficiary or estate becomes entitled to receive and is paid such contributions under said plan; provided and excepting, however, that if said contributor at the time of his death or retirement was a member of the plan established by Chapter 3.24, such cost-of-living contributions and interest shall not be so returned or paid to said survivor, beneficiary or estate if said survivor, beneficiary or estate is or becomes or may become entitled to receive any allowance under and pursuant to the provisions of said Chapter 3.24; and provided and excepting, further, that, if said contributor at the time of his death or retirement was a member of the plan established by Chapter 3.28, said cost-of-living contributions and interest shall not be so returned or paid to said survivor, beneficiary or estate if any cost-of-living benefit has theretofore been paid or has theretofore become payable under the provisions of this Chapter 3.44.

B. In the event that any contributor, after return to him of his accumulated contributions in any of the retirement plans established by Chapters 3.24, 3.28, 3.32 or 3.36 of this Code, should be required because of reinstatement or otherwise, to return and repay such contributions to any of said plans, he shall, at the same time that he returns such contributions to such plans, return and repay to the city's director of finance, for credit to his account under this Chapter 3.44, all cost-of-living contributions and interest theretofore returned to him under or pursuant to the provisions of this Chapter 3.44.

C. Upon payment, pursuant to the provisions of this Chapter 3.44, of a contributor's accumulated cost-of-living contributions to such contributor or to any beneficiary, estate or survivor of such contributor, neither said contributor nor any of his survivors shall thereafter have any right to any allowance or other benefit under the provisions of this Chapter 3.44.

(Prior code § 2904.514.)

#### **3.44.140 Investment of funds.**

A. The police and fire retirement board is hereby authorized to invest any or all moneys in the police and fire cost-of-living fund, subject to the same restrictions and limitations as are applicable to its investment of moneys in the retirement fund established by Chapter 3.36 of the San José Municipal Code.

B. The retirement board of the federated city employees retirement plan established by Chapters 3.24 and 3.28 of the San José Municipal Code is hereby authorized to invest any or all moneys in the federated cost-of-living fund, subject to the same restrictions and limitations as are applicable to its investment of moneys in the retirement fund established by Chapter 3.28 of the San José Municipal Code.

C. Earnings or losses from said investments shall be credited or debited to the respective cost-of-living fund from which such investments were made.

(Prior code § 2904.515.)

### **3.44.150 Chapter 3.36 police and fire plan - Effective February 1, 2002.**

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 months from February 1st of one calendar year to January 31 of the following calendar year, respectively, commencing with the twelve-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 per annum in lieu of the increase otherwise provided in this chapter. The first such three percent increase shall be made on February 1, 2002.

3. Each increase 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.

(Ord. 26417.)

### **3.44.160 Federated city employees retirement system - Effective April 1, 2006.**

A. Notwithstanding the other provisions of this chapter to the contrary, effective April 1, 2006, the following provisions shall apply to those persons who receive monthly allowances pursuant to the provisions of the federated city employees retirement system as set forth in Chapter 3.24 or Chapter 3.28 of the San José Municipal Code:

1. Each retirement allowance and each survivorship allowance which is payable under Chapter 3.24 or Chapter 3.28 any subject year which begins on or after April 1, 2006, 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 per annum in lieu of the increase otherwise provided in this chapter. The first such three percent increase shall be made on April 1, 2006.

2. Each increase shall become effective beginning with the allowance payable for the month of April in each subject year.

3. The accumulation of the excess of cost-of-living percentages as provided in Section 3.44.040 shall not apply.

B. In the event the board's actuary determines that there is an increased cost to implement the change to a flat-rate three percent cost-of-living adjustment as provided in this section, such increased cost shall be calculated as a percentage of each member's earned compensation and that percentage rate shall be added to the contributions made by members pursuant to Section 3.44.100. The additional percentage rate imposed pursuant to this paragraph shall be the same for all members.

C. The provisions of this Chapter 3.44 which are not inconsistent with the provisions of Subsections A. and B. shall continue to apply with respect to the persons described in Subsection A.

(Ord. 27652.)

## **Chapter 3.48**

**DEFERRED COMPENSATION PLAN**

## Sections:

- 3.48.010 Name.
- 3.48.020 Purpose.
- 3.48.025 Establishment of trust.
- 3.48.030 Definitions.
- 3.48.040 Deferral of compensation.
- 3.48.050 Participation in the plan.
- 3.48.055 Inter-plan transfer.
- 3.48.058 Eligible rollover distributions.
- 3.48.060 Administration of the plan.
- 3.48.070 Deferred compensation fund.
- 3.48.080 City participation.
- 3.48.090 Relation to retirement system.
- 3.48.100 Status of participants.
- 3.48.110 Condition of the plan.
- 3.48.120 Governing law.
- 3.48.130 Distribution of benefits; election.
- 3.48.131 Method of payment of benefits upon occurrence of severance event.
- 3.48.132 Postponement of payments of benefits.
- 3.48.133 Date of payment of benefits.
- 3.48.134 Payment of benefits after death.
- 3.48.135 Emergency withdrawals.
- 3.48.136 Other distributions.
- 3.48.137 De minimus accounts.
- 3.48.140 Loans.
- 3.48.150 Nonassignability.
- 3.48.160 Amendment or termination of plan.
- 3.48.170 Limitation on city responsibility.

- 3.48.180 Administrative costs.
- 3.48.181 Conforming domestic relations orders.
- 3.48.185 Repeal.

### **3.48.010 Name.**

The name of this plan is the City of San José, California, deferred compensation plan (hereinafter referred to as the plan).

(Prior code § 2915.1; Ords. 19953, 21404, 26540.)

### **3.48.020 Purpose.**

The primary purpose of the plan is to attract and hold personnel by permitting them to enter into agreements with the City of San José which will provide for deferral of payment of a portion of their current compensation until death, disability, retirement, termination of employment, or other event as provided herein, in accordance with the applicable provisions of the Internal Revenue Code.

(Prior code § 2915.2; Ords. 19953, 21404, 26540.)

### **3.48.025 Establishment of trust.**

A. There is hereby established the City of San José deferred compensation plan trust.

B. Notwithstanding any contrary provision of the plan, in accordance with Section 457(g) of the Internal Revenue Code, all amounts of compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held by the city in trust for the exclusive benefit of participants and beneficiaries under the plan.

C. All amounts of compensation deferred under the plan shall be transferred to the trust within a period that is not longer than is reasonable for the proper administration of the accounts of participants and beneficiaries.

D. Prior to the satisfaction of all liabilities with respect to plan participants and their beneficiaries, no part of the assets or income of the trust shall be used for, or diverted to, purposes other than for the exclusive benefits of the plan participants and their beneficiaries and defraying reasonable expenses of the administration of the plan.

(Ords. 25707, 26540.)

### **3.48.030 Definitions.**

For the purposes of this plan, certain words or phrases used herein will have the following meanings:

A. "City" shall mean the City of San José, California.

B. "Employee" shall mean any officer or employee of the City of San José, California.

C. "Participant" shall mean any eligible employee who fulfills the requirements of enrollment into the plan.

D. "Participation agreement" shall mean the agreement executed and filed by an employee with city, pursuant to Section 3.48.050, in which an employee elects to become a participant in the plan.

E. "Includible compensation" shall mean:

1. Prior to January 1, 2002, "includible compensation" shall mean the compensation for services performed for the city which (taking into account the provisions of Sections 457 and 403(b) of the Internal Revenue Code) is currently includible in gross income. Amounts of compensation shall be determined without regard to any community property laws.

2. After December 31, 2001, "includible compensation" shall have the meaning given to the term "participant's compensation" by Section 415(c)(3) of the Internal Revenue Code. Amounts of compensation shall be determined without regard to any community property laws.

F. "Disability" shall mean the complete and permanent inability of a participant to engage in his or her usual occupation by reason of a medically determinable physical or mental impairment as determined solely by the city on the basis of advice from a physician or physicians.

G. "Normal retirement age" shall mean age seventy and one-half, or that age as irrevocably selected in writing by the participant as an alternative normal retirement age.

H. "Alternative normal retirement age" shall mean any age irrevocably designated in writing by the participant which is:

1. Not earlier than the earliest age at which the participant has the right to retire under a retirement plan of the city and receive immediate retirement benefits without actuarial or similar reduction for early retirement; and

2. No later than age seventy and one-half; provided, however, for a participant who continues in the service of the city after age seventy and one-half, the normal retirement age shall be the date or age designated by the participant but such date or age shall not be later than the mandatory retirement age for such participant or the date or age at which the participant separates from service with the city.

I. "Committee" or "advisory committee" shall mean the deferred compensation advisory committee.

J. "Beneficiary" shall mean a beneficiary designated by the participant to receive payment of benefits under the plan.

K. "Plan year" shall mean a calendar year.

L. "Payroll period" shall mean a biweekly compensation period.

M. "Eligible deferred compensation plan" means a plan which meets the requirements of Internal Revenue Code Section 457(b).

N. "Percentage limitation" shall mean:

1. Prior to January 1, 2002, thirty-three and one-third percent of the participant's includible compensation for the taxable year.

2. After December 31, 2001, one hundred percent of the participant's includible compensation for the taxable year.

O. "Severance event" shall mean:

1. Prior to January 1, 2002, severance of the participant's employment with the city that constitutes a "separation from service" within the meaning of Internal Revenue Code Section 402(e)(4)(D)(iii).

2. After December 31, 2001, a severance of the participant's employment with the city within the meaning of Internal Revenue Code Section 457(d)(1)(A)(ii).

(Prior code § 2915.3; Ords. 19953, 21404, 26540, 26666.)

### **3.48.040 Deferral of compensation.**

A. During each payroll period in which an employee is a participant in the plan, the city shall defer payment of such part of the employee's compensation as is specified by the employee in his or her participation agreement, provided that, except as provided in subsections B. and C. of this Section 3.48.040, the maximum that each participant may defer under this plan for any taxable year shall not exceed the lesser of:

1. The applicable dollar amount permitted under Section 457(b) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder; or

2. The percentage limitation applied to the participant's includible compensation.

B. Beginning January 1, 2002, a participant who has attained the age of fifty years before the close of the tax year, and with respect to whom no other elective deferrals may be made to the plan for the tax year by reason of the limitations set forth in subsection A., may specify in the participation agreement that the participant elects to make deferrals in addition to those permitted by subsection A. in an amount not to exceed:

1. The applicable dollar amount permitted under Section 414(v)(2)(B) of the Internal Revenue Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Internal Revenue Code; or

2. The portion, if any, of the participant's compensation (as defined in Section 415(c)(3) of the Internal Revenue Code) that is in excess of any other elective deferrals of the participant for such year as are made without regard to this subsection B.

C. The maximum deferrals described in subsections A. and B. above shall not be applicable for one or more of the participant's last three taxable years ending before the attainment of normal retirement age as defined under this plan. In that instance, the maximum shall be the lesser of:

1. Twice the dollar amount in effect under Section 457(b)(2)(A) of the Internal Revenue Code; or

2. The sum of:

a. The maximum deferral amount established for the purposes of Section 3.48.040.A. for the taxable year (determined without regard to Section 3.48.040.B.); plus

b. So much of the maximum deferral amount established for the purposes of Section 3.48.040.A. for taxable years beginning after December 31, 1978, and before the taxable year as has not previously been used under Section 3.48.040.A., or under Section 3.48.040.B.

D. An employee whose employment is interrupted by qualified military service under Internal Revenue Code Section 414(u) or who is on a leave of absence for qualified military service under Internal Revenue Code Section 414 (u) may elect to make additional deferrals upon resumption of employment with the city, subject to the following:

1. The additional deferrals shall not exceed the maximum deferrals the employee could have elected during the period of qualified military service if the employee's employment with the city had continued at the same level of compensation without the interruption or leave of absence, reduced by the deferrals, if any, actually made during the taxable year(s) in which the qualified military service occurred.

2. The right to make additional deferrals is limited to the five-year period immediately following the resumption of employment with the city or, if sooner, the period immediately following the resumption of employment that is equal to three times the length of the interruption or leave of absence.

E. If the amount of compensation deferred in any taxable year exceeds the limitations described in this Section 3.48.040 when combined with other amounts deferred by a participant under another eligible deferred compensation plan under Internal Revenue Code Section 457(b) for which the participant provides information to the city, then the deferral for that taxable year (adjusted for any income or loss in value allocable thereto) shall be distributed to the participant to the extent that the deferral exceeds the applicable limitation.

(Prior code § 2915.5; Ords. 19953, 21404, 25198, 26540, 26666, 27523.)

### **3.48.050 Participation in the plan.**

A. Each employee may elect to become a participant of the plan and defer payment of part of his or her compensation by executing a written participation agreement and filing it with city before the beginning of the month in which the deferral is to be effective.

B. The deferred amount must equal at least twenty-five dollars per payroll period per investment company, exclusive of any service charge or such other minimum as the advisory committee may determine.

C. A participation agreement shall be effective for the first payroll period of the next month following its execution and filing with city, unless a later payroll period is designated by the employee. The participation agreement shall

continue from payroll period to payroll period and remain in full force and effect unless terminated as provided in Section 3.48.050.B.

D. A participant may terminate his or her participation in the plan, and thereby terminate further deferral of compensation, by filing with city an executed written notice of termination prior to effective date of termination. Once terminated, a former participant cannot rejoin the plan during the month in which termination occurred; however, the former participant may elect to become a participant in a subsequent month. No amounts shall be payable to an employee upon terminating his or her participation in the plan unless otherwise due, pursuant to Section 3.48.130.

(Prior code § 2915.4; Ords. 19953, 21404, 26540.)

### **3.48.055 Inter-plan transfer.**

#### **A. Incoming transfers.**

1. A participant who is a former participant in an eligible deferred compensation plan of any local government or state may transfer the amounts deferred under said plan to the City of San José deferred compensation plan, if the participant has had a severance event with the prior employer and if the prior employer's plan provides that such a transfer will be made.

2. Any such transferred amount shall not be treated as a deferral subject to the limitations of Section 3.48.040, except that for purposes of applying the limitations, an amount deferred during any taxable year under the transferring plan shall be treated as if it had been deferred under this plan during such taxable year.

3. Any such transferred amount shall otherwise be subject to the provisions of this Chapter 3.48.

#### **B. Outgoing transfers.**

1. If a participant terminates employment with the city and accepts employment with any other local government or state, which has an eligible deferred compensation plan and which plan provides for acceptance of amounts previously deferred, the participant may elect that all amounts previously deferred be transferred to the new employer's plan.

2. Beginning January 1, 2002, a participant may transfer all or a portion of the participant's account directly to the trustee of a defined benefit governmental plan (as defined in Internal Revenue Code Section 414(d)) if such transfer is:

a. For the purchase of permissive service credit (as defined in Internal Revenue Code Section 415(n)(3)(A)) under such governmental plan; or

b. A repayment to which Internal Revenue Code Section 415 does not apply by reason of Subsection (k)(3) thereof.

C. The advisory committee or the city may require such documentation regarding any plan from which a transfer may be accepted or to which a transfer may be made as it deems necessary to effectuate the transfer; to confirm that such plan is an eligible deferred compensation plan of a local government or state or defined benefit governmental plan, as applicable; or to assure that transfers are permitted under such plan.

(Ords. 22614, 26540, 28995.)

### **3.48.058 Eligible rollover distributions.**

#### **A. Incoming Rollovers.**

1. Beginning January 1, 2002, this plan may accept an eligible rollover distribution from an eligible retirement plan maintained by another employer and credit such rolled-over amounts to a participant's account under this plan.

2. Beginning January 1, 2009, within twelve months of a former city employee's separation from city service, this plan may accept an eligible rollover distribution of pre-tax contributions from an eligible retirement plan maintained by the city and credit such rolled-over amounts to the former employee's account under this plan.

3. The plan shall separately account for eligible rollover distributions accepted from any eligible retirement plan that is not an eligible deferred compensation plan maintained by an eligible governmental employer.

4. For the purpose of this Subsection A., "eligible retirement plan" means an annuity plan described in Internal Revenue Code Section 403(b), a qualified trust described in Internal Revenue Code Section 401(a), or an eligible governmental deferred compensation plan.

**B. Outgoing Rollovers.**

1. Beginning January 1, 2002, a distributee may elect to take a distribution from this plan in the form of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

2. For the purposes of this Subsection B.:

a. "Distributee" includes:

i. An employee or former employee of the city; and

ii. With respect to the interest of the spouse, an employee's or former employee's surviving spouse; and

iii. With respect to the interest of the beneficiary, an employee's or former employee's designated beneficiary; and

iv. With respect to the interest of the spouse or former spouse, an employee's or former employee's spouse or former spouse who is the alternate payee under a conforming domestic relations order.

b. "Eligible retirement plan" means an individual retirement account described in Internal Revenue Code Section 408(a), a Roth individual retirement account described in Internal Revenue Code Section 408A (for distributions after December 31, 2007), an individual retirement annuity described in Internal Revenue Code Section 408(b), an annuity plan described in Internal Revenue Code Section 403(b), a qualified trust described in Internal Revenue Code Section 401(a), or an eligible deferred compensation plan that accepts an eligible rollover distribution.

c. An "eligible rollover distribution" is any distribution of all or a portion of the balance to the credit of the distributee which constitutes an eligible rollover distribution under Internal Revenue Code Section 401(a)(31)(C). For the purposes of distributions from other plans rolled-over into this plan, the term "eligible rollover distribution" shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

d. The advisory committee or the city may require such documentation regarding any plan from which a rollover distribution may be accepted or to which a rollover distribution may be made as it deems necessary to effectuate the distribution; to confirm that such plan is an eligible retirement plan; or to assure that rollover distributions are permitted under such plan.

e. For the purposes of Internal Revenue Code Section 72(t), a distribution from this plan shall be treated as a distribution from a qualified retirement plan to the extent that such distribution is attributable to an amount rolled-over from a qualified retirement plan (as defined in Internal Revenue Code Section 4974(c)).

f. Effective with respect to distributions made on or after January 1, 2010, a beneficiary other than a participant's (or former participant's) surviving spouse or a participant's (or former participant's) spouse or former spouse who is an "alternate payee" under a qualified domestic relations order is a person eligible to make a rollover with regard to the interest of the participant or former participant, subject to the limitation for such a beneficiary that an eligible retirement plan is an individual retirement account or individual retirement annuity that will be treated as an inherited individual retirement account or annuity under Internal Revenue Code Section 402(c)(11) of the Code.

(Ords. 26540, 28852, 28995.)

**3.48.060 Administration of the plan.**

A. The plan and the trust established by this chapter shall be administered by the deferred compensation 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 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 method of selection and the term of office of the members of the advisory committee shall be established by resolution of the city council.

(Prior code § 2915.6; Ords. 19953, 21404, 25707, 26540.)

### **3.48.070 Deferred compensation fund.**

A. The city shall establish a deferred compensation fund to which all deferred compensation shall be credited at such times as the compensation would have been payable to individual employees if not a participant in the plan, and to which all inter-plan transfer and direct rollover amounts accepted by the plan shall be credited as received. Separate book accounts will be established for each employee participating which will show all amounts of deferred compensation, inter-plan transfer amounts, direct rollover amounts, investments made, shares acquired and earnings and gains on investments. Each book account will be valued at least semiannually.

B. On executing the participation agreement, the employee shall designate his or her investment objective prospectively only. The city may invest amounts of deferred compensation in the types of investments set forth in Sections 53601 and 53602 of the Government Code of the State of California and in corporate stocks, bonds, and securities, mutual funds, savings and loan accounts, credit union accounts, life insurance policies, variable and fixed annuities, mortgages, deeds of trust, or other security interests in real or personal property, whichever in the city's sole judgment will best achieve the employee's objectives. Nothing in this section shall be construed to permit any type of investment prohibited by the Constitution of the State of California. The employee's investment designations are intended to be merely an expression of investment preferences and do not obligate city to follow the employee's designations.

C. No participant of the plan or such participant's beneficiaries shall have, by reason of the plan, participation agreement, or book account, any secured or preferred interest in, or to, any assets of the city. The city shall have only a contractual obligation to pay the benefits due the participant under the plan.

D. Except as provided in Internal Revenue Code Section 457(g), all amounts of compensation deferred under this plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property and rights shall remain (until made available to the participant or his beneficiaries) solely the property and rights of the city, without being restricted to the provision of benefits under this plan, subject only to the claims of the city's general creditors.

(Ords. 25707, 26540.)

### **3.48.080 City participation.**

Notwithstanding any other provisions of this plan, the city may make additional deposits in the deferred compensation fund as additional compensation for services to be rendered by the employee to the city during an employment period; provided:

A. The employee has elected, prior to the month in which the additional compensation is paid, to have such additional compensation deferred and invested, pursuant to this plan;

B. That such additional deposit shall not exceed the maximum deferral permitted in Section 3.48.040.

(Prior code § 2915.8; Ords. 19953, 21404, 26540.)

### **3.48.090 Relation to retirement system.**

Any reduction in compensation of a participant under this plan shall be included as compensation of such participant for purposes of computing the amount of his or her contributions or benefits under any City of San José retirement system.

(Prior code § 2915.13; Ords. 19953, 21404, 26540.)

### **3.48.100 Status of participants.**

Neither the establishment of the plan nor any modification thereof, nor the establishment of any book account, nor the payment of any benefits, shall be construed as giving to any participant or other person any legal or equitable right against city, except as herein provided; and in no event shall the terms of employment of any employee or participant be modified or in any way affected hereby.

(Prior code § 2915.11(a); Ords. 19953, 21404, 26540.)

### **3.48.110 Condition of the plan.**

It is a condition of the plan and each employee by participating herein expressly agrees that he or she shall look solely to the general assets of the city for the payment of any benefit to which the employee or the employee's beneficiary is entitled under the plan.

(Prior code § 2915.11(b); Ords. 19953, 21404, 26540.)

### **3.48.120 Governing law.**

This plan shall be construed, administered, and enforced according to the laws of the state of California.

(Prior code § 2915.11(c); Ords. 19953, 21404, 26540.)

### **3.48.130 Distribution of benefits; election.**

A. Except as provided in subsections E. and F. below, a participant may elect the method of payment and the settlement options for distribution in the event of retirement, disability or other severance event, except death, no later than thirty days after such severance event.

B. A participant may elect the method of payment and the settlement options for distribution in the event of the participant's death at any time before his or her death.

C. If the participant fails to make an election of the method of payment before his or her death while still in employment status, the participant's beneficiary may elect the method of payment at any time before payments are due.

D. If no election of the method of payment has been made by the participant or the participant's beneficiary within the times provided for in this chapter, the benefits payable to the participant or the participant's beneficiary, less any federal or state income taxes required to be withheld, shall be payable in a lump sum; provided that, on or after January 1, 2002, the participant or beneficiary may elect an inter-plan transfer or a direct rollover as provided in Sections 3.48.055 and 3.48.058.

E. On or after January 1, 1997, a participant may elect to defer commencement of distributions from the plan if such election is made after amounts may be available under the plan in accordance with the requirements of Section 457(d)(1)(A) of the Internal Revenue Code of 1986, as amended, and before commencement of such distributions. A participant may make only one election under this subsection E.

F. On or after January 1, 2002, a participant's right to change his or her election with respect to commencement of distribution shall not be constrained by subsection E. Subject to such limitations on frequency of changes as may be imposed by the advisory committee or the provider(s) of the investment options selected by the participant, the participant may change the date for commencement of distribution at any time prior to distribution. Notwithstanding the foregoing, the advisory committee may, in order to ensure the orderly administration of this plan, establish a deadline after which such election to defer commencement of distribution of benefits shall not be allowed.

(Prior code § 2915.7; Ords. 19953, 21404, 22062, 22419, 25198, 26540.)

### **3.48.131 Method of payment of benefits upon occurrence of severance event.**

A. In the event of termination of employment because of retirement, disability, or other severance event, except death, the full benefits credited to the participant's book account plus or minus subsequent investment gains or losses, but less any federal or state income taxes required to be withheld, shall be distributed to the participant in any one or more of the following ways:

1. In a lump sum;

2. In monthly, quarterly, semiannual, or annual installments, or, for a participant eligible for an annuity payout option, installments during the lifetime of the participant with or without a provision for a period certain, but in no case less frequently than annual payments. Life expectancy shall be actuarially determined by the city based on the date the distribution shall begin. Each installment payment shall not be less than fifty dollars, unless such payment is the entire balance remaining in the participants' book account;

B. The amount payable with respect to the participant shall be paid at such times specified by the Secretary of the United States Treasury pursuant to regulations promulgated by said Secretary. Prior to January 1, 2002, distributions payable over a period of more than one year shall be made only in substantially non-increasing amounts.

C. No payment option may be selected by a participant unless it satisfies the requirements of Internal Revenue Code Sections 401(a)(9) and 457(d)(2).

(Ords. 22419, 23160, 26540.)

### **3.48.132 Postponement of payments of benefits.**

A. A participant may postpone all of the payments under Section 3.48.131 until a date not later than April 1 following the calendar year during which the participant reaches age seventy and one-half.

B. The election provided by subsection A. above must be made no later than (1) thirty days after the occurrence of a severance event, or (2) the date the payment of benefits would otherwise commence under this chapter, whichever is earlier.

C. Except as provided in subsections E. and F. of Section 3.48.130, the election made pursuant to subsection A. above shall be irrevocable.

D. Prior to January 1, 2002, if a participant postpones payments under this section, the participant must elect the method of payment no later than thirty days prior to the date the postponed payments are due to commence.

(Ords. 22419, 24071, 25991, 26540.)

### **3.48.133 Date of payment of benefits.**

A. A participant's book account balances may continue to be invested until, in the city's sole judgment, cash is to be withdrawn for the payment of benefits.

B. Payment of benefits under Section 3.48.131 may commence thirty-one days following the occurrence of a severance event, but in no event shall commence later than sixty days after the close of the plan year in which the severance event occurred except in the case where the participant has elected a postponement of the commencement of distribution in accordance with the terms of this plan.

C. If the participant has reached normal retirement age before the occurrence of a severance event, or will reach, or would have reached normal retirement age in the plan year of the severance event, the participant or beneficiary, in case of participant's death, may elect that payments not commence until a date within sixty days after the close of the plan year in which the severance event occurred.

D. Payment of postponed benefits under Section 3.48.132.A. or 3.48.134.E. shall commence on the first day of the month following the date or age selected by the participant or beneficiary for payment of the postponed payments.

E. Payment of benefits in the event of the death of the participant may commence sixty days after satisfactory proof of death, and shall commence no later than sixty days after the close of the plan year in which death occurred, subject to satisfactory proof of the death of the participant, unless the time for payment is extended pursuant to Section 3.48.134.E.

(Ords. 22419, 26540.)

### **3.48.134 Payment of benefits after death.**

A. After the death of a participant, the full benefits credited to the participant's book account, less any federal or state income taxes required to be withheld by law, shall be distributed to participant's beneficiaries in the manner designated by the participant's most recent participation agreement, or amendments thereto, or other designation in writing by participant.

#### **B. Post-Retirement Death Benefits.**

1. The beneficiary of a participant who has died after distribution has started may, subject to any limitation imposed by contract between participant and a plan administrator, elect to change the method of distribution to a more rapid payout within thirty days from the date of death of participant. Once such an election has been made it may not be revoked. The beneficiary must take distribution at least as rapidly as the participant had elected.

2. Benefits shall be distributed in one of the following:

a. A lump sum.

b. Monthly, quarterly, semiannually, or annual installments over a period not greater than:

i. The life expectancy of the beneficiary if the beneficiary is the surviving spouse of the participant.

ii. Fifteen years, if the beneficiary is not the surviving spouse of the participant.

iii. No installment payment shall be less than fifty dollars unless it is the entire balance remaining in the participant's book account. Life expectancy shall be actuarially determined by the city based on the date distribution to the beneficiary shall commence.

c. A partial lump sum payment followed by monthly, quarterly, semi-annual or annual installments, provided that all payments are made within a period of ten years from the initial payment.

3. If the participant dies without naming a beneficiary or if the person(s) named are no longer alive at the time of the participant's death, the participant's account balance shall be paid to the estate of the participant in a lump sum.

#### **C. Pre-Retirement Death Benefits.**

1. If the participant dies before he or she has begun to receive the benefits provided by this plan, the beneficiary may, subject to any limitation imposed by contract between participant and a plan administrator, change the method of payment elected by the participant to a method of payment allowed by this section, no later than thirty days prior to the date payments are due to commence.

2. If the participant dies before he or she has begun to receive the benefits provided by this plan, the beneficiary may elect to postpone distribution of some or all of the benefits payable, to a date not later than the taxable year that the participant would have attained normal retirement age. This election may only be made within thirty days from the date of death of participant and once made may not be revoked under any circumstances. If such an election to postpone is made, the beneficiary may elect a method of payment as allowed in this section no later than thirty days prior to the date when the postponed payments are to commence.

D. All distributions made under this section shall meet the requirements of Internal Revenue Code Section 457.

(Ords. 22419, 23160, 26540.)

### **3.48.135 Emergency withdrawals.**

If a participant is faced with an unforeseeable emergency, the participant may apply to advisory committee for withdrawal of funds from the plan. Such withdrawals shall be permitted, in the advisory committee's discretion, only in circumstances of an unforeseeable emergency.

"Unforeseeable emergency" means severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent (as defined in Internal Revenue Code Section 152(a) but without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B)) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved by:

- A. Reimbursement or compensation by insurance or otherwise;
- B. Liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- C. Cessation of deferrals under the plan.

Examples of what are not considered to be an unforeseeable emergency include the need to send a participant's child to college or the desire to purchase a home.

Withdrawal from account due to an unforeseeable emergency shall only be permitted to the extent reasonably needed to satisfy the emergency need.

Any amount so approved hereunder for withdrawal, less any taxes required to be withheld, shall be paid to the participant in a lump sum. The withdrawal shall be effective at the later of the dates specified in the participant's application, or the date approved by the city.

(Ords. 22419, 26540, 28995.)

### **3.48.136 Other distributions.**

Notwithstanding any other provisions of this plan, the city may change the time or methods of benefit payments pursuant to this plan.

(Ords. 22419, 26540.)

### **3.48.137 De minimus accounts.**

#### **A. Voluntary Liquidation.**

1. A participant may elect to withdraw the entire deferred compensation account balance in a lump sum if all of the following conditions are satisfied:

- a. The total balance in the account does not exceed the amount set forth in subsection B.; and
- b. There have been no deferrals under the plan with respect to the participant during the two-year period ending on the date of the distribution; and
- c. There has been no prior distribution from the plan to the participant.

2. A participant may not withdraw the account balance pursuant to this section unless the total account balance does not exceed the following amount:

a. For withdrawals on or after January 1, 1997, but before January 1, 1998, the sum of three thousand five hundred dollars; or

b. For withdrawals on or after January 1, 1998, the dollar limit set forth in Section 457(e)(9) of the Internal Revenue Code. On or after January 1, 2002, the value of the participant's account shall be determined without factoring in any amounts attributable to rollovers under Section 3.48.058 from eligible retirement plans other than eligible deferred compensation plans.

B. **Mandatory Liquidations.** Notwithstanding any other provision of this chapter, if the value of a participant's account upon the occurrence of a severance event is less than one thousand dollars, the participant's account shall be paid to the participant in a lump sum.

(Ords. 22614, 23160, 25198, 25466, 26540.)

### **3.48.140 Loans.**

A. A participant who is an active employee may apply for and receive a loan from the balance of his or her account as provided in this Section 3.48.140. Any such loan may not be for an amount less than one thousand dollars (\$1,000.00).

B. No loan to a participant hereunder may exceed the lesser of:

1. Fifty thousand dollars (\$50,000.00), reduced by the excess (if any) of the highest outstanding balance on loans from the plan to the participant during the one-year period ending on the day before the date the loan is approved (not taking into account any payments made during such one-year period), over the outstanding balance of any loans from the plan to the participant on the date the loan is made; or

2. One-half of the value of the participant's vested account balance as of the day immediately preceding the date on which such loan is approved.

C. For purposes of subsection B. above:

1. Any loan from any other plan maintained by the city shall be treated as if it were a loan made from the plan and the balance of all loans under all plans maintained by the city shall be aggregated in determining the maximum loan available; and

2. The amount of any loan fee shall be deducted from the participant's account balance before the determination of the maximum loan amount available.

D. The terms of the loan shall:

1. Require level amortization with payments not less frequently than biweekly throughout the repayment period, except that, to the extent permitted by the Internal Revenue Code and the applicable treasury regulations:

a. A borrower who is on a bona fide unpaid leave of absence may elect to suspend payments during the unpaid leave of absence, provided that the suspension of payments shall be for a period not to exceed one year, and further provided that the term of the loan shall not be extended and the borrower must repay the loan within the term of the loan.

b. A borrower who is on a leave of absence for the performance of uniformed service within the meaning of Section 414(u) of the Internal Revenue Code may elect to suspend payment for the period of uniformed service. If the borrower so elects, then upon the borrower's return from uniformed service, the loan repayment period shall be extended by a period equal to the length of the uniformed service.

2. Require that the loan be repaid within five years unless the participant certifies in writing to the loan administrator that the loan is to be used to acquire a dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the participant; and

3. Provide for interest at a reasonable rate, as determined by the loan administrator, commensurate with interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.

E. **Security for loan; default.**

1. **Security.** Any loan to a participant under the plan shall be secured by the pledge of the portion of the participant's interest in the plan invested in such loan.

2. **Default.** In the event that a participant fails to make a loan payment by the last business day of the calendar quarter following the calendar quarter in which the payment is due, a default on the loan shall occur. In the event of such

default:

- a. All remaining payments on the loan shall be immediately due and payable;
- b. The participant shall not be allowed to initiate another loan from the plan until the defaulted amount is repaid.

3. In the case of any default on a loan to a participant, the loan administrator shall apply the portion of the participant's interest in the plan held as security for the loan in satisfaction of the loan on the date of severance from employment.

4. Notwithstanding anything elsewhere in this chapter to the contrary, in the event a loan is outstanding on the date of a participant's death, his or her estate shall be his or her beneficiary as to the portion of the interest in the plan invested in such loan (with the beneficiary or beneficiaries as to the remainder of his or her interest in the plan to be determined in accordance with otherwise applicable provisions of the plan).

#### Repayment.

1. The participant shall be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the city to make payroll deductions from the participant's compensation as long as the participant is an employee and to transfer such payroll deduction amounts to the loan administrator in payment of such loan plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction to be made as soon as practicable after the loan funds are disbursed.

2. Notwithstanding paragraph 1., a participant may prepay the entire outstanding balance of his loan at any time, in whole or in part, provided that a partial prepayment shall not change the payment schedule or the interest rate on the loan.

3. If any payroll deductions cannot be made in full because a participant is on an unpaid leave of absence and the loan suspension provision is not in effect or the participant's paycheck is insufficient for any other reason, the participant shall pay directly to the loan administrator the full amount that would have been deducted from the participant's paycheck, with such payment to be made by the last business day of the calendar month in which the amount would have been deducted.

F. *Severance from city employment.* In the event a participant has a severance event, the outstanding balance of any loan shall be due and payable no later than the last day of the month immediately following the month in which the participant receives his or her final compensation from the city. For the purpose of this paragraph, "final compensation" includes any payments for unused accrued leave for which the participant may be eligible.

G. *Loan fee.* The loan administrator, with the approval of the committee, may charge a loan fee for any loan made pursuant to this Section 3.48.140. The loan fee will be deducted from the participant's account balance.

H. For the purpose of this Section 3.48.140, "loan administrator" means the person or entity authorized by the committee to administer the loan program for the plan. The committee may change the loan administrator at any time.

I. The committee may establish such rules with respect to the loan program as the committee deems advisable, including without limitation, rules regarding the maximum number of loans that may be outstanding for any participant at any time.

(Ord. 28057.)

#### 3.48.150 Nonassignability.

To the fullest extent permitted by law, the interest of a participant in the contractual obligation of the city, established by the plan, shall not be assignable in whole or in part, directly or by operation of law or otherwise, in any manner, and no right or interest of a participant in the city's contractual obligation shall be liable for, or subject to, any obligation or liability of such participant.

(Prior code § 2915.9; Ords. 19953, 21404, 26540.)

#### 3.48.160 Amendment or termination of plan.

A. The city may, at any time, terminate this plan for all participants. Upon such termination, each participant in the plan will be deemed to have terminated his service as of the date of such termination, and the value of each participant's book account, less any taxes required to be withheld, shall be distributed to the participants or their beneficiaries no later than sixty days after the termination of the plan.

B. The city may also amend the provisions of this plan at any time; provided, however, that no amendment shall affect the rights of the participants or their beneficiaries to the receipt of payment of benefits, to the extent of any compensation deferred at the time of the amendment as adjusted for income attributable to such deferred compensation prior to and subsequent to the amendment.

C. This plan is intended to qualify as an eligible state deferred compensation plan under Section 457 of the Internal Revenue Code, and shall be interpreted and administered in a manner consistent with such qualification. The city reserves the right to amend the plan to the extent that may be necessary to conform the plan to the requirements of Section 457 and any other applicable law, regulation or ruling, including amendments that are retroactive to the effective date of the plan. In the event that the plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Section 457, city shall correct such administration within the period provided in Section 457(b). The city reserves the right to take such action and do such things as are required to make the plan, as administered, consistent with Section 457.

(Prior code §§ 2915.12, 3.48.170; Ords. 19953, 21404, 26540.)

### **3.48.170 Limitation on city responsibility.**

A. The city may, but is not required to, invest funds held pursuant to agreements between participants and city in accordance with the requests made by each participant at the time of enrollment or change in enrollment, prospectively only.

B. The city shall retain the right to approve or disapprove such investment requests. Any action by the city or the advisory committee in investing funds, or approving of any such investment of funds, shall not be considered to be either an endorsement or guarantee of any investment, nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations as provided in Section 3.48.130. Neither city nor the advisory committee shall be liable to any participant, or to any participant's beneficiaries or heirs, or to any other person for any losses resulting from investments or funding made under the plan.

C. The city hereby establishes this deferred compensation plan on the terms and conditions set forth herein.

(Prior code §§ 2915.14, 3.48.180; Ords. 19953, 21404, 26540.)

### **3.48.180 Administrative costs.**

The advisory committee may determine fair and equitable cost to the city in withholding deferred compensation pursuant to this plan or in making investments or otherwise administering or implementing the plan. The advisory committee may withhold or collect, or have withheld or collected such costs, in such manner as it deems equitable either (1) from the compensation deferred pursuant to the plan, the income produced from any investment with respect thereto, or from principal return from any investment, whether or not augmented, or (2) from the organization receiving such investments, where required by law to collect therefrom, or if not so required, where mutually satisfactory to such organization and the advisory committee, or (3) by direct charge to the participants or any combination of the above.

(Ords. 21404, 26540.)

### **3.48.181 Conforming domestic relations orders.**

A. A domestic relations order means any judgment, decree or order, including approval of a property settlement agreement or separation agreement issued by a court of competent jurisdiction which relates to the provision of marital property rights of a participant and is made pursuant to the state domestic relations law of the state where the marital dissolution or separation occurred.

B. The plan shall only recognize domestic relations orders that the advisory committee, in accordance with its authority under Section 3.48.060, determines are conforming domestic relations orders.

C. A conforming domestic relations order is a domestic relations order that the advisory committee determines

conforms with the following guidelines:

1. The order may provide for the establishment of a separate account for the nonparticipant spouse under the plan. For purposes of this section, "nonparticipant spouse" equally refers to current or former spouse of a plan participant.
2. The order may provide, with respect to any separate account established for the nonparticipant spouse, that the nonparticipant spouse shall have the right:
  - a. To direct the investment of the account in accordance with the provisions of the plan;
  - b. To elect the time and form of distribution from the options available under the plan, provided that distributions shall not commence earlier than provided in paragraph 3. below;
  - c. To designate beneficiaries of the separate account in the event of the nonparticipant spouse's death, in accordance with the procedures provided under the plan;
  - d. To have all distributions from the account of the nonparticipant spouse made directly to the nonparticipant spouse or his or her beneficiary.
3. To conform, the order:
  - a. May not accelerate or increase any benefit provided under the plan or create any rights greater than the participant's rights under the plan and under Section 457 of the Internal Revenue Code of 1986, and may not conflict in any other way with the plan's distribution provisions or the requirements and limitations of Sections 401(a)(9), and 457 (d) of the Internal Revenue Code of 1986 as amended; provided that after December 31, 2001, the nonparticipant spouse who has been awarded a separate account may elect to commence distribution of the nonparticipant spouse's separate account prior to the occurrence of a severance event for the participant.
  - b. May not allow the nonparticipant spouse to defer compensation under the plan except to the extent the nonparticipant spouse is an employee otherwise authorized to become a participant under the plan; and
  - c. May provide that all distributions made to the nonparticipant spouse shall be made directly to the nonparticipant spouse or beneficiary, as applicable.
4. The order shall also conform with such additional guidelines as the advisory committee shall establish from time to time including, with regard to the following:
  - a. Provision for the withholding of taxes required by applicable law;
  - b. Provision that the participant and/or the nonparticipant spouse be required to pay any expenses incurred by the city in connection with the order including, without limitation, the costs of any legal action taken by the city relating to the order;
  - c. Any requirement that the nonparticipant spouse provide the advisory committee with such written requests, consents or instructions as the advisory committee may require in accordance with the provisions of the plan; and
  - d. Provision expressly acknowledging that the city's obligation to the participant is reduced to the extent that payments are to be made to the nonparticipant spouse.

(Ords. 24404, 25787, 26540.)

### **3.48.185 Repeal.**

The amendments to the plan made by the urgency ordinance adopted December 18, 2001, were made to implement provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). In the event the EGTRRA provisions implemented by the urgency ordinance terminate, expire or are repealed, the amendments made by the urgency ordinance shall be deemed terminated, expired or repealed to the extent necessary to conform this plan to the requirements of Internal Revenue Code Section 457.

**ARTICLE XV-A  
RETIREMENT**

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO  
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS  
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as:  
*"The Sustainable Retirement Benefits and Compensation Act."*

**Section 1501-A: FINDINGS**

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits - primarily health benefits - are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

February 8, 2012

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

**Section 1502-A: INTENT**

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

February 8, 2012

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

### **Section 1503-A. Act Supersedes All Conflicting Provisions**

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than September 30, 2012.

February 8, 2011.

**Section 1504-A. Reservation of Voter Authority**

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

**Section 1505-A. Reservation of Rights to City Council**

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees subject to the terms of this Act.

**Section 1506-A. Current Employees**

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to

February 8, 2013

amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.

(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

**Section 1507-A: One Time Voluntary Election Program ("VEP")**

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of

February 8, 2011

IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.
- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City

Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017.
- (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
- (vi) “Final compensation” shall mean the average annual pensionable pay of the highest three consecutive years of service.
- (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time

February 8, 201

worked (including paid leave, but not including overtime).

(c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

(i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.

(ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

(i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

February 8, 2011

- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

**Section 1508-A: Future Employees - Limitation on Retirement Benefits - Tier 2**

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program - for new employees - shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

- (a) The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent

February 8, 2012

the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose - San Francisco - Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation.

February 8, 20

(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

### **Section 1509-A: Disability Retirements**

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

February 8, 2012

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

February 8, 2012

**Section 1510-A: Emergency Measures to Contain Retiree Cost of Living Adjustments**

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

**Section 1511-A: Supplemental Payments to Retirees**

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

February 8, 20(

**Section 1512-A: Retiree Healthcare**

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

**Section 1513-A: Actuarial Soundness (for both pension and retiree healthcare plans)**

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually

February 8, 2012

through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- (i) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
- (ii) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

- (i) the funding objectives and actuarial assumptions of the plans; and
- (ii) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

**Section 1514-A: Savings**

In the event Section 6 (b) is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 4% of compensation each year, capped at a maximum of 16% of pay.

**Section 1515-A: Severability**

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

February 8, 2017

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

ADOPTED this 6th day of March, 2012, by the following vote:

AYES: CONSTANT, HERRERA, LICCARDO, NGUYEN,  
OLIVERIO, PYLE, ROCHA; REED.

NOES: CAMPOS, CHU, KALRA.

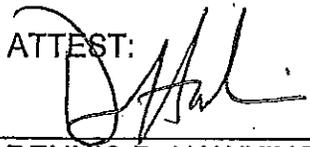
ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED  
Mayor

ATTEST:



DENNIS D. HAWKINS, CMC  
City Clerk