

DRAFT

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING
CHAPTER 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL
CODE TO PROVIDE INCREASED RETIREMENT BENEFITS FOR
MEMBERS OF THE POLICE AND FIRE DEPARTMENT
RETIREMENT PLAN WHO ARE EMPLOYED IN THE POLICE
DEPARTMENT**

WHEREAS, the City and the San Jose Police Officers Association (“SJPOA”) have reached an agreement regarding retirement benefits for those members of the Police and Fire Department Retirement Plan (the “Plan”) who are employed in the Police Department; and

WHEREAS, implementation of the agreement between the City and the SJPOA requires amendments to the Plan; and

WHEREAS, the City has received a report from its actuary regarding the actuarial cost of such benefits;

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

SECTION 1. Chapter 3.36 of Title 3 of the San José Municipal Code is amended by adding a section to be numbered and entitled and to read as follows:

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

- A. Subject to the provisions of this Chapter 3.36, if a member employed in the Police Department retired or retires for service on or after February 4, 2000, but prior to July 1, 2006, pursuant to the provisions of Section 3.36.750, 3.36.770 or 3.36.780, then he or she shall be paid from the retirement fund a monthly service retirement allowance calculated in accordance with Section 3.36.807.
- B. Subject to the provisions of this Chapter 3.36, if a member employed in the Police Department retired or retires for service on or after July 1, 2006,

DRAFT

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 four percent of his or her final compensation for each full year of service in excess of the first twenty years of service; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety 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 years, pro rata credit shall be given for a fraction of a full year.

SECTION 2. Section 3.36.995 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.995 Nonservice-Connected Disability Benefits.

- A. Subject to the provisions of this Chapter, a person who is retired for nonservice-connected disability, pursuant to Section 3.36.990, shall be paid from the retirement fund while the member is incapacitated for the performance of duty as a result of the nonservice-connected disability, a monthly allowance calculated in accordance with this section.
- B. A member who is entitled to credit for at least two but less than twenty years of service at the time the nonservice-connected disability occurs shall receive a monthly allowance equal to thirty-two percent of the member's final compensation, plus one percent of said final compensation for each full year of service for which the member is entitled to credit in

DRAFT

- excess of the first two years of service; provided, however, that in no event shall the monthly allowance exceed fifty percent of the member's final compensation.
- C. A member who is entitled to credit for twenty or more years of service at the time the nonservice-connected disability occurs shall receive a monthly allowance as follows:
1. If such member's nonservice-connected disability retirement occurred prior to January 1, 1970, the monthly allowance shall be equal to fifty percent 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 disability retirement allowance shall be:
 - a. From and after the date of such member's retirement to September 1, 1970, the monthly allowance shall be equal to fifty percent of such member's final compensation plus one and two-thirds percent of said final compensation for each full year of service in excess of the first twenty years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement allowance during said period of time exceed a maximum of sixty-six and two-thirds percent of such member's final compensation; and
 - b. From and after September 1, 1970, while so retired for disability, the monthly allowance shall be equal to fifty percent of such member's final compensation plus two and one-half percent of said final compensation for each full year of service in excess of the first twenty years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement

DRAFT

allowance exceed a maximum of seventy-five 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 percent of such member's final compensation, plus three percent of said final compensation for each full year of service in excess of the first twenty years of service for which such member is entitled to credit; provided, however:
 - a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty percent 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 below, if such member's nonservice-connected disability retirement occurred or occurs on or after February 4, 2000, the monthly allowance shall be equal to fifty percent of such member's final compensation for up to the first twenty years of services, plus three percent of said final compensation for each of the next five full years of service in excess of twenty years, 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:

DRAFT

- a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty-five 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 percent of his or her final compensation for each of the first twenty years of service plus four percent of his or her final compensation for each full year of service in excess of the first twenty years of service; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety 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,

DRAFT

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.

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

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

3.36.1020 Service-Connected Disability Benefits.

- A. Any member retired for service-connected disability pursuant to the provisions of Section 3.36.1000 shall thereafter be paid from the retirement fund, while incapacitated for the performance of duty as a result of such disability, subject to all other provisions of this Chapter, a monthly disability retirement allowance in the following amount:
 - 1. If such member's service-connected disability retirement occurred prior to January 1, 1970, the monthly allowance shall be equal to fifty percent 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:

DRAFT

- a. From and after the date of such member's retirement prior to September 1, 1970, the monthly allowance shall be equal to fifty percent of such member's final compensation plus one and two-thirds percent of said final compensation for each full year of service in excess of the first twenty years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement allowance during said period of time exceed a maximum of sixty-six and two-thirds percent of such member's final compensation; and
 - b. From and after September 1, 1970, while so retired for disability, the monthly allowance shall be equal to fifty percent of such member's final compensation plus two and one-half percent of said final compensation for each full year of service in excess of the first twenty years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement allowance exceed a maximum of seventy-five percent of such member's final compensation.
3. If such member's service-connected disability retirement occurred or occurs on or after February 4, 1996, but prior to February 4, 2000, the monthly allowance shall be equal to fifty percent of such member's final compensation plus three percent of said final compensation for each full year of service in excess of twenty years of service for which such member is entitled to credit; provided, however:
- a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty percent of such member's final compensation.

DRAFT

- 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 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 percent of such member's final compensation for up to twenty years of service, plus three percent of said final compensation for each of the next five full years of service in excess of twenty years, plus four percent of his or her final compensation for each full year of service in excess of twenty-five years of service; provided, however:
 - a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty-five 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.

DRAFT

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 percent of his or her final compensation for up to twenty years of service plus four percent of his or her final compensation for each full year of service in excess of twenty years; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety 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.
- B. For the purposes of this Section 3.36.1020, "service" means service performed for the city and for which the member is entitled to credit under the provisions of this Chapter. "Service" shall not include service as an officer or employee of a reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.

DRAFT

- C. Notwithstanding any other provision of this section, in computing the amount of allowance payable under this section for service in excess of the first twenty years, pro rata credit shall be given for a fraction of a full year.

SECTION 4. Section 3.36.1520 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1520 Current Service Contributions.

- A. The Retirement Board shall determine and fix, and from time to time it may change, the amount of monthly or biweekly contributions for current service which must be required of the City of San José and of members of this Plan to make and keep this Plan and the Retirement System at all times actuarially sound. 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

DRAFT

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.

//
//
//
//

DRAFT

SECTION 5. Section 3.36.1640 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1640 Monthly Allowance Or Return Of Contributions To Certain Persons With Ten 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 System, not later than ninety days after the date upon which notice of said right is mailed by this System to the person's latest address on file in the office of this System, whether to allow his or her accumulated contributions to remain in the retirement fund or to withdraw such contributions. Failure to make such election in writing shall be deemed an irrevocable election to withdraw his or her accumulated contributions. In the event of an election to withdraw, such person shall receive from the retirement fund the amount of such person's accumulated contributions to the fund, plus interest thereon as earned by the fund during the period of such person's service, but in no case shall the interest exceed two percent (2%) per annum. Thereafter neither such person nor the surviving spouse, surviving domestic partner, surviving child or children, or estate of such person shall be entitled to any allowance or benefit whatsoever under the provisions of this Chapter.
- B. 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:

DRAFT

1. Such person attains fifty-five years of age; and
 2. Twenty (20) years have elapsed from the time such person first became a member.
- C. 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 (25) years of service credit in this plan.
- D. 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 (2½%) of the person's final compensation for each full year of service. In no event shall the person's monthly allowance exceed a maximum of seventy-five percent (75%) of his or her final compensation.
 2. For a person who separated from City service on or after February 4, 1996, but prior to February 4, 2000, the monthly allowance shall be equal to two and one-half percent (2½%) of the person's final compensation for each of the first twenty (20) years of service plus three percent (3%) of the person's final compensation for each full year of service in excess of twenty (20) years of service. In no event shall the person's monthly allowance exceed a maximum of eighty percent (80%) of his or her final compensation.
 3. Except as provided in paragraph D. 4 below, for a person who separated from City service on or after February 4, 2000, the

DRAFT

monthly allowance shall be equal to two and one-half percent (2½%) of his or her final compensation for each of the first twenty (20) years of service plus three percent (3%) of his or her final compensation for each of the next five (5) full years of service plus four percent (4%) of the person's final compensation for each full year of service in excess of first twenty-five (25) years of service; provided, however that in no event shall the monthly allowance exceed a maximum of eighty-five percent (85%) of the member's final compensation.

4. For a person who was employed in the Police Department and who separated from City service on or after July 1, 2006, the monthly allowance shall be equal to two and one-half percent (2½%) of his or her final compensation for each of the first twenty (20) years of service plus four percent (4%) of the person's final compensation for each full year of service in excess of twenty (20) years of service; provided, however that in no event shall the monthly allowance exceed a maximum of ninety percent (90%) of the member's final compensation.
- E. 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.
- F. In computing the amount of allowance payable, pro rata credit shall be given for a portion of a full year.
- G. 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

DRAFT

date such contributions are returned, but in no case shall interest exceed two percent per annum. Thereafter, neither such person nor the surviving spouse, surviving domestic partner, surviving child or children, or estate of such person shall be entitled to any allowance or benefit whatsoever under the provisions of this Chapter.

SECTION 6. Section 3.36.3630 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.3630 Monthly Allowance For Alternate Payee.

- A. An alternate payee who has been awarded a separate account shall be paid a monthly allowance from the retirement fund, for the life of the alternate payee, if all of the following conditions are satisfied:
1. The alternate payee has not received a refund of accumulated contributions.
 2. Notwithstanding any service credit awarded to the alternate payee as of the date the alternate payee files an application for monthly benefits:
 - a. The participant is eligible to retire for service under provisions of this Plan; or
 - b. In the case where the participant retired for disability or died prior to becoming eligible for service retirement, the participant would have been eligible to retire for service had the participant continued working; or
 - c. In the case of a participant who left City service without retiring, the participant is eligible to receive a monthly allowance under Section 3.36.1640, or would have been eligible had the participant not elected a refund of his or her accumulated contributions.
 3. The alternate payee has attained at least fifty years of age.

DRAFT

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:
1. In the case where the participant separated from service prior to February 4, 2000, and subject to a maximum of forty 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 percent of the participant's final compensation for each of the first ten years of service credit credited to the alternate payee's separate account; plus
 - b. Three 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 years.
 2. Except as provided in paragraph 3 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 percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:

DRAFT

- a. Two and one-half percent of the participant's final compensation for each of the first ten years of service credit credited to the alternate payee's separate account; plus
 - b. Three percent of the participant's final compensation for each of the next two and one-half years of service credit credited to the alternate payee's separate account; plus
 - c. Four 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 years.
3. In the case where the domestic relations order is filed in the court on or after July 1, 2006, and 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 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 percent of the participant's final compensation for each of the first ten years of service credit credited to the alternate payee's separate account; plus
 - b. Four 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 years.
- D. In the event the alternate payee elects to receive a monthly benefit before the alternate payee reaches age 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:

DRAFT

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.

PASSED FOR PUBLICATION of title this 9th day of May 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk