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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING CHAPTER 3.48 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE BY ADDING SECTION 3.48.140 TO PERMIT LOANS TO PARTICIPANTS FROM THE CITY OF SAN JOSE DEFERRED COMPENSATION PLAN

WHEREAS, the City maintains the City of San José Deferred Compensation Plan as an eligible deferred compensation plan under Internal Revenue Code Section 457(b) whereby employees may elect to defer compensation up to certain limits; and

WHEREAS, eligible deferred compensation plans are permitted to establish loan programs for active employees who are participants of such plans; and

WHEREAS, the Deferred Compensation Advisory Committee has recommended that the Deferred Compensation Plan be amended to include provisions for such loans;

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

SECTION 1. Chapter 3.48 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:

3.48.140 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), 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

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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

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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).

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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.

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- 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.

PASSED FOR PUBLICATION OF TITLE this ____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

VACANT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk