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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING SECTION 3.36.550 OF CHAPTER 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO AUTHORIZE LIMITED LIABILITY COMPANIES AS A VEHICLE IN WHICH THE BOARD OF ADMINISTRATION FOR THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN MAY INVEST IN AND TAKE TITLE TO REAL ESTATE INVESTMENTS

WHEREAS, the Board of Administration for the Police and Fire Department Retirement Plan (the “Board”) has exclusive authority for the investment of the assets of the Police and Fire Department Retirement Plan (the “Plan”); and

WHEREAS, pursuant to San José Municipal Code Section 3.36.550, the Board invests a portion of the assets of the Plan in real estate investments of the types listed in Section 3.36.550; and

WHEREAS, Limited Liability Companies afford an alternative means by which pension plans may make investments in real estate while limiting liability and maintaining federal tax exempt status for the investments; and

WHEREAS, the inclusion of Limited Liability Companies as a vehicle in which the Board may make real estate investments will provide greater opportunities for diversification of the real estate portfolio; and

WHEREAS, the Board of Administration for the Plan has recommended that Section 3.36.550 be amended to include investments in Limited Liability Companies;

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

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

3.36.550 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;

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- 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); ~~or~~
 - 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); ~~or~~
 - 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

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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), ~~or~~ 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, ~~or~~ trust or company established by the Board.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk