

ORDINANCE NO. 27838

AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING CHAPTER 3.28 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO ESTABLISH A SEPARATE MEDICAL BENEFITS ACCOUNT IN THE FEDERATED CITY EMPLOYEES RETIREMENT FUND FOR MEDICAL AND DENTAL BENEFITS, TO ADD PROVISIONS RELATING TO PLAN TERMINATION, TO MAKE TECHNICAL AMENDMENTS RELATED TO INTERNAL REVENUE CODE PROVISIONS FOR QUALIFIED GOVERNMENTAL RETIREMENT PLANS

WHEREAS, the Federated City Employees Retirement System provides for the payment of premiums for medical and dental insurance coverage for certain persons who have retired from City service and for certain survivors of members and retirees; and

WHEREAS, Internal Revenue Code Section 401(h) requires that a separate account be maintained for such benefits; and

WHEREAS, the Internal Revenue Code contains various provisions relating to qualified governmental retirement plans; and

WHEREAS, the Board of Administration for the System recommends that the System be amended to establish a separate medical benefits account within the retirement fund and to make technical changes related to other provisions of the Internal Revenue Code;

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

SECTION 1. Section 3.28.010 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to be entitled and to read as follows:

3.28.010 Plan Established – Name – Purpose.

- A. There is hereby established a retirement plan for all persons hereinafter specified who may be or become members thereof pursuant to the provisions of this Chapter. This Plan shall be known as the “1975 Federated City Employees’ Retirement Plan”, and includes all provisions of this Chapter 3.28.
- B. Notwithstanding any provision of this Code to the contrary, the elements of the retirement plan as set out in Chapters 3.16, 3.20, 3.24 and 3.28 are components

of a single retirement system known as the Federated City Employees Retirement Plan.

- C. Contributions made by the City and the members of this Plan to the retirement fund described in Part 3 of this Chapter shall be made for the purpose of distributing to such members or their beneficiaries the corpus and income of the fund in accordance with the terms of this Plan.

SECTION 2. Part 1 of Chapter 3.28 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:

3.28.070 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, to the extent then funded, shall be nonforfeitable.
- B. Upon the 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 3.28.340 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.

SECTION 3. Section 3.28.300 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to be entitled and to read as follows:

3.28.300 Establishment – Name – Composition.

- A. 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 3.24 of this Code, and in order to carry out the provisions of this Chapter, the retirement fund heretofore continued in existence by the provisions of Chapter 3.24 and specifically by the provisions of Section 3.24.300 of the San Jose Municipal Code, is hereby continued in existence and is hereby made a combined common fund for the component of the retirement system established by this Chapter and for the component of the retirement system established by Chapter 3.24, and for the components of any and all other retirement systems with which it has heretofore been combined. All income and other moneys which are required pursuant to the provisions of this Chapter to be paid to this Retirement System or into the retirement fund shall be paid into and held in said fund; and all benefits or allowances payable to any member or person under this Retirement System shall be paid from said fund. Said fund is known as and shall continue to be known as the "San Jose Federated City Employees Retirement Fund".
- B. At no time prior to the satisfaction of all liabilities with respect to members of this plan and their beneficiaries shall any part of the corpus or income of the retirement fund be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries.

SECTION 4. Part 3 of Chapter 3.28 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:

3.28.380 Medical Benefits Account.

- A. There is hereby established 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 System, 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 eight-to-three.
 2. Contributions for medical and dental insurance premiums costs attributable to the Early Retirement Incentive Programs described in Parts 18, 19, and 20 of this Chapter shall be borne by the City.
 3. 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. Except as otherwise provided in this Section 3.28.380, 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 16 and 17 of this Chapter. Prior to the satisfaction of all liabilities under this System 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 System, shall be subordinate to the retirement and survivors' benefits provided by the System. Accordingly, at all times after the date on which the Medical Benefits Account is established, the aggregate of the City's contributions to the Medical Benefits Account shall not exceed twenty-five percent (25%) of its total aggregate contributions to the System (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. In any case under the terms of this System where a person is entitled to a return of employee contributions, such return of contributions shall include the employee contributions to the Medical Benefits Account plus interest accrued thereon at the rate of two percent (2%) per annum; provided, however, that no such return of contributions shall be paid from the Medical Benefits Account.
- G. Upon the satisfaction of all liabilities under this System to provide the benefits described in this Section, any amount remaining in the Medical Benefits Account shall be paid to the City.
- H. In the event that a member's interest in the Medical Benefits Account is forfeited prior to the termination of the System, an amount equal to the forfeiture shall be applied as soon as practicable to reduce the City contributions to the Medical Benefits Account.

SECTION 5. Part 4 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

Part 4

MEMBERSHIP

3.28.400 Continuation Of Members Of The Chapter 3.24 Retirement System Holding City Offices On June 30th And July 1, 1975.

Each person who on June 30, 1975, was an officer or employee of the City holding an office or position entitling him or her to membership in this retirement plan

pursuant to the provisions of Chapter 3.24 and who, in addition, was a member of the retirement plan on that date, shall become and be subject to the provisions of this Chapter 3.28 upon its becoming effective if he or she continues to hold that office or position to and through July 1, 1975, and, in addition, continues to be a member of the Chapter 3.24 retirement system until the effective date of this Chapter. Upon becoming subject to the provisions of this Chapter, each such person ceases to be a subject to the provisions of Chapter 3.24 and he or she, and all other persons or estates that might have any rights under Chapter 3.24 because of the person's coverage under Chapter 3.24, cease to have any rights under Chapter 3.24 but shall thereafter be governed by and have only such rights as are provided by this Chapter 3.28 system.

3.28.410 Reinstatement From Chapter 3.24 Service Retirement And Reentry Into Federated City Service.

- A. A person who has been retired from service under the provisions of Chapter 3.24, at an age less than the age for compulsory retirement applicable to him or her, may be reinstated from retirement to federated city service by the Retirement Board in accordance with the provisions of this Chapter, and, upon such reinstatement or thereafter, such person may be reemployed by the City in a position in the federated city service in accordance with the laws governing such employment in the same manner as a person who had not been so retired.
- B. The Retirement Board shall not reinstate any such person from service retirement unless:
 - 1. The person proposed to be reinstated has filed with the Board a written application requesting such reinstatement;
 - 2. At least one year has or will have expired between the effective date of said person's last retirement and the date of reinstatement; and
 - 3. The Board has found and determined that said person's age on the effective date of his reinstatement is at least six months less than age seventy.
- C. When a person is reinstated from service retirement and reenters federated city service pursuant to this section, his or her service retirement allowance shall be

canceled as of the effective date of the reinstatement, and, subject to the exceptions and exclusions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this Part, he or she shall become and be a member of this retirement plan as of the effective date of his or her new employment in the federated city service. Upon becoming a member of this plan, any such person who formerly was retired for service under the provisions of Chapter 3.24 ceases to be governed by the provisions of Chapter 3.24, and he or she and all other persons or estates that might have any rights under Chapter 3.24 because of the person's coverage under Chapter 3.24 cease to have any rights under Chapter 3.24 but shall thereafter be governed by and have only such rights as are provided for in this Chapter.

3.28.420 Reinstatement From Or Reentry After Chapter 3.24 Disability Retirement.

If a person retired for disability under the provisions of Chapter 3.24 and the disability retirement allowance is canceled for either of the following reasons, then, subject to the exclusions and exceptions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this Part, the person shall become and be a member of this Plan upon being reinstated to a position in federated city service or upon reentry into federated city service. Upon becoming a member of this Plan, any such person who formerly was retired for disability under the provisions of Chapter 3.24 ceases to have any rights thereunder but will thereafter be governed by and have only such rights as are provided for in this Chapter. This provision applies to:

- A. Any person retired for disability under the provisions of Chapter 3.24 whose disability retirement is canceled pursuant to the provisions of Section 3.24.1290 of the San José Municipal Code and who is reinstated, in accordance with the provisions of said Section 3.24.1290 to the City position held by him or her when retired for disability or to a position in the same classification of positions with duties within his or her capacity; or
- B. Any person retired for disability under the provisions of Chapter 3.24 whose disability retirement is canceled pursuant to the provisions of Section 3.24.1300

of the San José Municipal Code because of his or her reentry into federated city service in a position other than the position held when he or she retired for disability and other than any position in the same classification of positions as the position held when he or she retired for disability.

3.28.430 Reentry In City Service, Before Retirement, By Persons Who Retained Membership In Chapter 3.24 Retirement System Pursuant To Section 3.24.510 Or Other Provisions Of Chapter 3.24 System.

Subject to the exclusions and exceptions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this Part, each person, other than persons covered by the provisions of Sections 3.28.400, 3.28.410 and 3.28.420, who was a member of the Plan as described in Chapter 3.24 and retained such membership upon leaving City service by exercising the option given him or her by Section 3.24.510 or other provisions of Chapter 3.24, shall become and be subject to the provisions of this Chapter pursuant to the provisions of this section if, on or after July 1, 1975, while he or she is still a member of the Plan as described in Chapter 3.24, but before retirement thereunder for service or disability, he or she again becomes an officer or employee of the City in the federated city service. Upon the effective date the person again becomes an officer or employee in the federated city service, such person shall cease to be subject to the provisions of Chapter 3.24, and he or she and all other persons or estates that might have any rights under Chapter 3.24 because of such person's coverage under Chapter 3.24, shall cease to have any rights under Chapter 3.24 but shall thereafter be governed by and have only such rights as are provided in this Chapter.

3.28.440 Persons Employed On June 30, 1975, As Part-Time, Employees Who Are Not Members Of The Chapter 3.24 Retirement System.

A. Subject to the exclusions and exceptions hereinafter set forth in Sections 3.28.460 through 3.28.550 inclusive of this Part, each person who on June 30, 1975, was in the employ of the City as a part-time employee, excepting such of them, if any, as may become members of this retirement system under and pursuant to the provisions of Section 3.28.400, shall have and is hereby given an

option of becoming subject to the provisions of this Chapter 3.28 if he or she continued to be so employed as a part-time employee of the City to and through July 1, 1975.

- 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 become subject to the provisions of this Chapter. Said statement shall be filed on or before, and no later than, the thirty-first day of August, 1975. Upon filing said written statement with the Secretary in the manner and within the time specified in this Section, such person shall become subject to the provisions of this Chapter as of the effective date of this Chapter. Contributions which would have been required of the person because of service rendered by him or her from July 1, 1975, to the date the person exercises said option shall be charged to him or her and deducted from his or her paycheck. No such person shall become subject to the provisions of this Chapter unless he or she exercises said option in the manner and within the time specified in this Section.

3.28.450 Other Persons Who Become City Officers Or Employees On Or After July 1, 1975.

Subject to the exclusions and exceptions hereinafter set forth in this Part, each person, other than those persons specified or mentioned in Sections 3.28.400 through 3.28.440, inclusive, who becomes an officer or employee of the City on or after July 1, 1975 by virtue of an appointment made on or after said date shall become and be a member of this Plan as of the effective date of his or her appointment; provided, however, that the foregoing provisions of this section do not apply to persons employed to render part-time service.

3.28.460 Exclusions And Exceptions - Mayor And Members Of City Council.

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this Plan because of his or her election or appointment to, or his or her

holding the office of, Mayor or member of the City Council or because of any service rendered by him or her while he or she is Mayor or a member of the Council.

3.28.470 Exclusions And Exceptions - Members Of Boards And Commissions.

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this Plan because of his or election or appointment to, or his or her membership in, any board or commission of the City, or because of his or her election or appointment to or his or her holding of any office in said board or commission, or because of any service rendered as a member or officer of any such board or commission.

3.28.490 Exclusions And Exceptions - Persons Temporarily Employed Pursuant To Section 1101(A)(4) Of City Charter.

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this Plan because he or she is temporarily employed pursuant to the provisions of subparagraph (4) of subsection (a) of Section 1101 of the Charter of the City to make or conduct any special inquiry, investigation, examination or installation, or to render professional, scientific or technical services of an occasional or exceptional nature, nor because of any service rendered pursuant to such employment.

3.28.500 Exclusions And Exceptions - Persons Employed In Event Of Emergency Pursuant To Section 1101(A)(5) Of City Charter.

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this Plan because he or she is employed pursuant to subparagraph (5) of subsection (a) of Section 1101 of the Charter of the City in the event of an emergency to perform services required because of and during such emergency, nor because of any service rendered pursuant to such employment.

3.28.510 Exclusions And Exceptions - Persons Employed Pursuant To Section 1109 Of City Charter.

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this Plan because he or she is employed or his or her services are contracted for pursuant to the provisions of Section 1109 of the City Charter or pursuant

to any transfer, consolidation or contract mentioned in said Section 1109, nor because of any services rendered pursuant to any such employment or contract.

3.28.520 Exclusions And Exceptions - Volunteer Workers.

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this Plan because of his or her appointment as or his or her being a volunteer member of any police, fire or civil defense department, force, agency or organization, nor because of any service rendered as such volunteer member.

3.28.530 Exclusions And Exceptions - Emergency Appointments In Time Of War Or National Emergency.

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this Plan because of any appointment or employment made or entered into pursuant to the provisions of Section 1110 of the Charter of the City, nor because of any service rendered pursuant to any such appointment or employment.

3.28.540 Exclusions And Exceptions - Relief Or Antipoverty Programs.

Anything elsewhere to the contrary notwithstanding, unless otherwise provided by the City Council upon recommendation of the Retirement Board, no person shall become or be a member of this Plan because of his or her employment pursuant to any relief or antipoverty program where such employment is provided primarily to give relief or aid to such persons.

3.28.545 Exclusions And Exceptions - Police Recruits, Firefighter Recruits.

Anything elsewhere to the contrary notwithstanding, no person shall become or be a member of this Plan because of any appointment or employment as a police recruit or firefighter recruit or because of any appointment or employment for which the principal purpose is training such person to become a police officer or firefighter.

3.28.550 Exclusions And Exceptions - Members Of Other Retirement Or Pension Systems.

A. Anything elsewhere to the contrary notwithstanding, persons who are members of any police, fire or other retirement or pension system (other than this Plan as

described in this Chapter or in Chapter 3.24, the federal social security system, or any retirement or pension system of the federal government) supported in whole or in part by funds of the United States government, or of any state government, or of this City or any other city or municipal government or corporation, or of any political subdivision, department, district, authority or agency of any such government or corporation, who are receiving or are entitled to any credit in such other system for any service rendered to the City are hereby excluded and excepted from membership in this Plan; provided and excepting, however, that nothing contained in this section shall be deemed to prohibit any such person from becoming or being a member of this Plan after the person has ceased being a member of the abovementioned police, fire or other system if the person should thereafter qualify for membership in this Plan.

- B. For the purpose of this section, the following persons shall not be deemed to be members of any other retirement or pension system:
1. Persons who merely are receiving pensions or retirement allowances or other payments, from any source whatever, because of or on account of service rendered to an employer other than the City of San José while they were not in the employ or service of the City.
 2. Persons whose membership in another retirement or pension system is in a reciprocal system, as defined in Part 21 of this Chapter, and whose service in such other system is included as service in this Plan solely for the purpose of meeting the minimum service requirements for qualification for benefits and retirement allowances pursuant to subsection D. of Section 3.28.2420 of Part 21.

3.28.560 Exclusions And Exceptions - Part-Time Employees.

Anything elsewhere to the contrary notwithstanding, no person appointed or employed as a part-time employee shall become or be a member of this Plan because of such appointment or employment, or because of any service rendered pursuant to any such appointment or employment, unless he or she became or becomes a member of this Plan under and pursuant to the provisions of Section 3.28.400 through 3.28.440,

inclusive, or unless, having become a member of this Plan under any of the foregoing sections of this Part, and while rendering such full-time City service for the City as qualifies him or her to continue as a member of this Plan, he or she discontinues such full-time service and, without a break in service, continues to render or does render City part-time service of a kind and nature not excluded or excepted by the provisions of Sections 3.28.460 through 3.28.550, inclusive, of this Part.

3.28.570 Termination Of Membership.

Except as otherwise provided in Sections 3.28.580 and 3.28.590, a person ceases to be a member of this Plan upon the occurrence of any of the following events:

- A. Upon his or her death before retirement for service or disability;
- B. Upon his or her retirement for service or disability;
- C. Upon discontinuance of his or her federated city service because of resignation or discharge, or because of layoff or leave of absence found by the Retirement Board to have resulted in permanent discontinuance, and in the latter case as of the date of the determination by the Board that the discontinuance is permanent.

3.28.580 Election By Persons Who Became Members Pursuant To Sections 3.28.400 Through 3.28.430, Inclusive, To Allow Accumulated Contributions To Remain In Fund.

- A. The provisions of this section apply only to persons who became subject to the provisions of this Chapter pursuant to the provisions of Sections 3.28.400 through 3.28.430, inclusive, of this Part.
- B. If the federated city service of a member described in subsection A is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed or found by the Retirement Board to have resulted in permanent discontinuance (and in such case, as of the date of determination by the Board that the discontinuance is permanent), or if such member retires for disability under the provisions of this Chapter but such retirement is followed by a cessation of the disability because of which the member was retired and his or her disability retirement allowance is canceled but he or she does not thereupon reenter federated city service, then, in either of said events, if the amount of said

member's accumulated normal contributions standing to his or her credit at that time is five hundred dollars or more, the member shall have the right to elect, not later than the ninetieth day from and after the date upon which notice of such right is mailed to him or her at the latest address on file with the Board:

1. To continue (or in the case of the abovementioned person whose disability retirement allowance was canceled, to renew) his or her membership by allowing all of his or her accumulated prior service contributions and all or part (but in no event less than five hundred dollars) of his or her accumulated normal contributions to remain in the retirement fund; or
 2. To terminate or not renew membership, as the case may be, by withdrawing all of his or her accumulated contributions.
- C. Failure to make such election within the above-specified time shall be deemed to be an irrevocable election to terminate or not renew membership, as the case may be, by withdrawing all of his or her accumulated contributions; provided and excepting, however, that if such member is entitled under this Plan to credit for twenty or more years of federated city service, the failure to make such election within said time shall be deemed to be an election to continue or renew, as the case may be, his or her membership by allowing all of his or her accumulated contributions to remain in the retirement fund.
- D. An election to allow all or part of one's accumulated normal contributions to remain in the fund may be revoked at any time by said person as to all such normal contributions or as to any part of them in excess of five hundred dollars.
- E. Upon electing to terminate or not renew membership by withdrawing all of his or her accumulated contributions, such person immediately:
1. Ceases to be a member of this Plan (or loses the right to renew his membership, as the case may be); and
 2. Loses all rights to any credit for federated city service to which he or she was entitled hereunder; and
 3. Except as may be otherwise provided elsewhere in this Plan, loses all other rights or privileges under this Plan excepting the right to the return of

his or her said accumulated contributions, which said contributions shall be returned to the person forthwith.

- F. Upon electing to continue or renew membership by allowing all of his or her accumulated prior service contributions and all or part (but not less than five hundred dollars) of his or her accumulated normal contributions to remain in the retirement fund:
1. The said person continues to be or again becomes a member; and
 2. The member and his or her survivors shall thereafter have such rights, if any, as are provided elsewhere in this Chapter 3.28 for the member and his or her survivors, except that, unless otherwise provided elsewhere in this Plan, he or she shall lose and shall no longer be entitled to credit for any federated city service on account of which such withdrawn contributions had been paid into the retirement fund. In determining the federated city service for which a person is no longer entitled to credit upon such partial withdrawal, the withdrawn contributions shall be deemed to have been paid into the retirement fund on account of the latest federated city service rendered by the person to the City, or on account of the person's earliest federated city service if so requested by said person at the time he or she withdraws a part of his or her accumulated normal contributions.
- G. A member may at any time, if he or she so elects, voluntarily relinquish such right as the member may have to be credited for federated city service for such periods of time as may be designated by him or her, without withdrawing any contributions paid by the member because of such service, provided he or she retains credit for not less than five years of continuous federated city service; and in such event, in determining the member's eligibility for or the amount of any benefits to which he or she may subsequently be entitled, the member shall be given no credit for any federated city service so relinquished, and any contributions left in the fund which were made because of the service for which

the member has relinquished credit shall be treated as income of the retirement fund.

3.28.590 Election By Members Other Than Those Specified In Section 3.28.580 To Allow Accumulated Contributions To Remain In Fund.

- A. The provisions of this section apply only to members of this Plan who are entitled to credit for five or more years of federated city service rendered after June 30, 1975, and who are not covered by the provisions of Section 3.28.580.
- B. If the federated city service of a member described in subsection A. above is discontinued by reason of resignation or discharge or by reason of layoff or leave of absence which is determined by the Retirement Board to have resulted in permanent discontinuance (the effective date of such discontinuance to be the date of said determination by the Board), then such member shall have the right to elect:
 - 1. To continue membership in this system by allowing all of his or her accumulated contributions to remain in the retirement fund; or
 - 2. To terminate membership in this system by withdrawing all of his or her accumulated contributions.
- C. If a member described in Subsection A. above retires for disability but the disability retirement allowance is canceled because of a cessation of the disability for which the member retired and such member does not thereupon reenter federated city service, then such member shall have the right to elect:
 - 1. To renew membership in this system by allowing all of his or her accumulated contributions to remain in the retirement fund; or
 - 2. Not to renew membership in this system by withdrawing all of his or her accumulated contributions.
- D. The election described in Subsections B. and C. shall be made not later than the ninetieth day from and after the date notice of the right to make such election is mailed to the member at the latest address on file with the Board.
 - 1. In the case of a member entitled to credit for less than twenty years of federated city service, failure to make such election within said ninety days

- shall be deemed to be an irrevocable election to terminate or not renew, whichever is applicable, membership in this system by the withdrawal of all of the member's accumulated contributions.
2. In the case of a member entitled to credit for twenty or more years of federated city service, failure to make such election within said ninety days shall be deemed to be an election to continue or renew, whichever is applicable, membership in this system by allowing all of the member's accumulated contributions to remain in the retirement fund.
- E. Upon electing to terminate or not renew membership in this system pursuant to Subsection B., C. or D. above, the person immediately:
1. Ceases to be a member of this system or loses the right to renew membership in this system, whichever is applicable; and
 2. Unless otherwise provided elsewhere in this Chapter, loses all credit for any federated city service to which he or she was entitled under this system; and
 3. Loses all other rights and privileges under this system except the right to the return of his or her accumulated contributions, and such contributions shall be returned to such person forthwith.
- F. Upon electing to continue or renew membership in this system, whichever is applicable, by allowing all of his or her accumulated contributions to remain in the fund, the person:
1. Continues to be, or again becomes, a member of this system; and
 2. Shall continue to be entitled to credit for such federated city service as he or she was entitled as of the time the person made such election; and
 3. Shall thereafter have such rights, if any, as are provided in this chapter for such person or such person's survivors.

SECTION 6. Section 3.28.780 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.780 Return Of Contributions.

- A. Except as otherwise provided in Sections 3.28.580, 3.28.590, 3.28.785, and 3.28.2420 of this Chapter, if the membership herein of a member of this System is terminated for any reason other than death or retirement, the member shall be paid, within six months after the date of such termination, all of his or her accumulated normal contributions and all of his or her accumulated prior service contributions.
- B. Anything elsewhere in this Chapter 3.28 to the contrary notwithstanding, if during a member's employment with the City the member is required to or elects to become a member of any other retirement system supported in whole or in part by public funds, or is required to or elects to discontinue such federated city service as qualifies him or her for membership in this System and thereafter renders City service other than federated city service, such member shall be considered as having resigned from federated city service and, except as otherwise provided in Sections 3.28.580, 3.28.590, 3.28.785, and 3.28.2420, to have terminated membership in this System, as of the date he or she becomes a member of said other system or ceases to render said federated city service as aforesaid.
- C. Except as provided in Section 3.28.785, upon termination of a member's membership in this System for any reason other than death or retirement, the member, and any and all other persons or estates who might otherwise be entitled to any rights or benefits under this System because of such member's membership, shall thereupon cease to have or be entitled to any rights or benefits under this System.

SECTION 7. Chapter 3.28 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:

3.28.785 Transfer of Accumulated Contributions.

- A. In the event a person's membership in this System is terminated because the person transfers, without a break in service, to a position that qualifies the person for membership in the Police and Fire Department Retirement Plan and the person thereby becomes a member of such plan, the person may elect to leave his or her accumulated contributions on deposit in the retirement fund or may elect to have all of his or her accumulated contributions, with accrued interest thereon, transferred to the Police and Fire Department Retirement Fund in accordance with the provisions of the Police and Fire Department Retirement Plan.
- B. If a person described in subsection A elects to leave his or her accumulated contributions on deposit in this retirement fund, the person shall have no right to a refund of contributions until such person separates from City service. If the person elects to leave accumulated contributions on deposit in this retirement fund, subsequently separates from City service, and does not meet the requirements of Section 3.28.580, Section 3.28.590, or Section 3.28.2420, then within six months of such person's separation from City service, all of his or her accumulated contributions and the interest accrued thereon shall be paid to the person.
- C. If the accumulated contributions and accrued interest of a person described in subsection A are transferred to the Police and Fire Department Retirement Fund, such person's membership in this System shall terminate and thereafter the member, and any and all other persons or estates who might otherwise be entitled to any rights or benefits under this System because of such member's membership, shall thereupon cease to have or be entitled to any rights or benefits under this System.

SECTION 8. Section 3.28.955 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to be renumbered and to read as follows:

3.28.995 Benefit Limitations.

- A. Notwithstanding any other law, the benefits payable to any person who becomes a member of this System on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code as applied (other than paragraph (2)(G)) without regard to paragraph (2)(F) of said Section 415.
- B. Notwithstanding any other law, the benefits payable to any person who became a member of this System prior to January 1, 1990, shall be subject to the greater of the following limitations as provided in Section 415(b)(10) of the Internal Revenue Code:
 - 1. The limitations set forth in Section 415 of the Internal Revenue Code; or
 - 2. The accrued benefit of the member without regard to any benefit increases pursuant to any amendment of this System adopted after October 14, 1987.
- C. For purposes of the application of Section 415(b) of the Internal Revenue Code, actuarial equivalences shall be based on a five percent interest rate and the 1983 Group Annuity Table for Males with a two-year setback, or the interest rate and annuity tables adopted by resolution of the Board upon the advice of the Board's actuary provided that such interest rate and annuity tables comport with reasonable standards applicable to governmental retirement plans.

SECTION 9. Part 8 of Chapter 3.28 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:

3.28.1015 Minimum Distribution Requirements.

- A. Notwithstanding any other provision of this Chapter, payment of a member's retirement benefit shall commence not later than the later of:
 - 1. The April 1 following the end of the calendar year in which the member attains age seventy and one-half (70½); or

2. The April 1 following the end of the calendar year in which the member retires
- B. Notwithstanding any other provision of this Chapter, if a member has elected an optional settlement under Part 13 of this Chapter and the designated beneficiary is not the spouse of the member, the periodic amounts payable to the member and the designated beneficiary shall be adjusted only to the extent necessary to ensure that the minimum distribution requirements of Internal Revenue Code Section 401(a)(9) are satisfied.

SECTION 10. Part 8 of Chapter 3.28 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:

3.28.1025 Forfeitures.

- A. In the event of a forfeiture of benefits arising from separation from employment, death, or any other reason, the amount of such forfeiture shall remain in the retirement fund and shall not be applied to increase the benefits any member, former member or beneficiary of the Plan would otherwise be entitled to receive prior to the termination of the Plan.
- B. The amounts forfeited shall be used to reduce the City's contributions to the Plan; provided, however, that the effect of forfeitures may be anticipated in the determination of the liabilities of the Plan.

SECTION 11. Section 3.28.1170 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended and to read as follows:

3.28.1170 Reinstatement From Retirement.

- A. A person who has been retired for service pursuant to the provisions of this Part 9 may apply to the Retirement Board, in writing for reinstatement from such retirement for the purpose of reentering federated city service. The Board may reinstate the person from retirement if it finds that his or her age at the date of his application is at least six months less than seventy years of age. Upon such reinstatement, said person may be reemployed by the City, in the same manner

- B. Upon reinstatement from service retirement as aforesaid, the service retirement allowance of the reinstated person shall be canceled forthwith, and the person shall again become a member of this Plan as of the date of the reinstatement. Upon reinstatement the person shall regain credit for those years of service for which the person was entitled to credit as of the time he or she retired for service.

SECTION 12. Section 3.28.1442 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended and to read as follows:

3.28.1442 Reemployment Of Disability Retiree In City Service - Eligibility.

- A. Subject to the civil service rules, regulations and requirements of the City, a person who has been retired for disability pursuant to Part 17 or Part 18 of Chapter 3.24 or Part 10 of Chapter 3.28 of this Code may be reemployed from time to time in City service pursuant to voluntary agreement of both the City and such person, in any positions or offices other than the position or office held by that person at the time of such retirement whether in the same or another classification, if, based on medical and physical examination, the person is not incapacitated for performance of duty in any such new position or office, notwithstanding that he or she is still incapacitated for performance of duty in the position or office held at the time of such retirement and in any other office or position in the same classification of offices or positions as the one held at the time of such retirement.
- B. Upon such reentry into City service, the person's disability retirement shall be suspended and the person shall be reinstated to membership in this Plan and his her membership herein pursuant to this paragraph shall continue, subject to other provisions of this Part, until the cessation of the person's disability for performance of duty in the office or position held at the time of his or her disability retirement, or in any other office or position in the same classification of offices or positions within which he or she was included at such retirement, unless the

office or position which the person held upon such cessation of disability is one which would qualify him or her for membership by virtue of other provisions of this Part. In the latter event, the person's membership shall continue as long as he or she occupies such office or position, or any other office or position to which the person is subsequently appointed which similarly qualifies him or her for membership.

SECTION 13. Section 3.28.1443 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended and to read as follows:

3.28.1443 Reemployment; Disability Allowance Suspended; Credit to City.

- A. Upon a person's reentry into City service pursuant to Section 3.28.1442, the disability allowance granted pursuant to Part 17 or Part 18 of Chapter 3.24 or Part 10 of Chapter 3.28 of this Code shall be suspended and the City shall compensate the person at the greater of:
1. The rate of compensation of the position in which the person is reemployed; or
 2. The rate of compensation of the position from which the person retired at the time of such retirement.
- B. In any case where the rate of compensation of the position from which the person retired exceeds the rate of compensation of the position in which the person is reemployed, the City shall receive a credit against City contributions otherwise due to the retirement fund. The credit shall be equivalent to that portion of the compensation paid to the person during the suspension of the person's disability retirement that exceeds the rate of compensation of the position in which the person is reemployed.
- C. During the period the person's disability retirement is suspended and the person is reemployed, the person's "compensation earnable" shall be based upon the position of reemployment.

SECTION 14. Section 3.28.1446 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended and to read as follows:

3.28.1446 Reinstatement to Duty.

If, on the motion of the Board or application of a disability retiree, the Board determines that the recipient of a disability allowance granted pursuant to the provisions of this Part is no longer incapacitated for performance of duty, and if as of the date of such determination such person is not eligible for a service retirement, such person shall, subject to the Civil Service provisions of the City, and subject to the provisions of this Part, be reinstated in the position held by him or her at the time he or she retired for disability or 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 capacities. No person shall be required to be reinstated to duty if he or she was eligible for a service retirement on the date that the Board made its determination that the person was no longer incapacitated for the performance of duty. Upon being reinstated to duty pursuant to the provisions of this Section, the person shall again become a member of this System by reason of such reinstatement and shall be entitled to credit for past service, the same as if he or she had never been retired for disability.

SECTION 15. Section 3.28.1448 of Chapter 3.28 of Title 3 of the San José Municipal Code is repealed.

SECTION 16. Section 3.28.1720 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended and to read as follows:

3.28.1720 Actuarial Equivalences.

For the purposes of this Part, actuarial equivalences shall be based on a nine percent interest rate and the 1983 Group Annuity Table for Males with a two-year setback, or the interest rate and annuity tables adopted by resolution of the Board upon the advice of the Board's actuary provided that such interest rate and annuity tables comport with reasonable standards applicable to governmental retirement plans.

SECTION 17. Section 3.28.1980 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended and to read as follows:

3.28.1980 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 3.28.380 and by deductions from monthly allowances paid by the Plan in accordance with this Section 3.28.1980.
- B. Except as provided in subsection C:
 - 1. The portion of the premium to be paid from the Medical Benefits Account shall be the portion that represents an amount equivalent to the lowest of the premiums for single or family medical insurance coverage, for which the member or survivor is eligible and in which the member or survivor enrolls under the provisions of this Part, which is available to an employee of the City at such time as said premium is due and owing.
 - 2. Members or survivors shall be required to pay that portion of the premium which represents the difference between the cost of the premium for the medical plan selected by the member or the survivors and the portion paid from the Medical Benefits Account. Such premium as is required to be paid by a member or survivor shall be deducted from the allowance payable to such member or survivor under this Chapter.
- C. A surviving spouse or surviving domestic partner who is otherwise eligible only for single coverage, but who elects family coverage pursuant to Section 3.28.1970.D.2, shall be required to pay that portion of the medical premium which exceeds the sum of the amount payable by the surviving spouse or surviving domestic partner and the amount payable from the Medical Benefits Account for single coverage as provided in subsection B above. The portion of the premium required to be paid by the surviving spouse or surviving domestic partner shall be deducted from the monthly allowances otherwise payable to the surviving spouse or surviving domestic partner.

SECTION 18. Chapter 3.28 of Title 3 of the San José Municipal Code is amended to by adding a section to be numbered and entitled and to read as follows:

3.28.1995 Limitation on Medical Benefits.

- A. It is intended that the medical benefits provided by this System meet the requirements of Internal Revenue Code Section 401(h). Subject to the requirements of the Meyers-Milias-Brown Act (California Government Code Section 3500 *et seq.*), 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 16 and the dental benefits provided by Part 17, 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 3.28.1980 shall be adjusted 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 adjustment to be implemented until this Part is amended pursuant to subsection A above.

SECTION 19. Section 3.28.2030 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.2030 Costs of Dental Insurance.

The cost of providing dental insurance coverage as provided in this Part shall be borne by and paid from the Medical Benefits Account established by Section 3.28.380.

SECTION 20. Chapter 2.28 of Title 3 of the San José Municipal Code is amended to by adding a section to be numbered and entitled and to read as follows:

3.28.2045 Limitation on Dental Benefits.

- A. It is intended that the dental benefits provided by this System meet the requirements of Internal Revenue Code Section 401(h). Subject to the requirements of the Meyers-Milias-Brown Act (California Government Code Section 3500 *et seq.*), 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 17 and the medical benefits provided by Part 16, 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 3.28.2030 notwithstanding, all or a portion of the costs set forth in Section 3.28.2030 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 System is amended pursuant to subsection A above.

PASSED FOR PUBLICATION OF TITLE this 29th day of August, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,
NGUYEN, PYLE, REED, WILLIAMS, YEAGER;
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk