

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 3.36.020.3 OF PART 1 OF CHAPTER 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO CLARIFY THE DEFINITION OF COMPENSATION TO BE USED FOR THE CALCULATION OF POLICE AND FIRE DEPARTMENT RETIREMENT PLAN PENSION CONTRIBUTIONS AND BENEFITS

WHEREAS, the definition of compensation to be used for the calculation of the 1961 Police and Fire Department Retirement Plan (the “Plan”) pension contributions and benefits is codified in San José Municipal Code Section 3.36.020.3; and

WHEREAS, San José Municipal Code Section 3.36.020.3 specifically excludes “any worker’s compensation benefits” from the definition of compensation, but does not define the term “worker’s compensation benefit”; and

WHEREAS, prior to January 1, 2010, the City paid supplemental disability leave payments to police and firefighter members of the Plan pursuant to Memoranda of Agreements (“MOAs”) with the San José Police Officer’s Association (“POA”) and the International Association of Firefighters, Local 230 (“Local 230”), such that a police officer or a firefighter who was disabled from injury or illness arising out of and in the course of his or her duties received up to a one year leave without loss of salary; and

WHEREAS, the City’s pre-January 1, 2010, disability leave payments, were not treated as subject to the worker’s compensation exclusion contained in San José Municipal Code Section 3.36.020.3 because a portion of such payments were being made pursuant to the MOAs and not pursuant to the worker’s compensation law of the State of California; and

WHEREAS, effective January 1, 2010, Labor Code Section 4850 was amended to require that the City provide a leave of absence without loss of salary for up to one year to any police officer or firefighter who is disabled from injury or illness arising out of and in the course of his or her duties, in lieu of temporary disability leave payments that would otherwise be due; and

WHEREAS, the City Council wishes to revise the definition of compensation in San José Municipal Code Section 3.36.030.5 to clarify that the exclusion for “workers’ compensation” does not apply to disability leave payments that are being made during any time in which a member of the Plan is continuing to receive full monthly compensation, including but not limited to disability leave payments made pursuant to Labor Code Section 4850.

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

SECTION 1. Section 3.36.030.5 of Part 1 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.020.3 "Compensation"

- A. "Compensation" means the monthly remuneration paid in cash out of funds controlled by the city to a member in payment for his or her services to the city, excluding the monetary value, if any, of living quarters, board, lodging, fuel, laundry or other advantages of any nature furnished a member in payment of his or her services. Also, when the compensation of a member is a factor in any computation to be made under this chapter, there shall be excluded from such compensation any payments based on overtime put in by a member, any travel or uniform or expense allowance, any insurance or medical or surgical or hospital

benefits, any worker's compensation benefits; except as expressly provided in subsection G. below, any retirement or death or survivorship benefits, any payments paid on a per diem, per hour or any other basis than a monthly basis, and any and all other fringe benefits.

B. "Compensation" shall include holiday pay or any compensation paid to a member in lieu of holiday pay in the case of:

1. Any member who retires under the provisions of this chapter, either for service or disability, on or after July 5, 1992; and
2. Any former member who separates from city service on or after July 5, 1992, and elects to allow his or her accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640.

C. "Compensation" shall include premium pay paid pursuant to the Fair Labor Standards Act (FLSA) for regularly scheduled hours for employees who are assigned to a work week averaging fifty-six hours per week over a twelve-month period, subject to the following limitations:

1. "Compensation" shall only include FLSA premium pay which is earned and payable on or after December 28, 1997.
2. "Final compensation" including FLSA premium pay shall not exceed the one hundred eight percent limitation imposed by Section 3.36.020.5 B. 2.
3. This subsection C. shall apply only in the case of:

- a. A member who retires under the provisions of this chapter, either for service or disability, on or after July 5, 1998; and
 - b. A former member who separates from city service on or after July 5, 1998, and elects to allow his or her accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640; and
 - c. A member who dies on after July 5, 1998, while in city service for which the member receives service credit in this plan.
- D. "Compensation" shall include incentive pay for successful completion, on an annual basis, of training in Police Anti-Terrorist Tactics as certified by the police department to the city finance department.
- E. "Compensation" shall include incentive pay for completing and maintaining an Emergency Medical Technician (EMT) certificate, but only such EMT incentive pay which is earned and payable on or after July 7, 1991.
- F. "Compensation" shall include anti-terrorism training pay received by members of the plan who are employed in the fire department, but only such pay which is earned and payable on or after July 1, 2006.
- G. "Compensation" shall include disability leave payments paid by the City to a member pursuant to which a member continues to receive full monthly compensation, including but not limited to, disability leave payments made pursuant to Labor Code Section 4850.

SECTION 2. The provisions of this Ordinance are intended to clarify San José Municipal Code Section 3.36.020.3 as it existed on the date this Ordinance was passed

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10/7/2010

for publication and as a clarification it is intended to be retroactive to the effective date of Ordinance No.9605, pursuant to which the 1961 Police and Fire Department Plan was established.

PASSED FOR PUBLICATION of title this _____ day of _____, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk