

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PARTS 1 AND 10 OF CHAPTER 2.08 OF TITLE 2 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTIONS 2.08.130, ~~2.08.160~~, 2.08.1020 AND 2.08.1070 ~~AND TO ADD A NEW SECTION 2.08.170~~ TO CORRECT CLERICAL ERRORS RELATED TO THE PROCESS FOR REMOVAL OF MEMBERS OF THE BOARD OF ADMINISTRATION OF THE FEDERATED CITY EMPLOYEES RETIREMENT SYSTEM AND FILLING VACANCIES ON SAID BOARD, AND TO REQUIRE PUBLIC MEMBERS WHO ARE APPOINTED TO SAID BOARD ON OR AFTER APRIL 1, 2011 TO RESIDE WITHIN A FIFTY MILE RADIUS OF SAN JOSE CITY HALL, ~~AND TO CLARIFY COUNCIL'S INTENT WITH RESPECT TO THE NONVOTING MEMBER POSITION ON THE BOARD OF ADMINISTRATION OF THE FEDERATED CITY EMPLOYEES RETIREMENT SYSTEM AND THE BOARD OF ADMINISTRATION OF THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN~~

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 2.08.130 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to read as follows:

2.08.130 Removal from Office

- A. Except as provided in subsections B. and C., notwithstanding an appointment for a specific term or part of a term, any person appointed to and holding the position of member of any board or commission may be removed from appointment, at any time, by the Council, with or without prior notice, and with or without cause.

- B. Notwithstanding the appointment of a person to the position of member of the Board of Administration for the Police and Fire Department Retirement Plan for a specific term or part of a term, any person holding such position may be removed by the Council for cause as follows:
1. The San José Police Officers' Association, the International Association of Fire Fighters, Local 230, the City Manager, any retired member of the Police and Fire Department Retirement Plan or any member of the public may submit a written request for removal to the City Council. Any such request shall state the grounds for which removal is sought.
 2. The City Council shall hold a hearing on any written request for removal submitted by the San José Police Officers' Association, the International Association of Fire Fighters, Local 230, or the City Manager.
 3. The Rules and Open Government Committee of the City Council shall consider any written request for removal submitted by a retired member of the Police and Fire Department Retirement Plan or any member of the public, and shall determine in its discretion, whether such request should be forwarded to the full City Council for hearing. Any such request shall state the grounds for which removal is sought.
 4. Notice of hearing shall be provided to the affected Board member at least ten (10) days prior to the date of any City Council meeting.

After a hearing, the City Council may remove the member of the Board from office if the Council makes a written finding of substantial evidence of cause for removal. Cause may include, but is not limited to, failure to remain qualified for the Board position to which the member is appointed,

failure to discharge the Board member's duty as a fiduciary for the Plan, or failure to perform the Board member's duties in accordance with applicable law, including the requirements of Chapter 3.36 of Title 3 of this Code. For public members of the Board, cause for removal may also be based on failure to disclose all conflicts of interest, significant potential for conflict of interest, or appearance of conflict of interest as required by Code Section 2.08.1220E., and/or the existence of conflict of interest, significant potential for conflict of interest, or appearance of conflict of interest as based on information disclosed by public members of the Board pursuant to Code Section 2.08.1220E., or such other information as may be available to Council.

C. Notwithstanding the appointment of a person to the position of member of the Board of Administration for the Federated City Employees Retirement System for a specific term or part of a term, any person holding such position may be removed by the Council for cause as follows:

1. The City Manager or any employee organization recognized by the City as an exclusive representative of employees who are members of the Federated City Employees Retirement System may submit a written request for removal to the City Council. Any such request shall state the grounds for which removal is sought.
2. The City Council shall hold a hearing on any request for removal submitted by the City Manager or any employee organization recognized by the City as an exclusive representative of employees who are members of the Federated City Employees' Retirement System.

3. The Rules and Open Government Committee of the City Council shall consider any written request for removal submitted by a retired member of the Federated City Employees Retirement Plan or any member of the public, and shall determine in its discretion, whether such request should be forwarded to the full City Council for hearing. Any such request shall state the grounds for which removal is sought.
4. Notice of hearing shall be provided to the affected Board member at least ten (10) days prior to the date of any City Council hearing.
5. After the hearing, the City Council may remove the member of the Board from office if the Council makes a written finding of substantial evidence of cause for removal. Cause may include, but is not limited to, failure to discharge the Board member's duty as a fiduciary for the Plan, failure to remain qualified for the Board position to which the member is appointed, or failure to perform the Board member's duties in accordance with applicable law, including the requirements of Chapter 3.28 of Title 3 of this Code. For public members of the Board, cause for removal may also be based on failure to disclose all conflicts of interest, significant potential for conflict of interest, or appearance of conflict of interest as required by Code Section 2.08.1070F., and/or the existence of conflict of interest, significant potential for conflict of interest, or appearance of conflict of interest as based on information disclosed by public members of the Board pursuant to Code Section 2.08.1070F., or such other information as may be available to Council.

~~SECTION 2. Section 2.08.160 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to read as follows:~~

2.08.160 Council Liaison Representative

- ~~A. Except as set forth in Section 2.08.170, the City Council shall appoint one of its members to act as a liaison representative to every board and commission.~~
- ~~B. The Council liaison serves to advise the City Council of the background, attitudes and reasons behind decisions and recommendations of the board or commission; and, on request of any member of the board or commission, to advise the commission of policies, procedures and decisions of the council that may bear on matters under discussion by the board or commission.~~
- ~~C. The Council liaison may attend the meetings of the board or commission but, except as elsewhere specifically provided, shall have no power to vote and shall receive no additional compensation.~~

~~SECTION 3. Part 1 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to add new section to be numbered, entitled and read as follows:~~

2.08.170 Council Representative to Retirement Boards of Administration

- ~~A. The City Council shall appoint one of its members to act as a nonvoting nonfiduciary member of the Board of Administration of the Federated City Employees Retirement System.~~
- ~~1. The Council representative to the Board of Administration of Federated City Employees Retirement System serves to advise the City Council of the background, attitudes and reasons behind decisions and recommendations of the Board, and to advise the Board of policies,~~

~~procedures and decisions of the Council that may bear on matters under discussion by the Board.~~

~~2. The Council representative may attend the meetings of the Board of Administration of the Federated City Employees Retirement System and may fully participate with the voting members of the Board in all matters pending before the Board, with the exception of quasi-adjudicatory matters and closed sessions. The Council representative shall be provided with a copy of the Board's public agenda packet at the same time as agenda packets are distributed to Board members, but shall not receive closed session material. The Council representative shall have no power to vote on any matter pending before the Board, nor shall the Council representative be counted as a Board member for the purpose of determining what constitutes a quorum of the Board. The Council representative shall receive no additional compensation for serving as a nonvoting member of the Board.~~

~~B The City Council shall appoint one of its members to act as a nonvoting nonfiduciary member of the Board of Administration of the Police and Fire Retirement Plan.~~

~~1. The Council representative to the Board of Administration of the Police and Fire Retirement Plan serves to advise the City Council of the background, attitudes and reasons behind decisions and recommendations of the Board, and to advise the Board of policies, procedures and decisions of the Council that may bear on matters under discussion by the Board.~~

~~2. The Council representative may attend the meetings of the Board of Administration of the Police and Fire Retirement Plan and may fully participate with the voting members of the Board in all matters pending before the Board, with the exception of quasi-adjudicatory matters and closed sessions. The Council representative shall be provided with a copy of the Board's public agenda packet at the same time as agenda packets are distributed to Board members, but shall not receive closed session material. The Council representative shall have no power to vote on any matter pending before the Board, nor shall the Council representative be counted as a Board member for the purpose of determining what constitutes a quorum of the Board. The Council representative shall receive no additional compensation for serving as a nonvoting member of the Board.~~

SECTION 24. Section 2.08.1020 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to read as follows

2.08.1020 Qualifications – Public Members

- A. Each public member of the Board appointed on or before March 31, 2011 shall reside or have a primary place of employment or business within a fifty (50) mile radius of San José City Hall at all times during the Board member's term of office.
- B. Each public member of the Board appointed on or after April 1, 2011 shall reside within a fifty (50) mile radius of San José City Hall at all times during the Board member's term of office.

- C. Each public member of the Board shall possess a baccalaureate degree from an accredited college or university in finance, actuarial science, law, economics, business or other relevant field of study. An advanced degree in a relevant field of study or professional certification is desirable but not required.

- D. Each public member of the Board shall possess a high level of knowledge and expertise, and at least twelve (12) years experience, relevant to the administration of a public retirement plan. Knowledge and expertise relevant to the administration of a public pension system may include but is not limited to experience in: a senior executive position in pension administration; pension actuarial practice; institutional investment management; auditing; accounting; legal; health and welfare and/or employee benefits management; investment management; banking; asset/liability management for an insurance company; college or university professor with a focus on fiduciary or trust fund law or a quantitative background in financial theory or actuarial math. Twelve (12) years combined experience in related field may meet this requirement.

- E. The following individuals shall be ineligible for appointment as public members of the Board: current and former City employees; current or former elected or appointed City officials; retired members of, or persons participating in or receiving benefits from the Police and Fire Department Retirement Plan or the Federated City Employees Retirement System; a representative from any union representing City employees; or any immediate family member of a City employee or persons participating in or receiving benefits from the Police and Fire Department Retirement Plan or the Federated City Employees Retirement System.

- F. No person having a conflict of interest, significant potential for conflict of interest, or appearance of conflict of interest, shall be appointed as a public member of

the Board. For the purpose of evaluating conflicts of interest, potential conflicts of interest and the appearance of conflict of interest of Board members, all applicants for public member Board positions shall be required to provide disclosure information, in such form and substance as may be required by the Council, to allow Council to evaluate conflicts of interest, significant potential for conflicts of interest, or appearance of conflicts of interest, including but not limited to disclosure of information related to investments, ownership of real property, employment and business positions, income sources and loans of the prospective public member applicant and members of the applicant's immediate family. Disclosure of such conflict of interest, significant potential for conflict of interest, or appearance of conflict of interest; information as may be required by Council shall be provided by the applicant at the time of submission of an application for a public member position on the Board, and annually thereafter, concurrently with such conflict of interest disclosure as Board members may otherwise be required by law to file.

- G. For the purpose of this Section 2.08.1020, immediate family member means a person having any of the following relationships to a City employee or person participating in or receiving benefits from the Police and Fire Department Retirement Plan or the Federated City Employees Retirement System:
1. By Blood: Parent, child, grandparent, grandchild, brother, sister, nieces, nephews, uncles, aunts, great grandchildren, great grandparents.
 2. By Marriage: Husband, wife, stepparent, stepchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, half-sister, half-brother.

3. By Law: Guardianship relationships and adoptive parent/child relationships.
4. Domestic Partner: Individuals registered with the Human Resources Department and/or the State of California.

SECTION 35. Section 2.08.1070 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to read as follows:

2.08.1070 Recommendations for Filling Certain Vacancies

- A. Whenever a vacancy exists in a seat on the Board held by a City employee, the City employees who are members of the Federated City Employees Retirement System shall recommend, at an election to be conducted among them by the City Clerk, one of such employees as a successor for such seat; provided, however, upon any vacancy or vacancies in such office during the unexpired regular term, the City Council shall, in accordance with rules prepared by the City Clerk and approved by the City Council, appoint to such vacant seat for the remainder of the unexpired term, a City employee who is also a member of said System.
- B. The City Council shall appoint all public members of the Board.
- C. One of the public members of the Board shall be appointed by the City Council only after the candidates for such seat have been interviewed by the then existing Board and a recommendation for appointment has been made by the Board to the Council..
 1. If a majority of the Board recommends one (1) candidate, only that candidate will be forwarded to the City Council for consideration.

2. If a majority of the Board does not recommend one (1) candidate, the top two (2) candidates will be forwarded to the City Council for consideration.
 3. The first public member to be appointed pursuant to this Section 2.08.1070.C. will not be appointed until the three (3) other public members' seats have been filled, by Council and all other seats on the Board have been filled by Council. Thereafter, any vacancy in the seat held by such public member shall always be filled pursuant to this Section 2.08.1070.C.
- D. Whenever a vacancy exists in a seat on the Board held by a retired member of the System because of the expiration of a retired member's term of office, the following procedures shall apply:
1. The retired members of the System shall recommend, at an election to be conducted among them by the City Clerk, three (3) (or less if there are fewer than three candidates) of such retired members to be considered for appointment as a successor for such seat.
 2. A panel shall interview the three (3) (or less if there are fewer than three candidates) retired members receiving the highest number of votes. The purpose of the interview shall be to ensure that the candidates are viable in that they will be able to attend meetings of the Board and fulfill the time commitment of member of the Board.
 3. The panel shall consist of:

- a. A representative from the employee organizations affiliated with the American Federation of State, County and Municipal Employees, AFSCME Local 101;
 - b. A representative from the employee organizations other than the organizations affiliated with AFSCME, Local 101; and
 - c. A representative from the City Manager's Office.
4. The panel shall recommend to the City Council one of the interviewed retired members for appointment to the Board. The panel's recommendation shall be determined by a majority of the members of the panel; provided that a dissenting member of the panel may submit a minority report. If there is no majority for the recommendation of a retired member, each member of the panel may submit a written report to the City Council.
- E. Whenever a vacancy occurs in a seat on the Board held by a retired member of the Plan prior to the expiration of a retired member's term of office, the following procedures shall apply:
1. The City of San José Retired Employees Association shall recommend to the Board up to three (3) candidates for appointment for the remainder of the unexpired term.
 2. The Board shall interview the recommended candidates and recommend one (1) or more of them for appointment by the City Council for the remainder of the unexpired term.

- F. The appointment of employee and retiree members shall be routine business on the Council agenda.
1. Council shall only reject the employee recommended by a majority of those voting in an election among employees upon a finding of cause for rejection.
 2. Council shall only reject the retiree recommended by an interview panel upon a finding of cause for rejection.
 3. Cause for rejection may include, but is not be limited to, Council finding that the recommended candidate will not be able to attend meetings of the Board and fulfill the time commitment of a member of the Board, or to act in accordance with fiduciary duties or carry out the requirements of governing legislation, including the requirements of Chapter 3.36 of Title 3 of this Code.

RD:MD1:ERD
3/22/11

PASSED FOR PUBLICATION of title this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk