

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
VARIOUS SECTIONS OF CHAPTER 3.48 OF TITLE 3 OF
THE SAN JOSE MUNICIPAL CODE, THE SAN JOSE
DEFERRED COMPENSATION PLAN, TO COMPLY WITH
THE PENSION PROTECTION ACT OF 2006**

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

SECTION 1. Section 3.48.055 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.055 Inter-Plan Transfer

A. Incoming Transfers.

1. A participant who is a former participant in an eligible deferred compensation plan of any local government, ~~or state, or tax-exempt organization~~ may transfer the amounts deferred under said plan to the City of San José deferred compensation plan, if the participant has had a severance event with the prior employer and if the prior employer's plan provides that such a transfer will be made.
2. Any such transferred amount shall not be treated as a deferral subject to the limitations of Section 3.48.040, except that for purposes of applying the limitations, an amount deferred during any taxable year under the transferring plan shall be treated as if it had been deferred under this plan during such taxable year.

3. Any such transferred amount shall otherwise be subject to the provisions of this Chapter 3.48.

B. Outgoing Transfers.

1. If a participant terminates employment with the City and accepts employment with any other local government, or state, or tax-exempt organization which has an eligible deferred compensation plan and which plan provides for acceptance of amounts previously deferred, the participant may elect that all amounts previously deferred be transferred to the new employer's plan.
2. Beginning January 1, 2002, a participant may transfer all or a portion of the participant's account directly to the trustee of a defined benefit governmental plan (as defined in Internal Revenue Code Section 414(d)) if such transfer is:
 - a. For the purchase of permissive service credit (as defined in Internal Revenue Code Section 415(n)(3)(A)) under such governmental plan; or
 - b. A repayment to which Internal revenue Code Section 415 does not apply by reason of subsection (k)(3) thereof.

- C. The advisory committee or the City may require such documentation regarding any plan from which a transfer may be accepted or to which a transfer may be made as it deems necessary to effectuate the transfer; to confirm that such plan is an eligible deferred compensation plan of a local government or state or defined benefit governmental plan, as applicable; or to assure that transfers are permitted under such plan.

SECTION 2. Section 3.48.058 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.058 Eligible Rollover Distributions

A. Incoming Rollovers.

1. Beginning January 1, 2002, this plan may accept an eligible rollover distribution from an eligible retirement plan maintained by another employer and credit such rolled-over amounts to a participant's account under this plan.
2. Beginning January 1, 2009, within twelve (12) months of a former City employee's separation from City service, this plan may accept an eligible rollover distribution of pre-tax contributions from an eligible retirement plan maintained by the City and credit such rolled-over amounts to the former employee's account under this plan.
3. The plan shall separately account for eligible rollover distributions accepted from any eligible retirement plan that is not an eligible deferred compensation plan maintained by an eligible governmental employer.
4. For the purpose of this subsection A., "eligible retirement plan" means an annuity plan described in Internal Revenue Code Section 403(b), a qualified trust described in Internal Revenue Code Section 401(a), or an eligible governmental deferred compensation plan.

B. Outgoing Rollovers.

1. Beginning January 1, 2002, a distributee may elect to take a distribution from this plan in the form of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
2. For the purposes of this subsection B.:
 - a. "Distributee" includes:
 - i. An employee or former employee of the City; and
 - ii. With respect to the interest of the spouse, an employee's or former employee's surviving spouse; and
 - iii. With respect to the interest of the beneficiary, an employee's or former employee's designated beneficiary; and
 - iv. With respect to the interest of the spouse or former spouse, an employee's or former employees' spouse or former spouse who is the alternate payee under a conforming domestic relations order.
 - b. "Eligible retirement plan" means an individual retirement account described in Internal Revenue Code Section 408(a), a Roth individual retirement account described in Internal Revenue Code Section 408A (for distributions after December 31, 2007), an individual retirement annuity described in Internal Revenue Code Section 408(b), an annuity plan described in Internal Revenue Code Section 403(b), a qualified trust described in Internal

Revenue Code Section 401(a), or an eligible deferred compensation plan that accepts an eligible rollover distribution.

- C. An "eligible rollover distribution" is any distribution of all or a portion of the balance to the credit of the distributee which constitutes an eligible rollover distribution under Internal Revenue Code Section 401(a)(31)(C). For the purposes of distributions from other plans rolled- over into this plan, the term "eligible rollover distribution" shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- D. The advisory committee or the City may require such documentation regarding any plan from which a rollover distribution may be accepted or to which a rollover distribution may be made as it deems necessary to effectuate the distribution; to confirm that such plan is an eligible retirement plan; or to assure that rollover distributions are permitted under such plan.
- E. For the purposes of Internal Revenue Code Section 72(t), a distribution from this plan shall be treated as a distribution from a qualified retirement plan to the extent that such distribution is attributable to an amount rolled-over from a qualified retirement plan (as defined in Internal Revenue Code Section 4974(c)).
- F. Effective with respect to distributions made on or after January 1, 2010, a beneficiary other than a participant's (or former participant's) surviving spouse or a participant's (or former participant's) spouse or former spouse who is an "alternate payee" under a qualified domestic relations order is a person eligible to make a rollover with regard to the interest of the participant or former participant, subject to the limitation for such a beneficiary that an eligible retirement plan is an individual retirement account or individual retirement annuity that will be

treated as an inherited individual retirement account or annuity under Internal Revenue Code Section 402(c)(11) of the Code.

SECTION 3. Section 3.48.135 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.135 Emergency Withdrawals

If a participant is faced with an unforeseeable emergency, the participant may apply to advisory committee for withdrawal of funds from the plan. Such withdrawals shall be permitted, in the advisory committee's discretion, only in circumstances of an unforeseeable emergency.

"Unforeseeable emergency" means severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent (as defined in ~~the Internal Revenue Code, 26 U.S.C. Section~~ 152(a) but without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B)) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved by:

- A4. Reimbursement or compensation by insurance or otherwise;
- B2. Liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- C3. Cessation of deferrals under the plan.

Examples of what are not considered to be an unforeseeable emergency include the need to send a participant's child to college or the desire to purchase a home.

Withdrawal from account due to an unforeseeable emergency shall only be permitted to the extent reasonably needed to satisfy the emergency need.

Any amount so approved hereunder for withdrawal, less any taxes required to be withheld, shall be paid to the participant in a lump sum. The withdrawal shall be effective at the later of the dates specified in the participant's application, or the date approved by the City.

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