

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO ADD NEW CHAPTERS 3.54 AND 3.56 AND TO AMEND SECTIONS 3.36.575, 3.36.1925, 3.36.1930, 3.36.1950, 3.36.2030 AND 3.36.2050 OF CHAPTER 3.36 OF TITLE 3 FOR THE PURPOSE OF ESTABLISHING TWO NEW TRUSTS PURSUANT TO SECTION 115 OF THE INTERNAL REVENUE CODE RELATED TO RETIREE HEALTHCARE BENEFIT FUNDING AND PAYMENT OF RETIREE HEALTH CARE BENEFITS**

**WHEREAS**, pursuant to Governmental Accounting Standards Board Statements No. 43 ("GASB 43") and No. 45 ("GASB 45"), a non-federal governmental plan and employer must take steps to define and disclose the post-employment benefits, other than pension benefits, provided for retirees and their eligible spouses, registered domestic partners, and dependents entitled to health coverage, and to actuarially determine its liability for such benefits; and

**WHEREAS**, a non-federal governmental plan or employer may reduce or eliminate its net OPEB obligation, as defined in GASB 43 and GASB 45, by making contributions to an irrevocable trust in relation to such anticipated benefits; and

**WHEREAS**, the City of San José ("City") maintains health plans in which retired members of the Police and Fire Department Retirement Plan may participate in order to obtain medical and dental care pursuant to Parts 14 and 15 of Chapter 3.36 of the San José Municipal Code; and

**WHEREAS**, as of July 1, 1995, there was established a medical benefits account, pursuant to Internal Revenue Code Section 401(h) within the Police and Fire Department Retirement Plan for the purpose of providing for the payment of benefits for

sickness, accident, hospitalization, dental or medical expense of persons receiving monthly allowances under the provisions of the Police and Fire Department Retirement Plan; and

**WHEREAS**, Internal Revenue Code Section 401(h) limits the aggregate of the contributions to the medical benefits account; and

**WHEREAS**, in order to reduce or eliminate its net OPEB obligation, as defined in GASB 43 or GASB 45, the City has approved agreements with the bargaining units representing employees in the Police and Fire Department Retirement Plan that provide for the establishment of a new trust pursuant to Section 15 of the Internal Revenue Code related to retiree healthcare benefit funding and payment of retiree health care benefits; and

**WHEREAS**, the City understands that the ramp up to full funding for retiree health as contemplated by the agreements with the bargaining units representing members in the Police and Fire Department Retirement Plan, may in the future, cause contributions to the medical benefits account to exceed the Internal Revenue Code Section 401(h) limit;

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

SECTION 1. Section 3.36.575 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.36.575 Separate Medical Benefits Account**

- A. There is hereby established as of July 1, 1995, 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 Plan, and all earnings and interest attributable to such contributions to the retirement fund, 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. Contributions 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 Plan, and earnings and interest attributable to such contributions may be made to the medical benefits account or to the Trusts established by Chapters 3.54 and 3.56.

D. 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 three- to-one.
2. 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~~E. Except as otherwise provided in this Section 3.36.575, 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 14 and 15 of this Chapter. Prior to the satisfaction of all liabilities under this Plan to provide such benefits, no funds in the medical benefits account shall be used for, or diverted to, any other purpose.

~~E~~F.   All benefits provided through the medical benefits account, plus any life insurance protection provided under the Plan, shall be subordinate to the retirement and survivors' benefits provided by the Plan. 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 Plan (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~~G. Upon the satisfaction of all liabilities under this Plan to provide the benefits described in this Section, any amount remaining in the medical benefits account shall be paid to the City.

~~G~~H. In the event that a member's interest in the medical benefits account is forfeited prior to the termination of the Plan, an amount equal to the forfeiture shall be applied as soon as practicable to reduce the City contributions, if any, to the

medical benefits account.

**H.I.** \_\_\_ City and member contributions to the medical benefits account shall be made on the same periodic basis as City and member contributions are made to the retirement fund. City contributions and member contributions to the medical benefits account may be paid on different payment schedules.

**SECTION 2.** Section 3.36.1925 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.36.1925 Reimbursement for Medicare Part B Payments**

- A. The plan will reimburse members, former members and survivors for the amounts paid by them for Medicare Part B coverage, subject to the following limitations:
1. The member, former member or survivor must be eligible for medical insurance coverage under the provisions of the plan and must be enrolled in an eligible medical plan.
  2. The total amount paid by from the medical benefits account or the Trusts established by Chapters 3.54 and 3.56 for medical benefits pursuant to Section 3.36.1930 plus the Medicare Part B reimbursement shall not exceed the premium for the lowest cost medical plan, as defined in Section 3.36.1930 D, available to the member, former member or survivor.
  3. The reimbursement shall be only for Medicare Part B payments made after February 4, 2000.

4. The member, former member, or survivor must submit proof of payment for Medicare Part B. Except for Medicare Part B payments made during calendar year 2000, proof of payment must be submitted no later than the April 1<sup>st</sup> immediately following the calendar year for which reimbursement is sought. For Medicare Part B payments made during calendar year 2000, proof of payment must be submitted no later than November 30, 2001.
  5. The reimbursement shall not exceed the amount of the Medicare Part B payments for which proof of payment is submitted.
  6. The reimbursement may be reduced or eliminated pursuant to Section 3.36.1950.
- B. All reimbursements for Medicare Part B payments shall be made from the medical benefits account established by Section 3.36.575 or the Trusts established by Chapters 3.54 and 3.56.

SECTION 3. Section 3.36.1930 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.36.1930 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 3.36.575 or from the Trust Funds established by Chapters 3.54 and 3.56 and by deductions from monthly allowances paid by the Plan in accordance with this Section 3.36.1930. Unless otherwise determined by the Trustees, payment shall

be made out of the medical benefits account until the account is exhausted and thereafter out of the Trust Funds established by Chapters 3.54 and 3.56.

B. For members who retired prior to February 4, 1996, for former members described in Subsection C. of Section 3.36.1900 who separated from City service prior to February 4, 1996, and for survivors of said members and former members who satisfy the requirements of Section 3.36.1910:

1. For coverage through July 1998, the member, former member or survivor shall be required to pay a premium for medical insurance coverage under this Part in the same amount as is currently paid by an employee of the City in the classification from which the member retired, which the member held at the time of death, or which the former member held at the time of separation from City service. The remaining portion of the premium shall be paid from the medical benefits account.
2. Effective for coverage beginning in the month of August 1998, the portion of the premium to be paid from the medical benefits account shall be that portion which is equivalent to the premium for the "lowest cost medical plan", but shall not exceed the actual premium for the eligible medical plan in which the member, former member or survivor enrolls. The portion to be paid by deductions from monthly allowances paid to the member, former member, or survivor shall be that portion of the premium for the selected medical plan that exceeds the portion payable from the medical benefits account.

C.     For members who retired on or after February 4, 1996, for former members described in Subsection C. of Section 3.36.1900 who separated from City service on or after February 4, 1996, and for survivors of said members and former members who satisfy the requirements of Section

3.36.1910:

1. For coverage through November 1997, the member, former member or survivor shall be required to pay a premium for medical insurance coverage under this part in the same amount as was then paid by an employee of the City in the classification from which the member retired, which the member held at the time of death, or which the former member held at the time of separation from City service. The remaining portion of the premium shall be paid from the medical benefits account.
  2. Effective for coverage beginning in the month of December 1997, the portion of the premium to be paid from the medical benefits account shall be the lesser of (a) an amount which is equivalent to the premium for the "lowest cost medical plan" or (b) the actual premium for the eligible medical plan in which the member, former member or survivor enrolls. The portion to be paid by deductions from monthly allowances paid to the member, former member, or survivor shall be that portion of the premium for the selected medical plan that exceeds the portion payable from the medical benefits account.
- D. For the purposes of this Section, "lowest cost medical plan" means that medical plan (single or family coverage as applicable to the coverage selected by the member, former member or survivor):
1. Which is an eligible medical plan as defined in Section 3.36.1940; and
  2. Which has the lowest monthly premium of all eligible medical plans then in effect, determined as of the time the premium is due and owing.

SECTION 4. Section 3.36.1950 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.36.1950 Limitation on Funding Provided To Retirement Fund for Medical Benefits**

- A. It is intended that the funding provided to the retirement fund for 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 the funding provided to the retirement fund for the medical benefits as necessary to satisfy the requirements of said Section 401(h).
- B. In the event the contributions required to be paid into the retirement fund to fund the benefits provided by this Part 14 and the dental 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, the allocation of costs set forth in Section 3.36.1930 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 5. Section 3.36.2030 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.36.2030 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 3.36.575 or from

the Trusts established by Chapters 3.54 and 3.56. Unless otherwise determined by the Trustees, payment shall be made out of the medical benefits account until the account is exhausted and thereafter out of the Trusts established by Chapters 3.54 and 3.56.

SECTION 6. Section 3.36.2050 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.36.2050 Limitation on Funding for Dental Benefits**

- A. It is intended that the funding provided to the retirement fund for 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 be paid into the retirement fund to fund the benefits provided by this Part 15 and the medical benefits provided by Part 14, 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 3.36.2030 notwithstanding, all or a portion of the costs set forth in Section 3.36.2030 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.

SECTION 7. Title 3 of the San José Municipal Code is amended to add a new Chapter to be entitled, numbered and read as follows:

**CHAPTER 3.54**  
**POLICE DEPARTMENT HEALTH CARE TRUST FUND**  
**Part 1**  
**Definitions**

**3.54.010 Definitions – Rules of Construction**

Unless the context otherwise requires, the definitions and general provisions set forth in this Part 1 govern the construction of Chapter 3.54.

**3.54.020.01 “Administrator”**

“Administrator” means the Director of the Retirement Services Department of the City of San José.

**3.54.020.02 “Custodian”**

“Custodian” means a bank, mutual fund, savings and loan association, insurance company or other qualified entity selected by the Trustees, to hold and administer the assets of the Trust Fund.

**3.54.020.03 “Dependent”**

“Dependent” means a surviving spouse, surviving domestic partner, or surviving child, of a police department member of the Police and Fire Department Retirement Plan who is entitled to medical benefits under Section 3.28.1960 and/or dental benefits under Section 3.28.2010.

**3.54.020.04 “Governmental Accounting Standards Board” or “GASB”**

“Government Accounting Standards Board” or “GASB” means the organization funded and monitored by the Financial Accounting Foundation (FAF), or successor organization, whose main purpose is to improve and create accounting reporting standards or generally accepted accounting principles (GAAP), which make it easier for users to understand and use the financial records of both state and local governments.

**3.54.020.05 “GASB 43”**

“GASB 43” means the estimates of total liability and annual employer required contribution for post retirement health benefits that are required to be provided in the Plan’s annual financial reports pursuant to Governmental Accounting Standard Board Statement No. 43, as said Statement is in effect on July 1, 2011.

**3.54.020.06 “GASB 45”**

“GASB 45” means the estimates of total liability and annual employer required contribution for post retirement health benefits that are required to be provided in the City’s annual financial reports pursuant to Governmental Accounting Standard Board Statement No. 45, as said Statement is in effect on July 1, 2011.

**3.54.020.07 “Health and Welfare Benefit”**

“Health and Welfare Benefit” means a medical, prescription drug, or dental benefit, including a premium subsidy for the same for Retirees and Dependents, which is considered a post-retirement benefit other than pension under GASB 43 and/or GASB 45. Such a benefit is limited to medical care expenses, including premium subsidies as defined by IRC Section 213(d), which have been approved by the City Council for

Retirees and Dependents.

**3.54.020.08 “Investment Fund”**

“Investment Fund” means an investment fund that forms part of the Trust Fund as established by the Trustees.

**3.54.020.09 “Investment Manager”**

“Investment Manager” means an investment manager selected by the Trustees or a delegatee of the Trustees as authorized by Section 3.54.420.

**3.54.020.10 “IRC”**

“IRC” means the Internal Revenue Code of 1986, as amended.

**3.54.020.11 “OPEB Obligation”**

“OPEB Obligation” means the obligation for post-employment benefits other than pension benefits as defined under GASB 43 and/or GASB 45.

**3.54.020.12 “Plan”**

“Plan” means the health plan or plans in which Retirees and Dependents may participate in order to obtain Health and Welfare Benefits pursuant to Parts 14 and 15 of Chapter 3.36.

**3.54.020.13 “Property”**

“Property” refers to any property, real or personal, or partial interests therein, wherever situated, including, but not limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interests in limited liability companies, in partnerships whether limited or general or in any insurance contract, policy, annuity, or other investment media offered by an insurance company, in which trust assets may be invested pursuant to applicable law.

**3.54.020.14 “Regulation”**

“Regulation” means a policy, procedure, rule or regulation adopted by the Trustees, establishing administrative procedures for the administration of the Trust.

**3.54.020.15 “Retiree”**

“Retiree” means a former employee of the City who was employed in the Police Department of the City of San José and who is retired and is entitled to Health and Welfare Benefits under the Plan as described in Parts 14 and 15 of Chapter 3.36.

**3.54.020.16 “Trust”**

“Trust” means the trust created and established by this Chapter.

**3.54.020.17 “Trust Fund”**

“Trust Fund” means all such money, Property, and all investments made therewith and proceeds thereof and all earnings and profits thereon, less payments made by the

Trustees as authorized in this Chapter, which Trust Fund shall be known as the Police Department Health Care Trust Fund.

**3.54.020.18 “Trust Year”**

“Trust Year” means the twelve (12) month period beginning each July 1 and ending the following June 30 on which the books and records of the Trust are maintained.

**3.54.020.19 “Trustees”**

“Trustees” means the Board of Trustees as set forth in Section 3.54.400.

**3.54.020.20 Rules of Construction**

Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate. Accounting terms and principles used herein or applicable hereto shall be as defined and described from time to time by pronouncements and other guidance of the Governmental Accounting Standards Board ("GASB"), or any successor organization.

**Part 2**

**Trust Establishment and Purpose**

**3.54.100 Trust Established – Name – Purpose**

A. There is hereby established an irrevocable trust, which shall be known as the Police Department Health Care Trust, to:

1. Receive contributions made by the City on or after June 24, 2012, for the purpose of providing a funding source for the payment of the medical benefits described in Part 14 of Chapter 3.36, the dental benefits described Part 15 of Chapter 3.36 of this Title, any other Health and Welfare Benefits or other post-employment benefits other than pensions as approved by City for Retirees and Dependents.
2. Receive contributions made by Police Department employees on or after July 24, 2012, for the purpose of providing a funding source for the payment of medical benefits described in Part 14 of Chapter 3.36, the dental benefits described Part 15 of Chapter 3.36 of this Title, and any other Health and Welfare Benefits or other post-employment benefits other than pensions as approved by City for Retirees and Dependents.
3. Make distributions from the Trust Fund for the Health and Welfare Benefits provided for in the Plan to Retirees and Dependents and for the reasonable expenses of administering the trust and the Plan.

B. Participation in, and any coverage under, the Trust shall not constitute nor be construed as a commitment to provide a specific type or level of benefit; nor shall the Trust constitute a specific, accrued or vested benefit for any specific employee, Retiree, or Dependent.

C. The City intends that the income accruing to the Trust shall be excluded from City income for tax purposes, as such trust income is derived from the exercise of an essential governmental function, as provided for under Section 115(1) of the IRC, Revenue Rulings 77-261 and 90-74, and other relevant guidance.

### **3.54.110 Trust Fund**

The Trustees shall have exclusive authority and control over the administration and management of the Trust Fund, the investment of trust assets, and disbursements from the Trust Fund, pursuant to the provisions of this Chapter. The Trustees shall receive and accept for the purposes hereof all contributions described herein and shall hold, invest, reinvest, manage, administer, and distribute Property and the increments, proceeds, earnings, and income solely to meet OPEB Obligations and to fund Health and Welfare Benefits under the Plan as described herein.

### **3.54.120 Exclusive Benefit**

A. This Trust is created for the sole and exclusive purpose of funding Health and Welfare Benefits for Retirees and Dependents under the Plan. No portion of the principal or income of this Trust shall revert to the City except in a manner consistent with the irrevocability of contributions under the IRC and GASB 43 and/or GASB 45, or shall be used for or diverted to any purpose other than meeting the City's obligations to provide the Health and Welfare Benefits described in Parts 14 and 15 of Chapter 3.36 and any other Health and Welfare Benefits as approved by the City Council and the payment of reasonable expenses of the Plan and the Trust. Trust assets shall not be used to satisfy the claims of any creditor of the City or the Trustees.

B. At no time shall any part of the Trust Fund be used for, or diverted to, for purposes other than for the exclusive purpose of funding Health and Welfare Benefits for Retirees and their eligible Dependents, as applicable, as provided herein and under the Plan, and for defraying the reasonable expenses of administering the Trust and the Plan. No part of the Trust's net earnings may inure to the benefit of a private person. Private parties do not participate in, or benefit from, the operation of the Trust.

C. All investments, receipts, disbursements, and other transactions thereunder may be maintained in a common account, which contributions shall be used solely for the payment of benefits, expenses and other charges properly allocable to the Trust.

### **3.54.130 Taxation**

The Trust provides no guaranty that payments or reimbursements to employees, former employees, Retirees, or Dependents will be tax-free. The Trustees may obtain a ruling from the Internal Revenue Service concerning the federal tax treatment of the Trust's income. The ruling concerning federal tax treatment of the Trust's income may not be cited or relied upon by the City whatsoever as precedent concerning any other matter relating to the City's health plan(s) (including post-retirement health plans). The Trustees and the City may also obtain a ruling from the Internal Revenue Service concerning whether contributions to the City's health plan(s) and/or payments from the City's health plan(s) (including reimbursements of medical expenses) are excludable from the gross income of employees, former employees, Retirees or Dependents, under the IRC.

### **3.54.140 Group Trust**

The Trust Fund may participate under Section 401(a)(24) of the IRC in a qualified group trust that meets the requirements of Section 401(a) of the IRC in accordance with Revenue Ruling 81-100, as amended by Revenue Rulings 2004-67 and 2011-1, or other relevant guidance.

**Part 3**

**Deposits and Disbursements from the Trust Fund**

**3.54.200 Trust Deposits**

- A. The Trustees hereby delegate to the Administrator, the responsibility for accepting contributions to the Trust, remitting said contributions to the Custodian, and paying benefits as described herein from the Trust Fund. The Administrator is also responsible for crediting the deposits to the appropriate sub-trust, if sub-trusts have been established. In all cases, deposits of contributions shall be treated as actually made only as of the date the funds are accepted as in good order by the Administrator.
- B. The Trustees shall hold, invest, and reinvest the Trust Fund. The Administrator shall account for contributions, income, and payments made to or from the Trust. The Trustees, Custodian and Administrator shall not be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities of the City.
- C. Contributions to fund the benefits funded by the Trust shall consist of amounts determined pursuant to this Code and any applicable collective bargaining agreements.

**3.54.210 Sub-Trusts and Accounts**

Separate sub-trusts or accounts in the Trust Fund may be maintained by the Trustees for appropriate categories of employees and/or Retirees. The Trustees shall not be required to maintain separate investments for any sub-trust or account. Earnings may be credited to each sub-trust or account from time to time.

### **3.54.220 Trust Payments**

- A. Trust assets may be used to defray the cost of the City's obligations to pay for Health and Welfare Benefits for Retirees and their Dependents entitled to health care coverage under Sections 3.36.1950 through 3.36.1995, and for reasonable expenses, fees and allocated administrative fees and expenses. The benefits amount shall be determined by Parts 14 and 15 of Chapter 3.36 and any amount necessary to pay Health and Welfare Benefits as approved by the City Council.
- B. Any amounts remaining in the Trust Fund, after all Health and Welfare Benefits, fees and expenses have been paid, shall be retained for payment of future Health and Welfare Benefits until all City liabilities for such benefits and expenses have been satisfied.

## **Part 4**

### **Accounts and Investments**

#### **3.54.300 Accounts**

Except to the extent prohibited by applicable law, the Trustees or Custodian may commingle the assets held by the Trust for investment purposes.

#### **3.54.310 Investment of Trust Fund**

- A. Except as otherwise provided by Regulation, or as delegated to the Custodian, Administrator or an Investment Manager by the Trustees, the Trustees shall have complete control of the management and investment of the Trust Fund, and shall have all powers necessary or convenient to enable it to exercise such control.
- B. The Trustees or Trustees' delegatee may invest and reinvest funds held by the

Trust Fund in any investments which are legal investments under applicable law, and shall have the discretion to decide the allocation of funds among such investments. The Trustees may purchase, acquire, hold, lease, sell, and convey real and personal Property, and place funds held herein with banks or trust companies which have corporate trust powers, with insurance companies authorized to do business within the State of California, and do all such other acts permitted by law.

## **Part 5**

### **Composition, Powers and Duties of the Trustees**

#### **3.54.400 Composition of Board of Trustees**

- A. The Board of Administration of the Police and Fire Department Retirement Plan shall serve as the Trustees of this Trust. The appointment and term of Trustees shall be made pursuant to Part 10 of Chapter 2.08.
- B. By acceptance of their continued appointment to the Board of Administration of the Police Department Retirement Plan, the Trustees have agreed to accept this Trust and to perform the duties of the Trustees prescribed hereunder.

#### **3.54.410 Powers and Duties**

In administering the Trust, the Trustees shall have such power and authority, including discretion with respect to the exercise of that power and authority, as may be necessary, advisable, desirable, or convenient to the Trustees, in their sole discretion as fiduciaries subject to the provisions of this Chapter, and consistent with Part 10 of Chapter 2.08, plus all powers and duties given to them by the provisions of Chapter 3.36, including the power and authority:

- A. To enforce rules and Regulations with respect to the Trust not inconsistent with the Trust, GASB 43 or GASB 45, IRC Section 115 or applicable law;
- B. To determine, consistent with the applicable laws, rules or regulations, all questions of law or fact that may arise as to any person or entity claiming rights under the Trust;
- C. Subject to and consistent with GASB 43 and GASB 45, IRC Section 115 and applicable law, to construe and interpret the Trust and to correct any defect, supply any omission, or reconcile any inconsistency in the Trust;
- D. To adopt and amend investment policies, guidelines, restrictions, and requirements;
- E. To utilize Trust assets for the provision of Health and Welfare Benefits in accordance with this Chapter, for Retirees and Dependents who are eligible for a benefit as determined under Parts 16 and 17 of Chapter 3.36 and any other Health and Welfare Benefits as approved by the City Council and the payment of reasonable expenses of the Plan and the Trust;
- F. To implement termination of trusteeship and transfer of assets to successor trustees as permitted by law;
- G. To employ and contract with actuaries, auditors, accountants, investment advisers, investment brokers, other consultants, medical personnel, and other agents and employees;
- H. To collect and disburse all investment proceeds under the Trust;
- I. To provide for and promulgate all the Regulations and forms that are deemed as necessary or desirable in fulfilling its purposes of assisting in funding Health and

Welfare Benefits and in maintaining proper records and accountings consistent with GASB 43 and GASB 45 and Internal Revenue Service requirements;

J. To bring and defend actions, sue and be sued, and plead and be impleaded;

K. To authorize the expenditure of funds for the reasonable expenses of the Trustees while engaged in the performance of their duties, including entering into agreements and expending funds for investment related services selected by the Trustees;

L. To employ insurance companies, banks, trust companies, and/or investment brokers as agents for the keeping of records and the receipt and disbursement of funds held by or due to the Trustees;

M. To exercise generally any of the powers of an owner with respect to all or any part of the Trust Fund;

N. To administer or require oaths and affirmations, to issue subpoenas to compel the attendance of witnesses or the production of books, papers and documents, and to take and hear testimony concerning any matter pending before the Trustees. If any person so subpoenaed neglects or refuses to appear or produce any book, paper or document as required by said subpoena, or shall refuse to testify before the Trustees or answer any questions which a majority of the Trustees decides to be proper and pertinent, the Trustees shall have the power to initiate proceedings in the proper court to have such person declared guilty of contempt. The Chief of Police shall, on request of the Trustee, have such subpoenas served by a police officer or officers; and

O. To take all actions consistent with this Chapter necessary or appropriate to administer or carry out the purposes of the Trust; provided, however, the Trustees need not take any action unless in its opinion there are sufficient Trust

assets available for the expense thereof.

### **3.54.420 Delegation by Trustees**

In addition to the powers stated in Section 3.54.410, the Trustees may from time to time delegate to an Investment Manager, Custodian or committee formed by the Trustees certain of their fiduciary responsibilities under the Trust. Any such Investment Manager, Custodian or committee shall remain a fiduciary until such delegation is revoked by the Trustees, which revocation may be without cause and without advance notice. Such individual, committee, or organization shall have such power and authority with respect to such delegated fiduciary responsibilities as the Trustees have under the Trust.

### **3.54.430 Limitations of Trustees' Responsibility**

The Trustees' responsibilities and liabilities shall be subject to the following limitations:

- A. The Trustees shall have no duties other than those expressly set forth in this Chapter and those imposed on the Trustees by applicable laws.
- B. The Trustees shall be responsible only for money and Property actually received by the Trust, and then to the extent described in this Chapter.
- C. The Trustees shall have no responsibility or duty to define the specific design of the Health and Welfare Benefits, including but not limited to, selecting providers; nor shall the Trustees be responsible for establishing the Health and Welfare Benefits, or for setting the amount of premium subsidy to be paid by the Trust.
- D. The Trustees shall not be responsible for any particular Federal, state or local income, payroll or other tax consequence to the City or a Retiree, spouse, or Dependent, and shall not be responsible for any tax-reporting obligation relating

to payments or disbursements to such persons.

E. No Trustee shall have any liability for the acts or omissions of any predecessor or successor in office.

F. The Trustees shall have no liability for: (i) the acts or omissions of any Investment Manager; (ii) the acts or omissions of any insurance company; (iii) the acts or omissions of any Investment Fund; (iv) the acts or omissions of any Custodian; or (vi) the acts or omissions of any contractor, vendor, actuary or other service provider.

#### **3.54.440 Certification to Trustees**

To the extent consistent with the Trustees fiduciary responsibilities, the Trustees may rely upon a certification of the Administrator with respect to any instruction, direction, or approval of such Administrator and may continue to rely upon such certification until a subsequent certification is filed with the Trustees. The Trustees shall have no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized.

#### **3.54.450 Certification of Other Providers**

The Trustees shall be protected further in relying upon a written certification that purports to be from any Custodian, Investment Manager, insurance company, or mutual fund as to the person or persons authorized to give instructions or directions on behalf of such Custodian, Investment Manager, insurance company or mutual fund and continue to rely upon such certification until a subsequent written certification is filed with the Trustees.

## **Part 6**

### **Accounting and Recordkeeping**

#### **3.54.500 Maintenance of Records**

The Trustees shall maintain or cause to be maintained suitable records, data, and information relating to its responsibilities hereunder. The Trust's books and records relating thereto shall be open to inspection and audit at reasonable times, subject to applicable law.

#### **3.54.510 Independent Audit**

The Trustees shall cause an independent audit of the Trust Fund to be performed annually for each Trust Year, with results reported to the Trustees.

#### **3.54.520 Annual Report**

The Trustees shall publish an annual consolidated report for each Trust Year that includes the fiscal transactions of the Trust Fund for the preceding Trust Year; and the amount of the accumulated cash, securities, and other assets of the Trust Fund.

## **Part 7**

### **Amendment and Termination**

#### **3.54.600 Amendment**

This Chapter may be amended by the City Council at any time and in any manner permitted by applicable law and not inconsistent with GASB 43 and GASB 45 or IRC Section 115. Notice of such amendment shall be promptly provided to the Trustees,

Administrator, and Custodian.

### **3.54.610 Irrevocability**

The Trust created by this Chapter is irrevocable.

### **3.54.620 Termination**

The Trust shall have perpetual existence, except if dissolved by the City Council. Following any such dissolution, the Trustees shall proceed to wind up the affairs of the Trust in an orderly manner and within a reasonable period of time considering relevant circumstances. After paying or making reasonable provision for the payment of all liabilities of the Trust, and upon receipt of such releases, indemnities or like documentation as the Trustees may reasonably deem necessary for the protection of the Trust and the Trustees, the Trustees shall distribute the remaining Property of the Trust to the City, in cash or in kind or partly each. This distribution shall be made for the sole purpose of assisting the City in the payment of Health and Welfare Benefits for Retirees and their Dependents who are eligible for a benefit as determined under Parts 14 and 15 of Chapter 3.36 and any other Health and Welfare Benefits as approved by the City Council, and the payment of reasonable expenses of the Plan and the Trust. In making the distribution, the Trustees may retain an amount for reasonable, allocated administrative fees and expenses. In no event will Trust assets be distributed to or revert to any entity that is not the State of California, a political subdivision of the State, or an entity whose income is excluded from gross income under IRC Section 115.

**Part 8**  
**Miscellaneous**

**3.54.700 Construction and Governing Law**

- A. The provisions of this Chapter shall be construed, enforced and administered and the validity thereof determined in accordance with the IRC and the laws of the City and the State. If any provision of the Trust created by this Chapter is held to violate the IRC, State law, or this Code, or to be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise affect the Trust.
- B. The headings and subheadings in this Chapter are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Trust created by this Chapter.
- C. In resolving any conflict among provisions of this Chapter and in resolving any other uncertainty as to the meaning or intention of any provision of this Trust created by this Chapter, the interpretation that: (i) causes the Trust to be exempt from tax as a governmental instrumentality under IRC Section 115; and (ii) causes the Trust to comply with all applicable requirements of the IRC and the laws of the City and the State, shall prevail over any different interpretation.

**3.54.710 Parties Bound**

The provisions of the Trust created by this Chapter shall be binding upon the Trustees, the Administrator, the City and, as the case may be, the delegates, successors, and assigns of each of them.

### **3.54.720 Necessary Parties to Disputes**

Necessary parties to any accounting, litigation, or other proceedings relating to the Trust shall include only the Trustees.

### **3.54.730 Severability**

If any provisions of this Chapter shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Chapter shall continue to be fully effective.

### **3.54.740 Nonassignment**

The City may not commute, sell, assign, transfer, or otherwise convey any right to assets it may have under the Trust. The assets held under this Trust shall not be subject to the rights of the creditors of the City, the Trustees, the Custodian, or the Administrator, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third person.

### **3.54.750 Erroneous Payments**

If the Trustees or the Administrator makes any payment that, according to the terms of the Trust, and the benefits provided hereunder, should not have been made, the Trustees or Administrator may recover that incorrect payment, by whatever means necessary as allowed by State law, whether or not it was made due to the error of the Trustees or Administrator, from the person to whom it was made or from any other appropriate party, including but not limited to deduction of the amount of the incorrect payment when making any future payments to or on behalf of the recipient of the incorrect payment.

**3.54.760 Release**

Any payment to an insurance company, or its designee, shall, to the extent thereof, be in full satisfaction of the claim of such entity being paid thereby and the Trustees or Administrator may condition payment thereof on the delivery by the insurance company, or its designee, of a duly executed receipt and release in such form as may be determined by the Trustees.

SECTION 8. Title 3 of the San José Municipal Code is amended to add a new Chapter to be entitled, numbered and read as follows:

**CHAPTER 3.56**

**FIRE DEPARTMENT HEALTH CARE TRUST FUND**

**Part 1**

**Definitions**

**3.56.010 Definitions – Rules of Construction**

Unless the context otherwise requires, the definitions and general provisions set forth in this Part 1 govern the construction of Chapter 3.56.

**3.56.020.01 “Administrator”**

“Administrator” means the Director of the Retirement Services Department of the City of San José.

**3.56.020.02 “Custodian”**

“Custodian” means a bank, mutual fund, savings and loan association, insurance

company or other qualified entity selected by the Trustees, to hold and administer the assets of the Trust Fund.

### **3.56.020.03 “Dependent”**

“Dependent” means a surviving spouse, surviving domestic partner, or surviving child, of a fire department member of the Police and Fire Department Retirement Plan who is entitled to medical benefits under Section 3.28.1960 and/or dental benefits under Section 3.28.2010.

### **3.56.020.04 “Governmental Accounting Standards Board” or “GASB”**

“Government Accounting Standards Board” or “GASB” means the organization funded and monitored by the Financial Accounting Foundation (FAF), or successor organization, whose main purpose is to improve and create accounting reporting standards or generally accepted accounting principles (GAAP), which make it easier for users to understand and use the financial records of both state and local governments.

### **3.56.020.05 “GASB 43”**

“GASB 43” means the estimates of total liability and annual employer required contribution for post retirement health benefits that are required to be provided in the Plan’s annual financial reports pursuant to Governmental Accounting Standard Board Statement No. 43, as said Statement is in effect on July 1, 2011.

### **3.56.020.06 “GASB 45”**

“GASB 45” means the estimates of total liability and annual employer required contribution for post retirement health benefits that are required to be provided in the

City's annual financial reports pursuant to Governmental Accounting Standard Board Statement No. 45, as said Statement is in effect on July 1, 2011.

**3.56.020.07 "Health and Welfare Benefit"**

"Health and Welfare Benefit" means a medical, prescription drug, or dental benefit, including a premium subsidy for the same for Retirees and Dependents, which is considered a post-retirement benefit other than pension under GASB 43 and/or GASB 45. Such a benefit is limited to medical care expenses, including premium subsidies as defined by IRC Section 213(d), which have been approved by the City Council for Retirees and Dependents.

**3.56.020.08 "Investment Fund"**

"Investment Fund" means an investment fund that forms part of the Trust Fund as established by the Trustees.

**3.56.020.09 "Investment Manager"**

"Investment Manager" means an investment manager selected by the Trustees or a delegatee of the Trustees as authorized by Section 3.54.420.

**3.56.020.10 "IRC"**

"IRC" means the Internal Revenue Code of 1986, as amended.

**3.56.020.11 "OPEB Obligation"**

"OPEB Obligation" means the obligation for post-employment benefits other than

pension benefits as defined under GASB 43 and/or GASB 45.

**3.56.020.12 “Plan”**

“Plan” means the health plan or plans in which Retirees and Dependents may participate in order to obtain Health and Welfare Benefits pursuant to Parts 14 and 15 of Chapter 3.36.

**3.56.020.13 “Property”**

“Property” refers to any property, real or personal, or partial interests therein, wherever situated, including, but not limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interests in limited liability companies, in partnerships whether limited or general or in any insurance contract, policy, annuity, or other investment media offered by an insurance company, in which trust assets may be invested pursuant to applicable law.

**3.56.020.14 “Regulation”**

“Regulation” means a policy, procedure, rule or regulation adopted by the Trustees, establishing administrative procedures for the administration of the Trust.

**3.56.020.15 “Retiree”**

“Retiree” means a former employee of the City who was employed in the Fire Department of the City of San José and who is retired and is entitled to Health and Welfare Benefits under the Plan as described in Parts 14 and 15 of Chapter 3.36.

**3.56.020.16 "Trust"**

"Trust" means the trust created and established by this Chapter.

**3.56.020.17 "Trust Fund"**

"Trust Fund" means all such money, Property, and all investments made therewith and proceeds thereof and all earnings and profits thereon, less payments made by the Trustees as authorized in this Chapter, which Trust Fund shall be known as the Fire Department Health Care Trust Fund.

**3.56.020.18 "Trust Year"**

"Trust Year" means the twelve (12) month period beginning each July 1 and ending the following June 30 on which the books and records of the Trust are maintained.

**3.56.020.19 "Trustees"**

"Trustees" means the Board of Trustees as set forth in Section 3.54.400.

**3.56.020.20 Rules of Construction**

Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate. Accounting terms and principles used herein or applicable hereto shall be as defined and described from time to time by pronouncements and other guidance of the Governmental Accounting Standards Board ("GASB"), or any successor organization.

**Part 2**  
**Trust Establishment and Purpose**

**3.56.100 Trust Established – Name – Purpose**

- A. There is hereby established an irrevocable trust, which shall be known as the Fire Department Health Care Trust, to:
1. Receive contributions made by the City on or after June 24, 2012, for the purpose of providing a funding source for the payment of the medical benefits described in Part 14 of Chapter 3.36, the dental benefits described in Part 15 of Chapter 3.36 of this Title, any other Health and Welfare Benefits or other post-employment benefits other than pensions as approved by City for Retirees and Dependents.
  2. Receive contributions made by Fire Department employees on or after June 24, 2012 for the purpose of providing a funding source for the payment of medical benefits described in Part 14 of Chapter 3.36, the dental benefits described Part 15 of Chapter 3.36 of this Title, and any other Health and Welfare Benefits or other post-employment benefits other than pensions as approved by City for Retirees and Dependents.
  3. Make distributions from the Trust Fund for the Health and Welfare Benefits provided for in the Plan to Retirees and Dependents and for the reasonable expenses of administering the trust and the Plan.
- B. Participation in, and any coverage under, the Trust shall not constitute nor be construed as a commitment to provide a specific type or level of benefit; nor shall the Trust constitute a specific, accrued or vested benefit for any specific employee, Retiree, or Dependent.

C. The City intends that the income accruing to the Trust shall be excluded from City income for tax purposes, as such trust income is derived from the exercise of an essential governmental function, as provided for under Section 115(1) of the IRC, Revenue Rulings 77-261 and 90-74, and other relevant guidance.

### **3.56.110 Trust Fund**

The Trustees shall have exclusive authority and control over the administration and management of the Trust Fund, the investment of trust assets, and disbursements from the Trust Fund, pursuant to the provisions of this Chapter. The Trustees shall receive and accept for the purposes hereof, all contributions described herein and shall hold, invest, reinvest, manage, administer, and distribute Property and the increments, proceeds, earnings, and income solely to meet OPEB Obligations and to fund Health and Welfare Benefits under the Plan as described herein.

### **3.56.120 Exclusive Benefit**

A. This Trust is created for the sole and exclusive purpose of funding Health and Welfare Benefits for Retirees and Dependents under the Plan. No portion of the principal or income of this Trust shall revert to the City except in a manner consistent with the irrevocability of contributions under the IRC and GASB 43 and/or GASB 45, or shall be used for or diverted to any purpose other than meeting the City's obligations to provide the Health and Welfare Benefits described in Parts 14 and 15 of Chapter 3.36 and any other Health and Welfare Benefits as approved by the City Council and the payment of reasonable expenses of the Plan and the Trust. Trust assets shall not be used to satisfy the claims of any creditor of the City or the Trustees.

B. At no time shall any part of the Trust Fund be used for, or diverted to, for

purposes other than for the exclusive purpose of funding Health and Welfare Benefits for Retirees and their eligible Dependents, as applicable, as provided herein and under the Plan, and for defraying the reasonable expenses of administering the Trust and the Plan. No part of the Trust's net earnings may inure to the benefit of a private person. Private parties do not participate in, or benefit from, the operation of the Trust.

C. All investments, receipts, disbursements, and other transactions thereunder may be maintained in a common account, which contributions shall be used solely for the payment of benefits, expenses and other charges properly allocable to the Trust.

### **3.56.130 Taxation**

The Trust provides no guaranty that payments or reimbursements to employees, former employees, Retirees, or Dependents will be tax-free. The Trustees may obtain a ruling from the Internal Revenue Service concerning the federal tax treatment of the Trust's income. The ruling concerning federal tax treatment of the Trust's income may not be cited or relied upon by the City whatsoever as precedent concerning any other matter relating to the City's health plan(s) (including post-retirement health plans). The Trustees and the City may also obtain a ruling from the Internal Revenue Service concerning whether contributions to the City's health plan(s) and/or payments from the City's health plan(s) (including reimbursements of medical expenses) are excludable from the gross income of employees, former employees, Retirees or Dependents, under the IRC.

### **3.56.140 Group Trust**

The Trust Fund may participate under Section 401(a)(24) of the IRC in a qualified group

trust that meets the requirements of Section 401(a) of the IRC in accordance with Revenue Ruling 81-100, as amended by Revenue Rulings 2004-67 and 2011-1, or other relevant guidance.

### **Part 3**

### **Deposits and Disbursements from the Trust Fund**

#### **3.56.200 Trust Deposits**

- A. The Trustees hereby delegate to the Administrator the responsibility for accepting contributions to the Trust, remitting said contributions to the Custodian, and paying benefits as described herein from the Trust Fund. The Administrator is also responsible for crediting the deposits to the appropriate sub-trust, if sub-trusts have been established. In all cases, deposits of contributions shall be treated as actually made only as of the date the funds are accepted as in good order by the Administrator.
- B. The Trustees shall hold, invest, and reinvest the Trust Fund. The Administrator shall account for contributions, income, and payments made to or from the Trust. The Trustees, Custodian and Administrator shall not be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities of the City.
- C. Contributions to fund the benefits funded by the Trust shall consist of amounts determined pursuant to this Code and any applicable collective bargaining agreements.

#### **3.56.210 Sub-Trusts and Accounts**

Separate sub-trusts or accounts in the Trust Fund may be maintained by the Trustees

for appropriate categories of employees and/or Retirees. The Trustees shall not be required to maintain separate investments for any sub-trust or account. Earnings may be credited to each sub-trust or account from time to time.

### **3.56.220 Trust Payments**

A. Trust assets may be used to defray the cost of the City's obligations to pay for Health and Welfare Benefits for Retirees and their Dependents entitled to health care coverage under Sections 3.36.1950 through 3.36.1995, and for reasonable expenses, fees and allocated administrative fees and expenses. The benefits amount shall be determined by Parts 14 and 15 of Chapter 3.36 and any amount necessary to pay Health and Welfare Benefits as approved by the City Council.

B. Any amounts remaining in the Trust Fund, after all Health and Welfare Benefits, fees and expenses have been paid, shall be retained for payment of future Health and Welfare Benefits until all City liabilities for such benefits and expenses have been satisfied.

## **Part 4**

### **Accounts and Investments**

#### **3.56.300 Accounts**

Except to the extent prohibited by applicable law, the Trustees or Custodian may commingle the assets held by the Trust for investment purposes.

#### **3.56.310 Investment of Trust Fund**

A. Except as otherwise provided by Regulation, or as delegated to the Custodian, Administrator or an Investment Manager by the Trustees, the Trustees shall have

complete control of the management and investment of the Trust Fund, and shall have all powers necessary or convenient to enable it to exercise such control.

B. The Trustees or Trustees' delegatee may invest and reinvest funds held by the Trust Fund in any investments which are legal investments under applicable law, and shall have the discretion to decide the allocation of funds among such investments. The Trustees may purchase, acquire, hold, lease, sell, and convey real and personal Property, and place funds held herein with banks or trust companies which have corporate trust powers, with insurance companies authorized to do business within the State of California, and do all such other acts permitted by law.

## Part 5

### Composition, Powers and Duties of the Trustees

#### 3.56.400 Composition of Board of Trustees

A. The Board of Administration of the Police and Fire Department Retirement Plan shall serve as the Trustees of this Trust. The appointment and term of Trustees shall be made pursuant to Part 10 of Chapter 2.08.

B. By acceptance of their continued appointment to the Board of Administration of the Police Department Retirement Plan, the Trustees have agreed to accept this Trust and to perform the duties of the Trustees prescribed hereunder.

#### 3.56.410 Powers and Duties

In administering the Trust, the Trustees shall have such power and authority, including discretion with respect to the exercise of that power and authority, as may be necessary, advisable, desirable, or convenient to the Trustees, in their sole discretion

as fiduciaries subject to the provisions of this Chapter, and consistent with Part 10 of Chapter 2.08, plus all powers and duties given to them by the provisions of Chapter 3.36, including the power and authority:

- A. To enforce rules and Regulations with respect to the Trust not inconsistent with the Trust, GASB 43 or GASB 45, IRC Section 115 or applicable law;
- B. To determine, consistent with the applicable laws, rules or regulations, all questions of law or fact that may arise as to any person or entity claiming rights under the Trust;
- C. Subject to and consistent with GASB 43 and GASB 45, IRC Section 115 and applicable law, to construe and interpret the Trust and to correct any defect, supply any omission, or reconcile any inconsistency in the Trust;
- D. To adopt and amend investment policies, guidelines, restrictions, and requirements;
- E. To utilize Trust assets for the provision of Health and Welfare Benefits in accordance with this Chapter, for Retirees and Dependents who are eligible for a benefit as determined under Parts 16 and 17 of Chapter 3.36 and any other Health and Welfare Benefits as approved by the City Council and the payment of reasonable expenses of the Plan and the Trust;
- F. To implement termination of trusteeship and transfer of assets to successor trustees as permitted by law;
- G. To employ and contract with actuaries, auditors, accountants, investment advisers, investment brokers, other consultants, medical personnel, and other agents and employees;

- H. To collect and disburse all investment proceeds under the Trust;
- I. To provide for and promulgate all the Regulations and forms that are deemed as necessary or desirable in fulfilling its purposes of assisting in funding Health and Welfare Benefits and in maintaining proper records and accountings consistent with GASB 43 and GASB 45 and Internal Revenue Service requirements;
- J. To bring and defend actions, sue and be sued, and plead and be impleaded;
- K. To authorize the expenditure of funds for the reasonable expenses of the Trustees while engaged in the performance of their duties, including entering into agreements and expending funds for investment related services selected by the Trustees;
- L. To employ insurance companies, banks, trust companies, and/or investment brokers as agents for the keeping of records and the receipt and disbursement of funds held by or due to the Trustees;
- M. To exercise generally any of the powers of an owner with respect to all or any part of the Trust Fund;
- N. To administer or require oaths and affirmations, to issue subpoenas to compel the attendance of witnesses or the production of books, papers and documents, and to take and hear testimony concerning any matter pending before the Trustees. If any person so subpoenaed neglects or refuses to appear or produce any book, paper or document as required by said subpoena, or shall refuse to testify before the Trustees or answer any questions which a majority of the Trustees decides to be proper and pertinent, the Trustees shall have the power to initiate proceedings in the proper court to have such person declared guilty of contempt. The Chief of Police shall, on request of the Trustee, have such

subpoenas served by a police officer or officers; and

- O. To take all actions consistent with this Chapter necessary or appropriate to administer or carry out the purposes of the Trust; provided, however, the Trustees need not take any action unless in its opinion there are sufficient Trust assets available for the expense thereof.

### **3.56.420 Delegation by Trustees**

In addition to the powers stated in Section 3.56.410, the Trustees may from time to time delegate to an Investment Manager, Custodian or committee formed by the Trustees certain of their fiduciary responsibilities under the Trust. Any such Investment Manager, Custodian or committee shall remain a fiduciary until such delegation is revoked by the Trustees, which revocation may be without cause and without advance notice. Such individual, committee, or organization shall have such power and authority with respect to such delegated fiduciary responsibilities as the Trustees have under the Trust.

### **3.56.430 Limitations of Trustees' Responsibility**

The Trustees' responsibilities and liabilities shall be subject to the following limitations:

- A. The Trustees shall have no duties other than those expressly set forth in this Chapter and those imposed on the Trustees by applicable laws.
- B. The Trustees shall be responsible only for money and Property actually received by the Trust, and then to the extent described in this Chapter.
- C. The Trustees shall have no responsibility or duty to define the specific design of the Health and Welfare Benefits, including but not limited to, selecting providers; nor shall the Trustees be responsible for establishing the Health and Welfare

Benefits, or for setting the amount of premium subsidy to be paid by the Trust.

D. The Trustees shall not be responsible for any particular Federal, state or local income, payroll or other tax consequence to the City or a Retiree, spouse, or Dependent, and shall not be responsible for any tax-reporting obligation relating to payments or disbursements to such persons.

E. No Trustee shall have any liability for the acts or omissions of any predecessor or successor in office.

F. The Trustees shall have no liability for: (i) the acts or omissions of any Investment Manager; (ii) the acts or omissions of any insurance company; (iii) the acts or omissions of any Investment Fund; (iv) the acts or omissions of any Custodian; or (vi) the acts or omissions of any contractor, vendor, actuary or other service provider.

### **3.56.440 Certification to Trustees**

To the extent consistent with the Trustees fiduciary responsibilities, the Trustees may rely upon a certification of the Administrator with respect to any instruction, direction, or approval of such Administrator and may continue to rely upon such certification until a subsequent certification is filed with the Trustees. The Trustees shall have no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized.

### **3.56.450 Certification of Other Providers**

The Trustees shall be protected further in relying upon a written certification that purports to be from any Custodian, Investment Manager, insurance company, or mutual fund as to the person or persons authorized to give instructions or directions on behalf

of such Custodian, Investment Manager, insurance company or mutual fund and continue to rely upon such certification until a subsequent written certification is filed with the Trustees.

## **Part 6**

### **Accounting and Recordkeeping**

#### **3.56.500 Maintenance of Records**

The Trustees shall maintain or cause to be maintained suitable records, data, and information relating to its responsibilities hereunder. The Trust's books and records relating thereto shall be open to inspection and audit at reasonable times, subject to applicable law.

#### **3.56.510 Independent Audit**

The Trustees shall cause an independent audit of the Trust Fund to be performed annually for each Trust Year, with results reported to the Trustees.

#### **3.56.520 Annual Report**

The Trustees shall publish an annual consolidated report for each Trust Year that includes the fiscal transactions of the Trust Fund for the preceding Trust Year; and the amount of the accumulated cash, securities, and other assets of the Trust Fund.

## **Part 7**

### **Amendment and Termination**

#### **3.56.600 Amendment**

This Chapter may be amended by the City Council at any time and in any manner permitted by applicable law and not inconsistent with GASB 43 and GASB 45 or IRC Section 115. Notice of such amendment shall be promptly provided to the Trustees, Administrator, and Custodian.

### **3.56.610 Irrevocability**

The Trust created by this Chapter is irrevocable.

### **3.56.620 Termination**

The Trust shall have perpetual existence, except if dissolved by the City Council. Following any such dissolution, the Trustees shall proceed to wind up the affairs of the Trust in an orderly manner and within a reasonable period of time considering relevant circumstances. After paying or making reasonable provision for the payment of all liabilities of the Trust, and upon receipt of such releases, indemnities or like documentation as the Trustees may reasonably deem necessary for the protection of the Trust and the Trustees, the Trustees shall distribute the remaining Property of the Trust to the City, in cash or in kind or partly each. This distribution shall be made for the sole purpose of assisting the City in the payment of Health and Welfare Benefits for Retirees and their Dependents who are eligible for a benefit as determined under Parts 14 and 15 of Chapter 3.36 and any other Health and Welfare Benefits as approved by the City Council, and the payment of reasonable expenses of the Plan and the Trust. In making the distribution, the Trustees may retain an amount for reasonable, allocated administrative fees and expenses. In no event will Trust assets be distributed to or revert to any entity that is not the State of California, a political subdivision of the State, or an entity whose income is excluded from gross income under IRC Section 115.

## **Part 8**

## Miscellaneous

### 3.56.700 Construction and Governing Law

- A. The provisions of this Chapter shall be construed, enforced and administered and the validity thereof determined in accordance with the IRC and the laws of the City and the State. If any provision of the Trust created by this Chapter is held to violate the IRC, State law, or this Code, or to be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise affect the Trust.
- B. The headings and subheadings in this Chapter are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Trust created by this Chapter.
- C. In resolving any conflict among provisions of this Chapter and in resolving any other uncertainty as to the meaning or intention of any provision of this Trust created by this Chapter, the interpretation that: (i) causes the Trust to be exempt from tax as a governmental instrumentality under IRC Section 115; and (ii) causes the Trust to comply with all applicable requirements of the IRC and the laws of the City and the State, shall prevail over any different interpretation.

### 3.56.710 Parties Bound

The provisions of the Trust created by this Chapter shall be binding upon the Trustees, the Administrator, the City and, as the case may be, the delegates, successors, and assigns of each of them.

### 3.54.720 Necessary Parties to Disputes

Necessary parties to any accounting, litigation, or other proceedings relating to the Trust shall include only the Trustees.

### **3.54.730 Severability**

If any provisions of this Chapter shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Chapter shall continue to be fully effective.

### **3.54.740 Nonassignment**

The City may not commute, sell, assign, transfer, or otherwise convey any right to assets it may have under the Trust. The assets held under this Trust shall not be subject to the rights of the creditors of the City, the Trustees, the Custodian, or the Administrator, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third person.

### **3.54.750 Erroneous Payments**

If the Trustees or the Administrator makes any payment that, according to the terms of the Trust, and the benefits provided hereunder, should not have been made, the Trustees or Administrator may recover that incorrect payment, by whatever means necessary as allowed by State law, whether or not it was made due to the error of the Trustees or Administrator, from the person to whom it was made or from any other appropriate party, including but not limited to, deduction of the amount of the incorrect payment when making any future payments to or on behalf of the recipient of the incorrect payment.

**3.56.760 Release**

Any payment to an insurance company, or its designee, shall, to the extent thereof, be in full satisfaction of the claim of such entity being paid thereby and the Trustees or Administrator may condition payment thereof on the delivery by the insurance company, or its designee, of a duly executed receipt and release in such form as may be determined by the Trustees.

**SECTION 9.** The Director of Retirement Services shall have the following powers and duties with respect to funds deposited in the Police Department Health Care Trust Fund that is established pursuant to Chapter 3.54, until such time as the earlier of the following events to occur after the effective date of this Ordinance (i) the first regularly scheduled meeting of the Board of Administration of the Police and Fire Department Retirement Plan, (ii) the first meeting of the Board of Trustees of the Police Department Health Care Trust that can be convened:

- A. The power to select and negotiate and execute a contract with a custodian bank for the deposit of funds that are received by the Trust created pursuant to Chapter 3.54; and
- B. The power to enter into agreements with one or more investment managers for the investment of funds that are received by the Trust created pursuant to Chapter 3.56, into liquid asset classes in accordance with the adopted investment policy of the Police and Fire Department Retirement Plan.

**SECTION 10.** The Director of Retirement Services shall have the following powers and duties with respect to funds deposited in the Fire Department Health Care Trust Fund that is established pursuant to Chapter 3.56, until such time as the earlier of the following events to occur after the effective date of this Ordinance (i) the first regularly

scheduled meeting of the Board of Administration of the Police and Fire Department Retirement Plan, (ii) the first meeting of the Board of Trustees of the Fire Department Health Care Trust that can be convened:

- A. The power to select and negotiate and execute a contract with a custodian bank for the deposit of funds that are received by the Trust created pursuant to Chapter 3.56; and
- B. The power to enter into agreements with one or more investment managers for the investment of funds that are received by the Trust created pursuant to Chapter 3.56, into liquid asset classes in accordance with the adopted investment policy of the Police and Fire Department Retirement Plan.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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DENNIS D. HAWKINS, CMC  
City Clerk