

## **ARTICLE XV RETIREMENT**

### **SECTION 1500. Duty to Provide Retirement System.**

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees; provided, however the Council shall not establish any new or different plan after November 3, 2010 that is not actuarially sound.

*Amended at election November 2, 2010*

### **SECTION 1501. Exclusions.**

- (a) The Council in its discretion may exclude all or any of the following persons from any or all retirement plans, to wit: Persons mentioned in subparagraphs (1), (2), (4), (5), (6), and (7) of sub-section (a) of Section 1101 of this Charter; all persons employed or whose services are contracted for pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of this Charter; persons employed pursuant to Section 1110 of this Charter; persons in City service primarily for training, study or educational purposes; persons employed or paid on a part-time, per diem, per hour or any basis other than a monthly basis; temporary employees; persons employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons. Also, persons who are members of any other retirement or pension system, other than the federal social security system or any other federal retirement or pension system, and who are receiving credit in such other system for service rendered to the City may be excluded, as to such service, from any such plan or plans.
- (b) On or after November 3, 2010, the Council, may by Ordinance, exclude any officer or employee hired on or after the ordinance's effective date from any retirement plan or benefit of any retirement plan in existence on the effective date of the ordinance. Any such ordinance shall be subject to the requirements of applicable law.

*Amended at election November 2, 2010*

### **SECTION 1502. Authority to Join Other Systems.**

Subject to other provisions of this Article, the City, by and through its Council, is hereby empowered, but not required, to join or continue as a contracting agency in any

retirement or pension system or systems existing or hereafter created under the laws of the State of California or of the United States of America to which municipalities and municipal officers or employees are eligible.

### **SECTION 1503. Continuance of Existing Retirement Systems.**

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. The foregoing provisions of this Section shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San José or by the people of the City at the time of adoption or amendment of any such retirement system or systems. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.

### **SECTION 1504. Minimum Benefits for Certain Members of Police and Fire Departments.**

The Council, by ordinance, shall provide the following minimum benefits for the following members of the Police and Fire Departments of the City excepting those members who are hereinafter excluded from the application of this Section.

- (a) **RETIREMENT.** An officer or employee of the Police Department or Fire Department of the City shall be entitled, upon his or her request, to be retired from City service and to receive during such retirement until his or her death a monthly retirement allowance equal to fifty percent (50%) of his or her “final compensation,” hereinafter defined, if he or she:
  - (1) Completes twenty (20) years of “service,” hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or
  - (2) Completes twenty (20) years of “service,” hereinafter defined, is “disabled,” as such term is hereinafter defined, while holding such office or employment, and applies for such retirement while holding such office or employment.
- (b) **CONTRIBUTIONS.** Contributions required to be made by officers and employees of the Police Department or Fire Department of the City to any retirement fund, plan or system for or because of current service or current

service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or because of benefits provided by any such program.

- (c) **ACTUARIAL SOUNDNESS.** Any retirement plan or system established for officers or employees of the Police or Fire Departments shall be actuarially sound; and an actuarial report thereon shall be obtained at intervals not exceeding five (5) years.
- (d) **DEFINITIONS.** As used in this Section, “service” means service as defined on the effective date of this Charter in Topic 5 of Part 3A of Chapter 9 of Article II of the San José Municipal Code; and “final compensation” means final compensation as defined on the effective date of this Charter in Topic 1 of Part 3A of Chapter 9 of Article II of the San José Municipal Code, except that with respect to officers and employees who on the effective date of this Charter are members of the Police and Fire Department Retirement Plan established by Part 3 of Chapter 9 of Article II of the San José Municipal Code “final compensation” shall be deemed to mean the average monthly pay received by any such officer or employee during the three (3) years immediately preceding his or her request for retirement. Also, as used in this Section, “disabled” means the incurrence of a disability, short of death, of permanent duration, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his or her office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him or her; provided, however, that such a disability shall be deemed to be of permanent duration if the City or any of its authorized agencies finds that such disability will continue at least until the disabled person attains the age of fifty-five (55) years.
- (e) **MISCELLANEOUS.** The benefits hereinabove specified are minimum only; and the Council, in its discretion, may grant greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or she or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.

- (f) **PERSONS EXCLUDED.** The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions, to wit: Any and all persons hereinabove mentioned or referred to in Section 1501; officers or employees whose principal duties are those of a telephone operator, clerk, stenographer, secretary, machinist or mechanic; and any and all other officers or employees whose principal duties or functions do not fall clearly within the scope of active law enforcement or active fire fighting and prevention service even though such an officer or employee is subject to occasional call or is occasionally called upon to perform duties or functions within the scope of active law enforcement service or active fire fighting or prevention service, excepting persons employed and qualifying as police patrolmen or in equal or higher rank in the police department irrespective of the duties to which they are assigned, or persons employed and qualifying as firemen, fire fighters, hosemen or in equal or higher rank in the fire department irrespective of the duties to which they are assigned. Also, the provisions of this Section shall not apply to any person or persons who have been retired from the service of the City prior to the effective date of this Charter.

*Amended at election June 7, 1994*

**SECTION 1505. Minimum Benefits for Officers and Employees Other Than Members of the Police or Fire Departments.**

The Council, by ordinance, shall provide the following minimum benefits for all officers and employees of the City excepting those who are hereinafter excluded from the application of this Section.

- (a) **SERVICE RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, shall be entitled, upon his or her request, to be retired from City service and to receive during such retirement until his or her death an annual retirement allowance equal to two percent (2%) of his or her "final compensation," hereinafter defined, per each year of his or her first twenty-five (25) years of service, hereinafter defined, plus one percent (1%) of such final compensation per each year of his or her service in excess of twenty-five (25) years, subject to a maximum of eighty-five percent (85%) of such final compensation, if he or she:
- (1) Completes twenty-five (25) years or more of "service," hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or
  - (2) Attains, while holding such office or employment, the age of seventy (70) years or more regardless of his or her years of service.

- (b) **DISABILITY RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, who has completed ten (10) years of “service,” hereinafter defined, and is “disabled,” as such term is hereinafter defined, while holding such office or employment, and applies for a disability retirement while holding such office or employment, shall be entitled, upon his or her request, to be retired from City service because of such disability, and to thereafter receive, during the period of such disability, a monthly disability retirement allowance equal in amount to the monthly disability retirement allowance provided for in Topic 16 of Part 4 of Chapter 9 of Article II of the San José Municipal Code as said Topic and Chapter read on the effective date of this Charter.
- (c) **CONTRIBUTIONS.** Contributions required to be made by officers and employees of the City, other than those hereinafter excluded, to any retirement fund, system or plan for or because of current service or current service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or for or because of any benefits provided by any such program.
- (d) **DEFINITIONS.** As used in this Section, “service” means all service for which an officer or employee is entitled to credit under the provisions of the retirement system established by Part 4 of Chapter 9 of Article II of the San José Municipal Code as such Part 4 reads on the effective date of this Charter; and “final compensation” means final compensation as defined on the effective date of this Charter in Topic 1 of Part 4 of Chapter 9 of Article II of the San José Municipal Code. Also, as used in this Section, “disabled” means the incurrance of a disability, short of death, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his or her office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him or her.
- (e) **MISCELLANEOUS.** The benefits hereinabove specified are minimum only; and the Council in its discretion, may grant greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or she or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any service or disability

retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.

- (f) **PERSONS EXCLUDED.** The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions, to wit: Any and all persons mentioned or referred to in Section 1501; and any and all officers and employees in the Police Department and Fire Department of the City; any person or persons who have been retired from the service of the City prior to the effective date of this Charter; and any and all persons to whom, on the effective date of this Charter, the provisions of Topic 15A of Part 4 of Chapter 9 of Article II of the San José Municipal Code, as it reads on the effective date of this Charter, do not apply.

*Amended at election June 7, 1994*

**SECTION 1506. Conformance to State and Federal Law.**

Notwithstanding any other provisions of this Article, the City Council may, by ordinance, and subject to the provisions of California Government Code Section 3500 et seq., provide for the conformance of any retirement plan or plans established and maintained by the City of San José to Section 415 of the United States Internal Revenue Code or other applicable provisions of the laws of the United States or the State of California.

*Added at election June 5, 1990*

