

ORDINANCE NO. 27712

**AN ORDINANCE OF THE CITY OF SAN JOSÉ
AMENDING CHAPTER 3.36 AND CHAPTER 3.44 OF
TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO
IMPLEMENT STATE LAW REGARDING BENEFITS FOR
REGISTERED DOMESTIC PARTNERS**

WHEREAS, the Police and Fire Department Retirement Plan provides surviving spouse benefits for eligible surviving spouses of employees and retirees, provides for the payment of premiums for medical and dental insurance coverage for eligible beneficiaries and survivors of members and retirees, and provides cost-of-living adjustments for eligible survivors; and

WHEREAS, the State Legislature has enacted the California Domestic Partner Rights and Responsibilities Act of 2003 (the "Act") which extends the rights and duties of marriage to persons registered with the Secretary of State as domestic partners on and after January 1, 2005; and

WHEREAS, under the Act, registered domestic partners, former registered domestic partners, and surviving registered domestic partners have the same rights, protections and benefits as are granted to spouses, former spouses, and surviving spouses; and

WHEREAS, under the Act, no public agency in California may discriminate against any person or couple on the ground that the person is a registered domestic partner rather than a spouse or that the couple are registered domestic partners rather than spouses; and

WHEREAS, the Board of Administration for the Police and Fire Department Retirement Plan recommends that the Plan be amended to provide the same benefits to registered domestic partners, former registered domestic partners, and surviving registered domestic partners as are provided to spouses, former spouses, and surviving spouses; and

WHEREAS, the San José Police Officers Association and Local 230 of the International Association of Fire Fighters concur in the recommendation of the Board;

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

SECTION 1. Part 1 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended by adding a section to be numbered and entitled and to read as follows:

3.36.20.13 “Domestic Partnership”, “Domestic Partner” or “Domestic Partnership”.

- A. “Domestic partnership” means:
1. A registered domestic partnership that has been established by filing a Declaration of Domestic Partnership with the Secretary of State pursuant to Division 2.5 of the California Family Code; or
 2. A legal union of two persons of the same sex, other than a marriage, that was validly formed in a jurisdiction other than California if such union is recognized as a domestic partnership pursuant to California Family Code Section 299.2.
- B. “Domestic partner” means a person who has entered into a domestic partnership.

SECTION 2. Section 3.36.740 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.740 Service Credit Eligibility Under Plan-Approved Domestic Relations Orders.

- A. This section shall apply only in a case in which a court has ordered an amount or percentage of the service credit of a participant to be credited to an alternate payee’s separate account pursuant to a plan-approved domestic relations order which meets the requirements of Section 3.36.3600 of this Chapter.
- B. Solely for the purpose of meeting the minimum service requirements for a participant's or eligible survivor's qualification for retirement benefits, monthly allowances, survivors' benefits, medical benefits and dental benefits under this Plan, the service credit of the participant shall be aggregated with the service credit awarded the alternate payee.

- C. Solely for the purpose of determining whether the participant is eligible to retire in order that an alternate payee may begin distribution from the alternate payee's separate account under Section 3.36.3630, the service credit of the participant shall be aggregated with the service credit awarded the alternate payee.
- D. For the purposes of this section, the terms "participant" and "alternate payee" shall have the meanings set forth in Part 17 of this Chapter.

SECTION 3. Part 8 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

Part 8

SURVIVORSHIP AND DEATH BENEFITS

3.36.1200 Death Before Receipt Of Retirement Allowance -When Contributions, Full Allowances And Minimum Payments Are Payable.

- A. The benefits specified in this section shall be payable in accordance with this section in each of the following situations:
 - 1. Where a member who is entitled to immediate retirement for service under the provisions of this Chapter dies on or after August 6, 1970, while a member of this Plan and before being retired for service or disability;
 - 2. Where a person who is entitled to immediate retirement for service under the provisions of this Chapter is granted a leave of absence without full compensation and pay and such person dies on or after August 6, 1970, while on such leave of absence and before being retired for service or disability;
 - 3. Where a person who has been retired for service under the provisions of this Chapter dies on or after August 6, 1970, before receiving any service retirement allowance or pay;
 - 4. Where a person who has been retired for a service-connected disability under the provisions of this Chapter dies on or after August 6, 1970, during the service-connected disability retirement and before receiving any disability retirement allowance or pay;

5. Where a member dies on or after August 6, 1970, while a member of this Plan, but before being retired hereunder for service or disability, if the death arises out of and in the course of his or her employment with the City.

B. Definitions. For the purposes of this section, the following terms shall have the following meanings:

1. "Surviving spouse" means the person to whom the deceased person described in subsection A. above was married at the time of the deceased person's death and who survives the deceased person's death and none other.
2. "Surviving domestic partner" means the person with whom the deceased person described in subsection A. above, at the time of the deceased person's death had established a domestic partnership and who survives the deceased person's death, and none other.
3. "Surviving child" and "surviving children" mean the natural or adopted child or children of the deceased person described in subsection A. above that meets all of the following requirements:
 - a. The child survives the deceased person's death; and
 - b. The child is neither married nor a member of a domestic partnership at the time of the deceased person's death; and
 - c. The child is under the age of eighteen years at the time of the deceased person's death; and
 - d. The child is in existence or conceived at the time of the deceased person's death; and
 - e. If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to the deceased person's death.

C. Contributions and Interest Payable to Surviving Spouse or Surviving Domestic Partner. If the deceased person described in subsection A. above leaves a surviving spouse or a surviving domestic partner, the surviving spouse

or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the retirement fund a sum of money equal to all contributions of the deceased person to the Retirement Fund which have not previously been withdrawn from the Retirement Fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent per annum.

D. Contributions and Interest Payable to Surviving Children Where There Is No Surviving Spouse and No Surviving Domestic Partner.

1. If the deceased person described in subsection A. above leaves no surviving spouse and no surviving domestic partner but leaves a surviving child or surviving children, the eligible surviving child or children shall be entitled to receive and shall be paid from the Retirement Fund a sum of money equal to all contributions of the deceased person to the Retirement Fund which have not previously been withdrawn from the Retirement Fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent per annum. The sum to be paid to each eligible child shall be determined by dividing the total amount of unwithdrawn contributions plus interest thereon, by the number of eligible surviving children.
2. In the event that the estate of the deceased person establishes by appropriate court action a legal claim to all or any part of the contributions and interest paid to the surviving child or children under this subsection D. because of the provisions of San José Municipal Code Section 2903.250(d) as it existed on August 6, 1970 (as originally adopted by Ordinance No. 9506), monthly allowances or benefits which would otherwise be payable to any surviving child or surviving children under and by virtue of subsection G. of this section shall be withheld and not paid to such surviving child or children until such time as the total amount of allowances so withheld equals the total amount which the court

establishes is due to the estate. In the event such withholding is insufficient to pay such amount due to the estate, the Retirement Board may recover by suit that portion of the amount due to the estate which cannot be recovered by withholding such monthly allowances or benefits.

- E. **Contributions and Interest Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children.** If the deceased person described in subsection A. above leaves no surviving spouse, no surviving domestic partner and no eligible surviving child or children, the deceased person's estate shall be entitled to receive and shall be paid from the retirement fund a sum of money equal to all contributions of the deceased person to the retirement fund which have not previously been withdrawn from the retirement fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent per annum.
- F. **Survivorship Allowance Payable to Surviving Spouse or Surviving Domestic Partner.** If the deceased person described in subsection A. above leaves a surviving spouse or a surviving domestic partner, such surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the Retirement Fund a monthly survivorship allowance in the amount specified in Section 3.36.1270 Of this Chapter, subject to the provisions of subsection H. of this Section and to the following:
1. If the deceased person died prior to October 1, 1999, the monthly allowance payable to the surviving spouse shall be paid for the remainder of the surviving spouse's life.
 2. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an Optional Settlement pursuant to Part 9.5 of this Chapter, if the deceased person died on or after October 1, 1999, but prior to January 1, 2005, the monthly allowance payable to the

surviving spouse shall be paid until the surviving spouse marries or dies, whichever is the earlier date, and no longer.

3. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an Optional Settlement pursuant to Part 9.5 of this Chapter, if the deceased person died on or after January 1, 2005, the monthly allowance payable to the surviving spouse or surviving domestic partner shall be paid until the surviving spouse or surviving domestic partner marries, establishes a domestic partnership or dies, whichever is the earlier date, and no longer.

G. Survivorship Allowance Payable to Surviving Child or Children. If the deceased person described in subsection A. above leaves a surviving child or children, the eligible surviving child, or each of the eligible surviving children if there is more than one surviving child, shall be entitled to receive and shall be paid from the retirement fund, subject to the provisions of and except as provided in subsection H. of this section, until he or she marries, establishes a domestic partnership, attains the age of eighteen years or dies, whichever is the earliest date, and no longer, a monthly survivorship allowance in the amount specified in Section 3.36.1300 of this Chapter.

H. Deduction from Survivorship Allowances.

1. Anything elsewhere in this section or this Part to the contrary notwithstanding, all of the monthly allowances or benefits which would otherwise be payable to any surviving spouse, surviving domestic partner, eligible surviving child or surviving children pursuant to the provisions of subsections F. and G. of this section shall be withheld and not paid to the persons who would otherwise be entitled to the same until such time as the total amount of allowances so withheld equals the total amount paid or payable to a surviving spouse or surviving domestic partner of the deceased person or to the surviving child or children of the deceased person or to the estate of the deceased person pursuant to the provisions of subsections C., D. or E. of this Section, and the allowances so withheld

shall never be paid to the persons who would otherwise have been entitled to the same, it being the intention that the monthly survivorship allowances described in subsections F. and G. shall not be owing or payable and shall not commence until such time as there shall have elapsed from and after the death of the deceased person a number of months equal to that number obtained by dividing the total amount of money which is payable or paid to the surviving spouse or surviving domestic partner of the deceased person or to the surviving child or children of the deceased person or to the estate of the deceased person pursuant to the provisions of the above subsections C., D. or E. by the sum of the monthly survivorship allowances which would otherwise be payable to a surviving spouse or surviving domestic partner and to a surviving child or children pursuant to the provisions of subsections F. and G. of this Section. By way of explanation, if the deceased person should die leaving a surviving spouse or surviving domestic partner and surviving children, and if the amount payable to the spouse or domestic partner pursuant to the provisions of subsection C. were nine hundred dollars and the monthly amount payable to the spouse or domestic partner pursuant to subsection F. were two hundred dollars and the amount payable to surviving children pursuant to subsection G. were one hundred dollars, none of the allowances provided for in subsections F. and G. would become due or payable until there shall have elapsed from and after the deceased person's death a number of months equal to nine hundred dollars divided by three hundred dollars, or three months. No such allowance shall be paid or be payable to a surviving spouse or surviving domestic partner if at the time such allowance becomes payable the surviving spouse or surviving domestic partner shall have died, remarried, or established a domestic partnership; and no such allowance shall be paid or payable to any surviving child if at the time such allowance

becomes payable to such child he or she shall have died, married, established a domestic partnership or attained the age of eighteen years.

2. Notwithstanding any of the foregoing to the contrary, contributions and interest payable under subsections C., D. and E., at the option of the eligible recipient thereof, either shall be payable in a lump sum or shall be payable monthly in an amount equal to the amount of the monthly survivorship allowance payable pursuant to the provisions of subsections F. and G. of this Section, until the contributions and interest are exhausted, at which time payment of the monthly survivorship allowance shall commence. In the event that all the eligible recipients die before receiving the total amount of contributions and interest, the amount remaining to be paid shall be paid to the estate of the eligible recipient or, if more than one, the estate of the eligible recipient who dies last. In no event shall the eligible recipient who elects not to receive a lump sum payment of contributions and interest receive any less or more than the monthly survivorship allowance in any month even though the contributions and interest are exhausted within a month.
 3. The particular recipient or parent or guardian, in the case of a minor, or representative of an estate, in the case of an estate, shall exercise the above option in writing no later than thirty days after death of the deceased person on a form to be furnished by this system. Failure to make such election in writing shall be deemed an election to receive the contributions and interest in a lump sum payment.
- I. **Minimum Amount Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children.** If the deceased person described in subsection A. should leave no surviving spouse, no surviving domestic partner and no eligible surviving child or children, and if, in addition, the amount payable to the deceased person's estate pursuant to the provisions of subsection E. of this section should be less than one thousand dollars, then in that event there shall be paid from the Retirement Fund to the estate such

additional amount as would, when added to the amount payable to the estate under the provisions of subsection E., equal one thousand dollars.

- J. Anything herein in this part to the contrary notwithstanding, no persons other than those above specified shall be entitled to or receive any benefits or allowances whatsoever because of or as a result of the death of any person described in subsection A. above, and no moneys other than those above specified shall be paid or payable to the survivors or estate of the deceased person.

3.36.1210 Death Before Receipt Of Retirement Pay - When Contributions, Smaller Allowance And Minimum Benefits Are Payable.

- A. The benefits specified in this Section shall be payable in accordance with this Section in each of the following situations:
1. Where a member who is not entitled to immediate retirement for service dies on or after August 6, 1970, while a member of this Plan and prior to being retired for service or disability, if such member at the time of his or her death is entitled to credit for not less than two years' service and if, in addition, the death does not arise out of and in the course of his or her employment with the City;
 2. Where a person who has been retired under this Plan for a nonservice-connected disability dies on or after August 6, 1970, during his or her nonservice-connected disability retirement before receiving any disability allowance or pay.
- B. **Definitions.** For the purposes of this section, the following terms shall have the following meanings:
1. "Surviving spouse" means the person to whom the deceased person described in subsection A. above was married at the time of said deceased person's death and who survives said deceased person's death, and none other.
 2. "Surviving domestic partner" means the person with whom the deceased person described in subsection A. above, at the time of the deceased

person's death had established a registered domestic partnership and who survives the deceased person's death, and none other.

3. "Surviving child" and "surviving children" mean the natural or adopted child or children of the deceased person described in subsection A above that meets all of the following requirements:
 - a. The child survives the deceased person's death; and
 - b. The child is neither married nor a member of a domestic partnership at the time of the deceased person's death; and
 - c. The child is under the age of eighteen years at the time of the deceased person's death; and
 - d. The child is in existence or conceived at the time of the deceased person's death; and
 - e. If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to the deceased person's death.

C. Contributions and Interest Payable to Surviving Spouse or Surviving Domestic Partner. If the deceased person described in subsection A. above leaves a surviving spouse or surviving domestic partner, the surviving spouse or surviving domestic partner shall be entitled to receive and shall be paid from the retirement fund a sum of money equal to all contributions of the deceased person to the retirement fund which have not previously been withdrawn from the retirement fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent per annum.

D. Contributions and Interest Payable to Surviving Children Where There Is No Surviving Spouse and No Surviving Domestic Partner.

1. If the deceased person described in subsection A. above leaves no surviving spouse and no surviving domestic partner but leaves a surviving child or surviving children, the eligible surviving child or children shall be

entitled to receive and shall be paid from the retirement fund a sum of money equal to all contributions of the deceased person to the retirement fund which have not previously been withdrawn from the retirement fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent per annum. The sum to be paid to each eligible child shall be determined by dividing the total amount of unwithdrawn contributions plus interest thereon, by the number of eligible surviving children.

2. In the event that the estate of the deceased person establishes by appropriate court action a legal claim to all or any part of the contributions and interest paid to the surviving child or children under this subsection D. because of the provisions of San José municipal code Section 2903.251 (d) as it existed on August 6, 1970 (as originally adopted by Ordinance No. 9506), monthly allowances or benefits which would otherwise be payable to any surviving child or surviving children pursuant to subsection G. of this section shall be withheld and not paid to such surviving child or children until such time as the total amount of allowances so withheld equals the total amount which the court establishes is due to the estate. In the event such withholding is insufficient to pay such amount due to the estate, the Retirement Board may recover by suit that portion of the amount due to the estate which cannot be recovered by withholding such monthly allowances or benefits.

- E. Contributions and Interest Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children.** If the deceased person described in subsection A. above leaves no surviving spouse, no surviving domestic partner and no eligible surviving child or children, the deceased person's estate shall be entitled to receive and shall be paid from the retirement fund a sum of money equal to all contributions of the deceased person to the retirement fund which have not previously been withdrawn from the

retirement fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent per annum.

F. Survivorship Allowance Payable to Surviving Spouse or Surviving Domestic Partner. If the deceased person described in subsection A. above leaves a surviving spouse or surviving domestic partner, such surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the Retirement Fund a monthly survivorship allowance in the amount specified in Section 3.36.1280 of this Chapter, subject to the provisions of subsection H. of this section and to the following:

1. If the deceased person died prior to October 1, 1999, the monthly allowance payable to the surviving spouse shall be paid for the remainder of the surviving spouse's life.
2. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an Optional Settlement pursuant to Part 9.5 of this Chapter, if the deceased person died on or after October 1, 1999, but prior to January 1, 2005, the monthly allowance payable to the surviving spouse shall be paid until the surviving spouse marries or dies, whichever is the earlier date, and no longer.
3. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an Optional Settlement pursuant to Part 9.5 of this Chapter, if the deceased person died on or after January 1, 2005, the monthly allowance payable to the surviving spouse or surviving domestic partner shall be paid until the surviving spouse or surviving domestic partner marries, establishes a domestic partnership or dies, whichever is the earlier date, and no longer.

G. Survivorship Allowance Payable to Surviving Child or Children. If the deceased person described in subsection A. above leaves a surviving child or surviving children, the eligible surviving child, or each of the eligible surviving

children, if there is more than one surviving child, shall be entitled to receive and shall be paid from the retirement fund, subject to the provisions of and except as provided in subsection H. of this section, until he or she marries, establishes a domestic partnership, attains the age of eighteen years or dies, whichever is the earliest date, and no longer, as a monthly survivorship allowance, the amount of monthly survivorship allowance specified in Section 3.36.1300 of this Chapter.

H. Deduction from Survivorship Allowance.

1. Anything elsewhere in this Section or this Part to the contrary notwithstanding, all of the monthly allowances or benefits which would otherwise be payable to any surviving spouse, surviving domestic partner, eligible surviving child or surviving children pursuant to the provisions of subsections F. and G. of this section shall be withheld and not paid to the persons who would otherwise be entitled to the same until such time as the total amount of allowances so withheld equals the total amount paid or payable to a surviving spouse or surviving domestic partner of the deceased person or to the surviving child or children of the deceased person or to the estate of the deceased person pursuant to the provisions of subsections C., D. or E. of this section, and the allowances so withheld shall never be paid to the persons who would otherwise have been entitled to the same, it being the intention that the monthly survivorship allowances described in subsections F. and G. shall not be owing or payable and shall not commence until such time as there shall have elapsed from and after, the death of the deceased person a number of months equal to that number obtained by dividing the total amount of money which is payable or paid to the surviving spouse or surviving domestic partner of the deceased person or to the surviving child or children of the deceased person or to the estate of the deceased person pursuant to the provisions of the above subsections C., D. or E. by the sum of the monthly survivorship allowances which would otherwise be payable to a surviving spouse or surviving domestic partner or to a

surviving child or children pursuant to the provisions of subsections F. and G. of this section. By way of explanation, if the deceased person should die leaving a surviving spouse or surviving domestic partner and surviving children, and if the amount payable to the spouse pursuant to the provisions of subsection C. were nine hundred dollars and the monthly amount payable to the spouse or domestic partner pursuant to subsection F. were two hundred dollars and the amount payable to surviving children pursuant to subsection G. were one hundred dollars, none of the allowances provided for in subsections F. and G. would become due or payable until there shall have elapsed from and after the deceased person's death a number of months equal to nine hundred dollars divided by three hundred dollars, or three months. No such allowance shall be paid or be payable to a surviving spouse or surviving domestic partner if at the time such allowance becomes payable the surviving spouse or surviving domestic partner shall have died; and no such allowance shall be paid or payable to any surviving child if at the time such allowance becomes payable to such child he or she shall have died, married, established a domestic partnership, or attained the age of eighteen years.

2. Notwithstanding any of the foregoing to the contrary, contributions and interest payable under subsections C., D. and E., at the option of the eligible recipient thereof, either shall be payable in a lump sum or shall be payable monthly in an amount equal to the amount of the monthly survivorship allowance payable pursuant to the provisions of subsections F. and G. of this section, until the contributions and interest are exhausted, at which time payment of the monthly survivorship allowance shall commence. In the event that all the eligible recipients die before receiving the total amount of contributions and interest, the amount remaining to be paid shall be paid to the estate of the eligible recipient or, if more than one, the estate of the eligible recipient who dies last. In no event shall the eligible recipient who elects not to receive a lump sum

payment of contributions and interest receive any less or more than the monthly survivorship allowance in any month even though the contributions and interest are exhausted within a month.

3. The particular recipient or parent or guardian, in the case of a minor, or representative of an estate, in the case of an estate, shall exercise the above option in writing no later than thirty days after the death of the deceased person on a form to be furnished by this system. Failure to make such election in writing shall be deemed an election to receive the said contributions and interest in a lump sum payment.

- I. **Minimum Amount Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children.** If the deceased person described in subsection A. above should leave no surviving spouse, no surviving domestic partner and no eligible surviving child or children, and if, in addition, the amount payable to the deceased person's estate pursuant to the provisions of subsection E. of this section should be less than one thousand dollars, then in that event there shall be paid from the retirement fund to the estate such additional amount as would, when added to the amount payable to the estate under the provisions of subsection E., equal one thousand dollars.
- J. Anything herein in this part to the contrary notwithstanding, no persons other than those above specified shall be entitled to or receive any benefits or allowances whatsoever because of or as a result of the death of any person described in subsection A. above, and no moneys other than those above specified shall be paid or payable to the survivors or estate of the deceased person.

3.36.1230 Death After Receipt Of Retirement Pay - When Full Allowance And Minimum Benefits Are Payable.

- A. The benefits specified in this section shall be payable in accordance with this Section in each of the following situations:
 1. Where a person who has been retired for service under the provisions of this Chapter dies after receiving any service retirement allowance or pay;

2. Where a person who has been retired for a service-connected disability under the provisions of this Chapter dies during his or her service-connected disability retirement after receiving any disability retirement allowance or pay.

B. **Definitions.** For the purposes of this section, the following terms shall have the following meanings:

1. "Surviving spouse" means the person who survives the deceased person and who was married to the deceased person both at the time of the deceased person's death and at the time the deceased person was retired for service or disability, and no other person. A person married to the deceased person at the time of the deceased person's death or at the time the deceased person was retired is not a "surviving spouse" unless he or she was married to the deceased person at both times.
2. "Surviving domestic partner" means the person with whom the deceased person described in subsection A. above, both at the time of the deceased person's death and at the time the deceased person was retired for service or disability, had established a domestic partnership and who survives the deceased person's death, and no other person. A person in a domestic partnership with the deceased person at the time of the deceased person's death or at the time the deceased person was retired is not a "surviving domestic partner" unless he or she was a domestic partner of the deceased person at both times.
3. "Surviving child" or "surviving children" means the natural or adopted child or children of such deceased person that meets all of the following requirements:
 - a. The child survives the deceased person's death; and
 - b. The child is neither married nor a member of a domestic partnership at the time of the deceased person's death; and
 - c. The child is under the age of eighteen years at the time of the deceased person's death; and

- d. The child is in existence or conceived at the time of the deceased person's death; and
- e. If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to the time of the deceased person's death.

C. Survivorship Allowance Payable to Surviving Spouse or Surviving

Domestic Partner. If the deceased person described in subsection A. above leaves a surviving spouse or a surviving domestic partner, the surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the retirement fund a monthly survivorship allowance in the amount specified in Section 3.36.1270, subject to the following:

- 1. If the deceased person retired or died prior to October 1, 1999, the monthly allowance payable to the surviving spouse shall be paid for the remainder of the surviving spouse's life.
- 2. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an Optional Settlement pursuant to Part 9.5 of this Chapter, if the deceased person retired or died on or after October 1, 1999, but prior to January 1, 2005, the monthly allowance payable to the surviving spouse or surviving domestic partner shall be paid until the surviving spouse or surviving domestic partner marries, establishes a domestic partnership or dies, whichever is the earlier date, and no longer.
- 3. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an Optional Settlement pursuant to Part 9.5 of this Chapter, if the deceased person died on or after January 1, 2005, the monthly allowance payable to the surviving spouse or surviving domestic partner shall be paid until the surviving spouse or surviving domestic partner marries, establishes a domestic partnership or dies, whichever is the earlier date, and no longer.

- D. **Survivorship Allowance Payable to Surviving Child or Children.** If the deceased person described in subsection A. above leaves a surviving child or surviving children, the eligible surviving child, or each of the eligible surviving children if there is more than one surviving child, shall be entitled to receive and shall be paid from the Retirement Fund until he or she marries, establishes a domestic partnership, attains the age of eighteen years or dies, whichever is the earliest date, and no longer, as a monthly survivorship allowance, the amount of monthly survivorship allowance specified in Section 3.36.1300.
- E. **Minimum Amount Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner, and No Surviving Children.** If the deceased person described in subsection A. above should die leaving no surviving spouse, no surviving domestic partner and no eligible surviving child or children, there shall be paid from the Retirement Fund to the deceased person's estate as a death benefit the sum of one thousand dollars and no more.
- F. Anything in this Chapter to the contrary notwithstanding, no persons other than those specified above shall be entitled to or receive any benefits or allowances whatsoever because of or as a result of the death of a person described in subsection A. of this Section, and no moneys other than those specified above shall be paid or payable to the survivors or estate of the deceased person.

3.36.1240 Death After Receipt Of Retirement Pay - When Smaller Allowance And Minimum Benefits Are Payable.

- A. The benefits specified in this section shall be payable in accordance with this section in the following situation:
1. Where a person who has been retired for a nonservice-connected disability under the provisions of this Chapter dies while on such nonservice-connected disability retirement after receiving any disability retirement allowance or pay.
- B. **Definitions.** For the purposes of this section, the following terms shall have the following meanings:

1. “Surviving spouse” means the person who survives the deceased person described in subsection A. above and who was married to the deceased person both at the time of the deceased person's death and at the time the deceased person was retired for disability, and no other person. A person married to the deceased person at the time of the deceased person's death or at the time such deceased person was retired for disability is not a “surviving spouse” unless he or she was married to the deceased person at both times.
2. “Surviving domestic partner” means the person with whom the deceased person described in subsection A. above, both at the time of the deceased person's death and at the time the deceased person was retired for disability, had established a domestic partnership and who survives the deceased person's death, and no other person. A person in a domestic partnership with the deceased person at the time of the deceased person's death or at the time the deceased person was retired is not a “surviving domestic partner” unless he or she was a domestic partner of the deceased person at both times.
3. “Surviving child” or “surviving children” means the natural or adopted child or children of the deceased person described in subsection A. above that meets all the following requirements:
 - a. The child survives the deceased person's death; and
 - b. The child is neither married nor a member of a domestic partnership at the time of the deceased person's death; and
 - c. The child is under the age of eighteen years at the time of the deceased person's death; and
 - d. The child is in existence or conceived at the time of the deceased person's death; and
 - e. If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to the time of the deceased person's death.

- C. Survivorship Allowance Payable to Surviving Spouse or Surviving Domestic Partner.** If the deceased person described in subsection A. above leaves a surviving spouse or a surviving domestic partner, the surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the Retirement Fund a monthly survivorship allowance in the amount specified in Section 3.36.1280, subject to the following:
1. If the deceased person retired or died prior to October 1, 1999, the monthly allowance payable to the surviving spouse shall be paid for the remainder of the surviving spouse's life.
 2. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an Optional Settlement pursuant to Part 9.5 of this Chapter, if the deceased person retired or died on or after October 1, 1999, but prior to January 1, 2005, the monthly allowance payable to the surviving spouse shall be paid until the surviving spouse marries or dies, whichever is the earlier date, and no longer.
 3. Except as provided in Section 3.36.1290, and except in the case where the deceased person had elected an Optional Settlement pursuant to Part 9.5 of this Chapter, if the deceased person died on or after January 1, 2005, the monthly allowance payable to the surviving spouse or surviving domestic partner shall be paid until the surviving spouse or surviving domestic partner marries, establishes a domestic partnership or dies, whichever is the earlier date, and no longer.
- D. Survivorship Allowance Payable to Surviving Child or Children.** If the deceased person described in subsection A. above leaves a surviving child or surviving children, the eligible surviving child, or each of the eligible surviving children if there is more than one surviving child, shall be entitled to receive and shall be paid from the Retirement Fund until he or she marries, establishes a domestic partnership, attains the age of eighteen years or dies, whichever is the earliest date, and no longer, as a monthly survivorship allowance, the amount of monthly survivorship allowance specified in Section 3.36.1300.

- E. **Minimum Amount Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner and No Surviving Children.** If the deceased person described in subsection A. above leaves no surviving spouse, no surviving domestic partner, and no eligible surviving child or children, there shall be paid from the Retirement Fund to the deceased person's estate as a death benefit the sum of one thousand dollars and no more.
- F. Anything in this Chapter to the contrary notwithstanding, no persons other than those specified above shall be entitled to or receive any benefits or allowances whatsoever because of or as a result of the death of a person described in subsection A. of this section, and no moneys other than those specified above shall be paid or payable to the survivors or estate of the deceased person.

3.36.1250 Minimum Death Benefits - When Payable.

- A. The benefits specified in this Section shall be payable in accordance with this Section in each of the following situations:
1. Where a member who is entitled to credit for less than two years of service dies on or after August 6, 1970 while a member of this Plan and prior to being retired for service or disability and prior to receiving any service or disability retirement allowance or pay, if his or her death does not arise out of and in the course of his or her employment with the City;
 2. If a member of this Plan is granted a leave of absence from City service without full city compensation and pay before being retired for service or disability, and if in addition such member is not entitled at the time he or she receives such leave of absence to immediate retirement for service, and if such person should die on or after August 6, 1970 while on such leave of absence prior to being retired for disability or service and prior to receiving any service or disability retirement allowance or pay.
- B. For the purposes of this Section, the following terms shall have the following meanings:

1. "Surviving spouse" means the person who survives the deceased person described in subsection A above and who was married to the deceased person at the time of the deceased person's death, and no other person.
2. "Surviving domestic partner" means the person with whom the deceased person described in subsection A. above, at the time of the deceased person's death, had established a registered domestic partnership and who survives the deceased person's death, and no other person.
3. "Surviving child" and "surviving children" mean the natural or adopted child or children of the deceased person described in subsection A above that meets all of the following requirements:
 - a. The child survives the deceased person's death; and
 - b. The child is neither married nor a member of a domestic partnership at the time of the deceased person's death; and
 - c. The child is under the age of eighteen years at the time of the deceased person's death; and
 - d. If the child is an adopted child of the deceased person, the adoption was completed pursuant to law prior to such deceased person's death.

C. Contributions and Interest Payable to Surviving Spouse or Surviving Domestic Partner; Minimum Amount Payable.

1. If the deceased person described in subsection A above leaves a surviving spouse or surviving domestic partner, the surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid from the Retirement Fund a sum of money equal to all contributions of the deceased person to the Retirement Fund which have not previously been withdrawn from the Retirement Fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent per annum.

2. If the total of the unwithdrawn contributions plus interest thereon should be less than one thousand dollars, then in that event there shall be paid from the Retirement Fund to the surviving spouse or surviving domestic partner such additional amount as would, when added to the unwithdrawn contributions and interest thereon, equal one thousand dollars.

D. Contributions and Interest Payable to Surviving Child or Children; Minimum Amount Payable.

1. If the deceased person described in subsection A above leaves no surviving spouse and no surviving domestic partner but leaves a surviving child or surviving children, the eligible surviving child or children shall be entitled to receive and shall be paid from the Retirement Fund a sum of money equal to all contributions of the deceased person to the Retirement Fund which have not previously been withdrawn from the Retirement Fund by the deceased person, plus interest on the unwithdrawn contributions as earned by the fund by the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent per annum. The sum to be paid to each surviving child shall be determined by dividing the total amount of unwithdrawn contributions plus interest thereon, by the number of surviving children.
2. If the total of the unwithdrawn contributions plus interest thereon should be less than one thousand dollars, then in that event there shall be paid from the Retirement Fund to the surviving child or children such additional amount as would, when added to the unwithdrawn contributions and interest thereon, equal one thousand dollars. The additional sum to be paid to each surviving child shall be determined by dividing the additional amount by the number of surviving children.

- E. In the event that the estate of the deceased person establishes by appropriate court action a legal claim to all or any part of the contributions and interest paid to the surviving child or children under this subsection D because of the provisions of San José Municipal Code Section 2903.255(b) as it existed on August 6, 1970 (as originally adopted by Ordinance No. 9506), the contributions and interest

thereon which would otherwise be payable to any eligible surviving child or surviving children pursuant to subsection D 1 above shall be withheld and not paid to such surviving child or children until such time as the total amount of contributions and interest thereon so withheld equals the total amount of contributions and interest which the court action establishes is due the estate. In the event such withholding is insufficient to pay such amount due to the estate, the Retirement Board may recover by suit that portion of the amount due to the estate which cannot be recovered by withholding such contributions and interest thereon.

F. Contributions and Interest Payable to Estate Where There Is No Surviving Spouse, No Surviving Domestic Partner, and No Surviving Children; Minimum Amount Payable.

1. If the deceased person described in subsection A above leaves no surviving spouse, no surviving domestic partner and no eligible surviving child or children, the deceased person's estate shall be entitled to receive and shall be paid from the Retirement Fund a sum of money equal to all contributions of the deceased person to the Retirement Fund which have not previously been withdrawn from the Retirement Fund by said deceased person, plus interest on the unwithdrawn contributions as earned by the fund during the deceased person's period of aggregate service, but in no case shall the interest be in excess of two percent per annum.

2. If the total of the unwithdrawn contributions plus interest thereon should be less than one thousand dollars, then in that event there shall be paid from the Retirement Fund to the deceased person's estate such additional amount as would, when added to the unwithdrawn contributions and interest thereon, equal one thousand dollars.

G. Anything in this Chapter to the contrary notwithstanding, no persons other than those specified above shall be entitled to or receive any benefits or allowances whatsoever because of or as a result of the death of a person described in subsection A of this section, and no moneys other than those specified above

shall be paid or payable to the surviving spouse, surviving domestic partner, surviving child or children, or estate of the deceased person.

3.36.1260 Return Of Contributions To Certain Survivors Of Person Who Dies Before Reaching Fifty- Five.

- A. If a person who becomes a member of this Plan because of the reason set forth in Section 3.36.760 should die before he or she reaches fifty-five years of age, such person's surviving spouse, surviving domestic partner, surviving child or children (as such terms are defined in Section 3.36.1200) or estate shall be entitled under the conditions described in subsection C, D or E of Section 3.36.1250, whichever is applicable, to one of the following:
1. Either to the return from the Retirement Fund of a sum of money equal to the deceased person's contributions to the Retirement Fund, plus interest thereon to the date of death, as earned by such fund, said interest not to exceed two percent per annum, or to the sum of one thousand dollars, whichever is greater; or
 2. If the death because of which the survivorship allowance is payable arose out of and in the course of the deceased person's employment with the City, as a result of injury or disease arising out of and in the course of the deceased person's employment with the City, while the person was an employee of the City and a member of this Plan, and a survivorship allowance is not payable pursuant to any other provision of this Chapter, either the return from the Retirement Fund of a sum of money equal to the deceased person's contributions to the Retirement Fund, plus interest thereon to the date of death, as earned by such fund, said interest not to exceed two percent per annum, or to the sum of one thousand dollars, whichever is greater.
- B. For the purposed of this Section, if a surviving spouse or surviving domestic partner marries or establishes a domestic partnership, such marriage or domestic partnership shall not deprive the surviving spouse or surviving domestic partner of payment hereunder, provided he or she either is married to the deceased

person at the time of the deceased person's death or is a domestic partner of the deceased person at the time of the deceased person's death.

3.36.1270 Amount Of Survivorship Allowance To Surviving Spouse or Surviving Domestic Partner When Such Is Determinable By Section 3.36.1270.

Whenever in any other section of this Part 8 it is stated that a surviving spouse or surviving domestic partner shall be entitled to receive and be paid from the Retirement Fund the monthly survivorship allowance specified in this Section, the surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid, subject to other provisions of this Chapter including Sections 3.36.1200 and 3.36.1230, the following monthly survivorship allowance:

- A. **Where Deceased Died or Retired Prior to August 1, 1968.** If the person because of whose death the surviving spouse is entitled to a monthly survivorship allowance died or retired from City service prior to August 1, 1968, the amount of monthly survivorship allowance payable to the surviving spouse shall be:
1. An amount equal to twenty-eight and one hundred twenty-five thousandths percent (28.125%) of the deceased person's final compensation as defined in Section 3.36.020.5, less the amount specified in Section 3.36.1340; or
 2. If the deceased was retired for service-connected disability, an amount equal to twenty-eight and one hundred twenty-five thousandths percent (28.125%) of the deceased person's final compensation, as defined in Section 3.36.020.5; or
 3. If the death because of which the survivorship allowance is payable arose out of and in the course of the deceased person's employment with the city, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, while the deceased person was an employee of the City and a member of this Plan, and before he or she was retired for service or disability, then in such event the

amount of the monthly survivorship allowance shall be an amount equal to thirty-seven and one-half percent of the deceased person's final compensation as defined in Section 3.36.020.5.

B. Where Deceased Did Not Die or Retire Prior to August 1, 1968. If the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance did not die or retire from City service prior to August 1, 1968, then, except as provided in subsection C. or D. of this Section and subject to the optional settlement provisions of Part 9.5 of this Chapter, the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be:

1. An amount equal to thirty-seven and five tenths percent of the deceased person's final compensation as defined in Section 3.36.020.5, less the amounts specified in Section 3.36.1340; or
2. If the deceased was retired for service-connected disability, an amount equal to thirty-seven and one-half percent of the deceased person's final compensation as defined in Section 3.36.020.5; or
3. If the death because of which the survivorship allowance is payable arose out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, while the deceased person was an employee of the City and a member of this Plan, and before he or she was retired for service or disability, then in such event the amount of the monthly survivorship allowance shall be an amount equal to thirty-seven and one-half percent of the deceased person's final compensation as defined in Section 3.36.020.5.

C. Where Deceased Died or Retired On or After August 1, 1968, With Less Than Twenty Years Service Credit as a Member of this Plan. If the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance died or retired from City service on or after August 1, 1968, the amount of monthly survivorship allowance payable to

1. At the time of the person's death the person had earned less than twenty years of service credit in this Plan while employed by the City; and
2. The benefit is payable under this Section 3.36.1270 for any reason other than:
 - a. The death of a person before retirement where the death arises out of and in the course of the person's employment with the City; or
 - b. The death of a person who has been retired for service-connected disability but who dies before receipt of retirement pay; or
 - c. The death of a person who has been retired for service-connected disability, who is not reemployed by the City at the time of death and who dies during the disability retirement after receiving any disability retirement allowance.

D. Where Deceased Retired On or After February 4, 2000; or Deceased Died On or After February 4, 2000, But Prior to Receipt of Retirement Allowance.

Notwithstanding subsection B. above, if the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance retired from City service on or after February 4, 2000, or died on or after February 4, 2000, but before receiving any retirement allowance, then the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall, subject to a maximum of forty-two and one-half percent of the deceased person's final compensation, be an amount equal to one of the following, as applicable:

1. Thirty-seven and one-half percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1340, if at the

time of the deceased person's death the deceased person was entitled to a retirement allowance of less than seventy-five percent of the deceased person's final compensation.

2. Thirty-seven and one-half percent of the deceased person's final compensation, if at the time of the deceased person's death the deceased person was entitled to a retirement allowance of less than seventy-five percent of the deceased person's final compensation and either:
 - a. The deceased person was retired for service-connected disability;
or
 - b. The deceased person died prior to retirement and the death arose out of and in the course of the person's employment with the City.
3. Fifty percent of the deceased person's retirement allowance, less the amounts specified in Section 3.36.1340, if at the time of the deceased person's death the deceased person was entitled to a retirement allowance of at least seventy-five percent of the deceased person's final compensation.
4. Fifty percent of the deceased person's retirement allowance, if at the time of the deceased person's death the deceased person was entitled to a retirement allowance of at least seventy-five percent of the deceased person's final compensation and either:
 - a. The deceased person was retired for service-connected disability;
or
 - b. The person died prior to retirement and the death arose out of and in the course of the person's employment with the City.

For the purposes of this subsection D., if the deceased person died prior to retirement, references to the "deceased person's retirement allowance" or to the deceased's entitlement to a retirement allowance shall mean the retirement allowance that would have been paid had the deceased person retired on the day immediately preceding his or her death.

- E. Nothing in this Section shall be deemed to entitle any person to any survivorship allowance that was not provided by this Chapter as this Chapter existed at the time of the deceased person's death, except that the surviving spouse surviving domestic partner benefits described in subsection D. shall be payable retroactive to the date of the deceased person's death.

3.36.1280 Amount Of Survivorship Allowance To Surviving Spouse or Surviving Domestic Partner When Such Is Determinable By Section 3.36.1280.

Whenever in any other section of this Part 8 it is stated that a surviving spouse or surviving domestic partner shall be entitled to receive and be paid from the Retirement fund the monthly survivorship allowance specified in this section, the surviving spouse or surviving domestic partner, whichever is applicable, shall be entitled to receive and shall be paid, subject to other provisions of this Chapter including Sections 3.36.1210 and 3.36.1240, the following monthly survivorship allowance:

- A. **Where Deceased Died or Retired Prior to August 1, 1968.** If the person because of whose death the surviving spouse is entitled to a monthly survivorship allowance died or retired from City service prior to August 1, 1968, the amount of monthly survivorship allowance payable to the surviving spouse shall be equal to eighteen percent of the deceased person's final compensation as defined in Section 3.36.020.5; plus five thousand six hundred twenty-five ten-thousandths percent (0.5625%) of such final compensation for each full year of service for which the deceased person was entitled to credit under the provisions of this Plan in excess of the first two years of service, less the amounts specified in Section 3.36.1330, but in no event shall such monthly survivorship allowance exceed twenty-eight and one hundred twenty-five thousandths percent (28.125%) of the final compensation of the deceased person less the amounts specified in Section 3.36.1340.
- B. **Where Deceased Did Not Die or Retire Prior to August 1, 1968.** If the person because of whose death the surviving spouse is entitled to a monthly survivorship allowance did not die or retire prior to August 1, 1968, then except

as provided in subsection C. of this section, the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be an amount equal to twenty-four percent of the deceased person's final compensation, as defined in Section 3.36.020.5, plus seventy-five hundredths percent (0.75%) of such final compensation for each year of service for which the deceased person was entitled to credit under the provisions of this Plan in excess of the first two years of service, less the amounts specified in Section 3.36.1340, but in no event shall such monthly allowance exceed thirty-seven and one-half percent of the final compensation of the deceased person less the amounts specified in Section 3.36.1340.

C. Where Deceased Retired on or after February 4, 2000; or Deceased Died on or after February 4, 2000, but Prior to Receipt of Retirement Allowance. If the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance retired from City service on or after February 4, 2000, or died on or after February 4, 2000, but before receiving any retirement allowance, then:

1. In the case where, at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of up to seventy-five percent of the deceased person's final compensation, the amount of the monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be an amount equal to twenty-four percent of the deceased person's final compensation, as defined in Section 3.36.020.5, plus seventy-five hundredths percent (0.75%) of such final compensation for each year of service for which the deceased person was entitled to credit under the provisions of this Plan in excess of the first two years of service, less the amounts specified in Section 3.36.1340, but in no event shall such monthly allowance exceed thirty-seven and five-tenths percent of the final compensation of the deceased person, less the amounts specified in Section 3.36.1340.

2. In the case where, at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of at least seventy-five percent of the deceased person's final compensation, the amount of the monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be an amount equal to fifty percent of the deceased person's retirement allowance, less the amounts specified in Section 3.36.1340, but in no event shall such monthly allowance exceed forty-two and five-tenths percent of the final compensation of the deceased person, less the amounts specified in Section 3.36.1340.
- D. For the purposes of this subsection C., if the deceased person died prior to retirement, the "deceased person's retirement allowance" shall mean the retirement allowance that would have been paid had the deceased person retired on the day immediately preceding his or her death.

3.36.1290 Marriage or Domestic Partnership Of Surviving Spouse or Surviving Domestic Partner - When Return Of Contributions And Monthly Survivorship Allowance Are Payable.

- A. Anything in this Chapter to the contrary notwithstanding, from and after the effective date of this Section, if the surviving spouse or surviving domestic partner of a deceased member who, at the time of death is fifty-five years of age and is entitled to credit for twenty years of service, or who is entitled to be credited with thirty years of service regardless of whether such member has attained the age of fifty-five, marries or establishes a domestic partnership, such marriage or domestic partnership shall not deprive the surviving spouse or the surviving domestic partner of the return of contributions, plus interest thereon, and monthly survivorship allowances for which he or she is eligible at the time of the member's death under Sections 3.36.1200, 3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280. Such surviving spouse or surviving domestic partner shall, despite such marriage or domestic partnership, be entitled subject to the provisions of this Section to receive and shall be paid from the Retirement Fund,

until such surviving spouse or surviving domestic partner dies, such contributions plus interest there on, and such monthly survivorship allowance to which he or she would be entitled pursuant to Sections 3.36.1200, 3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280, as if he or she had not married or established a domestic partnership. In the event that any surviving spouse or surviving domestic partner of any such member has, at any time before the effective date of this Section, remarried or established a domestic partnership and for such reason has been deprived of any such contributions, plus interest thereon, and monthly survivorship allowances because of the provisions of Sections 3.36.1200, 3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280, the return of such contributions, and interest thereon (in the event the full return of such contributions, and interest thereon, has not been made at the time of such remarriage or establishment of a domestic partnership), and payment of the monthly survivorship allowance shall be recommenced as of the effective date of this Section and shall be thereafter paid in accordance with Sections 3.36.1200, 3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280, until such surviving spouse or surviving domestic partner dies, and no longer, but no return of contributions plus interest thereon shall be made, and no survivorship allowance shall be paid, for any period between the date such return of contributions plus interest thereon and monthly survivorship allowance was terminated by such remarriage or establishment of a domestic partnership and the effective date of this Section, it being the intention that this section shall operate prospectively and not retroactively.

B. As used in this section:

1. For the purposes of Sections 3.36.1200 and 3.36.1210:
 - a. "Surviving spouse" means the person to whom the deceased member was married at the time of the deceased member's death and who survives the deceased member's death.
 - b. "Surviving domestic partner" means the person with whom the deceased member, at the time of the deceased member's death,

had established a domestic partnership and who survives the deceased member's death.

2. For the purposes of Section 3.36.1230 and 3.36.1240:-
 - a. "Surviving spouse" means the person to whom the deceased member was married at the time of the deceased member's death and at the time the deceased member was retired for service or disability and who survives such deceased member's death.
 - b. "Surviving domestic partner" means the person with whom the deceased member, both at the time of the deceased person's death and at the time the deceased member was retired for service or disability, had established a registered domestic partnership and who survives the deceased member's death.
3. For the purposes of Sections 3.36.1270 and 3.36.1280:
 - a. "Surviving spouse" means whichever of the following is applicable for the purposes of Sections 3.36.1270 and 3.36.1280:
 - i. The person to whom the deceased member was married at the time of the deceased member's death and who survives the deceased member's death; or
 - ii. The person to whom the deceased member was married at the time of the deceased member's death and at the time the deceased member was retired for service or disability and who survives the deceased member's death.
 - b. "Surviving domestic partner" means whichever of the following is applicable for the purposes of Sections 3.36.1270 and 3.36.1280:
 - i. The person with whom the deceased member, at the time of the deceased member's death, had established a domestic partnership and who survives the deceased person's death; or
 - ii. The person with whom the deceased member, both at the time of the deceased person's death and at the time the

deceased member was retired for service or disability, had established a domestic partnership and who survives the deceased member's death.

3.36.1295 Reinstatement Of Terminated Allowances.

- A. If the monthly allowance of the surviving spouse of any person who retired or died prior to October 1, 1999, was terminated pursuant to the provisions of Chapter 3.36 of the San José Municipal Code as such Chapter read before the effective date of Ordinance No. 25936, because the surviving spouse remarried, the monthly allowance shall be reinstated effective the later of:
 - 1. October 1, 1999; or
 - 2. The first month after the surviving spouse provides documentation satisfactory to the Secretary to the Board showing the surviving spouse's eligibility for reinstatement, of the allowance.
- B. The reinstatement of the monthly allowance shall be prospective only and no payments shall be made for the months during which the allowance was terminated pursuant to the prior provisions of Chapter 3.36. Any cost-of-living adjustments pursuant to Chapter 3.44 of the San José Municipal Code shall also be prospective only and no cost-of-living adjustments shall be made for any time during which the monthly allowance was terminated.
- C. The reinstated monthly allowance shall be paid to the eligible surviving spouse for the remainder of the surviving spouse's life.

3.36.1300 Amount Of Survivorship Allowance Payable To Surviving Child Or Children.

Subject to and except as otherwise provided by other provisions of this Chapter, if and whenever any survivorship allowance is payable to any surviving child or children pursuant to other provisions of this Part 8, the surviving child, or each of the surviving children if there is more than one surviving child of the deceased member or person, shall be entitled to receive and shall be paid from the Retirement Fund, until the surviving child marries, establishes a domestic partnership, attains the age of eighteen

years or dies, whichever is the earlier time, and no longer, the following monthly survivorship allowance:

A. Death or Retirement Prior to August 1, 1968 - One Eligible Surviving Child.

If the person because of whose death the surviving child is entitled to a monthly survivorship allowance died or retired from City service prior to August 1, 1968, and if in addition, there is only one eligible surviving child of the deceased person entitled to receive a monthly survivorship allowance, then in that event while there is only one eligible surviving child of the deceased person entitled to receive a monthly survivorship allowance, the monthly allowance payable to such child shall be:

1. An amount equal to eighteen and seventy-five hundredths percent (18.75 %) of the deceased person's final compensation less the amounts specified in Section 3.36.1330; or
2. If the death because of which the survivorship allowance is payable arose out of and in the course of the deceased person's employment with the City, or as a result of injury or disease arising out of and in the course of the deceased person's employment with the City while the deceased person was an employee of the City and a member of this Plan and before he or she was retired for service or disability, then in that event the amount of the monthly survivorship allowance payable to one surviving child shall be twenty-five percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330.
3. If the deceased was retired for service-connected disability, an amount equal to eighteen and seventy-five hundredths percent (18.75%) of the deceased person's final compensation.

B. Death or Retirement Not Prior to August 1, 1968; One Eligible Surviving

Child. If the person because of whose death the surviving child is entitled to a monthly survivorship allowance did not die or retire from City service prior to August 1, 1968, and if, in addition, there is only one eligible surviving child of the deceased person entitled to receive a monthly survivorship allowance, then in

that event, while there is only one eligible surviving child of the deceased person entitled to receive a monthly survivorship allowance, the amount of such monthly survivorship allowance payable to such child shall be:

1. An amount equal to twenty-five percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330; or
2. If the death arose out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, while the deceased person was an employee of the City and a member of this Plan, and before he or she was retired for service or disability, an amount equal to twenty-five percent of the deceased person's final compensation.
3. If the deceased was retired for service-connected disability, an amount equal to twenty-five percent of the deceased person's final compensation.

C. Death or Retirement Prior to August 1, 1968 - Two Eligible Surviving Children. If the person because of whose death the surviving children are entitled to a monthly survivorship allowance died or retired from City service prior to August 1, 1968, and if in addition there are only two eligible surviving children of the deceased person entitled to receive a monthly survivorship allowance, then in that event while there are only two such surviving children of the deceased person entitled to receive a monthly survivorship allowance, the allowance payable to each child shall be:

1. If the death did not arise out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, the monthly retirement allowance payable to each of the surviving children shall be an amount equal to one-half of the amount specified in paragraph a below, or one-half of the amount specified in paragraph b below, whichever is the lesser amount:

- a. Twenty-eight and one hundred twenty-five thousandths percent (28.125%) of the deceased person's final compensation, less the amounts specified in Section 3.36.1330; or
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse of such deceased person, will not exceed a total of fifty-six and twenty-five hundredths percent (56.25%) of such final compensation, less the amounts specified in Section 3.36.1330.
2. If the death arose out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, while the deceased person was an employee of the City and a member of this system and before he or she was retired for service or disability, the monthly survivorship allowance payable to each of the two surviving children shall be one-half of the amount specified in paragraph a below, or one-half of the amount specified in paragraph b below, whichever is the lesser amount:
 - a. Fifty percent of the deceased person's final compensation less the amounts specified in Section 3.36.1330; or
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such compensation which is paid or payable to a surviving spouse of such deceased person, will not exceed a total of seventy-five percent of such final compensation, less the amounts specified in Section 3.36.1330.
3. If the deceased was retired for service-connected disability, the monthly retirement allowance payable to each of the surviving children shall be an amount equal to one-half of the amount specified in paragraph a. below, or one-half of the amount specified in paragraph b. below, whichever is the lesser amount:

- a. Twenty-eight and one hundred twenty-five thousandths percent (28.125%) of the deceased person's final compensation; or
- b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse of such deceased person, will not exceed a total of fifty-six and twenty-five hundredths percent (56.25%) of such final compensation.

D. Death or Retirement Not Prior to August 1, 1968 - Two Eligible Surviving Children. If the person because of whose death the surviving children are entitled to a monthly survivorship allowance did not die or retire from City service prior to August 1, 1968, and if in addition there are only two eligible surviving children of the deceased person entitled to receive a monthly survivorship allowance, then in that event, while there are only two eligible surviving children of the deceased person entitled to receive a monthly survivorship allowance, the monthly survivorship allowance payable to each of the two surviving children shall be:

- 1. If the death did not arise out of and in the course of the deceased person's employment with the city, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, the monthly allowance payable to each of the surviving children shall be an amount equal to one-half of the amount specified in paragraph a below, or one-half of the amount specified in paragraph b below, whichever is the lesser amount:
 - a. Thirty-seven and five tenths percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330; or
 - b. That percentage of the deceased person's final compensation which when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total

of seventy-five percent of such final compensation, less the amounts specified in Section 3.36.1330.

2. If the death because of which said survivorship allowances are payable arose out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, while the deceased person was an employee of the City and a member of this Plan, and before he or she was retired for service or disability, then in that event the amount of such monthly survivorship allowance payable to each of said two children from and after said death, while entitled to the same, shall be one-half of the amount specified in paragraph a below, or one-half of the amount specified in paragraph b below, whichever is the lesser amount:
 - a. Fifty percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330; or
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five percent of such final compensation, less the amounts specified in Section 3.36.1330.
3. If the deceased person was retired for service-connected disability, the monthly allowance payable to each of the surviving children shall be an amount equal to one-half of the amount specified in paragraph a. below, or one-half of the amount specified in paragraph b. below, whichever is the lesser amount:
 - a. Thirty-seven and five-tenths percent of the deceased person's final compensation; or
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation

which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five percent of such final compensation.

E. Death or Retirement Prior to August 1, 1968; Three or More Eligible

Surviving Children. If the person because of whose death the surviving children are entitled to a monthly survivorship allowance died or retired from City service prior to August 1, 1968, and if, in addition, there are three or more eligible surviving children of the deceased person entitled to receive a monthly survivorship allowance, the monthly survivorship allowance payable to each child while he is entitled to the same shall be:

1. If the death did not arise out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, the monthly allowance payable to each of the surviving children shall be the amount specified in paragraph a below, or the amount specified in paragraph b below, whichever is the lesser amount:
 - a. Thirty-seven and five tenths percent of the deceased person's final compensation less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance; or
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or is payable to a surviving spouse of such deceased person, will not exceed a total of fifty-six and twenty-five hundredths (56.25%) percent of such final compensation less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance.
2. If the death because of which said survivorship allowances are payable arose out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the

course of the deceased person's employment with the City, while the deceased person was an employee of the City and a member of this Plan, and before he or she was retired for service or disability, then in that event the amount of such monthly survivorship allowance payable to each child while he or she is entitled to same shall be the amount specified in the following paragraph a., or the amount specified in the following paragraph b., whichever is the lesser amount:

- a. Seventy-five percent of the deceased person's final compensation, less the amounts specified by Section 3.36.1330, divided by the number of children entitled to receive an allowance; or
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation paid or payable to a surviving spouse of such deceased person, will not exceed a total of seventy-five percent of such final compensation, less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance.
3. If the deceased person was retired for service-connected disability, the monthly allowance payable to each of the surviving children shall be the amount specified in paragraph a. below, or the amount specified in paragraph b. below, whichever is the lesser amount:
- a. Thirty-seven and five-tenths percent of the deceased person's final compensation, divided by the number of children entitled to receive an allowance; or
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or is payable to a surviving spouse of such deceased person, will not exceed a total of fifty-six and twenty-five hundredths percent (56.25%) of such final compensation, divided by the number of children entitled to receive an allowance.

F. Death or Retirement Not Prior to August 1, 1968 - Three or More Eligible Surviving Children. If the person because of whose death the surviving children are entitled to a monthly survivorship allowance did not die or retire from City service prior to August 1, 1968, and if, in addition, there are three or more eligible surviving children of the deceased person entitled to receive a monthly survivorship allowance, then in that event, while there are three or more such surviving children of the deceased person entitled to receive a monthly survivorship allowance, the monthly survivorship allowance payable to each child shall be:

1. If the death did not arise out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, the monthly allowance payable to each of the surviving children shall be the amount specified in the following paragraph a., or the amount specified in the following paragraph b, whichever is the lesser amount:
 - a. Fifty percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance; or
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or is payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five percent of such final compensation, less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance.
2. If the death because of which said survivorship allowances are payable arose out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, while the deceased person was an employee of the City and a member of this Plan

and before he or she was retired for service or disability, then in that event the amount of such monthly survivorship allowance payable to each child from and after said death while he or she is entitled to the same shall be the amount specified in the following paragraph a., or the amount specified in the following paragraph b., whichever is the lesser amount:

- a. Seventy-five percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance; or
- b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation paid or payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five percent of such final compensation, less the amounts specified in Section 3.36.1330, divided by the number of children entitled to receive an allowance.

3. If the deceased person was retired for service-connected disability, the monthly allowance payable to each of the surviving children shall be the amount specified in the following paragraph a., or the amount specified in the following paragraph b., whichever is the lesser amount:

- a. Fifty percent of the deceased person's final compensation, divided by the number of children entitled to receive an allowance; or
- b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or is payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five percent of such final compensation, divided by the number of children entitled to receive an allowance.

G. Nothing in this Section shall be deemed to entitle any person to any survivorship allowance that was not provided by this Chapter as this Chapter existed at the time of the deceased person's death.

3.36.1305 Amount Of Survivorship Allowance Payable To Surviving Child Or Children When Member Had Less Than Twenty Years Service Credit Earned While Employed By City.

Except as provided in subsection E. below, if and whenever any survivorship allowance is payable to any eligible surviving child or children pursuant to the provisions of this Part 8 because of the death of a member who, at the time of the member's death, had earned less than twenty years of service credit in this Plan while employed by the City, then instead of any other survivorship allowance provided to eligible surviving children under this Part 8, the surviving children's monthly survivorship allowances shall be as follows:

- A. To one eligible surviving child, one and twenty-five hundredths percent of the deceased person's final compensation for each full year of service earned in this Plan while employed by the City, subject to a maximum of twenty-five percent of such final compensation. Pro rata credit shall be given for a portion of a full year of service.
- B. To each of two eligible surviving children, one-half of the amount specified in the following paragraph 1. or one-half of the amount specified in the following paragraph 2., whichever is the lesser amount:
 1. One and eight hundred seventy-five thousandths percent of such deceased person's final compensation for each full year of service earned in this Plan while employed by the City; provided, however, that in no event shall the combined monthly allowance payable to the children exceed a maximum of fifty percent of such final compensation. Pro rata credit shall be given for a portion of a full year of service.
 2. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person will not exceed a total of seventy-five percent of such final compensation.

- C. To each of three or more eligible surviving children, the amount specified in the following paragraph 1. or the amount specified in the following paragraph 2., whichever is the lesser amount:
1. Two and five-tenths percent of such deceased person's final compensation for each full year of service earned in this Plan while employed by the City, divided by the number of children entitled to receive an allowance; provided, however, that in no event shall the combined monthly allowance paid to the children exceed a maximum of seventy-five percent of such final compensation. Pro rata credit shall be given for a portion of a full year.
 2. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person will not exceed a total of seventy-five percent of such final compensation, divided by the number of children entitled to receive an allowance.
- D. The benefits payable pursuant to this Section 3.36.1305 shall be payable to each eligible surviving child until that surviving child marries, establishes a domestic partnership, attains the age of eighteen years, or dies, whichever first occurs. Thereafter, no benefits shall be payable to such child.
- E. This Section 3.36.1305 shall not apply, and benefits payable to the deceased person's eligible surviving child or surviving children shall be calculated as provided in Section 3.36.1300, in any case where benefits are payable on account of:
1. The death of a person before retirement where the death arises out of and in the course of the person's employment with the City; or
 2. The death of a person who has been retired for service-connected disability but who dies before receipt of retirement pay; or
 3. The death of a person who has been retired for service-connected disability, who is not reemployed by the City at the time of death and who

dies during the disability retirement after receiving any disability retirement allowance.

3.36.1310 Limitation Of Total Amount Payable To Surviving Spouse And Children.

A. Anything in the preceding provisions of this Part 8 to the contrary notwithstanding, the total amount of survivorship or other allowances payable monthly to a surviving spouse or surviving domestic partner pursuant to the provisions of this Part, together with and in addition to the total amount of allowances payable monthly to any and all eligible surviving children pursuant to the provisions of this Part, shall not exceed the following maximum amounts:

1. **Where Deceased Died or Retired Prior to August 1, 1968.** If the person because of whose death the surviving spouse or children are entitled to a monthly allowance or allowances died or retired from City service prior to August 1, 1968, the maximum amount of all monthly allowances payable to a surviving spouse and children shall not exceed fifty-six and twenty-five hundredths percent (56.25 percent) of the deceased person's final compensation, less the amounts specified in Section 3.36.1330; provided and excepting, however, that if the death because of which said allowances are payable arose out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, while the deceased person was an employee of the City and a member of this Plan and before he or she was retired for service or disability, then in that event the maximum amount of all of said allowances shall not exceed seventy-five percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330.
2. **Where Deceased Did Not Die or Retire Prior to August 1, 1968.** If the person because of whose death the surviving spouse, surviving domestic partner or children are entitled to a monthly allowance or allowances did

not die or retire from City service prior to August 1, 1968, the maximum amount of all monthly allowances payable to a surviving spouse or surviving domestic partner and children from and after the death shall not exceed seventy-five percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1330.

- B. In the event that the monthly amount payable to a surviving spouse or surviving domestic partner, together with or in addition to the monthly amounts payable to the eligible surviving children should exceed the applicable maximum, the amounts payable to the children shall be reduced to such amounts as will not, when added to the sum payable to the surviving spouse or surviving domestic partner, exceed the monthly maximum.

3.36.1320 Surviving Children's Allowances - How Paid.

- A. Except as otherwise provided in this Chapter, any survivorship allowance which is payable under the provisions of this Chapter to any surviving child or children shall be paid to such parent or parents of such child or children as have custody of such child or children, for the benefit of such child or children, or if a guardian or guardians have been appointed for such child or children, and the Board shall have received notice thereof, to the guardian or guardians of such child or children, for the benefit of such child or children.
- B. Notwithstanding the above, however, the Board, in its discretion, may at any time or from time to time pay said allowances to any other person or persons, for the benefit of such child or children, or directly to the child or children, if it finds that such will be in the best interest of the children. In addition, the Board may, if it has reason to believe that such allowances are not being used for the benefit of the child or children entitled thereto, suspend such payments, or any of them, until such time as it receives assurance, satisfactory to the Board, that such payments will be used for the benefit of the children entitled thereto.
- C. No person shall have any claim against the Board or any member thereof because of or by reason of the Board's suspension of any payments or by reason

of the Board's changing the person or persons to whom such payments are made.

3.36.1325 Surviving Children's Allowances - Payment To Custodian Or Trustee.

- A. A member of this Plan or any person who has retired from this Plan may designate, on a beneficiary designation form approved by the Board, that any survivorship allowance which is payable under the provisions of this Chapter to any surviving child or children of the member or retired person shall be paid to any of the following:
1. A named custodian for such child under the California Uniform Transfers to Minors Act.
 2. A trustee of a trust created for the benefit of such child or children under such member's or retired person's will.
 3. A trustee of an inter vivos trust created for the benefit of such child or children.
- B. Payment to Custodian. Such survivorship allowance shall be paid to a custodian under the California Uniform Transfers to Minors Act named in a beneficiary designation form if all of the following conditions are met:
1. The Board is provided with proof to the Board's satisfaction that such person is in fact the custodian named in the beneficiary designation form; and
 2. The Board is provided with written acknowledgement of receipt of payment as custodian, as provided by California Probate Code Section 3908, on such form as the Board may provide, together with execution of such additional waivers, indemnification, or other documents as the Board may require.
- C. Payment to Trustee of Testamentary Trust. Such survivorship allowance shall be paid to a trustee named in a member's or retired person's will if all of the following conditions are met:

1. Such member's or retired person's beneficiary designation form specifically designates a trust created under such person's will as beneficiary; and
 2. Such member's or retired person's will contains provisions specifically creating such trust or trusts for the benefit of such member's or retired person's surviving child or children.
 3. The trustee is named in such member's or retired person's will.
 4. The Board is provided with a filed, endorsed, and certified copy of a court order which determines the validity of such trust or trusts and orders the establishment of such trust or trusts.
- D. Payment to Trustee of Inter Vivos Trust. Such survivorship allowance shall be paid to the trustee of an inter vivos trust if all of the following conditions are met:
1. Such trust is clearly identified to the Board's satisfaction on such member's or retired person's beneficiary designation form on file with the Board.
 2. Such trust contains provisions specifically creating a trust or trusts for the benefit of such member's or retired person's surviving child or children.
 3. The Board is provided with a filed, endorsed, and certified copy of a court order pursuant to California Probate Code Section 1138.1 or similar statute authorizing and approving payment of such benefit to such trust.
- E. Unless and until the conditions of either B., C., or D. of this Section 3.36.1325 are met, the payment of such survivorship allowance shall be made in accordance with Section 3.36.1320 of this Chapter.

3.36.1330 No Deduction After January 1, 1964, Of Amount Of Workmen's Compensation Benefits.

Anything elsewhere in this Chapter to the contrary notwithstanding, from and after January 1, 1964, the amount of any monthly survivorship or death allowance or benefit payable to any person or to any estate under and by virtue of other provisions of this Chapter shall be computed and determined as provided by other applicable sections of this Chapter without any deduction being made because of any provision of

this section. Nothing herein contained, however, shall be deemed to authorize or require the recomputation or increase of the amount of any survivorship or death allowance or benefit computed and paid prior to January 1, 1964, pursuant to the provisions of this Section as it read prior to said date, it being the intent that the present provisions of this Section shall operate prospectively as herein provided and not retroactively.

3.36.1340 Reduction Of Benefits If Member Retires Before Attaining Age Fifty-Five.

- A. If a member should retire for service pursuant to the provisions of Part 6 of this retirement Plan prior to July 5, 1992, and before attaining the age of fifty-five years, and if said member is entitled to be credited with twenty or more years of service but less than thirty years of service, then each allowance, benefit or other payment to which any person, persons or estate would otherwise be or become entitled to under or by virtue of the preceding sections of this Part 8 shall be reduced to an amount which bears the same relationship to the unreduced allowance, benefit or payment as the partially reduced allowance defined and referred to in subsection B.2. of Section 3.36.810 bears to the unreduced allowance defined and referred to in subsection B.1. of Section 3.36.810.
- B. If a member should retire for service pursuant to the provisions of Part 6 of this retirement Plan on or after July 5, 1992, and before attaining the age of fifty-five years, and if said member is entitled to be credited with twenty or more years of service but less than twenty-five years of service, then each allowance, benefit or other payment to which any person, persons or estate would otherwise be or become entitled to under or by virtue of the preceding provisions of this Part 8 shall be reduced to an amount which bears the same relationship to the unreduced allowance, benefit or payment as the partially reduced allowance defined and referred to in subsection B.2. of Section 3.36.810 bears to the unreduced allowance defined and referred to in subsection B.1. of Section 3.36.810.

3.36.1350 Survivorship Benefits Payable Where Person Eligible For Monthly Allowance Under Section 3.36.760 Dies Before Receiving Same.

- A. If a person who becomes a member of this Plan because of the reason set forth in Section 3.36.760 and has reached fifty-five years of age should die before receiving any monthly allowance provided for in Section 3.36.760, such person's surviving spouse, surviving domestic partner, child or children (as these terms are defined in Section 3.36.1200), shall be entitled to:
1. Under the conditions described in subsections C. and D. of Section 3.36.1200, a sum of money equal to all contributions of the deceased person to the retirement fund plus interest thereon as earned by the fund to the deceased person's death, but in no case shall the interest exceed two percent per annum; and
 2. Under the conditions described in subsections F. and G. of Section 3.36.1200, and subject to the withholding provided for in subsection H. of Section 3.36.1200, if a lump sum return of contributions and interest is chosen, a monthly allowance, the amount of such allowance to be as specified in subsection C. of this section.
- B. If a person who becomes a member of this system because of the reason set forth in Section 3.36.760 and has reached fifty-five years of age should die before receiving the monthly allowance provided for in Section 3.36.760, then under the conditions described in subsection E. of Section 3.36.1200 such deceased person's estate shall be entitled to a return of his contributions together with interest thereon to the date of death, but in no case shall the interest exceed two percent per annum.
- C. The amount of a monthly allowance payable under this section shall be:
1. To a surviving spouse or surviving domestic partner for the surviving spouse's or surviving domestic partner's life, one and eight hundred seventy-five thousandths percent of such deceased person's final compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of thirty-seven and

five tenths percent of such final compensation. Pro rata credit shall be given for a portion of a full year.

2. To one eligible surviving child, one and twenty-five one hundredths percent of such deceased person's final compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of twenty-five percent of such final compensation. Pro rata credit shall be given for a portion of a full year.
3. To each of two eligible surviving children, one-half of the amount specified in the following paragraph a or one-half of the amount specified in the following paragraph b, whichever is the lesser amount:
 - a. One and eight hundred seventy-five thousandths percent of such deceased person's final compensation for each full year of service; provided, however, that in no event shall the combined monthly allowance payable to such children exceed a maximum of fifty percent of such final compensation. Pro rata credit shall be given for a portion of a full year.
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five percent of such final compensation.
4. To each of three or more eligible surviving children, the amount specified in the following paragraph a or the amount specified in the following paragraph b, whichever is the lesser amount:
 - a. Two and five tenths percent of such deceased person's final compensation for each full year of service, divided by the number of children entitled to receive an allowance; provided, however, that in no event shall the combined monthly allowance paid to the children exceed a maximum of seventy-five percent of such final

compensation. Pro rata credit shall be given for a portion of a full year.

- b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five percent of such final compensation, divided by the number of children entitled to receive an allowance.

- D. Each child who, if he or she were under the age of eighteen years, would be a surviving child as defined in Section 3.36.1200 and entitled to payment of contributions and monthly allowance hereunder, shall, if he or she otherwise meets the eligibility requirements of Part 9 of this Chapter, it being assumed for purposes of such Part that such child would be entitled to a surviving child's monthly survivorship allowance under Part 8 if he or she were under eighteen years of age, be entitled to a child's school allowance for the time set forth in Section 3.36.1440 in the same amount, including return of contributions and monthly survivorship allowance as set forth above for surviving child and children.

3.36.1360 Survivorship Benefits Payable Where Person Eligible For Monthly Allowance Under Section 3.36.760 Dies After Receiving Same.

- A. If a person who becomes a member of this Plan because of the reason set forth in Section 3.36.760 and has reached fifty-five years of age should die after receiving any such allowance, such person's surviving spouse, surviving domestic partner, and surviving child or children (as these terms are defined in Section 3.36.1230) shall be entitled to a monthly allowance under the conditions described in subsections C. and D. of Section 3.36.1230, the amount of such monthly allowance to be as specified in subsection B. of this section, and the deceased person's estate shall be entitled to a payment of one thousand dollars under the conditions described in subsection E. of Section 3.36.1230.
- B. The amount of such monthly allowance payable under this section shall be:

1. To a surviving spouse or surviving domestic partner for the surviving spouse's or surviving domestic partner's life, one and eight hundred seventy-five thousandths percent of such deceased person's final compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of thirty-seven and five tenths percent of such final compensation. Pro rata credit shall be given for a portion of a full year.
2. To one eligible surviving child, one and twenty-five hundredths percent of such deceased person's final compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of twenty-five percent of such final compensation. Pro rata credit shall be given for a portion of a full year.
3. To each of two eligible surviving children, one-half of the amount specified in the following paragraph a, or one-half of the amount specified in the following paragraph b, whichever is the lesser amount:
 - a. One and eight hundred seventy-five thousandths percent of such deceased person's final compensation for each full year of service; provided, however, that in no event shall the combined monthly allowance payable to said children exceed a maximum of fifty percent of such final compensation. Pro rata credit shall be given for a portion of a full year.
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person will not exceed a total of seventy-five percent of such final compensation;
4. To each of three or more eligible surviving children, the amount specified in the following paragraph a, or the amount specified in the following paragraph b, whichever is the lesser amount:

- a. Two and five tenths percent of such deceased person's final compensation for each full year of service, divided by the number of children entitled to receive an allowance; provided, however, that in no event shall the combined monthly allowance paid to the children exceed a maximum of seventy-five percent of such final compensation. Pro rata credit shall be given for a portion of a full year.
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person will not exceed a total of seventy-five percent of such final compensation, divided by the number of children entitled to receive an allowance.
- C. Each child who, if he or she were under the age of eighteen years, would be a surviving child as defined in Section 3.36.1230 and entitled to payment of a monthly survivorship allowance hereunder shall, if he or she otherwise meets the eligibility requirements of Part 9 of this Chapter, it being assumed for purpose of such Part that such child would be entitled to a surviving child's monthly survivorship allowance under Part 8 if he or she were under eighteen years of age, be entitled to a child's school allowance for the time set forth in Section 3.36.1440 in the same amount, including return of contributions and monthly survivorship allowance as set forth above for surviving child and children.
- D. Such deceased person shall, for the purpose of the definition of spouse, domestic partner, child or children contained in this Section, be deemed to have retired as of the date such deceased person first received a monthly allowance under this Chapter.

3.36.1370 Termination Of Allowances Or Benefits For Treason Or Conviction Of A Felony.

Any and all allowances or benefits payable to any person under and by virtue of any of the provisions of this Part 8 may be cancelled and terminated by the retirement

Board, in its sole discretion, if the recipient thereof should commit treason or be convicted of a felony.

SECTION 4. Section 3.36.1410 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1410 Definitions.

As used in this Part 9:

- A. "Educational Institution" Defined. "Educational institution" means a school (including a technical, trade or vocational school), junior college, college or university:
1. Which is operated or directly supported by the United States, or by any state of the United States, or by any local government or political subdivision thereof; or
 2. Which is approved by a state or accredited by a state-recognized or nationally recognized accrediting agency or body. A nationally recognized accrediting agency or body is an agency or body that has been determined to be such by the United States commissioner of education. A state-recognized accrediting agency or body is an agency or body designated or recognized by a state as a proper authority for accrediting schools, colleges or universities as meeting educational standards. Approval by a state includes approval of a school, college or university as an educational institution, or of one or more of the school's, college's or university's courses by a state agency or subdivision of the state. This approval may be indirect, as for example, if attendance at the school satisfies the state's compulsory educational laws, or if the school has tax exemption as a school, or if the school receives financial aid, loans or scholarship allowances; or
 3. Whose credits are accepted, on transfer, by not less than three institutions which have been accredited by a state recognized or nationally recognized accrediting agency or body, for credit on the same basis is if

transferred from an institution so accredited. Acceptance of credits on transfer includes, in addition to acceptance of laterally transferred credits between similar institutions, acceptance of credits completed in an institution at a lower grade level for entrance into an institution at a higher grade level.

- B. "Eligible Surviving Child" Defined. "Eligible surviving child" means a surviving child, as defined in subsection E. of this Section, who meets and satisfies all of the following conditions:
1. Such surviving child must have attained the age of eighteen years; and
 2. Such surviving child must not have attained the age of twenty-two years; and
 3. Such surviving child must be neither married nor a member of a domestic partnership; and
 4. Such surviving child must be a full-time student, as such term is defined in subsection D. of this section.
- C. "Full-Time Attendance" Defined.
1. "Full-time attendance" at an educational institution means:
 - a. Enrollment in a junior college, college or university in a day or evening noncorrespondence course of at least thirteen school weeks' duration which is full-time under the school's standards and practices for day students; or
 - b. Enrollment in any other educational institution in a day or evening noncorrespondence course of at least thirteen school weeks' duration which is full-time under the school's standards and practices for day students with scheduled attendance at the rate of twenty hours per week or more.
 2. The thirteen-school-week duration requirement is met if the course lasts for thirteen weeks including the beginning and ending weeks.
 3. The thirteen-school-week duration requirement refers to the entire course of study (e.g., a four-year high school or college course, a two-year junior

college course), and not a semester, trimester, summer school session, or other segment of the course. If a student attending a course of at least thirteen school weeks' duration drops out or is dropped before completing the thirteen school weeks, he or she may still qualify for the months of full-time attendance.

4. A student whose full-time attendance begins or ends in a month is in full-time attendance for that month.
- D. "Full-Time Student" Defined. "Full-time student" means a student who is in full-time attendance, as such term is defined in subsection C. of this section, as a student at an educational institution as such term is defined in subsection A. of this section, except that no student shall be deemed to be a full-time student if he or she is paid by his or her employer for attending an educational institution at the employer's request or pursuant to a requirement of the employer.
- E. "Surviving Child" Defined. "Surviving child" means a child who, if he or she were under the age of eighteen years, would be deemed to be a surviving child as such term is defined in Part 8 of Chapter 3.36 and, as such, would be entitled, if he or she were under eighteen years of age, to a surviving child's survivorship allowance under and pursuant to the provisions of said Part 8.

SECTION 5. Section 3.36.1440 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1440 Duration Of Entitlement.

An eligible surviving child is entitled to a surviving child's school allowance under the provisions of this Part 9 for each calendar month, after January 1, 1968, in which all the conditions of entitlement described in the preceding provisions of this Part are met. The last month for which such child is entitled to a surviving child's school allowance under the provisions of this Part is the month before the month, in which any of the following events first occurs:

- A. The child dies; or

- B. The child marries; or
- C. The child becomes a member of a domestic partnership; or
- D. The child attains the age of twenty-two years; or
- E. The first month during no part of which the child is a full-time student.

SECTION 6. Part 9.5 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

Part 9.5

OPTIONAL SETTLEMENTS

3.36.1460 Election To Change Retirement Allowance.

Subject to the provisions of this Chapter, and subject particularly to the provisions of Section 3.36.1463 of this Part, a member of this Plan may elect, in the manner and within the time specified in Section 3.36.1461, to have the actuarial equivalent of any retirement allowance and survivorship allowance to which such member and such member's eligible spouse or domestic partner are entitled under this Plan applied in accordance with any of the optional settlements specified in this Part.

3.36.1461 Manner And Time Of Election.

- A. A member of this Plan may elect an optional settlement described in this Part by filing a written election with the Retirement Board on a form provided by the Secretary to the Board.
- B. An election of an optional settlement must be filed no earlier than the time the application for retirement is filed and no later than thirty days after the effective date of retirement.
- C. Any election made pursuant to the provisions of this Part may be amended or revoked by the member who made the election provided that the amendment or revocation is made in writing and is filed with the Retirement Board on or before the effective date of the member's retirement. If an election is revoked, a new one may be made in the manner and time specified in subsections A. and B. of this section.

- D. Except as provided in subsection E. of this section and in Section 3.36.1464, any election made pursuant to this part that is not amended or revoked on or before the thirtieth day after the effective date of the member's retirement shall be irrevocable, and benefits shall be paid in accordance with such election and the provisions of this part.
- E. In the event the member is reinstated from retirement and becomes a member of this Plan, any election made pursuant to this part prior to such reinstatement shall be automatically revoked, and no benefits shall be paid pursuant to such election.

3.36.1462 Optional Settlements.

- A. Optional Settlement One consists of an election to have the actuarial equivalent of any retirement allowance and survivorship allowance to which the member and the member's eligible spouse or eligible domestic partner are entitled under this Plan applied to provide a lesser retirement allowance to the member until the member's death and, thereafter, subject to the provisions of Section 3.36.1463, to have such percentage of the member's reduced retirement allowance as the member may select paid to the member's surviving spouse or surviving domestic partner for the life of the surviving spouse or surviving domestic partner. In the event the member's spouse or domestic partner predeceases the member, the reduced retirement allowance shall continue to be paid to the member until the member's death.
- B. Optional Settlement Two consists of an election to have the actuarial equivalent of any retirement allowance and survivorship allowance to which the member and the member's eligible spouse or eligible domestic partner are entitled under this Plan applied to provide a lesser retirement allowance to the member until the member's death and, thereafter, subject to the provisions of Section 3.36.1463, to have such percentage of the member's reduced allowance as the member may select paid to the member's surviving spouse or surviving domestic partner for the life of the surviving spouse or surviving domestic partner. In the event the member's spouse or domestic partner predeceases the member, the member

3.36.1463 Limitations On Optional Settlements.

- A. In no case shall the percentage paid to the surviving spouse or surviving domestic partner be greater than one hundred percent or be less than fifty percent of the reduced retirement allowance paid to the member.
- B. The percentage paid to the surviving spouse or surviving domestic partner shall be a multiple of five percent (e.g., 50%, 55%, 60%, 65%).
- C. In no case shall an optional settlement be selected that would result in the payment of an allowance to a surviving spouse or surviving domestic partner that is less than the allowance that would be payable to the surviving spouse or surviving domestic partner if no optional settlement had been selected.
- D. In no case shall any allowance be paid to a retired member that is greater than the allowance that would have been paid had no optional settlement been selected.
- E. The optional settlements provided in this Part shall be paid only to the person who was married to the member both at the time of the member's retirement and at the time of the member's death or to the person who was the member's domestic partner both at the time of the member's retirement and at the time of the member's death, whichever is applicable.
- F. In no case shall the total of the monthly allowance payable to a surviving spouse or surviving domestic partner under an optional settlement plus the monthly allowances payable to any surviving children under the provisions of this Chapter exceed a maximum of seventy-five percent of the deceased member's final compensation. In the event the total of such monthly allowances would exceed said maximum, the amounts payable to the children shall be reduced to such amounts as, when added to the amount payable to the surviving spouse or surviving domestic partner, will not exceed said maximum.

3.36.1464 Automatic Revocation Of Election Of Optional Settlement.

- A. In the event a member elects an optional settlement and the member's spouse or domestic partner predeceases the member prior to the effective date of the member's retirement, the election shall be automatically revoked, and benefits shall be paid to the member as though no optional settlement had been elected.
- B. In the event a member elects an optional settlement and the member dies leaving an eligible surviving spouse who is not the person named in the election or leaving an eligible surviving domestic partner who is not the person named in the election, the election shall be automatically revoked, and no benefits shall be paid pursuant to the election.
- C. In the event the application for retirement is withdrawn before being acted upon by the Board, the election shall be automatically revoked, and no benefits shall be paid pursuant to the election.
- D. In the event the application for retirement is denied by the Board, the election shall be automatically revoked, and no benefits shall be paid pursuant to the election in any case where:
 - 1. No timely appeal of the Board's decision is filed; or
 - 2. The Board's decision is upheld by a final decision of a court of competent jurisdiction.

3.36.1465 Special Provisions.

- A. Notwithstanding the time limitations for filing an election set forth in Section 3.36.1461.B., a person who was employed in City service and was a member of this Plan on June 1, 1991, may file a written election for an optional settlement on or before January 31, 1993, and such election shall be deemed filed in accordance with Section 3.36.1461.B. for the purposes of this Part.
- B. Notwithstanding the other provisions of this Part, the surviving spouse or surviving domestic partner of a deceased member may elect an optional settlement and receive benefits as though the optional settlement had been elected by the deceased member in accordance with this Part if all of the following conditions are satisfied:

1. On or after June 1, 1991, the deceased member either:
 - a. Retired pursuant to the provisions of this Chapter; or
 - b. Began receiving an allowance pursuant to Section 3.36.1640; and
 2. The deceased member died prior to February 1, 1993, without having made an election for an optional settlement; and
 3. The surviving spouse or surviving domestic partner files a written election for the optional settlement on or before January 31, 1993.
- C. For the purposes of this Part, "retirement allowance" includes:
1. The retirement allowance that would have been paid to a member who retired but died before receipt of retirement pay.
 2. The monthly allowance paid to a former member of this Plan pursuant to Section 3.36.1640.
- D. For the purposes of this Part, "member" includes a person who has elected to allow accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640. With respect to such person, "effective date of retirement" means the date such person begins receiving payments pursuant to Section 3.36.1640.

3.36.1466 Actuarial Equivalent.

For the purposes of this Part, "actuarial equivalent" means a benefit of equal value when computed upon the basis of:

- A. An interest rate of eight percent;
- B. An annual cost-of-living increase of three percent; and
- C. The following mortality tables, used irrespective of the gender of the member and the member's spouse or domestic partner:
 1. For spouses and domestic partners of members, the 1983 Group Annuity Mortality Table for females, without margins.
 2. For members who retire for service under the provisions of Part 6 of this Chapter and for former members who receive allowances pursuant to Section 3.36.1630 or Section 3.36.1640, the 1983 Group Annuity Mortality Table for males, without margins.

3. For members who retire for disability pursuant to Part 7 of this Chapter, the California Public Employees' Retirement System Table for duty-disability mortality from 1982-86 Experience.

3.36.1467 Additional Window Period For Election Of Optional Settlement.

- A. Notwithstanding the time limitations for filing an election set forth in Section 3.36.1461.B. or in Section 3.36.1465, a person who was employed in City service and was a member of this Plan on June 1, 1991, and who retired pursuant to the provisions of this Chapter or began receiving a monthly benefit pursuant to Section 3.36.1640 prior to October 23, 1992, may file a written election for an optional settlement on or before December 31, 1997, and such election shall be deemed filed in accordance with Section 3.36.1461.B. for the purposes of this part. Such election shall be subject to the requirements of subsection C. below.
- B. Notwithstanding the other provisions of this Part, and subject to the requirements of subsection C. below, the surviving spouse or surviving domestic partner of a deceased member or deceased former member may elect an optional settlement and receive benefits as though the optional settlement had been elected by the deceased member or former member in accordance with this Part if all of the following conditions are satisfied:
 1. On or after June 1, 1991, but prior to October 23, 1992, the deceased member or former member either:
 - a. Retired pursuant to the provisions of this Chapter; or
 - b. Began receiving an allowance pursuant to Section 3.36.1640; and
 2. The deceased member or former member died prior to October 2, 1997, without having made an election for an optional settlement; and
 3. The surviving spouse or surviving domestic partner files a written election for the optional settlement on or before December 31, 1997.
- C. Any election for an optional settlement made pursuant to the provisions of this section shall be subject to the following requirements:
 1. The actuarial equivalent of the retirement allowance and the surviving spouse allowance shall be calculated as of the date of the member's

retirement or as of the date the former member first began receiving monthly benefits, whichever is applicable.

2. If the total amount of the benefits paid from the Plan (including both monthly benefits paid to the retired member or former member plus any benefits paid to a surviving spouse or surviving domestic partner) as of the date of the election made under subsection A. or B. exceeds the amount of the benefits that would have been paid under the selected optional settlement, then the retired member, former member, surviving spouse, or surviving domestic partner as applicable, shall repay the excess benefits, plus any cost-of-living adjustments attributable to such excess payments, to the Retirement Fund in such manner and at such times as approved by the Board in order that the additional time in which persons may elect an optional settlement under this Section 3.36.1467 shall be cost-neutral to the retirement fund.
 3. In the event the retired member or former member dies before all overpayments have been repaid to the Retirement Fund as required by paragraph 2. above, any remaining overpayment shall be deducted from any survivorship or death benefits which otherwise would become payable upon the death of the retired member or former member.
- D. For the purposes of this section, "retirement allowance" includes:
1. The retirement allowance that would have been paid to a member who retired but died before receipt of retirement pay; and
 2. The monthly benefit paid to a former member of this Plan pursuant to Section 3.36.1640.

3.36.1468 Marriage Or Domestic Partnership After Commencement Of Monthly Allowance.

- A. Notwithstanding any provision in this Part 9.5 to the contrary, a person who is receiving a monthly retirement allowance or is receiving a monthly allowance from the retirement fund pursuant to Section 3.36.1640 and who marries or establishes a domestic partnership after beginning to receive such monthly

allowance may elect an optional settlement under this Section by filing a written election with the retirement Board on a form provided by the Secretary to the Board.

- B. The election for an optional settlement must be filed within the time specified in this subsection B.
1. The election must be filed on or before January 15, 2003, in the case of a person who, as of July 12, 2002:
 - a. Is receiving a monthly allowance; and
 - b. Has married after first receiving the monthly allowance; and
 - c. Has been married to that spouse for at least thirty days.
 2. The election must be filed on or before January 31, 2007, in the in the case of a person who, as of July 1, 2006, 2005:
 - a. Is receiving a monthly allowance; and
 - b. Entered into a domestic partnership on or after January 1, 2005, and after first receiving the monthly allowance; and
 - c. Has been in a domestic partnership with that domestic partner for at least thirty days.
 3. The election must be filed within thirty days after the date of the marriage or the establishment of the domestic partnership in the case of any person not described in paragraph 1. or paragraph 2. above.
- C. The optional settlement consists of either:
1. An election to have the actuarial equivalent of any monthly allowance to which the former member is entitled under this Plan applied to provide a lesser monthly allowance to the former member until the former member's death and, thereafter, subject to the provisions of subsection D. below, to have such percentage of the former member's reduced retirement allowance as the former member may select paid to the former member's spouse or domestic partner named in the election for the optional settlement for the life of that spouse or domestic partner. The reduction in the former member's monthly allowance shall begin with the first

monthly allowance payable after the effective date of the optional settlement. In the event the former member's spouse or domestic partner predeceases the former member, the reduced retirement allowance shall continue to be paid to the former member until the former member's death.

2. An election to have the actuarial equivalent of any monthly allowance to which the former member is entitled under this Plan applied to provide a lesser monthly allowance to the former member until the former member's death and, thereafter, subject to the provisions of subsection D. below, to have such percentage of the former member's reduced allowance as the former member may select paid to the former member's spouse or domestic partner named in the election for the optional settlement for the life of that spouse or domestic partner. The reduction in the former member's monthly allowance shall begin with the first monthly allowance payable after the effective date of the optional settlement. In the event the former member's spouse or domestic partner predeceases the former member, the former member shall be paid thereafter, until the former member's death, a monthly allowance in an amount equal to the monthly allowance that would have been paid to the former member had no optional settlement been elected.

D. For the purposes of this Section 3.36.1468:

1. In no case shall the percentage paid to the named spouse or domestic partner be greater than one hundred percent or be less than fifty percent of the reduced retirement allowance paid to the member.
2. The percentage paid to the named spouse or domestic partner shall be a multiple of five percent (e.g., 50%, 55%, 60%, 65%).
3. In no case shall any monthly allowance be paid to a former member that is greater than the monthly allowance that would have been paid had no optional settlement been elected.
4. The optional settlements provided in this Section shall be paid only to the person who was married to the former member both at the time of the

former member's election of the optional settlement and at the time of the former member's death or to the person who was the member's domestic partner both at the time of the member's retirement and at the time of the member's death, whichever is applicable.

5. In no case shall the total of the monthly allowance payable to a named spouse or domestic partner under an optional settlement plus the monthly allowances payable to any surviving children under the provisions of this Chapter exceed a maximum of seventy-five percent of the deceased former member's final compensation. In the event the total of such monthly allowances would exceed said maximum, the amounts payable to the children shall be reduced to such amounts as, when added to the amount payable to the named spouse or domestic partner, will not exceed said maximum.
 6. "Actuarial equivalent" shall have the meaning set out in Section 3.36.1466. In determining the actuarial equivalent, a former member who is receiving a benefit pursuant to Section 3.36.1640 shall be treated as though retired for service.
- E. Unless revoked within the time specified in subsection F. or unless automatically revoked as provided in subsection G., any optional settlement elected pursuant to this section shall become effective:
1. In the case of a person described in paragraph 1. of subsection B., the later of six months from the date the election is made or one year from the date of the marriage or the establishment of the domestic partnership; or
 2. In the case of a person described in paragraph 2. of subsection B., one year from the date of the marriage or the establishment of the domestic partnership.
- F. Any election made pursuant to this section may be amended or revoked by the former member who made the election provided that the amendment or revocation is made in writing and is filed with the retirement Board within the time

specified in subsection B. If an election is revoked, a new one may be made in the manner and time specified in subsections A. and B. of this Section.

G. Any election made pursuant to this section that is not amended or revoked within the time specified in subsection B. shall be irrevocable and benefits shall be paid in accordance with such election and the provisions of this Section except under the following circumstances:

1. In the event the former member is reemployed by the City and becomes a member of this Plan, any election made pursuant to this section prior to such reemployment shall be automatically revoked, and no benefits shall be paid pursuant to such election.
2. In the event a former member elects an optional settlement and the former member's spouse or domestic partner predeceases the member prior to the effective date of the optional settlement, the election shall be automatically revoked, and benefits shall be paid to the member as though no optional settlement had been elected.
3. In the event a former member elects an optional settlement and the former member dies leaving an eligible surviving spouse who is not the person named in the election or leaving an eligible surviving domestic partner who is not the person named in the election, the election shall be automatically revoked, and no benefits shall be paid pursuant to the election.

SECTION 7. Section 3.36.1600 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to be entitled and to read as follows:

3.36.1600 Suspension Of Membership -- Conditions -- Award Of Benefits Prohibited.

- A. A person's membership in this Retirement System shall be deemed automatically suspended for and during any and each of the following periods of time:
1. Any period of time for or during which such person is temporarily suspended from City service, unless such person is entitled to credit for such time as service pursuant to the provisions of Section 3.36.640;

2. Any period of time for or during which such person is temporarily laid off from City service because of lack of sufficient work requiring his or her services;
 3. Any period of time for or during which such person has received or is on a leave of absence without full monthly compensation, regardless of whether or not such person may be entitled to credit for such time as service under and by virtue of other provisions of this Chapter, excepting those leaves of absence to perform other City service which are specified in subsections G. and H. of Section 3.36.610; and excepting those leaves of absence for the performance of military or naval duty for the United States of America in time of war or national emergency;
 4. Any other period of time for or during which such person is not receiving or entitled to receive such full monthly compensation as is otherwise provided for such person's class of position, regardless of whether or not such person may be entitled to credit for such time, as service, under and by virtue of other provisions of this Chapter, excepting those leaves of absence to perform other City service which are specified in subsections G. and H. of Section 3.36.610; and excepting those leaves of absence for the performance of military or naval duty for the United States of America in time of war or national emergency;
 5. Any other period of time for which such person is not entitled to credit as service under and by virtue of other provisions of this Chapter.
- B. Upon expiration of any such period of time, and upon return of such person to active full-time duty in the service of the City, such person's membership in this System shall be automatically reinstated as of the day he or she returns to such City service.
- C. Anything elsewhere to the contrary notwithstanding, no person shall be entitled to any disability retirement or to any disability retirement allowance because of any disability which occurs or arises during any period of time for or during which his

or her membership is suspended by virtue of the provisions of this Section, nor to the return of any contributions or interest thereon because of the suspension of his or her membership or while his or her membership is suspended. Also, except as may be otherwise specifically provided by the provisions of subsection A.2. of Section 3.36.1200 and subsection A.2. of Section 3.36.1250, no surviving spouse, surviving domestic partner, surviving child or children, nor any estate, nor any other person, shall be entitled to any survivorship, death or other allowance or benefit under or by virtue of any provisions of this Chapter because of any person's death if such death occurs during any time for or during which such deceased person's membership was suspended.

- D. In the event survivorship benefits are paid pursuant to subsection A.2. of Section 3.36.1200 or subsection A.2. of Section 3.36.1250 because of the death of a member while on leave of absence to perform military or naval duty in time of war or national emergency, the monthly survivorship allowance shall be reduced by the amounts received by the survivor to whom the allowance is paid pursuant to the United States Social Security Act or other federal benefits program where such amounts are received by the survivor because of death of the member incurred while on such leave of absence.

SECTION 8. Section 3.36.1640 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to be entitled and to read as follows:

3.36.1640 Monthly Allowance Or Return Of Contributions To Certain Persons With Ten Or More Years Of Service Whose Membership Terminates Before Retirement.

- A. Any person credited with ten or more years of service on or after July 1, 1976, in this Retirement System whose membership is terminated after July 1, 1976, before such person retires, by reason of resignation or discharge, layoff or leave of absence deemed by the Board to have resulted in permanent discontinuance (unless such permanent discontinuance is to accept transfer to or appointment to another position covered by the plan) shall have the right to elect in writing, on a form to be furnished by this System, not later than ninety days after the date

upon which notice of said right is mailed by this System to the person's latest address on file in the office of this System, whether to allow his or her accumulated contributions to remain in the retirement fund or to withdraw such contributions. Failure to make such election in writing shall be deemed an irrevocable election to withdraw his or her accumulated contributions. In the event of an election to withdraw, such person shall receive from the retirement fund the amount of such person's accumulated contributions to the fund, plus interest thereon as earned by the fund during the period of such person's service, but in no case shall the interest exceed two percent (2%) per annum. Thereafter neither such person nor the surviving spouse, surviving domestic partner, surviving child or children, or estate of such person shall be entitled to any allowance or benefit whatsoever under the provisions of this Chapter.

- B. When both of the following conditions have been satisfied, a person who has elected to allow his or her accumulated contributions to remain in the retirement fund may apply for a monthly allowance to be paid from the retirement fund:
1. Such person attains fifty-five years of age; and
 2. Twenty (20) years have elapsed from the time such person first became a member.
- C. A person who separates from City service on or after July 5, 1992, may apply for a monthly allowance to be paid from the retirement fund if the conditions of subsection B are satisfied or if both of the following conditions are satisfied:
1. The person has attained fifty years of age; and
 2. At the time the person separated from City service, the person was entitled to not less than twenty-five (25) years of service credit in this plan.
- D. The monthly allowance payable pursuant to this Section shall be calculated as follows:
1. For a person who separated from City service prior to February 4, 1996, the monthly allowance shall be equal to two and one-half percent (2½%) of the person's final compensation for each full year of service. In no

- event shall the person's monthly allowance exceed a maximum of seventy-five percent (75%) of his or her final compensation.
2. For a person who separated from City service on or after February 4, 1996, but prior to February 4, 2000, the monthly allowance shall be equal to two and one-half percent (2½%) of the person's final compensation for each of the first twenty (20) years of service plus three percent (3%) of the person's final compensation for each full year of service in excess of twenty (20) years of service. In no event shall the person's monthly allowance exceed a maximum of eighty percent (80%) of his or her final compensation.
 3. For a person who separated from City service on or after February 4, 2000, the monthly allowance shall be equal to two and one-half percent (2½%) of the person's final compensation for each of the first twenty (20) years of service plus three percent (3%) of the person's final compensation for each of the next five (5) full years of service plus four percent (4%) of the person's final compensation for each full year of service in excess of twenty-five (25) years of service. In no event shall the person's monthly allowance exceed a maximum of eighty-five percent (85%) of his or her final compensation.
- E. For the purposes of this Section 3.36.1640, "service" means service performed for the City and for which the member is entitled to credit under the provisions of this Chapter. "Service" shall not include service as an officer or employee of a reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.
- F. In computing the amount of allowance payable, pro rata credit shall be given for a portion of a full year.
- G. At any time after electing to allow his or her accumulated contributions to remain in the retirement fund, the person may submit a written request for a return of such contributions, in which event such contributions shall be returned to such person plus interest thereon as earned by the fund to the date such contributions

are returned, but in no case shall interest exceed two percent per annum.

Thereafter, neither such person nor the surviving spouse, surviving domestic partner, surviving child or children, or estate of such person shall be entitled to any allowance or benefit whatsoever under the provisions of this Chapter.

SECTION 9. Section 3.36.1660 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to be entitled and to read as follows:

3.36.1660 Survivorship Benefits Payable Where Person Eligible For Monthly Allowance Under Section 3.36.1640 Dies Before Receiving Same.

- A. If after a person becomes entitled to the monthly allowance provided for in Section 3.36.1640, he or she should die before receiving any such allowance:
1. Such deceased person's surviving spouse, surviving domestic partner, eligible surviving child or children (as said terms are defined in Section 3.36.1200), shall be entitled:
 - a. Under the conditions described in subsections C. and D. of Section 3.36.1200, to a sum of money equal to all contributions of the deceased person to the retirement fund plus interest thereon as earned by the fund to the deceased person's death, but in no case shall the interest exceed two percent per annum; and
 - b. Under the conditions described in subsections F. and G. of Section 3.36.1200, and subject to the withholding provided for in subsection H. of Section 3.36.1200, if a lump sum return of contributions and interest is chosen, a monthly allowance in the amount specified in subsection B. of this Section.
 2. Such deceased person's estate shall be entitled, under the conditions described in subsection E. of Section 3.36.1200, to a return of the deceased person's contributions together with interest thereon to the date of death, but in no case shall the interest exceed two percent per annum.
- B. The amount of a monthly allowance payable under this Section shall be:
1. To a surviving spouse or surviving domestic partner, one and eight hundred seventy-five thousandths percent of the deceased person's final

compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of thirty-seven and five tenths percent of such final compensation. Pro rata credit shall be given for a portion of a full year. The monthly allowance shall be paid for the life of the surviving spouse or surviving domestic partner.

2. To one eligible surviving child, one and twenty-five hundredths percent of the deceased person's final compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of twenty-five percent of such final compensation. Pro rata credit shall be given for a portion of a full year.
3. To each of two eligible surviving children, one-half of the amount specified in the following paragraph a or one-half of the amount specified in the following paragraph b, whichever is the lesser amount:
 - a. One and eight hundred seventy-five thousandths percent of such deceased person's final compensation for each full year of service; provided, however, that in no event shall the combined monthly allowance payable to the children exceed a maximum of fifty percent of such final compensation. Pro rata credit shall be given for a portion of a full year.
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person will not exceed a total of seventy-five percent of such final compensation.
4. To each of three or more eligible surviving children, the amount specified in the following paragraph a or the amount specified in the following paragraph b, whichever is the lesser amount:
 - a. Two and five-tenths percent of such deceased person's final compensation for each full year of service, divided by the number of children entitled to receive an allowance; provided, however, that in

no event shall the combined monthly allowance paid to the children exceed a maximum of seventy-five percent of such final compensation. Pro rata credit shall be given for a portion of a full year.

- b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person will not exceed a total of seventy-five percent of such final compensation, divided by the number of children entitled to receive an allowance.
- C. Each child who, if he or she were under the age of eighteen years, would be a surviving child as defined in Section 3.36.1200 and entitled to payment of contributions and monthly allowance hereunder, shall, if he or she otherwise meets the eligibility requirements of Part 9, it being assumed for purposes of such part that such child would be entitled to a surviving child's monthly survivorship allowance under Part 8 if he or she were under eighteen years of age, be entitled to a child's school allowance for the time set forth in Section 3.36.1440 in the same amount, including return of contributions and monthly survivorship allowance as set forth above for surviving child and children.

SECTION 10. Section 3.36.1670 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to be entitled and to read as follows:

3.36.1670 Survivorship Benefits Payable Where Person Eligible For Monthly Allowance Under Section 3.36.1640 Dies After Receiving Same.

- A. If after a person becomes entitled to the monthly allowance provided for in Section 3.36.1640, he or she should die after receiving any such allowance, such person's surviving spouse, surviving domestic partner, surviving child or children (as said terms are defined in Section 3.36.1230) shall be entitled to a monthly allowance under the conditions described in subsections C and D of Section 3.36.1320, the amount of such monthly allowance to be as set forth in subsection B of this Section, and such deceased person's estate shall be entitled to a

payment of one thousand dollars under the conditions described in Section 3.36.1230 E.

- B. The amount of such monthly allowance payable under this Section shall be:
1. To a surviving spouse or surviving domestic partner, one and eight hundred seventy-five thousandths percent of the deceased person's final compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of thirty-seven and one-half percent of such final compensation. Pro rata credit shall be given for a portion of a full year. The monthly allowance shall be paid for the life of the surviving spouse or surviving domestic partner.
 2. To one eligible surviving child, one and twenty-five hundredths percent of the deceased person's final compensation for each full year of service; provided, however, that in no event shall the monthly allowance exceed a maximum of twenty-five percent of such final compensation. Pro rata credit shall be given for a portion of a full year;
 3. To each of two eligible surviving children, one-half of the amount specified in the following paragraph a, or one-half of the amount specified in the following paragraph b, whichever is the lesser amount:
 - a. One and eight hundred seventy-five thousandths percent of the deceased person's final compensation for each full year of service; provided, however, that in no event shall the combined monthly allowance payable to the children exceed a maximum of fifty percent of such final compensation. Pro rata credit shall be given for a portion of a full year;
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of the deceased person, will not exceed a total of seventy-five percent of such final compensation;

4. To each of three or more eligible surviving children, the amount specified in the following paragraph a, or the amount specified in the following paragraph b, whichever is the lesser amount:
 - a. Two and one-half percent of the deceased person's final compensation for each full year of service, divided by the number of children entitled to receive an allowance; provided, however, that in no event shall the combined monthly allowance paid to the children exceed a maximum of seventy-five percent of such final compensation. Pro rata credit shall be given for a portion of a full year.
 - b. That percentage of the deceased person's final compensation which, when added to the percentage of such final compensation which is paid or payable to a surviving spouse or surviving domestic partner of such deceased person, will not exceed a total of seventy-five percent of such final compensation, divided by the number of children entitled to receive an allowance.
- C. Each child who, if he or she were under the age of eighteen years, would be a surviving child as defined in Section 3.36.1230 and entitled to payment of a monthly survivorship allowance hereunder shall, if he or she otherwise meets the eligibility requirements of this Part 9, it being assumed for purposes of such part that such child would be entitled to a surviving child's monthly survivorship allowance under Part 8 if he or she were under eighteen years of age, be entitled to a child's school allowance for the time set forth in Section 3.36.1440 in the same amount, including return of contributions and monthly survivorship allowance, as set forth above for surviving child and children.
- D. Such deceased person shall, for the purpose of the definition of spouse, domestic partner, child or children contained in this Section, be deemed to have retired as of the date such deceased person first receives a monthly allowance hereunder.

SECTION 11. Section 3.36.1680 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to be entitled and to read as follows:

3.36.1680 Return Of Contributions To Certain Survivors Of Person Who Dies Before Reaching Fifty-Five And Before Twenty Years Have Elapsed From The Time Such Person First Became A Member.

If such person mentioned in Section 3.36.1640 should die before he or she reaches fifty-five years of age and before twenty years have elapsed from the time such person first became a member of this System, such deceased person's surviving spouse, surviving domestic partner, surviving child or children (as such terms are defined in Section 3.36.1250), or such deceased person's estate shall be entitled under the condition described in subsections C, D or E of Section 3.36.1250, whichever is applicable, either (i) to the return from the retirement fund of a sum of money equal to such deceased person's contributions to the retirement fund, plus interest thereon to the date of death, as earned by such fund, but in no case shall the interest exceed two percent (2%) per year, or (ii) to the sum of one thousand dollars, whichever is greater. A surviving spouse or surviving domestic partner shall be paid benefits under this Section regardless of whether the spouse or domestic partner is married or has established a domestic partnership at the time the benefits become payable.

SECTION 12. Section 3.36.1910 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to be entitled and to read as follows:

3.36.1910 Medical Benefits For Survivors Of Members.

Subject to the provisions of this Chapter, the surviving spouse, surviving domestic partner, child and/or children, as those terms are defined in Section 3.36.1200 of this Chapter, may be entitled to medical insurance coverage in an eligible insurance plan as specified in Section 3.36.1940 if the requirements of subsection A., B., or C. of this Section 3.36.1910 are satisfied:

- A. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly allowance pursuant to Part 8 of this Chapter because of the death of a member and:

1. The member either died before receiving retirement pay or was retired for service under Part 6 of this Chapter or for disability under Part 7 of this Chapter; and
 2. At the time of the member's death:
 - a. The member was entitled to credit for fifteen or more years of service; or
 - b. The member was retired pursuant to Section 3.36.760 of this Chapter; or
 - c. The surviving spouse, surviving domestic partner, surviving child and/or children were entitled to a survivorship allowance of at least thirty-seven and one-half percent of the member's final compensation.
- B. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly allowance pursuant to Part 11 of this Chapter because of the death of a former member who separated from City service on or after July 5, 1992, and who was entitled to credit for twenty or more years of service at the time of such separation from service.
- C. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly allowance pursuant to Part 11 of this Chapter because of the death of a former member who separated from City service prior to July 5, 1992, and who met all of the requirements of subsection D. of Section 3.36.1900.

SECTION 13. Section 3.36.1920 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1920 Requirements For Participation In Medical Insurance Plan.

- A. A member or former member, as specified in Section 3.36.1900, above, is eligible to participate in a medical insurance plan sponsored by the City provided that the member or former member satisfies the following requirements:
1. The member retires for service or disability pursuant to the provisions of this Chapter and at the time of retirement the member applies for medical

- insurance coverage in accordance with the applicable provisions of the medical insurance plan and agrees to pay any applicable premiums; or
2. The former member receives a monthly allowance pursuant to Section 3.36.1640 and within thirty days of first receiving such monthly allowance the former member applies for medical insurance coverage in accordance with the applicable provisions of the medical insurance plan and agrees to pay any applicable premiums.
- B. A survivor, as specified in Section 3.36.1910, above, is eligible to participate in a medical insurance plan sponsored by the City provided that the following conditions are satisfied:
1. At the time of the death of the member or former member, the member or former member and the survivor were both enrolled in one of the medical insurance plans sponsored by the City; and
 2. The survivor applies to continue medical insurance coverage within sixty days of the death of the member or former member; and
 3. The survivor agrees to pay any applicable premiums.
- C. A member or former member may secure medical insurance coverage for a spouse under the following conditions:
1. The spouse and member are married at the time of said member's retirement for service or disability; or
 2. The spouse and the former member are married at the time the former member first begins receiving a monthly allowance pursuant to Section 3.36.1640; or
 3. The member marries subsequent to his or her retirement and applies to add such spouse in accordance with the terms of the eligible medical plan; or
 4. The former member marries while receiving monthly allowances pursuant to Section 3.36.1640 and applies to add such spouse in accordance with the terms of the eligible medical plan.

- D. A member or former member may secure medical insurance coverage for a domestic partner under the following conditions:
1. The domestic partner and the member are members of a domestic partnership at the time of said member's retirement for service or disability; or
 2. The domestic partner and the member are member's of a domestic partnership at the time the former member first begins receiving a monthly allowance pursuant to Section 3.36.1640; or
 3. The member establishes a domestic partnership subsequent to his or her retirement and applies to add such domestic partner in accordance with the terms of the eligible medical plan; or
 4. The former member establishes a domestic partnership while receiving monthly allowances pursuant to Section 3.36.1640 and applies to add such domestic partner in accordance with the terms of the eligible medical plan.
- E. A surviving spouse or surviving domestic partner shall be eligible for single coverage only, except as follows:
1. A surviving spouse or surviving domestic partner shall be eligible for family coverage if a surviving child or children as defined in Section 3.36.1200, or an eligible surviving child for purposes of receiving a school allowance pursuant to Part 9 of this Chapter, are surviving the death of the member.
 2. A surviving spouse or surviving domestic partner shall be eligible for family coverage if the surviving spouse or the surviving domestic partner is the court-appointed guardian of the person of a minor child or children and such minor child or children are eligible for coverage under the terms of the eligible medical plan. A surviving spouse or surviving domestic partner may continue family coverage after such child reaches the age of majority in any case where, if such child had been a surviving child of the member or former member, such child would be an eligible surviving child

for purposes of receiving a school allowance pursuant to Part 9 of this Chapter.

- F. Notwithstanding the provisions of subsections A. and B. of Section 3.36.1920, members or their survivors who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this Part 14, but who, at the time of retirement or death, could not enroll because the benefits provided in this Part 14 were not available at the time of the member's retirement for service or disability or death of the member, may enroll in an eligible insurance plan as provided for in this Part 14 until or on August 31, 1984, only; said members or their survivors must otherwise comply with the coverage limitations provided in subsections C. and D. of Section 3.36.1920 and with all provisions of this Part 14.
- G. Notwithstanding the provisions of Section 3.36.1920.C., a spouse who married a member subsequent to the member's retirement and would otherwise qualify for participation in a medical insurance plan pursuant to this Part 14 but who, at the time of marriage, could not enroll because the benefits provided in this Part 14 were not available for spouses married subsequent to a member's retirement, may enroll in an eligible insurance plan as provided in this Part 14 until or on December 30, 1991, only. Such spouse must otherwise comply with all other provisions of this Part 14.
- H. Notwithstanding the provisions of Section 3.36.1920.D., a domestic partner who established a domestic partnership with a member subsequent to the member's retirement and would otherwise qualify for participation in a medical insurance plan pursuant to this Part 14 but who, at the time of establishing the domestic partnership, could not enroll because the benefits provided in this Part 14 were not available for domestic partnerships where the partnership was established subsequent to a member's retirement, may enroll in an eligible insurance plan as provided in this Part 14 until or on January 31, 2007, only. Such domestic partner must otherwise comply with all other provisions of this Part 14.

- I. Notwithstanding the provisions of subsections A. and B. of Section 3.36.1920, a member who retired pursuant to Section 3.36.760, or survivors of such member, who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this Part 14 but who, at the time of retirement or death, could not enroll because the benefits provided in this Part 14 were not available to such member or such survivors at the time of such member's retirement or death, may enroll in an eligible insurance plan as provided for in this Part 14 until or on December 30, 1991, only. Said member or survivors must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.
- J. A surviving spouse who would otherwise qualify for family coverage because the surviving spouse is the court-appointed guardian of the person of a minor child or children but who, at the time of the member's or former member's death, could not enroll because the family coverage provided in this Part 14 was not available to such surviving spouse at the time of the member's or former member's death, may enroll in family coverage in an eligible insurance plan as provided for in this Part 14 until June 30, 2002, only. Said surviving spouse must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.
- K. A domestic partner who would otherwise qualify for family coverage because the domestic partner is the court-appointed guardian of the person of a minor child or children but who, at the time of the member's or former member's death, could not enroll because the family coverage provided in this Part 14 was not available to such surviving domestic partner at the time of the member's or former member's death, may enroll in family coverage in an eligible insurance plan as provided for in this Part 14 until January 31, 2007, only. Said surviving domestic partner must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.
- L. Notwithstanding the provisions of subsection A. of Section 3.36.1920, a former member who meets the requirements of subsection D. of Section 3.36.1900 but

who, within thirty days of first receiving a monthly allowance, could not enroll in a medical insurance plan because the benefits provided in this Part 14 were not then available to such former member, may enroll in an eligible insurance plan as provided for in this Part 14 until or on December 31, 2002, only. Upon the death of such former member, the former member's survivors shall be eligible for continued medical insurance coverage. Such former member or survivors must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.

SECTION 14. Section 3.36.2010 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.2010 Dental Benefits For Survivors Of Members.

Subject to the provisions of this Chapter, the surviving spouse, surviving domestic partner, surviving child and/or children, as those terms are defined in Section 3.36.1200 of this Chapter, may be entitled to dental insurance coverage in an eligible dental plan as specified in Section 3.36.2040 if the requirements of subsection A., B., C. or D. are satisfied:

- A. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly survivorship allowance pursuant to Part 8 of this Chapter because of the death of a member who became a member of this Plan prior to July 1, 1998, and:
 - 1. Was retired for service or disability; or
 - 2. Died before receiving retirement pay.
- B. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly survivorship allowance pursuant to Part 8 of this Chapter because of the death of a member who became a member of this Plan on or after July 1, 1998, and:
 - 1. The member either died before receiving retirement pay or was retired for service under Part 6 of this Chapter or for disability under Part 7 of this Chapter; and

2. At the time of the member's death:
 - a. The member was entitled to credit for fifteen or more years of service; or
 - b. The surviving spouse, surviving domestic partner, surviving child and/or children were entitled to a survivorship allowance of at least thirty-seven and one-half percent of the member's final compensation.
- C. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly allowance pursuant to Part 11 of this Chapter because of the death of a former member who separated from City service on or after July 5, 1992, and who was entitled to credit for twenty or more years of service at the time of such separation from service.
- D. The surviving spouse, surviving domestic partner, surviving child and/or children are receiving a monthly allowance pursuant to Part 11 of this Chapter because of the death of a former member who separated from city service prior to July 5, 1992, and who met all of the requirements of subsection D. of Section 3.36.2000.

SECTION 15. Section 3.36.2020 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.2020 Requirements For Participation In Dental Insurance Plan.

- A. A member or former member, as specified in Section 3.36.2000 above, is eligible to participate in a dental insurance plan sponsored by the City provided that the member or former member satisfies the following requirements:
 1. The member retires for service or disability pursuant to the provisions of this Chapter and at the time of retirement the member applies for dental insurance coverage in one of the dental insurance plans sponsored by the City; or
 2. The former member receives a monthly allowance pursuant to Section 3.36.1630 or Section 3.36.1640 and within thirty days of first receiving

such monthly allowance the former member applies for dental insurance coverage in one of the dental insurance plans sponsored by the City.

- B. A survivor, as specified in Section 3.36.2010 above, is eligible to participate in a dental insurance plan sponsored by the City provided that the survivor satisfies the following requirements:
 - 1. At the time of the death of the member or former member, the member or former member and the survivor were enrolled in one of the dental insurance plans sponsored by the City; and
 - 2. The survivor applies to continue dental insurance coverage within thirty days of the death of the member or former member.
- C. Notwithstanding the provisions of subsections A. and B. of this section, all retired members and survivors who receive a retirement or survivorship allowance for the month of July 1986 shall automatically be enrolled in an eligible dental insurance plan as specified in this Part.
- D. If a member marries subsequent to his or her retirement or if a former member marries while receiving monthly allowances pursuant to Section 3.36.1630 or Section 3.36.1640, the member or former member may secure dental insurance coverage for his or her spouse only if the member or former member applies to add such spouse in accordance with the terms of the eligible dental insurance plan.
- E. If a member establishes a domestic partnership subsequent to his or her retirement or if a former member establishes a domestic partnership while receiving monthly allowances pursuant to Section 3.36.1630 or Section 3.36.1640, the member or former member may secure dental insurance coverage for his or her domestic partner only if the member or former member applies to add such domestic partner in accordance with the terms of the eligible dental insurance plan.
- F. Notwithstanding the provisions of subsection A. of this section, a former member who meets the requirements of subsection D. of Section 3.36.2000 but who, within thirty days of first receiving a monthly allowance, could not enroll in a

dental insurance plan because the benefits provided in this Part 15 were not then available to such former member, may enroll in an eligible insurance plan as provided for in this Part 15 until or on December 31, 2002, only. Upon the death of such former member, the former member's survivors shall be eligible for continued dental insurance coverage. Such former member or survivors must otherwise comply with all other provisions of this Part 15.

SECTION 16. Part 17 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

Part 17

PLAN-APPROVED DOMESTIC RELATIONS ORDERS

3.36.3500 Purpose And Applicability.

- A. The purpose of this Part 17 is to set forth the requirements for plan-approved domestic relations orders that may be awarded by a court in a dissolution of marriage, termination of domestic partnership, or legal separation action with respect to community property rights in benefits provided by this Plan.
- B. This Part shall apply only in those dissolution of marriage, termination of domestic partnership, or legal separation proceedings which are pending on January 14, 2000, in which the court has reserved jurisdiction over the retirement benefits or has not yet awarded the benefits, or in which the court issues a supplemental order with respect to the division of the community property rights in benefits provided by this Plan.

3.36.3510 Compliance With Plan-Approved Domestic Relations Orders.

The Board of Administration shall comply only with domestic relations orders that are plan-approved domestic relations orders pursuant to this Part. The Board shall not authorize payments to an alternate payee pursuant to any order that does not meet the requirements of a plan-approved domestic relations order.

3.36.3520 “Domestic Relations Order” Defined.

“Domestic relations order” or “DRO” means any judgment, decree or order (including court approval of a property settlement agreement) which relates to community property rights in the case of a marital dissolution, termination of domestic partnership, or legal separation and which is made pursuant to a state domestic relations law.

3.36.3530 “Participant” Defined.

“Participant” means a member of this Plan, a retired member of this Plan, or a former member of this Plan who separated from City service but left his or her accumulated contributions on deposit with the Plan.

3.36.3540 “Alternate Payee” Defined.

- A. “Alternate payee” means the spouse, domestic partner, former spouse or former domestic partner of a participant of this Plan who, as a result of petitioning a court of competent jurisdiction for the division of community property, has been awarded an interest in the benefits payable to a participant in this Plan.
- B. A spouse, domestic partner, former spouse or former domestic partner who is awarded an interest in such benefits shall not be or become a participant of this Plan by virtue of such award or the payment of such benefits.

3.36.3550 “Plan-Approved Domestic Relations Order” Defined.

- A. “Plan-approved domestic relations order” means a domestic relations order which:
 - 1. Sets forth an alternate payee’s right to receive a portion of the benefits payable to a participant of this Plan;
 - 2. Pursuant to Section 2610 of the California Family Code, orders the division of the community interest in the benefits payable to a participant; and
 - 3. Meets the requirements of this Part.

- B. A DRO is a plan-approved domestic relations order only if the Plan has been joined in the dissolution of marriage, termination of domestic partnership, or legal separation action pursuant to Chapter 6 (commencing with Section 2060) of Part 1 of Division 6 of the California Family Code.
- C. A DRO is a plan-approved domestic relations order only if the order clearly specifies that it:
 - 1. Does not require the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan; and
 - 2. Does not require the Plan to provide benefits (determined on the basis of actuarial value) in excess of those provided by the Plan.
- D. A DRO is not a plan-approved domestic relations order if it provides for any of the following:
 - 1. Payment from this Plan to an alternate payee at any time prior to the date the participant has both separated from City service and begun to receive payments from this Plan, except as provided in Section 3.36.3600, Section 3.36.3620, or Section 3.36.3630.
 - 2. Payment from this Plan because of the disability of the alternate payee, except as provided in Section 3.36.3580 or Section 3.36.3660.
 - 3. Payment from this Plan of any premium, or portion thereof, for medical or dental insurance coverage for the alternate payee.
 - 4. Designation of the alternate payee as a surviving spouse or surviving domestic partner for the purpose of receiving any surviving spouse benefit, surviving domestic partner benefit, or death benefit provided under this Plan on account of the death of the participant.
 - 5. The alternate payee to make any contributions to the Plan or the retirement fund or to purchase service credit in the Plan.

3.36.3560 Dissolution, Termination Or Legal Separation Before The Participant Has Separated From City Service.

If the marital dissolution, termination of domestic partnership or legal separation occurs before the participant has separated from City service, and the court orders the

division of the community interest in this Plan pursuant to Section 2610 of the Family Code, then the DRO will be a plan-approved domestic relations order if it meets the requirements of Section 3.36.3580 or Section 3.36.3600.

3.36.3570 Dissolution, Termination Or Legal Separation After The Participant Has Separated From City Service.

If the marital dissolution, termination of domestic partnership, or legal separation occurs after the participant has separated from City service, whether for retirement, resignation or any other reason, and the court orders the division of the community interest in this Plan pursuant to Section 2610 of the Family Code, then:

- A. In order to be a plan-approved domestic relations order the DRO must satisfy the requirements of Section 3.36.3580.
- B. The separate account option set forth in Section 3.36.3600 shall not be available, and the DRO shall not order the establishment of a separate account for the alternate payee.
- C. The DRO shall not in any way change any election made by the participant at the time of retirement or other separation from City service.

3.36.3580 Combined Account Option.

- A. If the court orders the division of the community interest in this Plan pursuant to Section 2610 of the Family Code, the Board will comply with a DRO which divides the community property interests of a participant and the participant's alternate payee, provided that the DRO meets all of the following requirements:
 - 1. Is a plan-approved domestic relations order under Section 3.36.3550.
 - 2. Includes the date of the marriage or the date of establishing the domestic partnership and the date on which the parties separated.
 - 3. Includes the last known mailing address of the alternate payee covered by the order.
 - 4. Specifies the amount or percentage of the participant's monthly benefit, or the participant's accumulated contributions in the event the participant elects a withdrawal of accumulated contributions, which is to be paid to

- the alternate payee or specifies the manner in which such amount or percentage is to be determined.
5. Subject to Sections 3.36.3650 and 3.36.3660, specifies the portion of the participant's monthly disability benefits which is to be paid to the alternate payee and the time when such payment to the alternate payee is to commence:
 - a. In the event the participant retires for disability after the date of the dissolution of marriage or legal separation but prior to the time the participant is eligible to retire for service; or
 - b. In the event the participant has already retired for disability as of the date of the dissolution of marriage or legal separation.
 6. Specifies that the Plan shall pay the alternate payee's portion of the benefits to the alternate payee only at such time or times as the Plan makes payments to the participant.
 7. Specifies that, unless the alternate payee has elected a life annuity option pursuant to Section 3.36.3590, payments by the Plan to the alternate payee shall terminate when payments to the participant (or the participant's eligible surviving spouse or eligible surviving domestic partner) terminate.
 8. Specifies that the alternate payee shall not be entitled to payment from the Plan of any premium, or portion thereof, for medical or dental insurance coverage.
 9. Specifies that the alternate payee shall not be deemed an eligible surviving spouse or eligible surviving domestic partner under the terms of the Plan.
 10. Specifies that the Plan may offset any payments made by the Plan to either party for any amounts to which the other party was entitled, but which were erroneously paid to the party against whom the offset is made.
- B. In addition to the requirements of subsection A., the DRO may address the rights of the alternate payee with respect to the following:

1. In accordance with Section 3.36.3640, the right to designate a beneficiary.
2. The right to elect an alternate distribution option pursuant to Section 3.36.3590.

3.36.3590 Alternate Distribution Option For Alternate Payee.

- A. In the event the alternate payee is awarded a combined account, the alternate payee may elect an alternate distribution option as provided in this section by filing a written election with the Retirement Board on a form provided by the Secretary to the Board. The election must be filed no earlier than the time the participant files an application for retirement and no later than thirty days after the effective date of the participant's retirement.
- B. Any election made pursuant to the provisions of this section may be revoked by the alternate payee provided that the revocation is made in writing and is filed with the Retirement Board no later than thirty days after the effective date of the participant's retirement. If the election is not revoked within thirty days of the effective date of the participant's retirement, the election shall be irrevocable and benefits shall be paid in accordance with the election and the provisions of this Plan.
- C. The alternate distribution option consists of an election to have the actuarial equivalent of any allowance payable to the alternate payee from the combined account applied to provide a lesser monthly allowance to the alternate payee until the participant's death and, thereafter, to continue such lesser monthly allowance to the alternate payee for the life of the alternate payee.
- D. Any age factor used in the calculation of benefits payable under the alternate distribution option shall be based on the ages of the participant and the alternate payee as of the date benefits first become payable to the participant.

3.36.3600 Separate Account Option.

- A. If the court orders the division of the community interest in this Plan pursuant to Section 2610 of the Family Code, and the participant has not separated from City service at the time of the entry of the DRO, the court may order that the

- B. Any accumulated contributions or service credit that are not explicitly awarded by the DRO shall be deemed to be the exclusive property of the participant.
- C. The Board will comply with a DRO which orders the establishment of separate accounts provided that the DRO meets all of the following requirements:
 - 1. Is a plan-approved domestic relations order under Section 3.36.3550.
 - 2. Includes the date of the marriage or date of establishing the domestic partnership and the date on which the parties separated.
 - 3. Includes the last known mailing address of the alternate payee covered by the order.
 - 4. Specifies the amount or percentage of the accumulated contributions and service credit to be credited to the alternate payee's separate account or specifies the manner in which such amount or percentage is to be determined.
 - 5. Specifies the rights of the alternate payee with respect to the following:
 - a. In accordance with Section 3.36.3610, the right to a refund of accumulated employee contributions and interest.
 - b. In accordance with Section 3.36.3630, the right to receive a monthly allowance.
 - c. In accordance with Section 3.36.3640, the right to designate a beneficiary.
 - 6. Specifies that, in the capacity of alternate payee, the alternate payee shall not be entitled to any of the following:
 - a. Payment from the Plan because of the disability of the alternate payee.
 - b. Payment from the Plan of any death benefit or survivor's benefit payable because of the death of the participant.

- c. Payment from the Plan of any premium, or portion thereof, for medical or dental insurance coverage.

3.36.3610 Distribution Of Accumulated Contributions In Separate Account.

- A. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date of entry of the DRO with the court, the participant is entitled to less than ten years of service credit in this Plan, the alternate payee shall receive a distribution of the accumulated contributions and credited interest placed in the alternate payee's account.
- B. If, as of the date of entry of the DRO with the court, the participant is entitled to ten or more years of service credit in this Plan, the alternate payee may elect to receive a distribution of the accumulated contributions and credited interest placed in the alternate payee's account.
 - 1. The alternate payee may make such election at any time after the establishment of the alternate payee's separate account.
 - 2. The alternate payee shall make such election by filing an application for distribution with the Secretary to the Board on a form provided by the Secretary.
- C. Any distribution of accumulated contributions made to an alternate payee shall be effective when the Plan deposits in the United States mail a warrant drawn in favor of the alternate payee and addressed to the latest address for the alternate payee on file with the Plan, or to such other address as is specified in writing by the alternate payee.
- D. Once a distribution made pursuant to this section becomes effective:
 - 1. The alternate payee may not cancel the refund or revoke the election for distribution.
 - 2. The alternate payee shall be deemed to have permanently waived all rights in this Plan and all rights to the payment of any other benefits pertaining to the service credit or accumulated contributions, or both, in the alternate payee's separate account; and

3. The alternate payee shall have no right to redeposit the distributed accumulated contributions.

3.36.3620 Participant's Redeposit Of Contributions Refunded To Alternate Payee.

If an alternate payee receives a refund under Section 3.36.3610, the participant may elect to redeposit the accumulated contributions and interest refunded to the alternate payee and to receive credit for the service that had been allocated to the alternate payee.

- A. Such election shall be made within five years after notice to the participant from the Secretary to the Board of the participant's option to redeposit the contributions.
- B. The participant shall make such election by filing, a written statement of election with the Secretary to the Board on a form provided by the Secretary.
- C. Except as provided in paragraph 1. of subsection F. below, the participant shall not be entitled to receive credit for the service that had been allocated to the alternate payee unless, prior to the date the participant retires the participant redeposits:
 1. All contributions and interest distributed to the alternate payee; plus
 2. All additional interest which would have been earned on the distributed contributions and interest at the actual rate earned by the retirement fund, as of the date the participant elects to redeposit, if the contributions and interest had not been distributed to the alternate payee; plus
 3. Interest on the unpaid balance from the date the participant elects the redeposit to the date all such moneys and interest are fully redeposited into the retirement fund, at the actuarial rate in effect on the date the participant files the election.
- D. Such redeposit shall be made within the time and in the manner provided by the Board.

- E. If the participant does not make the election within the time provided herein, the participant shall be deemed to have elected not to have such service credited to the participant.
- F. If the participant elects to redeposit contributions and interest refunded to the alternate payee but does not redeposit all required amounts plus interest within the time and in the manner provided by the Board, then:
 - 1. If the failure to complete the redeposit is because of the death of the participant, while a member of this Plan but prior to retirement, the participant shall be credited with the amount of service which is determined by the Board to be attributable to the amount of payments made as of the date of the participant's death.
 - 2. If the failure to complete the redeposit is for any reason other than the death of the participant prior to retirement, any payments made pursuant to the election shall be credited to the participant's accumulated contributions account but the participant shall receive no service credit that had been allocated to the alternate payee.

3.36.3630 Monthly Allowance For Alternate Payee.

- A. An alternate payee who has been awarded a separate account shall be paid a monthly allowance from the retirement fund, for the life of the alternate payee, if all of the following conditions are satisfied:
 - 1. The alternate payee has not received a refund of accumulated contributions.
 - 2. Notwithstanding any service credit awarded to the alternate payee as of the date the alternate payee files an application for monthly benefits:
 - a. The participant is eligible to retire for service under provisions of this Plan; or
 - b. In the case where the participant retired for disability or died prior to becoming eligible for service retirement, the participant would have been eligible to retire for service had the participant continued working; or

- c. In the case of a participant who left City service without retiring, the participant is eligible to receive a monthly allowance under Section 3.36.1640, or would have been eligible had the participant not elected a refund of his or her accumulated contributions.
 3. The alternate payee has attained at least fifty years of age.
 4. The alternate payee files a written application for monthly benefits with the Secretary to the Board on a form provided by the Secretary.
 5. The Board approves the payment of such monthly allowance.
 - B. The monthly allowance to the alternate payee shall begin to accrue on the later of the date designated in the alternate payee's application or the day following the date of the court order dividing the community property of the participant and the alternate payee. In no event shall the monthly allowance begin to accrue earlier than the first day of the month in which the alternate payee's application is received by the Secretary to the Board.
 - C. Subject to the provisions of Section 3.36.3650 and 3.36.3660 and subsection D:
 1. In the case where the participant separated from service prior to February 4, 2000, and subject to a maximum of forty percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:
 - a. Two and one-half percent of the participant's final compensation for each of the first ten years of service credit credited to the alternate payee's separate account; plus
 - b. Three percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account that is in excess of ten years.
 2. In the case where the participant did not separate from service prior to February 4, 2000, and subject to a maximum of forty-two and one-half percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:

- a. Two and one-half percent of the participant's final compensation for each of the first ten years of service credit credited to the alternate payee's separate account; plus
 - b. Three percent of the participant's final compensation for each of the next two and one-half years of service credit credited to the alternate payee's separate account; plus
 - c. Four percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account that is in excess of twelve and one-half years.
- D. In the event the alternate payee elects to receive a monthly benefit before the alternate payee reaches age 55, the alternate payee's monthly benefit shall be reduced by an amount calculated in the same manner as the reduced monthly service retirement allowance of a member under subsection B. of Section 3.36.810.
- E. For the purposes of this section:
1. If the alternate payee elects to receive a monthly allowance prior to the date the participant retires, "final compensation" means the monthly final compensation of the participant as of the effective date of the first payment of the alternate payee's allowance.
 2. If the participant retired either for service or disability prior to the effective date of the payment of the alternate payee's allowance, "final compensation" means the monthly final compensation used in calculating the participant's retirement allowance.
- F. Monthly allowances payable to the alternate payee shall be increased by cost-of-living adjustments in accordance with Chapter 3.44.

3.36.3640 Monthly Allowance For Participant.

- A. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date the participant separates from service, the alternate payee has not received a distribution pursuant to Section 3.36.3610,

1. The monthly allowance that would be payable to the participant if no separate account had been established, less
 2. The monthly allowance payable to the alternate payee pursuant to subsection C. of Section 3.36.3630.
- B. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date the participant separates from service, the alternate payee has received a distribution pursuant to Section 3.36.3610 but the participant has received credit pursuant to Section 3.36.3620 for the service that had been allocated to the alternate payee, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be the monthly allowance that would be payable to the participant if no separate account had been established.
- C. If the court orders the establishment of separate accounts pursuant to Section 3.36.3600 and, as of the date the participant separates from service, the alternate payee has received a distribution pursuant to Section 3.36.3610 and the participant has not made a redeposit pursuant to Section 3.36.3620, then the monthly allowance payable to the participant upon the participant's eligibility for a monthly allowance shall be:
1. The monthly allowance that would be payable to the participant if no separate account had been established, less
 2. The monthly allowance that would have been payable to the alternate payee pursuant to subsection C. of Section 3.36.3630 if the alternate payee had not received a distribution.

3.36.3650 Designation Of Beneficiary By Alternate Payee.

- A. The alternate payee who has been awarded a combined account may designate a beneficiary to receive amounts which would be payable to the alternate payee but for the death of the alternate payee.

- B. The alternate payee who has been awarded a separate account may designate a beneficiary:
 - 1. To receive the accumulated contributions in the alternate payee's account in the case where the alternate payee dies prior to receipt of payment.
 - 2. To receive any accumulated contributions remaining in the alternate payee's separate account or to receive any unpaid allowance payable at the time of the alternate payee's death.
- C. The beneficiary shall be a natural person or persons. The designation may be by class, in which case the members of the class living at the time of the alternate payee's death shall be entitled as beneficiaries and shall take in equal shares unless otherwise specified by the alternate payee.
- D. A designation of a beneficiary shall be filed with the Secretary to the Board on a form provided by the Secretary.
- E. The alternate payee may revoke or change the designation of a beneficiary at any time prior to the nonmember spouse's death. Any revocation or change of a designation of a beneficiary shall be in writing on a form provided by the Secretary to the Board, shall be notarized by a notary public, and shall be filed with the Secretary.
- F. If the alternate payee does not designate a beneficiary or if all designated beneficiaries predecease the alternate payee:
 - 1. In the case of a alternate payee who has been awarded a combined account, any payments which would have been made to the alternate payee but for the death of the alternate payee shall be paid to the alternate payee's estate.
 - 2. In the case of an alternate payee who has been awarded a separate account, any accumulated contributions remaining in alternate payee's separate account and any unpaid monthly allowance payable at the time of the alternate payee's death shall be paid to the alternate payee's estate.
- G. Nothing in this section shall be deemed to mean that any alternate distribution option elected by an alternate payee shall continue beyond the death of the

alternate payee. Payments of any amounts under an alternate distribution option cease upon the death of the alternate payee. Payment of any such amount to the alternate payee's beneficiary or estate is expressly limited to the monthly allowance, or portion thereof due but unpaid for the month in which the death of the alternate payee occurs.

3.36.3650 No Payments Resulting In Increased Benefits.

- A. Under no circumstances shall the Board or this Plan be required to make payments in any manner that would result in an increase in the amount of benefits provided under this Plan.
- B. All benefits payable from this Plan shall be determined on the basis of the actuarial assumptions and interest rates that are specifically set forth in this Plan, or the economic and demographic actuarial assumptions and interest rates adopted by the Board in those instances where the Board has such authority under the provisions of this Plan.
- C. Any age factor used in calculation of benefits to the alternate payee shall be based on the age of the alternate payee at the time benefits commence or, in the case where the alternate payee elects an alternate distribution option pursuant to Section 3.36.3590, as of the date benefits first become payable to the participant.

3.36.3660 Disability Retirement Of Participant.

- A. If the participant retires for disability, the combined benefit payments to both the participant and the alternate payee shall not exceed the amount that would otherwise have been paid to the participant alone.
- B. In the case where the alternate payee has been awarded a separate account, no payment shall be made to the alternate payee until such time as the participant would have been eligible for a service retirement had the participant continued working. Disability benefits shall be allocated between the participant and the alternate payee as follows:
 - 1. Until the date the participant would have been eligible for a service retirement or the date the alternate payee applies to receive a monthly

allowance, whichever date is later, disability retirement benefits shall be paid to the participant without regard to the service credit awarded to the alternate payee.

2. Once the participant would have been eligible for a service retirement had the participant continued working and the alternate payee applies to receive a monthly allowance from the retirement fund, the amount of the monthly allowance payable to each party shall be determined as though the participant had retired for service.

SECTION 17. Section 3.44.010 of Chapter 3.44 of Title 3 of the San José Municipal Code is amended to read as follows:

3.44.010 Definitions.

As used in and for purposes of this Chapter 3.44:

- A. "Index-year" means each calendar year, respectively, next preceding each "subject year."
- B. Subject to the exceptions hereinafter specified in this Chapter 3.44, the term "retirement allowance" means and includes any of the biweekly or monthly service-retirement or disability-retirement allowances, or any of the biweekly or monthly installments of any monthly or annual service-retirement or disability-retirement allowances, specified in the following subdivisions:
 1. Those specified in Chapter 3.16, Chapter 3.20, Chapter 3.32, Parts 6 and 7 and Sections 3.36.1630 and 3.36.1790 of Chapter 3.36 of the San José Municipal Code; and
 2. Those specified in Section 3.24.510, Part 15 or 16 and Part 17 or 18 of Chapter 3.24 of the San José Municipal Code; and
 3. Those specified in Parts 9, 10 and 13 of Chapter 3.28 of the San José Municipal Code; which are or may become payable on or after April 1, 1970, under and pursuant to any of the provisions of Chapters 3.16, 3.20, 3.24, 3.28, 3.32 or 3.36 of the San José Municipal Code, to any member or former member of any of the city retirement plans established by said

Chapters 3.16, 3.20, 3.24, 3.28, 3.32 or 3.36, including any increases therein, if any, authorized by the provisions of Chapter 3.40 of this code.

- C. "Subject year" means each consecutive twelve- month period, from April 1st of one calendar year to March 31st of the following calendar year, respectively, commencing with the twelve- month period from April 1, 1970, to March 31, 1971, for which retirement allowances and survivorship allowances are to be increased or decreased as hereinafter provided in this Chapter 3.44.
- D. Subject to the exceptions hereinafter specified in this Chapter 3.44, the term "survivorship allowance" means and includes any of the biweekly or monthly allowances, and any of the biweekly or monthly installments of any monthly or annual allowance, which are or may become payable on or after April 1, 1970, under and pursuant to the provisions of Section 3.24.2040 and Part 19 of Chapter 3.24; Sections 3.28.1480 and 3.28.1490 of Part 11 and Sections 3.28.1500, 3.28.1590, 3.28.1600 of Part 12, or Parts 13 or 14 of Chapter 3.28; and Sections 3.36.1630, 3.36.1790 and Parts 8, 9 and 9.5 of Chapter 3.36 of the San José Municipal Code, to any of the following persons:
1. To any "surviving spouse", "surviving domestic partner" or "surviving child" as such terms are defined in Part 8 of Chapter 3.36; or
 2. To any "eligible surviving child" as such term is defined in Part 9 of Chapter 3.36; or
 3. To any beneficiary under Part 19 of Chapter 3.24; or
 4. To a "surviving wife", "surviving husband" or "surviving child" under Section 3.24.2040 of Chapter 3.24; or
 5. To any "surviving spouse", "surviving child" or "surviving children" as such are defined in Part 11 of Chapter 3.28; or
 6. To any "surviving spouse", "surviving child" or "surviving children" as defined in Part 12 of Chapter 3.28; or
 7. To any "beneficiary" under Part 13 of Chapter 3.28; or

8. To any "eligible surviving child" as defined in Part 14 of Chapter 3.28; including any increases, if any, authorized by the provisions of Chapter 3.40 of the San José Municipal Code.
9. To any "spouse" or "domestic partner" receiving benefits pursuant to an election made under Part 9.5 of Chapter 3.36

SECTION 18. Transition Provisions. For the purposes of this Ordinance, "domestic partnership" includes a domestic partnership established after a member of the Police and Fire Department Retirement Plan has retired pursuant to the provisions of Chapter 3.36 if all of the following requirements are satisfied:

1. Prior to retirement the member had filed an Affidavit of Domestic Partnership with the City of San José to enroll the member's domestic partner in the City's health benefits program.
2. The Affidavit of Domestic Partnership was in effect as of the date of retirement.
3. Subsequent to retirement, the member and the member's domestic partner established a registered domestic partnership by filing a Declaration of Domestic Partnership with the Secretary of State pursuant to Division 2.5 of the California Family Code.
4. The Declaration of Domestic Partnership is filed with the Secretary of State and evidence of the establishment and registration of the domestic partnership is filed with the Director of Retirement Services on or before January 31, 2007.
5. The person who is the retired member's domestic partner pursuant to the Affidavit of Domestic Partnership is the same person as the retired member's domestic partner pursuant to the Declaration of Domestic Partnership.

SECTION 19. Retroactivity. The provisions of SECTION 1 through SECTION 15, inclusive, and the provisions of SECTION 17 of this Ordinance shall be effective with

respect to any person who was a member of the Police and Fire Department Retirement Plan on or after January 1, 2005, and to the surviving domestic partner of any person who was a member of the Police and Fire Department Retirement Plan on or after January 1, 2005.

PASSED FOR PUBLICATION of title this 2nd day of May, 2006, by the following vote:

AYES: CAMPOS, CHIRCO, CORTESE, LeZOTTE, NGUYEN,
PYLE, REED, WILLIAMS, YEAGER, CHAVEZ

NOES: NONE

ABSENT: GONZALES

DISQUALIFIED: NONE

CINDY CHAVEZ
Vice Mayor

ATTEST:

LEE PRICE, MMC
City Clerk