

ORDINANCE NO. 27768

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
CHAPTER 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL  
CODE TO MAKE TECHNICAL COMPLIANCE CLARIFICATIONS  
TO THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN**

**WHEREAS**, the Police and Fire Department Retirement Plan is intended to comply with applicable law;

**WHEREAS**, the Board of Administration for the Plan has recommended that the Plan be amended to clarify the Plan's compliance with applicable law; and

**WHEREAS**, the City of San Jose Police Officers Association, and International Fire Fighters Association Local 230 have agreed that the Plan should be amended pursuant to the terms of this ordinance;

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

**SECTION 1.** Section 3.36.020.12 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.20.12 "Retirement System", "Retirement Plan", "This System", or "This Plan".**

"Retirement system", "retirement plan", "this System", or "this Plan" means the City of San Jose Police and Fire Department Retirement Plan described in Section 3.36.110.

**SECTION 2.** Part 1 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended by adding a section to be numbered and entitled and to read as follows:

**3.36.110 Identification Of System.**

Notwithstanding anything to the contrary in Chapters 3.32 and 3.36 of Title 3 of the San Jose Municipal Code, the elements of the Plan set forth in Chapter 3.32 and the elements of the Plan set forth in Chapter 3.36 are components of a single retirement system known as the City of San Jose Police and Fire Department Retirement Plan.

**SECTION 3.** 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:

**3.36.120 Termination Of Plan.**

- A. Upon the termination of this Plan or upon the complete discontinuance of contributions under the Plan, the rights of each member, former member and beneficiary to benefits accrued to the date of such termination or discontinuance shall be nonforfeitable.
- B. Upon the complete termination of this Plan, the Board shall perform all of the following:
  - 1. Liquidate the assets of the retirement fund.
  - 2. Pay all of the accrued administrative expenses of the Plan, including the expenses of liquidation.
  - 3. Determine the rights of each member, former member and beneficiary to benefits accrued to the date of termination, and ensure that all such benefits have been or are paid to the respective persons.
  - 4. Allocate any assets in the Supplemental Retiree Benefit Reserve established pursuant to Section 3.36.580 to the then existing retired members, survivors of members, and survivors of retired members using the distribution methodology most recently approved by the City Council.
- C. Upon the termination of this Plan and the satisfaction of all liabilities described in subsection B above, the Board shall allocate any remaining assets of the retirement fund to the members of the Plan on the basis of years of service and final compensation credited to the member at the time of termination of the Plan.

**SECTION 4.** Section 3.36.170 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.170 Persons Appointed On Or After Effective Date To Positions In Police Department.**

- A. Subject to and except as otherwise provided by other provisions of this Chapter, each person appointed on or after the effective date of this Chapter to any of the

following positions or classes of positions in the Police Department shall be a member of the Plan as described in this Chapter, and shall be subject to the provisions of this Chapter, as of the date of such appointment to such position, as follows: Chief of Police; Assistant Chief of Police; Deputy Chief; Chief of Uniform Division; Chief of Detectives; Inspector of Operations; Chief of Technical Services; Chief of Prevention and Control Division; Police Captain; Police Lieutenant; Police Sergeant (Detective); Police Sergeant; Juvenile Officer; Police Officer; Police Woman; Assistant Police Woman; and Automotive Registration Technician, but only if the person appointed to the latter position held the position of Senior Identification Officer on February 1, 1962, and became a member of this Retirement Plan as of February 1, 1962, and was also a member of this Plan immediately prior to his appointment to the position of Automotive Registration Technician.

- B. A person retired for disability prior to the effective date of this Chapter pursuant to the provisions of Chapter 3.32 of this Code who is restored to active duty upon cessation of his or her disability after the effective date of this Chapter, shall not be deemed to be a "person who is appointed on or after the effective date of this Chapter," as such words are used in this Section.
- C. Anything hereinabove to the contrary notwithstanding, no person shall be deemed to have become a member of this Retirement Plan because of his or her appointment to any of the above-specified positions on or after the effective date of this Chapter if as of the date of such appointment he or she is a member of the Police and Fire Department Retirement Plan established by Chapter 3.32, unless he or she has been or is given and has exercised or exercises pursuant to other provisions of this Chapter an option to become subject to the provisions of this Chapter in lieu of remaining subject to the provisions of Chapter 3.32 of this Code.

**SECTION 5.** Section 3.36.180 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.180 Persons Holding Position In Police Department On Effective Date -- Option.**

- A. Except as may otherwise be provided in this Chapter, each person who on the effective date of this Chapter holds any of the following positions or classes of positions in the Police Department by virtue of an appointment made prior to the effective date of this Chapter, and who, in addition, is on such date a member of the Police and Fire Department Retirement Plan established by Chapter 3.32, shall have the option of becoming subject to the provisions of this Chapter. Said positions are: Chief of police, Chief of Detectives, Inspector of Operations, Police Captain, Assistant Chief of Police, Police Lieutenant, Police Sergeant (Detective), Juvenile Officer, Police Officer, Police Woman, Traffic Analyst, Senior Identification Officer, and Identification Officer.
- B. Each of said persons, in order to exercise said option, shall file with the Secretary of the Retirement Board, a written statement, on a form to be furnished by said Board upon his or her request, declaring that he or she elects to be subject to the provisions of the retirement plan as described in this Chapter. Said statement shall be filed as aforesaid on or before and no later than the ninetieth day immediately following the effective date of this Chapter; excepting, however, that any such person who on the effective date of this Chapter is on temporary leave because of active service in the Armed Forces of the United States may file said statement electing to be subject to the provisions of this Chapter with the Secretary on or before and no later than the ninetieth day immediately following the date of expiration of his or her leave or his or her return to duty, whichever is earlier. Upon filing said written statement with the Secretary in the manner and within the time hereinabove specified, such person shall be deemed to be subject to the provisions of this Chapter as of the effective date of this Chapter. Each such person so electing to become subject to the provisions of this Chapter shall cease being subject to the provisions of the retirement system as established by

Chapter 3.32 of this Code as of the date he or she becomes subject to the provisions of this Chapter and shall have no further rights under Chapter 3.32. Anything elsewhere to the contrary notwithstanding, no such person shall become entitled to the benefits provided under this Chapter unless he or she exercises said option as aforesaid.

**SECTION 6.** Section 3.36.185 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is repealed.

**SECTION 7.** Section 3.36.190 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is repealed.

**SECTION 8.** Section 3.36.200 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.200 Persons Appointed On Or After Effective Date To Positions In Fire Department.**

- A. Subject to and except as otherwise provided by other provisions of this Chapter, each person appointed on or after the effective date of this Chapter to any of the following positions or classes of positions in the Fire Department shall be a member of the Plan as described in this Chapter, and shall be subject to the provisions of this Chapter, as of the date of such appointment to such position, as follows: Fire Chief; Deputy Fire Chief; Assistant Fire Chief; Fire Prevention Chief; Fire Marshal; Battalion Chief; District Chief; Fire District Chief; Fire Training Officer; Assistant Fire Marshal; Fire Captain; Assistant Fire Training Officer; Senior Fire Prevention Inspector; Fire Engineer; Firefighter; Fire Master Mechanic; and Assistant Fire Master Mechanic.
- B. A person retired for disability prior to the effective date of this Chapter pursuant to the provisions of Chapter 3.32 of this Code who is retired to active duty upon cessation of his or her disability after the effective date of this Chapter shall not be deemed to be a "person who is appointed on or after the effective date of this Chapter" as such words are used in this Section.

- C. Anything hereinabove to the contrary notwithstanding, no person shall be deemed to have become a member of this Retirement System because of his or her appointment to any of the above-specified positions on or after the effective date of this Chapter if as of the date of such appointment he or she is a member of the Police and Fire Department Retirement Plan established by Chapter 3.32 unless he or she has been or is given and has exercised or exercises pursuant to other provisions of this Chapter an option to become subject to the provisions of this Chapter in lieu of remaining subject to the provisions of Chapter 3.32 of this Code.

**SECTION 9.** Section 3.36.205 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is repealed.

**SECTION 10.** Section 3.36.210 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.210 Persons Holding Position In Fire Department On Effective Date -- Option.**

- A. Except as may otherwise be provided in this Chapter, each person who on the effective date of this Chapter holds any of the following positions or classes of positions in the Fire Department by virtue of an appointment made prior to the effective date of this Chapter and who, in addition, is on such date a member of the Police and Fire Department Retirement Plan established by Chapter 3.32 of this code, shall have the option of becoming subject to the provisions of this Chapter. Said positions are: Fire Chief, Assistant Fire Chief, Fire Prevention Chief, Battalion Chief, Fire Captain, Firefighter, and Fire Master Mechanic.
- B. Each of said persons, in order to exercise said option, shall file with the Secretary of the Retirement Board a written statement, on a form to be furnished by the Board upon his or her request, declaring that he or she elects to be subject to the provisions of the retirement plan as described in this Chapter. Said statement shall be filed as aforesaid on or before and no later than the ninetieth day immediately following the effective date of this Chapter, excepting, however, that

any such person who on the effective date of this Chapter is on temporary leave because of active service in the Armed Forces of the United States may file said statement electing to be subject to the provisions of this Chapter with the Secretary on or before and no later than the ninetieth day immediately following the date of expiration of his or her leave or his or her return to duty, whichever is earlier. Upon filing said written statement with the Secretary in the manner and within the time hereinabove specified, such person shall be deemed to be subject to the provisions of this Chapter as of the effective date of this Chapter. Each such person so electing to become subject to this Chapter shall cease being subject to the provisions of the retirement plan as established by Chapter 3.32 as of the date he or she becomes subject to the provisions of this Chapter and shall have no further rights under Chapter 3.32. Anything elsewhere to the contrary notwithstanding, no such person shall become entitled to the benefits provided under this Chapter unless he or she exercises said option as aforesaid.

**SECTION 11.** Section 3.36.220 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.220 New Option For Persons Who Failed To Exercise Option Given Them By Sections 3.36.180 And 3.36.210.**

- A. Any person who was given by Section 3.36.180 or Section 3.36.210 of this Chapter an option to become subject to the provisions of this Chapter but failed for any reason to exercise such option, is hereby given a new option to become subject to the provisions of this Chapter if he or she has continuously, from February 1, 1962 (the effective date of this Chapter) to and including the date of exercise of such new option, held a position which would have entitled him or her to be subject to this Chapter during all such time had he or she exercised such original option.
- B. Each of said persons, in order to exercise said option, shall on or before November 15, 1968:

1. File with the Secretary of the Retirement Board a written statement, on a form to be furnished to him or her on his request by the Board, declaring that he or she elects to be subject to the provisions of the retirement system as described in by this Chapter; and
  2. At the time of filing said written statement pay into the retirement fund:
    - a. A sum equal to the difference between what he or she would have paid had he been subject to the provisions of this Chapter from the effective date of this Chapter to the date upon which he or she exercises such option and what he or she actually paid during said period pursuant to Chapter 3.32; plus
    - b. Such interest thereon as the Retirement Board may deem reasonable. Only that sum designated in subdivision a. above shall be credited to such person's account and be considered accumulated contributions.
- C. Upon filing said written statement within the time and in the manner hereinabove specified, said person shall be deemed to be subject to the provisions of this Chapter, as of the effective date of this Chapter. Such person, upon electing to become subject to the provisions of this Chapter, shall cease being subject to the provisions of the retirement plan as established by Chapter 3.32 as of the date he or she becomes subject to the provisions of this Chapter and shall have no further rights under Chapter 3.32. Anything elsewhere to the contrary notwithstanding, such person shall not become entitled to the benefits provided under this Chapter unless he or she exercises said option as aforesaid.

**SECTION 12.** Section 3.36.230 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.230 Option For Fire Training Officer Who Was Drill Master On February 1, 1962.**

That certain person who on February 1, 1962 held the position of Drill Master in the Fire Department and upon abolition of such position was appointed to the position of

Fire Training Officer, is hereby given an option to become subject to the provisions of this Chapter if he or she has continuously from February 1, 1962, to and including the date of exercise of the option granted by this section, held such positions of Drill Master and Fire Training Officer. Said person, in order to exercise said option, shall on or before November 15, 1968, file with the Secretary of the Retirement Board a written statement on a form to be furnished to him, upon request, by said Board declaring that he or she elects to become subject to the provisions of this Chapter and elects to pay into the Retirement Fund a sum equal to the difference between what he would have contributed under this Chapter had he or she been subject to the provisions of this Chapter from February 1, 1962, to the date upon which he or she exercises this option and what he or she has actually paid during said period of time pursuant to the provisions of Chapter 3.32 of this Code. Upon being paid said sum shall be credited to such person's account and be considered accumulated contributions. Payment of said sum shall be made in such installments, at such times, and in the manner prescribed by the Retirement Board. If such person or his or her survivors become entitled to any benefit under this Chapter prior to the time that all of said sum has been paid, such benefits shall be reduced by the amount of said sum still remaining unpaid.

**SECTION 13.** Section 3.36.240 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.240 Persons Retired For Disability Prior To Effective Date, Who Return To Active Duty After Effective Date.**

Except as may otherwise be provided in this Chapter, each person who was appointed to and held, prior to the effective date of this Chapter, any of the positions or classes of positions designated in Sections 3.36.170 and 3.36.200 and who, prior to the effective date of this Chapter, received a disability retirement from such position or class of position pursuant to the provisions of Chapter 3.32, shall have the option of becoming subject to the provisions of this Chapter, subject to all provisions of this Chapter, if such person's disability should cease, and if in addition such person should be restored to active service pursuant to the provisions of Chapter 3.32 in the position which he or she

held at the time of his or her disability retirement, provided and upon condition, however, that such person at the time he or she is restored to active duty is not fifty-five years or more of age. No such person shall become subject to the provisions of this Chapter if at the time of such restoration to duty in said position he or she is fifty-five or more years of age. Each of said persons, in order to exercise this option, shall file with the Secretary of the Retirement Board a written statement, on a form to be furnished to him or her, upon request, by said Board, declaring that he or she elects to become subject to the provisions of this Chapter. Said statement shall be filed on or before, and no later than, the ninetieth (90<sup>th</sup>) day immediately following the date of such person's restoration to active duty. Upon filing said statement in the manner and time specified in this Section, such person shall be deemed to be a member of the Retirement Plan and shall be subject to the provisions of this Chapter as of the date of his or her restoration to duty. Each such person so electing to become subject to the provisions of this Chapter shall cease being subject to the provisions of Chapter 3.32 as of the effective date of the election made pursuant to this Section. Anything elsewhere to the contrary notwithstanding, no such person shall become subject to the provisions of this Chapter unless he or she exercises this option in the time and manner specified by this Section.

**SECTION 14.** Section 3.36.250 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.250 Persons Holding Positions In Police Or Fire Department Not Included In Membership On Effective Date Who Become Entitled To Membership Later - Option.**

- A. Any person who has been appointed to and holds on the effective date of this Chapter any position in the Police Department or Fire Department not included within the list of positions set forth in Sections 3.36.180 or 3.36.210, and who subsequent to said effective date is appointed to a position in the Police Department or Fire Department included within the list of positions set forth in Sections 3.36.170 or 3.36.200 without a break in service, and who immediately prior to his or her appointment to such new position is a member of the Police

and Fire Department Retirement Plan as described in Chapter 3.32, shall have the option of becoming subject to the provisions of this Chapter.

- B. Each of said persons, in order to exercise said option, shall file with the Secretary of the Retirement Board a written statement, on a form to be furnished to him or her, upon request, by said Board, declaring that he or she elects to be subject to the provisions of this Chapter 3.36. Said statement shall be filed as on or before, and no later than, the ninetieth (90<sup>th</sup>) day immediately following such person's appointment to the position entitling him or her to be subject to the provisions of this Chapter. Upon filing said written statement in the manner and time hereinabove specified, such person shall become subject to the provisions of this Chapter as of the date of said new appointment. Each person so electing to become subject to the provisions of this Chapter shall cease being subject to the provisions of Chapter 3.32 as of the effective date of the election made pursuant to this Section. Anything elsewhere to the contrary notwithstanding, no such person shall become subject to the provisions of this Chapter unless he or she exercises this option in the time and manner specified by this Section.

**SECTION 15.** Section 3.36.260 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.260 Persons Holding Positions In Department Of Communication On Effective Date - Option.**

Except as may otherwise be provided in this Chapter, each person who, prior to the effective date of this Chapter, was transferred from a permanent appointment in any position or class of positions in the Police Department or Fire Department to one of the following positions or classes of positions in the Department of Communications: Superintendent of communications, chief radio-telephone operator and radio-telephone technician, and who in addition is on the effective date of this Chapter a member of the Police and Fire Department Retirement Plan as described in Chapter 3.32 of this Code, shall have the option, if he or she holds any such position in the Department of Communications on the effective date of this Chapter, and not otherwise, of becoming

subject to the provisions of this Chapter 3.36. Each of said persons, in order to exercise said option, shall file with the Secretary of the Retirement Board a written statement, on a form to be furnished to him or her, upon request, by said Board, declaring that he or she elects to be subject to the provisions of this Chapter. Said statement shall be filed on or before, and no later than, the ninetieth (90<sup>th</sup>) day immediately following the effective date of this Section, excepting, however, that any such person who on the effective date of this Section is on temporary leave because of active service in the Armed Forces of the United States may file said statement electing to be subject to the provisions of this Chapter with the Secretary on or before, and no later than, the ninetieth (90<sup>th</sup>) day immediately following the date of expiration of his or her leave or his or her return to duty, whichever is earlier. Upon filing said written statement with the Secretary in the manner and within the time specified in this Section, such person shall be deemed to be subject to the provisions of this Chapter as of the effective date of this Section. Each person so electing to become subject to this Chapter shall cease being subject to the provisions of Chapter 3.32, as of the effective date of the election made pursuant to this Section. No such person shall become subject to the provisions of this Chapter unless he or she exercises this option in the time and manner specified in this Section.

**SECTION 16.** Section 3.36.270 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.270 Persons Retired Pursuant To This Chapter For Disability Who Return To City Service In Position Other Than Position Included In Membership Of This Plan.**

A member who is retired for disability after the effective date of this Chapter pursuant to the provisions of this Chapter and who, in addition, after receiving such disability retirement, is appointed to a full-time position in the City service, appointment to which would not otherwise entitle him or her to the benefits of this Chapter, in which new position monthly compensation is paid, shall, if and while said disability continues during the period of such new service, be a member of the Retirement Plan and shall be subject to the provisions of this Chapter.

**SECTION 17.** Section 3.36.280 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.280 Membership In Prior Plan Continued When.**

All persons who, on the effective date of this Chapter, are members of the Police and Fire Department Retirement Plan described in Chapter 3.32 and do not exercise in the manner and within the time hereinabove specified their option of becoming subject to the provisions of this Chapter, or who are not hereinabove given any such option or who are otherwise excluded from membership in the Retirement Plan as described in this Chapter, are not and shall not be deemed to be subject to the provisions of this Chapter and shall not be entitled to any benefits paid pursuant to this Chapter. All such persons, however, shall remain members of the Police and Fire Department Retirement Plan as described in Chapter 3.32 of this Code, subject to the provisions of said Chapter and applicable provisions of the Charter of the City, and the benefits being paid on the effective date hereof to or on account of any persons pursuant to Chapter 3.32 shall be continued at their existing rates in accordance with the provisions of said Chapter 3.32, and shall be paid from the Retirement Fund maintained in accordance with this Chapter. Notwithstanding anything in this Code or in any ordinance to the contrary, no persons appointed to any position or class of positions on or after the effective date of this chapter shall become subject to Chapter 3.32 or be entitled to any benefits payable pursuant to Chapter 3.32.

**SECTION 18.** Section 3.36.500 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.500 Establishment - Name - Continuation Of Chapter 3.32 Fund.**

In order to continue in force and make effectual pensions and retirements already existing or that may be granted in the future in favor of members of the retirement plan heretofore established pursuant to the provisions of Chapter 3.32, and in order to carry out the provisions of this Chapter, the retirement fund heretofore created and existing pursuant to Chapter 3.32, and pursuant to Section 78a of the City Charter, is hereby continued, and is hereby made a combined or common fund for the Police and Fire

Department Retirement Plan established by this Chapter 3.36 and by Chapter 3.32, with the elements of the Plan in each chapter being a component of a single retirement plan. All contributions, income and other moneys which are required, pursuant to the provisions of this Chapter, to be paid to this Retirement Plan or into the retirement fund, shall be paid into and held in said fund; and all benefits or allowances payable to any member or beneficiary under this Retirement Plan shall be paid from said fund. Said combined or common fund shall be known as the "Police and Fire Department Retirement Fund."

**SECTION 19.** Part 4 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended by re-enacting a section to be numbered and entitled and to read as follows:

**3.36.575 Separate Medical Benefits Account.**

- A. There is hereby established the Medical Benefits Account as a separate account within the retirement fund. The Medical Benefits Account shall be maintained in compliance with Internal Revenue code Section 401(h) and the regulations promulgated thereunder. Monies in the Medical Benefits Account may be commingled with other monies in the retirement fund solely for the purposes of investment.
- B. All contributions made to the retirement fund to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of this Plan, and all earnings and interest attributable to such contributions, shall be placed in the Medical Benefits Account. All contributions to the Medical Benefits Account shall be reasonable and ascertainable. At the time the City makes a contribution to the Medical Benefits Account, the City shall designate in writing that such contribution is solely for the Medical Benefits Account.
- C. Contribution rates to fund the benefits for sickness, accident, hospitalization, dental or medical expenses shall be established by the Board as determined by the Board's actuary and shall be borne by the City and the members of the Plan as follows:

1. Contributions for dental benefits shall be made by the City and the members in the ratio of three-to-one.
  2. Contributions for other benefits provided through the Medical Benefits Account shall be made by the City and the members in the ratio of one-to-one.
- D. Except as otherwise provided in this Section 3.36.575, all funds in the Medical Benefits Account shall be used only for the payment of benefits and expenses allowed under Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. The Medical Benefits Account shall be used to provide medical and dental benefits in accordance with Parts 14 and 15 of this Chapter. Prior to the satisfaction of all liabilities under this Plan to provide such benefits, no funds in the Medical Benefits Account shall be used for, or diverted to, any other purpose.
- E. All benefits provided through the Medical Benefits Account, plus any life insurance protection provided under the Plan, shall be subordinate to the retirement and survivors' benefits provided by the Plan. Accordingly, at all times after the date on which the Medical Benefits Account is established, the aggregate of the City's contributions to the Medical Benefits Account shall not exceed twenty-five percent (25%) of its total aggregate contributions to the Plan (other than contributions to fund prior service). For the purpose of this limitation, City contributions include any contributions which are "picked-up" pursuant to Internal Revenue Code Section 414(h).
- F. In any case under the terms of this Plan where a person is entitled to a return of employee contributions, such return of contributions shall include the employee contributions to the Medical Benefits Account plus interest accrued thereon at the rate of two percent (2%) per annum; provided, however, that no such return of contributions shall be paid from the Medical Benefits Account.
- G. Upon the satisfaction of all liabilities under this Plan to provide the benefits described in this Section, any amount remaining in the Medical Benefits Account shall be paid to the City.

- H. In the event that a member's interest in the Medical Benefits Account is forfeited prior to the termination of the Plan, an amount equal to the forfeiture shall be applied as soon as practicable to reduce the City contributions to the Medical Benefits Account.

**SECTION 20.** Part 5.5 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended by adding a section to be numbered and entitled and to read as follows:

**3.36.745 Benefit Clarifications**

- A. The purpose of the Plan is to secure contributions for the City and from employees, and to distribute Plan assets only to members, retired members, and their beneficiaries, pursuant to the Plan's plan of benefits and to pay reasonable expenses of administration.
- B. Prior to the satisfaction of all liabilities with respect to members, former members and their beneficiaries, no part of the Plan's assets or income may be used for, or diverted to, purposes other than for the exclusive benefit of members, former members, or their beneficiaries.
- C. Forfeitures arising from termination of employment, death, or for any other reason will not be applied to increase the benefits any member, former member, or beneficiary would otherwise have received from the Plan at any time prior to the termination of the Plan, although the effect of forfeitures may be anticipated in determining the Plan's costs.
- D. Upon termination of the Plan or upon the complete discontinuance of contributions to the Plan, the rights of each member, former member and beneficiary to benefits accrued to the date of such termination or discontinuance are non-forfeitable.

**SECTION 21.** Part 5.5 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended by adding a section to be number and entitled and to read as follows:

**3.36.746 Minimum Distributions.**

Notwithstanding any other provision of this Chapter, the distribution of a

retirement allowance shall be subject to the minimum distribution rules of Section 401(a)(9) of the Internal Revenue Code and the regulations promulgated thereunder. In addition, payment of a member's retirement allowance shall commence no later than the later of the following:

- A. The April 1 following the end of the calendar year in which the member attains age seventy and one-half (70 ½); or
- B. The April 1 following the end of the calendar year in which the member retires.

**SECTION 22.** Section 3.36.1050 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is repealed.

**SECTION 23.** Section 3.36.1060 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is repealed.

**SECTION 24.** Section 3.36.1070 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is repealed.

**SECTION 25.** Section 3.36.1200 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**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. 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 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 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 the estate, the City may recover by suit that portion of the amount due 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 earlier 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 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.

**SECTION 26.** Section 3.36.1210 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**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. 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 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 child shall be determined by dividing the total amount of unwithdrawn contributions plus interest thereon, by the number of 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 the estate, the City may recover by suit that portion of the amount due 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 earlier 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 of 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 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; 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 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.

**SECTION 27.** Section 3.36.1230 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**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 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 earlier 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 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.

**SECTION 28.** Section 3.36.1240 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**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 earlier 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 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.

//

//

**SECTION 29.** Section 3.36.1250 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**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 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 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 the estate, the City may recover by suit that portion of the amount due 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 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.

**SECTION 30.** Section 3.36.1465 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**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 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 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.

**SECTION 31.** Section 3.36.1510 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.1510 Payroll Deductions And Other Collections.**

The Retirement Board shall furnish to the Director of Finance the rates of contributions for, and the amounts of any other contributions payable by each member or other person. The Director of Finance shall apply such rates of contribution to the compensation of each member, and deduct from such compensation the contributions

so determined and payable by each member. All other contributions authorized to be made or required of members or other persons shall be paid by such members or persons to the Director of Finance. The Director of Finance shall furnish to the Board, upon request therefor, a statement of such contributions so deducted or credited with respect to each member or other person, together with such other information as the Board may require. All contributions shall be placed in the Retirement Fund.

**SECTION 32.** Section 3.36.1630 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is repealed.

**SECTION 33.** Section 3.36.1650 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is repealed.

**SECTION 34.** Section 3.36.1700 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.1700 Transfer Of Contributions To Federated City Employees' Retirement System In Time And Manner Specified in Section 3.24.1080 or 3.28.650.**

- A. Subject to the provisions of subsection B, in the event a person's membership in this Plan is terminated because of the abolition or discontinuance of the office or position held by him or her in the Police or Fire Department, but such person is transferred, without a break in service and without being requested to take any civil service examination therefor, to a new office or position in a department other than the Police or Fire Department, and the functions and duties of his or her new office or position are substantially the same as those performed by him or her in the former office or position in the Police or Fire Department, and if in addition he or she thereby becomes a member of the retirement plan established by Chapter 3.24 or Chapter 3.28 of this Code and elects and becomes entitled to receive credit under such plan for service to which he or she was entitled to credit under this Plan, then in such event:

1. The person may elect, in lieu of receiving or being entitled to any other rights, benefits or moneys under this Plan, to have all of his or her accumulated contributions in this Retirement Fund, with interest thereon, transferred and paid to the retirement fund established pursuant to Chapters 3.24 and 3.28. Such election shall be made in the manner and time specified in Section 3.24.1080 or 3.28.650.
  2. Upon such election being made, said accumulated contributions and interest earned thereon, plus all contributions made by the City to this Plan because of such person's membership herein, shall be transferred and paid to the retirement fund established pursuant to Chapters 3.24 and 3.28 of this Code, and thereafter, neither the person making such election nor any survivor or estate of such person shall be entitled to any rights, benefits, allowance or moneys under this Plan.
- B. In the event the accumulated contributions in this Retirement Fund of a person who makes the election described in subsection A exceed the contributions required for the purchase of service credit in the Chapter 3.24 or 3.28 retirement plan and there is no provision in the Chapter 3.24 or 3.28 retirement plan for a credit against future contributions, then that portion of the accumulated contributions in this Retirement Fund that is in excess of the contributions required for such purchase of service credit shall remain in this Retirement Fund and shall be refunded, plus accrued interest at the rate of two percent (2%) per annum, to the person at the time the person separates from City service,

**SECTION 35.** Section 3.36.1710 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.1710 Transfer Of Contributions To Federated City Employees' Retirement System, In The Manner And Time Specified In Section 3.24.1090 or 3.28.660.**

- A. Subject to the provisions of subsection B, in the event a person's membership in this Plan is terminated, and if in addition he or she thereafter becomes a member of the retirement plan established by Chapter 3.24 or Chapter 3.28 of the San

Jose Municipal Code and elects and becomes entitled under Section 3.24.1090, 3.28.650 or 3.28.660 to receive credit under such plan for service to which he or she was entitled to credit under this Plan, then in such event:

1. The person must elect to have all of his or her accumulated contributions in this Plan, with interest thereon, transferred and paid to the retirement fund established pursuant to Chapters 3.24 and 3.28 of this Code. Such election shall be made in the manner and time specified in Section 3.24.1090 or 3.28.660 of this Code.
  2. Upon such election being made, said accumulated contributions, and interest earned thereon, in accordance with said election, shall be transferred and paid to the retirement fund established pursuant to Chapters 3.24 and 3.28 of this Code, and thereafter, neither the person making such election nor any survivor or estate of such person, shall be entitled to any rights, benefits, allowance or moneys under this plan.
  3. Also, upon said election being made, all contributions made by the City to this retirement fund because of said person's membership herein shall be transferred and paid to the retirement fund established pursuant to Chapters 3.24 and 3.28 of this Code.
- B. In the event the accumulated contributions in this Retirement Fund of a person who makes the election described in subsection A exceed the contributions required for the purchase of service credit in the Chapter 3.24 or 3.28 retirement plan and there is no provision in the Chapter 3.24 or 3.28 retirement plan for a credit against future contributions, then that portion of the accumulated contributions in this Retirement Fund that is in excess of the contributions required for such purchase of service credit shall remain in this Retirement Fund and shall be refunded, plus accrued interest at the rate of two percent (2%) per annum, to the person at the time the person separates from City service.

**SECTION 36.** Section 3.36.1780 of Chapter 3.36 of Title 3 of the San Jose Municipal Code is amended to read as follows:

**3.36.1780 Persons With More Than Twenty Years' Service, Under Fifty-Five Years Of Age, Who Resigned Or Were Discharged On Or After April 12, 1960 And Prior To The Effective Date Of This Chapter.**

- A. Each person who held on or after April 12, 1960 but prior to the effective date of this Chapter any position in the Police Department or Fire Department of the City which is included in the list of positions specified in Sections 3.36.170 or 3.36.200 of this Chapter and who, in addition, on or after April 12, 1960 but prior to the effective date of this Chapter resigned or was discharged from such position and who in addition at the time of such resignation or discharge had not yet attained fifty-five years of age but was entitled to credit for not less than twenty years of service under the Police and Fire Department Retirement Plan established by Chapter 3.32 of this Code, and who in addition at or prior to the time he or she exercises the option hereinafter given to him or her has not yet withdrawn from the Retirement Fund any contributions theretofore made by him or her under the provisions of the Police and Fire Department Retirement Plan established by Chapter 3.32, shall have the right, if he or she so elects within the time and in the manner hereinafter specified, to have all his or her said contributions transferred to an account maintained under the provisions of this Chapter and left in the Retirement Fund as contributions made by him or her under this Chapter.
- B. Each of said persons, in order to exercise the option to have his or her contributions transferred to an account maintained under the provisions of this Chapter as provided for in this section, shall file with the Secretary of the Retirement Board a written statement, on a form to be furnished by said Board upon his or her request, declaring that he or she elects to have all contributions theretofore made by him or her under the Police and Fire Department Retirement Plan established by Chapter 3.32 transferred to an account maintained under this Chapter and left in the Retirement Fund as contributions made by him or her

under this Chapter. Said statement shall be filed as aforesaid on or before and no later than the ninetieth day immediately following the effective date of this Plan. In no event may said statement be filed, and in no event may any such person elect to continue contributions under this section and have any rights under this section if the person has already withdrawn from the Retirement Fund all contributions theretofore made by him or her to said fund.

**SECTION 37.** Section 3.36.1925 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.36.1925 Reimbursement for Medicare Part B Payments.**

- A. The Plan will reimburse members, former members and survivors for the amounts paid by them for Medicare Part B coverage, subject to the following limitations:
1. The member, former member or survivor must be eligible for medical insurance coverage under the provisions of the Plan and must be enrolled in an eligible medical plan.
  2. The total amount paid by from the Medical Benefits Account for medical benefits pursuant to Section 3.36.1930 plus the Medicare Part B reimbursement shall not exceed the premium for the lowest cost medical plan, as defined in Section 3.36.1930 D, available to the member, former member or survivor.
  3. The reimbursement shall be only for Medicare Part B payments made after February 4, 2000.
  4. The member, former member or survivor must submit proof of payment for Medicare Part B. Except for Medicare Part B payments made during calendar year 2000, proof of payment must be submitted no later than the April 1st immediately following the calendar year for which reimbursement is sought. For Medicare Part B payments made during calendar year 2000, proof of payment must be submitted no later than November 30, 2001.

5. The reimbursement shall not exceed the amount of the Medicare Part B payments for which proof of payment is submitted.
  6. The reimbursement may be reduced or eliminated pursuant to Section 3.36.1950.
- B. All reimbursements for Medicare Part B payments shall be made from the Medical Benefits Account established by Section 3.36.575.

**SECTION 38.** Section 3.36.1930 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.36.1930 Allocation Of Costs Of Providing Medical Insurance Coverage To Members Or Survivors.**

- A. The costs of premiums for medical insurance coverage in an eligible medical plan shall be paid from the Medical Benefits Account established by Section 3.36.575 and by deductions from monthly allowances paid by the Plan in accordance with this Section 3.36.1930.
- B. For members who retired prior to February 4, 1996, for former members described in subsection C of Section 3.36.1900 who separated from City service prior to February 4, 1996, and for survivors of said members and former members who satisfy the requirements of Section 3.36.1910:
1. For coverage through July 1998, the member, former member or survivor shall be required to pay a premium for medical insurance coverage under this Part in the same amount as is currently paid by an employee of the City in the classification from which the member retired, which the member held at the time of death, or which the former member held at the time of separation from City service. The remaining portion of the premium shall be paid from the Medical Benefits Account.
  2. Effective for coverage beginning in the month of August 1998, the portion of the premium to be paid from the Medical Benefits Account shall be that portion which is equivalent to the premium for the "lowest cost medical plan", but shall not exceed the actual premium for the eligible medical plan

in which the member, former member or survivor enrolls. The portion to be paid by deductions from monthly allowances paid to the member, former member or survivor shall be that portion of the premium for the selected medical plan that exceeds the portion payable from the Medical Benefits Account.

- C. For members who retired on or after February 4, 1996, for former members described in subsection C of Section 3.36.1900 who separated from City service on or after February 4, 1996, and for survivors of said members and former members who satisfy the requirements of Section 3.36.1910:
1. For coverage through November 1997, the member, former member or survivor shall be required to pay a premium for medical insurance coverage under this Part in the same amount as was then paid by an employee of the City in the classification from which the member retired, which the member held at the time of death, or which the former member held at the time of separation from City service. The remaining portion of the premium shall be paid from the Medical Benefits Account.
  2. Effective for coverage beginning in the month of December 1997, the portion of the premium to be paid from the Medical Benefits Account shall be the lesser of (a) an amount which is equivalent to the premium for the "lowest cost medical plan" or (b) the actual premium for the eligible medical plan in which the member, former member or survivor enrolls. The portion to be paid by deductions from monthly allowances paid to the member, former member or survivor shall be that portion of the premium for the selected medical plan that exceeds the portion payable from the Medical Benefits Account.
- D. For the purposes of this Section, "lowest cost medical plan" means that medical plan (single or family coverage as applicable to the coverage selected by the member, former member or survivor):
1. Which is an eligible medical plan as defined in Section 3.36.1940; and

2. Which has the lowest monthly premium of all eligible medical plans then in effect, determined as of the time the premium is due and owing.

**SECTION 39.** Section 3.36.2030 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.36.2030 Costs of Dental Insurance.**

The cost of providing dental insurance coverage under this Part shall be borne by and paid from the Medical Benefits Account established by Section 3.36.575.

PASSED FOR PUBLICATION of title this 6<sup>th</sup> day of June, 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