ORDINANCE NO. 28030

AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING CHAPTER 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO PERMIT MEMBERS OF THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN WHO ARE EMPLOYED IN THE POLICE DEPARTMENT TO REDEPOSIT PREVIOUSLY WITHDRAWN CONTRIBUTIONS, TO PURCHASE SERVICE CREDIT FOR PREVIOUS FEDERATED SERVICE AT ANY TIME PRIOR TO RETIREMENT, AND TO PURCHASE SERVICE CREDIT IN THE PLAN FOR TIME ON UNPAID LEAVE OF ABSENCE

WHEREAS, the City and the San Jose Police Officers Association ("SJPOA") have reached an agreement regarding retirement benefits for those members of the Police and Fire Department Retirement Plan (the "Plan") who are employed in the Police Department; and

WHEREAS, implementation of the agreement between the City and the SJPOA requires amendments to the Plan; and

WHEREAS, the Board of Administration for the Plan (the "Board") has received a report from the Board's actuary regarding the actuarial cost of such benefits; and

WHEREAS, the Board has reviewed the proposed amendments to the Plan and has recommended that the proposed amendments be adopted;

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

SECTION 1. Section 3.36.610 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.610 Service Defined.

Except as may be otherwise expressly provided elsewhere in this Chapter, "service" means and includes the following service of a member of this Retirement System and none other:

A. Service as Officer or Employee of Police or Fire Department, Rendered by Member After Becoming and While a Member of This System.

Service rendered by a member of this retirement system, where such service was rendered as an officer or employee of the Police Department or Fire Department of the City, for monthly compensation, and only while such officer or employee is receiving such compensation for such service from the City.

B. Service as Officer or Employee of Police or Fire Department, Rendered Prior to Effective Date of This System by a Person Who Becomes a Member Pursuant to Provisions of Sections 3.36.180, 3.36.210 or 3.36.260.

Service rendered prior to the effective date of this retirement system by any person who becomes a member of this retirement system pursuant to the provisions of Sections 3.36.180, 3.36.210 or 3.36.260 where such service was rendered as an officer or employee of the Police Department or Fire Department of the City for monthly compensation, if and to the extent such person received credit for such service pursuant to the provisions of the Police and Fire Department Retirement Plan established by Chapter 3.32 of this Code.

C. Service as Officer or Employee of Police or Fire Department Rendered Prior to the Effective Date of Membership in This System by a Person Who Becomes a Member Pursuant to the Provisions of Sections 3.36.240 or 3.36.250.

Service rendered prior to the effective date of his or her membership in this retirement system by any person who becomes a member of this retirement system pursuant to the provisions of Sections 3.36.240 or 3.36.250, where such service was rendered as an officer or employee of the Police Department or Fire Department of the City, for monthly compensation, if and to the extent that such person received credit for such service pursuant to the provisions of the Police and Fire Department Retirement Plan established by Chapter 3.32, if the following condition is satisfied:

1. On or before the ninetieth day immediately following the day he or she becomes a member of this retirement system, the member has

filed with the Retirement Board a written election to have such service so credited to him or her and to pay into the retirement fund, at times and in the manner fixed by the Board, the amount necessary to make the accumulated contributions standing to the credit of the member's individual account equal to the amount they would be had he or she been a member of or on active duty with the Police Department or Fire Department in the position or class of position in the Police Department or Fire Department to which he or she shall have been appointed, during the time between the effective date of this Chapter and the date he or she became a member of this system.

D. Certain Service for Which Certain Persons Were Previously Entitled to Credit Under Certain Other City Retirement Plans.

1. Service rendered prior to the effective date of membership in this retirement system, by a person who becomes a member of this retirement system pursuant to the provisions of Sections 3.36.170 or 3.36.200, if all of the following conditions are satisfied:

   a. Such service consisted of service rendered by said person to the City as an officer or employee of the City, in a position or positions not included in this system, without any break, gap or cessation in the rendering of such service from the time such service was rendered to the time the person rendering such service became a member of this system pursuant to Sections 3.36.170 or 3.36.200; and

   b. Such service was rendered for monthly compensation and only while the person was receiving such monthly compensation for such service; and

   c. The person was entitled to credit for such service, immediately prior to the time he or she became a member of this system, under and pursuant to the provisions of the San

José Federated City Employees' Retirement System established by the provisions of Chapter 3.24 or Chapter 3.28 of this Code or the provisions of the Police and Fire Department Retirement Plan established by Chapter 3.32 of this Code; and

d. Except as provided in paragraph 2 or paragraph 3, below, the member files with the Retirement Board, on or before the ninetieth day immediately following the day he or she becomes a member of this system, a written Notice of Election re Federated Service to have such service credited to him or her; and

e. The member pays into the retirement fund, at the time or times and in the manner specified by the Retirement Board, an amount of money sufficient to make the accumulated contributions standing to the credit of the member's individual account in this system equal to the amount such contributions would be if he or she had been a member of or on active duty with the Police Department or Fire Department in the position or class of position in the Police Department or Fire Department to which he or she was appointed and because of which appointment he or she became a member of this system pursuant to Sections 3.36.170 or 3.36.200, during the time he or she was rendering the previous service for which he or she seeks to get credit, and if the contributions payable by him or her to this system under such circumstances had been deducted from his or her compensation and paid into the retirement fund during all of such time; and

f. The member ceases to be a member of, or have any membership rights under, any other retirement plan or system of the City, other than Social Security or the City's Deferred Compensation Plan.

2. A person who became a member of this retirement system pursuant to Sections 3.36.170 or 3.36.200 prior to September 1, 1995, and who failed to elect to have the previous service in the Federated City Employees Retirement System credited under this retirement system within the time specified in D.1. d above., may elect to have the previous service credited under this Retirement System if:

   a. The person satisfies the requirements of D.1. a, b, c, e and f above; and

   b. The person files with the Retirement Board a written election for such service credit on or before August 15, 1996.

3. On or after July 1, 2006, a person who became a member of this retirement system pursuant to Section 3.36.170, and who does not meet the requirements of D. 1 above, may elect to have the previous service credited under this Retirement System if:

   a. The person satisfies the requirements of D.1. a, b, c and f above; and

   b. Prior to the person's retirement the person files with the Retirement Board a written election for such service credit; and

   c. Prior to the person's retirement, the person pays into the retirement fund at such times and in such manner as specified by the Retirement Board:

      i. An amount of money sufficient to make the accumulated contributions standing to the credit of the

member's individual account in this system equal to the amount the accumulated contributions would be if he or she had been a member of this Plan employed in the Police Department during the time he or she was rendering the prior City service for which he or she seeks service credit and if the contributions payable to this retirement system had been deducted from his or her compensation and paid into the retirement fund during all of such time; plus

ii. An amount equal to the interest that would have been earned on the accumulated contributions, at the actual rate earned by the Retirement Plan, as of the date the member files the election for service credit had the contributions been deducted and paid into the retirement fund; plus

iii. Interest on the unpaid balance of all such moneys, at the actuarially assumed interest rate, from the date the member files the election to redeposit to the date all such moneys are fully paid into the retirement fund.

E. Service in Department of Communications. Service rendered prior to or during membership in this retirement system by a person who becomes a member of this system pursuant to the provisions of Section 3.36.260, where such service was or is rendered as an officer or employee of the Department of Communications, for monthly compensation and only while the holder of such position is receiving such compensation for such service from the City.

F. Military Leave of Absence. Time on leave of absence from City employment for monthly compensation, while engaged in the performance of military or naval duty for the United States of America in time of war;

provided, however, that no member shall be entitled to credit for such time unless such member heretofore, or on or before the ninetieth day immediately following the effective date of this plan, or on or before the ninetieth day immediately following termination of such leave of absence or on or before the ninetieth day immediately following the date such person becomes a member of this system, whichever date is later, has filed or files with the Retirement Board a written election to have such time so credited to him or her and pays into the retirement fund, at the time and in the manner fixed by the Board, the amount necessary to make the accumulated contributions standing to the credit of the member's individual account the amount they would be if he or she had been a member of and on active duty with the Police Department or Fire Department, in the class of position in the Police Department or Fire Department to which he or she shall have been appointed, during the period of leave of absence while engaged in the performance of military or naval duty for the United States of America in time of war, and if the contributions payable by him or her as such member had been deducted from his or her compensation and paid into the retirement fund during all such times.

Anything herein to the contrary notwithstanding, no person shall be entitled to or be given credit for any such time served prior to the effective date of this Chapter if he or she shall have heretofore been given reasonable time to claim credit for such service and pay contributions therefor and has failed within such reasonable time to claim the same or pay contributions therefor.

G. Leave of Absence From Position in Police or Fire Department to Perform Other City Services.

Should a member, during membership in this retirement system and while holding any position in the Police Department or Fire Department for active service in which monthly compensation is paid, receive, after the

effective date of this Chapter, a temporary leave of absence from active duty in such position in order to perform any other service for the City as an officer or employee of the City, for monthly compensation, time served with the city in such other service during said temporary leave of absence shall be considered as time served in the position from which he or she is on temporary leave of absence; provided that the member contributes while on such leave of absence, to the retirement fund for such time the same as if he or she were on active duty in his or her position in the Police Department or Fire Department.

H. Leave of Absence of Member From Position in Communications Department to Perform Other City Service.

Should any member, during membership in this retirement system and while holding a position in the Department of Communications for active service in which monthly compensation is paid, receive, after the effective date of this Chapter, a temporary leave of absence from active duty in such position in order to perform any other service for the city as an officer or employee of the City, for monthly compensation, time served with the City in such other service during said temporary leave of absence shall be considered as time served in the position from which he or she is on temporary leave of absence; provided that the member contributes, while on such leave of absence, to the retirement fund for such time the same as if he or she were on active duty in his or her position in the Department of Communications.

I. City Service, After Disability Retirement, Other Than in Position in Police or Fire Department Included Within 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 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 membership in this retirement system, in which a monthly

compensation is paid, shall receive credit for such service which is so rendered during such disability, and shall make contributions into the retirement fund at the same rates established for other members.

J. **Eligible Prior Military Service.** Eligible prior military service purchased by a member in accordance with Part 18 of this Chapter.

K. **Service for Time on Unpaid Leave.** Time on unpaid leave of absence purchased by a member in accordance with Section 3.36.717 of this Chapter.

SECTION 2. Section 3.36.710 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.710 Reentry Into Police Or Fire Department After Withdrawal Or Repayment Of Contributions - Option For Prior Service Credit.

A. Except as provided in this Section 3.36.710 and in Sections 3.36.715 and 3.36.3030, no person who, for any reason whatsoever, has withdrawn or has been paid, or withdraws or is paid, his or her accumulated contributions in the retirement fund pursuant to the provisions of this Chapter or of Chapter 3.32 of this Code, and who subsequently is reemployed in the Police Department or Fire Department of the City and becomes a member of this Plan, shall be entitled to or be given credit for any service rendered by him or her prior to such reemployment, to which credit he or she might otherwise be entitled under the provisions of this Chapter.

B. Upon any person becoming a member of this Plan because of reemployment in the Police Department or Fire Department of the City, the Retirement Board shall cause written notice to be personally delivered or mailed to such member, informing such member of his or her rights under this section. If such notice is personally delivered, the person delivering such notice shall forthwith file with the Secretary of the Retirement Board a declaration attesting to the time and place of such delivery. If mailed,

such notice shall be sent by certified mail, return receipt requested, to such member at the latest address as shown in the records of the Human Resources Department of the City.

C. Except as provided in subsection I below, if the member wishes to have such prior service credited to him or her, the member shall file a written notice of election to redeposit with the Secretary to the Retirement Board within ninety days from and after the date that written notice of rights under this section is personally delivered or deposited in the mail to the member, and no later. If the member does not file the notice of election to redeposit within such time, the member shall be deemed to have elected not to have such prior service credited to him or her.

D. The member shall not be entitled to prior service credit unless the member redeposits and pays into the retirement fund:

1. All of the accumulated contributions previously withdrawn by or returned to said member; plus
2. Interest on the accumulated contributions at the rate of two percent per year from the date said contributions were withdrawn by or paid to said member to the date the member repays such contributions to the retirement fund.

E. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code, any member who elects to have prior service credited to him or her shall redeposit and pay into the retirement fund the moneys specified in subsection D or subsection I:

1. In one lump sum within sixty days from and after the date the member files with the Secretary of the Retirement Board the notice of election to redeposit; or
2. In monthly or biweekly installments, paid over a period of time not to exceed eight years; or
3. A combination of a lump sum and installments.

F. If the member elects to pay the contributions in installments, or if the member elects to make the lump sum payment by payroll deduction, the member shall execute a binding irrevocable payroll authorization form authorizing the payment of the required contributions by payroll deduction. The payroll authorization form shall be filed with the Director of Finance.

G. The election to redeposit accumulated contributions in the retirement fund and the authorization to redeposit by payroll deductions shall be irrevocable. During the time the irrevocable election is in effect, no direct payments from the member to the retirement fund shall be made by the member or accepted by this Plan.

H. Notwithstanding the other provisions of this section, a person who elected to redeposit withdrawn or returned accumulated contributions and has not completed the redeposit as of December 14, 1999, may either:

1. Continue to make such redeposits in the manner permitted by this Section 3.36.710 as it read prior to December 14, 1999; or
2. Execute a binding irrevocable payroll authorization form authorizing the payment of the redeposit by payroll deductions and file the form with the Director of Finance within ninety days from and after the date that written notice of rights under this section is personally delivered or deposited in the mail to the member. If said person does not file the payroll authorization form within such time, the person shall be deemed to have elected to continue to make redeposits under paragraph 1, above.

I. On or after July 1, 2006, if a member who is employed in the Police Department wishes to have such prior service credited to him or her, and the member does not otherwise qualify under this Section 3.36.710, the member shall file a written notice of election to redeposit with the Secretary to the Retirement Board and, prior to his or her retirement, shall redeposit and pay into the retirement fund:

1. All of the accumulated contributions previously withdrawn by or returned to said member; plus
2. An amount equal to the interest that would have been earned on the accumulated contributions, at the actual rate earned by the Retirement Plan, as of the date the member files the election to redeposit if the contributions had not been withdrawn by or returned to the member; plus
3. Interest on the unpaid balance of all such moneys, at the actuarially assumed interest rate, from the date the member files the election to redeposit to the date all such moneys are fully paid into the retirement fund.

J. If a member elects to redeposit and pay the moneys specified in subsection D or subsection I above and subsequently does redeposit all such moneys as provided in this section, such member shall be credited under this Plan for all the service for which he or she lost credit upon the withdrawal or return of the accumulated contributions.

K. If a member elects to redeposit and pay the moneys specified in subsection D or subsection I above but fails to complete the redeposit, then:

1. If the failure to complete the redeposit is because of death of the member, while a member of this Plan but prior to retirement, the member shall be credited with the amount of service which is determined by the Board to be attributable to the amount of accumulated contributions redeposited as of the date of the member's death.
2. If the failure to complete the redeposit is for any reason other than the death of the member prior to retirement, any amounts redeposited pursuant to the election provided by this section shall be credited to the member's accumulated normal contributions

account but the member shall receive no credit for any service lost because of the previous withdrawal or return of contributions.

SECTION 3. 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:

3.36.717 Service Credit For Time On Unpaid Leave of Absence.

A. Subject to the conditions, limitations and requirements of this Section 3.36.717, on or after July 1, 2006, a member of this Plan who is employed in the Police Department may purchase service credit in this Plan for eligible time on unpaid leave of absence.

B. For the purpose of this Section, “eligible time on unpaid leave of absence” means time for which the member was on leave of absence from his or her employment in the Police Department and for which the member received no compensation from the City, but does not include:

1. Any time prior to the date the person first became a member of this Plan;
2. Time in military service that would otherwise be eligible for service credit under any other provision of this Plan;
3. Time for which the member receives any service credit in a reciprocal system (as described in Part 16 of this Chapter); or
4. Any time for which the person was absent from service because of suspension or other disciplinary action.

C. In the event there is any dispute regarding a member's eligibility to purchase service credit for eligible time on unpaid leave of absence, the contributions required, or the amount of service to be credited to a member, the Board shall determine the issue based on the relevant information presented to the Board.

D. If a member wishes to purchase service credit for time on unpaid leave of absence, the member shall file a written notice of election to purchase

such service credit with the Secretary to the Retirement Board and shall submit to the Secretary an amount of money determined by the Secretary to be the cost of the actuarial services necessary to determine the cost of the additional benefits to be purchased. In addition, prior to his or her retirement, the member shall pay into the retirement fund the full cost of any and all additional benefits that accrue to the member and the member's survivors as a result of the purchase of service credit for time on unpaid leave of absence, as follows:

1. The cost of the additional benefits shall be actuarially determined as the difference between (a) the value of the benefits calculated including service credit for the time on unpaid leave of absence and (b) the value of the benefits calculated without service credit for the time on unpaid leave of absence.
2. The cost of the additional benefits shall be determined using the interest rate and life expectancy tables used in determining the actuarial equivalents of the optional settlements provided under Part 9.5 of this Chapter.
3. The cost of the additional benefits shall include any cost-of-living-adjustments provided under Chapter 3.44.
4. If the member elects the installment payment option described below, member shall also pay interest on the outstanding balance at the actuarially assumed interest earnings rate.

E. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code, any member who elects to purchase service credit for unpaid leave of absence shall pay into the retirement fund the moneys specified in subsection D:

1. In one lump sum within sixty days from and after the date the member files with the Secretary of the Retirement Board the election to purchase service credit; or

2. In monthly or biweekly installments, paid over a period of time not to exceed eight years; or
3. A combination of a lump sum and installments.

F. If the member elects to pay the contributions required by this Section 3.36.717 in installments, or if the member elects to make the lump sum payment by payroll deduction, the member shall execute a binding irrevocable payroll authorization form authorizing the payment of the required contributions by payroll deduction. The payroll authorization form shall be filed with the Director of Finance. The election to purchase service credit for time on unpaid leave of absence and the authorization to redeposit by payroll deductions shall be irrevocable. During the time the irrevocable election is in effect, no direct payments from the member to the retirement fund shall be made by the member or accepted by this Plan.

G. If a member elects to purchase service credit for unpaid leave of absence and pay the moneys specified in subsection D above and subsequently does pay all such moneys as provided in this section, such member shall receive service credit under this Plan for the time on unpaid leave of absence.

H. If a member elects to purchase service credit for time on unpaid leave of absence and pay the moneys specified in subsection D. but fails to complete the payment because of a separation from City service whether by reason of retirement or death or otherwise, then the member shall be credited with the amount of service that is determined by the Board to be attributable to the amount of money paid as of the date of the member's separation from City service.

I. Under no circumstances shall the service credit for time on unpaid leave of absence be included in the determination of service credit for qualification for medical benefits provided under Part 14 of this Chapter or

for the qualification for dental benefits provided under Part 15 of this Chapter.

SECTION 4. Section 3.36.1580 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1580 City Pickup Of Member Contributions.

A. For the purposes of this section, contributions "picked up" by the City means contributions to this Plan which are designated as employee contributions but are treated as employer contributions for income tax purposes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414(h)(2)).

B. Notwithstanding any other provisions of law, the City may pick up, for the sole and limited purpose of deferring taxes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414 (h)(2)) and Section 17501 of the California Revenue and Taxation Code, all or a portion of the contributions:

1. Required to be paid by a member of this Plan; or
2. Elected to be paid by a member pursuant to the irrevocable election provided in Section 3.36.615; or
3. Elected to be paid by a member pursuant to the irrevocable election provided in Section 3.36.710; or
4. Elected to be paid by a member pursuant to the irrevocable election provided in Section 3.36.717.

C. Nothing herein shall be construed to mean that any contributions so picked up by the City are to be treated as City contributions for any purpose other than the sole and limited purpose specified herein. Any contributions so picked up by the City shall be paid into the retirement fund and shall be treated in the retirement fund in the same manner as

D. Subject to applicable laws relating to meet and confer requirements, the City shall retain the authority periodically to increase, reduce or eliminate the pickup by the City of all or a portion of the contributions required to be paid by a member of this Plan or elected to be paid pursuant to the irrevocable election provided in Section 3.36.615, Section 3.36.710, or Section 3.36.717 as authorized by this section.

PASSED FOR PUBLICATION of title this 1st day of May, 2007, by the following vote:

AYES:	CAMPOS, CHIRCO, CONSTANT, LICCARDO, NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED
NOES:	NONE
ABSENT:	CORTESE
DISQUALIFIED:	NONE
VACANT:	DISTRICT 4

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk