

ORDINANCE NO. 28300

AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING CHAPTER 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO PROVIDE INCREASED RETIREMENT BENEFITS FOR MEMBERS OF THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN WHO ARE EMPLOYED IN THE FIRE DEPARTMENT

WHEREAS, pursuant to the Opinion and Award in Interest Arbitration Proceedings Pursuant to San Jose City Charter Section 1111 dated August 3, 2007 (the “Arbitration Award”), effective July 1, 2008, the benefit formula for members of the Police and Fire Department Retirement Plan (the “Plan”) who are employed in the Fire Department and retire on or after July 1, 2008 will be changed from the current benefit formula; and

WHEREAS, implementation of the Arbitration Award requires amendments to the Plan; and

WHEREAS, the Council desires to include those members of the Plan who are employed in the Fire Department but are not represented by an employee organization as well as those who are represented; 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 been provided a copy of the proposed amendments to the Plan for its review and recommendation;

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

SECTION 1. 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:

3.36.808 Service Retirement Allowance for Members Employed in Fire Department-- Retirement on or After February 4, 2000.

- A. Subject to the provisions of this Chapter 3.36, if a member employed in the Fire Department retired or retires for service on or after February 4, 2000, but prior to July 1, 2008, pursuant to the provisions of Section 3.36.750, 3.36.770 or 3.36.780, then he or she shall be paid from the retirement fund a monthly service retirement allowance calculated in accordance with Section 3.36.807.
- B. Subject to the provisions of this Chapter 3.36, if a member employed in the Fire Department retired or retires for service on or after July 1, 2008, pursuant to the provisions of Section 3.36.750, 3.36.770 or 3.36.780, then:
 - 1. If the person was credited with less than twenty years of service credit at the time of retirement, he or she shall be paid from the retirement fund a monthly service retirement allowance equal to two and one-half percent of his or her final compensation for each year of service credit.
 - 2. If the person was credited with twenty or more years of service credit at the time of retirement, he or she shall be paid from the retirement fund a monthly service retirement allowance equal to three percent of his or her final compensation for each year of service credit; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety percent of the member's final compensation.
- C. For the purposes of this Section 3.36.809, "service" means service performed for the City and for which the member is entitled to credit under the provisions of this Chapter. "Service" shall not include service as an officer or employee of a reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.
- D. In computing the amount of the allowance payable for service in excess of the first twenty years, pro rata credit shall be given for a fraction of a full year.

SECTION 2. Section 3.36.995 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.995 Nonservice-Connected Disability Benefits.

- A. Subject to the provisions of this Chapter, a person who is retired for nonservice-connected disability, pursuant to Section 3.36.990, shall be paid from the

retirement fund while the member is incapacitated for the performance of duty as a result of the nonservice-connected disability, a monthly allowance calculated in accordance with this section.

- B. A member who is entitled to credit for at least two but less than twenty years of service at the time the nonservice-connected disability occurs shall receive a monthly allowance equal to thirty-two percent of the member's final compensation, plus one percent of said final compensation for each full year of service for which the member is entitled to credit in excess of the first two years of service; provided, however, that in no event shall the total monthly allowance exceed fifty percent of the member's final compensation.
- C. A member who is entitled to credit for twenty or more years of service at the time the nonservice-connected disability occurs shall receive a monthly allowance as follows:
1. If such member's nonservice-connected disability retirement occurred prior to January 1, 1970, the monthly allowance shall be equal to fifty percent of such member's final compensation.
 2. If such member's nonservice-connected disability retirement occurred on or after January 1, 1970, but prior to February 4, 1996, the monthly allowance shall be:
 - a. From and after the date of such member's retirement to September 1, 1970, the monthly allowance shall be equal to fifty percent of such member's final compensation plus one and two-thirds percent of said final compensation for each full year of service in excess of the first twenty years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement allowance during said period of time exceed a maximum of sixty-six and two-thirds percent of such member's final compensation; and
 - b. From and after September 1, 1970, while so retired for disability, the monthly allowance shall be equal to fifty percent of such

member's final compensation plus two and one-half percent of said final compensation for each full year of service in excess of the first twenty years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement allowance exceed a maximum of seventy-five percent of such member's final compensation.

3. If such member's nonservice-connected disability retirement occurred or occurs on or after February 4, 1996, but prior to February 4, 2000, the monthly allowance shall be equal to fifty percent of such member's final compensation, plus three percent of said final compensation for each full year of service in excess of the first twenty years of service for which such member is entitled to credit; provided, however:
 - a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty percent of such member's final compensation.
 - b. This paragraph C.3. shall not apply in the case where the member was retired for service prior to February 4, 1996, was not reemployed by the city for any period on or after February 4, 1996, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph C.1. or C.2., above, as applicable.
4. Except as provided in paragraph 5 or or paragraph 6 below, if such member's nonservice-connected disability retirement occurred or occurs on or after February 4, 2000, the monthly allowance shall be equal to fifty percent of such member's final compensation for up to the first twenty years of service, plus three percent of said final compensation for each of the next five full years of service in excess of twenty years, plus four percent of his or her final compensation for each full year of service in excess of the first twenty-five years of service; provided, however:

- a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty-five percent of such member's final compensation.
 - b. This paragraph C.4. shall not apply in the case where the member was retired for service prior to February 4, 2000, was not reemployed by the City for any period on or after February 4, 2000, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph C.1., C.2. or C.3. above, as applicable.
5. With respect to those members of the Plan who are employed in the Police Department:
- a. If such member's nonservice-connected disability retirement occurred or occurs on or after February 4, 2000, but prior to July 1, 2006, the monthly allowance shall be calculated in accordance with paragraph C.4 above.
 - b. If such member's nonservice-connected disability retirement occurred or occurs on or after July 1, 2006, the monthly allowance shall be equal to two and one-half percent of his or her final compensation for each of the first twenty years of service plus four percent of his or her final compensation for each full year of service in excess of the first twenty years of service; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety percent of the member's final compensation.
 - c. This paragraph C.5. shall not apply in the case where the member was retired for service prior to July 1, 2006, was not reemployed by the City for any period on or after July 1, 2006, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement

allowance shall be calculated in accordance with paragraph C.1., C.2., C.3. or C.4 above, as applicable.

6. With respect to those members of the Plan who are employed in the Fire Department:
 - a. If such member's nonservice-connected disability retirement occurred or occurs on or after February 4, 2000, but prior to July 1, 2008, the monthly allowance shall be calculated in accordance with paragraph C.4 above.
 - b. If such member's nonservice-connected disability retirement occurred or occurs on or after July 1, 2008:
 - i. If the member was credited with less than twenty years of service credit on the date of retirement, the monthly allowance shall be calculated in accordance with paragraph C.4. above.
 - ii. If the member was credited with twenty or more years of service credit on the date of retirement, the monthly allowance shall be equal to three percent of his or her final compensation for each year of service credit; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety percent of the member's final compensation.
 - c. This paragraph C.6. shall not apply in the case where the member was retired for service prior to July 1, 2008, was not reemployed by the City for any period on or after July 1, 2008, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph C.1., C.2., C.3. or C.4 above, as applicable.
- D. For the purposes of this Section 3.36.995, "service" means service performed for the City, and for which the member is entitled to credit under the provisions of

this Chapter. "Service" shall not include service as an officer or employee of a reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.

- E. Notwithstanding any other provision of this section, in computing the amount of allowance payable under this section for service in excess of the first twenty years, pro rata credit shall be given for a fraction of a full year.

SECTION 3. Section 3.36.1020 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1020 Service-Connected Disability Benefits.

- A. Any member retired for service-connected disability pursuant to the provisions of Section 3.36.1000 shall thereafter be paid from the retirement fund, while incapacitated for the performance of duty as a result of such disability, subject to all other provisions of this Chapter, a monthly disability retirement allowance in the following amount:
1. If such member's service-connected disability retirement occurred prior to January 1, 1970, the monthly allowance shall be equal to fifty percent of such member's final compensation.
 2. If such member's service-connected disability retirement occurred on or after January 1, 1970, but prior to February 4, 1996, the monthly disability retirement allowance shall be as follows:
 - a. From and after the date of such member's retirement prior to September 1, 1970, the monthly allowance shall be equal to fifty percent of such member's final compensation plus one and two-thirds percent of said final compensation for each full year of service in excess of the first twenty years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement allowance during said period of time exceed a maximum of sixty-six and two-thirds percent of such member's final compensation; and

- b. From and after September 1, 1970, while so retired for disability, the monthly allowance shall be equal to fifty percent of such member's final compensation plus two and one-half percent of said final compensation for each full year of service in excess of the first twenty years of service for which such member is entitled to credit; provided, however, that in no event shall the total monthly disability retirement allowance exceed a maximum of seventy-five percent of such member's final compensation.
3. If such member's service-connected disability retirement occurred or occurs on or after February 4, 1996, but prior to February 4, 2000, the monthly allowance shall be equal to fifty percent of such member's final compensation plus three percent of said final compensation for each full year of service in excess of twenty years of service for which such member is entitled to credit; provided, however:
 - a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty percent of such member's final compensation.
 - b. This paragraph A.3. shall not apply in the case where the member was retired for service prior to February 4, 1996, was not reemployed by the city for any period on or after February 4, 1996, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph A.1. or A.2., above, as applicable.
4. Except as provided in paragraph 5 or paragraph 6 below, if such member's service-connected disability retirement occurred or occurs on or after February 4, 2000, the monthly allowance shall be equal to fifty percent of such member's final compensation, plus three percent of said final compensation for each year of the first five full years of service in excess of twenty years, plus four percent of his or her final compensation

for each full year of service in excess of twenty-five years of service; provided, however:

- a. In no event shall the total monthly disability retirement allowance exceed a maximum of eighty-five percent of such member's final compensation.
 - b. This paragraph A.4. shall not apply in the case where the member was retired for service prior to February 4, 2000, was not reemployed by the City for any period on or after February 4, 2000, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph A.1., A.2. or A.3. above, as applicable.
5. With respect to those members of the Plan who are employed in the Police Department:
- a. If such member's service-connected disability retirement occurred or occurs on or after February 4, 2000, but prior to July 1, 2006, the monthly allowance shall be calculated in accordance with paragraph A.4 above.
 - b. If such member's service-connected disability retirement occurred or occurs on or after July 1, 2006, the monthly allowance shall be equal to fifty percent of his or her final compensation, plus four percent of his or her final compensation for each full year of service in excess of twenty years; provided, however, that in no event shall the monthly allowance exceed a maximum of ninety percent of the member's final compensation.
 - c. This paragraph A.5. shall not apply in the case where the member was retired for service prior to July 1, 2006, was not reemployed by the city for any period on or after July 1, 2006, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement

allowance shall be calculated in accordance with paragraph A.1., A.2., A.3. or A.4 above, as applicable.

6. With respect to those members of the Plan who are employed in the Fire Department:
 - a. If such member's service-connected disability retirement occurred or occurs on or after February 4, 2000, but prior to July 1, 2008, the monthly allowance shall be calculated in accordance with paragraph A.4 above.
 - b. If such member's service-connected disability retirement occurred or occurs on or after July 1, 2008:
 - i. If the member was credited with less than twenty years of service credit on the date of retirement, the monthly allowance shall be fifty percent (50%) of the member's final average salary.
 - ii. If the member was credited with twenty or more years of service credit on the date of retirement, the monthly allowance shall be equal to three percent of his or her final compensation for each year of service credit; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety percent of the member's final compensation.
 - c. This paragraph A.6. shall not apply in the case where the member was retired for service prior to July 1, 2008, was not reemployed by the City for any period on or after July 1, 2008, and the disability retirement is a result of a change in retirement status from service to disability. Under such circumstances, the disability retirement allowance shall be calculated in accordance with paragraph A.1., A.2., A.3. or A.4 above, as applicable.
- B. For the purposes of this Section 3.36.1020, "service" means service performed for the City and for which the member is entitled to credit under the provisions of

this Chapter. "Service" shall not include service as an officer or employee of a reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.

- C. Notwithstanding any other provision of this section, in computing the amount of allowance payable under this section for service in excess of the first twenty years, pro rata credit shall be given for a fraction of a full year.

SECTION 4. Section 3.36.1640 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

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

- A. Any person credited with ten or more years of service on or after July 1, 1976, in this Retirement Plan whose membership is terminated after July 1, 1976, before such person retires, by reason of resignation or discharge, layoff or leave of absence deemed by the Board to have resulted in permanent discontinuance (unless such permanent discontinuance is to accept transfer to or appointment to another position covered by the plan) shall have the right to elect in writing, on a form to be furnished by this plan, not later than ninety days after the date upon which notice of said right is mailed by this plan to the person's latest address on file in the office of this plan, whether to allow his or her accumulated contributions to remain in the retirement fund or to withdraw such contributions. Failure to make such election in writing shall be deemed an irrevocable election to withdraw his or her accumulated contributions. In the event of an election to withdraw, such person shall receive from the retirement fund the amount of such person's accumulated contributions to the fund, plus interest thereon as earned by the fund during the period of such person's service, but in no case shall the interest exceed two percent (2%) per annum. Thereafter neither such person nor the surviving spouse, domestic partner, child or children, or estate of such person shall be entitled to any allowance or benefit whatsoever under the provisions of this Chapter.

- B. When both of the following conditions have been satisfied, a person who has elected to allow his or her accumulated contributions to remain in the retirement fund may apply for a monthly allowance to be paid from the retirement fund:
1. Such person attains fifty-five years of age; and
 2. Twenty years have elapsed from the time such person first became a member.
- C. A person who separates from City service on or after July 5, 1992, may apply for a monthly allowance to be paid from the retirement fund if the conditions of subsection B. are satisfied or if both of the following conditions are satisfied:
1. The person has attained fifty years of age; and
 2. At the time the person separated from City service, the person was entitled to not less than twenty-five years of service credit in this plan.
- D. The monthly allowance payable pursuant to this section shall be calculated as follows:
1. For a person who separated from City service prior to February 4, 1996, the monthly allowance shall be equal to two and one-half percent of the person's final compensation for each full year of service. In no event shall the person's monthly allowance exceed a maximum of seventy-five percent of his or her final compensation.
 2. For a person who separated from City service on or after February 4, 1996, but prior to February 4, 2000, the monthly allowance shall be equal to two and one-half percent of the person's final compensation for each of the first twenty years of service plus three percent of the person's final compensation for each full year of service in excess of twenty years of service. In no event shall the person's monthly allowance exceed a maximum of eighty percent of his or her final compensation.
 3. For a person who separated from City service on or after February 4, 2000, the monthly allowance shall be equal to two and one-half percent of his or her final compensation for each of the first twenty years of service plus three percent of his or her final compensation for each of the next five

full years of service plus four percent of the person's final compensation for each full year of service in excess of the first twenty-five years of service; provided, however that in no event shall the monthly allowance exceed a maximum of eighty-five percent of the member's final compensation.

4. For a person who was employed in the Police Department and who separated from City service on or after July 1, 2006, the monthly allowance shall be equal to two and one-half percent of his or her final compensation for each of the first twenty years of service plus four percent of the person's final compensation for each full year of service in excess of twenty years of service; provided, however that in no event shall the monthly allowance exceed a maximum of ninety percent of the member's final compensation.
 5. For a person who was employed in the Fire Department and who separated from City service on or after July 1, 2008:
 - a. If the person was credited with less than twenty years of service credit at the time of separation from service, he or she shall be paid from the retirement fund a monthly allowance equal to two and one-half percent of his or her final compensation for each year of service credit.
 - b. If the person was credited with twenty or more years of service credit at the time of separation from service, he or she shall be paid from the retirement fund a monthly allowance equal to three percent of his or her final compensation for each year of service credit; provided, however, that in no event shall the monthly service retirement allowance exceed a maximum of ninety percent of the member's final compensation.
- E. For the purposes of this Section 3.36.1640, "service" means service performed for the City and for which the member is entitled to credit under the provisions of this Chapter. "Service" shall not include service as an officer or employee of a

reciprocal agency which is used to qualify for benefits pursuant to Section 3.36.3020.

- F. In computing the amount of allowance payable, pro rata credit shall be given for a portion of a full year.
- G. At any time after electing to allow his or her accumulated contributions to remain in the retirement fund, the person may submit a written request for a return of such contributions, in which event such contributions shall be returned to such person plus interest thereon as earned by the fund to the date such contributions are returned, but in no case shall interest exceed two percent per annum. Thereafter, neither such person nor the surviving spouse, domestic partner, child or children, or estate of such person shall be entitled to any allowance or benefit whatsoever under the provisions of this Chapter.

SECTION 5. Section 3.36.3630 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.3630 Monthly Allowance For Alternate Payee.

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

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

participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:

- a. Two and one-half percent of the participant's final compensation for each of the first ten years of service credit credited to the alternate payee's separate account; plus
 - b. Three percent of the participant's final compensation for each of the next two and one-half years of service credit credited to the alternate payee's separate account; plus
 - c. Four percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account that is in excess of twelve and one-half years.
3. In the case where the participant was employed in the Police Department and separates from service on or after July 1, 2006, and subject to a maximum of forty-five percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:
- a. Two and one-half percent of the participant's final compensation for each of the first ten years of service credit credited to the alternate payee's separate account; plus
 - b. Four percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account that is in excess of ten years.
4. In the case where the participant was employed in the Fire Department and separates from service on or after July 1, 2008, and subject to a maximum of forty-five percent of the participant's final compensation, the amount of the monthly allowance payable to the alternate payee shall be:
- a. In the case where the alternate payee's account is credited with less than ten years of service credit, two and one-half percent of the participant's final compensation for each year of service credit credited to the alternate payee's separate account.

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

PASSED FOR PUBLICATION of title this 6TH day of MAY, 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE,
LICCARDO, NGUYEN, OLIVERIO, PYLE, WILLIAMS;
REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk