

ORDINANCE NO. 28331

AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING SECTIONS 3.36.1270 AND 3.36.1280 OF CHAPTER 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO REVISE THE BENEFIT FORMULA FOR CERTAIN SURVIVING SPOUSES AND SURVIVING DOMESTIC PARTNERS OF 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”), the benefit formula for surviving spouses and surviving domestic partners of 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 City and the San Jose Fire Fighters, IAFF, Local 230 have agreed to modify the Arbitration Award to maintain the current minimum survivorship benefit; and

WHEREAS, the Council desires to have the change in the benefit formula 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. Section 3.36.1270 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

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

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

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

arising out of and in the course of the deceased person's employment with the City, while the deceased person was an employee of the City and a member of this Plan, and before he or she was retired for service or disability, then in such event the amount of the monthly survivorship allowance shall be an amount equal to thirty-seven and one-half percent of the deceased person's final compensation as defined in Section 3.36.020.5.

- B. Where Deceased Did Not Die or Retire Prior to August 1, 1968.** If the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance did not die or retire from City service prior to August 1, 1968, then, except as provided in subsection C., D. or E. of this Section and subject to the optional settlement provisions of Part 9.5 of this Chapter, the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be:
1. An amount equal to thirty-seven and five tenths percent of the deceased person's final compensation as defined in Section 3.36.020.5, less the amounts specified in Section 3.36.1340; or
 2. If the deceased was retired for service-connected disability, an amount equal to thirty-seven and one-half percent of the deceased person's final compensation as defined in Section 3.36.020.5; or
 3. If the death because of which the survivorship allowance is payable arose out of and in the course of the deceased person's employment with the City, or as a result of an injury or disease arising out of and in the course of the deceased person's employment with the City, while the deceased person was an employee of the City and a member of this Plan, and before he or she was retired for service or disability, then in such event the amount of the monthly survivorship allowance shall be an amount

equal to thirty-seven and one-half percent of the deceased person's final compensation as defined in Section 3.36.020.5.

- C. Where Deceased Died or Retired On or After August 1, 1968, With Less Than Twenty Years Service Credit as a Member of this Plan.** If the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance died or retired from City service on or after August 1, 1968, the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be an amount equal to one and eight hundred seventy-five thousandths percent (1.875%) of the deceased person's final compensation for each year of service or portion thereof, less the amounts specified in Section 3.36.1340, subject to a maximum of thirty-seven and one-half percent of such final compensation, in any case where:
1. At the time of the person's death the person had earned less than twenty years of service credit in this Plan while employed by the City; and
 2. The benefit is payable under this Section 3.36.1270 for any reason other than:
 - a. The death of a person before retirement where the death arises out of and in the course of the person's employment with the City; or
 - b. The death of a person who has been retired for service-connected disability but who dies before receipt of retirement pay; or

- c. The death of a person who has been retired for service-connected disability, who is not reemployed by the City at the time of death and who dies during the disability retirement after receiving any disability retirement allowance.
- D. **Where Deceased Retired On or After February 4, 2000; or Deceased Died On or After February 4, 2000, But Prior to Receipt of Retirement Allowance.** Notwithstanding subsection B. above, if the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance retired from City service on or after February 4, 2000, or died on or after February 4, 2000, but before receiving any retirement allowance, then the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall, subject to a maximum of forty-two and one-half percent of the deceased person's final compensation, be an amount equal to one of the following, as applicable:
1. Thirty-seven and one-half percent of the deceased person's final compensation, less the amounts specified in Section 3.36.1340, if at the time of the deceased person's death, the deceased person was entitled to a retirement allowance of less than seventy-five percent of the deceased person's final compensation.
 2. Thirty-seven and one-half percent of the deceased person's final compensation, if at the time of the deceased person's death the deceased person was entitled to a retirement allowance of less than seventy-five percent of the deceased person's final compensation and either:
 - a. The deceased person was retired for service-connected disability; or
 - b. The deceased person died prior to retirement and the death arose out of and in the course of the person's employment with the City.

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

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

- E. **Where Deceased Was Employed in the Fire Department and Either Retired On or After July 1, 2008; or Died On or After July 1, 2008, But Prior to Receipt of Retirement Allowance.** Notwithstanding subsection B. above, if the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance was employed in the Fire Department and either (a) retired from City service on or after July 1, 2008, or (b) died on or after July 1, 2008, but before receiving any retirement allowance, then the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall, subject to a maximum of

forty-five percent of the deceased person's final compensation, be an amount equal to one of the following, as applicable:

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

- b. The person died prior to retirement and the death arose out of and in the course of the person's employment with the City.

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

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

SECTION 2. Section 3.36.1280 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

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

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

- A. **Where Deceased Died or Retired Prior to August 1, 1968.** If the person because of whose death the surviving spouse is entitled to a monthly survivorship allowance died or retired from City service prior to

August 1, 1968, the amount of monthly survivorship allowance payable to the surviving spouse shall be equal to eighteen percent of the deceased person's final compensation as defined in Section 3.36.020.5; plus five thousand six hundred twenty-five ten-thousandths percent (0.5625%) of such final compensation for each full year of service for which the deceased person was entitled to credit under the provisions of this Plan in excess of the first two years of service, less the amounts specified in Section 3.36.1330, but in no event shall such monthly survivorship allowance exceed twenty-eight and one hundred twenty-five thousandths percent (28.125%) of the final compensation of the deceased person less the amounts specified in Section 3.36.1340.

- B. **Where Deceased Did Not Die or Retire Prior to August 1, 1968.** If the person because of whose death the surviving spouse is entitled to a monthly survivorship allowance did not die or retire prior to August 1, 1968, then except as provided in subsection C. or D of this section, the amount of monthly survivorship allowance payable to the surviving spouse or surviving domestic partner, whichever is applicable, shall be an amount equal to twenty-four percent of the deceased person's final compensation, as defined in Section 3.36.020.5, plus seventy-five hundredths percent (0.75%) of such final compensation for each year of service for which the deceased person was entitled to credit under the provisions of this Plan in excess of the first two years of service, less the amounts specified in Section 3.36.1340, but in no event shall such monthly allowance exceed thirty-seven and one-half percent of the final compensation of the deceased person less the amounts specified in Section 3.36.1340.
- C. **Where Deceased Retired on or after February 4, 2000; or Deceased Died on or after February 4, 2000, but Prior to Receipt of Retirement Allowance.** If the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance retired from City service on or after February 4, 2000, or died

on or after February 4, 2000, but before receiving any retirement allowance, then:

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

For the purposes of this subsection C., if the deceased person died prior to retirement, the "deceased person's retirement allowance" shall mean

the retirement allowance that would have been paid had the deceased person retired on the day immediately preceding his or her death.

D. Where Deceased Was Employed in the Fire Department and Retired on or after July 1, 2008; or Deceased Died on or after July 1, 2008, but Prior to Receipt of Retirement Allowance. If the person because of whose death the surviving spouse or surviving domestic partner is entitled to a monthly survivorship allowance was employed in the Fire Department and either (a) retired from City service on or after July 1, 2008, or died on or after July 1, 2008, but before receiving any retirement allowance, then:

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

applicable, shall be an amount equal to fifty percent of the deceased person's retirement allowance, less the amounts specified in Section 3.36.1340, but in no event shall such monthly allowance exceed forty-five percent of the final compensation of the deceased person, less the amounts specified in Section 3.36.1340. For the purposes of this subsection D., if the deceased person died prior to retirement, the "deceased person's retirement allowance" shall mean the retirement allowance that would have been paid had the deceased person retired on the day immediately preceding his or her death.

PASSED FOR PUBLICATION of title this 17th day of June, 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