ORDINANCE NO. 28848

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 3.36.580 OF PART 4 OF CHAPTER 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO SUSPEND THE DISTRIBUTION OF FUNDS FROM THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN SUPPLEMENTAL RETIREE BENEFIT RESERVE DURING FISCAL YEAR 2010-2011

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 3.36.580 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.580 <u>Supplemental Retiree Benefit Reserve</u>

A. Establishment and Purpose.

1. The Board shall establish a reserve in the retirement fund to be known as the Supplemental Retiree Benefit Reserve or SRBR.

2. The purpose of the SRBR shall be to provide a source of funding for benefits to supplement those benefits otherwise provided by this Plan or the Chapter 3.32 plan to former members of such plans who are receiving benefits, survivors of such former members, and survivors of members who die prior to receiving benefits from this Plan.

B. Funding.

1. The initial amount allocated to the SRBR shall be ten percent (10%) of the Plan's prefunded actuarial accrued liability as of June 30, 1999, as

determined by the Board's actuary. The Board's actuary shall calculate the initial funding amount without regard to any Plan amendments that became effective after June 30, 1999.

2. Each June 30, beginning June 30, 2000, there shall be allocated to the SRBR the investment earnings attributable to the balance in the SRBR as of June 30 of the calendar year in which the allocation is made. Investment earnings credited to the SRBR shall be calculated as though the transfer required by paragraphs 3. and 4. of this subsection B. had been made on the immediately following July 1 (first allocation on July 1, 2000) regardless of the actual date such transfer is made. In the event the investment earnings for the retirement fund are less than zero, no investment earnings shall be allocated to the SRBR and no reduction shall be made to the SRBR balance except as provided in subsection C. below.

3. The Board shall determine the excess earnings for the twelve (12) months ending June 30, 2000, and for the twelve (12) months ending June 30, 2001, and shall transfer to the SRBR ten percent (10%) of the excess earnings for each such twelve (12)-month period.

4. Within ninety (90) days from and after receipt of audited financial statements for each fiscal year, commencing with the year 2002, the Board shall determine, and by written resolution declare, the excess earnings as of June 30 in each such year, and shall transfer ten percent (10%) of such excess earnings to the SRBR. The excess earnings shall be added to the SRBR principal and shall not be available for distribution under subsection D.

C. Reduction of SRBR Balance.

1. If the City's contribution rate, as determined by the Board's actuary during any actuarial valuation performed after June 30, 1999, will increase as a result of poor investment earnings in the Retirement Fund, there shall be transferred from the SRBR to the regular Retirement Fund and the cost-of-living fund an amount equal to ten percent (10%) of the City's increased contributions for the first twelve (12) months following the increase in the contribution rates. Such transfers shall be limited to those situations where the increase in the City's contribution rate is attributable to poor investment earnings; no such transfer shall be made for any increase in the City's contribution rate that is due to any factor other than poor investment earnings including, but not limited to, increases in medical or dental premium costs, enhancements to benefits provided under the Plan, or changes in the actuarial assumptions.

2. Notwithstanding paragraph 1. of this subsection C., the amount transferred from the SRBR because of the increase in the City's contributions shall not exceed five percent (5%) of the accrued balance in the SRBR as of the date of the actuarial valuation.

D. Distributions.

1. The Board shall make an initial distribution from the SRBR during calendar year 2002.

2. Beginning in calendar year 2003, the Board shall make an annual distribution from the SRBR; except there shall be no distribution during calendar year 2010 or during calendar year 2011, prior to June 30, 2011.

3. The initial distribution from the SRBR shall be made solely to former members of this Plan or the Chapter 3.32 Plan who are receiving benefits

as of June 30, 2001, and survivors (of such former members or of members who died prior to receiving benefits from this Plan) who are receiving benefits as of June 30, 2001; provided, however, that if a member or former member died after June 30, 2001, but before the initial distribution, the survivor shall be deemed to have been receiving benefits as of June 30, 2001.

4. All subsequent annual distributions from the SRBR shall be made solely to former members of this Plan or the Chapter 3.32 Plan who are receiving benefits as of the June 30 immediately preceding the distribution date and survivors (of such former members or of members who died prior to receiving benefits from this plan) who are receiving benefits as of said June 30.

5. The Board shall develop a methodology for distributions from the SRBR such that supplemental benefits provide a greater benefit for those persons who have been in benefit status for a longer period of time and those persons receiving the lowest monthly benefit payments. Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology.

6. Except as required by subsection C. or in the case of the termination of this Plan, the Board shall not transfer or distribute funds in the SRBR if such transfer or distribution would reduce the SRBR principal.

E. Definitions. For the purpose of this Section 3.36.580, the terms listed herein shall have the following meanings:

1. "Excess earnings" means the earnings of the Retirement Fund that remain after interest has been credited to the SRBR as provided in paragraph

B.2. and the actuarial assumed earnings rate adopted by the Board (and in effect on June 30 of the year in which the SRBR calculation is performed) has been credited to other reserves.

2. "Former member" means a person who has retired under the provisions of this Chapter or Chapter 3.32 or a person who separated from City service without retiring but left his or her contributions on deposit in the retirement fund.

3. "Investment earnings" means the earnings of the Retirement Fund during the twelve (12) months ending June 30 as determined by the Board's actuary using the same methodology used to determine the value of assets for the actuarial valuation. In the case of investment earnings attributable to the SRBR, the application of the methodology shall begin as of July 1, 1999.

RD:ERD
11/4/2010

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PASSED FOR PUBLICATION of title this 9th day of November, 2010, by the following vote:

AYES: CHIRCO, CONSTANT, HERRERA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: CHU, KALRA.

ABSENT: CAMPOS.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk