

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING CHAPTER 3.50 OF TITLE 3 OF THE SAN
JOSE MUNICIPAL CODE**

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), it has been determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance; and

WHEREAS, the City of San Jose's Deferred Compensation Program consists of two plans: the voluntary Deferred Compensation Plan and the PTC Plan; and

WHEREAS, the PTC Plan is for part-time, temporary and contract employees not covered by one of the City of San Jose's Retirement Systems and councilmembers that choose the PTC Plan over CalPERS; and

WHEREAS, on April 9, 2013, the City Council accepted the City Auditor's recommendation that responsibility for the administration of the PTC Plan should reside with the City Manager, including the operation and interpretation of the Plan in accordance with its terms and contractual authority to enter into contracts for the administration of the Plan; and

WHEREAS, on April 9, 2013, the City Council accepted the City Auditor's recommendation that the oversight role and responsibilities of the Deferred Compensation Advisory Committee should be reviewing and advising on annual budgets and proposed changes to the PTC Plan, the Investment Policy, and the investment menu; and

WHEREAS, on April 9, 2013, the City Council accepted the City Auditor's recommendation that the basic provisions of the PTC Plan should be set forth in the San Jose Municipal Code (Name, Purpose, Establishment of Trust, Definitions, Deferral of Compensation, Participation in the Plan, and Administration of the Plan, etc.), and the specifics of the PTC Plan should be set forth in a stand-alone Basic Plan Document; and

WHEREAS, the PTC Plan has been updated to ensure compliance with tax laws and align with the City's practices.

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

SECTION 1. Section 3.50.010 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.010 Name

The name of this plan is the City of San José, California, PTC Deferred Compensation Plan (hereinafter referred to as the Plan). Detailed rules and provisions related to the Plan can be found in the Basic Plan Document.

SECTION 2. Section 3.50.020 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.020 Purpose

The purpose of the ~~PTC~~Plan is to provide part-time, temporary and contract employees, City councilmembers and council assistants (who are not members of a City retirement plan other than an eligible deferred compensation plan) with a retirement program by requiring them to enter into agreement with the City of San José which will provide for deferral of payment of a portion of their current compensation until death, ~~disability,~~ retirement, termination of employment or other event as provided herein, in accordance with the applicable provisions of the Internal Revenue Code.

SECTION 3. Section 3.50.025 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.025 Establishment of Trust

- A. There is hereby established the City of San José PTC Deferred Compensation Plan Trust.

- B. Notwithstanding any contrary provision of the Plan, in accordance with Section 457(g) of the Internal Revenue Code, all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held by the City in trust for the exclusive benefit of participants and beneficiaries under the Plan.

C. The trustee shall ensure that all investments, amounts, property and rights held under the trust are held for the exclusive benefit of participants and their beneficiaries.

D. All amounts of compensation deferred under the ~~P~~plan shall be transferred to the trust within a period that is not longer than is reasonable for the proper administration of the accounts of participants and beneficiaries.

~~DE~~. Prior to the satisfaction of all liabilities with respect to Plan participants and their beneficiaries, no part of the assets or income of the trust shall be used for, or diverted to, purposes other than for the exclusive benefits of the Plan participants and their beneficiaries and defraying reasonable expenses of the administration of the Plan.

SECTION 4. Section 3.50.030 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.030 Definitions

For the purposes of this, certain words or phrases used herein will have the following meanings:

A. “Account” shall mean a sub-account maintained for a participant to hold and account for the contributions which are the proceeds of deferral of compensation from the City, including any adjustment for earnings and expenses.

B. “Alternative normal retirement age” shall mean any age irrevocably designated in writing by the participant which is:

1. Not earlier than the earliest age at which the participant has the right to retire under a retirement plan of the City and receive immediate retirement benefits without actuarial or similar reduction for early retirement; and
 2. No later than age seventy and one-half (70-1/2). ~~For a participant who continues in the service of the city after age seventy and one half, the normal retirement age shall be the date or age designated by the participant.~~
- C. “Alternate payee” shall mean any person who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to a participant within the meaning of Internal Revenue Code Section 414(p).
- D. “Basic Plan Document” shall mean the written basic plan document, as amended and restated from time to time, for the City of San José, PTC Deferred Compensation Plan.
- E. “Beneficiary” shall mean a beneficiary designated by the participant to receive payment of benefits under the Plan, or if no beneficiary is so designated, the participant’s estate.
- ~~E. “Disability” shall mean the complete and permanent inability of a participant to engage in his or her usual occupation by reason of a medically determinable physical or mental impairment as determined solely by the City on the basis of advice from a physician.~~
- F. “City” shall mean the City of San José, California.
- G. “City Manager” shall mean the City Manager or the City Manager’s designee.

H. “Committee” or “Advisory Committee” shall mean the ~~e~~Derred ~~e~~Compensation ~~a~~Advisory ~~e~~Committee.

I. “Compensation” prior to [insert effective date of this ordinance] shall mean includible compensation. Effective [insert effective date of this ordinance]. “compensation” shall mean the following:

1. Regular Salary;
2. Executive Leave;
3. Personal Leave;
4. Vacation;
5. Holiday;
6. Sick Leave;
7. Administrative Leave;
8. Funeral Leave;
9. Paid Time Off;
10. Witness Leave;
11. Cancer Screening Release Time;
12. Military Leave;

13. Retroactive Salary Payments;
14. POST Pay;
15. Anti-Terrorism Pay; and
16. Any compensation that would be considered a non-pensionable compensation increase under Chapters 3.28.030.05(E) and/or 3.36.020.3(A) of Title 3 of the San José Municipal Code.

Notwithstanding anything to the contrary, compensation does not include payment for any purpose not included above, including, but not limited to, the following:

1. Bilingual pay;
2. Auto allowances;
3. Taxable cellular phone and data stipends;
4. Medical and dental in lieu payments;
5. Higher class pay;
6. Retention payments;
7. Management Performance Bonus Program;
8. Premium-related payments;

- 9. Severance pay;
- 10. Vacation balance payoffs;
- 11. Compensatory time off payoffs;
- 12. Sick leave payoffs;
- 13. Reimbursements;
- 14. Allowances for equipment;
- 15. Safety purchases;
- 16. Moving expenses;
- 17. Professional development;
- 18. Education reimbursement; and
- 19. Overtime.

J. "Eligible Deferred Compensation Plan" means a plan which meets the requirements of Internal Revenue Code section 457(b).

K. "Includible compensation" shall mean:

- 1. Prior to January 1, 2002, "includible compensation" shall mean the compensation for services performed for the City which (taking into

account the provisions of Sections 457 and 403(b) of the Internal Revenue Code) is currently includible in gross income. Amounts of compensation shall be determined without regard to any community property laws.

2. After December 31, 2001, "includible compensation" shall have the meaning given to the term "participant's compensation" by Section 415(c)(3) of the Internal Revenue Code. Amounts of compensation shall be determined without regard to any community property laws.

3. Effective January 1, 2009, "includible compensation" includes differential wage payments ~~to participants on active duty~~ while the participant is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code) to the extent required by the provisions of Internal Revenue Code Sections 3401(h) and 414(u)(12)(A)(ii), the Treasury regulations thereunder and any subsequent guidance issued under Internal Revenue Code Section 414(u)(12)(A)(ii). -A participant receiving differential wage payment from the City shall be treated as employed by the City and the differential wage payment shall be treated as compensation for purposes of applying the maximum amount which may be deferred under Code Sections 457(b)(2) and 457(b)(3). Furthermore, effective January 1, 2008, "includible compensation" includes amounts paid after the employee's severance event if paid by the later of two and one-half (2 ½) months after the employee's severance event, or the end of the calendar year that includes the date of the employee's severance event subject to the following requirements:
 - a. The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments

and the payment would have been made to the employee prior to a severance event if the employee had continued in employment with the City.

- b. Includible compensation shall include all payments to an individual who does not currently perform services for the City by reason of qualified military service (within the meaning of Internal Revenue Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the City rather than entering qualified military service.

4. Effective [insert effective date of this ordinance], "includible compensation" shall mean a participant's actual wages for services performed for the employer the year reported in box 1 of Form W-2, increased by any compensation reduction election under Internal Revenue Code Sections 125, 132(f), 401(k), 403(b) or 457(b) (including an election to defer compensation under this plan). Includible compensation is determined without regard to any community property laws.

L. Participant" shall mean any eligible PTC employee who fulfills the requirements of enrollment into the Plan, and who is or has enrolled in the plan and who retains the rights to benefits under the Plan.

M. "Participation Agreement" shall mean the agreement executed and filed by a PTC employee with the eCity or Plan Administrator, pursuant to Section 3.50.050, the Basic Plan Document, in which a PTC employee becomes a participant in the Plan.

N. "Payroll period" shall mean a biweekly compensation period.

Q. "Percentage limitation" shall mean:

1. Prior to January 1, 2002, thirty-three and one-third percent (33 1/3%) of the participant's includible compensation for the taxable year.
2. After December 31, 2001, one hundred percent (100%) of the participant's includible compensation for the taxable year.

P. "Plan administrator" shall mean the City Manager or the entity designated by the City Manager to carry out certain nondiscretionary administrative functions of the Plan.

Q. "Plan year" shall mean a calendar year.

R. "PTC employee" shall mean any part-time, temporary, or contract employee, or any city councilmember of the City of San José, California, and shall include any council assistant until such time as the council assistant becomes a member of a city retirement plan other than an eligible deferred compensation plan.

S. "Severance event" shall mean:

1. Prior to January 1, 2002, severance of the participant's employment with the City that constitutes a "separation from service" the meaning of Internal Revenue Code Section 402(e)(4)(D)(iii).
2. After December 31, 2001, a severance of the participant's employment with the City within the meaning of Internal Revenue Code Section 457(d)(1)(A)(ii).

I. "Trustee" shall mean the City of San José and Advisory Committee based on the duties set forth in Chapter 3.50.060 of Title 3 of the San José Municipal Code.

SECTION 5. Section 3.50.040 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.040 Deferral of Compensation – Mandatory Deferrals and City Contributions

A. During each payroll period in which a PTC employee is a participant in the Plan;
~~the City shall defer payment of such part of his or her compensation as specified by the participation agreement, subject to the maximum amounts specified in this Section.~~

1. 3.75% of the participant's compensation shall be deferred and paid to the Plan (mandatory deferrals); and

2. For PTC employees other than City councilmembers, the City shall contribute 3.75% of the participant's compensation to the plan; for City councilmembers, the City shall contribute 6.55% of the participant's compensation to the Plan ("City contributions").

B. Notwithstanding any provision of the Plan to the contrary, contributions to the Plan and additions to accounts of participants shall be limited to the percentage limitation and as provided in Internal Revenue Code Section 457 and any other relevant Internal Revenue Code Sections, as detailed in the Basic Plan Document.

~~B. Except as provided in Section 3.50.040.B., the maximum that each participant may defer under this Plan for any taxable year shall not exceed the lesser of:~~

~~1. The applicable dollar amount permitted under Section 457(b) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder; or ; and~~

~~2. The percentage limitation applied to includable compensation.~~

~~C. The maximum deferral described in Section 3.50.040.B. shall not be applicable for one (1) or more of the participant's last three (3) taxable years ending before the attainment of normal retirement age as defined under this Plan. In that instance, the maximum shall be the lesser of:~~

~~1. Twice the dollar amount in effect under Section 457(b)(2)(A) of the Internal Revenue Code; or~~

~~2. The sum of:~~

~~a. The maximum deferral amount established for the purposes of Section 3.50.040.B. for the taxable year (determined without regard to this Section 3.50.040.C.); plus~~

~~b. So much of the maximum deferral amount established for the purposes of Section 3.50.040.B. for taxable years beginning after December 31, 1978, and before the taxable year as has not previously been deferred under Section 3.50.040.B., or under this Section 3.50.040.C.~~

~~D. An employee whose employment is interrupted by qualified military service under Internal Revenue Code Section 414(u) or who is on a leave of absence for qualified military service under Internal Revenue Code Section 414(u) may elect to make additional deferrals upon resumption of employment with the City, subject to the following:~~

~~1. The additional deferrals shall not exceed the maximum deferrals the employee could have elected during the period of qualified military service.~~

~~if the employee's employment with the City had continued at the same level of compensation without the interruption or leave of absence, reduced by the deferrals, if any, actually made during the taxable year(s) in which the qualified military service occurred.~~

~~2. The right to make additional deferrals is limited to the five (5)-year period immediately following the resumption of employment with the City or, if sooner, the period immediately following the resumption of employment that is equal to three (3) times the length of the interruption or leave of absence.~~

~~E. If the amount of compensation deferred in any taxable year exceeds the limitations described in this Section 3.48.040 when combined with other amounts deferred by a participant under another eligible deferred compensation plan under Internal Revenue Code Section 457(b) for which the participant provides information to the City, then the deferral for that taxable year (adjusted for any income or loss in value allocable thereto) shall be distributed to the participant to the extent that the deferral exceeds the applicable limitation.~~

SECTION 6. Section 3.50.050 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.050 Participation in the Plan

A. Each PTC employee shall automatically become a participant of the Plan and make mandatory deferrals of part of their compensation, in the amount set forth in section 3.50.040, effective the first pay period~~defer payment of part of his or her compensation by executing a participation agreement.~~

B. Each period served by a person in the uniformed services shall, upon reemployment under the Uniformed Service Employment and Reemployment Act of 1994, as it may be amended from time to time (USERRA), be deemed to

constitute service with the employer maintaining the Plan for the purpose of determining the accrual of benefits under the Plan, all to the extent required by and as provided under USERRA. Notwithstanding any provision in the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u) for additional elective deferrals a participant can make upon return from qualified military service.

SECTION 7. Section 3.50.060 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.060 Administration of the Plan

- A. The ~~P~~plan and the ~~t~~Trust established by this ~~C~~chapter shall be administered by the ~~deferred compensation advisory committee~~ City Manager which shall be the sole authority to enforce the ~~P~~plan and the ~~t~~Trust. To the extent reasonably necessary to effectively administer the plan in accordance with the requirements of the Internal Revenue Code and any other applicable laws, regulations, or pronouncements, the City Manager may adopt amendments to the Basic Plan Document, provided such amendments do not conflict with any provisions of the San José Municipal Code.
- B. The ~~advisory committee~~ City Manager shall be responsible for the operation of the ~~P~~plan in accordance with its terms and shall determine all the questions arising out of the administration, interpretation and application of the ~~P~~plan and the ~~T~~rust, ~~including making decisions on behalf of the city as to the choice and nature of investments to be available under the plan.~~ All such determinations shall be conclusive and binding on all persons.

- C. The ~~advisory committee~~ City Manager shall have the authority to enter into agreements on behalf of the ~~e~~City for the administration of the ~~P~~plan, for custodial agreements for funds, and for investments selected by the Advisory Committee under the plan where the fees to be paid under such an agreement are to be paid by the participants of the Plan or where there is no amount to be paid by the ~~e~~City under the agreement.
- D. The Advisory Committee shall have the authority to make decisions on behalf of the City as to the investment policy, the choice and nature of investments to be available under the Plan, and enter agreements on behalf of the City for investment advice under the Plan where the fees under such an agreement are to be paid by the participants of the Plan or where there is no amount to be paid by the City under the agreement. The Advisory Committee shall have the authority to review and advise the City Manager on annual budgets and proposed changes to the Plan.
- E. The method of selection and the term of office of the members of the Advisory Committee shall be established by resolution of the City Council.

SECTION 8. Section 3.50.070 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.070 PTC Fund

- A. The City shall establish a PTC deferred compensation fund to which all ~~PTC~~ deferred compensation shall be credited at such times as the compensation would have been payable to individual employees if not a participant in the Plan.
- B. Separate ~~book~~ accounts will be established for each employee participating which will ~~show~~ include all amounts of deferred compensation, investments

made, shares acquired and earnings and gains on investments. Each ~~book~~ account will be valued at least semiannually.

- C. The City may invest amounts of deferred compensation in the types of investments set forth in Sections 53601 and 53602 of the Government Code of the State of California ~~and in corporate stocks, bonds and securities, mutual funds, savings and loan accounts, credit union accounts, life insurance policies, variable and fixed annuities, mortgages, deeds of trust, or other security interests in real or personal property, whichever in the City's sole judgment will best achieve the employees' objectives.~~ Nothing in this Section shall be construed to permit any type of investment prohibited by the Constitution of the State of California. Any action by the Advisory Committee in selecting investment funds shall not be considered to be either an endorsement or guarantee of any investments, nor shall it be considered to attest to the financial soundness or the suitability of any investment for the purpose of meeting future obligations. Neither the City nor the Advisory Committee shall be liable to any participant, or to any participant's beneficiaries or heirs, or to any other person for any losses resulting from investments under the Plan.
- ~~D. No participant of the Plan or his or her beneficiaries shall have, by reason of the Plan or book account, any secured or preferred interest in or to any assets of the City. The City shall have only a contractual obligation to pay the benefits due the participant under the Plan.~~
- ~~E. Except as provided in Internal Revenue Code Section 457(g), all amounts of compensation deferred under this Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property and rights shall remain (until made available to the participant or his or her beneficiaries) solely the property and rights of the City, without being restricted to the provisions of benefits under this Plan, subject only to the claims of the City's general creditors.~~

SECTION 9. Section 3.50.080 of Chapter 3.50 of Title 3 of the San José Municipal Code is hereby repealed.

SECTION 10. Section 3.50.090 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.090 Status of Participants

Neither the establishment of the Plan nor any modification thereof, nor the establishment of any ~~book~~-account, nor the payment of any benefits, shall be construed as giving to any PTC employee or participant or other person any legal or equitable right against the City, except as herein provided; and in no event shall the terms of employment of any PTC employee or participant be modified or in any way affected hereby.

SECTION 11. Section 3.50.100 of Chapter 3.50 of Title 3 of the San José Municipal Code is hereby repealed.

SECTION 12. Section 3.50.115 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.115 Inter-Plan Transfer

- A. Outgoing inter-plan transfers shall be permitted pursuant to the Basic Plan Document. ~~If a participant terminates employment with the City and accepts employment with any other local government, or state, which has an eligible deferred compensation plan and which plan provides for acceptance of amounts previously deferred, the participant may elect that all amounts previously deferred be transferred to the new employer's~~

- B. ~~Incoming inter-plan transfers are not permitted. Beginning January 1, 2002, a participant may transfer all or a portion of the participant's account directly to the trustee of a defined benefit governmental plan (as defined in Internal Revenue Code Section 414(d)) if such transfer is:~~
- ~~1. For the purchase of permissive service credit (as defined in Internal Revenue Code Section 415(n)(3)(A)) under such governmental plan; or~~
 - ~~2. A repayment to which Internal Revenue Code Section 415 does not apply by reason of Subsection (k)(3) thereof.~~
- C. ~~The City Manager may require such documentation regarding any plan to which a transfer may be made as it deems necessary to effectuate the transfer; to confirm that such plan is an eligible deferred compensation plan of a local government or state or defined benefit governmental plan, as applicable; or to assure that transfers are permitted under such plan.~~

SECTION 13. Section 3.50.116 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.116 Eligible Rollover Distributions

- A. ~~Outgoing rollovers shall be permitted pursuant to the Basic Plan Document. Beginning January 1, 2002, a distributee may elect to take a distribution from this Plan in the form of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.~~
- B. ~~Incoming rollovers are not permitted. For the purposes of this Section:~~
- ~~1. "Distributee" includes:
 - ~~a. An employee or former employee of the City; and~~~~

- ~~b. With respect to the interest of the spouse, an employee's or former employee's surviving spouse; and~~
 - ~~c. With respect to the interest of the beneficiary, an employee's or former employee's designated beneficiary; and~~
 - ~~d. With respect to the interest of the spouse or former spouse, an employee's or former employees' spouse or former spouse who is the alternate payee under a conforming domestic relations order.~~
- ~~2. "Eligible retirement plan" means an individual retirement account described in Internal Revenue Code Section 408(a), an individual retirement annuity described in Internal Revenue Code Section 408(b), a Roth individual retirement account described in Internal Revenue Code Section 408A (for distributions after December 31, 2007), an annuity plan described in Internal Revenue Code Section 403(b), a qualified trust described in Internal Revenue Code Section 401(a), or an eligible deferred compensation plan that accepts an eligible rollover distribution.~~
- ~~3. An "eligible rollover distribution" is any distribution of all or a portion of the balance to the credit of the distributee which constitutes an eligible rollover distribution under Internal Revenue Code Section 401(a)(31)(C).~~
- ~~C. The City Manager may require such documentation regarding any plan to which a rollover distribution may be made as it deems necessary to effectuate the distribution; to confirm that such plan is an eligible retirement plan; or to assure that rollover distributions are permitted under such plan.~~
- ~~D. Effective with respect to distributions made on or after January 1, 2010, a beneficiary other than a participant's (or former participant's) surviving spouse or a participant's (or former participant's) spouse or former spouse who is an "alternate payee" under a qualified domestic relations order is a person eligible to make a rollover with regard to the interest of the participant or former participant, subject to the limitation for such a beneficiary that an eligible retirement plan is an individual retirement account or individual retirement annuity that will be~~

~~treated as an inherited individual retirement account or annuity under Internal Revenue Code Section 402(c)(11) of the Code.~~

SECTION 14. Section 3.50.120 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.120 Distribution of Benefits; Election

~~A. The distribution of benefits shall be made in accordance with the provisions pursuant to the Basic Plan Document. Except as provided in Subsections E. and F. below, a participant may elect the method of payment and the settlement options for distribution in the event of retirement, disability or other severance event, except death, no later than thirty (30) days after such termination of employment.~~

~~B. A participant may elect the method of payment and the settlement options for distribution in the event of the participant's death at any time before his or her death.~~

~~C. If the participant fails to make an election of the method of payment before the participant's while still in employment status, his or her beneficiary may elect the method of payment at any time before payments are due.~~

~~D. If no election of the method of payment has been made by the participant or the participant's beneficiary within the time provided in this Chapter, the benefits payable to the participant or the participant's beneficiary, less any federal or state income taxes required to be withheld, shall be payable in a lump sum; provided that, on or after January 1, 2002, the participant or beneficiary may elect an inter-plan transfer or a direct rollover as provided in Sections 3.48.055 and 3.48.058.~~

~~E. On or after January 1, 1997, a participant may elect to defer commencement of distributions from the Plan if such election is made after amounts may be available under the Plan in accordance with the requirements of Section 457(d)(1)(A) of the Internal Revenue Code of 1986, as amended, and before commencement of such distributions. A participant may make only one election under this Subsection E.~~

~~F. On or after January 1, 2002, a participant's right to change his or her election with respect to commencement of distribution shall not be constrained by Subsection E. Subject to such limitations on frequency of changes as may be imposed by the City Manager or the provider(s) of the investment options selected by the participant, the participant may change the date for commencement of distribution at any time prior to distribution. Notwithstanding the foregoing, the City Manager may, in order to ensure the orderly administration of this Plan, establish a deadline after which such election to defer commencement of distribution of benefits shall not be allowed.~~

~~G. Effective as of January 1, 2013, a participant shall be treated as having a severance event during any period the participant is performing service in the uniformed services described in Internal Revenue Code Section 3401(h)(2)(A). If a participant elects to receive a distribution from the Plan as result of the application of this paragraph, the participant may not make deferrals to the Plan during the six (6)-month period beginning on the date of the distribution.~~

SECTION 15. Section 3.50.130 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.130 Method of Payment of Benefits upon Occurrence of Severance Event

~~A. The method of payment of benefits upon the occurrence of termination of employment, or other severance event, shall be made in accordance with the provisions pursuant to the Basic Plan Document. Upon election of distribution of benefits as set forth in Section 3.50.120, benefits shall be distributed to the participant, less any federal or state income taxes required to be withheld, in one of the following ways:~~

- ~~1. In a lump sum.~~
- ~~2. In monthly, quarterly, semiannual, or annual installment or, for a participant eligible for an annuity payout option, installments during the lifetime of the participant with or without a provision for a period certain, but in no case less frequently than annual payments. Life expectancy shall be actuarially determined by the City based on~~

~~the date the distribution shall begin. Each installment payment shall not be less than fifty dollars (\$50.00), unless such payment is the entire balance remaining in the participant's book account.~~

~~B. The amount payable with respect to the participant shall be paid at such times specified by the Secretary of the United States Treasury pursuant to regulations promulgated by said Secretary. Prior to January 1, 2002, distributions over a period of more than one (1) year shall be made only in substantially non-increasing amounts.~~

~~C. No payment option may be selected by a participant unless it satisfies the requirements of Internal Revenue Code Sections 401(a)(9) and 457(d)(2).~~

SECTION 16. Section 3.50.131 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.131 Postponement of Payment of Benefits

~~A. The postponement of payment of benefits shall be allowed as permitted under the requirements of Internal Revenue Code Sections 401(a)(9) and 457(d)(2), as detailed in the Basic Plan Document. A participant may postpone receipt of some or all of the payments due to the participant under Section 3.50.130 until a date not later than April 1 following the calendar year during which the participant reaches age seventy and one-half (70 ½).~~

~~B. This election must be made, irrevocably, no later than thirty (30) days after the occurrence of a severance event, or the date the payment of benefits would otherwise commence under this Chapter, whichever is earlier.~~

~~C. Prior to January 1, 2002, if a participant postpones payments under this Section, the participant must elect the method of payment no later than thirty (30) days prior to the date the postponed payments are due to commence.~~

SECTION 17. Section 3.50.140 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.140 Date of Payments of Benefits

~~A. The date of payment of benefits shall be made in accordance with the provisions of the Basic Plan Document. A participant's book account balances may continue to be invested until, in the City's sole judgment, cash is to be withdrawn for the payment of benefits.~~

~~B. _____ Payment of benefits under Section 3.50.130 may commence no sooner than thirty-one (31) days following the occurrence of a severance event but in no event shall commence later than sixty (60) days after the close of the Plan year in which the severance event occurred except in the case where the participant has elected a postponement of the commencement of distribution in accordance with the terms of this Plan.~~

~~C. _____ Payment of benefits in the event of the death of the participant may commence sixty (60) days after satisfactory proof of death and shall commence no later than sixty (60) days after the close of the Plan year in which death occurred, subject to satisfactory proof of the death of the participant, unless the time for payment is extended.~~

SECTION 18. Section 3.50.150 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.150 Payment of Benefits After Death

~~A. The payment of benefits following the death of a participant shall be made in accordance with the provisions in the Basic Plan Document. After the death of a participant, the full benefits credited to the participant's book account, less any federal~~

~~or state income taxes required to be withheld by law, shall be distributed to the participant's beneficiaries in the manner designated by the participant's most recent participation agreement, or amendments thereto, or other designation in writing by the participant.~~

~~B. Post-Retirement Death Benefits.~~

~~1. The beneficiary of a participant who has died after distribution has started may, subject to any limitation imposed by contract between the participant and a Plan administrator, elect to change the method of distribution to a more rapid payout within thirty (30) days from the date of death of the participant. Once such an election has been made it may not be revoked. The beneficiary must take distribution at least as rapidly as the participant had elected.~~

~~2. Benefits shall be distributed in a lump sum.~~

~~3. If the participant dies without naming a beneficiary or if the person(s) named is no longer alive at the time of the participant's death, the participant's account balance shall be paid to the estate of the participant in a lump sum.~~

~~C. Pre-Retirement Death Benefits.~~

~~1. If the participant dies before he or she has begun to receive the benefits provided by this Plan, the beneficiary may, subject to any limitation imposed by contract between the participant and a Plan administrator, change the method of payment elected by the participant to a method of payment allowed by this Section, no later than thirty (30) days prior to the date payments are due to commence.~~

~~2. If the participant dies before he or she has begun to receive the benefits provided by this Plan, the beneficiary may elect to postpone distribution of some or all of the benefits payable, to a date not later than the taxable year that the participant would have attained normal retirement age. This election may only be made within thirty (30) days from the date of death of the participant and once made may not be revoked under any~~

~~circumstances. If such an election to postpone is made, the beneficiary may elect a method of payment as allowed in this Section no later than thirty (30) days prior to the date when the postponed payments are to commence.~~

~~D. All distributions made under this Section shall meet the requirements of Internal Revenue Code Section 457.~~

~~E. Effective as of January 1, 2007, the Plan specifically incorporates herein by reference the requirements of Internal Revenue Code Section 401(a)(37), the Treasury regulations thereunder and any subsequent guidance under Internal Revenue Code Section 401(a)(37) requiring that if a participant dies while performing qualified military service (as defined in Internal Revenue Code Section 414(u)), the beneficiary(ies) of the participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the participant resumed employment on the date before the participant's date of death and then had a severance event on account of death.~~

SECTION 19. Section 3.50.155 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.155 De Minimus Accounts

The provisions relating to mandatory liquidation of account balances are described in the Basic Plan Document.

~~Notwithstanding any other provision of this Chapter, if the value of a participant's account upon the occurrence of a severance event is less than one thousand dollars (\$1,000.00), the participant's account shall be paid to the participant in a lump sum; provided that the participant may elect an inter-plan transfer or an eligible rollover distribution.~~

SECTION 20. Section 3.50.170 of Chapter 3.50 of Title 3 of the San José Municipal Code is hereby repealed.

SECTION 21. Section 3.50.180 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.180 Amendment or Termination of Plan

- A. The City may, at any time, terminate this Plan for all participants. Upon such termination, each participant in the Plan will be deemed to have terminated his or her service as of the date of such termination, and the value of each participant's ~~book~~ account, less any taxes required to be withheld, shall be distributed to the participants or their beneficiaries no later than sixty (60) days after the termination of the Plan.
- B. The City may also amend the provisions of this Plan at any time; provided, however, that no amendment shall affect the rights of the participants or their beneficiaries to the receipt of payment of benefits, to the extent of any compensation deferred at the time of the amendment as adjusted for income attributable to such deferred compensation prior to and subsequent to the amendment. No amendment shall divest any participant of any rights to deferrals prior to the date of any amendment or amend the Plan so that it is no longer in compliance with the requirements of Internal Revenue Code Section 457.
- C. This Plan is intended to qualify as an eligible deferred compensation plan maintained by a governmental employer under Section 457 of the Internal Revenue Code and shall be interpreted and administered in a manner consistent with such qualification.

- D. The City reserves the right to amend the Plan to the extent that may be necessary to conform the Plan to the requirements of Internal Revenue Code Section 457 and any other applicable law, regulation or ruling, including amendments that are retroactive to the effective date of the Plan.

- E. In the event that the Plan is deemed by the Internal Revenue Service to be administered in a manner inconsistent with Internal Revenue Code Section 457, the City shall correct such administration within the period provided in Section 457(b). The City reserves the right to take such action and do such things as are required to make the Plan, as administered, consistent with Section 457.

SECTION 22. Section 3.50.190 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.190 Administrative Costs

- A. The ~~Advisory Committee~~ City Manager may determine fair and equitable cost to the City in withholding deferred compensation pursuant to this Plan or in making investments or otherwise administering or implementing the Plan.

- B. The ~~Advisory Committee~~ City Manager may withhold or collect or have withheld or collected such costs in such manner as it deems equitable either:
 - 1. From the compensation deferred pursuant to the Plan, the income produced from any investment with respect thereto, or from principal return from any investment, whether or not augmented; or

 - 2. From the organization receiving such investments, where required by law to collect therefrom, or if not so required, where mutually satisfactory to such organization and the committee; or

3. By direct charge to the participants or any combination of the above.

SECTION 23. Section 3.50.200 of Chapter 3.50 of Title 3 of the San José Municipal Code is amended to read as follows:

3.50.200 Conforming Domestic Relations Orders

The eligibility for and requirements of a conforming domestic relations order are as described in the Basic Plan Document.

- ~~A. A domestic relations order means any judgment, decree or order, including approval of a property settlement agreement or separation agreement issued by a court of competent jurisdiction which relates to the provision of marital property rights of a participant and is made pursuant to the state domestic relations law of the state where the marital dissolution or separation occurred.~~
- ~~B. The Plan shall only recognize domestic relations orders that the City Manager, in accordance with its authority under Section 3.50.060, determines are conforming domestic relations orders.~~
- ~~C. A conforming domestic relations order is a domestic relations order that the City Manager determines conforms with the following guidelines:~~
- ~~1. The order may provide for the establishment of a separate account for the nonparticipant spouse under the Plan. For purposes of this Section, "nonparticipant spouse" equally refers to current or former spouse of a Plan participant.~~
 - ~~2. The order may provide, with respect to any separate account established for the nonparticipant spouse, that the nonparticipant spouse shall have the right:~~
 - ~~a. To direct the investment of the account in accordance with the provisions of the Plan;~~

- ~~b. To elect the time and form of distribution from the options available under the Plan, provided that distributions shall not commence earlier than provided in paragraph 3. below;~~
 - ~~c. To designate beneficiaries of the separate account in the event of the nonparticipant spouse's death, in accordance with the procedures provided under the Plan;~~
 - ~~d. To have all distributions from the account of the nonparticipant spouse made directly to the nonparticipant spouse or his or her beneficiary.~~
- ~~3. To conform, the order:~~
- ~~a. May not accelerate or increase any benefit provided under the Plan or create any rights greater than the participant's rights under the Plan and under Section 457 of the Internal Revenue Code of 1986, and may not conflict in any other way with the Plan's distribution provisions or the requirements and limitations of Sections 401(a)(9), and 457(d) of the Internal Revenue Code of 1986 as amended; provided that after December 31, 2001, the nonparticipant spouse who has been awarded a separate account may elect to commence distribution of the nonparticipant spouse's separate account prior to the occurrence of a severance event for the participant.~~
 - ~~b. May not allow the nonparticipant spouse to defer compensation under the Plan except to the extent the nonparticipant spouse is an employee otherwise authorized to become a participant under the Plan; and~~
 - ~~c. May provide that all distributions made to the nonparticipant spouse shall be made directly to the nonparticipant spouse or beneficiary, as applicable.~~

- ~~4. The order shall also conform with such additional guidelines as the City Manager shall establish from time to time including, with regard to the following:~~
- ~~a. Provision for the withholding of taxes required by applicable law;~~
 - ~~b. Provision that the participant and/or the nonparticipant spouse be required to pay any expenses incurred by the City in connection with the order including, without limitation, the costs of any legal action taken by the City relating to the order;~~
 - ~~c. Any requirement that the nonparticipant spouse provide the City Manager with such written requests, consents or instructions as the City Manager may require in accordance with the provisions of the Plan; and~~
 - ~~d. Provision expressly acknowledging that the City's obligation to the participant is reduced to the extent that payments are to be made to the nonparticipant spouse.~~

PASSED FOR PUBLICATION of title this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk