

**DRAFT**

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF SAN JOSE  
AMENDING VARIOUS SECTIONS OF CHAPTERS 3.28  
AND 3.58 OF TITLE 3 OF THE SAN JOSE MUNICIPAL  
CODE TO IMPLEMENT THE AMENDMENTS TO THE  
TERMS OF THE ALTERNATIVE PENSION REFORM  
SETTLEMENT FRAMEWORK AGREEMENT WITH CITY  
NONSWORN EMPLOYEE BARGAINING UNIT GROUPS**

**WHEREAS**, on November 8, 2016, San José voters approved Measure F, which modified provisions of Title 3 of the San José Municipal Code which were previously adopted by Measure B, approved by San José voters on June 5, 2012; and

**WHEREAS**, changes to provisions of Title 3 of the San José Municipal Code in order to implement Measure F became effective on June 16, 2017; and

**WHEREAS**, the City of San Jose and the Federated employee bargaining units reached agreement to modify the Alternative Pension Reform Framework Settlement Agreement;

**WHEREAS**, this ordinance will implement the amendments to the Alternative Pension Reform Framework Settlement Agreement;

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

SECTION 1. Section 3.28.150 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.28.150 Retirement Board - Authority to Secure Medical Service and Advice**

- A. The Board may enter into contractual arrangements for such medical service and advice, and may secure and pay reasonable compensation for such independent medical examiners, as the Board deems necessary to effectuate the terms of this Chapter. Such contracts for medical services shall be entered into in the name of the Board of Administration for the Federated City Employees Retirement System. The cost of obtaining such medical services and advice, and any cost for appeals therefrom to an administrative law judge shall be administrative expenses of the Plan.

B. Effective as of June 16, 2017 with respect to applications for disability benefits under the Plan, the Board shall appoint an independent medical panel of three (3) medical experts to evaluate and approve or deny, by a majority vote, all disability applications. The Board shall establish processes and procedures by which the independent medical panel shall carry out and document its responsibilities. Once the independent medical panel is formed, responsibility for reviewing disability applications and making disability determinations will be the sole responsibility of the independent medical panel, or, if the decision of the independent medical panel is appealed, an administrative law judge. The independent medical panel may, upon its own initiative or upon request, reassess the status of a disability retirement recipient to confirm whether the recipient's disability continues. The individuals who may be appointed to such panel by the Board shall be determined as follows:

1. Individuals shall be recruited to serve on the independent medical panel by the Board using the City's established request for proposal process.
2. Each individual selected to serve on the independent medical panel shall be approved by a vote of no less than ~~four~~ five (5) of the seven (7) members of the Board and shall serve for a four (4)-year term.
3. Individuals serving on the independent medical panel shall have experience in varying fields of medicine and shall meet the following minimum qualifications:
  - a. Ten (10) years of practice after completion of residency; and
  - b. Practicing or retired Board Certified physician; and
  - ~~c. No current or previous employment with the City; and~~
  - dc. Except for prior service on the independent medical panel established under this Section 3.28.150, is not providing or has not provided medical services to the City or retirement boards; and
  - ed. No prior experience as a Qualified Medical Evaluator ~~or Agreed Medical Evaluator.~~

SECTION 2 Section 3.28.200 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.28.200 Authority to Adopt Tables, Revise Contribution Rates**

- A. Upon the basis of any or all of such investigations, valuations and determinations, the Board shall adopt such mortality, service and other tables, actuarially assumed annual rate of return, and other actuarial assumptions as it may deem reasonably necessary, and, subject to such limitations as are set forth elsewhere in this Chapter, it shall fix and from time to time make such revisions or changes in the rates of contribution required of members and of the City as it may determine reasonably necessary to provide the benefits provided for by this Retirement Plan and make this System at all times actuarially sound in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act"); provided that, as may be otherwise provided elsewhere in this Chapter, the share of the normal cost portion of contributions made to the Plan on behalf of the City and members who are not Tier 2 members shall at all times be shared in the ratio of three to eight (3:8), except as provided for in 3.28.200.A.1 and 3.28.200.A.2- with the City bearing the total cost of any associated actuarially accrued unfunded liability for such members. For Tier 2 members, except as provided in Section 3.28.200.B, the proportionate share of contributions on behalf of the City and Tier 2 members shall at all times be in the ratio of one for the City to one for the Tier 2 members (1:1) (sharing equally), including any unfunded actuarially accrued liability.
1. Notwithstanding the foregoing, the following shall apply to the manner of determining contributions on behalf of the City and members who had been prior members of this Plan and then became Tier 2 members prior to June 16, 2017 but on and after September 30, 2012 remain in the Plan but are no longer considered Tier 2 members as defined under Section 3.28.030.28. The costs, including but not limited to, any unfunded actuarial accrued liability, associated with benefit changes adopted on June 16, 2017 for such members any amounts associated with moving such members from Tier 2 status to non-Tier 2 status, will be amortized as a separate liability over twenty (20) years or other period determined by the Board. Notwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of this Section 3.28.200.A above, the costs described in this Section 3.28.200.A.1 shall at all times be shared in a ratio of one for the City and one for the affected member (1:1) and will be reflected as soon as practicable as an increase in the monthly contribution rates for these affected members.
  2. Notwithstanding the foregoing, the following shall apply to the manner of determining contributions on behalf of the City and members who accept

employment on or after September 30, 2012 who is otherwise eligible for this Plan and who was an active member in another California public retirement system, with which this Plan has reciprocity under Part 21, and who has a break in service of less than six (6) months from that covered employment and employment with the City, other than those who meet the definition of new members as defined by Government Code Section 7522.04(f) as may be amended, but on and after June 16, 2017 remain in the Plan but are no longer considered Tier 2 members under the definition of Tier 2 member under Section 3.28.030.28. Any and all costs, including but not limited to any unfunded actuarial accrued liability, directly or indirectly associated with benefit changes adopted on June 16, 2017 for such members and any and all amounts associated with moving such members from Tier 2 status to non-Tier 2 status, will be amortized as a separate liability over twenty (20) years or such other period determined by the Board. Further, nNotwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of Section 3.28.200.A above, any and all the costs described in this subsection 3.28.200.A.2. shall at all times be shared in the ratio of one for the City and one for the affected non-Tier 2 members (1:1) and will be reflected as soon as practicable in the monthly contribution rates for such members.

- B. Notwithstanding Section 3.28.200.A, the following shall apply to the manner of determining contributions on behalf of the City and members who are Tier 2 members on or after June 16, 2017:
1. The costs, including any unfunded actuarial accrued liability, associated with the Tier 2 benefit changes adopted on June 16, 2017 for members who were Tier 2 members prior to June 16, 2017, will be amortized as a separate liability over twenty (20) years or other period determined by the Board and will be reflected as soon as practicable in contribution rates to be shared equally among the City and all Tier 2 members and such increased rates shall not be subject to the incremental increases in amounts associated with unfunded actuarial accrued liability described in Section 3.28.200.B.2.
  2. Other than provided in Section 3.28.200.A, in determining member contribution rates, to the extent an unfunded actuarial accrued liability is determined to exist with respect to the Plan, Tier 2 members will contribute toward the amount of such amortized unfunded actuarial accrued liability by increasing the Tier 2 member contribution rate by one-third of one percent (0.33%) of compensation each year until such time as the cost of the unfunded actuarial accrued liability is being shared equally by the Tier 2 members and the City. Until such time as the Tier 2 members and the City are sharing such cost equally, the City will include

in its contribution rate the amount of the amortized unfunded actuarial accrued liability that would otherwise have been paid by the Tier 2 members in such year.

SECTION 3. Section 3.28.381 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.28.381 Contributions to Fund Retiree Healthcare Benefits**

A. Effective on the date determined by the City once the VEBA is established, contributions to fund the healthcare benefits for qualified members and qualified survivors who are eligible for benefits to be provided under the terms of Part 16 and 17 of this Plan who do not make the one-time irrevocable election described in subsection 3.28.381.D. will be seven and one-half percent (7.5%) of compensation as defined under Section 3.28.030.05 for members and such percentage of covered compensation for City contributions as determined by the actuary to be necessary to fund the amount of the annual required contribution each year; provided, however, that if the City's portion of the required contribution is determined to be fourteen percent (14.0%) of covered compensation or greater for a year, the City may in its discretion choose to only contribute a maximum of fourteen percent (14.0%) of covered compensation for such year.

~~B. Members hired or rehired prior September 27, 2013 shall be eligible for retiree healthcare benefits provided under Part 16 or Part 17 of this Plan. Except as otherwise provided in Part 16 and Part 17 of this Plan, members, other than Tier 2 members, hired or rehired after September 27, 2013 that are either (i) described in Section 3.28.030.28.B.1, or (ii) described in Section 3.28.030.28.B.2 and were hired by the reciprocal plan sponsor prior to January 1, 2013, shall not be eligible for retiree healthcare benefits provided under Part 16 or Part 17 of this Plan. Effective on the date determined by the City once the VEBA is established, such members shall be provided retiree healthcare benefits in accordance with provisions of Chapter 3.58 and member's contribution rate to fund such benefits shall be determined under Chapter 3.58.~~

~~C.B.~~

~~D.C. Subject to IRS approval of the ability of non-Tier 2 members and Tier 2 members hired or rehired after September 30, 2012 to elect out of the Part 16 and 17 coverage, except as otherwise provided in this Section 3.28.381, Tier 2 members hired after September 27, 2013 Tier 2 members shall not be eligible for the retiree healthcare benefits provided under Parts 16 and 17 of this Plan. Effective on the date determined by the City once the VEBA is established, Tier 2 members shall be provided retiree healthcare benefits in accordance with provisions of Chapter 3.58 and member's contribution rate to fund such benefits shall be determined under Chapter 3.58.~~

1. Notwithstanding the first paragraph of subsection 3.28.381.C., Tier 2 members ~~represented by the Operating Engineers, Local 3 and the Association of Building, Mechanical and Electrical Inspectors~~ who were hired or rehired on or after September 30, 2012 but ~~before no later than~~ September 27, 2013 are eligible for retiree health benefits under Part 16 and Part 17 of this Plan and shall make retiree healthcare contributions in accordance with Section 3.28.381.A.

~~E.D.~~ On or soon after the date determined by the City once the VEBA is established, members described in subsection ~~3.28.381.A, subsection~~ 3.28.381.B., or subsection 3.28.381.C.1. who are eligible for benefits under Part 16 and/or Part 17 shall be provided a one-time irrevocable election to instead be covered under Chapter 3.58, in accordance with the process described in Chapter 3.58. Upon opting into Chapter 3.58, such member's Chapter 3.57 account shall receive a credit for all prior contributions made by the member under Parts 16 and 17 of this Plan and such member's retiree health benefits and contribution rate shall be determined under Chapter 3.58.

~~F.E.~~ Notwithstanding anything else in this Plan to the contrary, unrepresented Tier 2 members hired after September 27, 2013 in Unit 99, Unit 81 and Unit 82 shall not be eligible for retiree healthcare benefits under Part 16 and Part 17 of this Plan nor retiree healthcare benefits under Chapter 3.58. Unrepresented members of Unit 99, Unit 81 and Unit 82 who are not Tier 2 members as defined by Section 3.28.030.28 that are rehired after September 27, 2013 are also ineligible for retiree health benefits under Part 16 and Part 17 of this Plan and the retiree health benefits under Chapter 3.58 and shall not make contributions under either program. For members who previously made contributions under Part 16 and 17, the City shall transfer any amount equal to the member's prior contributions (without accrued interest) to the funding vehicle used to provide the benefits under Chapter 3.58 for such member's future use.

~~G.F.~~ The City Manager shall have the discretion to terminate the existing Tier 2 retiree medical benefits plan. In that event, Tier 2 members shall not be provided benefits or make contributions under Parts 16 and 17 of this Plan.

**SECTION 4.** Section 3.28.710 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

### **3.28.710 Normal Rate of Contribution - Determination**

- A. For non-Tier 2 members: Except as provided under Section 3.28.200.A.1 and 3.28.200.A.2., ~~the~~ the normal rate of contribution required of members shall be such that, based on interest and mortality tables and other relevant actuarial

data, the total amount of normal contributions which will be required of members under the provisions of this Chapter will be sufficient to pay, when due, three-elevenths (3/11) of the amount of all pensions, allowances and other benefits which are and will become payable under this System on account or because of current service rendered on or after July 1, 1975; provided and excepting, however, that if and when, from time to time, the members' normal rate of contribution is hereafter amended or changed, the new rate shall not include any amount designed to thereafter recover from members or return to members the difference between the amount of normal contributions theretofore actually required to be paid by members and any greater or lesser amount which, because of amendments hereafter made to this System or as a result of experience under this System, said members should have theretofore been required to pay in order to make their normal contributions equal three-elevenths (3/11) of the abovementioned pensions, allowances and other benefits which are or will become payable on account or because of current service rendered on or after July 1, 1975, and before the effective date of the new rate. Notwithstanding the foregoing, members subject to this subsection A shall be responsible for any additional contributions described in Section 3.28.200, to the extent applicable to such member.

- | B. For Tier 2 members: Except as provided under 3.28.200.B, The normal rate of contribution required of Tier 2 members shall be such that, based on interest and mortality tables and other relevant actuarial data, the total amount of normal contributions which will be required of members under the provisions of this Chapter will be sufficient to pay, when due, half of the amount of all pensions, allowances and other benefits which are and will become payable under this System on account or because of service rendered by Tier 2 members, including any amount designed to recover from members the difference between the amount of normal contributions theretofore actually required to be paid by members and any greater amount which, because of amendments hereafter made to this System or as a result of experience under this System, said members should have theretofore been required to pay in order to make their normal contributions half of the cost of the abovementioned pensions, allowances and other benefits which are or will become payable to such Tier 2 members on or after September 30, 2012.
  
- C. There shall be no offset to normal cost contribution rates in the event Plan funding exceeds one hundred percent (100%). Both the City and employees shall always make the full annual required Plan contributions as calculated by the Retirement Board actuaries which will be in compliance with applicable laws and will ensure the qualified status under the Internal Revenue Code.

**SECTION 5.** Section 3.28.860 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.28.860 Regular Current Service Rate - Determination**

- A. Except as provided in Section 3.28.200, The City's regular current service rate of contribution shall be such that the amount of contributions paid by the City under such rate for each month (or two (2) weeks, if members contribute biweekly) of current service for which the rate is imposed, as compared to the amount of normal contributions required of members for each such period of current service, shall be in the ratio of eight for the City to three for members (8:3).
- B. For Tier 2 members, except as provided in Section 3.28.200.B, the City's regular current rate of contribution shall be such that the amount of contributions paid by the City under such rate for each month (or two (2) weeks, if members contribute biweekly) of current service for which the rate is imposed, as compared to the amount of normal contributions required of members for each such period of current service, shall be in the ratio of one for the City to one for the members (1:1).
- C. There shall be no offset to normal cost contribution rates in the event Plan funding exceeds one hundred percent (100%). Both the City and employees shall always make the full annual required Plan contributions as calculated by the Retirement Board actuaries which will be in compliance with applicable laws and will ensure the qualified status under the Internal Revenue Code.

**SECTION 6.** Section 3.28.1195 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.28.1195 Guaranteed Purchasing Power Non-Tier 2 Members**

Beginning January 1, 2018, the annual retirement benefit of each member who is not a Tier 2 member shall be evaluated to determine if such member's retirement allowance (including any cost of living adjustments) is equal to at least seventy-five percent (75%) of the purchasing power of the member's retirement allowance at retirement. Each member's purchasing power shall be measured by reference to the most current consumer price index for all urban consumers (CPI-U), San Francisco-Oakland-San José metropolitan area. If the member's retirement allowance falls below seventy-five percent (75%) of purchasing power, the member shall receive a lump sum payment of the difference between the member's current retirement allowance required to achieve seventy-five percent (75%) purchasing power. Purchasing power payments shall be received by ~~separate checks~~ as a separate line item on the pension check each February,



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as needed, to achieve seventy-five percent (75%) of the purchasing power the member had at the time of retirement.

SECTION 7. Section 3.28.1955 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.28.1955 Medical Benefits for Retired Tier 2 Members Effective On or After September 27, 2013 and Participants in the Defined Contribution Plan Under Chapter 3.49 and Their Survivors**

A. Effective September 27, 2013, new employees and their respective survivors shall not be entitled to medical insurance coverage under this Section 3.28.1955, except to the extent specifically provided under subsection 3.28.1955.B. below. If insurance coverage under Part 16 for any Tier 2 member is terminated by the City Manager prior to the establishment of benefits under Chapter 3.58, affected Tier 2 members shall not be entitled to any benefits or make any additional contributions under this Part 16 once participation is terminated and affected Tier 2 members shall not be entitled to any retiree medical benefits nor make medical benefit contributions during the gap period between termination of benefits under Part 16 and establishment of the VEBA under Chapter 3.58.

~~B. Tier 2 Members and Their Survivors. For purposes of determining medical insurance coverage under this Part 16, Tier 2 members may be entitled to medical insurance coverage under this Part 16 in accordance with the following:~~

~~1. Rehired Members. Members rehired or reinstated prior to the date IRS approval is obtained shall be treated as Tier 2 members for purposes of this Part 16 and shall not be entitled to medical insurance coverage under this Part 16, but instead, shall be entitled to medical coverage under the provisions of Chapter 3.58. Effective on the date IRS approval is obtained, a rehired or reinstated member who was a non-Tier 2 member during his or her previous employment with the City and, at the time of his or her prior termination, satisfied the requirements of Section 3.28.1950, such rehired or reinstated member and eligible survivor shall remain entitled to medical insurance coverage for which the member or survivor would have been eligible under the provisions of Part 16 based upon such member's eligibility at the prior termination date as if the member had not been rehired or reinstated, including the member's ability to make a one-time irrevocable election to participate in Chapter 3.58 instead of receiving benefits under Part 16 where such option is instituted while such rehired or reinstated member is still an active member.~~

~~2. In order for a Tier 2 member described in Section 3.28.1955.B.1. or such Tier 2 member's eligible survivor to receive medical insurance coverage under this Part 16, such Tier 2 member and such Tier 2 member's eligible survivor must meet the requirements specified in Section 3.28.1970.~~

**3B.** Tier 2 Members Hired On or After September 27, 2013. Other than those Tier 2 members that meet the requirements described in Section 3.28.1955.381.B. or Section 3.28.381.C.1., Tier 2 members hired on or after September 27, 2013, and their survivors, shall not be entitled to medical insurance coverage under this Part 16. Such members may be eligible for medical insurance coverage under Chapter 3.58. In order for a Tier 2 member described in Section 3.28.381.B. or Section 3.28.381.C.1. or such Tier 2 member's eligible survivor to receive medical insurance coverage under this Part 16, such Tier 2 member and such Tier 2 member's eligible survivor must meet the requirements specified in Section 3.28.1970.

C. Defined Contribution Plan Participants and Their Survivors. Employees who are participants in the City of San José defined contribution plan for employees in Unit 99 under Chapter 3.49, and their survivors shall not be entitled to medical insurance coverage under this Part 16.

**SECTION 8.** Section 3.28.1970 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.28.1970 Requirements for Participation in Medical Insurance Plan**

A. A member who, as specified in Section 3.28.1950 or 3.28.1955.B.1. above, is eligible to participate in a medical insurance plan sponsored by the City, provided the member (or Tier 2 member, as applicable) must satisfy the following requirements:

1. The member retires for service or disability pursuant to the provisions of this Chapter; and
2. The member applies for medical insurance coverage at the time of his or her retirement in accordance with the provisions of the medical insurance plan, and agrees to pay any applicable premiums; and
3. The member retires for service or disability pursuant to the provisions of this Chapter and executes a waiver of coverage in the form and manner prescribed by the City indicating that he or she has medical coverage at the time of retirement other than coverage under the City's medical insurance coverage and later applies for medical insurance coverage upon the occurrence of an event identified by the medical plans as providing such individuals with an opportunity to elect to be covered under the City's medical coverage, or if there is no qualifying event, applies for medical insurance coverage during the annual open enrollment period, and agrees to pay any applicable premiums within thirty (30) days of the

termination of the prior coverage or the commencement of coverage following open enrollment as applicable..

- B. A survivor who, as specified in Section 3.28.1960 above, or to the extent the survivor of a member (including a Tier 2 member) specified in Section 3.28.1955 above, is eligible to participate in a medical insurance plan sponsored by the City, such survivor must satisfy the following conditions:
1. The survivor is receiving a monthly survivorship allowance because of the death of a member who either died during his or her employment with the City or died after he or she terminated City employment and was retired pursuant to the provisions of this Chapter; and
  2. At the time of the member's death, the member and the survivor were enrolled in one (1) of the medical insurance plans sponsored by the City; and
  3. The survivor applies to continue medical insurance coverage at the time of the member's death, and agrees to pay any applicable premiums. Notwithstanding the foregoing, if at the time of member's or former member's death, the survivor was not enrolled in a medical insurance plan sponsored by the City, but the survivor would have been eligible to have been enrolled at the time of the member or former member's death, and the survivor applies to continue medical insurance coverage within sixty (60) days of the death of the member or former member and the survivor agrees to pay any applicable premiums, such survivor shall be treated as if the survivor had been enrolled in a medical insurance plan sponsored by the City at the time of the member or former member's death for purposes of continued coverage under the City's medical insurance coverage.
- C. A member may secure medical insurance coverage for a spouse only if the spouse and member were married at the time of said member's retirement for service or disability.
- D. A member may secure medical insurance coverage for a domestic partner only if the domestic partner and member had established a registered domestic partnership pursuant to Division 2.5 of the California Family Code or had formed a legal union other than a marriage that is recognized as a domestic partnership pursuant to California Family Code Section 299.2 at the time of said member's retirement for service or disability.
- E. A surviving spouse or surviving domestic partner shall be eligible for single coverage only, except as follows:

1. A surviving spouse or surviving domestic partner shall be eligible for family coverage if at least one (1) surviving child as defined in Section 3.28.1460.D., or at least one (1) child of the surviving spouse or surviving domestic partner who is unmarried, not a member of a registered domestic partnership and under the age of eighteen (18) years, or an eligible surviving child for purposes of receiving a school allowance as defined in Section 3.28.1750, is surviving the death of a member; in such case, if such child was enrolled in a medical insurance plan sponsored by the City at the time of the member's death. Notwithstanding the foregoing, if at the time of the death of the member, such surviving child of the member was not enrolled in a medical insurance plan sponsored by the City, but such surviving child would have been eligible to have been enrolled at the time of the member's death, and such surviving child applies to continue medical insurance coverage within sixty (60) days of the death of the member and the surviving child (or the surviving spouse or domestic partner on behalf of the surviving child) agrees to pay any applicable premiums, such surviving child shall be treated as if the surviving child had been enrolled in a medical insurance plan sponsored by the City at the time of the member's death for purposes of continued coverage under the City's medical insurance coverage.
  2. A surviving spouse or surviving domestic partner shall be eligible for family coverage if the surviving spouse or surviving domestic partner is the court-appointed guardian of the person of a minor child or children and such minor child or children are eligible for coverage under the terms of the eligible medical plan. A surviving spouse or surviving domestic partner may continue family coverage after such child reaches the age of majority in any case where, if such child had been a surviving child of the member, such child would be an eligible surviving child for purposes of receiving a school allowance pursuant to Part 14 of this Chapter.
- F. As used in this Section, "medical insurance plan sponsored by the City" means an eligible medical plan as described in Section 3.28.1990, below.
- G. Notwithstanding the provisions of Sections 3.28.1970A.1., 2., and 3., and 3.28.1970.B.1., 2., and 3., members or their survivors who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this Part, but who, at the time of retirement or death, could not enroll because the benefits provided in this Part were not available at the time of the member's retirement for service or disability or death of the member, may enroll in an eligible insurance plan as provided for in this Part on or before October 31, 1984. If a member or survivor does not enroll on or before October 31, 1984, then said members or their survivors must otherwise comply with the coverage limitations provided in Section 3.28.1970 and with all other provisions of this Part.

- H. A surviving spouse who would otherwise qualify for family coverage because the surviving spouse is the court-appointed guardian of the person of a minor child or children but who could not enroll because the family coverage provided in subsection E. above was not available to the surviving spouse at the time of the member's death, may enroll in family coverage in an eligible insurance plan as provided for in this Part until December 30, 2002, only. Said surviving spouse must otherwise comply with the coverage limitations set forth in this Section 3.28.1970 and with all other provisions of this Part.
- I. Effective September 30, 2012 for Tier 2 members and effective January 4, 2013 for non-Tier 2 members, a member and/or dependent and/or survivor who is eligible for retiree healthcare benefits in the Federated City Employees' Retirement System and who is eligible for Medicare coverage, including any Tier 2 member and/or dependents and/or survivors of such Tier 2 member to the extent they may be eligible for retiree healthcare benefits under Section 3.28.1955, shall be required to enroll in Medicare Part A and B during the individual's "initial enrollment period" under the applicable federal rules. The initial enrollment period shall begin three (3) months before the plan member and/or survivor's sixty-fifth (65th) birthday (or other event providing eligibility for enrollment in Medicare) and concludes four (4) months after the plan member and/or dependent and/or survivor's sixty-fifth (65th) birthday (or other event providing eligibility for enrollment in Medicare). Additionally, the plan member and/or dependent and/or survivor who is eligible for Medicare coverage shall be required to enroll in a Medicare Plan provided by the Federated City Employees' Retirement System and assign Medicare Part A and B benefits to the Medicare Plan if required by the healthcare provider. Any member who retires for service or disability pursuant to the provisions of this Chapter or is a former member receiving a monthly allowance pursuant to Section 3.36.1640 waives coverage, he or she will not be required to enroll in Medicare Parts A or B. However, if such member or former member later joins a City plan, he or she will be required to enroll in Medicare Parts A and B and any charges or penalties associated with enrollment outside the "initial enrollment period" shall be borne by such member or former member.

If a Plan member was hired before March 1986 and is not eligible for Medicare Part A at no cost or a Plan member for any reason is not eligible for Medicare, the Plan member shall be required to provide such verification from the U.S. Social Security Administration to the Department of Retirement Services. Unless such verification is provided, Plan members shall be required to enroll in a Medicare Plan provided by the Federated City Employees' Retirement System within six (6) months of the ~~initial enrollment period~~. This provision shall not apply to those who waive coverage.

If a Plan member fails to meet the requirements set forth above within six (6) months from the date of the member's (or dependent or survivor's) "initial enrollment period", the Plan shall cease to provide retiree healthcare benefits until the Plan member completes such requirements. This means that the member and any qualifying dependents shall not receive retiree healthcare benefits. The Plan member and qualifying dependents shall be re-enrolled in retiree healthcare benefits beginning the first day of the following month after such requirements have been completed.

If the Plan member dies during the period which the Plan member failed to complete the requirements set forth above, the eligible spouse or domestic partner and any qualifying child(ren) shall be re-enrolled in a health insurance plan. When the spouse or domestic partner is age sixty-five (65), the requirements described above regarding enrollment in Medicare Parts A and B and enrollment in a Medicare Plan provided for City retirees and dependents, and assignment of Medicare Parts A and B benefits to the Medicare Plan must be fulfilled, unless verification is provided that the spouse or domestic partner is not eligible for Medicare coverage as described in this Section. If such requirements are not met, retiree healthcare coverage will cease until such requirements are completed, in the same manner set forth above with respect to members.

- J. Subject to the provisions of this Chapter, effective June 16, 2017 and upon IRS approval of the VEBA, a member of the VEBA who meets the requirements of Section 3.58.300 may be entitled to receive benefits similar to those established under Parts 16 and 17 of Chapter 3.28 as such benefits are described in Chapter 3.58. These provisions entitle a VEBA member to a benefit equal to the amount of the premium for single coverage under the lowest cost medical insurance coverage available under the City's retiree medical program. VEBA members with at least five years of service with the City may be eligible to purchase medical benefits under the City's healthcare plans, however, such medical plan purchases will be at a retiree only rate that is not a rate blended with active City employees eligible for any benefits under the City's retiree medical program. VEBA members with less than five years of service with the City are not eligible for the benefits described herein. Such benefit shall cease at the time that such member is eligible for coverage under Medicare and subject to the provisions of Section 3.58.320. The catastrophic disability healthcare benefit provided under Chapter 3.58 shall be paid from the Federated Healthcare Trust Fund, as applicable.

SECTION 9. Section 3.58.020.05 of Chapter 3.58 of Title 3 of the San José Municipal Code, is amended to read as follows:

**3.58.020.05 "Health and Welfare Benefit"**

"Health and welfare benefit" means a medical, prescription drug, or dental benefit, including a premium subsidy for the same, for retirees and dependents, which is considered a post-retirement benefit other than pension under applicable GASB standards and reports. Such a benefit is limited to medical care expenses, including premium subsidies as defined in Section 213(d), which may be provided under the VEBA for eligible retirees and dependents. To the extent a VEBA member's health and welfare benefit includes eligible to purchase coverage under a City provided retiree healthcare plan, the following restrictions apply:

- A. The rate at which retiree healthcare insurance plans will be made available to VEBA members shall be at a retiree only rate, and shall not be based on a blended rate with active employees; and
- B. VEBA member with less than five (5) years of service with the City of San Jose will not be eligible to purchase into the City's retiree healthcare insurance plans.; and

SECTION 10. Section 3.58.020.01 of Chapter 3.58 of Title 3 of the San José Municipal Code is amended to read as follows:

### **3.58.020.01 "Dependent"**

"Dependent" means a surviving spouse, surviving domestic partner, or surviving child of a member ~~or a Tier 2 member~~ eligible for benefits under the terms of the VEBA established pursuant to this Chapter 3.58.

SECTION 11. Section 3.58.020.07 of Chapter 3.58 of Title 3 of the San José Municipal Code is amended to read as follows:

### **3.58.020.07 "Member"**

"Member" means ~~any person new employee as defined under Section 3.58.020.08.~~ "Member" also means a who meets the definition of member ~~as defined~~ under Section 3.28.030.15 of Title 3 of the San José Municipal Code who is not entitled to retiree healthcare benefits under Part 16 and 17 of Chapter 3.28 of Title 3 of the San José Municipal Code. "Member" also means a person who meets the definition of member under Section 3.28.030.15 of Title 3 of the San José Municipal Code and is as well as those who are entitled to benefits under Part 16 and 17 but made is eligible to make and makes an irrevocable election pursuant to the procedures established under this Chapter 3.58 to be covered under the terms of the VEBA established under this Chapter 3.58 and to no longer be eligible for ~~or entitled to insurance benefits provided coverage~~ under Parts 16 and 17 of Chapter 3.28 of Title 3 of the San José Municipal Code.



SECTION 12. Section 3.58.020.08 of Title 3 of the San José Municipal Code is amended to be read as follows:

**3.58.020.08 "New Employee"**

"New Employee" means any employee hired or rehired by the City on or after September 27, 2013, ~~including any new employees who are members of Operating Engineers, Local 3 and the Association of Building, Mechanical, and Electrical Inspectors that were hired prior to October 1, 2013 and made an irrevocable election pursuant to the procedures established under this Chapter 3.58 to be covered under the terms of the VEBA established under this Chapter 3.58 and no longer eligible for insurance coverage under Parts 16 and 17 of Chapter 3.28 of Title 3 of the San José Municipal Code.~~

SECTION 13. Section 3.58.100 of Chapter 3.58 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.58.100 VEBA Established – Purpose**

Effective June 16, 2017, pursuant to applicable agreements between the City and City employees, a VEBA meeting the requirements of IRC Section 501(c)(9), as approved by the Internal Revenue Service, shall be established to provide post-retirement healthcare benefits ~~to eligible new employees, as defined by Section 3.58.020.08, for all persons, hereinafter in this chapter specified, who may become members thereof pursuant to the provisions of this chapter 3.58. hired after September 27, 2013 to new employees other than those new employees hired on or after September 30, 2012 but before September 27, 2013, that are represented by the Operating Engineers, Local 3 and the Association of Building, Mechanical, and Electrical Inspectors.~~ Upon approval of the Internal Revenue Service, also to (i) new employees hired on or after September 30, 2012 but before September 27, 2013, represented by the Operating Engineers, Local 3 and the Association of Building, Mechanical, and Electrical Inspectors or (ii) other members ~~employees participating or eligible to participate in Part 16 and Part 17 of Chapter 3.28 of Title 3 of the San José Municipal Code, and (iii) who make a one-time irrevocable election to be covered under this Chapter 3.58 rather than continuing to be covered under Parts 16 and 17 of Title 3 of Chapter 3.28 of the San José Municipal Code. Such irrevocable election shall be executed as provided under the procedures established under this Chapter 3.58.~~

SECTION 14. Section 3.58.200 of Chapter 3.58 of Title 3 of the San José Municipal Code is amended to read as follows:

### **3.58.200 VEBA Funding**

The VEBA established under this Chapter 3.58 shall have the following sources of funding:

- A. ~~Except for new employees represented by the Operating Engineers, Local 3 and the Association of Building, Mechanical, and Electrical Inspectors that were hired before September 27, 2013, e~~Effective on the date established by the City, and except as provided subsection 3.58.200.B through 3.58.200.G, members new employees shall make mandatory contributions equal to two percent (2.0%) of base salary.
- B. Effective on the date established by the City, members ~~other than those described in Section 3.58.200.A and who are represented by the Association of Building, Mechanical, and Electrical Inspectors, Confidential Employeesq Organization, International Brotherhood of Electrical Workers, Municipal EmployeesqFederation, and the Operating Engineers, Local 3 who are eligible to and make a one-time irrevocable election to opt-out of the benefits provided under Part 16 and Part 17 of Chapter 3.28 of Title 3 of the San Jose Municipal Code,~~ shall make mandatory contributions equal to ~~threefour~~ and one-half percent (~~34.5~~%) of base pay.
- C. Effective on the date established by the City, members represented by the Association of Engineers and Architects, the Association of Legal Professionals, the Association of Maintenance Supervisory Personnel, and the City Association of Management Personnel who are eligible to make and make a one-time irrevocable election to opt-out of the benefits provided under Part 16 and Part 17 of Chapter 3.28 of Title 3 of the San Jose Municipal Code, shall make mandatory contributions equal to two and one-half percent (2.5%) of base pay.
- ~~D~~G. There are no required contributions by the City to the VEBA.
- ~~E~~D. Effective upon IRS approval of the one-time irrevocable election process for non-Tier 2 members and Tier 2 ~~members represented by the Operating Engineers, Local 3 and the Association of Building, Mechanical, and Electrical Inspectors~~ hired between September 30, 2012 and September 27, 2013, and upon IRS approval of the ability to transfer funds in such manner, including the ability to transfer funds from the Federated Plan and any applicable 115 trust to the VEBA, and upon completing the irrevocable election process to become covered under the VEBA, an amount determined to equal the member's prior retiree healthcare contributions under the terms of Parts 16 and 17 of Chapter 3.28 of Title 3 of the San José Municipal Code, without any interest on such amounts, shall be contributed by the City to the member's account under the VEBA.

~~FE. Notwithstanding anything to the contrary, nNew employees in Unit 99, Unit 81 and Unit 82 are not eligible members of Chapter 3.58 and may not participate in the benefits under Chapter 3.58. Further, iIn the event an unrepresented member a member in Unit 99, Unit 81 and Unit 82 who is eligible to make, and makes, an irrevocable election under Part 16 and/or Part 17 of Chapter 3.28, such member shall not make contributions to this Chapter 3.58 and benefits to such members shall be limited to an amount determined to equal the member's prior retiree healthcare contributions under the terms of Parts 16 and 17 of Chapter 3.28 of Title 3 of the San José Municipal Code, if any.~~

~~G. Notwithstanding anything to the contrary, employees in Unit 99, Unit 81 and Unit 82 are not eligible members of Chapter 3.58 and may not participate in the benefits under Chapter 3.58.~~

SECTION 15. Section 3.58.210 of Chapter 3.58 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.58.210 Administration of the Plan (Subject to IRS Review and Approval)**

- A. The plan and the trust established by this Chapter shall be administered by the VEBA advisory committee which shall be the sole authority to enforce the plan and the trust.
- B. The advisory committee shall be responsible for the operation of the plan in accordance with its terms, and shall determine all the questions arising out of the administration, interpretation, and application of the plan and the trust, 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 shall have the authority to enter into agreements on behalf of the City for the administration of the plan, for custodial agreements for funds, and for investments under the plan where the fees to be paid under such an agreement are to be paid by the participants or where there is no amount to be paid by the City under the agreement.
- D. The advisory committee shall be selected by plan members. The number of members on the committee, qualifications, selection process and term of office shall be established by a negotiated agreement among between the City and all labor groups participating in the plan, including unrepresented members.  
~~Agreement shall be reached no later than by June 1, 2017.~~ Once agreement is reached, the matter shall be referred to and adopted by resolution of the City Council in the form of a resolution.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk