

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTERS 3.28, 3.36, 3.57 and 3.58 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO CLARIFY THE EFFECTIVE DATE OF THE ELECTION BY EMPLOYEES OUT OF THE DEFINED RETIREE HEALTHCARE BENEFIT PLAN TO THE VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION PLAN

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

SECTION 1. 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 Parts 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. Except as otherwise provided in Part 16 and Part 17 of this Plan, members, other than Tier 2 members, rehired after September 27, 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. ~~Subject to IRS approval of the ability of non-Tier 2 members to elect out of the Part 16 and 17 coverage, e~~ Except as otherwise provided in this Section 3.28.381, 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 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.

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. Coverage under Chapter 3.58 for such members becomes effective upon IRS approval of the transfer of prior member contributions made under Parts 16 and 17 to the funding vehicle established under Chapter 3.58. On a date determined by the City after coverage under Chapter 3.57 becomes effective, Upon opting into Chapter 3.58, such member's ~~Chapter 3.57~~Chapter 3.58 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.

- E. Notwithstanding anything else in this Plan to the contrary, unrepresented Tier 2 members 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.
- 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 2. Section 3.28.1950 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.1950 Medical Benefits for Retired Members

Subject to the provisions of this Chapter, a member, other than a new employee or a member described in Section 3.28.1950.E or Section 3.28.1955.B., may be entitled to medical insurance coverage in an eligible medical plan as specified in Section 3.28.1970 if the member satisfies the requirements of subsection A., subsection B., or subsection C below. ~~Effective on the date determined by the City after IRS approval is obtained, m~~Members who would otherwise be eligible for coverage under this Part 16 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. Coverage under Chapter 3.58 shall not become effective until receipt of IRS approval to transfer member contributions previously contributed under Part 16 and Part 17 to the funding vehicle established under Chapter 3.58. The contributions to the Plan by members and the City shall be as determined under Section 3.28.381.

- A. The member is retired for service or disability under the provisions of this Chapter and at the time of such retirement meets any of the following requirements:
1. Is entitled to credit for fifteen (15) or more years of service; or
 2. Receives an allowance equal to at least thirty-seven and one-half percent (37.5%) of the final compensation of such member; or
 3. Would be receiving an allowance equal to at least thirty-seven and one-half percent (37.5%) of the final compensation of such member if the

workers' compensation offset set forth in Section 3.28.1040 did not apply.

- B. The member is entitled to credit for twelve (12) or more years of service as of May 14, 1993, and the member is retired for service on or after May 14, 1993, but prior to June 20, 1993.
- C. The member voluntarily resigns from City service and satisfies all of the following requirements:
 - 1. The effective date of the voluntary resignation is on or after May 14, 1993, but prior to June 20, 1993; and
 - 2. As of the effective date of the resignation, the member is entitled to credit for at least twelve (12) years of service; and
 - 3. The member elects to continue membership in this System by allowing all of his or her accumulated contributions to remain in the retirement fund; and
 - 4. The member is not reinstated to City service prior to the member's retirement; and
 - 5. The member retires for service under the provisions of Section 3.28.1110.
- D. Any member who meets the requirements of subsection A, subsection B or subsection C of this Section 3.28.1950 and is thereby eligible for coverage but instead elects to participate in the "in lieu" premium credit option described

in Section 3.28.1965, and later elects to again be covered under the City's medical coverage during the annual open enrollment period or upon qualifying events 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 shall be required to pay the full member portion of the cost of coverage less any available premium in lieu credits that the member may have accrued and which remain unused under this Part 16.

- E. Except as provided in Section 3.28.1950.F. below, new employees shall not be eligible for benefits under this Section 3.28.1950.

- F. Tier 2 members and employees in Unit 99 who participate in the City of San José defined contribution plan under Chapter 3.49 are not eligible for benefits under this Section 3.28.1950. Instead, insurance coverage to a Tier 2 member on and after September 27, 2013, or to an employee who is a participant in the City of San José defined contribution plan for employees in Unit 99 under Chapter 3.49 shall be determined only as provided under Section 3.28.1955. Notwithstanding Section 3.28.1950.E, a new employee hired before October 1, 2013 who is represented by the Operating Engineers, Local 3 or the Association of Building, Mechanical and Electrical Inspectors shall be eligible for benefits under this Section 3.28.1950 if he or she meets the requirements of subsection 3.28.1950.A.

SECTION 3. Section 3.36.576 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.576 - Contributions to fund retiree healthcare benefits.

- A. ~~Subject to IRS approval of the ability of tier 1 members to elect out of the Part 14 and 15 coverage, on or soon after the date determined by the city once the VEBA is established,~~ Members who would otherwise be eligible for coverage under Parts 14 and 15 of this plan shall be provided a one-time irrevocable election to instead be covered under Chapter 3.57, in accordance with the process described in Chapter 3.57. Coverage under Chapter 3.57 shall not become effective until IRS approval to transfer member contributions previously contributed under Part 14 and Part 15 to the funding vehicle established under Chapter 3.57 is obtained. On a date determined by the City after ~~Upon opting into Chapter 3.57~~ coverage under Chapter 3.57 becomes effective, such member's Chapter 3.57 account shall receive a credit for all prior contributions made by the member under Parts 14 and 15 of this plan and such member's contribution rate shall be determined under Chapter 3.57.
- B. 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 Parts 14 and 15 of this plan who do not make the one-time irrevocable election described in Subsection 3.36.576.C will be eight percent of compensation as defined under Section 3.36.020.3 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 eleven percent of covered compensation or greater for a year, the city may in its discretion choose to only contribute a maximum of eleven percent of covered compensation for such year.

- C. 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 14 and 15 of this plan.

- D. Effective on the date determined by the city once the VEBA is established, tier 2 members shall be subject to the provisions of Chapter 3.57 of this plan with respect to healthcare benefits and tier 2 members shall contribute the amount specified under Chapter 3.57 and shall not be provided benefits under or make contributions under Parts 14 and 15 of this plan.

SECTION 4. Section 3.36.1900 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1900 Medical Benefits for Retired Members

Subject to the provisions of this chapter, a member or former member may be entitled to medical insurance coverage in an eligible medical plan as specified in Section 3.36.1940 if the requirements of Subsection A., B., C., or D. of this Section 3.36.1900 are satisfied.

Effective March 31, 2017, this Part 14 shall not be applicable to tier 2 members and new employees and they shall not be eligible for medical insurance coverage under this Part 14. Notwithstanding the preceding sentence, the city manager has the authority and discretion to terminate tier 2 retiree medical benefits under this Part 14 prior to the implementation of Chapter 3.57. In the event the city manager exercises this authority, tier 2 members shall not be entitled to any benefits or make any additional contributions under this Part 14. Unless expressly stated otherwise, the term "member" or "former member" includes a tier 2 member and former tier 2

member for purposes of this Part 14. Effective March 31, 2017, tier 2 members and new employees shall be covered under the provisions of Chapter 3.57. ~~Subject to IRS approval of the ability of tier 1 members to elect out of the Part 14 and 15 coverage, effective on the date IRS approval is obtained, m~~Members who would otherwise be eligible for coverage under this Part 14 shall be provided a one-time irrevocable election to instead be covered under Chapter 3.57, in accordance with the process described in Chapter 3.57. Coverage under Chapter 3.57 shall not become effective until receipt of IRS approval to transfer member contributions previously contributed under Part 14 and Part 15 to the funding vehicle established under Chapter 3.57. The contributions to the plan by members and the city shall be as determined under Section 3.36.576.

- A. The member is retired for service under Part 6 of this chapter or for disability under Part 7 of this chapter and at the time of such retirement either:
 - 1. Is entitled to credit for fifteen or more years of service; or
 - 2. Receives a retirement allowance equal to at least thirty-seven and one-half percent of such member's final compensation.
- B. The member is retired pursuant to Section 3.36.760 of this chapter; or
- C. The former member separates from city service on or after July 5, 1992, prior to retirement, and satisfies all of the following requirements:
 - 1. At the time of separation from city service, the former member is entitled to credit for twenty or more years of service; and

2. The former member elects to allow his or her accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640; and
 3. The former member receives a monthly allowance pursuant to Section 3.36.1640.
- D. The former member separated from city service prior to July 5, 1992, and prior to retirement, and satisfies all of the following requirements:
1. At the time of separation from city service the former member was entitled to credit for twenty or more years of service; and
 2. The former member elected to allow his or her accumulated contributions to remain in the retirement fund pursuant to Section 3.36.1640; and
 3. As of April 1, 2002, the former member was receiving a monthly allowance pursuant to Section 3.36.1640; and
 4. The former member is receiving a monthly allowance pursuant to Section 3.36.1640 at the time the former member applies for medical insurance coverage.
- E. Any member who meets the requirements of Subsection A., B., C. or D. of this Section 3.36.1900 and is thereby eligible for coverage but instead elects to participate in the "in lieu" premium credit option described in Section 3.36.1955, and later elects to again be covered under the city's medical coverage during the annual open enrollment period or upon the occurrence of another event identified by the medical plans as providing such individuals with

an opportunity to elect to be covered under the city's medical coverage shall be required to pay the full cost of the member's portion of coverage under this Part 14.

- F. Notwithstanding the exclusion of tier 2 members and new employees from coverage under Part 14, if a tier 2 member or new employee covered under Chapter 3.57 meets the requirements of Section 3.57.300, such person shall be entitled to receive a benefit as described under Section 3.57.310. The benefit described under Section 3.57.310 shall be paid from the assets set aside to provide benefits under this Part 14. Such benefits shall cease at the time the tier 2 member or new employee becomes eligible for coverage under Medicare.

SECTION 5. Section 3.57.200 of Chapter 3.57 of Title 3 of the San José Municipal Code is amended to read as follows:

3.57.200 VEBA Funding

The VEBA established under this Chapter 3.57 shall have the following sources of funding:

- A. Effective on the date established by the city, tier 2 members and new employees shall make mandatory contributions equal to four percent of base salary.
- B. Effective on the date established by the city, members other than members described in Section 3.57.200.A., shall make mandatory contributions equal to five percent of base pay.

- C. There are no required contributions by the city to the VEBA.
- D. Effective ~~upon IRS approval of one-time irrevocable election process for tier 1 members and~~ upon IRS approval of the ability to transfer funds ~~in such manner, including ability to transfer funds~~ from the police and fire plan and the applicable 115 trust to the VEBA and upon completing the irrevocable election process to become covered under ~~the VEBA~~ this Chapter 3.57, an amount determined to equal the member's prior retiree healthcare contributions under the terms of Parts 14 and 15 of Chapter 3.36 of Title 3 of the San José Municipal Code, without any interest on such amounts, shall be ~~contributed by the city~~ transferred from the police and fire plan and applicable 115 trust to the member's account under the VEBA.

SECTION 6. 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, effective on the date established by the City, 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, shall make mandatory contributions equal to four and one-half percent (4.5%) of base pay.
- C. There are no required contributions by the City to the VEBA.
- 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~~this Chapter 3.58, 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~~from the Federated Plan and applicable 115 trust to the member's account under the VEBA.
- E. New 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, in the event an unrepresented 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

RD:EJM:CER
12/6/2017

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.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk