

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING VARIOUS SECTIONS OF CHAPTER 3.36 AND
3.57 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE,
TO IMPLEMENT THE TERMS OF THE ALTERNATIVE
PENSION REFORM SETTLEMENT FRAMEWORK
AGREEMENT WITH THE SAN JOSE POLICE OFFICERS'
ASSOCIATION AND INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 230**

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, in order to implement Measure F, the following changes are required to be made to Title 3; and

WHEREAS, the ordinance will also include modifications to Title 3 to allow re-enrollment after alternative health coverage and flexibility in designation of death benefit;

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

SECTION 1. Section 3.36.020.15 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.020.15 Tier 2 Member

"Tier 2 member" means:

- A. Any person who is hired, rehired, or reinstated by the City as an employee of the Police Department in a position covered by this Plan on or after August 4, 2013; or
- B. Any person who is hired, rehired, or reinstated by the City as an employee of the Fire Department in a position covered by this Plan on or after January 2, 2015.
- C. Notwithstanding the foregoing, the following persons shall not be considered Tier 2 members under this Plan and their benefits shall be determined under the same terms as those members hired prior to the dates specified in subsections A. and B. of this Section:

1. Any person who was a member of this Plan as an employee of the Police Department prior to August 4, 2013, and terminated employment with the City without a return of his or her contributions, and returned to employment with the City in a position covered by this Plan on or after August 4, 2013; or
2. Any person who was a member of this Plan as an employee of the Fire Department prior to January 2, 2015, and terminated employment with the City without a return of his or her contributions, and returned to employment with the City in a position covered by this Plan on or after January 2, 2015; or
3. Any person accepting employment in the Police Department or Fire Department of the City on or after January 1, 2013 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 16, 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.

SECTION 2. Section 3.36.380 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.380 Medical Service and Advice

- A. The Board may enter into contractual arrangements for such medical services and advice, and may secure and pay reasonable compensation for 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 Police and Fire Department Retirement Plan. 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 March 31, 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 solely be the 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 six (6) of the nine (9) 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~~
 - d. Except for prior service on the independent medical panel established under this 3.36.380, is not providing or has not provided medical services to the City or retirement boards; and
 - e. No prior experience as a Qualified Medical Evaluator ~~or Agreed Medical Evaluator.~~

SECTION 3. Section 3.36.410 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.410 Mortality, Service and Other Tables - Revision of Rates of Contribution

- A. Upon the basis of any or all of such investigations, evaluations and determinations, the Board shall adopt such mortality, service and other tables as may be necessary, and shall fix and from time to time change the rates of monthly contribution required of members and of the City as may be necessary to 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") and to provide the benefits provided for in this Retirement Plan; provided that, as may be otherwise provided elsewhere in this Chapter, the proportionate share of contributions on behalf of the City and

members who are not Tier 2 members shall at all times be in the ratio of three to eight (3:8) except as provided in 3.36.410.A. For Tier 2 members, except as provided in Section 3.36.410.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 prior to August 4, 2013 for Police and prior to January 1, 2015 for Fire were non-Tier 2 members of this Plan and then became Tier 2 members prior to March 31, 2017 but on and after March 31, 2017 remain in the Plan but are no longer considered Tier 2 members as defined under Section 3.36.020.15. Any cost, including but not limited to any unfunded actuarial accrued liability, associated with benefit changes adopted on March 31, 2017 for such members and any amounts associated with moving such members from Tier 2 status to non-Tier 2 status, will be amortized as a separate liability over sixteen (16) years or other period determined by the Board. Notwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of Section 3.36.410.A above, the costs described in this subsection 3.36.410.A.1. shall at all times be shared in the ratio of one for the City and one for the affected member (1:1) and will be reflected as soon as practicable in the monthly contribution rates for such 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 in the Police Department or Fire Department of the City on or after January 1, 2013 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 16, 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 March 31, 2017 remain in the Plan but are no longer considered Tier 2 members under the definition of Tier 2 member under Section 3.36.020.15. Any and all costs, including but not limited to any unfunded actuarial accrued liability, directly or indirectly associated with benefit changes adopted on March 31, 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 sixteen (16) years or other period determined by the Board. Further, nNotwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of Section 3.36.410.A above, ~~the~~ any and all costs

described in this subsection 3.36.410.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 3.36.410.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 March 31, 2017:
1. The costs, including any unfunded actuarial accrued liability, associated with the Tier 2 benefit changes adopted on March 31, 2017 for members who were Tier 2 members prior to March 31, 2017 will be amortized as a separate liability over sixteen (16) 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 impacted 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 3.36.410.B.2.
 2. Other than provided in Section 3.36.410.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 4. Section 3.36.580 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.580 Guaranteed Purchasing Power Provision

Effective January 1, 201~~8~~⁶, and each January 1 thereafter, the annual retirement benefit of each member who is not a Tier 2 member will be reviewed by the Board to determine if the 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 calculated as of the member's retirement date, adjusted for inflation by reference to the most current consumer price index for all urban consumers (CPI-U), San Francisco-Oakland-San José metropolitan area. If the value of

the member's retirement allowance falls below seventy-five percent (75%) of purchasing power, the member shall receive an annual lump sum payment of the difference between the member's current retirement allowance and the amount required to achieve seventy-five percent (75%) purchasing power as a separate line item on the pension check ~~in a separate check~~ as of February 1, ~~2016~~2018, and each February 1 thereafter.

SECTION 5. Section 3.36.1520 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1520 Current Service Contributions

- A. The retirement board shall determine and fix, and from time to time it may change, the amount of monthly or biweekly contributions for current service which must be required of the City of San José and of members of this plan to make and keep this plan and the retirement system at all times actuarially sound as provided under Section 3.36.540B. For the purpose of this section, "contributions for current service" for members employed in the fire department shall mean the sum of the normal costs for each actively employed member in the fire department as determined under the entry age normal actuarial cost method, divided by the aggregate current compensation of such members, and "contributions for current service" for members employed in the police department shall mean the sum of the normal costs for each actively employed member in the police department as determined under the entry age normal actuarial cost method, divided by the aggregate current compensation of such members. Rates for current service shall not include any amount required to make up any deficit resulting from the fact that previous rates of contribution made by the city and members were inadequate to fund benefits attributable to service rendered by such members prior to the date of any change of rates, and shall not include any amount required for payment of medical or dental insurance benefits. Notwithstanding the foregoing, members subject to this Subsection A. shall be responsible for any additional contributions described in Section 3.36.410, to the extent applicable to such member.
- B. For the purposes of this section, the "entry age normal actuarial cost method" means the actuarial calculation which divides the actuarial present value of a member's future benefits, determined as of the date of the member's employment by the actuarial present value of the member's future salaries, determined as of the date of the member's employment in order to determine the member's normal cost rate. The "current year normal cost" for a member is the member's normal cost rate multiplied by the member's current compensation.
- C. The City of San José and the members of this plan shall make and pay all such monthly or biweekly contributions as are found necessary and as are fixed by the retirement board ; ~~provided that;~~ Except as provided under Section 3.36.410, for

members other than tier 2 members, the monthly or biweekly contributions required of members, as compared to the monthly or biweekly contributions required of the city, shall at all times be in the ratio of three to eight (3:8). Except as provided under Section 3.36.410, fFor tier 2 members, the monthly or biweekly contributions required of tier 2 members and the city shall at all times be in the ratio of one for the city to one for the members (1:1) (sharing equally).

- D. With respect to monthly or biweekly contributions required of members, the retirement board shall determine and fix, and from time to time change, the rate of contribution as a percentage of a member's monthly or biweekly compensation. The rate of contribution may be different for members employed in the fire department and members employed in the police department, depending on the benefits provided to such members, but it shall be the same percentage for all members in the fire department and shall be the same percentage for all members in the police department, except as otherwise provided under Section 3.36.410 or another provision of this Chapter 3.36. For tier 2 members, the rate of contribution may be different than for other non-tier 2 members, but it shall be the same percentage for all tier 2 members in any department, except as otherwise provided under Section 3.36.410 or another provision of this Chapter 3.36. The retirement board shall furnish such information to the director of finance so that payroll deductions may be made as provided in Section 3.36.1510.
- E. There shall be no offset to normal cost contribution rates in the event plan funding exceeds one hundred percent. 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 3.36.1570 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1570 Administrative Expenses

From and after July 12, 1987, all administrative expenses of this retirement plan, as determined and approved by the board, including staff salaries and indirect labor costs, shall be paid from the retirement fund. The payment of said expenses shall be subject to such limitations on said expenses as may be agreed upon by the city and the employee organizations representing members of this plan and set forth in the appropriate memoranda of agreement. Expenses in excess of said limitations, if any, shall be paid by the city.

All administrative costs related to providing benefits for tier 2 members of the system, as determined and approved by the board, shall be reflected in contribution rates so that

such costs are shared equally by the tier 2 members and the city in accordance with Section 3.36.410.

All administrative costs related to tier transition of members who prior to August 4, 2013 for Police and prior to January 1, 2015 for Fire were non-Tier 2 members of this Plan and then became Tier 2 members prior to March 31, 2017 but on and after March 31, 2017 remain in the Plan but are no longer considered Tier 2 members as defined under Section 3.36.020.15, shall be reflected in contribution rates so that such costs are shared equally by the impacted Tier 1 members and the city in accordance with Section 3.36.410.

SECTION 7. Section 3.36.1920 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1920 Requirements for Participation in Medical Insurance Plan

- A. A member or former member, as specified in Section 3.36.1900, above, is eligible to participate in a medical insurance plan sponsored by the City provided that the member or former member satisfies the following requirements:
1. The member retires for service or disability pursuant to the provisions of this Chapter and at the time of retirement the member applies for medical insurance coverage in accordance with the applicable provisions of the medical insurance plan and agrees to pay any applicable premiums; or
 2. The former member receives a monthly allowance pursuant to Section 3.36.1640 and within thirty (30) days of first receiving such monthly allowance the former member applies for medical insurance coverage in accordance with the applicable provisions of the medical insurance plan and agrees to pay any applicable premiums; or
 3. The member retires for service or disability pursuant to the provisions of this Chapter and waives 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; or

4. The former member receives a monthly allowance pursuant to Section 3.36.1640 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 he or she first receives such monthly allowance 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, as specified in Section 3.36.1910, above, is eligible to participate in a medical insurance plan sponsored by the City provided that the following conditions are satisfied:
1. At the time of the death of the member or former member, the member or former member and the survivor were both enrolled in one (1) of the medical insurance plans sponsored by the City; and
 2. The survivor applies to continue medical insurance coverage within sixty (60) days of the death of the member or former member; and
 3. The survivor agrees to pay any applicable premiums.
 4. 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 or former member may secure medical insurance coverage for a spouse under the following conditions:
1. The spouse and member are married at the time of said member's retirement for service or disability; or

2. The spouse and the former member are married at the time the former member first begins receiving a monthly allowance pursuant to Section 3.36.1640; or
 3. The member marries subsequent to his or her retirement and applies to add such spouse in accordance with the terms of the eligible medical plan; or
 4. The former member marries while receiving monthly allowances pursuant to Section 3.36.1640 and applies to add such spouse in accordance with the terms of the eligible medical plan.
- D. A member or former member may secure medical insurance coverage for a domestic partner under the following conditions:
1. The domestic partner and the member are members of a domestic partnership at the time of said member's retirement for service or disability; or
 2. The domestic partner and the member are members of a domestic partnership at the time the former member first begins receiving a monthly allowance pursuant to Section 3.36.1640; or
 3. The member establishes a domestic partnership subsequent to his or her retirement and applies to add such domestic partner in accordance with the terms of the eligible medical plan; or
 4. The former member establishes a domestic partnership while receiving monthly allowances pursuant to Section 3.36.1640 and applies to add such domestic partner in accordance with the terms of the eligible medical plan.
- 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 a surviving child or children as defined in Section 3.36.1200, or an eligible surviving child for purposes of receiving a school allowance pursuant to Part 9 of this Chapter, are surviving the death of the member.
 2. A surviving spouse or surviving domestic partner shall be eligible for family coverage if the surviving spouse or the 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 or former member, such child would be an eligible surviving child for purposes of receiving a school allowance pursuant to Part 9 of this Chapter.

- F. Notwithstanding the provisions of subsections A. and B. of Section 3.36.1920, members or their survivors who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this Part 14, but who, at the time of retirement or death, could not enroll because the benefits provided in this Part 14 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 14 until or on August 31, 1984, only; said members or their survivors must otherwise comply with the coverage limitations provided in subsections C. and D. of Section 3.36.1920 and with all provisions of this Part 14.
- G. Notwithstanding the provisions of Section 3.36.1920.C., a spouse who married a member subsequent to the member's retirement and would otherwise qualify for participation in a medical insurance plan pursuant to this Part 14 but who, at the time of marriage, could not enroll because the benefits provided in this Part 14 were not available for spouses married subsequent to a member's retirement, may enroll in an eligible insurance plan as provided in this Part 14 until or on December 30, 1991, only. Such spouse must otherwise comply with all other provisions of this Part 14.
- H. Notwithstanding the provisions of Section 3.36.1920.D., a domestic partner who established a domestic partnership with a member subsequent to the member's retirement and would otherwise qualify for participation in a medical insurance plan pursuant to this Part 14 but who, at the time of establishing the domestic partnership, could not enroll because the benefits provided in this Part 14 were not available for domestic partnerships where the partnership was established subsequent to a member's retirement, may enroll in an eligible insurance plan as provided in this Part 14 until or on January 31, 2007, only. Such domestic partner must otherwise comply with all other provisions of this Part 14.
- I. Notwithstanding the provisions of subsections A. and B. of Section 3.36.1920, a member who retired pursuant to Section 3.36.760, or survivors of such member, who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this Part 14 but who, at the time of retirement or death, could not enroll because the benefits provided in this Part 14 were not available to such member or such survivors at the time of such member's retirement or death, may enroll in an eligible insurance plan as provided for in

this Part 14 until or on December 30, 1991, only. Said member or survivors must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.

- J. 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, at the time of the member's or former member's death, could not enroll because the family coverage provided in this Part 14 was not available to such surviving spouse at the time of the member's or former member's death, may enroll in family coverage in an eligible insurance plan as provided for in this Part 14 until June 30, 2002, only. Said surviving spouse must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.
- K. A domestic partner who would otherwise qualify for family coverage because the domestic partner is the court-appointed guardian of the person of a minor child or children but who, at the time of the member's or former member's death, could not enroll because the family coverage provided in this Part 14 was not available to such surviving domestic partner at the time of the member's or former member's death, may enroll in family coverage in an eligible insurance plan as provided for in this Part 14 until January 31, 2007, only. Said surviving domestic partner must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.
- L. Notwithstanding the provisions of subsection A. of Section 3.36.1920, a former member who meets the requirements of subsection D. of Section 3.36.1900 but who, within thirty (30) days of first receiving a monthly allowance, could not enroll in a medical insurance plan because the benefits provided in this Part 14 were not then available to such former member, may enroll in an eligible insurance plan as provided for in this Part 14 until or on December 31, 2002, only. Upon the death of such former member, the former member's survivors shall be eligible for continued medical insurance coverage. Such former member or survivors must otherwise comply with the coverage limitations provided in Section 3.36.1920 and with all other provisions of this Part 14.
- M. Effective March 31, 2017, a member and/or dependent and/ or survivor who is eligible for retiree healthcare benefits in this Plan and who is eligible for Medicare coverage 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 dependent 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). However,

if a member is already retired and age sixty-five (65) or older on the date this Section of the Ordinance becomes effective for such member and is eligible for Medicare coverage then the member shall be required to enroll in Medicare Part A and B by ~~July 1, 2017~~ July 1, 2018. Additionally, the Plan member and/or dependent and/or survivor who is eligible for Medicare shall be required to enroll in a Medicare Plan provided by the City under this Part 14 and assign Medicare Parts A and B benefits to the Medicare Plan if required by the healthcare coverage provider. If 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 member is not eligible for Medicare Part A at no cost or a Plan member for any reason is not eligible for Medicare, the 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 this Plan upon reaching age sixty-five (65). This provision shall not apply to those who waive coverage,

If a member fails to meet the requirements set forth above within the member's (or dependent or survivor's) "initial enrollment period" which begins three (3) months before the Plan member and/or dependent 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), the Plan shall cease to provide retiree healthcare benefits until the Plan member (or dependent or survivor) 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 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.

- N. Subject to the provisions of this Chapter, effective March 31, 2017 and upon IRS approval of the VEBA, a member of the VEBA who meets the requirements of Section 3.57.300 may be entitled to receive a benefits similar to those established under Parts 14 and 15 of Chapter 3.36. 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. Such benefit shall cease at the time that such member is eligible for coverage under Medicare and subject to the provisions of Section 3.57.320. The catastrophic disability healthcare benefit provided under Chapter 3.57 shall be paid from the Police Department Healthcare Trust Fund or the Fire Department Healthcare Trust Fund, as applicable.

SECTION 8. Section 3.36.1955 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1955 "In Lieu" Premium Credit Option

- A. Effective March 31, 2017, members and their surviving spouses, surviving domestic partners, and/or children who are eligible for medical insurance coverage under Section 3.36.1900 or 3.36.1910 may instead of receiving such coverage choose to receive a credit for an amount equal to twenty-five percent (25.0%) of the monthly premium of the lowest cost medical plan as defined under Section 3.36.1930.D and the lowest cost dental plan under the coverage provided under Part 15. Such credited amounts must be used only for application toward the cost of such person's healthcare premiums actually incurred in future years under Part 14 and Part 15 of this Plan.
- B. Each year during the annual open enrollment period during which qualifying individuals covered under this Part 14 and Part 15 are provided the opportunity to elect healthcare coverage under this Part 14, or upon the occurrence of another event identified by the medical plans as providing qualifying individuals with an opportunity to elect coverage under this Part 14, such individuals may again elect such coverage and pay the full cost of the member's portion of coverage or instead elect to have the credit described in Section 3.36.1955.A again credited to be used only for application toward the cost of such person's healthcare premiums actually incurred in future years under Part 14 and Part 15 of this Plan.

- C. Individuals receiving credits in lieu of premiums for greater than the cost of single coverage must annually submit substantiation that they continue to be eligible for coverage at greater than the cost of single coverage. Further, eEligible retirees who receive retiree healthcare coverage as a dependent of another City employee or retiree are not eligible for the family in lieu premium credit and must elect, if any in lieu election is made, the single in lieu premium credit.
- D. To the extent a member and/ or the member's eligible dependents selects to receive the credits under Section 3.36.1955.A or 3.36.1955.B and the member and his surviving dependents do not use the accumulated credits while eligible for healthcare coverage under this Part 14, any remaining credits will be forfeited. In no event can a member, surviving spouse, surviving domestic partner, and/ or eligible dependent receive the credits in lieu of coverage under this Part 14 as cash and such credits may only be applied to the cost of future premiums for coverage provided under this Part 14 and Part 15.
- E. 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.

SECTION 9. Section 3.57.020.03 of Chapter 3.57 of Title 3 of the San José Municipal Code is amended to read as follows:

3.57.020.03 "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 the applicable GASB requirements or statements. 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 is eligible to purchase a City provided retiree healthcare plan, the following restrictions apply:

- A. 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

- B. The rate at which retiree healthcare insurance plans will be made available to VEBA Members shall at a retiree only rate, and shall not be based on a blended rate with active employees.

SECTION 10. A new Section 3.57.020.10 is added to Chapter 3.57 of Title 3 of the San José Municipal Code, to be numbered, entitled and to read as follows:

3.57.020.10 "Retired"

"Retired" means any VEBA members who retire from the city under the provisions of Chapter 3.36 of Title 3 of San José Municipal Code and VEBA Members who have a separation from service with the City and are retirement eligible under the provisions of Chapter 3.36 of Title 3 of San José Municipal Code.

SECTION 11. 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 [date established by the City]. tier 2 members and new employees shall make mandatory contributions equal to four percent (4.0%) of base salary. To the extent a Tier 2 member made member contributions to the benefit programs provided under Part 14 and Part 15 of Chapter 3.36 of the San José Municipal Code prior to the effective date of this Subsection, an amount determined to be equal to 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 to the Tier 2 member's account under the VEBA."
- B. Effective [date established by the City], members other than members described in Section 3.57.200.A., shall make mandatory contributions equal to five percent (~~4~~5.0%) 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 & Fire Plan and the 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 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 to the member's account under the VEBA.

SECTION 12. Section 3.57.210 of Chapter 3.57 of Title 3 of the San José Municipal Code is amended to read as follows:

3.57.210 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.

RD:EJM
08/29/2017

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