

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: SEE BELOW

DATE: November 14, 2018

Approved  Date 11-15-18

**SUBJECT: AMENDMENTS TO THE ORDINANCE ALLOWING THE EMPLOYEE
REPAYMENT OF TIER 1 REHIRE AMORTIZATION COSTS**

RECOMMENDATION

Approve an ordinance to amend various sections of Chapter 3.28 and Chapter 3.36 of Title 3, of the San José Municipal Code regarding Tier 1 Rehire Amortization Costs to clarify certain provisions of the Alternative Pension Reform Settlement Framework Agreement with the City's employee bargaining units.

OUTCOME

Adoption of an ordinance amending San José Municipal Code Sections 3.28.200, 3.28.820, 3.36.410, and 3.36.720 will provide for the repayment of the amortization costs associated with the transition of a Rehired Tier 1 employee from Tier 2 into Tier 1.

BACKGROUND

The City and the eleven bargaining units agreed to clarify the terms of the Alternative Pension Reform Framework Agreements, including the process for the payment of the amortization costs associated with transitioning former Tier 1 employees who were rehired to the City as Tier 2 employees back into Tier 1 (hereinafter "Tier 1 Rehire Amortization") in side letters approved by Council on August 28, 2018.

Pursuant to these side letter agreements, the City brought forward an ordinance reflecting these agreements to the August 2, 2018 Police and Fire Department Retirement Plan Board Meeting and the August 16, 2018 Federated City Employees' Retirement System Board Meeting. The Boards' Counsel commented on the ordinances at those meetings and subsequent updates were made to the ordinances before Council approval on August 28, 2018 (See Attachments). The

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Subject: Amendments to the Ordinance Allowing the Employee Repayment of Tier 1 Rehire Amortization Costs

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second reading of the ordinances occurred on September 11, 2018. The Boards' Counsel had several outstanding concerns regarding the ordinances and was directed by the Retirement Boards to work with the Administration and the City Attorney's Office to amend the ordinances.

ANALYSIS

City staff worked with the Retirement Boards' Counsel and the City Attorney's Office, in consultation with the Boards' actuary, Chieron, and the City's actuary, John Bartel, to draft an ordinance that provides more specific direction regarding the agreements made between the City and the bargaining units. The attached ordinance, if approved by Council, would amend the Municipal Code to specify the terms for the repayment of these amortization costs as outlined in the approved side letters and would clarify the following points:

1.	The member will pay 50% of the total actuarial liability attributable to converting Tier 2 service to Tier 1 service. The City will pay, through the UAL of the system, the other 50% of the actuarial liability attributable to this conversion.
2.	The total actuarial liability will be based on the member's age, years of service, salary, length of Tier 2 service and other relevant actuarial factors.
3.	This cost will include calculated interest from the date the liability amount is determined (June 18, 2017) to the date the member's first payment is received (March 24, 2019) and through the period of repayment.
4.	If the member does not make a full payment within 60 days after termination of employment, the member's monthly benefit will be reduced by the actuarial value of the unpaid amount.
5.	For members who terminated City employment before the effective date of the ordinance, they have 60 days from the receipt of their repayment calculation to pay back their amount in a lump sum.
6.	Based on the side letter agreements, all "Classic" employees will share in the additional costs associated with the "Classic" benefit regardless of when the employee was hired or moved into the "Classic" tier.

After the adoption of the ordinance, all affected rehired Tier 1 members will be required to sign an agreement with the City based on the calculation of their individual amortization amount. This agreement will inform those who have terminated City employment of the obligation to repay the costs for which they are responsible.

The City and the Boards' Counsel have worked together to make the clarifications to the Municipal Code language. The City last provided its comments made to the Boards' Counsel on October 30, 2018. The Federated Board will meet on November 15, 2018 and the City will issue a supplemental memorandum if there is any necessary follow-up communication from the Federated Board or the Boards' Counsel following that meeting.

HONORABLE MAYOR AND CITY COUNCIL

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EVALUATION AND FOLLOW-UP

If the Council approves the proposed ordinance for publication, the ordinance will be placed on the Council agenda for final approval on December 4, 2018 and become effective 30 days later. We have requested that the final approval take place one week following the first reading of the ordinance, rather than the standard two week timeline due to the time-sensitive nature of the ordinance amendments.

PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's website in advance of the November 27, 2018 City Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION AND INPUT

The Federated City Employees' Retirement System Board and the Police and Fire Department Retirement Plan Board reviewed the Municipal Code changes, as noted above.

COST SUMMARY/IMPLICATIONS

There are no anticipated costs associated with the adoption of this Ordinance.

CEQA

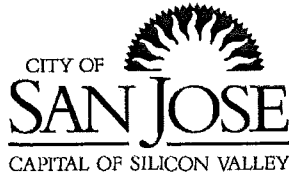
CEQA: Not a Project, File No. PP17-008, General Procedure or Policy Making.



JENNIFER SCHEMBRI
Director of Employee Relations
Acting Director of Human Resources

For questions please contact Jennifer Schembri, Director of Employee Relations and Acting Director of Human Resources, at (408) 535-8150.

Attachments



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: SEE BELOW

DATE: August 16, 2018

Approved

Date

8/17/18

**SUBJECT: ORDINANCE ALLOWING THE EMPLOYEE REPAYMENT OF TIER 1
REHIRE AMORTIZATION COSTS**

RECOMMENDATION

- a) Adopt a resolution to approve the terms of a Side Letter Agreement related to the Tier 1 Amortization Costs between the City of San Jose and its' eleven bargaining units.
- b) Approve an ordinance to amend various sections of Chapter 3.28 and Chapter 3.36 of Title 3, of the San José Municipal Code to clarify certain provisions of the Alternative Pension Reform Settlement Framework Agreement with the City's employee bargaining units.

OUTCOME

Adoption of a resolution approving the terms of a Side Letter Agreement and the adoption of an ordinance amending San José Municipal Code Sections 3.28.030.28, 3.28.200, 3.36.020.15, and 3.36.410 and adding sections 3.28.700 and 3.36.720 will provide for the repayment of the amortization costs associated with the transition of a Rehired Tier 1 employee from Tier 2 into Tier 1 .

BACKGROUND

The City and the eleven bargaining units have clarified the terms of the Alternative Pension Reform Frameworks, including the process for the payment of the amortization costs associated with transitioning Tier 1 employees in Tier 2 back into Tier 1 (hereinafter "Tier 1 Rehire Amortization"). The City and the bargaining units have agreed to the amended terms regarding the Tier 1 Rehire amortization in two side letter agreements (See Attachment A and B).

ANALYSIS

The parties agreed in the attached side letters that for Rehired Tier 1 Employees, any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were rehired former Tier 1 City employees will be amortized over different individual amortization periods as determined by the Board's actuary. The amount of time will be dependent on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1 and split between the employee and the City on a 50/50 basis.

Rehired Tier 1 Employees are individually responsible for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, and will sign individual agreements confirming his or her obligations. They will pay the same contribution rate, as determined by the Board's actuary, to pay for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1. This contribution rate is in addition to the Tier 1 contributions these employees are required to make as a reinstated Tier 1 employee. The employees will pay this additional contribution rate on different individual amortization periods, depending on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1.

If a rehired Tier 1 employee leaves City service prior to paying the full cost attributable to such member's transition to Tier 1, including any unfunded liability, the employee is required to pay any remaining balance upon leaving City service. The remaining balance may be paid through an asset transfer from the employee's 457 deferred compensation plan account or through a lump-sum after-tax payment.

The portion of unfunded liability that the City is responsible for as result of this transition was calculated into the total unfunded liability for the 2018-2019 year.

Pursuant to these side letter agreements, the City is bringing forward an amendment to the San Jose Municipal Code. The City drafted an ordinance that, if adopted by Council, would amend the Municipal Code to provide for the repayment of these amortization costs as outlined in the attached side letters.

The City provided the draft ordinance to the Police and Fire Department Retirement Plan and Federated City Employees' Retirement System Boards of Administration for their meetings in August. Both Boards directed their Counsel to provide any comments or questions to the City for consideration. If the Board's counsel has any follow-up, the City will communicate those comments to the Council for their review.

EVALUATION AND FOLLOW-UP

If the Council approves the proposed ordinance for publication, the ordinance will be placed on the Council agenda for final approval on September 11, 2018 and become effective 30 days later.

HONORABLE MAYOR AND CITY COUNCIL

August 16, 2018

Subject: Ordinance Allowing the Employee Repayment of Tier 1 Rehire Amortization Costs

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PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's website in advance of the August 28, 2018 City Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION AND INPUT

The Federated Retirement System Board and the Police and Fire Retirement Plan Board reviewed the Municipal Code changes, as noted above.

COST SUMMARY/IMPLICATIONS

There are no anticipated costs associated with the adoption of this Ordinance.

CEQA

CEQA: Not a Project, File No. PP17-008, General Procedure or Policy Making.



JENNIFER SCHEMBRI
Director of Employee Relations
Acting Director of Human Resources

For questions please contact Jennifer Schembri, Director of Employee Relations, at (408) 535-8150.

Attachments

SIDE LETTER AGREEMENT

BETWEEN

THE CITY OF SAN JOSE

AND

THE ASSOCIATION OF BUILDING, MECHANICAL AND ELECTRICAL INSPECTORS (ABMEI)
THE ASSOCIATION OF ENGINEERS AND ARCHITECTS, IFPTE LOCAL 21 (AEA)
THE ASSOCIATION OF LEGAL PROFESSIONALS (ALP)
THE ASSOCIATION OF MAINTENANCE SUPERVISORY PERSONNEL, IFPTE LOCAL 21 (AMSP)
THE CITY ASSOCIATION OF MANAGEMENT PERSONNEL, IFPTE LOCAL 21 (CAMP)
CONFIDENTIAL EMPLOYEES' ORGANIZATION, AFSCME LOCAL NO 101 (CEO)
THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO 332 (IBEW)
MUNICIPAL EMPLOYEES' FEDERATION, AFSCME LOCAL NO 101 (MEF)
THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO 3 (OE#3)

Federated Alternative Pension Reform Settlement Framework (Tier 1 Rehire Amortization)

Background

On or about November/December 2015, the City of San Jose (City) and ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3 (collectively, Federated Bargaining Units) reached agreement on the Federated Alternative Pension Reform Settlement Framework (Federated Framework). As the City has moved to implement the terms of the Federated Framework, the City and the Federated Bargaining Units have updated certain terms of the Framework, including the amortization costs associated with transitioning Tier 1 employees in Tier 2 back into Tier 1 (hereinafter "Tier 1 Rehire Amortization").

This Side Letter Agreement is to memorialize the amended terms regarding Tier 1 Rehire Amortization that the City and the Federated Bargaining Units have agreed upon and which shall be incorporated into the San Jose Municipal Code.

Amended Framework Terms (Tier 1 Rehire Amortization)

The parties hereby agree to the following amendments to the terms of the Framework with regards to Tier 1 Rehire Amortization:

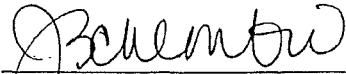
Federated Framework		Amended Terms
Issue	Section	
Tier 2 Retirement Benefits	18	"18. Former Tier 1 Federated City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1. a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 City employees who have since been rehired will be amortized as a separate liability over a

		<p>minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability. <u>For purposes of this section, former Tier 1 employees who are subject to the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, shall be referred to as "Rehired Tier 1 Employees."</u></p> <p>(i) <u>Rehired Tier 1 Employees shall be individually responsible for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, and shall sign individual binding agreements to this effect.</u></p> <p>(ii) <u>Rehired Tier 1 Employees shall:</u></p> <p>(1) <u>Pay the same contribution rate, as determined by the Board's actuary, to pay for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1. This contribution rate is in addition to the Tier 1 contributions these employees are required to make as a reinstated Tier 1 employee; and</u></p> <p>(2) <u>Pay the additional contribution rate referenced above on different individual amortization periods as determined by the Board's actuary, depending on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1. This means the amortization period for each individual Rehired Tier 1 Employee will be determined by the Board's actuary and may not be the same length of time the Rehired Tier 1 Employee was a Tier 2 member.</u></p> <p>(iii) <u>A Rehired Tier 1 Employee who leaves City service prior to paying the full cost attributable to such member's transition to Tier 1, including any unfunded liability associated with the transition from Tier 2 to Tier 1, is liable for and shall be required to pay any remaining balance upon leaving City service. The remaining balance owing and payable by the Rehired Tier 1 Employee shall be determined by the Board's actuary. Upon separation from City service, Rehired Tier 1 Employees must pay their outstanding balance, as determined by the Board's actuary, through an asset transfer from the employee's 457 deferred compensation plan account or through a lump-sum after-tax payment.</u></p> <p>b. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPR, regardless of tier, will be placed in Tier 1.</p> <p>c. Any lateral hire from any other pension system who transfers as a "new" employee under PEPR will be placed in Tier 2."</p>
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The terms of this Side Letter Agreement shall not be construed to modify or supersede any other section or term of the Framework unless specified herein.


This Side Letter Agreement shall be effective when signed by all parties below.

FOR THE CITY:


 6/20/18

Jennifer Schembri Date
Director of Employee Relations


FOR THE UNIONS:

 6/4/18

Peter Fenerin Date
President, ABMEI

 5/30/18


Brad Fox Date
President, AEA

 5/29/2018

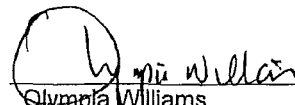
Matt Mason Date
Business Representative, IFPTE

 6/6/18

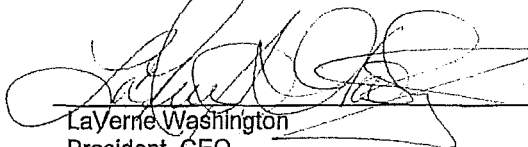
Terra Chaffee Date
President, ALP

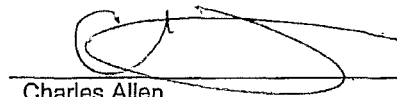
 6/21/18

Steve Contreras Date
President, AMSP


 5/31/18

Olympia Williams Date
IFPTE Representative, CAMP


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LaVerne Washington Date
President, CEO

 6-1-18


Charles Allen Date
Business Representative, AFSCME

 5-29-2018

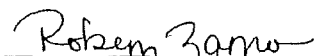
Frank Crusco Date
Chief Steward, IBEW

 6-4-18

Daniel Romero Date
Business Representative, IBEW

 6/4/18

Mary Blanco Date
Business Representative, OE#3

 6/4/18

Robyn Zamora Date
President, MEF

 6/14/18

Christopher Platten Date
Legal Counsel

SIDE LETTER AGREEMENT

BETWEEN

THE CITY OF SAN JOSE

AND

THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)
THE SAN JOSE FIRE FIGHTERS, IAFF LOCAL 230 (IAFF)

Alternative Pension Reform Settlement Framework (Tier 1 Rehire Amortization)

Background

On or about July 2015, the City of San Jose (City) and the San Jose Police Officers' Association (POA) and the San Jose Fire Fighters, IAFF Local 230 (IAFF) reached agreement on the Alternative Pension Reform Settlement Framework (Framework). As the City has moved to implement the terms of the Framework, the City, the POA, and IAFF have updated certain terms of the Framework, including the amortization costs associated with transitioning Tier 1 employees in Tier 2 back into Tier 1 (hereinafter "Tier 1 Rehire Amortization").

This Side Letter Agreement is to memorialize the amended terms regarding Tier 1 Rehire Amortization that the City, the POA, and IAFF have agreed upon and which shall be incorporated into the San Jose Municipal Code.

Amended Framework Terms (Tier 1 Rehire Amortization)

The parties hereby agree to the following amendments to the terms of the Framework with regards to Tier 1 Rehire Amortization:


Framework		Amended Terms
Issue	Section	
Tier 2 Retirement Benefits	16	<p>"a. Former Tier 1 sworn City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1</p> <p>b. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 sworn City employees who have since been rehired will be amortized as a separate liability over a minimum of 16 years and split between the employee and the City 50/50. This will be calculated as a separate</p>

	<p>unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability. <u>For purposes of this section, former Tier 1 employees who are subject to the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, shall be referred to as "Rehired Tier 1 Employees."</u></p> <p><u>(i) Rehired Tier 1 Employees shall be individually responsible for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1, and shall sign individual binding agreements to this effect.</u></p> <p><u>(ii) Rehired Tier 1 Employees shall:</u></p> <p><u>(1) Pay the same contribution rate, as determined by the Board's actuary, to pay for the costs, including any unfunded liability, of transitioning from Tier 2 to Tier 1. This contribution rate is in addition to the Tier 1 contributions these employees are required to make as a reinstated Tier 1 employee; and</u></p> <p><u>(2) Pay the additional contribution rate referenced above on different individual amortization periods as determined by the Board's actuary, depending on how long the Rehired Tier 1 Employee was in Tier 2 prior to being transitioned back to Tier 1. This means the amortization period for each individual Rehired Tier 1 Employee will be determined by the Board's actuary and may not be the same length of time the Rehired Tier 1 Employee was in Tier 2 member.</u></p> <p><u>(iii) A Rehired Tier 1 Employee who leaves City service prior to paying the full cost attributable to such member's transition to Tier 1, including any unfunded liability associated with the transition from Tier 2 to Tier 1, is liable for and shall be required to pay any remaining balance upon leaving City service. The remaining balance owing and payable by the Rehired Tier 1 Employee shall be determined by the Board's actuary. Upon separation from City service, Rehired Tier 1 Employees must pay their outstanding balance, as determined by the Board's actuary, through an asset transfer from the employee's 457 deferred compensation plan account or through a lump-sum after-tax payment.</u></p> <p>c. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPR, regardless of tier, will be placed in Tier 1.</p> <p>d. Any lateral hire from any other pension system who transfers as a "new" employee under PEPR will be placed in Tier 2."</p>
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The terms of this Side Letter Agreement shall not be construed to modify or supersede any other section or term of the Framework unless specified herein.

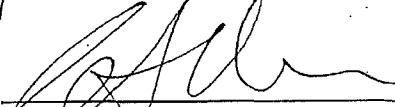
This Side Letter Agreement shall be effective when signed by all parties below.

FOR THE CITY:

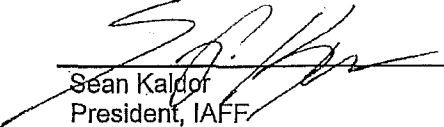
 6/14/18
Date
Jennifer Schembri
Director of Employee Relations

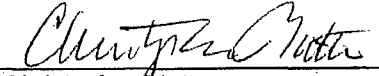
FOR THE POA:

 6/11/18
Date
Paul Kelly
President, POA

 6/11/18
Date
Gregg Adam
POA Counsel

FOR IAFF:

 4/18/18
Date
Sean Kaldor
President, IAFF

 6/14/18
Date
Christopher Platten
IAFF Counsel



COUNCIL AGENDA: 8/28/18
FILE: 18-1026
ITEM: 3.3

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: SEE BELOW

DATE: August 27, 2018

Approved

Date

8/27/18

SUPPLEMENTAL

SUBJECT: ORDINANCE ALLOWING THE EMPLOYEE REPAYMENT OF TIER 1
REHIRE AMORTIZATION COSTS

REASONS FOR SUPPLEMENTAL

The reason for the supplemental memorandum is to bring forward changes to the Ordinance as a result of the comments provided by the Federated City Employee's Retirement System's Board, the Police and Fire Department Retirement Board, and their Counsel.

ANALYSIS

On August 2, 2018, the Police and Fire Department Retirement Board and on August 16, 2018, the Federated City Employee's Retirement System Board met to discuss the proposed Ordinance. At the meetings, the Boards asked that the City clarify the Ordinance regarding what happens if a rehired employee does not pay back the full amount of unfunded liability owed to the Plan. City staff responded that we would review the comments and if appropriate, we would modify the proposed Ordinance to address the issue.

As a result of the comments from the Retirement Boards and their Counsel, City staff is recommending a clarification to the Ordinance regarding what happens if a rehired employee does not pay back the full amount of unfunded liability owed to the Plan. The proposed clarifications are included the attached Ordinance.

Additionally, the attached ordinance also includes a correction to one of the Section numbers from the originally posted Ordinance. Section 3.28.700 in the originally posted Ordinance has been amended to read Section 3.28.820.

/s/

JENNIFER SCHEMBRI
Director of Employee Relations/Acting
Director of Human Resources

For questions, please contact Jennifer Schembri, Director of Employee Relations/Acting Director of Human Resources at (408) 535-8154.

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
VARIOUS SECTIONS OF CHAPTERS 3.28 AND 3.36 OF
TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO
IMPLEMENT THE TERMS OF THE ALTERNATIVE
PENSION REFORM SETTLEMENT FRAMEWORK
AGREEMENT WITH CITY EMPLOYEE BARGAINING
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, 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 3.28.030.28 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.030.28 Tier 2 Member

- A. "Tier 2 member" means any person who is hired, rehired or reinstated by the City on or after September 30, 2012 except for any person who is eligible and elects

to participate in a defined contribution plan established under the San José Municipal Code.

B. Notwithstanding subsection 3.28.030.28.A., the following persons who do not elect to participate in a defined contribution plan established under the San José Municipal Code 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 September 30, 2012:

1. Any person who was a member of this Plan prior to September 30, 2012, and terminated employment with the City and did not take a return of contributions, and returned to employment with the City in a position covered by this Plan on or after September 30, 2012; or
2. Any person accepting 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 a new member as defined by Government Code Section 7522.04(f) as may be amended, or are rehired or reinstated City employees without a work history prior to September 30, 2012; or
3. Any person who, prior to August 4, 2013, was a Police member of the Police and Fire Department Retirement Plan established under Chapter 3.24 or the 1961 Police and Fire Department Retirement Plan established under Chapter 3.36, and terminated employment with the City without a

return of his or her contributions, and later returned to employment with the City in a position covered by this Plan on or after August 4, 2013; or

4. Any person who, prior to January 2, 2015, was a Fire Department member of the Police and Fire Department Retirement Plan established under Chapter 3.24 or the 1961 Police and Fire Department Retirement Plan established under Chapter 3.36, and terminated employment with the City without a return of his or her contributions, and later returned to employment with the City in a position covered by this Plan on or after January 2, 2015.

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 Section 3.28.200.A.1 and Section 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. Members who are reclassified from Tier 2 membership to Tier 1 membership shall be referred to as Reclassified Tier 1 members for purposes of this Section 3.28.200.A.1. Reclassified Tier 1 members shall:

- i. be individually responsible for their cost, including any unfunded liability, associated with the transition from Tier 2 to

RD:EJM:KML
07/25/2018

Tier 1

membership and must sign a legally binding agreement setting forth the terms and conditions of his or her Tier 1 member status under the Plan; and

ii. in addition to making the contributions required of Tier 1 members, make additional contributions to pay their entire cost, including any unfunded liability, of the transition from Tier 2 to Tier 1 membership. The additional contributions shall be determined by the Board's actuary and may be based, at least in part, on the period of time each Reclassified Tier 1 member spent as a Tier 2 member prior to reclassification. As a result, the amortization schedule for each Reclassified Tier 1 member may vary; and

iii. any outstanding balance associated with a Reclassified Tier 1 member's liability for the cost of transition from Tier 2 to Tier 1 membership must be satisfied upon separation from City service. Any outstanding balance attributable to such Reclassified Tier 1 member's liability must be paid in accordance with Section 3.28.820700.

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, notwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of Section 3.28.200.A above, any and all 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. Chapter 3.28 of Title 3 of the San José Municipal Code is amended to add a new Section 3.28.~~820700~~, to be numbered, entitled and to read as follows:

3.28.~~820700~~ Satisfaction of Liability for Reclassification as Tier 1

- A. A member who is a Reclassified Tier 1 member under Section 3.28.200.A.1 and leaves City service prior to paying the full cost of the transition from Tier 2 to Tier 1 membership, as that cost is described in Section 3.28.200.A.1, is liable for and shall be required to pay any remaining balance upon leaving City service or as may otherwise be provided in Subsection 3.28.~~820700~~.E.
- B. The outstanding balance owing and payable by the Reclassified Tier 1 member shall be determined by the Board's actuary. In the event there is any dispute regarding the amount attributable to such Reclassified Tier 1 member or any other issue related to the liability associated with this reclassification, the board

shall determine the issue based on the relevant information presented to the board. Any decision made by the Board shall be final and binding.

- C. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, the Reclassified Tier 1 member must satisfy the outstanding balance of his or her liability under Section 3.28.200.A.1, as determined by the Board's actuary, through either a transfer or rollover from the employee's Code Section 457(b) deferred compensation plan account or through a lump-sum after-tax payment.
- D. In order for a Reclassified Tier 1 member to satisfy his or her outstanding liability, the member must make the payment in the time and manner established by the Board, provided however, the entire outstanding liability must be paid concurrent with the Reclassified Tier 1 member's separation from City service or as may otherwise be provided in Subsection 3.28.820700.E.
- E. If a Reclassified Tier 1 member fails to satisfy his or her outstanding liability within sixty (60) days from the later of such Reclassified Tier 1 member's separation from City service or passage of this Section 3.28.820700.E by the City Council of the City of San José, ~~the Reclassified Tier 1 member shall be reclassified as a Tier 2 member and~~ such member shall only receive a portion of the Tier 1 benefits provided under this Plan that is the actuarial equivalent (as determined in the sole discretion of the Boards in consultation with their actuaries) of the amount such member paid for under the applicable provisions of this Plan attributable to Tier 2 membership under this Plan.

SECTION 4. Section 3.36.020.15 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

RD:EJM:KML
07/25/2018
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; or

4. Any person who, prior to September 30, 2012, was a member of the Federated City Employees Retirement System established under Chapter 3.24 or the 1975 Federated City Employees Retirement Plan established under Chapter 3.28 and terminated employment with the City without a return of his or her contributions, and later returned to employment with the City in a Police Department position covered by this Plan on or after September 30, 2012; or

5. Any person who, prior to September 30, 2012, was a member of the Federated City Employees Retirement System established under Chapter 3.24 or the 1975 Federated City Employees Retirement Plan established under Chapter 3.28 and terminated employment with the City without a return of his or her contributions, and later returned to employment with the City in a Fire Department position covered by this Plan on or after September 30, 2012.

SECTION 5. 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. Members who are reclassified from Tier 2 membership to Tier 1 membership shall be referred to as Reclassified Tier 1 members for purposes of this Section 3.36.410.A.1. Reclassified Tier 1 members shall:

- i. be individually responsible for their cost, including any unfunded liability, associated with the transition from Tier 2 to Tier 1 membership and must sign a legally binding agreement setting forth the terms and conditions of his or her Tier 1 member status under the Plan; and
- ii. in addition to making the contributions required of Tier 1 members, make additional contributions to pay their entire cost, including any unfunded liability, of the transition from Tier 2 to Tier 1 membership. The additional contributions shall be determined by the Board's actuary and may be based, at least in part, on the period of time each Reclassified Tier 1 member spent as a Tier 2 member prior to reclassification. As a result, the amortization schedule for each Reclassified Tier 1 member may vary; and
- iii. any outstanding balance associated with a Reclassified Tier 1 member's liability for the cost of transition from Tier 2 to Tier 1 membership must be satisfied upon separation from City service. Any outstanding balance attributable to such Reclassified Tier 1 member's liability must be paid in accordance with Section 3.36.720.

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, notwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of Section 3.36.410.A above, 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 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 6. Chapter 3.36 of Title 3 of the San José Municipal Code is amended to add a new Section 3.36.720, to be numbered, entitled and to read as follows:

3.36.720 Satisfaction of Liability for Reclassification as Tier 1

- A. A member who is a Reclassified Tier 1 member under Section 3.36.410.A.1 and leaves City service prior to paying the full cost of the transition from Tier 2 to Tier 1 membership, as that cost is described in Section 3.36.410.A.1, is liable for and shall be required to pay any remaining balance upon leaving City service or as may otherwise be provided in Subsection 3.36.720.E.

- B. The outstanding balance owing and payable by the Reclassified Tier 1 member shall be determined by the Board's actuary. In the event there is any dispute regarding the amount attributable to such Reclassified Tier 1 member or any other issue related to the liability associated with this reclassification, the board shall determine the issue based on the relevant information presented to the Board. Any decision made by the Board shall be final and binding.
- C. Subject to any limits on annual contributions imposed by Section 415 of the Internal Revenue Code of 1986, as amended, the Reclassified Tier 1 member must satisfy the outstanding balance of his or her liability under Section 3.36.410.A.1, as determined by the Board's actuary, through either a transfer or rollover from the employee's Code Section 457(b) deferred compensation plan account or through a lump-sum after-tax payment.
- D. In order for a Reclassified Tier 1 member to satisfy his or her outstanding liability, the member must make the payment in the time and manner established by the Board, provided however, the entire outstanding liability must be paid concurrent with the Reclassified Tier 1 member's separation from City service or as may otherwise be provided in Subsection 3.36.720.E.
- E. If a Reclassified Tier 1 member fails to satisfy his or her outstanding liability within sixty (60) days from the later of such Reclassified Tier 1 member's separation from City service or the passage of this Section 3.36.720.E by the City Council of the City of San José, ~~the Reclassified Tier 1~~such member shall only receive a portion of the Tier 1 benefit provided under this Plan that is the actuarial equivalent (as determined in the sole discretion of the Boards in consultation with their actuaries) of the amount such ~~be reclassified as a Tier 2-~~
~~member paid for and only receive benefits attributable to Tier 2 membership~~

RD:EJM:KML
07/25/2018

under the applicable provisions of this Plan.

PASSED FOR PUBLICATION of title this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk