

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 3.49.030 OF CHAPTER 3.49 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO AMEND THE DEFINITION OF COMPENSATION FOR THE CITY OF SAN JOSE, CALIFORNIA DEFINED CONTRIBUTION PLAN FOR UNIT 99 EMPLOYEES**

**WHEREAS**, the City of San José established the City of San José, California Defined Contribution Plan for Unit 99 Employees ("Plan") effective January 1, 2013, under the San Jose Municipal Code § 3.49.010 *et seq.*;

**WHEREAS**, the Plan is a single employer defined contribution retirement plan established to provide retirement benefits for certain employees of the City of San José who are new employees hired directly into the Executive Management and Professional Employees unit (Unit 99) on or after January 20, 2013, and who have never worked for the City before;

**WHEREAS**, in September 2017, the City of San José discovered that certain compensation was not included in employees' compensation for purposes of determining contributions to the Plan although they came within the Plan's definition of compensation;

**WHEREAS**, in October 2018, the City of San José requested a compliance statement from the Internal Revenue Service with regard to the Plan under the submission procedures of the Voluntary Compliance Program pursuant to Revenue Procedure 2016-51 to amend the definition of compensation retroactive to January 1, 2013;

**WHEREAS**, on September 11, 2018, the City Council adopted an amendment to the definition of compensation in the Plan, commencing October 12, 2018; and

**WHEREAS**, on April 29, 2019, the Internal Revenue Service provided the City of San José with a compliance statement whereby it agreed with the City's corrective method of an amendment to the definition of compensation retroactive to January 1, 2013.

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

Section 3.49.030 of Chapter 3.49 of Title 3 of the San José Municipal Code is amended to read as follows:

**3.49.030 Definitions**

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

- A. "414(h) pick-up contribution account" shall mean the account maintained for a participant under the plan to which participant contributions pursuant to Section 3.49.040 and the adoption agreement shall be credited.
- B. "Account" shall mean the account maintained for a participant under the plan, which may include the following accounts: the employer contribution account, the 414(h) pick-up contribution account, and the rollover contribution account.
- C. "Beneficiary" shall mean a beneficiary designated pursuant to the plan terms.
- D. "City" shall mean the City of San José, California.

E. "Employer contribution account" shall mean the account maintained for a participant under the plan to which City contributions pursuant to Section 3.49.080 and the adoption agreement shall be credited.

F. "Compensation" shall mean, effective January 1, 2013,:- "participant's compensation," within the meaning of Internal Revenue Code Section 415(c)(3), required to be reported as actual wages in Box 1 of Form W-2 for a year for services to the City, except as provided in this Section 3.49.030(F), plus any compensation reduction election under Internal Revenue Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under the City's deferred compensation plan) that is actually paid or includable in gross income during the calendar year. Compensation includes payment for the following:

1. Regular salary;
2. Executive leave;
3. Vacation;
4. Holiday;
5. Sick Leave;
6. Jury duty;
7. Administrative leave;
8. Funeral leave;
9. Paid time off;
10. Personal leave;
11. Witness leave;
12. Cancer screening release time;
13. Military leave;
14. Management performance program retroactive payments; and

15. Any compensation that would be considered a non-pensionable compensation increase under 3.28.030.05(E).

Notwithstanding anything to the contrary, compensation does not include payment for the following:

1. Bilingual pay;
2. Auto allowances;
3. Taxable cellular phone and data stipends;
4. Medical and dental in lieu payments;
5. Higher class management pay;
6. Retention payments;
7. Management performance program bonuses;
8. Premium-related payments;
9. Severance pay; and
10. Vacation balance payoffs.

Compensation also includes certain additional amounts if paid no later than two and one-half (2½) months after severance from employment or the end of the calendar year that includes a participant's severance from employment that, absent a severance from employment, would have been paid to the participant while the participant continued in employment with the City. The compensation of each participant for any plan year shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000) (for 2012), as adjusted for cost of living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). The cost of living adjustment in effect for a calendar year applies to compensation for the determination period that begins with or within such calendar year. Amounts of compensation shall be determined without regard to any community property laws.

- G. "Employee" shall mean any officer or employee of the City of San José, California, who is an executive management or professional employee in Unit 99 who is first hired on or after January 20, 2013.
- H. "Normal retirement age" shall mean age sixty-five (65).
- I. "Participant" shall mean any eligible employee who fulfills the requirements of enrollment into the plan contained in Section 3.49.050, and has not yet received a distribution of his or her entire account under the plan.
- J. "Participation agreement" shall mean the agreement executed and filed by an employee with City, pursuant to Section 3.49.050, in which an employee elects to become a participant in the plan.
- K. "Payroll period" shall mean the normally scheduled payroll for Unit 99.
- L. "Plan document" shall mean any document, including a basic plan and adoption agreement, that is adopted by the City to set forth additional plan provisions.
- M. "Plan year" shall mean a calendar year.
- N. "Rollover contribution account" shall mean the account maintained for a participant under the plan to which rollovers pursuant to Section 3.49.058 and the adoption agreement shall be credited.
- O. "Separation from service" shall mean a severance of a participant's employment with the City for any reason, including retirement. A participant shall be deemed to have separated from service with the City for purposes of the plan when, in

accordance with the established personnel practices of the City, the employment relationship is considered actually terminated. If a participant has not been terminated, but the participant has not performed services for the City for a period of six (6) consecutive months and the participant is not on a paid leave of absence, the participant shall be deemed separated from service for purposes of this plan at the end of the six (6) month period.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk