

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING SECTION 3.36.1290 OF CHAPTER 3.36 OF
TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO
ALLOW FOR CONTINUATION OF SURVIVORSHIP
BENEFITS FOR ACTIVE FIRE MEMBERS KILLED IN THE
LINE OF DUTY**

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), it has been determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General procedure and policy making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

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

Section 3.36.1290 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.1290 Marriage or domestic partnership of surviving spouse or surviving domestic partner - When return of contributions and monthly survivorship allowance are payable

A. Anything in this chapter to the contrary notwithstanding, from and after the effective date of this section, if the surviving spouse or surviving domestic partner of a deceased member who, at the time of death is not a tier 2 member and is fifty-five years of age and is entitled to credit for twenty years of service, or who is entitled to be credited with thirty years of service regardless of whether such member has attained the age of fifty-five, or who was ~~a Police member who was~~ killed in the line of duty, marries or establishes a domestic partnership, such marriage or domestic partnership shall not deprive the surviving spouse or the surviving domestic partner of the return of contributions, plus interest thereon, and monthly survivorship allowances for which he or she is eligible at the time of the member's death under Sections 3.36.1200, 3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280. Such surviving spouse or surviving domestic partner shall, despite such marriage or domestic partnership, be entitled subject to the provisions of this section to receive and shall be paid from the retirement fund, until such surviving spouse or surviving domestic partner dies, such contributions plus interest there on, and such monthly survivorship allowance to which he or she would be entitled pursuant to Sections 3.36.1200, 3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280, as if he or she had not married or established a domestic partnership. In the event that any surviving spouse or surviving domestic partner of any such member has, at any time before the effective date of this section, remarried or established a domestic partnership and for such reason has been deprived of any such contributions, plus interest thereon, and monthly survivorship allowances because of the provisions of Sections 3.36.1200, 3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280, the return of such contributions, and interest thereon (in the event the full return of such contributions, and interest thereon, has not been made at the time of such remarriage or establishment of a domestic partnership), and payment of the monthly survivorship allowance shall be recommenced as of the effective date of this Section and shall be thereafter paid in accordance with Sections 3.36.1200,

3.36.1210, 3.36.1230, 3.36.1240, 3.36.1270 and 3.36.1280, until such surviving spouse or surviving domestic partner dies, and no longer, but no return of contributions plus interest thereon shall be made, and no survivorship allowance shall be paid, for any period between the date such return of contributions plus interest thereon and monthly survivorship allowance was terminated by such remarriage or establishment of a domestic partnership and the effective date of this section, it being the intention that this section shall operate prospectively and not retroactively.

B. As used in this section:

1. For the purposes of Sections 3.36.1200 and 3.36.1210:
 - a. "Surviving spouse" means the person to whom the deceased member was married at the time of the deceased member's death and who survives the deceased member's death.
 - b. "Surviving domestic partner" means the person with whom the deceased member, at the time of the deceased member's death, had established a domestic partnership and who survives the deceased member's death.
2. For the purposes of Section 3.36.1230 and 3.36.1240:
 - a. "Surviving spouse" means the person to whom the deceased member was married at the time of the deceased member's death and at the time the deceased member was retired for service or disability and who survives such deceased member's death.

- b. "Surviving domestic partner" means the person with whom the deceased member, both at the time of the deceased person's death and at the time the deceased member was retired for service or disability, had established a registered domestic partnership and who survives the deceased member's death.
3. For the purposes of Sections 3.36.1270 and 3.36.1280:
- a. "Surviving spouse" means whichever of the following is applicable for the purposes of Sections 3.36.1270 and 3.36.1280:
 - i. The person to whom the deceased member was married at the time of the deceased member's death and who survives the deceased member's death; or
 - ii. The person to whom the deceased member was married at the time of the deceased member's death and at the time the deceased member was retired for service or disability and who survives the deceased member's death.
 - b. "Surviving domestic partner" means whichever of the following is applicable for the purposes of Sections 3.36.1270 and 3.36.1280:
 - i. The person with whom the deceased member, at the time of the deceased member's death, had established a domestic partnership and who survives the deceased person's death; or

- ii. The person with whom the deceased member, both at the time of the deceased person's death and at the time the deceased member was retired for service or disability, had established a domestic partnership and who survives the deceased member's death.

4. "Effective date of this section" also means the effective date of any amendment to this section, as may be applicable.

5. "Killed in the line of duty" means that a ~~Police~~ member dies while a member of this plan and before being retired for service or disability as a direct result of an incident while in the performance of duty in the member's employment with the City. To be covered, the death must not result from a condition unrelated to the specific incident. A ~~Police~~ member who dies after first being on disability retirement with the City is not considered to have been killed in the line of duty for purposes of this Section.

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RD:SH:KML
04/22/2020

PASSED FOR PUBLICATION of title this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk