

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 3.28.200 OF CHAPTER 3.28 AND SECTION 3.36.410 OF CHAPTER 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 RELATING TO REHIRED TIER 1 MEMBER AMORTIZATION INTEREST COSTS**

**WHEREAS**, on July 15, 2015, the City and its sworn bargaining units entered into an Alternative Pension Reform Settlement Framework Agreement relating to litigation arising out of a voter-approved ballot measure, known as Measure B;

**WHEREAS**, on November 23, 2015, the City and its non-sworn bargaining units entered into an Alternative Pension Reform Settlement Framework Agreement relating to litigation arising out of a voter-approved ballot measure, known as Measure B;

**WHEREAS**, on November 8, 2016, San José voters approved Measure F, which incorporated the terms of the Alternative Pension Reform Settlement Framework Agreements in Title 3 of the San José Municipal Code, approved by San José voters on June 5, 2012; and

**WHEREAS**, in part of the Alternative Pension Framework Agreement, members who left the City as Tier 1 members, but returned as Tier 2 members, would be reclassified retroactively to Tier 1 membership and would share 50% of the costs associated with the reclassification to Tier 1;

**WHEREAS**, based on the terms of the Agreements, the members were also responsible for 50% of the interest costs associated with the reclassification;

**WHEREAS**, the City and bargaining units' original intent of this provision was to share the costs 50% without the member incurring more debt to return to Tier 1;

**WHEREAS**, the City and bargaining units have clarified the terms of the Alternative Pension Reform Framework Agreements regarding rehired Tier 1 members and have agreed that the City will pay the interest accrued on the Total UAL Increase from the first full pay period following the effective date of this ordinance until the reclassified Tier 1 member obligation is fully repaid; and

**WHEREAS**, in order to implement this clarification of the Alternative Pension Reform Framework, the following changes are required to be made to Title 3.

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

SECTION 1. 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 and making additional contributions attributable to the cost associated with reclassifying prior members of this Plan, who became Tier 2 members between September 30, 2012 and June 18, 2017, and thereafter remain in the Plan but are no longer considered Tier 2 members as defined under Section 3.28.030.28 ("Reclassified Tier 1 Member"). The additional contributions described in this Section 3.28.200.A.1 are attributable to the entire cost associated with treating Tier 2 service earned by a Reclassified Tier 1 Member as Tier 1 service, including any increase in the unfunded actuarial accrued liability of the benefits. The entire cost associated with treating such Tier 2 service as Tier 1 service, including the increased UAL cost will be referred to as the "Total UAL Increase." The Total UAL Increase shall be determined for each affected member individually by the Board's actuary based upon that member's age, years of service, salary, length of Tier 2 service and other relevant actuarial factors As a result, the amortization schedule for each Reclassified Tier 1 Member's Total UAL Increase may vary.

Notwithstanding the cost sharing ratio for Tier 1 members described in the

first paragraph of this Section 3.28.200.A above, the Total UAL Increase attributable to Reclassified Tier 1 Members shall be shared in a ratio of one for the City and one for the Reclassified Tier 1 Member (1:1) and will be reflected as soon as practicable as an increase in the contribution rates of the Reclassified Tier 1 Members. As a condition of receiving his or her full Tier 1 benefit, a Reclassified Tier 1 Member must:

i. \_\_\_\_\_ pay his or her Total UAL Increase plus accrued interest on the Reclassified Tier 1 Member's Total UAL Increase at the Plan's assumed rate of return from the date the Total UAL Increase is calculated until ~~fully repaid~~ September 3, 2020 (the "Reclassified Tier 1 Member Obligation"). Effective the first full pay period following the effective date of Ordinance No. [xxxxx] amending Chapter 3.28.200.A(1)(i) of the 1975 Federated Employees Retirement Plan in the San José Municipal Code, the City will pay a one-time amount equivalent to the expected future interest accrual on the Tier 1 Reclassified Member Obligation calculated as to the anticipated date to be repaid. In no event shall the City's payment cover interest accrued on the Reclassified Tier 1 Member Obligation prior to the first full pay period following the effective date of the ordinance amendment adding this provision and all interest accrued on the Reclassified Tier 1 Member Obligation prior to such date remains the obligation of the Reclassified Tier 1 Member whether or not previously paid by the Reclassified Tier 1 Member; and

i.ii. \_\_\_\_\_ in addition to making the required Tier 1 member contributions, be individually responsible for his or her Reclassified Tier 1 Member Obligation and commence paying his or her Reclassified Tier 1

Member Obligation as soon as practicable after the board determines the amount of such obligation; and

~~ii.~~iii. execute a legally binding agreement with the City setting forth the terms and conditions of his or her Reclassified Tier 1 Member status under the Plan and payment of his or her Reclassified Tier 1 Member Obligation; and

~~iii.~~iv. fully satisfy any outstanding balance of his or her Reclassified Tier 1 Member Obligation on or before the later of sixty (60) calendar days following the date of the Reclassified Tier 1 Member's separation from City service or receipt of the final remaining balance calculation of such member's Reclassified Tier 1 Member Obligation from the Board. If the entire balance of the Reclassified Tier 1 Member Obligation is not satisfied by such date, benefits for such Reclassified Tier 1 Member shall be determined in accordance with Section 3.28.820.E.

2. The City shall pay its share of the Total UAL Increase through the Plan's amortization of the Plan's UAL as determined by the Board upon the recommendation of its actuary. The City's obligation includes any actuarial gains and losses associated with the Total UAL Increase, including interest from time to time at the Plan's assumed rate or return.
3. Notwithstanding the foregoing, subdivisions 1 and 2 of this Section 3.28.200.A<sub>2</sub> 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.3. shall at all times be shared in the ratio of one for the City and one for the non-Tier 2 members who became a member as a result of Part 21 of Chapter 3.28 of the San José Municipal Code and is not a Tier 2 Member as defined under Section 3.28.030.28 (1:1) and will be reflected as soon as practicable in the 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 2. 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 and making additional contributions attributable to the cost associated with reclassifying members of this Plan 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 June 18, 2017 but on and after June 18, 2017 remain in the Plan but are no longer considered Tier 2 members as defined under Section 3.36.020.15 ("Reclassified Tier 1 Members"). The additional contributions described in this Section 3.36.410.A.1 are attributable to the entire cost associated with treating Tier 2 service earned by a Reclassified Tier 1 Member as Tier 1 service, including any increase in the unfunded actuarial accrued liability, of the benefits. The entire cost associated with treating former Tier 2 service as Tier 1 service, including the increased unfunded actuarial accrued liability will be referred to as the “Total UAL Increase.” The Total UAL Increase shall be determined for each affected member individually by the Board’s actuary as of as based upon that member’s age, years of service, salary, length of Tier 2 service and other relevant actuarial factors. As a result, the amortization schedule for each Reclassified Tier 1

Member may vary. Notwithstanding the cost sharing ratio for Tier 21 members described in the first paragraph of this Section 3.36.410.A above, the Total UAL Increase shall 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 contribution rates for such Reclassified Tier 1 Members. As a condition of receiving his or her full Tier 1 benefit, Reclassified Tier 1 Member must:

- i. pay his or her Total UAL Increase plus accrued interest on the Reclassified Tier 1 Member's Total UAL Increase at the Plan's assumed rate of return from the date the Total UAL Increase is calculated until ~~fully repaid~~ September 3, 2020 (the "Reclassified Tier 1 Member Obligation"). Effective the first full pay period following the effective date of Ordinance No. [xxxxx] amending Chapter 3.36.410.A(1)(i) of the 1961 Police and Fire Department Retirement Plan in the San José Municipal Code, the City will pay a one-time amount equivalent to the expected future interest accrual on the Tier 1 Reclassified Member Obligation calculated as to the anticipated date to be repaid. In no event shall the City's payment cover interest accrued on the Reclassified Tier 1 Member Obligation prior to the first full pay period following the effective date of the ordinance amendment adding this provision and all interest accrued on the Reclassified Tier 1 Member Obligation prior to such date remains the obligation of the Reclassified Tier 1 Member whether or not previously paid by the Reclassified Tier 1 Member; and; and
- ii. in addition to making the required Tier 1 Member contributions, be individually responsible for his or her Reclassified Tier 1 Member

- Obligation and commence paying his or her Reclassified Tier 1 Member Obligation as soon as practicable after the board determines the amount of such obligation; and
- iii. a legally binding agreement with the City setting forth the terms and conditions of his or her Reclassified Tier 1 Member status under the Plan and payment of his or her Reclassified Tier 1 Member Obligation; and
  - iv. fully satisfy any outstanding balance of his or her Reclassified Tier 1 Member Obligation on or before the later of sixty (60) calendar days following the date of the Reclassified Tier 1 Member's separation from City service or receipt of the final remaining balance calculation of such member's Reclassified Tier 1 Member Obligation from the Board. If the entire balance of the Reclassified Tier 1 Member Obligation is not satisfied by such date, benefits for such Reclassified Tier 1 Member shall be determined in accordance with Section 3.36.720.E
2. The City shall pay its share of the Total UAL Increase through the Plan's amortization of the Plan's UAL as determined by the Board upon the recommendation of its actuary. The City's obligation includes any actuarial gains and losses associated with the Total UAL Increase, including interest from time to time at the Plan's assumed rate or return.
  3. 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.3. shall at all times be shared in the ratio of one for the City and one for the non-Tier 2 members who became a member as a result of Part 16 of Chapter 3.36 of the San José Municipal Code and is not a Tier 2 Member as defined under Section 3.36.020.15 members (1:1) and will be reflected as soon as practicable in the contribution rates for such members.

4. Members of this Plan who, prior to September 30, 2012 were Tier 1 members of the Plan established under Chapter 3.28 of the San Jose Municipal Code and became Tier 2 members of this Plan prior to March 31, 2017 and remained in this Plan after March 31, 2017 but are no longer considered Tier 2 members as defined under Section 3.36.020.15 shall also be considered "Reclassified Tier 1 Members." The reclassification of

their Tier 2 service to Tier 1 service and the corresponding benefits of such reclassification for these Reclassified Tier 1 Members shall be subject to the same terms and conditions as the Reclassified Tier 1 Members identified in Section 3.36.410.A.1, including but not limited to those described in Section 3.36.410.A.1 and Section 3.36.720.

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.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2020, 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