

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

*D. D. S. L.*

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 in 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

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