

RD:SH:SH
3/10/2020

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 3.36.020 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.020.3 - "Compensation".

A. "Compensation" means the monthly remuneration paid in cash out of funds controlled by the City to a member in payment for his or her services to the City, excluding the monetary value, if any, of living quarters, board, lodging, fuel, laundry or other advantages of any nature furnished a member in payment of his or her services. Also, when the compensation of a member is a factor in any computation to be made under this Chapter, there shall be excluded from such compensation any payments based on overtime put in by a member except as expressly provided in subsection C below; any travel or uniform or expense allowance; any insurance or medical or surgical or hospital benefits; any workers' compensation benefits except as expressly provided in subsection G. below; peace officer standards training pay except as expressly provided in subsection H. below; any retirement or death or survivorship benefits; any payments paid on a per diem, per hour or any other basis than a monthly basis; and any and all other fringe benefits or items of pay not expressly included in the definition of Compensation under this section 3.36.020.3.

B. "Compensation" shall include holiday pay or any compensation paid to a member in lieu of holiday pay in the case of:

Any member who retires under the provisions of this Chapter, either for service or disability, on or after July 5, 1992; and

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Any former member who separates from City service on or after July 5, 1992, and elects to allow his or her accumulated contributions to remain in the retirement fund pursuant to [Section 3.36.1640](#).

Effective June 28, 2009, compensation in lieu of holiday pay paid to members of this Plan who are employed in the Police Department is incorporated into base pay and thus considered Compensation under subsection A for employees of the Police Department on and after such effective date. Effective October 7, 2018, compensation in lieu of holiday pay paid to members of this Plan who are employed in the Fire Department is incorporated into base pay and thus considered Compensation under subsection A for employees of the Fire Department on or after such date.

C. "Compensation" shall include premium pay paid pursuant to the Fair Labor Standards Act (FLSA premium pay) for regularly scheduled hours for employees who perform fire suppression duties and are assigned to a work schedule in excess of 212 hours in a 28 day work period ~~work week averaging fifty-six (56) hours per week over a twelve (12)-month period~~, subject to the following limitations:

1. "Compensation" shall only include FLSA premium pay which is earned and payable on or after December 28, 1997.
2. "Final compensation" including FLSA premium pay shall not exceed the one hundred eight percent (108%) limitation imposed by Section 3.36.020.5.B.2.
3. This subsection C. shall apply only in the case of:
 - a. A member who retires under the provisions of this Chapter, either for service or disability, on or after July 5, 1998; and
 - b. A former member who separates from City service on or after July 5, 1998, and elects to allow his or her accumulated contributions to remain in the retirement fund pursuant to [Section 3.36.1640](#); and
 - c. A member who dies on or after July 5, 1998, while in City service for which the member receives service credit in this Plan.

D. "Compensation" shall include incentive pay for successful completion, on an annual basis, of training in Police Anti-Terrorist Tactics as certified by the Police Department to the City Finance Department. Effective March 22, 2009, incentive pay for training in Police Anti-Terrorist Tactics is incorporated into base pay and thus considered Compensation under subsection A on and after such date.

E. "Compensation" shall include incentive pay for completing and maintaining an Emergency Medical Technician (EMT) certificate, but only such EMT incentive pay which is earned and payable on or after July 7, 1991. Effective October 7, 2018, EMT incentive pay is incorporated into base pay and thus considered Compensation under subsection A on and after such date.

F. "Compensation" shall include anti-terrorism training pay received by members of the Plan who are employed in the Fire Department, but only such pay which is earned and payable on or after July 1, 2006. Effective October 7, 2018, anti-terrorism training pay received by members of this Plan who are employed in the Fire Department is incorporated into base pay and thus considered Compensation under subsection A on and after such date.

G. "Compensation" shall include disability leave payments paid by the City to a member pursuant to which a member continues to receive full monthly compensation, including but not limited to, disability leave payments made pursuant to Labor Code Section 4850.

H. "Compensation" shall include Peace Officer Standards Training (POST) payments paid by the City to a member except that only POST payments received by such Tier 2 member on or after March 31, 2017 shall be a factor for any computation made under this Chapter.

I. Notwithstanding any other provisions of [Chapter 3.36](#), "Compensation" shall not include any non-pensionable compensation increase, which represents a wage increase, that is effective on or after January 3, 2016. Compensation also shall not include any subsequent increases to non-pensionable compensation due to future

increases to base pay, such as merit increases, step increases, and general wage increases.

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