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## **SEC. 3-501. - DEFINITIONS.**

The following words and phrases as used herein, unless a different meaning is plainly required by the context, shall have the following meanings:

(a)

"Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the Retirement Board, and regular interest.

(b)

"Actuarial present value" shall mean the lump sum amount which is the actuarial equivalent of a future series of payments. The actuarial assumptions used in the determination of an actuarial present value shall be the interest rate and mortality tables last adopted by the Board prior to the time the actuarial present value is being determined.

(c)

"Alternate payee" shall mean the spouse, domestic partner, former spouse, or former domestic partner of a member of this System who, as a result of petitioning a court of competent jurisdiction for the division of community property, has been awarded an interest in the benefits payable to a member. A spouse, domestic partner, former spouse, or former domestic partner who is awarded an interest in such benefits shall not be or become a member of this System by reason of such award or payment of such benefits.

(d)

"Annual leave" referred to in this article, shall mean leave with pay under an annual leave program, which is accrued in lieu of sick leave and vacation leave.

(e)

"Annuity" shall mean equal monthly payments for life derived from contributions made by a member.

(f)

"Beneficiary" shall mean any person in receipt of a retirement allowance, a death benefit, or any other benefit from the Retirement System.

(g)

"Board" shall mean "Retirement Board" as created in [Section 3-505](#) of this article.

(h)

"City service" shall mean service rendered as an employee of the city, other than as a fireman or policeman, for compensation, and for the purpose of the Retirement System a member shall be considered as being in the "city service" only while he is receiving compensation from the city for such service. When city service is a factor in the computation of allowances and other benefits hereunder, fractional years of such service shall be added to make complete years, and any remaining fractional year shall be included in the computation, unless only completed years are required by the context.

(i)

The various types of compensation are as follows:

(1)

"Compensation", as distinguished from benefits under [Division 4](#) of the Labor Code of the State of California, shall mean the remuneration payable in cash by the city, plus the monetary value, as determined by the Council, or if the Council shall not have so determined, then by the Retirement Board, of board, lodging, fuel, laundry and other advantages allowed as remuneration by the city. For individuals who first became members in the System before July 1, 1996, there shall be no limit on the compensation taken into account in determining his or her benefits. For individuals who first became members in the System on or after July 1, 1996, the annual compensation of each member taken into account under the System for any year shall not exceed the maximum amount provided in Internal Revenue Code [Section 401\(a\)\(17\)](#). In applying this rule for individuals who first became members on or after July 1, 1996, the following special rules shall apply:

(i)

Effective with respect to the plan years commencing on or after July 1, 1996, and before July 1, 2002, the maximum amount is \$150,000 as adjusted for cost of living increases by the Secretary of the Treasury. Each subsequent year that maximum is subject to further adjustments for cost of living increases in accordance with regulations issued by the Secretary of the Treasury. Any such increases shall be automatically incorporated into this Code without the need for specifically amending this Code each time the maximum is adjusted.

(ii)

Effective only for the 1996 plan, if any individual is part of the family of a highly compensated employee in the group consisting of the ten most highly compensated employees paid the greatest compensation by the city during the plan year, then such individual shall not be considered a separate employee. Compensation paid to such individual by the city shall be treated as if it were paid to the highly compensated employee. In applying this rule, the term "family" shall include only the spouse of the highly compensated

employee and any lineal descendants of the highly compensated employee who have not attained age nineteen before the end of the plan year and the term "highly compensated employee" shall refer to those employees defined in Internal Revenue Code Section 414(q).

(iii)

If the provisions of subsection (ii) above are applied to any member and his or her family in the aggregate, the compensation counted for each aggregated employee shall be reduced pro rata to stay within the limit of subsection (i), except that if any family member is not participating in any qualified retirement plan sponsored by the city, then the compensation counted for that family member shall be reduced to zero before any other reductions are made under this subsection.

(iv)

Effective with respect to plan years beginning on and after July 1, 2002, the annual compensation of a plan member which exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with [Section 401\(a\)\(17\)\(B\)](#) of the Internal Revenue Code) may not be taken into account in determining benefits or contributions due for any plan year. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(v)

As used in this Section, the term "eligible member" means a person who first became a member of the retirement system prior to July 1, 1996. Pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that Section, eligible members are not subject to the limits of [Section 401\(a\)\(17\)](#) of the Internal Revenue Code.

(2)

"Compensation earnable" by a member shall mean the compensation as determined by the Retirement Board, which would have been earned by the member had he worked, throughout the period under consideration, the average number of days ordinarily worked by persons in the same grade or class of positions as the positions held by him during such period, and at the rates of pay attached to such positions. The compensation for any absence shall be based on the compensation earnable by him at the beginning of the absence, and that for such time prior to his first entering city service, as may be necessary to complete the three consecutive years required in the calculation of "final compensation," shall be based on the compensation earnable by him in the position first held by him in such service.

(3)

"Final compensation" shall mean the highest average monthly compensation earnable by a member during any period of three consecutive years during his membership in the System, using the rate of pay in effect at the time of retirement (including, as to any member retiring on or after July 1, 1976, and prior to August 1, 1976, and as to any member retiring on or after July 1 and prior to August 1 of any fiscal year thereafter, any adjustment of such rate of pay made pursuant to a memorandum of understanding with a formally recognized employee organization approved by the Council prior to January 1 of that fiscal year) and calculated as follows: The compensation attached, as of the date of retirement, including such adjustment thereto as specified above, to the lowest position held during the three highest consecutive years plus one-thirty-sixth of the difference between it and the compensation attached to any higher position held during that period for each month and fraction thereof the higher position was held. For the purposes of this Code, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for such breaks. If a break in service did not exceed six months in duration, time included in the break and compensation earnable during such time shall be included in computation of final compensation, but time included in the break which is in excess of six months and the compensation earnable during such excess time shall be excluded in computation of final compensation.

(4)

When the compensation of a member is a factor in any computation to be made under this article, there shall be excluded from such computation any compensation based on overtime such as, but not limited to, differentials for holidays, any compensation payable, upon separation from city service, for unused accumulated vacation, for unused accumulated annual leave, and any bonus or award payable solely for achievement of proficiency in any skill and not based on any additional or higher duties performed or to be performed by the recipient thereof. "Overtime," for the purposes of this article, is the aggregate city service performed by an employee

as a member in excess of the hours of work considered normal for employees on a full-time basis.

(5)

When the compensation of a member is a factor in any computation under this article, there shall be included in such compensation:

(i)

"Holiday Pay", defined to mean pay received by a member over and above the member's regular base pay, i.e., pay received in a typical paycheck for the member, due to working on a holiday in the payroll period to which the paycheck applies. Holiday Pay does not include holiday pay paid at an overtime rate;

(ii)

"Administrative Leave Allowance" or "Pay in Lieu of Administrative Leave", defined to mean pay received by employees in lieu of base administrative leave. The term does not include pay received by employees in lieu of merit administrative leave;

(iii)

"Miscellaneous Pay", defined to mean those items of miscellaneous pay included in pensionable compensation as of August 31, 2007, and, in addition, bilingual pay, court appearance standby pay, uniform allowance, educational incentive pay, certificate pay, and no other pay; and

(iv)

"Vehicle Allowance", defined to mean payments to members for a vehicle allowance in the form of a flat monthly stipend. The term does not include vehicle allowance paid on the basis of cents per mile.

(6)

When the compensation of a member is a factor in any computation to be made under this article, there shall be excluded from such computation:

(i)

Premiums paid for employee medical, dental, prescription drug, vision, life, long-term disability insurance, or for professional dues or memberships or license renewal fees, which shall not be included as compensation for any retirement purpose, including but not limited to calculating service or disability retirement allowances or survivor continuances.

(ii)

Cash-outs at retirement of accumulated leave balances shall not be included as compensation for any retirement purpose, including but not limited to, calculating service or disability retirement allowances or survivor continuances. Accumulated leave balances at the time an active employee enters DROP shall not be included as compensation for any retirement

purpose, including but not limited to, calculating service or disability retirement allowances or survivor continuances.

(7)

When Holiday Leave of a member is a factor in any computation to be made under this article, the Holiday Leave shall be determined pursuant to the settlement stipulation in *FORCE, et al v. City of Fresno Employees Retirement Board*, Fresno Superior Court Case No. 03 CECG 02595 HAC, effective August 31, 2007.

(j)

"Continuous service" shall mean uninterrupted city service, except that discontinuance of city service from any cause whatever followed by re-entry into city service shall not be considered as a break in the continuity of service but the period of absence shall not count as city service, and except that any absence from city service while on military service shall not be considered as a break in city service and the period of such absence shall count as city service as provided in this article; but time during which a period otherwise has been or shall be absent, for any reason, from city service shall not be included in calculating any benefit under the Retirement System or in determining whether a member qualifies for retirement.

(k)

The various types of contributions are as follows:

(1)

"Accumulated contributions" shall mean accumulated normal contributions.

(2)

"Accumulated normal contributions" shall mean the sum of all the normal contributions, deducted from the compensation of a member, standing to the credit of his individual account, together with regular interest thereon.

(3)

"Normal contributions" shall mean contributions at the rates provided for in [Section 3-523](#), without interest.

(4)

"Contributions" shall mean normal contributions.

(l)

The following definitions apply to domestic partnerships and to domestic partners:

(1)

"Domestic partnership" shall mean (1) a registered domestic partnership that has been established by filing a Declaration of Domestic Partnership with the Secretary of State pursuant to Division 2.5 of the California Family Code; or (2) a legal union of two persons of the same sex, other than a marriage, that was validly formed in a jurisdiction other than California if such union is recognized as a domestic partnership pursuant to California Family Code Section 299.2.

(2)



"Domestic partner" shall mean a person who has entered into a domestic partnership.

(3)

"Former domestic partner" shall mean the person who had established a domestic partnership with a member, where that partnership has since been terminated pursuant to California law or other applicable law.

(4)

"Surviving domestic partner" shall mean the person with whom a deceased member, at the time of death, had established a domestic partnership and who survives the member's death.

(m)

"Disability," as a basis for retirement, shall mean permanent disability or disability of extended and uncertain duration, as determined by the Board upon the basis of competent medical and other information.

(n)

"Employee" shall mean any person who occupied a position created by or which is under the jurisdiction of the city, whose compensation is paid by the city, and who is under the control of the city as to employment, direction, and discharge.

(o)

"Service-connected" in reference to the disability of any member of this System shall mean disability which results from injury or disease arising out of and in the course of the member's employment with the city, and such employment contributes substantially to such disability.

(p)

"Member" shall mean any person included in the membership of the Retirement System as provided in [Section 3-515](#)

(q)

"Pension" shall mean equal monthly payments for life derived from contributions made by the city as provided herein.

(r)

"Prior service" shall mean city service rendered prior to June 1, 1939.

(s)

"Regular interest" shall mean interest at the authorized rate as adopted by the Board and compounded, computed, and credited in the manner prescribed in [Section 3-505](#), including such additional interest as the Board may declare from year to year as authorized under this article.

(t)

"Plan year" shall mean the consecutive 12-month period beginning on July 1 and ending on June 30 of the following calendar year.

(u)

"Limitation year" shall mean the calendar year.

*(Rep. and Added Ord. 5313, 1958, based on former Section 2-801; Am Ord. 5666, 1959; Am. Ord. 6045, 1962; Am. Ord. 6062, 1962; Am. Ord. 6166, 1962; Am. Ord. 6395, 1964; Am. Ord. 6621, 1965; Am. Ord. 68-125, 1968; Am. Ord. 72-116, 1972; Am. Ord. 72-124, eff. 8-10-72; Am. Ord. 73-121, § 1, eff. 8-10-73; Am. Ord. 77-25, § 1, eff. 4-3-77; Am. Ord. 94-29, §§ 1, 2, eff. 5-27-94; Am. Ord. 96-41, § 3, eff. 6-28-96; Am. Ord. 2000-25, § 1, 4-24-00; Am. Ord. 2001-73, § 1, eff. 11-10-01; Am. Ord. 2006-17, § 1, eff. 3-10-06; Am. Ord. 2011-2, §§ 1, 2, eff. 3-7-11; Am. Ord. 2011-3, § 1, eff. 3-11-11; Am. Ord 2012-22, §(o), eff. 1/21/2013).*

**SEC. 3-502. - EFFECT OF REDEFINITION OF FINAL COMPENSATION.** 

The definition of "final compensation," contained in [Section 3-501\(g\)\(3\)](#) as amended by Ordinance No. 72-116, adopted July 20, 1972, shall not be applied to increase or decrease any retirement allowance payable to or on account of any person who died or was retired as a member of the System prior to July 1, 1972. (Added Ord. 72-124, 1972; Am. Ord. 95-40, § 1, eff. 6-23-95).

**SEC. 3-503. - GROUPS OF EMPLOYEES.** 

The various groups of employees shall be as follows, and the Retirement Board shall classify each employee who is eligible for membership in the Retirement System, in one of such groups:

(1)

"Manual worker" shall mean any employee engaged upon duties requiring principally physical exertion, including among others, such positions as laborer, caretaker, janitor, mechanic, gardener.

(2)

"Clerical or Supervisory worker" shall mean any employee engaged upon duties requiring principally mental exertion, including among others, such positions as clerk, deputy, inspector, foreman, etc. (Rep. and Added Ord. 5313, 1958; based on former Section 2-801.1).

**SEC. 3-504. - CREATION OF RETIREMENT SYSTEM.** 

(a)

The City of Fresno Employees Retirement System was created by Ordinance No. 2502, effective June 1, 1939, and said retirement system is continued in effect by this article. Retirement allowances being paid at the close of the day next preceding the effective date hereof, to persons whose retirements were effective prior thereto, shall be continued and paid in the same respective amounts to such persons, but such persons shall otherwise be subject to the provisions of this article. The mortality, service and other tables and the rates of contribution for members as recommended from time to time by the actuary and the valuations determined by him from time to time and approved by the Retirement Board in accordance herewith shall be final and conclusive, and the Retirement System shall be based thereon. The total amount, as determined by the actuary and approved by the Retirement System in accordance with this article, shall be paid into the Retirement Fund, hereinafter created, by the city during such year.

(b)

The purpose of the System is to secure contributions from the City and from employees, and to distribute System assets only to members, retired members and their beneficiaries, pursuant to the System's plan of benefits and to pay reasonable expenses of administration.

(c)

No part of the System's assets or income may be used for, or diverted to, purposes other than for the exclusive benefit of members, retirees, or their beneficiaries and no part of the System's assets or income may revert to the City.

(d)

Forfeitures arising from termination of employment, death, or for any other reason, will not be applied to increase the benefits any member, retired member, or beneficiary would otherwise have received from the System at any time prior to the termination of the System, although the effect of forfeitures may be anticipated in determining the System's costs.


(e)

Upon termination of the System or upon the complete discontinuance of contributions to the System, the rights of each employee to benefits accrued to the date of such termination or discontinuance are non-forfeitable.

(f)

The City of Fresno Employees Retirement System is established as a qualified governmental defined benefit plan under the Internal Revenue Code of 1986, as amended from time to time (hereinafter referenced as "Internal Revenue Code" for purposes of this Article), pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue Code as applicable and applicable Treasury regulations and other guidance.

*(Rep. and Added Ord. 5313, 1958, based on former Sec. 2-802; Am. Ord. 6062, 1962; Am. Ord. 96-54, § 42, eff. 9-20-96; Am. Ord. 2001-15, § 1, eff. 3-26-01; Am. Ord. 2011-2, § 3, eff. 3-7-11).*

**SEC. 3-505. - RETIREMENT BOARD CREATED. POWERS AND DUTIES. RETIREMENT ADMINISTRATOR TO BE SECRETARY. POWERS AND DUTIES OF RETIREMENT ADMINISTRATOR.** 

(a)

The management and control of this System shall be vested in the Board which is hereby created. The Board shall be the successor to, and have the powers and duties of, the Pension Board created by Ordinance No. 3116, as amended, in addition to the powers and duties conferred by this article. The Board shall consist of the following five members:

(1)

Two members who are city management employees appointed by the Mayor and approved by the Council;

(2)

A member who is a manual worker, elected by members who are manual workers in an election conducted by the Board;

(3)

A member who is a clerical or supervisory worker, elected by members who are clerical or supervisory workers in an election conducted by the Board;

(4)

A qualified elector of the County of Fresno, not connected with the government of the City of Fresno, elected by the previously designated four members. If such person has been retired for service or disability, and is receiving or is entitled to receive a retirement allowance under the Fresno Fire and Police Retirement System, such person shall be elected by a unanimous vote of the previously designated four members. A person receiving or entitled to receive a retirement allowance under the Employees Retirement System shall not be eligible to serve on the Board.

(5)

The four employee Board members shall serve without compensation. The four employee Board members shall determine whether, in what amount, and under what conditions a stipend for attending Board meetings and for participating in other activities directly related to the performance of Board duties is payable from the Retirement Fund to the Board member they elect.

(b)

The Board, in conjunction with the Fire and Police Retirement Board, shall appoint and direct a retirement administrator who shall be a member of the City of Fresno unclassified service; shall serve at the Boards' pleasure; shall report to the Boards; shall administer the retirement office and its financial affairs; shall appoint, suspend, and remove subordinate employees subject to the Civil Service System provisions of the City of Fresno Charter and the Municipal Code; and shall perform such other administrative duties as the Boards require. The Retirement Administrator shall serve as the Secretary of the Board without additional compensation.

(c)

The Board shall, when necessary, employ a consulting actuary, who shall be a person skilled by training and experience, in both the technical and administrative features of retirement systems. The Board may employ or contract for professional or consulting services, including legal services, to carry out and effect the functions of the Board.

(d)

The Board shall have the sole power and authority to hear and determine all facts pertaining to applications for and awards of any benefits under the System, or any matters pertaining to the administration thereof.

(e)

As of June 30, 1956, and thereafter at intervals of not to exceed three years, the Board shall make an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries, and further, shall make an actuarial valuation of the assets and liabilities of the System. From time to time the Board shall determine the rate of interest

being earned on the Retirement Fund. Upon the basis of all or any of such investigation, valuation and determination, the Board shall:

(1)

Adopt for the System such interest rate and mortality, service and other tables, or any of such items, and any other actuarial assumptions, as shall be deemed necessary; and shall set forth the actuarial assumptions as adopted in its rules.

(2)

Make such revision in the city's and member's rate of contribution under the System as shall be deemed necessary to comply with this article, provided that before such revised rates of contributions are adopted by the Board, a public hearing on the question of the proposed revision shall be held by the Board, and,

(3)

Transfer to or from, as the case may be, either or both of (i) the accumulated investment income in excess of interest credited to contributions, and (ii) the accumulated contributions of the city held for the benefit of members on account of current and prior service, amounts necessary to bring amounts available, in the accounts required herein to be kept, to meet the obligation of the System on account of benefits that have been granted, including the annuity portion of such benefits, to or on account of persons who have retired or died, on the basis of the mortality tables and interest rate adopted by the Board.

(f)

The Board shall determine the city service rendered by members, and shall fix and may modify allowances for service and disability and fix other benefits. One year and proportionate parts thereof shall be credited on the basis of not more than two hundred fifty nor less than two hundred twenty days of city service rendered by per diem employees, and on the basis of ten months or more of city service rendered by monthly employees, but not more than one year shall be credited for all service in any fiscal year. Time during which a member was or shall be absent from city service without pay shall not be allowed in computing service except as provided in this article. Time during which a member is absent with compensation shall be credited as service in the same proportion that such compensation bears to the compensation earnable by the member in full-time city service.

(g)

The Retirement Administrator shall credit contributions of members, of beneficiaries and of the city with interest, at the rate adopted by the Board from time to time in the manner provided in this section, compounded on June 30 of each year, and computed and credited as the Board shall prescribe. The Board, however, at the end of each fiscal year, may credit to all contributions held in the Retirement Fund at the end of such fiscal year such additional interest as it may deem proper in the light of the earnings on the Retirement Fund during such fiscal year; provided, that the total interest credited to contributions during any fiscal year shall not exceed the earnings on the Retirement Fund during that year; and provided further, that

interest at the rate adopted by the Board pursuant to this section, compounded annually, shall be used in the calculation of benefits under any mortality table adopted by the Board, regardless of any additional interest allowed on contributions under this subsection (g).

(h)

The Retirement Administrator shall keep in convenient form such data as shall be necessary for the actuarial valuation of the System, and, in addition to such other records and accounts as the Board may require, shall keep such records and accounts as shall be necessary to show at any time:

(1)

The total accumulated contributions of members;

(2)

The total accumulated contributions of retired members less the annuity payments made to such members;

(3)

The accumulated contributions of the city held for the benefit of members on account of service credited to members;

(4)

All other accumulated contributions of the city, which shall include the amounts available to meet the obligation of the city on account of benefits that have been granted and on account of prior service of members.

(i)

Credit for prior service shall be granted to each member who has rendered such service as defined herein and who entered the Retirement System on or before June 1, 1939, or who enters thereafter, provided that prior service rendered prior to a discontinuance of city service followed by re-entrance into city service after the elapse of more than one year shall not be credited. However, prior service so credited shall be for the basis for a retirement allowance or benefit as provided herein only if membership continues unbroken until retirement on a retirement allowance or until granting of such other benefit, provided that a termination of membership by the withdrawal of contributions followed by the re-deposit of such contributions upon re-entrance into city service shall not constitute a break in membership. (Orig. Ord. 4789; Rep. and Added Ord. 5313, 1958; Am. Ord. 5666, 1959; Am. Ord. 6030, 1961; Am. Ord. 68-125, 1968; Am. Ord. 73-91, § 2, eff. 7-8-73; Am. Ord. 76-50, § 1, eff. 7-4-76; Am. Ord. 84-43, § 1, eff. 5-4-84; Am. Ord. 85-167, § 3, eff. 11-239-85; Rep. and Added Ord. 90-54, §§ 1, 2, eff. 7-13-90; Am. Ord. 95-40, § 2, eff. 6-23-95; Am. Ord. 96-54, §§ 43—47, eff. 9-20-96; Am. Ord. 2001-15, § 2, eff. 3-26-01; Am. Ord. 2001-49, § 1, eff. 7-3-01; Am. Ord. 2005-85, § 1, eff. 9-25-05).

## **SEC. 3-506. - ABSENCES ON MILITARY SERVICE.**

(a)

It is the intent of this section to comply with the reemployment of members from military service as set forth in [section 1101](#) of the Charter of the City of Fresno; in the Uniformed Services Employment and Reemployment Rights Act (USERRA), codified as Chapter 43 of Title 38 of the United States Code; and in section 414(u) of the Internal Revenue Code. Notwithstanding any provision of this article to the contrary, contributions, benefits, and credit for service with respect to military service shall be provided in accordance with section 414(u) of the Internal Revenue Code.

(b)

Any member absent on military service, who returns to city service not later than one hundred eighty days after the member's honorable discharge from such service (unless that period is extended by USERRA), shall receive credit for the time of the absence as service in the same manner as if the member had not been absent. Such member shall not be required to contribute to the Retirement System for the time of such absence (unless that period is extended by USERRA), and the member's rate of compensation during such absence, for purposes of the System, shall be the same as the member's rate immediately prior to the beginning of such absence. This section shall be applied retroactively to members in city service who were absent on military service prior to the effective date of this ordinance.

(c)

Military service means the performance of duty on a voluntary or involuntary basis, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and attending a fitness-for-duty examination, in the Armed Forces, the Army or Air National Guard, the commissioned corps of the Public Health Service, or any other category of persons designated by the President of the United States in time of war or emergency.

(d)

The city's liability under the System for benefits based on service so credited, shall be included in the liabilities which are used as the basis for the city's current service rate of contribution or its prior service annual installment, as the case may be, at their periodical determination as required by this article.

(e)

Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by [Section 401\(a\)\(37\)](#) of the Internal Revenue Code, survivors of a member, are entitled to any additional benefits that this Code would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.

(f)

Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments as defined under Section

3401(h)(2) of the Internal Revenue Code from an employer shall be treated as an employee of the employer making the payment, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

*(Added Ord. 5313, 1958, Based on former Sec. 2-804; Am. Ord. 5666, 1959; Am. Ord. 2002-37, § 1, eff. 8-22-02; Am. Ord. 2011-2, § 4, eff. 3-7-11).*

### **SEC. 3-507. - PROPOSED AMENDMENTS TO BE SUBMITTED TO RETIREMENT BOARD.**

No amendment or other modification of the Fresno City Employees Retirement System ordinance, as now existing and as hereafter amended, shall be made by the Council, unless such amendment or other modification shall be previously submitted to the Retirement Board for its consideration. (Added Ord. 5313, 1958, Based on former Sec. 2-805; Am. Ord. 96-54, § 48, eff. 9-20-96).

### **SEC. 3-508. - ESTIMATES OF AGE AND SERVICE.**

If it shall be impracticable for the Retirement Board to determine from the records the length of service, the compensation or the age of any member, the said Board may estimate, for the purposes hereof, such length of service, compensation or age. (Added Ord. 5313, 1958, Based on former Sec. 2-806).

### **SEC. 3-509. - BENEFITS EXEMPT FROM EXECUTION.**

The right of a person to a pension, an annuity, a retirement allowance, or the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit, or any other right or benefit accrued or accruing to any person under the provisions hereof and the moneys in the fund created herein, shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable; provided, however, that the right of any member to the return of contributions upon his permanent separation from the city service may be assigned by such member to any credit union in which eligibility for membership is limited to persons employed or formerly employed by the city, as collateral for any loan made by such credit union directly to such member; and provided further, that no such assignment by a member to a credit union shall be deemed a waiver by such member of his right, under any provision of this article, to allow his accumulated contributions to remain in the Retirement Fund. Assignments permitted hereunder shall be deemed acknowledged by the Board upon the filing thereof with the Retirement Administrator, but neither the city, its officers and employees nor the Board, its members and employees shall be liable to any credit union for any loss or damage on account of failure for any reason to give effect to any such assignment. (Added Ord. 5313, 1958, Based on former Sec. 2-807; Am. Ord. 6396, 1964; Am. Ord. 96-54, § 49, eff. 9-20-96).

### **SEC. 3-510. - TIME TO APPLY FOR BENEFITS.**



Proceedings before the Retirement Board for the collection of benefits provided under the Retirement System, upon the death of a member or beneficiary, must be commenced within one year from the date of death, or from the date of appointment of a guardian or trustee of the person to whom the said benefits would be payable, if such person is incompetent or under twenty-one years of age. (Added Ord. 5313, 1958, based on former Sec. 2-808).

**SEC. 3-511. - APPLICATION FOR REHEARING.** 

Any applicant, or in the event of the death or incompetency of the applicant, any person legally qualified to act for said applicant, may file an application for rehearing of any application, whether for a benefit hereunder or retirement, within thirty days after written notice of the determination by the Retirement Board has been sent by mail to the applicant or his attorney of record, upon any of the following grounds:

- (1)  
That the Retirement Board acted without and in excess of its powers;
- (2)  
That the order, decision, or award was procured by fraud;
- (3)  
That the evidence does not justify the determination of said Retirement Board;
- (4)  
That the applicant has discovered new evidence material to him which he could not, with reasonable diligence, have discovered or procured at the hearing. (Added Ord. 5313, 1958, based on former Sec. 2-809; Am. Ord. 5666, 1959).

**SEC. 3-512. - DETERMINATION OF APPLICATION FOR REHEARING.** 

The determination of the Retirement Board on any application for rehearing shall be made within sixty days after the filing thereof, or said application shall be deemed denied and such determination shall be final and conclusive and it shall have no jurisdiction to entertain any subsequent application regarding the same matter. (Added Ord. 5313, 1958; based on former Sec. 2-810).

**SEC. 3-513. - CREATION AND CONTROL OF RETIREMENT FUND.** 

- (a)  
A trust fund is hereby created, to be known as the Fresno City Employees Retirement Fund and to consist of all the moneys paid into it as herein provided, whether such moneys shall take the form of cash, securities or other assets. The Retirement Board shall have exclusive control of the administration and investment of the said fund.
- (b)  
Reserved.
- (c)

Reserved.

(d)

Reserved.

(e)

Except as provided in this article, no member or employee of the Retirement Board shall have any interest, direct or indirect in the making of any investment, or in the gains or profits accruing therefrom. No member of the Retirement System and no member or employee of the said Board, directly or indirectly, for himself or as an agent or partner of others, shall borrow any of its funds or in any manner use the same except to make such current and necessary payments as are authorized by said Board; nor shall any member or employee of the Board become an indorser or surety or become in any manner an obligor for moneys invested by the Board. Effective as of July 1, 1989, a member or employee of the Retirement Board shall not engage in a transaction prohibited by [Section 503](#)(b) of the Internal Revenue Code.

(f)

In the exercise of its control of the administration and investment of the Retirement Fund, the Retirement Board may by resolution specify certain classes or kinds of securities in which the moneys in the Retirement Fund may be invested and may authorize the Retirement Administrator to:

(1)

Invest moneys in the Retirement Fund, from time to time as such moneys become available, in securities of any of the classes or kinds so specified, and

(2)

Surrender matured securities in the Retirement Fund upon their maturity and reinvest the proceeds in securities of any such specified classes or kinds.

(g)

The Retirement Fund may participate under [Section 401](#)(a)(24) of the Internal Revenue Code in a qualified group trust that meets the requirements of [Section 401](#)(a) of the Internal Revenue Code in accordance with Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67.

*(Added Ord. 5313, 1958, based on former Sec. 2-811; Am. Ord. 6395, 1964; Am. Ord. 96-54, §§ 50—55, eff. 9-20-96; Am. Ord. 2011-2, §§ 5, 6, eff. 3-7-11).*

## **SEC. 3-514. - INVESTMENTS.**

(a)

The Board is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire for their own account.

(b)

In investing, reinvesting, purchasing, acquiring, exchanging, selling and managing the assets of the Retirement Fund, the Board shall exercise the judgement and care, under the circumstances then prevailing, which persons of prudence, discretion and intelligence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims. In addition, the Board shall diversify the investments of the Retirement Fund in order to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to diversify.

(c)

The Board may by resolution adopt rules and regulations to carry out the provisions of this section and to govern procedures of the Board in the management of the assets of the Retirement Fund.

(d)

Should an investment manager or investment advisor be retained under contract to provide investment management or investment advisory services with respect to the purchase, sale or exchange of stocks, shares and securities to be purchased or purchased with moneys in the Retirement Fund, the Board may by contract authorize such investment manager or investment advisor to purchase, sell or exchange stocks, shares and securities without prior approval by the Board of any such transaction; provided, however, that any such contract shall provide that the investment manager or investment advisory shall comply with investment guidelines adopted by the Board by resolution. (Added Ord. 69-23, 1969; Am. Ord. 74-13, § 1, eff. 3-3-74; Am. Ord. 77-42, § 2, eff. 5-27-77; Am. Ord. 82-52, § 1, eff. 6-18-82; Am. Ord. 85-119, § 2, eff. 9-13-85; Am. Ord. 90-11, § 1, eff. 3-2-90; Am. Ord. 92-27, § 3, eff. 5-22-92; Am. Ord. 93-64, § 3, eff. 11-12-93; Am. Ord. 96-54, §§ 56—58, eff. 9-20-96).

### **SEC. 3-515. - PERSONS INCLUDED.**

With the exception of those employees who are excluded from membership as provided in [Section 3-518](#), all employees shall continue to be or shall become members of the Retirement System as follows:

(1)

Every member of the Retirement System who became a member on or before July 1, 1952 shall continue to be such a member.

(2)


Every employee who enters city service after July 1, 1952 and prior to May 31, 1965, shall become a member of the Retirement System upon such entry provided such employee is certified from a Civil Service list for permanent employment; otherwise such employee shall become a member of the Retirement System upon completion of six months of city service uninterrupted by a break of more than one month.

(3)

Every employee who enters city service on and after June 1, 1965, shall become a member of the System upon such entry. (Added Ord. 5313, 1958, based on former Sec. 2-812; Am. Ord. 6621, 1965; Am. Ord. 2001-32, § 1, eff. 5-10-01).

**SEC. 3-516. - CITY EMPLOYEES FORMERLY EMPLOYED BY FRESNO REDEVELOPMENT AGENCY; CREDIT FOR SERVICE.** 

Any other provision of this article to the contrary notwithstanding, any person who, on May 2, 1976, was employed by the Fresno Redevelopment Agency ("Agency") and who thereafter entered the city service as a consequence of the consolidation of that Agency and the city, shall be given credit for his total continuous service with both the Agency and the city for the purpose of satisfying any minimum service requirement set forth in this article; provided, however, that the retirement allowance or other benefit payable to or on behalf of such person under this article shall be computed based upon actual years of city service only, and not upon any combination of Agency and city service. (Added Ord. 76-71, § 1, eff. 8-29-76).

**SEC. 3-517. - CITY EMPLOYEES FORMERLY EMPLOYED BY COUNTY WATER WORKS DISTRICTS; CREDIT FOR SERVICE.** 

Any other provision of this article to the contrary notwithstanding, any person who, on October 1, 1988, was employed by the County Water Works Districts ("Districts") and who thereafter entered the city service as a consequence of the consolidation of the Districts and the city, shall be given credit for his/her total continuous service with both the Districts and the city for the purpose of satisfying any minimum service requirement set forth in this article; provided, that the retirement allowance or other benefit payable to or on behalf of such person under this article shall be computed based upon actual years of city service only, and not upon any combination of District and city service. (Added Ord. 89-2, § 1, eff. 2-3-89).

**SEC. 3-518. - PERSONS EXCLUDED.** 

The following employees shall not be members of the Retirement System:

(1)

Elective officers and non-employee members of Boards and Commissions;

(2)

Any persons not otherwise members who are appointed to limited positions or interim positions, appointed on a provisional basis, or appointed to intermittent or part-time positions (as these items are defined in Article 16 of [Chapter 2](#) of this Code, in its present form or as it may be amended in the future);

(3)

The City Manager, City Attorney, City Clerk, Council Assistant or Department Head otherwise eligible for membership but not already a member because retirement

benefits differ from those contained in this Article have been established for them separately by resolution of the Council of the City of Fresno; and

(4)

Employees of the Fire or Police Departments or the Airport Public Safety Division, who are firefighters or police officers or public safety officers/supervisors as defined in Article 3 or Article 4 of this Chapter.

The exclusion heretofore of persons from membership, in accordance with this section, is hereby validated and confirmed. (Added Ord. 5313, 1958, based on former Sec. 2-183; Am. Ord. 5474, 1959; Am. Ord. 5666, 1959; Am. Ord. 95-39, § 3, 6-23-95; Am. Ord. 2001-32, § 2, eff. 5-10-01).

### **SEC. 3-519. - UNCLASSIFIED EMPLOYEES.**

Any person while employed by the city, who was considered to be excluded by ordinance from membership in the Retirement System, because the person was in a full-time position in the unclassified service, as defined by the city's Civil Service rules or in a full-time position listed in [section 3-518\(2\)](#), shall receive credit for service rendered by the person while in such unclassified service or position and was so considered, with the same effect as if the person had never been considered not to be a member, provided that the person becomes a member of the Retirement System without a break in service. Each such employee, prior to receiving credit for such service, shall pay to the System, at times and in a manner fixed by the Retirement Board, but in any event prior to retirement, (1) contributions equal to the contributions the employee would have been made if the employee had never been so considered not to be a member, plus (2) interest at the rate fixed by the board hereafter, compounded monthly, on contributions so payable, which remain unpaid, from time to time. (Added Ord. 5313, 1958, based on former Sec. 2-813.1; Am. Ord. 5666, 1959; Am. Ord. 2001-32, § 3, eff. 5-10-01).

### **SEC. 3-520. - DUTY OF DEPARTMENT HEAD.**

It shall be the duty of the head of each office or department to give immediate notice in writing to the Retirement Administrator of the change in status of any member in his office or department resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, death, or other cause. The head of each office or department shall furnish such other information concerning any member as the Retirement Administrator may require. (Added Ord. 5313, 1958, based on former Sec. 2-814; Am. Ord. 96-54, § 59, eff. 9-20-96).

### **SEC. 3-521. - DUTY OF MEMBER OR BENEFICIARY.**

Each member and beneficiary shall be subject to all the provisions hereof and to all the rules and regulations adopted by the Retirement Board, and shall furnish to the Board such information affecting his status as a member or beneficiary of the system as the Board may require. (Added Ord. 5313, 1958, based on former Sec. 2-815).

### **SEC. 3-522. - MEMBERSHIP CEASES—WHEN.**

Should any member die or retire, or should he be paid more than one-quarter of his accumulated normal contributions, he shall thereupon cease to be a member. (Added Ord. 5313, 1958, based on former Sec. 2-816; Am. Ord. 5666, 1959).

### **SEC. 3-523. - NORMAL CONTRIBUTIONS OF MEMBERS.**

The normal rates of contribution of all members shall be those adopted by the Retirement Board and shall be based on nearest age at time of entry into the Retirement System. Such normal rate for each member shall be such as will provide, on the basis of experience as interpreted by the actuary, an average annuity at age fifty-five equal to one-third (1/3) of (1) one-fiftieth (1/50) of such member's final compensation, for each of the first twenty-five years of service as a member, plus (2) one one-hundredth (1/100) of such final compensation, for each year of service in excess of the first twenty-five years of such service, not including automatic continuance to dependents. The actual amount of annuity receivable, however, by a member upon retirement for service shall be the actuarial equivalent of the member's accumulated contributions as provided in [Section 3-541](#) hereof. The rates so adopted shall remain in full force and effect until revised or changed by the Retirement Board in the manner provided in [Section 3-504](#). (Added Ord. 5313, 1958, based on former Sec. 2-817; Am. Ord. 6809, 1966; Am. Ord. 6809, 1966; Am. Ord. 69-60, 1969; Am. Ord.79-71, § 1, eff. 2-23-79)

### **SEC. 3-524. - PAYMENT OF CONTRIBUTIONS OF MEMBERS BY CITY, APPLICATION OF COLLECTIVE BARGAINING LAWS.**

Notwithstanding any other provision of law, the city shall pay all of the contributions required to be paid by all members. Such payments shall be reported as employer-paid", "picked-up" contributions under Section 414(h)(2) of the Internal Revenue Code, although designated as normal contributions under this Code, and shall be credited to the members' accounts. Such payments shall be made in lieu of a like amount of salary otherwise payable to all members, so that the member's compensation shall in no way be affected by such payments. Notwithstanding any provision to the contrary, a member shall not be permitted to opt out of this Section or to receive the contributed amounts directly instead of having them paid by the city to the City of Fresno Employees Retirement System.

Nothing in this section shall be construed to limit the authority of the city to periodically increase, reduce, or eliminate the payment by the city of all or a portion of the contributions required to be paid by the members.

The provisions of this section shall be subject to any applicable collective-bargaining laws.

*(Added Ord. 86-39, § 2, eff. 4-18-86; Am. Ord. 2011-2, § 7, eff. 3-7-11).*

### **SEC. 3-525. - RATES FOR CERTAIN AGES.**

The normal rate of contribution established for age fifty-four shall be the rate for any members who have attained a greater age before entrance into the Retirement System. In like manner, the normal rate of contribution established for age twenty shall be the rate for any member who enters the Retirement System at a lesser age. (Added Ord. 5313, 1958, based on former Sec. 2-818; Am. Ord. 69-60, 1969).

#### **SEC. 3-526. - NORMAL CONTRIBUTIONS OF MEMBER UPON RE-ENTRY.**

Upon a member's re-entry into city service from service or disability retirement, or following his election to allow his accumulated contributions to remain in the Retirement System, his normal rate of contribution shall be based upon an age determined by adding the number of completed years of his absence from city service to the age upon which his normal rate of contribution as it was prior to said retirement or election, as the case may be, was based. (Added Ord. 5313, 1958, based on former Sec. 2-819; Am. Ord. 5666, 1959).

#### **SEC. 3-527. - COLLECTION OF MEMBER'S CONTRIBUTIONS.**

The Retirement Board shall certify to the head of the proper office or department and the Controller the normal rate of contribution for each member provided for in [Section 3-523](#). The head of such office or department or the Controller shall apply such rate of contribution to the compensation of the member to be contributed by each member, and shall furnish immediately to the Retirement Board a copy of each and every such payroll; and each of said amounts shall be deducted by the Controller and shall be deposited together with regular interest, to the individual account of the member for whom the contribution was made. The Controller, however, may accept cash payments by any member of amounts necessary to correct or adjust the contribution account of such member, the amount so accepted to be deposited and credited in the same manner as if deducted on a payroll. Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his salary or compensation, and payment less said contribution shall be a full and complete discharge and acquittance of all claims and demands whatsoever, for the services rendered by such person during the period covered by such payment, except his claims to the benefits to which he may be entitled under the provisions hereof. (Added Ord. 5313, 1958, based on former Sec. 2-1820).

#### **SEC. 3-528. - CORRECTION OF ERRORS.**

If more or less than the correct amount of contributions required by members, or the city, is paid, proper adjustment shall be made in connection with subsequent payments, or such adjustments may be made by direct cash payments between the members, or the city, and the Board. Adjustments to correct any other errors in payments to or by the Board, including adjustments of contributions, with interest, which are found to be erroneous as the result of corrections of dates of birth, may be made in the same manner. Adjustments to correct overpayment of a retirement allowance may also be made by adjusting the allowance so that the retired person or the retired person and his beneficiary, as the case may be, will receive the actuarial equivalent of the allowance to which the member is entitled.

Underpayments or delayed payments or corrected payments or similar adjustments to a member or person shall include interest, where appropriate, at the interest rate adopted by the Board. (Added Ord. 5666, 1959; Am. Ord. 95-40, § 3, eff. 6-23-95).

**SEC. 3-529. - CITY CONTRIBUTIONS FOR CURRENT SERVICE.** 

(a)

There shall be paid into the Retirement Fund, by contributions of the City, amounts necessary to pay all pensions, other benefits allowable under the Retirement System to members on account of current services and not provided by members' accumulated contributions derived from the normal rates of contribution provided for in [Section 3-523](#), and all administrative costs as set forth in [Section 3-532](#). The Board shall annually apply the city's current service rate of contributions as determined by the actuary and approved by the Board, to the aggregate amount of members' compensation earned, or (with respect to members absent in military service and either themselves contributing or having contributions made for them by the city) members' compensation earnable during said month and shall certify the result of such application to the Controller segregated according to compensation paid or payable from:

(1)

Funds of operating public utilities;

(2)

Bond funds not included under preceding item (1);

(3)

Other special funds;

(4)

All other sources.

(b)

There shall be paid to the Retirement Fund from each of the funds listed above, an amount equal to the amount certified by the Board as required by this section. The Controller shall transfer the amount certified with respect to all other sources as set forth in item (4) above, to the Retirement System from the budget appropriations of the Retirement Fund for the then fiscal year. Nothing in this section, however, shall prevent the determination of the amount of city's contributions required to be transferred from any particular fund, as being the amount which bears the same ratio to the total city's contributions to be transferred, as the compensation paid to Retirement System members under such fund for the period in question, bears to total compensation paid to Retirement System members from all funds for said period.

(c)

Any other provisions of this article to the contrary notwithstanding, the Board may provide for the funding over a period of thirty years of any deficit which may result to the Retirement System because of amendments of this article effected by Ordinance No. 69-60. (Added Ord.



5313, 1958; Am. Ord. 69-60, 1969; Am. Ord. 91-49, § 1, eff. 6-7-91; Am. Ord. 96-54, § 60, eff. 9-20-96).

### **SEC. 3-530. - CITY CONTRIBUTION FOR PRIOR SERVICE.**

There shall be paid into the Retirement Fund, by contributions of the city, the amounts necessary to pay all pensions and all other benefits allowable under the Retirement System to members on account of prior service. Until the amount accumulated in the Retirement Fund from contributions of the city made because of prior service becomes not less than the then present value of all amounts thereafter payable from the Retirement Fund on account of prior service, the City shall contribute annually to the Retirement Fund under this section, at a rate of contribution determined from time to time by the actuary, an amount which will liquidate, during the remaining working lifetimes of the members of the Retirement System, computed on an aggregate basis, the difference between such then present value and the funds on hand at the time of the determination of such rate of contribution, to meet such obligations on account of prior service. The Controller shall transfer during each fiscal year to the Retirement Fund, from the budget appropriation for the then fiscal year, an amount equal to such annual contribution; provided, however, that any portion of such annual contribution which was payable on account of prior service of members rendered as employees of municipally-owned public utilities shall be paid from the funds of such public utility from which such prior service was rendered. (Added Ord. 5313, 1958, based on former Sec. 2-822; Am. Ord. 6697, 1965).

### **SEC. 3-531. - CITY CURRENT SERVICE RATE OF CONTRIBUTION AND PRIOR SERVICE CONTRIBUTION.**

Until revised by the Board on the basis of experience under the System, as determined in accordance with [Section 3-505](#), the city's current service rate of contribution expressed in percentage of compensation paid to members shall be 11.18 per cent, and the annual installment required of the city to liquidate the present value of all amounts thereafter payable from the Retirement Fund on account of prior service shall be fifty-nine thousand one hundred and seventy dollars (\$59,170). The rate of contribution and annual installment set forth in this section are based on the rates and tables used under the Fresno City Employees Retirement System on July 1957, and shall be adjusted by the Board in accordance with such tables and rates as the Board may adopt in accordance with [Section 3-505](#). (Added Ord. 5313, 1958, based on former Sec. 2-823; Am. Ord. 5666, 1959; Am. Ord. 96-54, § 61, eff. 9-20-96).

### **SEC. 3-532. - ADMINISTRATIVE COSTS.**

Costs related to the provision of administrative, professional, or consulting services performed by employees of the city for the benefit of the Retirement System, including but not limited to, clerical and other staff support and employee representation on the Retirement Board, and the costs incurred whenever the Board employs or contracts for services pursuant to the provisions of [Section 3-505\(c\)](#), the cost of such services shall be considered a charge against the assets of the Retirement System.

(Added Ord. 5313, 1958, based on former Sec. 2-824; Am. Ord. 78-164, § 1, eff. 12-1-78; Am. Ord. 84-43, § 2, eff. 5-4-84; Am. Ord. 91-49, § 2, eff. 6-7-91).

### **SEC. 3-533. - GUARANTY.**

The payments of the city into the Fresno City Employees Retirement Fund, as provided in Sections [3-529](#) to [3-532](#) hereof, are hereby made obligations of the city. There shall be appropriated, in the budget for each fiscal year, such amounts as are necessary to make such payments, less the portions to be paid from the several funds set forth in the said sections, and the amounts so appropriated shall be provided for in the tax levy. Provisions shall be made for the payment from said several funds of such amounts as shall be necessary to meet the obligations of the city under the Retirement System on account of employees whose compensation is or has been paid from such funds. (Added Ord. 5313, 1958, based on former Sec. 2-825; Am. Ord. 96-54, § 62, eff. 9-20-96).

### **SEC. 3-534. - REFUND OF CONTRIBUTIONS.**

(a) Should the city service of a member in a status requisite for membership in the System be discontinued, except by death or retirement, the member shall be paid no less than six months after the date of discontinuance, such part of the member's accumulated contributions as the member shall demand; provided that, if in the opinion of the Retirement Board, said member is permanently separated from city service by reason of such discontinuance, the member shall be paid forthwith all of the member's accumulated contributions, and provided also that the Retirement Board may in its discretion withhold for not more than one year after a member last rendered city service, all or part of the member's accumulated normal contribution if after a previous discontinuance of city service the member withdrew all or part of the member's accumulated normal contributions and failed to redeposit such withdrawn amount in the Retirement Fund as provided in this section. In intervals between meetings of the Retirement Board, the Retirement Administrator shall act under this section, for and in lieu of the Board, by making payment of accumulated contributions in the same manner and with the same effect as if the conditions prescribed herein for the Board were prescribed instead for the Retirement Administrator. Such payments shall be reported to the Board at its next meeting.

(b) Any member upon re-entry to the Retirement System may within thirty days of re-entry elect to redeposit in the Retirement Fund, in one lump sum or in equal bi-weekly payments spread over a time period not to exceed five years, an amount equal to that which the member withdrew from the Retirement Fund at the member's last termination of membership, including the amount of additional interest which would have been credited to the member's account had such contributions not been withdrawn. If a member elects to make repayments in equal monthly payments but fails to complete the repayment schedule, the member shall only receive credit for the amount of service which is the actuarial equivalent to the amount of repayment actually made by the member. In the case of members electing to make repayment other than in one lump sum, interest shall be paid on the unpaid balance of the amount payable to the System under such an election, beginning on the effective date of such election at the rate of interest currently being used under the System. If a

member shall not make such a redeposit upon re-entry to the Retirement System the member shall re-enter as a new member without credit for any service. The rate of the member's contribution for future years shall be the normal rate provided for in [Section 3-523](#) at the member's age of re-entry. If the member does make such redeposit, the member's rate of contribution for future years shall be based on an age determined by adding the number of completed years of the member's absence from membership in the System, to the age upon which the member's normal rate of contribution was based prior to such termination. In such event, the member's membership shall be the same as if unbroken by such last termination. Notwithstanding the foregoing redeposit limitation there is an open sixty-day period beginning June 1, 1987 for the purpose of allowing any member who has re-entered city service and has not elected to redeposit, to make an election to redeposit in the Retirement Fund in accord with this subsection. The Retirement Board may also create an open thirty-day period for allowing an individual member to elect to redeposit in accordance with this subsection upon a finding that an employee has been inequitably denied an opportunity to redeposit due to financial hardship or other circumstances beyond the control of the employee. (Added Ord. 5313, 1958; Am. Ord. 566, 1959; Am. Ord. 73-121, § 2, eff. 8-10-73; Am. Ord. 87-45, § 1, eff. 5-15-87; Am. Ord. 96-54, § 63, eff. 9-20-96; Am. Ord. 2006-8, § 1, 3-13-06).

### **SEC. 3-535. - DEFERRED BENEFITS AFTER SEPARATION.**

Any other provision in this Code to the contrary notwithstanding, if the city service of a member is discontinued by reason of resignation or discharge or by reason of lay-off or leave of absence deemed by the Board to have resulted in permanent discontinuance (and in such case, as of the date of the determination by the Board of such permanence), or if the disability retirement of a member is followed by cessation of the disability and by cancellation of the disability allowance, but the member does not re-enter city service, and the member is entitled to credit for five years of city service, the member shall have the right to elect within ninety days after the date upon which notice of said right is mailed by the System to the member's latest address on file in its office, whether to allow the member's accumulated contributions to remain in the Retirement Fund. Failure to make such election shall be deemed an irrevocable election to withdraw the member's accumulated contributions. A member having made such election may, at any time before the effective date of any deferred retirement allowance for which the member has qualified under this section, rescind the member's election in writing, and upon such rescission the member shall be paid forthwith the member's accumulated contributions. A member whose membership continues under this section is subject to the same age and disability requirements as apply to other members for service or for disability retirement, but the member is not subject to a minimum service requirement. After the qualification of such member by reason of age or disability the member shall receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the city contributions held for the member, and calculated in the same manner as for other members, except that the provisions in this article for minimum retirement allowances do not apply to the member, unless the member meets such minimum service requirements. No death benefit shall be payable if the death of the member occurs on or after such

election is made and before any re-entry into city service, except as provided in Subsection (b) of [Section 3-537](#).

*(Added Ord. 5313, 1958, based on former Sec. 2-827; Am. Ord. 5666, 1959; Am. Ord. 6621, 1965; Am. Ord. 98-60, § 1, eff. 9-19-98).*

### **SEC. 3-536. - DEFERRED BENEFITS AFTER ENTERING EXCLUDED CLASSIFICATION.**

(a)

Other provision in this Code to the contrary notwithstanding, the accumulated contributions of a member who has entered or enters a classification which is requisite for membership in the City of Fresno Fire and Police Retirement System shall remain in the Retirement Fund. A member whose membership continues under this section is subject to the same age and disability requirements except as provided in subsection (c) of this section, as apply to other members for service or for disability retirement, and the member is subject to a minimum service requirement of five years credited under this system and the Fresno Fire and Police Retirement System. After the qualification of such member for retirement by reason of service and age or disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the city contributions held for the member, and calculated in the same manner as for other members, except that the provisions in this article for minimum retirement allowance do not apply to the member unless the member meets such minimum service requirements.

(b)

Upon the death of such a member, while employed in such classification, a death benefit as described in [Section 3-537](#) shall be payable, but computed upon the basis of compensation earnable by the member during the six months preceding the member's entry into such classification. The portion of such death benefit which is derived from contributions of the city, shall be reduced by an amount equal to the portion so derived, of any death benefit to which such member may be entitled, from the Fire and Police Retirement System.

(c)

A member with accumulated contributions remaining in the Fire and Police Retirement Fund pursuant to [Section 3-329](#) or [3-407](#), as applicable, of Article 3 and who retires for service or disability under the Fresno Fire and Police Retirement System, shall be retired under this System, for service or disability as the case may be, regardless of the member's age or service credited hereunder, but subject to the requirement in subsection (a) of at least five years of service under both Systems. If, however, the member is retired for service before attaining age fifty-five, the member's allowance shall be discounted from age fifty-five in the same manner that allowances of members retiring below age fifty-five are discounted according to [Section 3-541](#). Such allowances shall be calculated as provided in this Article 5, except for the greater discount of the Service Retirement allowance, and except that the disability retirement allowances under the two Systems shall be combined for application of

the provisions in Sections 3-413 and 3-547 relating to minimum allowances, and only one such minimum allowance shall be calculated on the basis of the combined credited service and the higher of the average compensation or final compensation. The minimum allowance so determined shall be prorated between the two Systems according to the credited service under such Systems.

(d)

This section shall be applied retroactively to include persons who would have been subject to its provision if it had been in effect when they entered such classification.

*(Added Ord. 5313, based on former Sec. 2-828; Am. Ord. 5666, 1959; Am. Ord. 69-60, 1969; Am. Ord. 95-40, § 4, eff. 6-23-95; Am. Ord. 98-60, § 2, eff. 9-19-98; Am. Ord. 2001-15, § 3, eff. 3-26-01).*

### **SEC. 3-537. - DEATH BENEFITS.**

(a)

Upon the death before retirement of a member while in city service, or within four months after the discontinuance of city service in a status requisite for membership in the System, or while physically or mentally incapacitated for performance of his duty, if such incapacity has been continuous from discontinuance of city service, the Retirement System shall be liable for a death benefit, which shall be paid to such person as the member has nominated or shall nominate by written designation duly executed and filed with the Retirement Board or, if the member has not designated such person or if the person so designated is not living at the time of payment, to the member's estate, and such death benefit shall consist of:

(1)

His accumulated contributions, and in addition thereto,

(2)

An amount derived from contributions of the city, equal to one-sixth of the compensation earnable by him during the six months immediately preceding his death, or the six months immediately preceding the last contribution made to the Retirement Fund, whichever is greater, multiplied by the number of completed years of service, not to exceed six, as a member of the System.

(b)

Upon the death of a member who has discontinued city service in a status requisite for membership in the System, the Retirement System shall be liable, in the event the death does not qualify for the death benefit under subsection (a) of this section, for a limited death benefit consisting of his accumulated contributions only. Such benefit shall be paid to the member or to such person as the member has nominated or shall nominate by written designation duly executed and filed with the Retirement Board or, if the member has not designated such a person or if the person so designated is not living at the time of payment, to the member's estate.

(c)

A member, or a beneficiary after the death of a member, may elect, by written designation duly executed and filed with the Retirement Board, to have the death benefit provided in this section paid in monthly or annual installments instead of in one lump sum, subject to such rules and regulations as the Board may adopt.

(d)

A person, while a member or after retirement, shall have the right to revoke the nomination of a beneficiary made by him under the Retirement System, and to nominate a beneficiary in lieu thereof, all by written designation duly executed and filed with the Retirement Board, provided that his right shall not extend to beneficiaries nominated under Options 2 and 3, [Section 3-554](#) hereof.

*(Added Ord. 5313, 1958, based on former Section 2-829; Am. Ord. 5666, 1958; Am. Ord. 76-29, § 2, eff. 5-2-76).*

### **SEC. 3-538. - BENEFITS AT RETIREMENT.**

(a)

Upon retirement for service or disability a person shall be entitled to the retirement allowances specified in Sections [3-541](#) to [3-546](#) inclusive.

(b)

No benefits shall be paid to any person, including the former spouse or former domestic partner of a member, prior to the retirement of the member. No reimbursement shall be made to a member who has not retired from city service and who is making payments, whether voluntarily or pursuant to court order, to a former spouse or former domestic partner which represent that former spouse's or former domestic partner's share of the member's retirement benefits, even though the retirement system would have paid the benefits due to the former spouse or former domestic partner if the member had at the time of the payments been retired.

*(Added Ord. 5313, 1958, based on former Section 2-830; Added Ord. 90-113, § 1, eff. 1-16-90; Am. Ord. 2006-17, § 2, eff. 3-10-06).*

### **SEC. 3-539. - EFFECT OF COMPENSATION BENEFITS ON OTHER BENEFITS.**

The benefits payable under this System shall not be modified on account of any amounts paid to a beneficiary, as defined in this chapter, under [Division 4](#) of the Labor Code of the State of California.

*(Added Ord. 5313, 1958, based on former Section 2-831).*

### **SEC. 3-540. - SERVICE RETIREMENT.**

Retirement of a member for service shall be made by the Retirement Board as follows:

(a)

Any member may retire upon written application to the Retirement Board, stating what time the member desires to be retired; provided, that said member shall be credited, at the time so

specified for the member's retirement, with five years of continuous service, and shall have attained the age of fifty-five years.

(b)

Any member may retire upon written application to the Retirement Board provided that all the following conditions exist:

(1)

The member is credited with five years of continuous service and has attained the age of fifty years; and

(2)

The member consents in writing to the early retirement reduction provisions set forth in 3-541(4).

(c)

The effective date of any retirement granted under this subsection shall be the day following the date of discontinuance of the member's city service.

(d)

A member shall be 100% vested in his or her service retirement benefit upon the completion of five years of continuous service and shall be entitled to receive his or her unreduced service retirement benefit after the attainment of normal retirement age, which is age 55. A member shall be 100% vested in his or her accumulated contributions at all times.

*(Added Ord. 5313, 1958, based on former Section 2-832; Am. Ord. 5666, 1959; Am. Ord. 6045, 1962; Am. Ord. 67-133, 1968; Am. Ord. 69-60, 1969; Am. Ord. 79-37, § 1, eff. 3-30-79; Am. Ord. 95-40, §§ 6, 7, eff. 6-23-95; Am. Ord. 98-60, § 3, eff. 9-19-98; Am. Ord. 2007-105, § 1, eff. 1-28-08; Am. Ord. 2011-2, § 8, eff. 3-7-11).*

## **SEC. 3-541. - ALLOWANCE AT SERVICE RETIREMENT.**

A member, upon retirement for service as provided in Section 3-540, shall receive a retirement allowance, which shall consist of the sum of the three following elements:

(1) The member's service retirement annuity, which is an annuity actuarially equivalent to the accumulated normal contributions of the member at the time of the member's retirement.

(2) The member's current service pension, which is a pension derived from the contributions of the City, sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, and when also added to the prior pension of the member, to equal:

Two percent of the member's final compensation for each of the first twenty-five years of service (including both prior service and current service) for which the member is entitled to credit at the time of retirement, plus one percent of the member's final compensation for each year of the member's service (including both prior service and current service) in excess of twenty-five years, multiplied by the retirement age factor in the second column of the following

Retirement Age Factor Table opposite the member's age at time of retirement, taken to the preceding completed quarter year:

### RETIREMENT AGE FACTOR TABLE

#### Age of Retirement    Retirement Factor

55	.....	1.000
55¼	.....	1.005
55½	.....	1.010
55¾	.....	1.015
56	.....	1.020
56¼	.....	1.025
56½	.....	1.030
56¾	.....	1.035
57	.....	1.040
57¼	.....	1.045
57½	.....	1.050
57¾	.....	1.055
58	.....	1.060
58¼	.....	1.065
58½	.....	1.070
58¾	.....	1.075
59	.....	1.080
59¼	.....	1.085
59½	.....	1.090
59¾	.....	1.095
60	.....	1.100
60-¼	.....	1.110
60-½	.....	1.120
60-¾	.....	1.130
61	.....	1.140
61-¼	.....	1.150
61-½	.....	1.160
61-¾	.....	1.170
62	.....	1.180
62-¼	.....	1.190
62-½	.....	1.200



62-¾	.....	1.210
63	.....	1.220
63-¼	.....	1.230
63-½	.....	1.240
63-¾	.....	1.250
64	.....	1.260
64-¼	.....	1.270
64-½	.....	1.280
64-¾	.....	1.290
65	.....	1.300

For retirement ages in excess of age 65, there shall be added 0.01 to the retirement age factor base of 1.300 for each completed quarter year in excess of age 65.

(3) The member's prior service pension, which is a pension derived from the contributions of the City, equal to:

Two percent of the member's final compensation for each of the first twenty-five years of "prior service" for which the member is entitled to credit at the time of retirement, plus one percent of the member's final compensation for each year of the member's "prior service" in excess of the first twenty-five years of such service, multiplied by the retirement age factor specified opposite the member's age at time of retirement, taken to the preceding quarter year, in the second column of the Retirement Age Factor Table which is set forth above.

(4) A member electing prior to January 1, 2008 an early retirement pursuant to [section 3-540\(b\)](#) shall have his or her retirement allowance calculated pursuant to sections [3-541\(1\)](#), [3-541\(2\)](#) and [3-541\(3\)](#), and that allowance shall then be reduced by the applicable early retirement adjustment factor set forth below:

**EARLY RETIREMENT ADJUSTMENT FACTORS**

Age 54.75	.....	.985
Age 54.50	.....	.970
Age 54.25	.....	.956
Age 54.00	.....	.942
Age 53.75	.....	.928
Age 53.50	.....	.914
Age 53.25	.....	.901
Age 53.00	.....	.888
Age 52.75	.....	.875

Age 52.50 .....	.862
Age 52.25 .....	.850
Age 52.00 .....	.838
Age 51.75 .....	.826
Age 51.50 .....	.814
Age 51.25 .....	.803
Age 51.00 .....	.792
Age 50.75 .....	.780
Age 50.50 .....	.770
Age 50.25 .....	.759
Age 50.00 .....	.749

(5) With respect to elections for early retirement that are made on or after January 1, 2008, the Board, in conjunction with the Board's actuary, shall modify the early retirement adjustment factors so as to maintain the actuarial equivalence of a retirement allowance under this [section 3-541\(4\)](#) to a service retirement allowance under [section 3-541\(1\)–\(3\)](#).

*(Added Ord. 5313, 1958, based on former Sec. 2-833; Am. Ord. 69-60, 1969; Am. Ord. 97-52, eff. 9-26-97; Am. Ord. 98-60, § 4, eff. 9-19-98; Am. Ord. 2007-105, § 1, eff. 1-28-08).*

**SEC. 3-542. - RESERVED.** 

*Editor's note—*

Ord. 2007-105, § 3, effective January [28](#), 2008, amended the Code by repealing former [§ 3-542](#). Former [§ 3-542](#) pertained to allowance at service retirement under age fifty-five, and derived from Ord. 67-133, 1968; Ord. 69-60, 1969; Ord. 98-60, effective September 19, 1998.

**SEC. 3-543. - RE-EMPLOYMENT OF RETIRED PERSONS.** 

(a)

A person who has been retired under this system for service may be reinstated from retirement by the Board as provided in this section, and thereafter may be employed by the city in accordance with the laws governing such employment, in the same manner as a person who has not been so retired. Such reinstatement shall be based upon the retired member's application to the Board for reinstatement.

(b)

When any such person is reinstated from retirement under this section, the person's retirement allowance shall be cancelled forthwith, and the person shall become a member of this System as of the date of reinstatement. The person's individual account shall be credited with an amount which is the actuarial equivalent of the person's annuity at the date of reinstatement, not to exceed the amount of the person's accumulated contributions as it was

at the date of his retirement. The person's future rate of contributions and the person's retirement allowance on subsequent retirement shall be determined in accordance with the provisions of this article.

*(Added Ord. 5313, 1958, based on former Sec. 2-834; Am. Ord. 2002-40, § 1, eff. 9-3-02; Am. Ord. 2012-5, § 2, eff. 3-15-12).*

### **SEC. 3-544. - CURRENT SERVICE PENSION OF REINSTATED MEMBER.**

(a)

The current service pension of any member reinstated from service retirement, upon his subsequent service retirement, shall be the sum of (1) a current service pension calculated on the basis of service rendered after such reinstatement and in accordance with [Section 3-541](#), plus (2) his current service pension as it was prior to his reinstatement adjusted according to any change in the provisions governing the calculation of such pensions, made after such reinstatement and applicable to pensions being paid at the date of the change; provided, that such subsequent retirement occurs before he renders after his reinstatement at least one year of city service credited under this System; otherwise, in lieu of (2), a current service pension based on current service rendered prior to such reinstatement, but calculated under [Section 3-541](#), (i) on the basis of an age, taken to the preceding completed quarter year but not less than fifty years, and determined by deducting from his age at his subsequent retirement, the aggregate time during which he was under retirement, and (ii) on the basis of his final compensation as it was at the date of his preceding retirement. If however, the member renders at least three years of service after his reinstatement, the final compensation which is used in calculating the pension based on service rendered after reinstatement shall be used also in calculating the pension based on current service rendered prior thereto.

(b)

For such a member reinstated from disability retirement, the current service pension upon his service retirement after attaining age fifty-five, and subsequent to such reinstatement, shall be calculated in the manner described in the preceding subsection.

*(Added Ord. 5313, 1958, based on former Section 2-835; Am. Ord. 5666, 1959; Am. Ord. 67-133, 1968; Am. Ord. 69-60, 1969).*

### **SEC. 3-545. - PRIOR SERVICE PENSION OF RE-INSTATED MEMBER.**

(a)

The prior service pension of any member reinstated from service retirement, upon his subsequent service retirement, shall be in the same amount as his prior service pension prior to his reinstatement, adjusted according to any change in the provisions governing the calculation of such pensions made after such reinstatement and applicable to pensions being paid at the date of the change; provided, that such subsequent retirement occurs before he renders after his reinstatement at least one year of city service credited under this System; otherwise, a prior service pension calculated (1) on the basis of an age, taken to the preceding completed quarter year but not less than fifty years, and determined by deducting

from his age at his subsequent retirement, the aggregate time during which he was under retirement, and (2) on the basis of his final compensation as it was at the date of his preceding retirement. If however, the member renders at least three years of service after his reinstatement, the final compensation which is used in calculating the pension based on service rendered after reinstatement, shall be used also in calculating the pension based on prior service.

(b)

For such a member reinstated from disability retirement, the prior service pension upon his service retirement after attaining age fifty-four, or upon his disability retirement after attaining age fifty-five, and subsequent to such reinstatement, shall be calculated in the manner described in the preceding subsection.

*(Added Ord. 5313, 1958, based on former Section 2-836; Am. Ord. 5666, 1959; Am. Ord. 67-133, 1968; Am. Ord. 69-60, 1969).*

### **SEC. 3-546. - DISABILITY RETIREMENT.**

(a) Retirement of a member for disability shall be made by the Retirement Board upon medical examination as follows: Any member while in the city-service, or within four months after the discontinuance of city-service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from discontinuance of city-service, shall be examined by one or more physicians or surgeons selected by the Retirement Board, upon the Board's own motion, upon the application of the head of the office or department in which said member is employed, or upon the application of said member or of a person acting in his behalf, stating that said member is physically or mentally incapacitated for the performance of duty and ought to be retired provided he shall be credited with ten or more years of continuous city-service.

(b) If such medical examination and other available evidence show, to the satisfaction of the Retirement Board, that the said member is physically or mentally incapacitated for the performance of duty and ought to be retired, the Retirement Board shall retire the said member for disability forthwith.

(c) The Retirement Board shall secure such medical service and advice as may be necessary to carry out the purpose of this section and of [Section 3-548](#), and shall pay for such medical service and advice such compensation as the Board shall deem reasonable. (Added Ord. 5313, 1958, based on former Section 2-837; Am. Ord. 5666, 1959).

### **SEC. 3-547. - ALLOWANCE AT DISABILITY RETIREMENT.**

On or after the effective date of retirement for disability under [Section 3-546](#), a member,

(a) if the member's disability, in the opinion of the Board, is service-connected, shall receive a retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of such retirement, and

(2) A pension derived from the contributions of the city which, together with the annuity provided by the member's accumulated contributions, shall make the retirement allowance equal to the greater of:

(i) One and eight-tenths per cent of the member's final compensation multiplied by the number of years of city service credited to the member; or,

(ii) One-third of the member's final compensation; or,

(iii) if such member has qualified for retirement for service under this article, the amount of the member's service retirement allowance.

(b) if the member's disability, in the opinion of the Board, is not service-connected, shall receive a retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of such retirement, and

(2) A pension derived from the contributions of the city which, together with the annuity provided by the member's accumulated contributions, shall make the retirement allowance equal to the greater of:

(i) One and eight-tenths per cent of the member's final compensation multiplied by the number of years of city service credited to the member or,

(ii) One-third of the member's final compensation; or,

(iii) if such member has qualified for retirement for service under this article, the amount of the member's service retirement allowance.

(c) In computing a retirement allowance pursuant to this section, the allowance of a member whose satisfaction of minimum service requirements is determinable in accordance with [Section 3-516](#) shall be ten per cent of the amount otherwise payable hereunder for each year of permanent city service creditable pursuant to [Section 3-505\(f\)](#), to a maximum of one hundred per cent of such amount. Service with the Redevelopment Agency shall be disregarded for purposes of computation of such allowance. (Added Ord. 5313, 1958, based on former Sec. 2-838; Am. Ord. 5666, 1959; Am. Ord. 6804, 1966; Am. Ord. 69-60, 1960; Am. Ord. 76-71, § 2, eff. 8-29-76; Am. Ord. 2001-73, § 2, eff. 11-10-01).

## SEC. 3-548. - SAFEGUARDS.

(a) The Retirement Board may, at its pleasure, require any beneficiary who has been retired for disability and who has not attained the age of fifty-five years to undergo medical examination, such examination to be made by a physician or surgeon, appointed by the Retirement Board, at the place of residence of said beneficiary or other place mutually agreed upon. Upon the basis of such examination, the Board shall determine whether said disability beneficiary is still incapacitated, physically or mentally, for service in the office or department of the city where the beneficiary was employed and in the position held by the beneficiary when retired for disability. If the Retirement Board shall determine that said beneficiary is not so incapacitated, the beneficiary's retirement allowance shall be canceled forthwith, and the beneficiary shall be reinstated to the position of the same class as that held by the beneficiary when retired for disability.

(b) (1) Should a beneficiary after retirement for disability re-enter the city-service and be eligible for membership in the Retirement System in accordance with [Section 3-515](#), the beneficiary's retirement allowance shall be canceled and the beneficiary shall immediately become a member of the Retirement System, the beneficiary's rate of contribution for future years being that established for the beneficiary's age at the time of such re-entry, subject to [Section 3-523](#). The beneficiary's individual account shall be credited with an amount which shall be the actuarial equivalent, at the time of such re-entry, based on a disabled life, of the beneficiary's annuity, but such amount shall not exceed the amount of the beneficiary's accumulated contributions as it was at the time of the beneficiary's retirement.

(2) An amount equal to such actuarial equivalent shall again be held for the benefit of said member and shall no longer be included in the amounts available to meet the obligation of the city on account of benefits that have been granted and on account of prior service of members. Such member shall receive credit for prior service in the same manner as if the member had never been retired for disability.

(c) Should any person retired for disability engage in a gainful occupation prior to attaining age fifty-five, the Retirement Board shall reduce the amount of the person's monthly pension as defined herein, to an amount which, when added to the compensation earned monthly by the person in such occupation, shall not exceed the maximum current compensation attached to the position which the person held at the time of the person's retirement, or if that position has been abolished, the maximum current compensation attached to such position immediately prior to its abolition. Should the earnings of such beneficiary be further altered, the board shall further alter the beneficiary's said pension to an amount which shall not exceed its amount which it would be if not reduced under this section, but which, subject to such limitation, shall equal, when added to the compensation earned by the beneficiary, the amount of such maximum current compensation. When said beneficiary reaches age fifty-five, the beneficiary's retirement allowance shall be made equal to the amount it would be if not reduced under this section, and shall not again be modified under this section.

(d) Should any beneficiary retired for disability refuse under age sixty to submit to medical examination, the beneficiary's pension may be discontinued until the beneficiary's withdrawal of such refusal, and should such refusal continue for one year, the beneficiary's retirement allowance may be cancelled. (Added Ord. 5313; Am. Ord. 5782, 1960; Am. Ord. 70-50, 1970; Am. Ord. 2002-40, § 2, eff. 9-3-02).

**SEC. 3-549. - INCREASED ALLOWANCES APPLICABLE TO PERSONS ALREADY RETIRED.**



(a) Every retirement allowance payable by the Fresno City Employees Retirement System, for the time commencing on the first day of December, 1952, to or on account of any person who was retired prior to July 1, 1952, as a member of said System, is hereby increased to the amount it would be if the other provisions of this article had been in effect on the date of the actual retirement of the member. This section does not give any member retired prior to July 1, 1952, or his successors in interest, any claim against the city for any increase in any retirement allowance paid or payable for time prior to said effective date. If a member elected at retirement to have his retirement allowance modified under Options 2 or 3, and if his beneficiary is living on said effective date, the increase in his allowance shall be modified under the option elected at retirement, and on the basis of current ages, mortality tables and interest rate. If the beneficiary of such a person who elected at retirement to have his allowance modified under one of said options is not living on said effective date, or if the retired member is not living on said effective date and the beneficiary is receiving the modified retirement allowance, then the allowance shall be increased as provided herein for persons who did not elect an option.

(b) The increase in the retirement allowance shall be apportioned between service rendered prior to the entry of the member into the Retirement System and service rendered as a member, in the manner which would have applied if said ordinance had been in effect at the time of retirement. Contributions to the Retirement System necessary for the payment of the increases in the retirement allowances provided in this section, shall be provided from the reserves held by the Retirement System on account of active members, the necessary amount being transferred upon said effective date, from said reserves to the reserves held by the Retirement System to meet the obligations on account of benefits that have been granted. (Added Ord. 5313, 1958; Am. Ord. 96-54, § 64, eff. 9-20-96).

**SEC. 3-550. - CONTINUATION OF RETIREMENT ALLOWANCES AFTER DEATH.**



(a) Upon the death of a retired member after retirement, including retired members receiving allowances on the effective date of this section, one-half of the retirement allowance as it was at death, before modification under an option, shall be continued throughout life to the retired member's surviving spouse or surviving domestic partner. If there be no surviving spouse or surviving domestic partner entitled to an allowance hereunder, or if the surviving spouse or surviving domestic partner so entitled dies before every child of such deceased member attains the age of eighteen years, then the

allowance which the surviving spouse or surviving domestic partner would have received had the spouse or domestic partner lived shall be paid to the retired member's child or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any allowance after marrying or establishing a domestic partnership and no non-disabled child shall receive any allowance after attaining the age of eighteen years. Should the member leave no surviving spouse or surviving domestic partner and no children under the age of eighteen years but leave a child or children who, pursuant to terms and conditions adopted by the Retirement Board, is or are determined by the Board to have been disabled prior to age eighteen and whose disability continues past age eighteen, the child or children while so disabled shall collectively receive a monthly allowance equal to that which a surviving spouse or surviving domestic partner would have received. Should said retired member leave no surviving spouse or surviving domestic partner so entitled, no children under the age of eighteen years, and no disabled child whose disability continued past the age of eighteen years, but leave a parent or parents dependent upon the retired member for support, the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving spouse or surviving domestic partner otherwise would have received, during such dependency. Contributions necessary for the payment of the continuance of one-half of allowances of retired members who are receiving allowances on the operative date of this section, shall be provided from the reserve held by the Retirement System on account of active members, the necessary amount being transferred upon said effective date from said reserves to the reserves held by the Retirement System to meet obligations on account of benefits that have been granted.

(b) With respect to members retiring on or before the effective date of Ordinance No. 2000-5, an allowance shall be paid under this section to a surviving spouse only if the spouse was married to the retired member at least one year prior to retirement. With respect to members retiring after the effective date of Ordinance No. 2000-5, an allowance shall be paid under this section to a surviving spouse only if the spouse was married to the retired member as of the date of retirement or to a surviving domestic partner only if the domestic partnership had been established on or before the date of retirement. (Added Ord. 5313, 1958; Am. Ord. 5666, 1959; Am. Ord. 2000-5, § 1, 2-10-00; Am. Ord. 2001-18, § 1, eff. 3-26-01; Am. Ord. 2006-17, § 3, eff. 3-10-06).

**SEC. 3-551. - INCREASE OF ALLOWANCES APPLICABLE TO PERSONS ALREADY RETIRED.**

(a) Every monthly allowance payable under the Fresno City Employees Retirement System, for time commencing on July 1, 1961, to or on account of any member who was retired prior to July 1, 1960, is hereby increased by the percentage set forth in the following table opposite the period during which the member's retirement became effective, or death occurred:

Period during which retirement became effective or death occurred	Percentage of increase in monthly allowance



Prior to July 1, 1951	24.73%
12 months ended June 30, 1952	22.09%
12 months ended June 30, 1953	17.61%
12 months ended June 30, 1954	14.66%
12 months ended June 30, 1955	14.36%
12 months ended June 30, 1956	11.67%
12 months ended June 30, 1957	8.71%
12 months ended June 30, 1958	4.12%
12 months ended June 30, 1959	2.58%
12 months ended June 30, 1960	0.00%

(b) Every monthly allowance payable under the System on and after July 1, 1965, to, or on account of, any member who was retired prior to July 1, 1963, hereby is increased by the percentage set forth in the following table opposite the period during which the member's retirement became effective, or death occurred:

Period during which retirement became effective or death occurred	Percentage of increase in monthly allowance
Prior to July 1, 1961	7.50%

12 months ended June 30, 1962	5.00%
12 months ended June 30, 1963	2.50%

(c) The increase in each allowance provided by this section shall be apportioned between the credited service rendered prior to entry of the member into the Retirement System, and credited service rendered as a member in the same proportions that the portion of the allowance which was not provided by the members accumulated contributions, was so apportioned at the time of retirement or death. Contributions to the Retirement System necessary for the payment of the increases in the retirement allowance provided in this section shall be provided, with respect to the portion of the increases based on service rendered after May 31, 1939, from the reserves held by the Retirement System on account of service rendered after that date, the necessary amount being transferred upon such effective date from such reserves to the reserves held by the Retirement System to meet the obligations on account of allowances that have been granted. The contribution being required of the city currently, as a percentage of the compensation of members, shall be increased by a percentage determined by the actuary as necessary to replace the reserves so transferred. Contributions to the Retirement System necessary for the payment of such increases with respect to the portion of the increases based on service rendered prior to June 1, 1939, shall be similarly transferred from and to the pertinent reserve accounts, and the reserves so transferred shall be replaced in the pertinent reserve by payment to the System by the city, annual amounts determined by the actuary as necessary, and shall be as an addition to the prior service contribution currently being made by the city.

(d) This section does not give any retired member, or his successors in interest, or his beneficiary, or any payee for any allowance in respect to a deceased member, any claim against the city for any increase in any allowance paid or payable for time prior to its effective date. (Added Ord. 5941, 1961, Am. Ord. 6621, 1965; Am. Ord. 96-54, § 65, eff. 9-20-96).

**SEC. 3-552. - ALLOWANCE AFTER DEATH BEFORE SERVICE RETIREMENT.** 

(a)

Upon the death before retirement of a member who has credit for five or more years of continuous city service, and on account of whose death the benefit provided for in accordance with [Section 3-537\(a\)](#) is otherwise payable, a monthly allowance shall be paid as hereinafter provided in this section.

(b)

If the member is qualified at death for service retirement, the monthly allowance shall be equal to one-half of the monthly retirement allowance, prior to modification under options provided for in accordance with [Section 3-554](#), which the member would have been entitled to receive if the member had retired for service on the day next following the date of his death. If the member at death is under age fifty-five, the monthly allowance shall be equal to one-half the monthly service retirement allowance, prior to modification under any such options, which the member had earned to the date of death, based on the member's city service to and including the date of death, but assuming for the purpose of computing such retirement allowance that the member was age fifty-five at death.

(c)

The monthly allowance shall be payable:

(1)

To the member's surviving spouse qualifying under subsection (f) of this section who was married to such member or to the member's surviving domestic partner qualifying under subsection (f) of this section with whom the member had established a domestic partnership; or

(2)

If there is no qualifying surviving spouse or qualifying surviving domestic partner, or if such spouse or such domestic partner dies, to unmarried children, including stepchildren, of the member collectively, who are under eighteen years of age; or

(3)

Should the member leave no qualifying surviving spouse or qualifying surviving domestic partner and no children under eighteen years of age but leave a child or children who, pursuant to terms and conditions adopted by the Retirement Board, is determined to have been disabled prior to age eighteen and whose disability continues past age eighteen, to such disabled child or children during the period of disability; or

(4)

Should the member leave no qualifying spouse or qualifying surviving domestic partner or no child under eighteen or no disabled child whose disability continued past age eighteen, but leave a parent or parents dependent upon the member for support, to such parent, or parents collectively, during such dependency.

(d)

The monthly allowance shall be in lieu of the death benefit otherwise payable as provided for in accordance with [Section 3-537\(a\)](#). If, upon the death of the member, there is any person qualifying for the allowance, then any designation made by the member, pursuant to [Section 3-537](#), of a beneficiary to be paid the death benefit shall be of no force or effect, but a person qualifying for the allowance or such person's guardian may elect, before the first payment on account of it, to receive such death benefit in lieu of the allowance. The accumulated

contributions of the member shall be applied toward providing the allowance, and the balance not so provided shall be payable from contributions of the city.

(e)

The monthly allowance shall begin to accrue on the day next following the date of death of the member, and payments to the surviving spouse or surviving domestic partner shall continue until death, and to or on account of children with respect to each non-disabled child until the attainment of age eighteen, death or prior marriage or domestic partnership and with respect to each disabled child whose disability continues past age eighteen until death, marriage, establishment of a domestic partnership, or cessation of the disability. If payment of the allowance provided by this section is stopped because of death of the surviving spouse or surviving domestic partner, or the attainment of the age eighteen years by, or the death or marriage or establishment of a domestic partnership of, a non-disabled child, or the death or marriage or establishment of a domestic partnership or cessation of disability of a disabled child whose disability continued past the age of eighteen, or the death or cessation of dependency of a parent, before the sum of the monthly payments made equals the death benefit provided for in accordance with [Section 3-537\(a\)](#), a lump sum equal to the difference shall be paid, to the surviving children of the member, share and share alike.

(f)

With respect to members whose death occurs on or before the effective date of Ordinance No. 2000-5, an allowance shall be paid under this section to a surviving spouse only if the spouse was married to the member prior to the occurrence of the injury or onset of the illness which resulted in the member's death. With respect to members whose death occurs after the effective date of Ordinance No. 2000-5, an allowance shall be paid under this section to a surviving spouse only if the spouse was married to the member prior to the date of the member's death or to a surviving domestic partner only if the domestic partner had established a domestic partnership with the member prior to the date of the member's death.

*(Added Ord. 5942, 1961; Am. Ord. 6893, 1966; Am. Ord. 98-60, § 6, eff. 9-19-98; Am. Ord. 2000-5, § 3, 2-10-00; Am. Ord. 2001-18, § 2, eff. 3-26-01; Am. Ord. 2006-17, § 4, eff. 3-10-06).*

### **SEC. 3-553. - COST OF LIVING ADJUSTMENT.**

(a)

Notwithstanding any other provision of this article, and subject to the provisions of this section, as of July 1 of each year, commencing with the year 1978, every monthly allowance payable to or on account of any person who has retired or died or who shall retire or die as a member of the Retirement System and whose retirement or death occurred on or before June 30, of the preceding fiscal year, shall be increased or decreased by a percentage of the total allowance then being received which shall approximate, to the nearest one-tenth of one percent, the percentage of annual increase or decrease in the cost of living during the preceding calendar year, as determined by the Retirement Board in the manner provided in this section; provided, that such increase or decrease shall not exceed five percent of any allowance in any year, regardless of the percentage of change in such cost of living.

(b)

Determination of the percentage of annual increase or decrease in the cost of living shall be made by the Retirement Board on or before April 1 of each year by reference to the Consumer Price Index (United States City average for urban wage earners and clerical workers—all items), as published by the Bureau of Labor Statistics of the United States Department of Labor, for each of the two immediately preceding calendar years. The percentage by which such index for the more recent full calendar year shall have increased or decreased over or below such index for the full calendar year immediately prior thereto shall be the percentage used to calculate adjustments in retirement allowances pursuant to subsection (a) of this section.

(c)

The amount of any cost of living increase or decrease in any year which is in excess of the maximum annual allowable adjustment of five percent provided in subsection (a) of this section shall be accumulated from year to year and included in the computation of increases or decreases in succeeding years. The provisions of this subsection shall be applied to the allowances of individual beneficiaries by classes based upon the fiscal year in which the member retired or died, so that each allowance shall have applied to it only such increase or decrease as shall have accumulated during or after the fiscal year in which the member retired or died.

(d)

No allowance shall be reduced by operation of this section below the amount payable on the effective date of entitlement thereto or July 1, 1966.

(e)

Such increases in allowances as shall be payable pursuant to this section shall be funded insofar as possible from moneys in the contingency reserve of the Retirement Fund which are in excess of one per cent of the total assets of the Retirement System on July 1, 1966, and by such moneys from such contingency reserve as shall be determined by the Retirement Board as of June 30 of each year thereafter. Any additional moneys required for such increases shall be provided by additional contributions to the Retirement Fund, at rates fixed by the Retirement Board as it shall determine to be necessary, to be shared equally between the City and the contributing members, and to be designated "cost of living contributions." The individual members' contributions shall be graded in proportion to the member's normal contributions.

(f)

Cost of living contributions of members shall be credited with regular interest and the accumulation of such contributions and interest shall be deemed a part of their accumulated contributions for the purposes of refund and of re-entry into the Retirement System under [Section 3-534](#) and for the purpose of computing the death benefit under [Section 3-537](#). Cost of living contributions of members shall not be refunded after retirement, whether or not any cost of living increases are paid hereunder.

(g)

The rates of cost of living contributions of members shall not be combined with the normal rates of contribution, but shall be separately stated. A separate accounting shall be maintained of the accumulations of such contributions and the interest thereon, and such accumulations shall not be included in the accumulated contributions of the member in the computation of any retirement allowance.

(h)

There shall be paid to the Retirement Fund, during each fiscal year, cost of living contributions of the City in a total amount equal to the total of the cost of living contributions of members contributed to the Retirement Fund during that fiscal year. The Controller shall transfer to the Retirement Fund, during each fiscal year, from the budget appropriation therefor, the amount of the City's annual cost of living contribution for that year; provided, however, that any portion of such annual contribution which is payable on account of any member while employed in the operation of any municipally-owned public utility shall be paid from the funds of such public utility.

(i)

The payments of the City provided for in this section are hereby made obligations of the City, the funds necessary therefor to be appropriated and provided in the manner specified in [Section 3-533](#) for appropriating and providing other City contributions to the Retirement Fund.

(j)

The definition of the term "contributions," contained in [Section 3-501\(8\)\(iv\)](#) shall not apply to this section.

*(Added Ord. 6703, 1965; Am. Ord. 6896, 1966; Am. Ord. 70-35, 1970; Am. Ord. 72-116, 1972; Am. Ord. 78-165, § 1, eff. 12-1-78; Am. Ord. 2009-26, § 1, eff. 8-16-09).*

*Editor's note—*

The amendments adopted Ord. 2009-26 expired June 30, 2010.

## **SEC. 3-554. - OPTIONAL MODIFICATION OF ALLOWANCES AT RETIREMENT.**

(a) For purposes of determining actuarial equivalence under this Section, the following terms will be used:

(1) "Basic retirement allowance" shall mean the sum of a member's service retirement annuity and service pension as determined under [Section 3-541](#), payable as a single life annuity, or the sum of the member's disability annuity and disability pension as determined under [Section 3-547](#), payable as a single life annuity.

(2) "Basic retirement allowance plus continuance" shall mean a member's basic retirement allowance plus any one-half continuation payments that would be payable under [Section 3-550](#) as determined at the effective date of the member's retirement.

(3) "Accumulated contributions" shall mean accumulated contributions as defined in [Section 3-501\(k\)\(i\)](#).

(4) "Adjusted accumulated contributions" shall be calculated as follows:

(i) The amount of the member's accumulated contributions at the effective date of retirement will be converted to an actuarially equivalent monthly annuity payable for the life of the member with a one half continuance of that monthly annuity for the life of the member's beneficiary.

(ii) The difference between the member's monthly annuity and the beneficiary's monthly continuance shall be determined.

(iii) The amount determined in subsection (ii) will be converted to an actuarially equivalent lump sum present value, which amount is defined to be the member's "adjusted accumulated contributions".

(5) "Monthly uncontinued annuity payments" shall mean the difference calculated in subsection 4(ii).

(6) All actuarial calculations shall be done using the actuarial factors in effect on a member's effective date of retirement, and shall not take into account any future cost of living increases. Actuarial calculations shall also not take into account the possibility that the marriage of a member could be dissolved.

(b) If at the effective date of retirement the member has no spouse, children or dependent parents who would qualify for the one-half's continuation under [Section 3-550](#), then, instead of receiving a retirement allowance only over the member's lifetime, the member may elect any of the following options:

(1) Option 1A. The member may elect a lower service or disability annuity for the member's life, which also provides that if the member dies before receiving in such lower service or disability annuity payments the amount of the member's accumulated contributions, then the balance of such accumulated contributions shall be paid upon the member's death in a lump sum to a beneficiary designated by the member, as provided in subsection (d). This optional form shall be the actuarial equivalent of the member's service or disability annuity for the member's lifetime at the effective date of retirement. Under this option, no elections may be made with respect to the pension portion of the member's service or disability retirement allowance.

(2) Option 2A, 100% Optional Continuance. The member may elect that a lower retirement allowance will be paid over the member's lifetime and that after the member's death the same lower benefit will be continued for life to a beneficiary designated by the member as

provided in subsection (d). This option shall be actuarially equivalent to the member's basic retirement allowance at the effective date of retirement.

(3) Option 3A, 50% Optional Continuance. The member may elect that a lower retirement allowance will be paid over the member's lifetime and that after the member's death one-half of the lower benefit will be continued for life to a beneficiary designated by the member as provided in subsection (d). This option will be actuarially equivalent to the member's basic retirement allowance at the effective date of retirement.

(c) If at the effective date of retirement the member has a spouse, children or dependent parents who would qualify for a one-half's continuance under [Section 3-550](#), then, instead of receiving a retirement allowance only over the member's lifetime, with a continuance after the member's death to certain beneficiaries, the member may elect any of the following options:

(1) Option 1B. The member may elect a lower service or disability annuity for the member's life, which also provides that if the member dies before receiving in monthly uncontinued annuity payments (as defined in [Section 3-554\(a\)\(5\)](#)) the amount of the member's adjusted accumulated contributions (as defined in [Section 3-554\(a\)\(4\)](#)), then the balance of such adjusted accumulated contributions shall be paid upon the member's death in a lump sum to a beneficiary designated by the member as provided in subsection (d). Under this option, no elections may be made with respect to the pension portion of the member's service or disability allowance.

(2) Option 2B, 100% Optional Continuance. The member may elect that a lower retirement allowance will be paid over the member's lifetime with an optional continuance payable for a beneficiary's lifetime after the member's death in such an amount that the sum of the optional continuance plus the one-half continuance under [Section 3-550](#) will be equal to the lower retirement allowance payable for the member's lifetime. This option shall be actuarially equivalent to the member's basic retirement allowance plus continuance as defined in subsection (a)(2) above at the effective date of retirement.

(3) Option 3B, 50% Optional Continuance. The member may elect that a lower retirement allowance will be paid over the member's lifetime with an optional continuance payable for life to a beneficiary designated by the member as provided in subsection (d) in such amount that the optional continuance shall equal one-half of the difference between the lower retirement allowance payable for the member's lifetime and the one-half continuance under [Section 3-550](#). This option shall be actuarially equivalent to the member's basic retirement allowance plus continuance as defined in subsection (a)(2) above at the effective date of retirement.

(d) The beneficiaries under any of the options shall be determined as follows:



(1) Under all options, either the lump sum or optional continuances, if any, shall be payable only to such beneficiary as the member shall nominate by written designation duly executed and filed with the Retirement Board. Lifetime benefits are payable to beneficiaries only if they survive the member, and in the case of spouses, only if they were married to the member on the date of the member's death, and in the case of domestic partners, only if the domestic partnership with the member had been established on or before the date of the member's death. For purposes of this Section, a member's beneficiary shall be limited to the following classes of individuals:

(i) spouse;

(ii) domestic partner;

(iii) children;

(iv) grandchildren;

(v) parents;

(vi) any person who depends on the member wholly or in part for education or support; or

(vii) a trust, provided that (I) the beneficiaries of the trust comes within categories (i)—(vi) and are identifiable, (II) the trust is valid under state law, (III) the trust is irrevocable no later than upon the death of the member, and (IV) a copy of the trust agreement is provided to the retirement office.

(2) With respect to Options 1A and 1B,

(i) The individual or entity designated as beneficiary of the lump sum amount may be changed by the member at any time, but only if the change is received by the Retirement Board prior to the member's death;

(ii) In addition to the classes of individuals or entities listed in [section 3-554\(d\)\(1\)](#), a member may select as a beneficiary under Options 1A and 1B any of the following: a corporation, unincorporated association, or governmental unit; and

(iii) If the member has not designated a beneficiary, or if an individual is designated and is not living at the time of payment or if an entity is designated and is not in existence at the time of payment (including through merger with another entity), the unpaid balance of accumulated contributions shall be payable in a lump sum to the member's estate.

(3) With respect to Options 2A, 3A, 2B and 3B, a member's lifetime beneficiary must be designated not later than the effective date of retirement and cannot be changed thereafter, unless the designation of a new spouse or domestic partner as beneficiary is permitted under [Section 3-555](#) upon the member's marriage or establishment of a domestic partnership after retirement.

(4) With respect to all Options in which the member names his or her spouse or domestic partner as contingent lifetime beneficiary to receive benefits after the member's death, upon the death of the spouse or domestic partner or dissolution of marriage of the member and spouse or termination of the domestic partnership of the member and the domestic partner before the member's death, the designation of the former spouse or former domestic partner as contingent lifetime beneficiary is automatically revoked and such former spouse or former domestic partner shall receive no survivor benefits after the member's death.

(e) Any election under this Section shall be made prior to the making of the first payment on account of any retirement allowance. However, if at the effective date of retirement (1) a member has a spouse or domestic partner who is a designated beneficiary under any lifetime option, and (2) the member dies within 30 days after the member's effective date of retirement, then the member's surviving spouse or surviving domestic partner shall have the option to either elect benefits under this Section or elect the benefits provided to a surviving spouse or surviving domestic partner for a member who dies before retirement. (Added Ord. 5313, 1958, based on former Sec. 2-841; Am. Ord. 95-40, § 8, eff. 6-23-95; Am. Ord. 2004-99, §§ 1, 2, eff. 11-15-04; Am. Ord. 2006-17, § 5, eff. 3-10-06; Am. Ord. 2006-140, § 1, eff. 10-27-06).

## **SEC. 3-555. - OPTIONAL MODIFICATION OF BENEFICIARY AFTER RETIREMENT.**

(a)

Members who become married or establish a domestic partnership after retirement may elect an optional modification provided herein by filing a written election with the Retirement Board within the time limits specified in this Section. If an optional modification is elected by the retired member under this Section, all prior elections are revoked, and no previously designated beneficiary shall have any rights to benefits under the System other than as provided in this Section. In addition, no continuation benefits will be payable under [Section 3-550](#)

(b)

A retired member is eligible to make this election if he or she is described within any of the following subsections:

(1)

A retired member who was not married or not a member of a domestic partnership at the time of his or her retirement may revoke any prior elections with respect to the form of his or her retirement allowance (including the unmodified form) if the retired

member becomes married or establishes a domestic partnership after retirement and names his or her new spouse or domestic partner as a surviving spouse beneficiary or surviving domestic partner beneficiary in accordance with the procedures of this Section.

(2)

A retired member who was married or a member of a domestic partnership at the time of his or her retirement and whose spouse or domestic partner predeceased the retired member may revoke any prior elections with respect to the form of his or her retirement allowance (including the unmodified form) if the retired member becomes married or establishes a domestic partnership after retirement and names his or her new spouse or domestic partner as a surviving spouse beneficiary or a surviving domestic partner beneficiary in accordance with the procedures of this Section.

(3)

A retired member who was married or a member of a domestic partnership at the time of his or her retirement and whose marriage ended in dissolution or whose domestic partnership was terminated may revoke any prior elections with respect to the form of his or her retirement allowance (including the unmodified form) with respect to that portion specifically allocated to the retired member in the dissolution or termination proceeding, if the retired member becomes married or establishes a domestic partnership after retirement and names his or her new spouse or domestic partner as a surviving spouse beneficiary or a surviving domestic partner beneficiary of the portion of the retired member's allowance specifically allocated to the retired member in the dissolution proceeding in accordance with the procedures of this Section.

(4)

A retired member who makes an election under subsections (1), (2) or (3) and whose new marriage or domestic partnership is subsequently dissolved or terminated for any reason, may again make an election under this Section upon the retired member's subsequent marriage or establishment of a domestic partnership but only with respect to the allowance then payable to the retired member for the retired member's remaining lifetime.

(c)

A retired member eligible to name his or her new spouse or domestic partner as beneficiary shall have the option to name such spouse or domestic partner as the survivor annuitant of a joint and survivor annuity form of payment and shall have his or her retirement allowance adjusted to make the allowance as adjusted together with the survivor annuity actuarially equivalent to the retired member's retirement allowance immediately prior to the election under this section. Depending on the retired member's option election at retirement, the survivor annuity shall be a percentage of the retired member's adjusted retirement allowance as determined from the following table:

Form Elected	Survivor Percentage
Unmodified	50
Option 1A or 1B	50
Option 2A or 2B	<u>100</u>
Option 3A or 3B	50

(d)

Any election shall provide that after its effective date an adjusted retirement allowance will be paid over the retired member's lifetime and that after the retired member's death the applicable survivor annuity will be continued for life to the retired member's surviving spouse or surviving domestic partner as defined in subsection (f) below, recognizing that such surviving spouse or surviving domestic partner will not be entitled to a continuance under [Section 3-550](#)

(e)

Any election under this section shall be actuarially equivalent to the benefits otherwise payable to the retired member and his or her beneficiary after the effective date. In determining such actuarial equivalence, the System's provision for cost of living increases shall be taken into account, but the possibility that the marriage of the retired member could be dissolved or that the domestic partnership of the retired member could be terminated will not be taken into account. After the effective date of the election, the previously named beneficiary shall have no survivor benefits, other than benefits payable to a former spouse pursuant to a judgment of dissolution or to a former domestic partner pursuant to a judgment of termination.

(f)

The surviving spouse or surviving domestic partner benefit will be paid only to the person who was married to the retired member or was a member of a domestic partnership with the retired member at the time of the retired member's election, at the effective date of the election, and at the time of the retired member's death. If the spouse or domestic partner named in the election either dies or his or her marriage with the retired member is dissolved or his or her domestic partnership with the retired member is terminated before the death of the retired

member, no adjustment will be made to the retired member's benefit and neither the former spouse or former domestic partner or his or her estate shall be entitled to any survivor benefit.

(g)

The optional modifications provided in this Section must be made in writing on such form or forms as the Retirement Board may designate, and must include such documentation as the Retirement Board may require. The election under this Section shall be deemed to be made on the date a properly executed form is received by the Retirement Board.

(h)

The election for an optional modification after retirement must be filed with the Retirement Board within the time frames specified below:

(1)

If the retired member retired before the effective date of Ordinance No. 2004-99, married after retiring but before that effective date, and would otherwise be eligible to elect one of the optional modifications after retirement, then the retired member must make the election no later than six months after the effective date of Ordinance No. 2004-99.

(2)

In all other cases, the election must be made within six months after the date of marriage or the date of the establishment of the domestic partnership.

(3)

Elections received by the Retirement Board after the six month time period shall be null and void.

(i)

Any optional modification elected by the retired member under this section shall be effective as of the first day of the month following the one year anniversary of the retired member's election. The optional payments to the retired member shall begin in the adjusted amount on the effective date. If the spouse dies or the marriage is dissolved or if the domestic partner dies or the domestic partnership is terminated before the effective date specified in this subsection(i), the election is automatically revoked and no adjustment will be made in the retired member's allowance. If the retired member dies before the effective date, no benefits are payable to the spouse or domestic partner under this Section.

(j)

In no event will any elections be permitted under this Section if they would violate the minimum distribution rules of Internal Revenue Code [section 401\(a\)\(9\)](#). (Added Ord. 2004-99, § 3, eff. 11-15-04; Am. Ord. 2006-17, § 6, eff. 3-10-06).

### **SEC. 3-556. - RETIREMENT ALLOWANCES PAYABLE.**

A pension, an annuity or retirement allowance granted under the provisions hereof shall be payable in equal monthly installments or in smaller pro rata amounts when the pension, annuity or

retirement allowance begins after the first day of the month or ends before the last day of the month. (Added Ord. 5313, 1958, based on former Sec. 2-842).

### **SEC. 3-557. - APPOINTIVE SERVICE AFTER RETIREMENT.**

(a)

A person who is retired for service or disability or who is receiving or is entitled to receive a retirement allowance under this System shall not be appointed to or serve in any appointive office or position in the city service, including membership on boards and commissions, after the effective date of his retirement, unless he had first been reinstated from retirement pursuant to this article or unless such service, without reinstatement, is authorized by this section.

(b)

Such a retired person may serve in the following appointed offices or positions without reinstatement from retirement or loss or interruption of benefits provided under this System;

(1)

As a member of any board, commission, or advisory committee of the city except the Civil Service Board or the Board of this System;

(2)

As an elections officer or juror;

(3)

A retired person may be employed on a temporary basis not to exceed the time period specified in Charter [Section 1000\(a\)\(2\)](#), but only if a showing is made by the appointing authority that such person possesses special skills or experience necessary to perform the duties of that temporary position.

(c)

A retired person who serves in any office or is employed by the city without reinstatement, whether by permission of this section or other law, shall acquire thereby no service credit or retirement rights under this article, and no contributions to the System shall be deducted from any compensation he may receive for such services. (Added Ord. 5313, 1958, based on former Sec. 2-843; Am. Ord. 74-10, § 2, eff. 2-17-74; Am. Ord. 85-167, § 4, eff. 11-29-85; Am. Ord. 87-82, § 1, eff. 7-24-87).

### **SEC. 3-558. - EFFECT OF CERTAIN AMENDMENTS.**

Certain amendments of this article have been effected by Ordinance No. 69-60. Any of such amendments to the contrary notwithstanding, every person having membership status in the System on the day preceding the effective date of such ordinance shall receive, upon his subsequent retirement for service or disability, a retirement allowance which shall be not less in amount than that to which he would have been entitled under this article as it read immediately prior to the effective date of such ordinance. The amendments of this article effected by such ordinance shall not operate to

increase any pension or allowance in effect prior to the effective date of such ordinance. (Added Ord. 69-60, 1969).

### **SEC. 3-559. - INTERNAL REVENUE CODE SECTION 415 ELECTION.**

(a)

Notwithstanding any other provision of this Code, the retirement rights conferred upon any member of the City of Fresno Employees Retirement System shall be subject to, and such a person shall not have any retirement right or benefit which exceeds, and no retirement right or benefit shall accrue to or vest in such a person which exceeds, the limitations upon public retirement systems contained in Section 415 of the Internal Revenue Code to the extent necessary to preserve the tax-qualified status of the system. Amendments to this [Section 3-559](#) by Ordinance 2011-2 shall be effective for retirements on or after January 1, 2008.

(b)

Notwithstanding subsection (a), the city, pursuant to Internal Revenue Code Section 415(b)(10)(C), hereby makes the election set forth in that section.

(c)

Participation in Other Qualified Plans: Aggregation of Limits. The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(i) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(d)

Basic 415(b) Limitation.

(1)

Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2)

For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue

Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(e)

Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the plan is other than the form specified in subsection (e)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1)

If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date under (4) or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit under (2) and (3) as follows:

(2)

For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply (a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

(A)

The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or

(B)

The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for limitation years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for limitation years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(3)

For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies (a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

(A)



The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience:

(B)

The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for limitation years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for limitation years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(C)

The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate using the rate in effect for the month immediately prior to the first day of the plan year with a one-year stabilization period)) and (i) for limitation years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for limitation years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(4)

The actuary may adjust the 415(b) limit at the annuity starting date in accordance with the above.

(f)

Benefits For Which No Adjustment of 415(b) Limit is Required. For purposes of this Section, the following benefits shall not be taken into account in adjusting these limits:

(1)

Any ancillary benefit which is not directly related to retirement income benefits;

(2)

That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3)

Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(g)

Other Adjustments in 415(b) Limitation.

(1)

In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this Section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

(2)

In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in (1) above shall not apply.

(3)

The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(4)

Only in the event the member's retirement benefit becomes payable after age sixty-five (65) under [Section 3-541](#), for purposes of determining whether this benefit meets the limitation set forth in subsection (d), such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made using an assumed interest rate of five (5) percent and shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

(h)

Less than Ten (10) Years of City Service Adjustment for 415(b) Limitations. The maximum retirement benefits payable to any member who has completed less than ten (10) years of City Service or Service (as defined in Article 3 or 4) in all plans of the City shall be the amount determined under subsection (d) multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The

reduction provided for in this subsection shall not be applicable to preretirement disability benefits or pre-retirement death benefits.

(i)

Ten Thousand Dollar (\$10,000) Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

(j)

Effect of COLA on 415(b) Testing. Effective on and after January 1, 2008, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a member, the following shall apply:

(1)

a member's applicable Limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under [Section 3-553](#)

(2)

to the extent that the member's annual benefit equals or exceeds the Limit, the member shall no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit: and

(3)

thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under [Section 3-553](#), shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(k)

Section 415(c) limitations on contributions and other additions. After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the member's compensation. Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions (determined without regard to picked-up employee contributions that are paid to a defined benefit plan), and forfeitures credited to a member's individual account. "Compensation" for purposes of this Section, subject to annual limits under [Section 401\(a\)\(17\)](#) of the Internal Revenue Code, shall be as defined under Treasury Regulation Section 1.415(c)-2(d)(4) and shall exclude member contributions that are picked up by the employer under Internal Revenue Code Section 414(h). Amounts described in Treasury Regulation Section 1.415(c)-2(e)(3)(iii) are included in

compensation if paid within the limitations prescribed under Treasury Regulation Section 1.415(c)-2(e)(3)(i)(A) and (B).

(l)

Redeposit of Withdrawn Contributions Any redeposit of withdrawn contributions (including interest thereon) to the retirement system with respect to an amount previously refunded upon a forfeiture of service credit under the retirement system or another governmental plan maintained by the retirement system shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(m)

Reduction of Benefits Priority. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

*(Added Ord. 91-56, § 1, eff. 6-29-91; Am. Ord. 96-54, § 66, eff. 9-20-96; Am. Ord. 2011-2, § 9, eff. 3-7-11).*

## **SEC. 3-560. - EFFECT OF MARITAL DISSOLUTION OR LEGAL SEPARATION OR TERMINATION OF DOMESTIC PARTNERSHIP.**

(a)

### **Purpose.**

(1)

It is the intent of this Section and Sections [3-561](#) and [3-562](#) to insure that a member and the alternate payee each receives his or her appropriate community property share of any applicable retirement allowance and benefits (including statutorily provided monthly installments payable after a member's death to his or her surviving spouse, surviving domestic partner, children or parents), but only insofar as the division of any community property interest does not increase the actuarial present value (as defined in [Section 3-501\(b\)](#)) of allowances and other benefits which would otherwise have been provided by the Retirement System.

(2)

It is the further intent of this section to allow court orders to provide retirement allowances and benefits (including statutorily provided monthly installments payable after a member's death to surviving spouses, surviving domestic partners, children or parents) to alternate payees to the extent:

- (i)  
Of at least the alternate payee's community property interest in the retirement allowance and other benefits earned during the marriage or the domestic partnership;
- (ii)  
That a final judgment of dissolution of marriage or legal separation or of termination of domestic partnership or the order incident thereto dividing the community property interest allocates a portion of that community property interest to the alternate payee; and
- (iii)  
That the Board is joined as a party in the dissolution, separation, or termination proceeding and has been served with a file-endorsed copy of the judgment of final dissolution or legal separation or termination or the order incident thereto dividing the community property interest in the retirement allowance and other benefits earned during the marriage or the domestic partnership.

(3)  
It is the intent of this section not to provide retirement allowances to any persons other than alternate payees and not to allow alternate payees to be treated as surviving spouses or surviving domestic partners under this Article 5.

(b)

**Provisions Permitted in Court Orders.** A final judgment of dissolution, legal separation, or termination or court order incident thereto dividing the community property interest of a member and the member's alternate payee in a retirement allowance or other benefit, may provide for any of the following:

- (1)  
That, prior to the retirement of the member, the community property interest of the member and the alternate payee be split into separate accounts for the member and the alternate payee as hereafter provided in [Section 3-561](#); or
- (2)  
That the community property interest of a member and the alternate payee be paid after the member's retirement as the court may order, provided that:
  - (i)  
No retirement allowances are payable to the the alternate payee before the member dies or retires;
  - (ii)  
No form of payment is required other than a form being permitted under the Retirement System at the time payments start;
  - (iii)

No survivor allowance is payable to an alternate payee under [Section 3-550](#) or any other section of this Article 5, except that an alternate payee may receive a community property share of a survivor benefit payable to someone else as a result of the member's death;

(iv)

The actuarial present value of the portion of the member's allowance payable to the member and the alternate payee, plus the actuarial present value of any survivor benefits payable under Sections [3-550](#) and [3-552](#), shall not exceed the actuarial present value of the member's allowance and such survivor benefits as would have been payable had the member never been married or had never established a domestic partnership with the alternate payee; and

(v)

No retirement allowances or other benefits are payable to the parents of an alternate payee or to the children of an alternate payee who were stepchildren of the member, except as permitted under the combined account option upon the death of the alternate payee.

(3)

That permitted beneficiaries are limited to the following classes of individuals:

(i)

spouse,

(ii)

domestic partner,

(iii)

children,

(iv)

grandchildren,

(v)

parents, or

(vi)

any person who depends on the member wholly or in part for education or support.

(c)

**Provisions Prohibited in Court Orders.** A final judgment of dissolution, legal separation, or termination or other court order dividing the community property interest of a member and the alternate payee in a retirement allowance or other benefit must conform to the following rules:

(1)

Retirement allowances or other benefits may not be paid to any individual who is not a permitted beneficiary of the member or of the alternate payee;

(2)

Payments may not be made in a form not provided in this Article 5;

(3)

An alternate payee is not a surviving spouse of the member under this Article 5 for any purpose;

(4)

The surviving spouse or surviving domestic partner of an alternate payee is not to be deemed to be a surviving spouse under this Article 5 for any purpose;

(5)

An alternate payee or the surviving spouse or surviving domestic partner of an alternate payee is not eligible to receive any form of disability retirement allowance under this Article 5 with respect to any disabling condition the alternate payee or the surviving spouse or surviving domestic partner of an alternate payee might sustain.

(d)

**Member's Rights.** Any credited service or any accumulated contributions which are not explicitly awarded by court order to an alternate payee shall be the sole and separate property of the member.

(e)

If benefits are payable pursuant to an order that satisfies the requirements of this Section, [Section 3-561](#), and/or [Section 3-562](#) that meets the requirements of a "domestic relations order" as defined in Section 414(p) of the Internal Revenue Code, then the applicable requirements of Section 414(p) of the Internal Revenue Code shall be followed by the retirement system.

*(Added Ord. 94-29, § 3, eff. 5-27-94; Am. Ord. 94-38, § 1, eff. 6-24-94; Am. Ord. 2002-12, § 1, eff. 3-19-02; Am. Ord. 2004-102, § 1, eff. 11-15-04; Am. Ord. 2006-17, § 7, eff. 3-10-06; Am. Ord. 2011-2, § 10, eff. 3-7-11).*

## **SEC. 3-561. - DISSOLUTION OR LEGAL SEPARATION PRIOR TO A MEMBER'S RETIREMENT.**

(a)

### **Separate account option.**

(1)

**Purpose.** The purpose of the separate account option is to permit a member and an alternate payee to divide the member's retirement allowance and benefits (including statutorily provided monthly installments payable after a member's death to his or her surviving spouse, surviving domestic partner, children or parents) prior to retirement into separate and distinct accounts for the member and for the alternate payee, as set forth in a court order which meets the requirements of [Section 3-560](#) and this [Section 3-561](#)

(2)

**Court Order.** In the event of a legal separation or dissolution or termination, the Board shall comply with a court order incident thereto which contains the following provisions:

(i)

The division of the accumulated member contributions and credited service applicable to periods of service during the marriage or domestic partnership into two separate and distinct accounts in the name of the member and the alternate payee;

(ii)

The right of the alternate payee to elect an option under [Section 3-554](#) and designate a beneficiary with respect to the alternate payee's separate account;

(iii)

The right of the alternate payee to a refund of accumulated contributions in the alternate payee's separate account;

(iv)

For purposes of determining the amount of any retirement allowance payable to the alternate payee, final compensation (as defined in [Section 3-501\(i\)\(3\)](#)) shall be determined solely by the compensation earnable (as defined in [Section 3-501\(i\)\(2\)](#)) by the member during the period of marriage or domestic partnership;

(v)

For purposes of applying the benefit formula of [Section 3-541](#) for determining the amount of any retirement allowance payable to the alternate payee, the age of the alternate payee shall be used.

(3)

**Refund of Contributions to an Alternate Payee.**

(i)

An alternate payee who has been awarded a separate account shall possess the right to a refund of accumulated member contributions in that separate account at any time after the court order has been filed with the Retirement System.

(ii)

The alternate payee shall file a written application with the Retirement System on a form provided by the System to obtain the refund.

(iii)

Upon filing the application for a refund with the Retirement System, the alternate payee shall from that point on be deemed to have permanently waived any and all rights the alternate payee may have possessed in the



Retirement System based on the member's employment, including any and all rights to any benefit or retirement allowance or any survivor benefits.

(iv)

If, as of the date of separation of the member and his or her spouse or equivalent date for a domestic partnership as determined in the court proceedings, the member did not possess sufficient credited service to retire for service, then the alternate payee's only form of payment under this separate account option will be a refund of the accumulated member contributions allocated to his or her separate account.

(v)

If an alternate payee has withdrawn his or her portion of the accumulated member contributions, the alternate payee shall not be allowed to redeposit those contributions with the Retirement System.

(4)

**Retirement of Alternate Payee.** An alternate payee shall be deemed to be retired only if:

(i)

The alternate payee files a written application with the Retirement System on a form provided by the System;

(ii)

The member and the alternate payee have both attained the minimum age required for a service retirement; and

(iii)

On the date of separation of the member and the alternate payee or the equivalent date for a domestic partner as determined in the court proceedings, the member possessed sufficient credited service to retire for service. A member who possessed sufficient credited service to retire before the division shall be deemed to continue to do so after the division, and so shall the alternate payee.

(5)

**Calculation of the Alternate Payee's Retirement Allowance.**

(i)

The alternate payee's retirement allowance shall consist of an annuity based upon the alternate payee's accumulated contributions and a pension based upon the alternate payee's credited service. Only the compensation earnable by the member during the period of marriage or domestic partnership and prior to the date of separation shall be used to determine final compensation.

(ii)

The alternate payee's retirement allowance shall be eligible for cost-of-living increases under this Article 5.

(iii)

No survivor or death benefits will be payable upon the death of the alternate payee, and such alternate payee upon remarriage or reestablishment of domestic partnership shall not be entitled to elect any of the optional forms of benefit.

(6)

**Death of Alternate Payee Prior to Retirement of Alternate Payee.** If the alternate payee dies prior to retirement, then the accumulated contributions in the alternate payee's separate account shall be paid to the alternate payee's beneficiary as designated to the Retirement System on a form provided by the System. If a beneficiary has not been designated at the time of death or if the designated beneficiary is not living at the time of death, the accumulated contributions shall be paid to the alternate payee's estate. No other death benefits will be payable as a result of the death of the alternate payee.

(b)

**Combined Account Option.** The Retirement System will comply with a court order incident to a legal separation or dissolution or termination which divides the community property interests of a member and the alternate payee, provided that:

(1)

The alternate payee's interest is not to be paid before the member retires or dies, and

(2)

The court order complies with the provisions set forth in [Section 3-560](#), including the provision that the alternate payee will not be considered to be a surviving spouse or surviving domestic partner under [Section 3-550](#) or any other Section of this Article 5.

(3)

The court order may provide that the alternate payee's interest in the member's retirement allowance be paid over the lifetime of the member under the optional form of payment allowed by the System and selected by the member.

(i)

With respect to the alternate payee's interest in the member's retirement allowance, the alternate payee may on a form provided by the System designate a permitted beneficiary as set forth in [Section 3-560\(b\)\(3\)](#). If the alternate payee predeceases the member, the person so designated shall receive until the member's death the benefit previously paid to the alternate payee.

(ii)

If a benefit is payable under [Section 3-550](#) or [3-552](#) upon the member's death, as long as payments are payable under those provisions, one-half of the community property share thereof may be payable to the alternate payee

or a permitted beneficiary as set forth in [Section 3-560\(b\)\(3\)](#) of the alternate payee.

(iii)

If the member predeceases the alternate payee and the member has chosen option 2 or 3, the alternate payee or the permitted beneficiary as set forth in [Section 3-560\(b\)\(3\)](#) of the alternate payee may receive, as long as payments are payable under the selected option, one-half of the community property share of that portion of the allowance which would be continued after the member's death, regardless of dependents.

(4)

In lieu of the payment method specified in subsection (3) above, the court order may provide that the alternate payee's interest in the member's retirement allowance be paid under any optional form of payment allowed by the Retirement System over the lifetime of the alternate payee (instead of over the lifetime of the member), provided that,

(i)

The sum of the actuarial present values of the member's and the alternate payee's allowances and survivor benefits shall not exceed the actuarial present value of the member's allowance and survivor benefits had they been payable to the member, assuming the member had never been married to or had never established a domestic partnership with the alternate payee; and

(ii)

No survivor benefits under [Section 3-550](#) or any other Section of this Article 5 are payable to any surviving spouse of the alternate payee.

(5)

The court order may provide for the division of the community property interest in the death benefit under [Section 3-537](#)

*(Added Ord. 94-29, § 4, eff. 5-27-94; Am. Ord. 94-38, § 1, eff. 6-24-94; Am. Ord. 95-40, § 10, eff. 6-23-95; Am. Ord. 2002-12, § 2, eff. 3-19-02; Am. Ord. 2004-102, § 2, eff. 11-15-04; Am. Ord. 2006-17, § 8, eff. 3-10-06).*

## **SEC. 3-562. - DISSOLUTION OR LEGAL SEPARATION OR TERMINATION AFTER A MEMBER'S RETIREMENT.**

(a)

**Purpose.** The purpose of this section is to allow a court order to provide for an equitable distribution of retirement allowances and survivor benefits between a retired member and the alternate payee, without requiring the retirement system to pay increased benefits.

(b)

**Form of Payment to Remain Unchanged.** If a retired member's marriage to the individual to whom the retired member was married at the time the retired member's retirement allowance

commences is dissolved after retirement benefits commence or if they are legally separated or if a retired member's domestic partnership to the individual with whom the retired member had established a domestic partnership at the time the retired member's retirement allowance commences is terminated after retirement benefits commence, then the final judgment of dissolution or legal separation or termination or court order incident thereto may not in any way change the form or forms of payment under [Section 3-554](#) selected by the member at retirement, except that any life annuity payable only for the member's life may be modified as set forth in [Section 3-562\(c\)](#) to provide that a portion thereof be payable for the alternate payee's lifetime.

(c)

**Unmodified Allowance or Option 1.** If a member prior to retirement either did not select an option under [Section 3-554](#) or selected Option 1 under that Section, the Retirement System will comply with a court order that divides the total actuarial present value of the allowances payable to the retired member according to the separate and community property interests of the retired member and the alternate payee. The court order may further provide that the divided value allocated to the retired member shall continue to be paid to the retired member in the same form as before the court order, and that the divided value allocated to the alternate payee shall be converted into the same form of payment, but payable for the life of the alternate payee instead of for the life of the retired member. The sum of the actuarial present values of the divided values for the retired member and the alternate payee shall not exceed the actuarial present value of the benefit otherwise payable immediately before the division to the retired member alone, excluding the value of any survivor benefits under [Section 3-550](#) or under any other Section of this Article 5.

(d)

**Survivor Benefits.** The court order may provide that any survivor benefits payable as a result of a retired member's death shall be payable to the beneficiary entitled thereto under this Article 5, provided that the alternate payee's one-half community property share therein can be paid directly to such alternate payee. No benefits shall be payable to the alternate payee after all beneficiaries entitled to the retired member's survivor benefits are no longer entitled thereto.

(e)

**Option 2 or 3.** If a member at retirement selected either Option 2 or 3 under [Section 3-554](#) for any portion of his or her retirement allowance, which options provide for retirement continuances to a person having an insurable interest in the member's life, the amount and the form of payment of the benefits payable pursuant to these options by the Retirement System cannot be changed, but the Retirement System will comply with a court order requiring that a portion of those payments be paid directly to the alternate payee (or to the beneficiaries named by the alternate payee if he or she predeceases the retired member) rather than to the retired member or the retired member's beneficiary. In no event, however, shall the alternate payee's life replace the life of another previously named beneficiary under either Option 2 or 3.

(f)

**Post-retirement Elections.** If a retired member made an election under [Section 3-555](#) to name a new spouse or domestic partner as beneficiary and that marriage is dissolved or the parties become legally separated or the domestic partnership is terminated, no surviving spouse or surviving domestic partnership benefits will be paid to the alternate payee, but the Retirement System will comply with a court order that divides the present value of the allowance payable for the retired member's life between the retired member and the alternate payee. The court order may further provide that the divided value allocated to the retired member shall continue to be paid to the retired member for life, and the divided value allocated to the alternate payee shall be converted into monthly payments for the life of the alternate payee instead of for the life of the retired member.

*(Added Ord. 94-29, § 5, eff. 5-27-94; Am. Ord. 94-38, § 1, eff. 6-24-94; Am. Ord. 2002-12, § 3, eff. 3-19-02; Am. Ord. 2004-99, § 4, eff. 11-15-04; Am. Ord. 2004-102, § 3, eff. 11-15-04; Am. Ord. 2006-17, § 9, eff. 3-10-06).*

### **SEC. 3-563. - JUDICIAL REVIEW OF CERTAIN BOARD DECISIONS.**

The provisions of Section 1094.6 of the California Code of Civil Procedure shall be applicable to decisions of the Board denying an application for a retirement benefit or allowance or entitlement.

*(Added Ord. 95-40, § 11, eff. 6-23-95).*

### **SEC. 3-564. - DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS.**

(a)

If, under the provisions of this Article, a distributee becomes entitled to an eligible rollover distribution, the distributee may elect to have the distribution or any portion thereof paid directly to an eligible retirement plan specified by the distributee.

(b)

The election made pursuant to this Section shall be in accordance with the terms and conditions established by the Board.

(c)

Upon the exercise of the election by a distributee pursuant to this Section, the distribution from the retirement fund of the amount designated by the distributee shall be made in the form of a direct transfer to the eligible retirement plan so specified.

(d)

For purposes of this Section, "distributee" means a member, a surviving spouse, or a former spouse under a domestic relations order which is treated as a qualified domestic relations order to the extent provided in Internal Revenue Code Section 414(p)(11), and such other persons as come within the meaning of the term as used in [Section 401\(a\)\(31\)\(A\)](#) of the Internal Revenue Code. Effective for plan years on or after January 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by [Section 401\(a\)\(9\)\(E\)](#) of the Internal Revenue Code. However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity

established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

(e)

For purposes of this Section, "eligible rollover distribution" means a distribution from the retirement fund which constitutes an eligible rollover distribution within the meaning of [Section 401\(a\)\(31\)\(C\)](#) of the Internal Revenue Code, i.e., any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(1)

Any distribution that is one of a series of substantially equal periodic payments (not less than frequently than annually) made (i) for the life (or expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary or (ii) for a specified period of ten years or more;

(2)

Any distribution to the extent such distribution is required under [Section 401\(a\)\(9\)](#) of the Internal Revenue Code;

(3)

The portion of any distribution that is not includable in gross income; or

(4)

Any distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in [Section 401\(a\)](#) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in [Section 401\(a\)](#) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not so includable; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code.

(f)

For purposes of this Section, "eligible retirement plan" means a plan which constitutes an eligible retirement plan within the meaning of [Section 401\(a\)\(31\)\(D\)](#) of the Internal Revenue Code, the terms of which permit the acceptance of rollover distributions and is limited to the following:

(1)

an individual retirement account described in Section 408(a) of the Internal Revenue Code,

(2)

an individual retirement annuity described in Section 408(b) of the Internal Revenue Code,

(3)

an annuity plan described in Section 403(a) of the Internal Revenue Code, or

(4)

a qualified trust described in Section 401(a) of the Internal Revenue Code.

(5)

effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code,

(6)

effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or

(7)

effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(g)

This Section applies to distributions made on or after January 1, 1993.

(h)

If this Article in Section 3-534 (Refund of Contributions) or Section 3-535 (Deferred Benefits After Separation) provides for a mandatory refund of contributions which constitutes an eligible rollover distribution under this Section and if an individual while a member does not elect to have such refund paid either directly to the individual or to an eligible retirement plan in a direct rollover, the amount to be refunded shall be credited to the Retirement Fund, with the individual as a former member being entitled thereafter to claim the amount so credited but without interest.

*(Added Ord. 95-40, § 12, eff. 6-23-95; Am. Ord. 2011-2, § 11, eff. 3-7-11).*

### **SEC. 3-565. - MINIMUM REQUIRED DISTRIBUTIONS.**

The City of Fresno Employees Retirement System shall pay all benefits in accordance with a reasonable good faith interpretation of the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The City of Fresno Employees Retirement System shall be subject to the following provisions:

(a)

Notwithstanding any other provision of this article, payment of a member's retirement allowance shall commence no later than the required beginning date which is the later of the following:

(i)

The April 1 following the end of the calendar year in which the member attains age seventy and one-half (70½); or

(ii)

The April 1 following the end of the calendar year in which the member retires.

(b)

The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.

(c)

If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

(d)

If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be distributed within five (5) years of his death, unless it is to be distributed in accordance with the following rules:

(1)

If the member's surviving spouse is the sole designated beneficiary, the member's remaining interest in the plan is distributed or begins to be distributed by December 31 of the calendar year immediately following the calendar year in which the member died or by December 31 of the calendar year in which the participant would have attained age 70½, if later, and if the surviving spouse dies before the distribution to the surviving spouse begins, this Section shall be applied as if the surviving spouse were the plan member; or

(2)

If the member's surviving spouse is not the sole designated beneficiary, the member's remaining interest is to be distributed over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary; and such distribution begins no later than December 31 of the calendar year immediately following the calendar year of the member's death.

(e)



The death and disability benefits provided by the retirement system are limited by the incidental benefit rule set forth in [section 401\(a\)\(9\)\(G\)](#) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from the retirement system.

(f)

Notwithstanding any other provision of this article, if a member has elected an option under [section 3-554](#) and his or her surviving spouse is not the designated beneficiary, the periodic amounts payable to the member and any other designated beneficiary shall be adjusted only to the extent necessary to ensure that the minimum distribution incidental benefit requirement of Internal Revenue Code [Section 401\(a\)\(9\)](#) is satisfied.

*(Added Ord. 97-23, § 1, eff. 6-21-97; Am. Ord. 2011-2, § 12, eff. 3-7-11).*

## **SEC. 3-566. - DEFERRED RETIREMENT OPTION PROGRAM ("DROP").**

(a)

### **Purpose of DROP.**

(1)

It is the intent of this section to create a voluntary deferred retirement option program ("DROP") for members.

(2)

DROP is designed to be an alternate method of receiving retirement benefits.

(3)

DROP is intended to be cost neutral to the System.

(4)

DROP is intended to provide additional flexibility to the System by providing members with an additional method of receiving their retirement benefits.

(5)

It is the intent of DROP not to jeopardize in any way the tax-qualified status of the System under the Internal Revenue Code. The provisions of this section may at any time be modified, with such modifications being given retroactive effect, if necessary to maintain the System's tax-qualified status.

(b)

### **Eligibility and Election to Participate in DROP.**

(1)

Any member who has attained age 55 and who possesses sufficient credited service to be eligible for a service retirement shall be eligible to participate in DROP. The eligibility age of fifty-five may be reduced to an age not less than age fifty, provided the member consents in writing to the early retirement reduction provisions set forth in [section 3-541\(4\)](#).

(2)

The election to participate in DROP shall be voluntary and irrevocable. The election shall:

(i)

Be made on a form provided by the System;

(ii)

Designate a period of participation not to exceed one hundred and twenty (120) months;

(iii)

Affirm that the member, on the date the member commences participation in DROP, shall cease accruing service credits;

(iv)

Affirm that the member agrees to terminate City employment no later than completion of the designated DROP participation period;

(v)

Constitute an application for service retirement no later than the end of the designated DROP participation period; and

(vi)

Include the member's irrevocable election among the options in [Section 3-554](#) (Optional Modification of Allowances).

(3)

A member making the election shall execute such waivers with respect to state and federal employment discrimination and related laws, such releases, and such covenants as are required by the City or the System.

(4)

By electing to participate in DROP:

(i)

A member becomes subject to all of the provisions of this section;

(ii)

For a member whose retirement allowance is determined under [Section 3-501](#) (Definitions), average final compensation shall be determined solely by reference to the position or positions held by the member prior to the date the member commences participation in DROP; and

(iii)

A member shall have DROP benefits credited to a DROP account pursuant to subsection (c) of this section.

(c)

**DROP Accounts and DROP Benefits.**

(1)

A DROP account is a nominal, bookkeeping account established within the System for each DROP participant. No System assets shall be separately segregated for any DROP account; a DROP participant shall not have a claim on any specific assets of the System.

(2)

Amounts credited to a member's DROP account shall be vested, except to the extent deemed necessary by the Board in its sole discretion to maintain the System's tax-qualified status under the Internal Revenue Code.

(3)

A member's DROP account shall be credited monthly with an amount which represents the service retirement allowance which the member would have received if the member had retired on the date the member commenced DROP participation.

(4)

The monthly amount credited to a member's DROP account shall reflect any cost-of-living adjustments otherwise applicable to retired members.

(5)

A member's DROP account shall be credited monthly with interest pursuant to subsection (d) of this section.

(d)

**Interest Crediting to DROP Accounts.**

(1)

Each DROP account shall be credited monthly with interest at the nominal monthly interest rate equivalent to the annual effective DROP interest rate adopted by the Board. The nominal monthly interest rate shall apply to the balance in each DROP account as of the beginning of each month and shall be applied before the monthly amount described in [Section 3-566\(c\)\(3\)](#) for that month has been credited to the account.

(2)

The Board shall set an annual effective DROP interest rate, which shall apply to each DROP account during the retirement system's fiscal year in which the Board set the rate.

(3)

In setting the annual effective DROP interest rate, the Board shall review and consider the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP.

(4)

The Board shall review the net rate of return earned by the System's entire investment portfolio for each of the five prior fiscal years, including realized and unrealized gains and losses and as reduced by all investment expenses. These net rates of return shall be certified by the System's Retirement Administrator. The sum

of the five net rates of return shall be divided by five to provide an average net rate of return.

(5)

The Board shall set the annual effective DROP interest rate at a level it deems in its sole discretion necessary to maintain the cost neutrality of the DROP program. The Board shall not set the annual effective DROP interest rate lower than 3 percent below the average net rate of return as determined in [Section 3-566\(d\)\(4\)](#) nor higher than that average net rate of return.

(6)

If the average net rate of return determined in [Section 3-566\(d\)\(4\)](#) is negative, the Board shall set a negative annual effective DROP interest rate, i.e., each DROP account balance shall be reduced accordingly.

(e)

**Additional DROP Provisions.**

(1)

The effective date of DROP participation for a member shall be the first of the month following the date the Board approves the member's fully completed DROP application.

(2)

For a member whose effective date of a participation in DROP is prior to the effective date of Ordinance No. 2011-2 and notwithstanding [Section 3-523](#) (Normal Contributions of Members) and [Section 3-553\(e\)](#) (Cost of Living Adjustment), the member shall cease making contributions to the System. For a member whose effective date of participation in DROP is on or after the effective date of Ordinance No. 2011-2, the member shall continue to make contributions which shall be deposited into the member's DROP account.

(3)

If a member becomes disabled while participating in DROP, the member shall be eligible to apply for disability retirement and shall be subject to the same disability eligibility requirements as if the member were not in DROP. Notwithstanding [Section 3-547](#) (Allowance at Disability Retirement), if the Board grants the application, whether for an industrial or non-industrial disability, the amount of the disability retirement allowance shall be the same as the amount then being credited monthly to the member's DROP account.

(4)

If a member dies due to non service-connected causes while participating in DROP, the member shall be deemed to have died after retirement. If a member dies on or after June 1, 2008 while participating in DROP and the Board determines that the causes are service-connected, the member shall be deemed to have suffered a service-connected death, with the survivorship benefit to be comprised solely of the

monthly amount currently being credited into the member's DROP account, adjusted for any optional modification elected by the member, and the balance in the DROP account paid pursuant to Sections [3-566\(f\)](#) and [3-566\(g\)\(2\)](#).

(5)

If a member marries or establishes a domestic partnership while participating in DROP, the marriage or domestic partnership shall be deemed to have occurred prior to the member's retirement only for purposes of satisfying any applicable benefit eligibility requirement.

(f)

**Designation of DROP Beneficiary.**

(1)

A member electing to participate in DROP shall designate a beneficiary of the member's DROP account.

(2)

If a member dies while participating in DROP,

(i)

A designated DROP account beneficiary who is either a surviving spouse or surviving domestic partner of the member or a child under the age of 18 of the member or a dependent parent of the member shall be entitled to select a form of distribution under [Section 3-566\(g\)\(2\)](#); or

(ii)

A designated DROP beneficiary who is not listed in [Section 3-566\(f\)\(2\)\(i\)](#) shall receive a DROP account distribution in the form of a lump sum; or

(iii)

If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.

(3)

No DROP beneficiary designation shall modify a member's community property obligations under California law.

(g)

**Distribution of DROP Account.**

(1)

Upon termination of DROP participation and upon retirement from the City, a member shall:

(i)

Receive the amounts credited to the member's DROP account, including interest; and

(ii)

Begin receiving a monthly retirement allowance in the amount being credited to the member's DROP account.

(2)

A member upon the completion of the designated DROP participation period shall select one of the following as the form of distribution of the member's DROP account:

(i)

A lump sum; or

(ii)

An amount payable monthly in equal monthly installments in accord with applicable provisions of the Internal Revenue Code;

1.

The member shall be entitled to select an installment pay-out period not to exceed the lesser of ten years or the joint life expectancies of the member and the member's spouse;

2.

The balance in the member's DROP account during the installment pay-out period shall be credited with simple interest monthly at the actuarially assumed interest rate;

3.

No cost-of-living adjustment shall be made to the monthly amount;

4.

Payments of the monthly amount shall terminate when the balance in the DROP account is reduced to zero;

5.

If the retired member dies prior to receipt of the member's entire DROP account, then:

(a)

A designated DROP beneficiary who is listed in [Section 3-566\(f\)\(2\)\(i\)](#) shall be entitled to select a form of distribution under [Section 3-566\(g\)\(2\)](#); or

(b)

A designated DROP beneficiary who is not listed in [Section 3-566\(f\)\(2\)\(i\)](#) shall receive a DROP account distribution in the form of a lump sum; or

(c)

If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.

6.

The retired member may at any time request immediate payment of the entire balance remaining in the member's DROP account; or

(iii)

Such other form of distribution, as is adopted by the Board and in accord with applicable provisions of the Internal Revenue Code.

(3)

No distribution shall be made from a member's DROP account until the member terminates DROP participation.

(4)

If a member dies while participating in DROP, the member's DROP account shall be paid pursuant to Sections [3-566\(f\)](#) and [3-566\(g\)\(2\)](#).

(h)

**Termination of DROP Participation.** A member's participation in DROP shall automatically terminate upon the earliest occurrence of any of the following events:

(1)

Completion of the member's designated DROP participation period; or

(2)

Death of the member; or

(3)

Approval by the Board of the member's application for a disability retirement; or

(4)

Voluntary termination of a member's employment; or

(5)

Involuntary termination of a member's employment, whether or not for cause, including layoffs or reductions in force and including the conclusion of any administrative or judicial appeals process.

(i)

**General DROP Provisions.**

(1)

The right is reserved at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions relating to DROP. But no amendment shall be enacted which has the effect of decreasing the amount credited to a member's DROP account.

(2)

The Board shall enact such rules and procedures as are necessary or appropriate to administer DROP.

(3)

The Board shall issue annually to each DROP participant a statement of that member's DROP account balance.

(j)

**Compliance with Applicable Provisions of the Internal Revenue Code and other Federal Laws.**

(1)

It is intended that DROP shall not jeopardize the tax-qualified status of the System under the Internal Revenue Code. Full rights are reserved to modify this section to the extent necessary or appropriate to insure that DROP complies with applicable federal laws, regulations, and administrative rulings.

(2)

Notwithstanding any other provision in this section, the DROP program shall be subject to the sections of the Internal Revenue Code applicable to governmental plans, as amended, and the regulations and rulings under those sections.

(k)

**Employment Status During DROP Participation.** The employment status of a member electing to participate in DROP shall not be affected by that election.

*(Added Ord. 97-67, § 1, eff. 12-18-97; Am. Ord. 2000-74, § 1, eff. 12-11-00; Am. Ord. 2006-17, § 10, eff. 3-10-06; Am. Ord. 2007-105, § 4, 1-28-08; Am. Ord. 2011-2, § 13, eff. 3-7-11; Am. Ord. 2011-3, § 2, eff. 3-11-11; Am. Ord. 2012-4, § 3, eff. 3-15-12).*

**SEC. 3-567. - POST-RETIREMENT SUPPLEMENTAL BENEFIT.** 

(a)

**Purpose of the Post-Retirement Supplemental Benefit.**

(1)

It is the intent of this section to create a post-retirement supplemental benefit to provide assistance to retirees to pay for various post-retirement expenses.

(2)

It is the intent of this section that the post-retirement supplemental benefit is to be distributed if and only if distributable actuarial surplus, as defined in this section, is available to provide such benefit.

(3)

It is the intent of this section that the post-retirement supplemental benefit not jeopardize in any manner the tax-qualified status of the System under the Internal Revenue Code. The provisions of this section may at any time be modified, with such modifications being given retroactive effect, if necessary, to maintain the System's tax-qualified status.

(4)

It is generally the intent of this section to distribute only a single post retirement supplemental benefit to any given individual, except as provided in subsection (g)(3) of this section.

(5)



It is generally the intent of this section that, if an individual is eligible to receive a post-retirement supplemental benefit from this System and from the Fire and Police Retirement System, the individual is to receive only the higher of the two benefits, except as provided in subsection (g)(3) of this section.

(b)

**Definitions.** The following words as used in this section, unless a different meaning is plainly required by the context, shall have the following meanings:

(1)

"Actuarial accrued liabilities" shall mean that portion, as determined under the actuarial funding method adopted by the Retirement Board, of the actuarial present value of retirement benefits and System expenses which are not provided for by future normal costs.

(2)

"Actuarial value of assets" shall mean the value of cash, investments and other property of the System, as used by the System's actuary for the purpose of an actuarial valuation.

(3)

"Actuarial surplus" shall mean the amount by which the actuarial value of the System's assets exceeds one hundred and ten percent (110%) of the System's actuarial accrued liabilities.

(4)

"Actuarial deficit" shall mean the amount by which one hundred and ten percent (110%) of the value of the System's actuarial accrued liabilities exceeds the actuarial value of the System's assets.

(5)

"Distributable actuarial surplus" shall mean the actuarial surplus as amortized over such period as is determined by the Board.

(c)

**Eligibility for a Post-Retirement Supplemental Benefit.**

(1)

A member or former member shall be eligible for a post-retirement supplemental benefit only if the member or former member has completed at least five full years of service with the City of Fresno.

(2)

The following are eligible post-retirement supplemental benefit recipients:

(i)

Former members receiving a service retirement allowance under [section 3-535](#) (Deferred Benefits After Separation) or [section 3-541](#) (Allowance At

Service Retirement) or a disability retirement allowance under [section 3-547](#) (Allowance At Disability Retirement); and

(ii)

Beneficiaries receiving a monthly allowance under [section 3-550](#) (Continuation Of Retirement Allowances After Death) or under [section 3-552](#) (Allowance after Death Before Service Retirement) or under [section 3-554](#) (Optional Modification Of Allowance).

1.

In situations where a monthly allowance is divided among more than one beneficiary, such as where there is more than one child under age eighteen receiving an allowance under [section 3-552](#) or where the allowance under [section 3-550](#) is distributed to a qualifying surviving spouse or qualifying surviving domestic partner but where the allowance under [section 3-554](#) (Option 2) is distributed to a different individual, only a single post-retirement supplemental benefit shall be paid, with that benefit being divided among the applicable beneficiaries based upon the ratio that each allowance being paid bears to the total of all allowances being paid with respect to the former member.

(3)

Retired members and beneficiaries become eligible for the post-retirement supplemental benefit at the date they first commence receiving their monthly retirement allowance, but in no event prior to January 1, 1999.

(4)

Ineligible to receive a Post-Retirement Supplemental Benefit are:

(i)

Former members who withdrew their contributions from the System; and

(ii)

Notwithstanding any other provision in this section to the contrary, members and former members who have completed less than five full years of service with the City of Fresno, with service with any other employer specifically excluded.

(d)

**Determination of Amortization Period of Actuarial Surplus.**

(1)

The Retirement Board shall consult with the System's actuary and thereafter adopt a period over which the actuarial surplus is to be amortized.

(2)

The Retirement Board after consultation with the System's actuary may modify the amortization period.

(e)

**Determination of Distributable Actuarial Surplus.**

(1)

The Retirement Board shall at the meeting at which it receives and approves the periodic actuarial valuation report review and declare the amount of actuarial surplus as determined by the System's actuary.

(2)

The Retirement Board shall then declare by resolution the amount of distributable actuarial surplus.

(f)

**Allocation and Distribution of Distributable Actuarial Surplus.**

(1)

The Distributable Actuarial Surplus shall first be used to reduce City and member contributions for cost of living increases pursuant to Sections 3-553(e) and (h).

(2)

The Retirement Board shall divide the remaining distributable actuarial surplus into two components, one component composed of two-thirds of the distributable actuarial surplus and a second component composed of one-third of the distributable actuarial surplus.

(3)

The two-thirds component of the distributable actuarial surplus shall be used to reduce or eliminate city contributions.

(i)

In the event a portion of the two-thirds component remains after reducing or eliminating city contributions, the remainder shall be allocated to a City Surplus Reserve Account.

1.

The City Surplus Reserve Account shall accrue interest at the average gross rate of return earned by the System's entire investment portfolio for each of the three prior fiscal years, including realized and unrealized gains and losses and as reduced by all investment related expenses.

2.

The City Surplus Reserve Account shall be drawn upon in subsequent years if needed to reduce or eliminate the city's contributions.

(4)

The one-third component of surplus shall be distributed among eligible post-retirement supplemental benefit recipients as follows:

(i)

The Retirement Administrator shall determine the number of eligible post-retirement supplemental benefit recipients as of the date of the most recent actuarial valuation.

(ii)

The following amount shall be distributed monthly to each eligible post-retirement supplemental benefit recipient commencing in January of the calendar year following the declaration of distributable actuarial surplus:

1.

An amount which is the lesser of:

a.

ninety-five percent (95%) of the sum of the distributable actuarial surplus, plus the balance in the PRSB Reserve Account as defined in subsection f(4)(iii) of the section as of June 30th of the most current actuarial valuation date, divided by the number in subsection f(4)(i) and then divided by twelve: or

b.

the monthly health insurance premium being paid with respect to an active employee to the Fresno City Health and Welfare Trust or such other health insurance or health plan as is determined by the Board.

(iii)

The portion of the distributable actuarial surplus that is not distributed shall be allocated to a Post-Retirement Supplemental Benefit Reserve Account ("PRSB Reserve Account").

1.

The PRSB Reserve Account shall accrue interest at the average gross rate of return earned by the System's entire investment portfolio for each of the three prior fiscal years, including realized and unrealized gains and losses and as reduced by all investment related expenses.

2.

The PRSB Reserve Account shall be drawn upon in subsequent years only to the extent necessary to increase the amount otherwise available to pay a monthly post-retirement supplemental benefit equivalent to a monthly health insurance premium as determined by the Retirement Board.

3.

In the event of an actuarial deficit, amounts in the PRSB Reserve Account may be used to pay a post-retirement supplemental benefit in an amount as determined by the Board; in the absence of a positive balance in the PRSB Reserve Account, a post-retirement supplemental benefit shall not be paid.

(g)

**General Post-Retirement Supplemental Benefit Provisions.**

(1)

The right is reserved at any time and from time to time, and retroactively if deemed by the Board to be necessary or appropriate, to amend in whole or in part any or all of the provisions relating to the post-retirement supplemental benefit.

(2)

The Board shall enact such rules and procedures as are necessary or appropriate to administer the post-retirement supplemental benefit.

(3)

An individual who is a retired member of this System and also a surviving spouse or surviving domestic partner or beneficiary of a member of this System or of the Fire and Police Retirement System shall be eligible to receive two post-retirement supplemental benefits, one as a retired member and one as a surviving spouse or beneficiary.

(4)

Except as provided in subsection g(3) of this section,

(i)

an individual is entitled to receive only a single post-retirement supplemental benefit from the System, and

(ii)

if an individual is eligible to receive a post-retirement supplemental benefit from the System and also from the Fire and Police Retirement System, the individual shall be entitled to receive only the larger of the two benefits.

(h)

**Compliance with Applicable Provisions of the Internal Revenue Code and other Federal Laws.**

(1)

It is intended that the post-retirement supplemental benefit not jeopardize the tax-qualified status of the System under the Internal Revenue Code. Full rights are reserved to modify this section to the extent necessary or appropriate to insure that the post-retirement supplemental benefit complies with applicable federal laws, regulations, and administrative rulings.

(2)

Notwithstanding any other provision in this section, the post-retirement supplemental benefit shall be subject to the sections of the Internal Revenue Code applicable to governmental plans, as amended, and the regulations and rulings under those sections.

(i)

**Effective Date.** The first actuarial valuation to which this section will apply is June 30, 1998. The PRSB benefit shall not be distributed earlier than January 1, 1999 and shall not be attributable to any period prior to January 1, 1999.

*(Added Ord. 98-53, § 1, eff. 8-27-98; Am. Ord. 2000-3, § 1, 2-10-00; Am. Ord. 2002-7, § 1, eff. 2-18-02; Am. Ord. 2002-9, § 1, eff. 3-19-02; Am. Ord. 2006-17, § 11, eff. 3-10-06).*

### **SEC. 3-568. - RECIPROCITY BETWEEN THE EMPLOYEES RETIREMENT SYSTEM AND THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM.**

(a) **Purpose.** The purpose of this section is to extend to the members of other public agency retirement systems which adopt similar reciprocal provisions into their retirement ordinances or plans pursuant to Sections 20351, 20353, 31840.2, or 45310.5 of the California Government Code or pursuant to the charter of a City or a City and county or pursuant to the authority vested in any other public agency of the state of California (hereinafter "reciprocal systems"), and which have entered into an agreement to establish a reciprocal retirement system with the California Public Employees' Retirement System, the rights in this Retirement System set forth in this section.

(b) **Limitations On Application Of This Section.**

(1) Subject to subsection (f), the provisions of this section shall only apply to a person who satisfies either of the following requirements:

(i) The person is a member of this Retirement System, terminates his or her employment with the City, and becomes a member of a reciprocal system within six months of such termination of employment; or

(ii) The person is a member of a reciprocal system, terminates his or her employment pursuant to which he or she was a member of such reciprocal system, and becomes a member of this Retirement System within six months of such termination of employment.

(2) Except as provided in subsection (c) below, the provisions of this section shall apply only to a member whose termination and entry into employment resulting in a change in membership from this Retirement System to a reciprocal system, or from a reciprocal system to this Retirement System, as provided in subsection (b)(1) above, occurred after the effective date of February 18, 2002, specified in the agreement for reciprocal benefits between the Board of Administration of the Public Employees Retirement System and the Council of the City of Fresno.

(3) The provisions of this section relating to computation of final compensation shall apply to a member if such provisions would have applied had the member's termination and entry into employment occurred after the effective date of the agreement for reciprocal benefits.

(c) **Benefits.** The following provisions shall apply to a member who meets the requirement of subsection (b):

(1) Notwithstanding any provision of this plan or a reciprocal system plan in the matter of vesting, the member shall have the right to elect to leave his or her accumulated contributions on deposit in the Retirement System irrespective of the amount of such contributions or the length of service credited to the member under this Retirement System. Such election shall be irrevocable while membership in the reciprocal system continues.

(2) For the purpose of the calculation of contribution rates of the City and the members, the age of entry for a person entering this Retirement System from a reciprocal system shall be such person's age at entry into the reciprocal system.

(3) The average monthly salary during any period of service as a member of a reciprocal system shall be considered compensation to a member of this Retirement System for the purpose of computing final compensation for such member if all of the following conditions are satisfied:

(i) The member has attained the age of fifty years; and

(ii) The member retires concurrently under both this Retirement System and the reciprocal system; and

(iii) At the time of retirement, the member is credited with such period of service under the reciprocal system.

(4) Solely for the purpose of meeting the minimum service requirements for qualification for benefits and retirement allowances under this Retirement System, service shall also include service as an officer or employee of a reciprocal system, if all of the following conditions are satisfied:

(i) The member has attained the age of fifty years; and

(ii) The member retires concurrently under both this Retirement System and the reciprocal system; and

(iii) The salary for service in the reciprocal system constitutes compensation of a member of this Retirement System for purposes of calculating final compensation.

(5) A member shall be retired for disability and receive a retirement allowance based on the service credited to the member at the time of retirement during any period in which the member receives a disability retirement allowance under a reciprocal system, subject to the following limitations:

(i) Such allowance shall not exceed an amount which when added to the allowance paid under the reciprocal system equals the allowance which would be paid for a nonservice-connected (nonindustrial) disability if all the member's service had been credited under the reciprocal system; and

(ii) Such allowance shall in no event be less than an annuity which is the actuarial equivalent of the member's contributions, whether or not the disability is for service-connected (industrial) reasons.

(6) The death benefits for a member who dies from nonservice-connected (nonindustrial) causes as a member of a reciprocal system shall not exceed an amount which when added to the death benefits paid for such member under the reciprocal system equals the maximum death benefit payable under that system, subject to the following limitations:

(i) Such death benefits shall be at least the amount of the member's accumulated contributions; and

(ii) If death is cause by service-connected (industrial) injury or disease in the reciprocal system, the death benefits shall be the amount of the member's accumulated contributions.

(d) **Information And Data.** On the request of a reciprocal system, the Board shall supply information and data necessary for administration of the reciprocal system as it is affected by membership in the service credited under this Retirement System.

(e) **Interpretation Of This Section.** Interpretations of the provisions of this section shall be made with reference to interpretations that have been made relative to the California Public Employees' Retirement System—1937 Act County Employees' Retirement reciprocal provisions upon which these provisions are based.

(f) **Modification Of Rights.** All rights under this section are subject to modification as may be necessary to conform to amendments to the Public Employees' Retirement Law or the County Employees' Retirement Law of 1937 as provided in California Government Code Section 20353.

*(Added Ord. 2002-5, § 1, 2-18-02; Am. Ord. 2007-105, § 5, eff. 1-28-08).*

**SEC. 3-569. - RIGHTS OF DOMESTIC PARTNERS.** 



Full rights are reserved, at any time and from time to time and retroactively if deemed necessary or appropriate, to amend in whole or in part any and all provisions of this Article 5 relating to domestic partners. It is specifically intended that, if through the initiative process or otherwise, California law expands or reduces, rescinds or terminates the status and rights of domestic partners, whether current, surviving, or former, or the status and rights of domestic partnerships, then conforming expansions, reductions, rescission, or termination shall be deemed to be incorporated into this article, including retroactively. It is further intended that the domestic partner provisions of this Article not jeopardize the tax-qualified status of the System under the Internal Revenue Code; full rights are reserved to modify or rescind those provisions to insure compliance with applicable federal laws, regulations, and administrative rulings.

*(Am. Ord. 2006-17, § 12, eff. 3-10-06).*