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SEC. 3-301. - DEFINITIONS. 

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

(a)

(1)

"Accumulated contributions" shall mean accumulated normal contributions plus accumulated prior 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 the member's individual account, together with regular interest thereon.

(3)

"Accumulated prior contributions" shall mean prior service contributions together with regular interest thereon from and including July 1, 1955.

(4)

"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 interest at the rate fixed by the Board.

(5)

"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.

(6)

"Actuary" shall mean the consulting actuary employed by the Retirement Board in accordance with the provisions of [Section 3-305](#)

(7)

"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.

(8)

"Annuity" shall mean equal monthly payments for life derived from a member's accumulated contribution account.

(9)

"Average compensation" shall mean the average monthly compensation attached to the rank or ranks held by a member during employment in the Fire Department, Police Department, or Airport Public Safety Division, unless the member commenced service prior to August 27, 1990 and elected the definition of average compensation contained in [Section 3-302](#). Said average shall be the sum of the products of the compensation attached to the respective ranks held by the member and the service

rendered in such ranks, divided by the total service with which the member is entitled to be credited. Such average compensation of a member, and the allowance based on it, shall be adjusted from time to time, as the compensation attached to said rank or ranks is changed, after the member's retirement or death, provided that compensation shall be considered as attached to a rank only for the period of service specified in any ordinance or resolution which fixes rates of compensation, exclusive of time elapsing from the expiration of such period to the date, such as but not limited to the first of the month next following, upon which a different compensation is effective.

(b)

(1)

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

(2)

"Board" shall mean "Retirement Board" as created by [Section 3-305](#)

(c)

(1)

"Charter" shall mean the Charter of the City of Fresno.

(2)

"Class" or "Classification" shall mean a group of positions to which the same title is applied and the same rate of salary or compensation is paid or attached.

(3)

"Compensation," as distinguished from benefits under [Division 4](#) of the Labor Code of the State of California, shall mean the remuneration payable by the city, in amounts fixed for members of the Fire Department, Police Department, and Airport Public Safety Division, by ordinances existing on July 1, 1955, and ordinances or provisions of this Code, or resolutions of the Council, thereafter enacted. 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, except compensation payable during absence from duty on overtime leave, any compensation payable, upon separation from city service, for unused vacation and overtime leave, and any bonus or award payable solely for marksmanship attainment or other achievement of proficiency in any skill and not based on any additional or higher duties performed or to be performed by the recipient thereof. 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 year, 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 City of Fresno Fire and Police Retirement System prior to the plan year beginning after December 31, 1995. 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.

(4)

"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/she worked, throughout the period under consideration, the average number of days ordinarily worked by persons in the same rank or ranks held by the member during such period, and at the rates of compensation attached to such ranks. The compensation for any absence shall be based on the compensation earnable by the member in the rank first held by the member in service.

(5)

"Contributions" shall mean normal contributions plus prior contributions.

(6)

"Controller" shall mean the Controller of the City of Fresno.

(d)

(1)

"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.

(2)

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

(i)

"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.

(ii)

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

(iii)

"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.

(iv)

"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.

(e)

"Employee" shall mean any person who occupies a position created by or which is under the
jurisdiction of the city, whose compensation is paid by the city, and who is a member of the
Fire Department or Police Department or as a public safety officer/supervisor in the Airport
Public Safety Division.

(f)

"Firefighter" with respect to persons who became members of the System on July 1, 1955,
shall mean any officer or employee of the Fire Department, and with respect to persons who
have entered or enter such department after that date, shall mean any officer or employee of
the Fire Department, except one whose principal duties are those of a telephone operator,
clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall
within the scope of active fire fighting and prevention service, even though such an employee
is subject to occasional call or is occasionally called upon, to perform duties within the scope
of active fire fighting and prevention service, but not excepting persons employed and
qualifying as firefighters of equal or higher rank, regardless of the duties to which they are
assigned.

(g)

Reserved.

(h)

Reserved.

(i)

"Service-connected" in reference to the death or disability of any member of this System shall
mean death or disability which results from injury or disease arising out of and in the course of
the member's employment as a member of the Fire Department or Police Department or as a

public safety officer/supervisor in the Airport Public Safety Division, and such employment contributes substantially to such death or disability.

(j)

Reserved.

(k)

Reserved.

(l)

Reserved.

(m)

"Member" shall mean any person included in the membership of the Retirement System, as provided in [Section 3-303](#)

(n)

"Normal contributions" shall mean contributions at the rates provided for in [Section 3-319](#), without interest.

(o)

"Overtime leave," for the purposes of this article, is any absence from duty with compensation allowed or allowable on account of overtime, which is the aggregate service performed by an employee as a member in excess of the hours of work considered normal for employees on full-time basis.

(p)

(1)

"Part-time employee" shall mean an employee who engages in the employee's duties for less time than is required of employees serving on a full time basis, even though the employee is subject to call at any time.

(2)

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

(3)

"Police officer," with respect to persons who became members of the System on July 1, 1955, shall mean any officer or employee of the Police Department, and with respect to persons who have entered or enter such department after that date, shall mean any officer or employee of the Police Department, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service, even though such an employee is subject to occasional call or is occasionally called upon, to perform duties within the scope of active law enforcement service, but not excepting persons employed and qualifying as patrolmen or equal or higher rank, regardless of the duties to which they are assigned.

(4)

"Public safety officer/supervisor" shall mean employees in the class of public safety officer or public safety supervisor or, in the case of individuals appointed after January 1, 2000, airport public safety manager in the Airport Public Safety Division or, in the event class titles are added within the class series or are changed, also in such classes.

(5)

"Prior contributions" shall mean contributions paid to the Retirement System as provided in [Section 3-318](#)

(q)

Reserved.

(r)

(1)

"Rank" shall mean a group of positions to which the same title is applied and the same rate of salary or compensation is paid or attached.

(2)

"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 3-305](#), including such additional interest as the Board may declare from year to year as authorized under this article.

(3)

"Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this article.

(4)

"Retirement allowance" shall mean the pension plus the annuity.

(5)

"Retirement Fund" shall mean "Fresno Fire and Police Retirement Fund," as created and established in [Section 3-313](#)

(6)

"Retirement System" or "this Retirement System" shall mean "Fresno Fire and Police Retirement System" as created in [Section 3-303](#)

(s)

(1)"Service" shall mean service rendered as a firefighter in the Fire Department, a police officer in the Police Department, or as a public safety officer/supervisor in the Airport Public Safety Division of the city for compensation, and for the purpose of the Retirement System a member shall be considered as being in the "service" only while the member is receiving compensation from the city for such service. When service is a factor in the computation of allowances and other benefits hereunder, fractional years of 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.

(2)

"System" or "this System" shall mean "Fresno Fire and Police Retirement System" as created in [Section 3-303](#)

(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 Sec. 2-701; Am. Ord. 5667, 1959; Am. Ord. 6058, 1962; Am. Ord. 6167, 1962; Am. Ord. 6394, 1964; Am. Ord. 68-124, 1968; Am. Ord. 85-139, § 1, eff. 10-18-85; Am. Ord. 94-27, §§ 1, 2, eff. 5-27-94; Am. Ord. 96-41, § 1, eff. 6-28-96; Am. Ord. 96-54, §§ 1, 2, eff. 9-20-96; Am. Ord. 98-35, § 1, eff. 6-27-98; Am. Ord. 98-98, §§ 1—6, eff. 1-9-99; Am. Ord. 2000-11, § 1, eff. 3-3-00; Am. Ord. 2001-72, § 1, eff. 11-10-01; Am. Ord. 2006-15, § 1, eff. 3-10-06; Am. Ord. 2011-1, §§ 1, 2, eff. 3-7-11); Am. Ord. 2012-22, § (i), eff. 1/21/2013.)

SEC. 3-302. - ALTERNATIVE DEFINITION OF AVERAGE COMPENSATION. ELECTION OF MEMBER. ADJUSTMENT OF ALLOWANCES.

(a)

This section applies only to members who commenced service prior to August 27, 1990.

(b)

"Average compensation" shall mean, in the event election is made pursuant to this section, the average monthly compensation earnable by a member during the last three years of the member's employment in the Fire Department, Police Department, or the Airport Public Safety Division.

(c)

Any member, prior to retirement on or after January 1, 1973, or, if a member shall die on or after January 1, 1973, but before retirement, and with no election by the member in effect at the member's death, then the person or persons first entitled to any continuation allowance payable under the System on account of the member's death while a member of the System, or any such person's guardian, may elect, by written designation duly executed and filed with the Retirement Administrator, that the allowance payable to or on account of such member shall be based upon average compensation of the member determined in accordance with the definition set forth in subsection (b) hereof instead of the definition provided in [Section 3-301](#)

(d)

Other provisions of this section to the contrary notwithstanding, any former member who attained age sixty and was mandatorily retired under [Section 3-332\(1\)](#) on or after January 1, 1972, and prior to January 1, 1973, or, if such former member shall die prior to January 1, 1973, with no election by the member in effect at the member's death, then the person or persons first entitled to any continuation allowance payable under the System on account of

the member's death after retirement, or any such person's guardian, may elect, by written designation duly executed and filed with the Retirement Administrator prior to January 1, 1973, that the allowance payable to or on account of such former member shall be based, from and after the effective date of the member's retirement, upon average compensation determined in accordance with the definition set forth in subsection (b) hereof. An election made by a former member pursuant to this subsection shall be irrevocable as to the member's retirement allowance and any continuation allowance payable on account of the member's membership in the System. An election made by a person or persons first entitled to a continuation allowance on account of a former member's death before January 1, 1973, with no election by the member in effect at the member's death, shall be irrevocable as to any continuation allowance thereafter paid on account of such member's membership in the System. Nothing contained in this section shall be deemed to entitle any other former member or person claiming under the member to any of the benefits of this section.

(e)

An election made by a member before retirement pursuant to this section shall be irrevocable as to the member's retirement allowance and any continuation allowance payable on account of the member's membership in the System, unless revoked by written revocation duly executed by the member and filed with the Retirement Administrator prior to the effective date of the member's retirement. An election made by a person or persons first entitled to a continuation allowance on account of any such member's death before retirement with no election by the member in effect at the member's death shall be irrevocable as to any continuation allowance thereafter paid on account of such member's membership in the System, unless such election is revoked by written revocation duly executed by such person or persons, or the guardian of any such person, prior to the date of the first payment of such continuation allowance.

(f)

Monthly allowances based upon average compensation as defined in subsection (b) shall be adjusted from time to time solely in accordance with this section. As of July 1 of each year, commencing with the year 1973, every such monthly allowance shall be increased by a percentage (which shall be not less than zero) of the total allowance then being received which shall approximate, to the nearest one-tenth of one percent,

(1)

if the allowance is payable to or on account of a person who prior to the person's retirement or death was a member employed in the Fire Department, the percentage by which the weighted mean average monthly compensation attached to all ranks of members employed in the Fire Department during the current fiscal year shall have changed from that of the preceding fiscal year, or

(2)

if the allowance is payable to or on account of a person who prior to the person's retirement or death was a member employed in the Police Department or employed

as a public safety officer/supervisor, the percentage by which the weighted mean average monthly compensation attached to all ranks of members employed in the Police Department and employed as a public safety officer/supervisor during the current fiscal year shall have changed from that of the preceding fiscal year;

provided, that such increase shall not exceed five percent of any monthly allowance in any year, regardless of the percentage of change in such weighted mean average monthly compensation.

(g)

Determination of the percentage of change in the weighted mean average monthly compensation shall be made annually after the compensation of the ranks of firefighters, police officers, and public safety officers/supervisors in the respective departments has been fixed for the current fiscal year, and upon such determination the monthly allowances governed by this section shall be adjusted retroactively to July 1 of such year. In determining the weighted mean average monthly compensation for any fiscal year the following shall be used:

(1)

The number of positions authorized in each of the ranks as contained in the annual budgets for the respective departments contained in the annual city budget for such fiscal year as originally adopted by the Council pursuant to Charter [Section 1205](#), disregarding changes in any amendments of or supplements to such departmental budgets thereafter made.

(2)

The compensation of each of the ranks, at the highest step, as fixed by the Council in the original salary resolution or other action of the Council establishing the rate of compensation for each of the ranks in the respective departments for such fiscal year. For any increases in compensation in such fiscal year that are effective on a date other than July 1st, such increases shall be recalculated and converted to an equivalent annualized increase by rank at the highest step and included in the weighted mean average monthly compensation calculation.

For the purposes of this section "fiscal year" shall mean the period July 1 to June 30, inclusive, and "current fiscal year" shall mean the fiscal year as of July 1 of which the adjustment of monthly allowances is made.

(h)

The amount of any percentage of change in the weighted mean average monthly compensation which is in excess of the maximum annual allowable adjustment of five percent provided in subsection (f) shall be accumulated from year to year and included in the computation of increases in succeeding years. The provisions of this subsection shall be applied to individual beneficiaries by groups based upon the fiscal year in which the member retired or died, so that each allowance shall have applied to it only such increase as shall have accumulated after the fiscal year in which the member retired or died.

(i)

The adjustment provisions of this section shall not operate to reduce the retirement allowance payable to any former member or the continuation allowance payable to any beneficiary on account of a member's death before retirement below the amount payable to such former member or beneficiary on the date of first entitlement thereto; nor shall such provisions operate to reduce the continuation allowance payable to any person on account of a former member's death after retirement, or on account of the death of the member's spouse after the member's retirement and death, below the amount which such person would have received had such former member died on the date of the former member's retirement.

(Added Ord. 72-142, 1973; Am. Ord. 96-54, §§ 3, 4, eff. 9-20-96; Am. Ord. 98-35, § 2, eff. 6-27-98; Am. Ord. 98-98, §§ 7—9, 1-9-99; Am. Ord. 2000-4, § 1, eff. 2-10-00; Am. Ord. 2006-120, § 1, eff. 10-6-06).

SEC. 3-303. - CREATION OF RETIREMENT SYSTEM.

(a)

There is hereby created the City of Fresno Fire and Police Retirement System. All persons who were members of the Fire or Police Department at the close of June 30, 1955, and who were then subject to the Relief and Pension Fund under the provisions of Ordinance No. 3116, shall be members of the Retirement System established by Ordinance No. 4611 and this article and shall be subject to the provisions thereof, on and after July 1, 1955. All persons who became or become firefighters in the Fire Department on or after July 1, 1955, police officers in the Police Department on or after July 1, 1955, or public safety officers/supervisors in the Airport Public Safety Division on or after July 1, 1988, including persons reinstated from retirement, but excluding part-time employees, shall be members of the Retirement System established by Ordinance No. 4611 and this article and shall be subject to the provisions thereof, effective on the date of employment or reinstatement, as the case may be. Former members of the Fire or Police Department and dependents of such former members who are receiving benefits from the Relief and Pension Fund under Ordinance No. 3116, on July 1, 1955, shall be beneficiaries under this Retirement System on and after said date, and benefits being paid to said former members and dependents, on said date, shall be continued at their existing rates and in accordance with the provisions of said Ordinance No. 3116, but shall be paid from the fund created under 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 the actuary 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 Board, of the contributions required during any fiscal year of the city under the Retirement System in accordance with this article, shall be paid into the Retirement Fund, hereinafter created, by the city during such year. The determination heretofore of membership in the Retirement System, in accordance with this section, is hereby validated and confirmed.

(b)

Members who first commenced service prior to August 27, 1990 shall be subject to the provisions of this article. Individuals commencing service on or after August 27, 1990, while

members of the System, shall be subject to the provisions of Article 4 concerning vesting, definitions of compensation, employee contributions, benefits, and other matters. Accordingly, for example, sections [3-302](#), [3-304](#), [3-319](#), [3-330](#), [3-331](#), [3-332](#), [3-333](#), [3-338](#), [3-341](#), [3-347](#), [3-348](#), and [3-349](#) apply only to members who commenced service prior to August 27, 1990.

(c)

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.

(d)

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.

(e)

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.

(f)

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.

(g)

The City of Fresno Fire and Police 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 Code), 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; Am. Ord. 5667, 1959; based on former Sec. 2-702; Am. Ord. 98-35, § 3, eff. 6-27-98; Am. Ord. 98-98, § 10, eff. 1-9-99; Am. Ord. 2001-13, § 1, 2-13-01; Am. Ord. 2011-1, § 3, eff. 3-7-11).

SEC. 3-304. - POLICE CHIEF, ALTERNATE RETIREMENT PLAN.

(a)

Any other provision of this article to the contrary notwithstanding, on and after January 1, 1979, the person appointed to the position of Police Chief, provided that the person commenced service prior to August 27, 1990, may elect not to be a member of this System on condition that during the member's entire tenure in the position the member shall participate in the alternate retirement plan provided by this section. Upon such consent the Council shall activate an alternate retirement plan for the benefit of such employee in accordance with this

section, which plan shall be made effective as of the date of commencement of the member's employment in the position.

(b)

The Council hereby establishes, with the International City Management Association Retirement Corporation, a national nonprofit corporation, (hereinafter referred to as the "corporation"), a fund (hereinafter referred to as the "alternate fund") for the relief and pensioning of any such employee whose election not to be a member of this System is made and consented to pursuant to subsection (a) hereof. The alternate fund shall be activated for the benefit of any such employee when:

(1)

The Council shall have authorized an agreement between the city and the Corporation whereby the Corporation agrees to act as the city's trustee to receive and administer for the city, for the deferred benefit of such employee or the employee's beneficiary upon the employee's disablement, superannuation or death, moneys deposited by the city in the alternate fund for such employee's account; and

(2)

The employee shall have entered into an agreement with the city whereby:

(i)

The city agrees that the total compensation of the employee for the employee's services as Police Chief shall be the sum of the regularly established compensation for the position, as fixed from time to time in the current salary resolution or other action of the Council establishing the compensation of city employees, and an added amount equal to \$7,500 annually, payable semimonthly, such payments to be made directly to the Corporation by the city; and

(ii)

The employee agrees, in consideration of the Council's consent to the employee's election hereunder and of the city's agreement to augment the employee's compensation as hereinbefore provided;

1.

That the employee waives any and all rights and benefits of an employee of the city under this System; and

2.

That at all times during the employee's tenure as Police Chief the employee will maintain, at no cost to the city, the employee's eligibility to participate in the deferred compensation retirement plan of the Corporation.

(c)

Any election and consent made pursuant to this section shall be irrevocable; provided, however, that in the event it shall become necessary, during the tenure of such employee as

Police Chief, to terminate the alternate retirement plan provided herein for the employee, because of the employee's failure to retain eligibility for participation therein under the rules of the Corporation, or because of failure of the Corporation to maintain its plan for any reason, or for any other cause not the fault of the city, then upon such termination the employee shall become a member of this System as if the employee were first employed by the city on the date of such termination or such earlier date as may be fixed by the Council, unless the employee shall have previously been a member and shall qualify for re-entry under Section 3-327(b).


(d)

Service in the position of Police Chief by an employee who has been qualified under this section for participation in this alternate retirement plan shall not be deemed "city service," within the meaning of this article, for the purpose of qualification for membership in the System or for any benefits thereunder, except to the extent that the Council permits a retroactive re-entry pursuant to subsection (c) above. If, therefore, the employee who has been so qualified is a member of the System at the time of the employee's appointment to such position, then for the purposes of continuance of the employee's membership under the provisions of this article the employee's "city service" shall be deemed discontinued upon commencement of the employee's employment in such position, unless and until the employee re-enters the System as authorized herein.

(e)

Any individual appointed to the position of Police Chief on or after January 1, 1979, shall be retired on the first day of the month next following that in which such individual attains the age of sixty-five.

(Added Ord. 79-13, § 1, eff. 2-16-79; Am. Ord. 98-35, § 4, eff. 6-27-98).

SEC. 3-305. - 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 of the Fire and Police Retirement System who is a firefighter, elected by members who are firefighters in an election conducted by the Board;

(3)

A member of the Fire and Police Retirement System who is a police officer or a public safety officer/supervisor elected by members who are police officers and public safety officers/supervisors 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 City Employees 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 Fire and Police 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 Employees 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, 1958, and thereafter at intervals of not to exceed two 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 members' rates of contribution under the System as shall be deemed necessary to comply with this article and such revision in the city's rate of contribution under the System as shall be deemed necessary to comply with this article and article 4, provided that before such revised rates of contribution 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 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 service rendered by and shall credit such service to 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 ten months or more of 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 duty without compensation shall not be allowed in computing service, except

(1)

Time of absence on military service shall count as service as provided in this article; and,

(2)

Time of absence from service by reason of disability retirement shall count as service and the member shall not be required to make contributions for the time of such retirement. 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 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. 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.

(i)

The Retirement Board shall control, administer, and manage the provisions set forth in article 4.

(Rep. and abated Ord. 5313, 1968, based on former Sec. 2-703; Am. Ord. 5667, 1969; Am. Ord. 6029, 1961; Am. Ord. 68-124, 1968; Am. Ord. 73-91, § 1, eff. 7-8-73; Am. Ord. 76-49, § 1, eff. 7-14-76; Am. Ord. 84-42, § 1, eff. 5-4-84; Am. Ord. 85-167, § 1, eff. 11-29-85; Rep. and Added Ord. 90-55, §§ 1, 2, 7-13-90; Am. Ord. 95-41, § 1, eff. 6-23-95; Am. Ord. 96-54, §§ 5—9, eff. 9-20-96; Am. Ord. 98-35, § 5, eff. 6-27-98; Am. Ord. 98-98, § 11, eff. 1-9-99; Am. Ord. 2001-13, § 2, eff. 3-26-01; Am. Ord. 2001-48, § 1, eff. 7-3-01; Am. Ord. 2005-84, § 1, eff. 9-25-05).

SEC. 3-306. - 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 contributions relating to members whose employment began after June 30, 1954, at its periodical determination as required by this article; or included in the city's liability for contributions required by this article, to be made as benefits are paid, with respect to other persons.

(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. 5667, 1959; Am. Ord. 2002-36, § 1, eff. 8-22-02; Am. Ord. 2011-1, § 4, eff. 3-7-11).

SEC. 3-307. - AMENDMENTS.

No amendment or other modification of this article, 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 Board for its consideration.

(Rep. (See Sec. 2-2704) and Added Ord. 5313, 1958, Based on former sec. 2-704).

SEC. 3-308. - ESTIMATES OF AGE AND SERVICE.

If it shall be impracticable for the 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 purpose hereof, such length of service, compensation or age.

(Rep. (See Sec. 2-2705) and Added Ord. 5313, 1958, Based on former Sec. 2-705).

SEC. 3-309. - 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 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.

(Rep. (See Sec. 2-2706) and Added Ord. 5313, 1958, Based on former Sec. 2-1706; Am. Ord. 6396, 1964; Am. Ord. 96-54, § 10, eff. 9-20-96).

SEC. 3-310. - TIME TO APPLY FOR BENEFITS.

Proceedings before the 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.

(Rep. (See Sec. 2-2707) and Added Ord. 5313, 1958, Based on former Sec. 2-1707).

SEC. 3-311. - 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.

(Rep. (See Sec. 2-2708) and Added Ord. 5313, 1958, Based on former Sec. 2-708; Am. Ord. 5667, 1959).

SEC. 3-312. - DETERMINATION OF APPLICATION FOR REHEARING.

The determination of the 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.

(Rep. (See Sec. 2-2709) and Added Ord. 5313, 1958, Based on former Sec. 2-709).

SEC. 3-313. - CREATION AND CONTROL OF RETIREMENT FUND; INVESTMENTS.

- (a) A trust fund is hereby created, to be known as the Fresno Fire and Police 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, plus the assets in the Fund created by Ordinance No. 3116, as amended, said Fund being hereby discontinued. The assets so transferred shall be applied on the city's obligation under [Section 3-318](#). The Retirement

Board shall have exclusive control of the administration and investment of the said fund herein created.

(b)

Except as provided in this article or in article 4, no member or employee of the 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.

(c)

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.

(d)

The City of Fresno Fire and Police 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.

(Rep. and Added Ord. 5313, 1958, based on former Sec. 2-710; Am. Ord. 6394, 1964; Am. Ord. 70-30, 1970; Am. Ord. 96-54, §§ 11—16, eff. 9-20-96; Am. Ord. 98-35, § 6, eff. 6-27-98; Am. Ord. 2011-1, §§ 5, 6, eff. 3-7-11).

SEC. 3-314. - 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 advisor shall comply with investment guidelines adopted by the Board by resolution.

(Added Ord. 69-24, 1969; Am. Ord. 74-14, § 1, eff. 3-3-74; Am. Ord. 77-42, § 1, eff. 5-27-77; Am. Ord. 82-53, § 1, eff. 6-18-82; Am. Ord. 85-119, § 1, eff. 9-13-85; Am. Ord. 92-27, § 1, eff. 5-22-92; Am. Ord. 93-64, § 1, eff. 11-12-93; Am. Ord. 96-54, §§ 17—19, eff. 9-20-96).

SEC. 3-315. - 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 other information concerning any member as the Retirement Administrator may require.

(Added Ord. 5313, 1958, based on former Sec. 2-711; Am. Ord. 96-54, § 20, eff. 9-20-96).

SEC. 3-316. - DUTY OF MEMBER OR BENEFICIARY.

Each member and beneficiary shall be subject to all revisions hereof and to all the rules and regulations adopted by the 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. 2-712).

SEC. 3-317. - MEMBERSHIP CEASES—WHEN.

Should any member die or be retired, or should he be paid his accumulated contributions, he shall thereupon cease to be a member.

(Added Ord. 5313, 1958, based on former Sec. 2-713).

SEC. 3-318. - MEMBERS' CONTRIBUTIONS UNDER PREVIOUS FUNDS.

Contributions deducted under other Police and Fire Retirement or Pension Funds of the city, from the compensation of members, shall be paid by the city to the Retirement System, with regular interest from and including July 1, 1955, said payment to be made prior to the time or when said accumulated contributions are payable to or on account of members, or are applicable toward providing part of members' or dependents' allowances. Such contributions shall be credited, together with regular interest, to the individual accounts of the respective members from whose compensation the contributions were deducted.

(Added Ord. 5313, 1958, based on former Sec. 2-714).

SEC. 3-319. - NORMAL CONTRIBUTIONS OF MEMBERS WHO COMMENCED SERVICE PRIOR TO AUGUST 27, 1990.

The normal rate of contribution of each member who commenced service prior to August 27, 1990, shall be based on the member's age taken to the next lower completed quarter year, (1) at the date the member became a member under Ordinance No. 3116 or its predecessor, in the case of persons who were members under Ordinance No. 3116 at the close of June 30, 1955, or (2) at the date the member becomes a member in the case of persons who become members upon employment, on or after July 1, 1955, without credit for service. If, however, a person who is included in item (1) of the preceding sentence, was absent from duty without compensation, after the date of the member's first employment as a member of the Fire or Police Department, more than two months in any fiscal year, the age upon which the member's rate of contribution shall be based, shall be taken to the next lower completed quarter year, at the date derived by deducting the years of service with which the member is entitled to be credited, as calculated under this article from July 1, 1955. The normal rate of contribution of each such member, to be effective on and after the effective date of membership in this Retirement System, shall be such as, on the average, will provide, assuming service without interruption, one-third of the service retirement allowance to which the member would be entitled, including automatic continuance to dependents, upon first qualifying as to service and age not less than fifty years, for retirement hereunder, which is based on service rendered after the date upon which the member's age is based for determination of the member's rate of contribution according to the first two sentences in this paragraph, and assuming the contribution to be made from that date, it being the intention for purposes of this section that the retirement allowance of such member who serves without interruption, upon retirement for service when qualified at age fifty or higher age, and with twenty years of service, shall be, on the average, one-half of the member's average compensation, and when qualified at age sixty with less than twenty years of service, the fraction of one-half, that the member's service is of twenty years. The portion of the rate of contribution which is calculated to provide for automatic continuance to dependents shall be based on the assumption that the dependent is a wife three years younger, or a husband three years older, as the case may be, than the member at the time of qualification for service retirement. If at the date of retirement for service or

disability, said member has no wife or husband or domestic partner, as the case may be, who would qualify for the continuance of the allowance to her or him, after the death of such member, the accumulated contributions resulting from the dependent portion of the normal rate, shall be refunded to the member forthwith. The Retirement Board shall adopt members' normal rates of contribution to comply with this section. The rates so adopted shall remain in effect until revised by such Board in the manner provided in [Section 3-305](#).

(Added Ord. 5313, 1958, based on former Sec. 2-715; Am. Ord. 5667, 1959; Am. Ord. 5673, 1960; Am. Ord. 98-35, § 7, eff. 6-27-98; Am. Ord. 2006-15, § 2, eff. 3-10-06).

SEC. 3-320. - 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 members' 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 Fire and Police 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, § 1, eff. 4-18-86; Am. Ord. 2011-1, § 7, eff. 3-7-11).

SEC. 3-321. - NORMAL CONTRIBUTIONS OF MEMBERS UPON REENTRY WHO COMMENCED SERVICE PRIOR TO AUGUST 27, 1990.

Upon the re-entry of a member who commenced service prior to August 27, 1990 into the Retirement System at reinstatement from service or disability retirement, or upon the member's re-entry to service following the member's election under [Section 3-328](#) to allow the member's accumulated contributions to remain in the Retirement System, the member's normal rate of contribution shall be based upon an age determined by adding the number of completed years of the member's absence from service, to the age upon which the member's normal rate of contribution, as it was prior to said retirement or election, as the case may be, was based. The same percentage of the member's average, compensation per year of service which, prior to retirement, the member's contributions and those of the city, were calculated to provide upon retirement for service at the

member's lowest optional service retirement age without reduced benefit shall be used in the calculation of the member's normal rate of contribution at reinstatement.

(Am. Ord. 98-35, § 8, eff. 6-27-98).

SEC. 3-322. - COLLECTION OF MEMBERS' CONTRIBUTIONS.

The Board shall certify to the head of the respective departments and the Controller the normal rate of contribution for each member provided for in [Section 3-319](#) and [Section 3-405](#). The head of such department or the Controller shall apply such rate of contribution to the compensation of the member to determine the amount to be contributed by each member, and shall furnish immediately to the Board a copy of each and every such payroll; and each of said amounts shall be deducted by the Controller and shall be deposited in the Retirement Fund, herein provided for, and shall be credited 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 the member's 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 the member's claims to the benefits to which the member may be entitled under the provisions hereof. (Added Ord. 5313, 1958, based on former Sec. 2-717; Am. Ord. 98-35, § 9, eff. 6-27-98).

SEC. 3-323. - ADJUSTMENTS.

If more or less than the normal contribution required of members, or the city, is paid, proper adjustment shall be made in connection with subsequent payments, or such adjustment may be made by direct cash payments between the member, the city, or the Board. Adjustment regarding payments to or by the Board, including adjustment 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. Adjustment to correct overpayment or underpayment 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. 5667, 1959; Am. Ord. 85-139, § 2, eff. 10-18-85; Am. Ord. 95-41, § 2, eff. 6-23-95).

SEC. 3-324. - CITY CONTRIBUTIONS.

There shall be paid into the Retirement Fund, by contributions of the city, amounts necessary to pay all allowances, other benefits allowable under the Retirement System to or on account of members and not provided by members' accumulated contributions, and all administrative costs as set forth in [Section 3-325](#). Until revised by the Board on the basis of experience, as determined in

accordance with [Section 3-305](#), the city's rate of contribution for the purposes of this section shall be 38.95 percent. This rate shall be adjusted by the Board in accordance with such tables and rates as the Board may adopt pursuant to [Section 3-305](#). The above city rate shall be the sum of the following:

(a) With respect to members whose employment in the Fire or Police Department began prior to July 1, 1954, the liability on account of those members or beneficiaries on the pension roll on July 1, 1975, shall be amortized over a thirty-year period and expressed as a level percentage of the aggregate amount of compensation earned by all active members of the retirement system.

(b) With respect to the liability of the retirement system other than that in subsection (a), the city shall have a normal contribution rate which shall be computed as a level percentage of compensation which, when applied to the future compensation of the average new member entering the system, together with the required member contributions, will be sufficient to provide for the payment of all prospective benefits of such member. The portion of liability not provided by the normal contribution rate shall be amortized over a period of thirty years. (Added Ord. 5313, 1958, based on former Sec. 2-718; Am. Ord. 5667, 1959; Am. Ord. 76-46, § 1, eff. 6-27-76; Am. Ord. 88-145, § 1, eff. 12-23-88; Am. Ord. 91-48, § 1, eff. 6-7-91; Am. Ord. 96-54, § 21, eff. 9-20-96).

SEC. 3-325. - 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 3-305\(c\)](#), 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. 2-719; Am. Ord. 78-163, § 1, eff. 12-1-78; Am. Ord. 84-42, § 2, eff. 5-4-84; Am. Ord. 91-48, § 2, eff. 6-7-91).

SEC. 3-326. - GUARANTY.

The payments of the city into the Fresno Fire and Police Retirement System, as provided in Sections [3-324](#) and [3-325](#), 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, and the amounts so appropriated shall be provided for in the tax levy. (Added Ord. 5313, 1958, based on former Sec. 2-720).

SEC. 3-327. - REFUND OF CONTRIBUTIONS.

(a) Should the 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 not less than six months after the date of discontinuance, and upon the member's demand, the member's accumulated contributions; provided that, if in the opinion of the Board, said member is permanently separated from service by reason of such discontinuance, the member shall be paid forthwith all of such contributions. 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-entering the Retirement System, shall redeposit in the Retirement Fund, in one sum or in not to exceed six monthly or twelve semi-monthly payments, (1) an amount equal to that which the member withdrew therefrom at the last termination of the member's membership, and (2) an amount equal to the additional interest which would have been credited to the member's account had such contributions not been withdrawn, and (3) in the case of members electing to make repayment other than in one lump sum, interest 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 from time to time under the System. 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, as it was prior to such termination, was based, and the member's membership shall be the same as if unbroken by such last termination. The same percentage of the member's average compensation per year of service which, prior to refund, the member's contributions and those of the city were calculated to provide upon retirement for service at the member's lowest optional service retirement age without reduced benefit shall be used in the calculation of the member's normal rate of contribution at reinstatement. If a member who commenced service prior to August 27, 1990 fails to make such a redeposit within the time period set forth in this subsection, the member shall be deemed to be subject to the provisions of article 4 as of the date the member re-entered service. (Added Ord. 5313, 1958; based on former Sec. 2-721; Am. Ord. 5667, 1959; Am. Ord. 95-41, § 3, eff. 6-23-95; Am. Ord. 96-54, § 22, eff. 9-20-96; Am. Ord. 98-35, § 10, eff. 6-27-98).

SEC. 3-328. - DEFERRED BENEFITS AFTER SEPARATION.

Any other provision in this article to the contrary notwithstanding, if the 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 service, and he is entitled to credit for ten years of service, he 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 last address on file in its office, whether to allow his accumulated contributions to remain in the Retirement Fund. Failure to make such election shall be deemed an irrevocable election to withdraw his accumulated contribution. A member having made such election may, at any time before the effective date of any deferred retirement allowance for which he has qualified under this section, rescind his election in writing and upon such rescission he shall be paid forthwith his 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 he is

not subject to a minimum service requirement. After the qualifications of such member for retirement by reason of age or disability, he shall receive a retirement allowance based upon the amount of his accumulated contributions and service standing to his credit at the time of retirement and on the city contributions held for him 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 him, unless he meets such minimum service requirements. No death benefits shall be payable if the death of the member occurs on or after such election is made and before any re-entry into service, except as provided in Subsection (b) of [Section 3-330](#). (Added Ord. 5313, 1958, based on former Sec. 2-722; Am. Ord. 6735, 1965).

SEC. 3-329. - DEFERRED BENEFITS AFTER ENTERING EXCLUDED CLASSIFICATION.

(a) Other provisions 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 Employees Retirement System 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 ten years credited under this system and the City Employees Retirement System. After the qualifications 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 member, while employed in such classification, a death benefit as described in [Section 3-330](#) shall be payable, but computed upon the basis of compensation earnable by the member during the six months preceding the member 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 City Employees Retirement System.

(c) A member with accumulated contributions remaining in the City Employees Retirement Fund pursuant to [Section 3-537](#) of Article 5 and who retires for service or disability under the City Employees 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 thereunder, but subject to the requirement in subsection (a) of at least ten years under both systems. Such allowances shall be calculated as provided in this Article 3, 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 [3-336](#) 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 provisions if it had been in effect when they entered such classification. (Added Ord. 5667, 1959; Am. Ord. 2001-13, § 3, 3-26-01).

SEC. 3-330. - DEATH BENEFITS.

(a) Upon the death before retirement of a member, the Retirement System shall be liable for a death benefit, which, if an amount be due under paragraph (3) of this subsection or an allowance be payable under [Section 3-338](#), and if there be a surviving spouse or surviving domestic partner or surviving children or parents, shall be paid in monthly installments and to the surviving spouse or surviving domestic partner and children and parents as prescribed therein; otherwise such death benefit shall be paid to such person having an insurable interest in the member's life as the member 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 the payment, to the member's estate. Such death benefits shall consist of:

(1) The member's accumulated contributions, and in addition thereto;

(2) An amount equal to one-sixth of the member's compensation earnable during the six months immediately preceding the member's death multiplied by the member's completed years of service as a member of the System not to exceed six, and if such death is service-connected, in the opinion of the Retirement Board, in addition thereto;

(3) An amount sufficient, when added to the amounts provided in the next preceding paragraphs (1) and (2) to provide, when applied according to mortality tables and interest rate adopted by the Board, a monthly death allowance, equal to the service retirement allowance which the member would have received if the member had retired for service on the day of the member's death, provided the member was at least fifty years of age, and was entitled to be credited with at least twenty years of service, but such allowance shall not be less than one-half of the member's average compensation; otherwise, equal to one-half of the member's average compensation, to be paid to the surviving spouse or surviving domestic partner, to continue as long as the spouse or domestic partner shall live; or if there be no qualifying surviving spouse or qualifying surviving domestic partner, or if the spouse or domestic partner shall die, to the unmarried child or children of such member who are unmarried or not in a domestic partnership, collectively, under the age of eighteen years, to continue until every such child dies or marries or attains age eighteen; provided that no child shall receive any allowance after marrying or attaining age eighteen. Should the member leave no surviving spouse or surviving domestic partner and no children under the age of eighteen years, but leave a parent or parents dependent upon the 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. If payment of the allowance be stopped because of death of the surviving spouse or death of the surviving domestic partner or attainment of the age of eighteen years by, or the death or marriage of, a child, or the death or cessation of dependency of a parent, before the sum of the monthly payments made shall equal the sum of the amounts provided in the next preceding paragraphs (1) and (2), then an amount equal to the difference between said sums shall be paid in one amount, to the surviving children of the deceased member, share and share alike.

(b) Upon the death of a member who, after ten years of service, has discontinued service and elected to allow his or her accumulated contributions to remain in the Retirement Fund, the Retirement System shall be liable, in the event the member dies four or more months after the discontinuance of service, for a death benefit consisting of the member's accumulated contributions only. Such benefits shall be paid to the member's estate, or to such person as the member has nominated or shall nominate by written designation duly executed and filed with the Retirement Board.

(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 or her under the Retirement System, and to nominate a beneficiary in lieu thereof, of all by written designation duly executed and filed with the Retirement Board, provided that this right shall not extend to beneficiaries nominated under Options 2 and 3, [Section 3-341](#).

(e) With respect to members retiring on or before the effective date of Ordinance No. 2000-4, 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 sustaining of the injury or the onset of the illness which resulted in the member's death or, if such date was more than one year prior to his or her death, only if the spouse was married to the member at least one year prior to the member's death. With respect to members retiring after the effective date of Ordinance No. 2000-4, an allowance shall be paid under this section to a surviving spouse only if the spouse was married to the member prior to the death of the member or to a surviving domestic partner only if the domestic partner had established a domestic partnership with the member prior to the death of the member. (Added Ord. 5313, 1958, based on former Sec. 2-723; Am. Ord. 5667, 1959; Am. Ord. 6894, 1966; Am. ord. 7629, § 1, eff. 5-2-76; Am. Ord. 76-45, § 1, 6-27-76; Am. Ord. 84-47, § 1, eff. 5-11-84; Am. Ord. 2000-4, § 2, eff. 2-10-00; Am. Ord. 2001-16, § 1, eff. 3-26-01; Am. Ord. 2001-72, § 2, eff. 11-10-01; Am. Ord. 2006-15, § 3, eff. 3-10-06).

SEC. 3-331. - BENEFITS AT RETIREMENT. 

(a)

Upon retirement for service or disability a person shall be entitled to the retirement allowances specified in [Section 3-333](#) to [3-335](#), 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, except as provided in [section 3-348](#)(a). 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 been 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 Sec. 2-724; Am. Ord. 90-112, § 1, eff. 11-16-90; Am. Ord. 98-35, § 11, eff. 6-27-98; Am. Ord. 2006-15, § 4, eff. 3-10-06).

SEC. 3-332. - SERVICE RETIREMENT.

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

(1)

Every member shall be retired on the first day of the month next following that in which the member attains the age of sixty-five years. Every member who attains age sixty, who shall have completed ten years of service after qualifying for service retirement, shall not be required to make further contributions to the retirement fund. If such member shall not have completed ten years of service after qualification for service retirement, then the member shall be required to contribute to the retirement fund only until such ten years of service are completed;

(2)

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 entitled to be credited, at the time so specified for the member's retirement, with at least ten years of service in the aggregate, and shall have attained the age of fifty years.

(Am. Ord. 2000-28, § 1, eff. 4-24-00).

SEC. 3-333. - ALLOWANCE AT SERVICE RETIREMENT.

A member, upon retirement for service as provided in [Section 3-332](#), shall receive a retirement allowance, which shall consist of the sum of subsections (1) and (2):

(1)

The member's service annuity, which is an annuity actuarially equivalent to the accumulated contributions of the member at the time of the member's retirement;

(2)

The member's service pension, which is a pension derived from the contributions of the city, sufficient, when added to the service annuity set forth in subsection (1), to equal the benefit set forth in subsection (3).

(3)

Subsections (1) and (2) shall equal:

(i)

upon service retirement at the later of age 50 or the date 20 years of service was completed, a member shall be entitled to a retirement allowance equal to fifty-five percent (55%) of average compensation;

(ii)

upon service retirement at a date after the later of age 50 or the date 20 years of service was completed, a member shall be entitled to a retirement allowance equal to (i) fifty-five percent (55%) of average compensation plus (ii) two percent (2%) of average compensation for each year of service in excess of 20 years completed after age 50;

(iii)

upon service retirement at or after age 50 but with less than 20 years of service, a member shall be entitled to a retirement allowance which equals fifty-five percent (55%) of average compensation, multiplied by the ratio of the member's years of service to twenty;

(iv)

upon retirement of a member subject to [Section 3-328](#) (Deferred Benefits After Separation), a member shall be entitled to a retirement allowance which equals fifty-five (55%) of average compensation, multiplied by the ratio of (i) the member's years of service to (ii) the years of service the member would have completed if the member had remained in City service to the later of age 50 or the date the member would have completed twenty years of service;

(v)

in no event shall a member's retirement allowance exceed seventy-five percent (75%) of average compensation;

(vi)

subsection 3(i)—(v) of this Section shall not be applied retroactively and shall only be applied to members, retired members, and beneficiaries with respect to retirement allowances issued after July 1, 1998.

(Added Ord. 5313, 1958, based on former Sec. 2-726; Am. Ord. 5667, 1959; Am. Ord. 98-35, § 12, eff. 6-27-98).

SEC. 3-334. - RE-EMPLOYMENT OF PERSONS RETIRED FOR SERVICE.

(a)

A person who has been retired under this System for service, at an age less than the age for compulsory retirement applicable to the person, 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:

(1)

The retired member's application to the Board for reinstatement, and

(2)

The determination of the Board that the member's age at the date of application for reinstatement is at least six months less than the age of compulsory retirement for service applicable to the member.

(b)

When any such person is reinstated from retirement under this section, the member's retirement allowance shall be canceled forthwith, and the member shall become a member of this System as of the date of reinstatement. The member's individual account shall be credited with an amount which is the actuarial equivalent of the member's annuity at the date of reinstatement, not to exceed the amount of the member's accumulated contributions as it was at the date of the member's retirement. The member's future rate of contribution shall be determined in the same manner as if the member were re-entering the System and redepositing accumulated contributions. The member's allowance at subsequent service retirement shall be determined in accordance with the provisions of this article, including the use of the same percentages of the member's average compensation, for each year of service, which would have been used if the member had not been retired previously or with the provisions of article 4 for a member who commenced service on or after August 27, 1990.

(Added Ord. 5313, 1958, based on former Sec. 2-728; Am. Ord. 5567, 1959; Am. Ord. 98-35, § 13, eff. 6-27-98; Am. Ord. 2012-5, § 1, eff. 3-15-12).

SEC. 3-335. - 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 service, or within four months after the discontinuance of service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from discontinuance of service, shall be examined by one or more physicians or surgeons selected by the 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 authorized to act in his behalf, stating that said member is physically or mentally incapacitated for the performance of duty and ought to be retired, provided, if his disability is not industrial, he shall be credited with ten or more years of service.

(b)

If such medical examination and other available evidence show, to the satisfaction of the Board, that the said member is physically or mentally incapacitated for the performance of duty, and that such incapacity is of permanent or extended duration, and that he ought to be retired, the Board shall retire the said member for disability forthwith.

(c)

The Board shall secure such medical service and advice as may be necessary to carry out the purpose of this section and of [Section 3-337](#), and shall pay for such medical service and advice such compensation as the Board shall deem reasonable.

(Added Ord. 5313, 1958, based on former Sec. 2-729).

SEC. 3-336. - ALLOWANCE AT DISABILITY RETIREMENT.

Upon retirement for disability as provided in [Section 3-335](#), a member,

(a)

If the member's disability, in the opinion of the Board, is service-connected, shall receive

(1)

A disability annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of the member's retirement; and

(2)

A disability pension purchased by contribution of the city, which together with the annuity provided by the member's accumulated contributions, shall make the member's total retirement allowance equal to fifty-five percent of the member's average compensation, or if the member is qualified for service retirement, such pension shall be an amount which together with the annuity provided by the member's accumulated normal contributions, shall equal the retirement allowance the member would receive if retired for service, but not less than fifty-five percent of the member's average compensation.

(b)

If the member's disability, in the opinion of the Board, is not service-connected, shall receive

(1)

A disability annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of the member's retirement; and

(2)

A disability pension purchased by 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)

thirty-six and sixty-seven hundredths (36.67) percent of the member's average compensation; or

(ii)

one and sixty-five hundredths (1.65) percent of the member's average compensation multiplied by the number of years of service credited to the member; or

(iii)

the amount of the member's service retirement allowance, provided that the member is eligible to retire for service.

(Added Ord. 5313, 1958, based on former Sec. 2-730; Am. Ord. 98-35, § 14, eff. 6-27-98; Am. Ord. 2001-72, § 4, eff. 11-10-01).

SEC. 3-337. - SAFEGUARDS.

(a)

The board at its pleasure or upon request by a beneficiary may require the beneficiary who has been retired for disability and who has not attained the age of fifty years to undergo medical examination, such examination to be made by a physician or surgeon appointed by the 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 he was employed and in the position held by him when retired for disability. If the Board shall determine that said beneficiary is not so incapacitated, his retirement allowance shall be cancelled forthwith, and he shall be reinstated to the position of the same class as that held by him when retired for disability.

(b)

(1)

Should a beneficiary after retirement for disability reenter the service and be eligible for membership in the Retirement System in accordance with [Section 3-303](#), his retirement allowance shall be cancelled and he shall immediately become a member of the Retirement System, his rate of contribution for future years being that established subject to [Section 3-321](#). His 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 his annuity, but such amount shall not exceed the amount of his accumulated contributions as it was at the time of his retirement.

(2)

An amount actuarially equivalent to his disability pension, 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. Such member shall receive credit for service in the same manner as if he had never been retired for disability.

(c)

Should any person retired for disability or service engage in a gainful occupation, prior to attaining age fifty, the Board shall reduce the amount of his monthly pension as defined herein to an amount which, when added to the compensation earned monthly by him in such occupation, shall not exceed the amount of the compensation attached to the rank which he held at the time of his retirement. Should the earning capacity of such beneficiary be further altered, the Board may further alter his said pension to an amount which shall not exceed the full amount to which he would be entitled under this article in the absence of engagement in such occupation, but which, subject to such limitation, shall equal, when added to the compensation earned by him, the amount of the compensation attached to said rank. When said beneficiary reaches age fifty, his retirement allowance shall be made equal to the full amount to which he would be entitled under this article in the absence of engagement in such occupation, and shall not again be modified because of earnings other than under employment of the city.

(d)

Should any beneficiary retired for disability refuse under age fifty to submit to medical examination, his pension may be discontinued until his withdrawal of such refusal, and should such refusal continue for one year, his retirement allowance may be cancelled.

(Added Ord. 5313, 1958; based on former Sec. 2-731; Am. Ord. 95-41, § 5, eff. 6-23-95).

SEC. 3-338. - CONTINUATION OF RETIREMENT ALLOWANCES AFTER DEATH.

(a) Upon the death of a member, due to other than service-connected cause, after qualification for service retirement at or over age fifty, with credit for at least ten years of service and on account of whose death the benefit provided for in [Section 3-330\(a\)](#), (1) and (2) is otherwise payable, or after retirement, regardless of cause, two-thirds of the retirement allowance to which the member would have been entitled if the member had retired for service at the time of death, or two-thirds of the member's retirement allowance as it was at death, as the case may be, and both before modification under an option, shall be continued, throughout life, to the surviving spouse or to the surviving domestic partner.

(b) Upon the death of a member, due to other than service-connected cause, prior to the member's attainment of age fifty, with credit for at least ten years of service and on account of whose death the benefit provided for in [Section 3-330\(a\)](#), (1) and (2) is otherwise payable, two-thirds of the retirement allowance to which the member would have been entitled had the member continued in the service and retired at age fifty, before modification under an option, earned by the member's service as of the date of death, shall be continued, throughout life to the surviving spouse or to the surviving domestic partner.

(c) If there be no surviving spouse or surviving domestic partner entitled to an allowance under this section, 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 such

surviving spouse or surviving domestic partner would have received had the spouse or domestic partner lived shall be paid to the 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 the member leave no surviving spouse or surviving domestic partner so entitled, no children under the age of eighteen years, and no disabled children whose disability continued past the age of eighteen years, but leave a parent or parents dependent upon the member for support, the parents so dependent shall collectively receive a monthly allowance equal to that which such surviving spouse or surviving domestic partner otherwise would have received during such dependency. If payment of the allowance payable under this section because of death before retirement be stopped because of death of the surviving spouse or surviving domestic partner or attainment of the age of eighteen years or establishment of a domestic partnership by, or the death or marriage of, a child, or the death or marriage or establishment of a domestic partnership or cessation of disability in a child whose disability continued past the age of eighteen years, or the death or cessation of dependency of a parent, before the sum of the monthly payments made shall equal the sum of the amounts, which except for this section, would have been payable under [Section 3-330\(a\)](#), (1) and (2), then an amount equal to the difference between said sums shall be paid in one amount, to the surviving children of the deceased member, share and share alike.

(d) The allowance provided in subsection (b) of this section shall be in lieu of the death benefit otherwise payable as provided in [Section 3-330\(a\)](#), (1) and (2), but, notwithstanding any other provision of this article, 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.

(e) With respect to members whose death occurs on or before the effective date of Ordinance No. 2000-4, an allowance shall be paid under this section to a surviving spouse, in the case of death before retirement, only if the spouse was married to the member prior to the date of the sustaining of the injury or the onset of the illness which resulted in death, or, in the case of death after retirement, only if the spouse was married to the member at least one year prior to retirement. With respect to members whose death occurs after the effective date of Ordinance No. 2000-4, an allowance shall be paid under this section (1) to a surviving spouse, in the case of death before retirement, only if the spouse was married to the member prior to the date of death, or, in the case of death after retirement, only if the spouse was married to the member as of the date of retirement or (2) or to a surviving domestic partner, in the case of death before retirement, only if the domestic partner had established a domestic partnership with the member prior to the date of death, or, in the case of death after

retirement, only if the domestic partner had established a domestic partnership with the member as of the date of retirement. (Added Ord. 5313, 1958, based on former Sec. 2-732; Am. Ord. 5667, 1959; Am. Ord. 6894, 1966; Am. Ord. 76-45, § 2, eff. 6-27-76; Am. Ord. 84-47, § 2, eff. 5-11-84; Am. Ord. 2000-4, § 3, eff. 2-10-00; Am. Ord. 2001-16, § 2, eff. 3-26-01; Am. Ord. 2001-72, § 5, eff. 11-10-01; Am. Ord. 2006-15, § 5, eff. 3-10-06).

SEC. 3-339. - DETERMINATION OF SURVIVORS' BENEFITS.

(a) If a member whose death after retirement or while qualified for service retirement qualifies his surviving wife, children or parents for the continuation of an allowance under [Section 3-338](#) was employed in the Fire or Police Department prior to September 22, 1928, the allowance continued to such wife, children or parents shall be two hundred dollars (\$200) per month plus one-half of the difference between two hundred dollars (\$200) and the allowance which the member was receiving at the time of death, or for which he was qualified, as the case may be, instead of two-thirds of such allowance, as provided in said section. Any allowance being received on December 1, 1957, by a surviving wife under [Section 3-338](#), shall be changed, effective on such date, to an amount determined under this section, provided her husband was so employed.

(b) The provisions of [Section 3-339\(a\)](#) shall not apply to any such member who was so employed prior to September 22, 1928, or to a surviving wife of such a member, until and unless such member, if living on December 1, 1957, or otherwise his qualifying surviving wife then living, elects on a form provided by said system, not later than ninety days after the date upon which notice of the right to so elect is mailed by said system to such person's or surviving wife's latest address on file in the office of said system, to be subject to such provisions, and to waive any rights he or she has or may have under Ordinances numbered 1021 and 1415. (Added Ord. 5313, 1958; based on former Sec. 2-732.1).

SEC. 3-340. - LIMITATION.

In the event the surviving spouse or surviving domestic partner of a deceased member becomes eligible for one or more allowances as the surviving spouse or surviving domestic partner of one or more other members, the surviving spouse or surviving domestic partner shall receive the greater of any survivorship allowances for which he or she is eligible and shall not receive any other survivorship allowance, with this exclusion not applicable to any amounts payable for life to the surviving spouse or surviving domestic partner pursuant to Option 2B or Option 3B of sections 3-341 and 3-417.. (Added Ord. 76-45, § 3, eff. 6-27-76; Am. Ord. 2006-15, § 6, eff. 3-10-06; Am. Ord. 2012-23 eff. 1/21/2013).

SEC. 3-341. - 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 annuity and service pension as determined under [Section 3-333](#), payable as a single life annuity, or the sum of the member's disability annuity and disability pension as determined under [Section 3-336](#), payable as a single life annuity.

(2) "Basic retirement allowance plus continuance" shall mean a member's basic retirement allowance plus any two-thirds continuation payments that would be payable under [Section 3-338](#) as determined at the effective date of the member's retirement.

(3) "Net accumulated contributions" shall mean accumulated contributions as defined in [Section 3-301\(a\)\(1\)](#) minus any refund paid to a member under [Section 3-319](#) representing a refund of accumulated contributions resulting from the dependent portion of the normal rate.

(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 two-thirds 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' "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 two-third's continuation under [Section 3-338](#), 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 net accumulated

contributions, then the balance of such net 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 two-third's continuance under [Section 3-338](#), 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 3-341\(a\)\(5\)](#)) the amount of the member's adjusted accumulated contributions (as defined in [Section 3-341\(a\)\(4\)](#)), 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 two-thirds continuance under [Section 3-338](#) 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 two-thirds continuance under [Section 3-338](#). 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. 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 3-341\(d\)\(1\)](#), 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, 2B, 3A, 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 as beneficiary is permitted under [Section 3-342](#) upon the member's marriage after retirement.

(4) With respect to all Options in which the member names his or her spouse as contingent lifetime beneficiary to receive benefits after the member's death, upon the death of the spouse or dissolution of marriage of the member and spouse before the member's death, the designation of the former spouse as contingent lifetime beneficiary is automatically revoked and such former spouse 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 who is 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 shall have the option to either elect benefits under this Section or elect the benefits provided to a surviving spouse for a member who dies before retirement. (Added Ord. 2004-97, §§ 1, 2, eff. 11-15-04; Am. Ord. 2006-15, § 7, eff. 3-10-06; Am. Ord. 2006-138, § 1, eff. 10-27-06).

SEC. 3-342. - 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 3-338](#)

(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 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 surviving domestic partner beneficiary of the portion of the retired member's allowance specifically allocated to the retired member in the dissolution or termination 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 is subsequently dissolved or new domestic partnership 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	662/3
Option 1A or 1B	662/3
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 3-338](#)

(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. 2004-98, 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. 2004-98.

(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\(a\)\(9\)](#).

SEC. 3-343. - RETIREMENT ALLOWANCES PAYABLE. 

A pension, an annuity or retirement allowance granted under the provisions of this article 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. 2-735).

SEC. 3-344. - NON-FORFEITURE OF RIGHT TO RETIREMENT ALLOWANCE. 

Subject to compliance with this article, nothing shall deprive a member of the right to a retirement allowance as determined under it, after he has qualified as to service and disability for retirement for disability, or as to normal retirement age, which is age fifty (50), and the completion of ten (10) years of service for retirement for service. A member shall be 100% vested in his or her accumulated contributions at all times.

(Added Ord. 5313, 1958, based on former Sec. 2-735; Am. Ord. 2011-1, § 8, eff. 3-7-11).

SEC. 3-345. - 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 the person's retirement, unless the person has first been reinstated from retirement pursuant to this article or to article 4 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 employment of 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 or under article 4, and no contributions to the System shall be deducted from any compensation the person may receive for such service.

(Added Ord. 5313, based on former Sec. 2-736; Am. Ord. 74-10, § 1, Eff. 2-17-74; Am. Ord. 85-167, § 2, 11-29-85; Am. Ord. 88-53, § 1, eff. 5-13-88; Am. Ord. 98-35, § 15, eff. 6-27-98).

SEC. 3-346. - INTERNAL REVENUE CODE SECTION 415 ELECTION.

(a)

Notwithstanding any other provision of this Code, the retirement rights conferred upon any member of the First Tier and Second Tier of the City of Fresno Fire and Police 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 3-346](#) by Ordinance No. 2011-1 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(j) 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.

(h)

Less than Ten (10) Years of Service Adjustment for 415(b) Limitations. The maximum retirement benefits payable to any member who has completed less than ten (10) years of Service or City Service (as defined in Article 5) 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 pre-retirement 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 this Article and Article 4, 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. 91-58, § 1, eff. 6-29-91; Am. Ord. 2011-1, § 9, eff. 3-7-11).

SEC. 3-347. - EFFECT OF MARITAL DISSOLUTION OR LEGAL SEPARATION OR TERMINATION OF DOMESTIC PARTNERSHIP.

(a)

Purpose.

(1)

It is the intent of this section and Sections [3-348](#) and [3-349](#) 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 3-301\(a\)\(5\)](#)) 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 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 under this Article 3.

(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 3-348](#); 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 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 3-338](#) or any other section of this Article 3, 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 3-330 and 3-338, 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 to 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 3;

(3)

An alternate payee is not a surviving spouse of the member under this Article 3 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 or surviving domestic partner under this Article 3 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 3 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 3-348](#), and/or [Section 3-349](#) 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. 94-27, § 3, eff. 5-27-94; Am. Ord. 94-36, § 1, eff. 6-24-94; Am. Ord. 2002-11, § 1, eff. 3-19-02; Am. Ord. 2004-100, § 1, eff. 11-15-04; Am. Ord. 2006-15, § 9, eff. 3-10-06; Am. Ord. 2011-1, § 10, eff. 3-7-11).

SEC. 3-348. - DISSOLUTION OR LEGAL SEPARATION OR TERMINATION 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 3-347](#) and this [Section 3-348](#)

(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 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 3-341](#) 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, the average compensation in [Section 3-301\(a\)\(9\)](#) shall be determined solely by reference to the rank or ranks held by the member during the period of marriage or domestic partnership;

(v)

For purposes of applying the benefit formula of [Section 3-333](#) 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 the 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 partnership 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. The alternate payee shall have the same right as the member to select the pay formula upon which the retirement allowance is to be based. In applying the selected pay formula, only the rank or final average compensation earned by the member during the period of marriage or domestic partnership and prior to the date of separation shall be used.

(ii)

The alternate payee's retirement allowance shall be eligible for such cost-of-living increases under this Article 3 as are consistent with the pay formula

selected by the alternate payee to determine the alternate payee's retirement allowance.

(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 an 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 3-347](#), including the provision that the alternate payee will not be considered to be a surviving spouse or surviving domestic partner under [Section 3-338](#) or any other Section of this Article 3.

(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 3-347\(b\)\(3\)](#). 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 3-330](#) or [3-338](#) 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 3-347\(b\)\(3\)](#) 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 3-347\(b\)\(3\)](#) 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 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 the the alternate payee or had never established a domestic partnership with the alternate payee; and

(ii)

No survivor benefits under [Section 3-338](#) or any other Section of this Article 3 are payable to the surviving spouse of the alternate payee.

(5)

In the absence of a qualifying surviving spouse, qualifying domestic partner, unmarried children under the age of eighteen or children under the age of eighteen not members of a domestic partnership, disabled child qualified under [section 3-338\(c\)](#), or dependent parents, the court order may provide for the division of the community property interest in the death benefit under [Section 3-330](#)

(Added Ord. 94-27, § 4, eff. 5-27-94; Am. Ord. 94-36, § 2, eff. 6-24-94; Am. Ord. 95-41, § 8, eff. 6-23-95; Am. Ord. 2002-11, § 2, eff. 3-19-02; Am. Ord. 2004-100, § 2, eff. 11-15-04; Am. Ord. 2006-15, § 10, eff. 3-10-06).

SEC. 3-349. - 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 3-341](#) 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 3-349\(c\)](#) 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 3-341](#) 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 3-338](#) or under any other Section of this Article 3.

(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 3, 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 3-341](#) 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 3-342](#) 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 partner 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. 94-27, § 3, eff. 5-27-94; Am. Ord. 94-36, § 1, eff. 6-24-94; Am. Ord. 2002-11, § 3, eff. 3-19-02; Am. Ord. 2004-97, § 4, eff. 11-15-04; Am. Ord. 2004-100, § 3, eff. 11-15-04; Am. Ord. 2006-15, § 11, eff. 3-10-06).

SEC. 3-350. - 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. 95-41, § 9, eff. 6-23-95).

SEC. 3-351. - DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

(a)

If, under the provisions of this article or article 4, 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 frequently than annually) made (i) for the life (or life 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

includible; 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,

(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 3-327](#) (Refund of Contributions) or [Section 3-328](#) (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 City of Fresno Fire and Police Retirement Fund, with the individual as a former member being entitled thereafter to claim the amount so credited but without interest.

(Added Ord. 95-41, § 10, eff. 6-23-95; Am. Ord. 98-35, § 16, eff. 6-27-98; Am. Ord. 2011-1, § 11, eff. 3-7-11).

SEC. 3-352. - MINIMUM REQUIRED DISTRIBUTIONS.

The City of Fresno Fire and Police Retirement System shall pay all benefits in accordance with a 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 Fire and Police Retirement System shall be subject to the following provisions:

(a)

Notwithstanding any other provision of this article or article 4, 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 (70 1/2); 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 70 1/2, 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 or article 4, if a member has elected an option under [section 3-341](#) or [section 3-417](#) 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. 97-21, § 1, eff. 6-21-97; Am. Ord. 98-35, § 17, eff. 6-27-98; Am. Ord. 2011-1, § 12, eff. 3-7-11).

SEC. 3-353. - 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 50 and who possesses sufficient credited service to be eligible for a service retirement shall be eligible to participate in DROP.

(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 3-341](#) (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 3-301\(a\)](#) (Definitions), average compensation shall be determined solely by reference to the rank or ranks held by the member prior to the date the member commences participation in DROP;

1.

If a member is entitled to convert a sick or holiday or other leave balance into a lump sum cash payment upon retirement, the dollar value of the member's leave balance as of the effective date of DROP participation shall be divided by the member's years of service, and the resulting quotient shall be included in the compensation of each rank held by the member for purposes of determining average compensation under [Section 3-301\(a\)](#) (Definitions);

2.

The employee contributions due with respect to the leave balance shall be charged against the member's DROP account;

(iii)

For a member whose retirement allowance is determined under [Section 3-302](#) (Alternate Definition of Average Compensation), average compensation shall be determined solely by the average monthly compensation earnable by a member during the three years of employment occurring immediately prior to the date the member commences participation in DROP;

1.

If a member is entitled to convert a sick or holiday or other leave balance into a lump sum cash payment upon retirement, the dollar value of the member's leave balance as of the effective date of DROP participation shall be divided by thirty-six, and the resulting quotient shall be added to the average monthly compensation earnable by a member during the three years of employment immediately prior to commencing participation in DROP used for purposes of determining average compensation under [Section 3-302](#) (Alternate Definition of Average Compensation);

2.

The employee contributions due with respect to the leave balance shall be charged against the member's DROP account;

(iv)

Any changes in leave balances occurring after the member commences participation in DROP shall not affect in any manner the amounts credited to the member's DROP account or the member's retirement allowance, whether for service or disability, payable to the member; and

(v)

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 3-353\(c\)\(3\)](#) 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 that will be credited to the DROP accounts during the fiscal year.

(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 3-353\(d\)\(4\)](#) nor higher than that average net rate of return.

(6)

If the average net rate of return determined in [Section 3-353\(d\)\(4\)](#) 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 in DROP is prior to the effective date of Ordinance No. 2011-1 and notwithstanding [Section 3-319](#) (Normal Contributions of Members), 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-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 3-336](#) (Allowance at Disability Retirement), if the Board grants the application, whether for a service-connected or non-service-connected 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 [3-353\(f\)](#) and [3-353\(g\)\(2\)](#).

(5)

If a member marries while participating in DROP, the marriage 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 3-353\(g\)\(2\)](#); or

(ii)

A designated DROP beneficiary who is not listed in [Section 3-353\(f\)\(2\)\(i\)](#) 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 3-353\(f\)\(2\)\(i\)](#) shall be entitled to select a form of distribution under [Section 3-353\(g\)\(2\)](#); or

(b)

A designated DROP beneficiary who is not listed in [Section 3-353\(f\)\(2\)\(i\)](#) 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 [3-353\(f\)](#) and [3-353\(g\)\(2\)](#).

(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.

(4)

The refund of the dependent portion of a member's normal contribution rate under [Section 3-319](#) (Normal Contributions of Members) shall not be made until the member terminates DROP participation and retires.

(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. 97-65, § 1, eff. 12-18-97; Am. Ord. 2000-72, § 1, eff. 12-11-00; Am. Ord. 2001-72, § 6, eff. 11-10-01; Am. Ord. 2006-15, § 12, eff. 3-10-06; Am. Ord. 2011-1, § 13, eff. 3-7-11; Am. Ord. 2012-4, § 1, eff. 3-15-12).

SEC. 3-354. - 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 applicable to this article and to article 4 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 Employees 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 is 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, other than a member or former member retired or retiring under [section 3-335](#) (Disability Retirement) or [3-412](#) (Disability Retirement), 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 3-328](#) (Deferred Benefits After Separation) or [section 3-406](#) (Deferred Benefits After Separation) or [section 3-333](#) (Allowance At Service Retirement) or [section 3-411](#) (Allowance At Service Retirement) or a disability retirement allowance under [section 3-336](#) (Allowance At Disability Retirement) or [section 3-413](#) (Allowance At Disability Retirement); and

(ii) Members, but only while participating in the Deferred Retirement Option Program under [section 3-353](#) or [section 3-424](#), and with the post-retirement supplemental benefit only being credited to the member's DROP account; and

(iii) Beneficiaries receiving a monthly allowance under [section 3-330](#) (Death Benefits) or [3-408](#) (Death Benefits) or under [section 3-338](#) (Continuation Of Retirement Allowances After Death) or [section 3-415](#) (Continuation of Retirement Allowances) or under [section 3-341](#) (Optional Modification Of Allowance) or [section 3-417](#) (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 3-330](#) or [3-408](#) or where the allowance under [section 3-338](#) or [3-415](#) is distributed to a qualifying surviving spouse or qualifying domestic partner but where the allowance under [section 3-341](#) (Option 2) or [section 3-417](#) (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) Members, retired members and beneficiaries become eligible for the post-retirement supplemental benefit at the earlier of the date they first commence receiving monthly retirement allowance or upon commencing participation in the Deferred Retirement Option Program, 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, other than members or former members retired or retiring under [section 3-335](#) (Disability Retirement) or [3-412](#) (Disability Retirement), 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, available for distribution.

(f) Allocation and Distribution of Distributable Actuarial Surplus.

(1) The Retirement Board shall divide the 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.

(2) 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.

(3) 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 under this article and article 4 as of the date of the most recent actuarial valuation.

(ii) Seventy-five percent (75%) of the distributable actuarial surplus (or such higher percentage as is determined by the Retirement Board) shall be divided by the number in subsection f(3)(i), with this amount then divided by twelve and distributed on a monthly basis to each eligible post-retirement supplemental benefit recipient commencing in January of the calendar year following the declaration of distributable actuarial surplus.

(iii) Any distributable actuarial surplus that is not distributed pursuant to subsection f(3)(ii) 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 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 Employees 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 Employees 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. 98-35, § 18, eff. 6-27-98; Am. Ord. 2000-2, § 1, eff. 2-10-00; Am. Ord. 2002-6, § 1, eff. 2-18-02; Am. Ord. 2002-10, § 1, eff. 3-19-02; Am. Ord. 2006-15, § 13, eff. 3-10-06).

SEC. 3-355. - 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 3 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. (Added Ord. 2006-15, § 14, eff. 3-10-06)