

ARTICLE 4 - SECOND TIER OF THE FIRE AND POLICE RETIREMENT SYSTEM 

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**SEC. 3-401. - 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. Words and phrases defined in [section 3-301](#) that are not defined differently in this section shall have the same meaning in this article as in article 3.

- (a)
  - (1)
    - (2) "Accumulated contributions" shall mean accumulated normal contributions.
    - (2) "Average Compensation." Each member's Benefits at Retirement shall be computed on the basis of the highest average monthly compensation earnable by a member during any 36-consecutive-month period of Service (or, if the period of Service is less than 36 months, for the member's total period of Service).
    - (3) "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.
  - (b) Reserved.
  - (c)
    - (1) "Compensation," as distinguished from benefits under [Division 4](#) of the Labor Code of the State of California, shall be limited to mean the base compensation payable by the city, in amounts fixed for members of the Fire Department, Police Department and Airport Public Safety Division, and also including payments made to members of the Fire Department by way of Paramedic Premium Pay and Holiday Payoff, and, to members of the Police Department and of the Airport Public Safety Division by way of the Educational Incentive Program, Assignment Pay and Holiday Payoff. Any form of compensation not specifically mentioned above shall not be included unless modified by the Council. Any such modification of the definition of Compensation by the Council must contain an express statement by the Council, in clear and concise language, that said definition is being modified. 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.

(2)

"Contributions" shall mean normal contributions.

(d)

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

(1)

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

(2)

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

(3)

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

(4)

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

(e)

Reserved.

(f)

"Firefighter," shall mean employees of the Fire Department employed in the following classes: Fire Chief, Assistant Fire Chief, Fire Bureau Chief, Fire Battalion Chief, Fire Captain, Firefighter Specialist, Firefighter, and Firefighter Trainee or, in the event class titles are changed or added within the class series, also in such classes.

(g)

"Fire or Police Department or Airport Public Safety Division" shall mean the Fire Department or the Police Department or the Airport Public Safety Division and specifically excludes every other city department or division regardless of the functions performed by employees of that department or division.

(h)

Reserved.

(i)

Reserved.

(j)

Reserved.

(k)

Reserved.

(l)

Reserved.

(m)

Reserved.

(n)

"Member" shall mean any person included in membership of the Retirement System.

(o)

"Normal Contributions" shall mean contributions at the rates provided for in Section 3-405, without interest.

(p)

"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.

(q)

(1)

"Police Officer" shall mean employees of the Police Department employed in the following classes: Police Chief, Deputy Police Chief, Police Captain, Police Lieutenant, Police Sergeant, Police Specialist, Police Officer, and Police Officer Recruit or, in the event class titles are changed or added within the class series, also in such classes.

(2)

"Public safety officer/supervisor" shall mean employees in the class of public safety officer or public safety supervisor 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.

(r)

Reserved.

(s)

Reserved.

(t)

"Service" shall mean service rendered as a firefighter in the Fire Department or police officer in the Police Department or as a public safety officer/supervisor in the Airport Public Safety Division for compensation, and for the purpose of the Retirement System as a member shall be considered as being in the "service" only while he/she 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.

(u)

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

(v)

"Limitation year" shall mean the calendar year.

*(Added Ord. 90-73, § 1, eff. 8-27-90; Am. Ord. 94-28, §§ 1, 2, eff. 5-27-94; Am. Ord. 95-42, §§ 1—4, eff. 6-23-95; Am. Ord. 96-41, § 2, eff. 6-28-96; Am. Ord. 96-54, § 24, eff. 9-20-96; Am. Ord. 98-36, § 3, eff. 6-27-98; Am. Ord. 98-99, §§ 1—4, eff. 1-9-99; Am. Ord. 2006-16, § 1, eff. 3-10-06; Am. Ord. 2011-1, §§ 14, 15, eff. 3-7-11).*

## **SEC. 3-402. - CREATION OF THE SECOND TIER OF THE FIRE AND POLICE RETIREMENT SYSTEM.**

(a)

There is hereby created a second tier of the Fire and Police Retirement System. Any person who commenced city service as a firefighter, police officer, or airport public safety officer/supervisor on or after August 27, 1990 shall be subject to the provisions of this article.

(b)

This article is intended to add a second, separate, and distinct tier to the Fire and Police Retirement System in terms of employee contributions, benefits, vesting, the definition of compensation, and other matters.

(c)

All persons who were members of the Retirement System under [Section 3-301](#) prior to August 27, 1990, terminate service, resume service, and redeposit contributions after August 26, 1990, shall be members of the Retirement System established under [Section 3-301](#), subject to the provisions thereof.

(d)

All persons who first become members of the Retirement System after August 26, 1990, terminate service, and resume service shall be, subject to the provisions of this article.

(e)

The second tier of the Fire and Police Retirement System is a component of the Retirement System and is accordingly to be administered, controlled, and managed by the Retirement Board created under [section 3-305](#)

(f)

Since this article is a second tier of the Retirement System, (i) such administrative provisions of article 3 as sections [3-305](#), [3-306](#), [3-308](#), [3-309](#), [3-310](#), [3-311](#), [3-312](#), [3-313](#), [3-314](#), [3-315](#), [3-316](#), [3-317](#), [3-322](#), [3-323](#), [3-324](#), [3-325](#), [3-326](#), [3-327](#), [3-334](#), [3-345](#), [3-346](#), [3-350](#), [3-351](#), and [3-352](#), and (ii) [Section 3-354](#) are applicable to members who commenced service on or after August 27, 1990.

(g)

In the event of a conflict between the provisions of article 3 and this article, the provisions of this article shall apply to members who commenced service on or after August 27, 1990.

*(Added Ord. 90-73, § 1, eff. 8-27-90; Am. Ord. 98-36, §§ 4, 5, eff. 6-27-98; Am. Ord. 98-99, § 5, 1-9-99; Am. Ord. 2011-1, § 16, eff. 3-7-11).*

## **SEC. 3-403. - PERSONS EXCLUDED.**

The following employees shall not be subject to the provisions of this article: Employees in the position of Police Chief or Fire Chief who commenced service on or after August 27, 1990 and for whom retirement benefits different from those contained in this article have been established separately for them by resolution of the Council of the City of Fresno.

*(Added Ord. 95-39, § 1, eff. 6-23-95; Am. Ord. 98-36, § 6, eff. 6-27-98).*

#### **SEC. 3-404. - AMENDMENTS.**

No amendments or other modification of this article, as now existing and as hereinafter amended, shall be made by the Council, unless said amendment or other modification shall be previously submitted to the Board for its consideration. The definition of Compensation in Sections 3-401(a)(7) and (c)(3) may not be amended without an express statement by the Council, in clear and concise language, that said definition is being modified.

*(Added Ord. 90-73, § 1, eff. 8-27-90).*

#### **SEC. 3-405. - NORMAL CONTRIBUTIONS OF MEMBERS.**

Each member's normal rate of contribution shall be 9% of his/her compensation.

*(Added Ord. 90-73, § 1, eff. 8-27-90).*

#### **SEC. 3-406. - 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/she is entitled to credit for five years of service, he/she shall have the right to elect, within ninety days after the date upon which notice of said right is mailed by the System to the member's latest address on file in its office, whether to allow his/her accumulated contributions to remain in the Retirement Fund. Failure to make such election shall be deemed an irrevocable election to withdraw his/her accumulated contributions. A member having made such election may, at any time before the effective date of any deferred retirement allowance for which he/she has qualified under this section, rescind his/her election in writing and upon such rescission he/she shall be paid forthwith his/her 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/she is not subject to a minimum service requirement. After the qualification of such member for retirement by reason of age or disability, he/she shall receive a retirement allowance based upon the amount of his/her accumulated contributions and service standing to his/her 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/she 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 re-entry into service, except as provided in Subsection (b) of [Section 3-408](#).

*(Added Ord. 5313, 1958, based on former Sec. 2-722; Am. Ord. 6735, 1965; Added Ord. 90-73, § 1, eff. 8-27-90; Am. Ord. 95-42, § 10, eff. 6-23-95).*

### **SEC. 3-407. - DEFERRED BENEFITS AFTER ENTERING EXCLUDED CLASSIFICATION.**

(a) Other code provisions to the contrary notwithstanding, the accumulated contributions of a member who has entered or enters a classification that 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 he/she is subject to a minimum service requirement of five years credited under this article and the Employees Retirement System. After such member qualifies for retirement by reason of service and age or disability, he/she shall be entitled to receive a retirement allowance based upon the amount of his/her accumulated contributions, service standing to his/her credit at the time of retirement, and his/her Average Compensation, 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 him/her unless he/she meets such minimum service requirements.

(b) Upon a member's death while employed in such classification, a death benefit as described in [Section 3-408](#) shall be payable, but computed upon the basis of compensation earnable by him/her during the six months preceding his/her entry into such classification. The portion of such death benefit derived from city contributions shall be reduced by an amount equal to the portion so derived, of any death benefit to which such member may be entitled, from such Employees Retirement System.

(c) A member with accumulated contributions remaining in the Employees Retirement Fund pursuant to [Section 3-536](#) of Article 5 and who retires for service or disability under the Employees Retirement System, shall be retired under this System, for service or disability as the case may be, regardless of his/her age or service credited thereunder, but subject to the requirement in subsection (a) of at least five years under both systems. Such allowances shall be calculated as provided in this Article 4, except for the greater discount of the Service Retirement Allowance, and except that the disability retirement allowances under the two Systems shall be combined for application of the provisions in Sections [3-413](#) and [3-547](#) relating to minimum allowances, and only one such minimum allowance shall be calculated on the basis of the combined credited service and the higher of the average compensation or final compensation. The minimum allowance so determined shall be prorated between the two Systems according to the credited service under such Systems.

(d) This section shall be applied retroactively to include persons who would have been subject to its provisions if it had been in effect when they entered such classification. (Added Ord. 90-

73, § 1, eff. 8-27-90; Am. Ord. 95-42, § 11, 6-23-95; Am. Ord. 98-36, § 26, eff. 6-27-98; Am. Ord. 2001-14, § 1, eff. 3-26-01).

### **SEC. 3-408. - DEATH BENEFITS.**

(a) Upon a member's death before retirement, 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 3-416](#), 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 person or if the person so designated is not living at the time of payment, to the member's estate. Such death benefit 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 child or children of the 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 establishes a domestic partnership 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 leaves 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 would have otherwise 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 or domestic partnership 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 five 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 discontinuance of service, for a death benefit consisting of the member's accumulated contributions only. Such benefit 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 said Board may adopt.

(d) A person, while a member or after retirement, shall have the right to revoke the nomination of a beneficiary he or she made under the Retirement System, and to nominate another beneficiary, 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 3-417](#).

(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 date of death 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. 90-73, § 1, eff. 8-27-90; Am. Ord. 95-42, § 12, eff. 6-23-95; Am. Ord. 2000-4, § 4, eff. 2-10-00; Am. Ord. 2001-17, § 1, eff. 3-26-01; Am. Ord. 2001-72, § 7, eff. 11-10-01; Am. Ord. 2006-16, § 2, eff. 3-10-06).

#### **SEC. 3-409. - BENEFITS AT RETIREMENT.**

Upon retirement for service or disability a person shall be entitled to the retirement allowances specified in Sections [3-411](#) and [3-412](#) inclusive. (Added Ord. 90-73, § 1, eff. 8-27-90).

#### **SEC. 3-410. - 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 five 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 five years of service after qualification for service retirement, then the member shall be required to contribute to the Retirement Fund only until such five 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 five years of service in the aggregate, and shall have attained the age of fifty years. (Added Ord. 90-73, § 1, eff. 8-27-90; Am. Ord. 2000-28, § 2, eff. 4-24-00).

**SEC. 3-411. - ALLOWANCE AT SERVICE RETIREMENT.**

A member, upon retirement for service as provided in [Section 3-410](#), shall receive a retirement allowance which shall be a pension derived from the contributions of the City sufficient when added to the service annuity that is derived from the accumulated contributions of the member at the date of his/her retirement to equal the percentage of his/her Average Compensation set forth opposite his/her age in the following table multiplied by the number of his/her years of service at the time of his/her retirement.

If retirement occurs at age:	The percentage for each year of credited service is:
50	2.000
50¼	2.035
50½	2.070
50¾	2.105
51	2.140
51¼	2.175

51½	2.210
51¾	2.245
52	2.280
52¼	2.315
52½	2.350
52¾	2.385
53	2.420
If retirement occurs at age:	The percentage for each year of credited service is:
53¼	2.455
53½	2.490
53¾	2.525
54	2.560
54¼	2.595
54½	2.630
54¾	2.665

55 and over	2.700
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In no event shall the retirement allowance exceed an amount equal to 75% of such member's Average Compensation.

On or before April 1 of each year the Retirement System shall determine the percentage of annual increase or decrease in the cost of living by reference to the Consumer Price Index (United States City Average for urban wage earners and clerical workers—all items), as published by the Bureau of Labor Statistics of the United States Department of Labor, for each of the two immediately preceding calendar years. The percentage by which such index for the more recent full calendar year shall have increased or decreased over or below such index for the full calendar year immediately prior shall be the percentage of the annual increase or decrease in the cost of living effective January 1 of each year from January 1 of the preceding year.

Beginning as of January 1 of the year in which said Retirement Board shall so determine the percentage of increase or decrease in the cost of living, the amounts of certain members' retirement allowances as identified here shall be increased or decreased by reason of such determined percentage of increase or decrease in the cost of living but not to exceed 3% in any given year. Such determined percentage of increase or decrease in the cost of living shall be applied to the amounts of such allowances payable for the preceding month of December, including any previous percentage of increase or decrease in the cost of living. In no event, however, will the amount of allowance of any member be so increased or decreased for cost of living until the January 1 of the second calendar year following such member's service retirement.

The amount of any retirement allowance referred to in this section shall never be reduced, by reason of the cost of living adjustment, to an amount less than the amount the member was originally granted at his/her service retirement.

If the percentage of adjustment in the cost of living in any year were to exceed 3% for that year, the percentage of increase or decrease in the cost of living exceeding 3% shall be carried over and added to or subtracted from the percentage of increase or decrease in the cost of living in succeeding years, and such procedure shall be followed from year to year.

*(Added Ord. 90-73, § 1, eff. 8-27-90; Am. Ord. 98-36, § 27, eff. 6-27-98; Am. Ord. 2009-25, § 1, eff. 8-16-09).*

*Editor's note—*

The amendments adopted Ord. 2009-25 expired June 30, 2010.

**SEC. 3-412. - 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/her 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/her behalf, stating that said member is physically or mentally incapacitated for the performance of duty and ought to be retired, provided, if his/her disability is not industrial, he/she 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/she 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 3-414](#), 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; Added Ord. 90-73, § 1, eff. 8-27-90).*

### **SEC. 3-413. - ALLOWANCE AT DISABILITY RETIREMENT.**

Upon retirement for disability as provided in [Section 3-412](#), a member,

(a)

If his/her disability, in the opinion of the Board, is service-connected, shall receive

(1)

A disability annuity which shall be the actuarial equivalent of his/her accumulated contributions at the time of his/her retirement; and

(2)

A disability pension purchased by contribution of the city, which together with the annuity provided by his/her accumulated contributions, shall make his/her total retirement allowance equal to one-half of his/her average compensation, or if he/she be qualified for service retirement, such pension shall be an amount which together with the annuity provided by his/her accumulated normal contributions, shall equal the retirement allowance he/she would receive if retired for service, but not less than one-half of his/her average compensation.

(b)

If his/her disability, in the opinion of the Board, is not service-connected, shall receive

(1)

A disability annuity which shall be the actuarial equivalent of his/her accumulated contributions at the time of his/her retirement; and

(2)

A disability pension purchased by the contributions of the city, which, together with the annuity provided by his/her accumulated contributions, shall make the retirement allowance equal to the greater of:

(i)

thirty-three (33.00) percent of the member's average compensation; or

(ii)

one and one-half (1.50) 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; Added Ord. 90-73, § 1, eff. 8-27-90; Am. Ord. 2001-72, § 9, eff. 11-10-01).*

#### **SEC. 3-414. - SAFEGUARDS.**

(a) The Board at its pleasure or upon request of 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/she was employed and in the position held by him/her when retired for disability. If the Board shall determine that said beneficiary is not so incapacitated, his/her retirement allowance shall be cancelled forthwith, and he/she shall be reinstated to the position of the same class as that held by him/her when retired for disability.

(b) (1) Should a beneficiary after retirement for disability re-enter the service and be eligible for membership in the Retirement System in accordance with [Section 3-402](#), his/her retirement allowance shall be cancelled and he/she shall immediately become a member of the Retirement System, his/her rate of contribution for future years being that established subject to Section 2-1716A. His/her 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/her annuity, but such amount shall not exceed the amount of his/her accumulated contributions as it was at the time of his/her retirement.

(2) An amount actuarially equivalent to his/her 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/she 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/her monthly pension as defined herein to an amount which, when added to the compensation earned monthly by him/her in such occupation, shall not exceed the amount of the compensation attached to the rank which he/she held at the time of his/her retirement. Should the earning capacity of such beneficiary be further altered, the Board may further alter his/her said pension to an amount which shall not exceed the full amount to which he/she 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/her retirement allowance shall be made equal to the full amount to which he/she 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 by the city.

(d) Should any beneficiary retired for disability refuse under age fifty to submit to medical examination, his/her pension may be discontinued until his/her withdrawal of such refusal, and should such refusal continue for one year, his/her retirement allowance may be cancelled. (Added Ord. 5313, 1958; based on former Sec. 2-731; Added. Ord. 90-73, § 1, eff. 8-27-90; Am. Ord. 95-42, §§ 14, 15, eff. 6-23-95).

### **SEC. 3-415. - CONTINUATION OF RETIREMENT ALLOWANCES AFTER DEATH.**

(a) Upon a member's death, due to other than service-connected cause, after qualification for service retirement at or over age fifty, with credit for at least five years of service and on account of whose death the benefit provided for in [Section 3-408\(a\)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 a member's death, due to other than service-connected cause, before the member's attainment of age fifty, with credit for at least five years of service and on account of whose death the benefit provided for in [Section 3-408\(a\)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 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 that 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 of the surviving domestic partner or attainment of eighteen years by, or the death or marriage or establishment of a domestic partnership 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 3-408\(a\)](#) 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 3-408\(a\)](#)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 instead 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) to a surviving domestic partnership, 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. 90-73, § 1, eff. 8-27-90; Am. Ord. 2000-4, § 5, 2-10-2000; Am. Ord. 2001-17, § 2, eff. 3-26-01; Am. Ord. 2001-72, § 10, eff. 11-10-01; Am. Ord. 2006-16, § 3, eff. 3-10-06).

#### **SEC. 3-416. - 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 [Section 3-417](#). (Added Ord. 76-45, § 3, eff. 6-27-76; Added Ord. 90-73, § 1, eff. 8-27-90; Am. Ord. 2006-16, § 4, eff. 3-10-06; Am. Ord 2012-23 eff 1/21/2013.)

#### **SEC. 3-417. - OPTIONAL MODIFICATION OF ALLOWANCES.**

(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 3-411](#), payable as a single life annuity, or the sum of the member's disability annuity and disability pension as determined under [Section 3-413](#), 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 3-415](#) as determined at the effective date of the member's retirement.

(3) "Accumulated contributions" shall mean accumulated contributions as defined in [Section 3-401\(a\)\(1\)](#).

(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's "adjusted accumulated contributions".

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

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

(b) If at the effective date of retirement the member has no spouse, children or dependent parents who would qualify for the two-third's continuation under [Section 3-415](#), then, instead of receiving a retirement allowance only over the member's lifetime, the member may elect any of the following options:

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

(2) Option 2A, 100% Optional Continuance. The member may elect that a lower retirement allowance will be paid over the member's lifetime and that after the member's death the same lower benefit will be continued for life to a beneficiary designated by the member as provided in subsection(d). This option shall be actuarially equivalent to the member's basic retirement allowance at the effective date of retirement.

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

(c) If at the effective date of retirement the member has a spouse, children or dependent parents who would qualify for a two-third's continuance under [Section 3-415](#), 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 3-417\(a\)\(5\)](#)) the amount of the member's adjusted accumulated contributions (as defined in [Section 3-417\(a\)\(4\)](#)), 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 3-415](#) 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 3-415](#). 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 3-417\(d\)\(1\)](#), 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 3-418](#) 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 2004-98, §§ 1, 2, eff. 11-15-04; Am. Ord. 2006-16, § 5, eff. 3-10-06; Am. Ord. 2006-139, § 1, eff. 10-27-06).

## **SEC. 3-418. - 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 3-415](#)

(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 3-415](#)

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

*(Added Ord. 2004-98, § 3, eff. 11-15-04; Am. Ord. 2006-16, § 6, eff. 3-10-06).*

#### **SEC. 3-419. - 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; Added Ord. 90-73, § 1, eff. 8-27-90).*

#### **SEC. 3-420. - RETIREMENT ALLOWANCE NONFORFEITURE.**

Subject to compliance with this article, nothing shall deprive a member of the right to a retirement allowance as determined under it, after he/she has qualified as to service and disability for retirement for disability, or as to normal retirement age, which is age fifty-five (55), and the completion of five (5) 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; Added Ord. 90-73, § 1, eff. 8-27-90; Am. Ord. 2011-1, § 17, eff. 3-7-11).*

#### **SEC. 3-421. - EFFECT OF MARITAL DISSOLUTION OR LEGAL SEPARATION OR TERMINATION OF DOMESTIC PARTNERSHIP.**

(a)

##### **Purpose.**

(1)

It is the intent of this Section and Sections [3-422](#) and [3-423](#) 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 of members 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 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 or surviving domestic partners under this Article 4.

(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 3-422](#); 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 3-415](#) or any other section of this Article 4, 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 [Section 3-408](#) and [3-415](#), 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 4;

(3)

An alternate payee is not a surviving spouse of the member under this Article 4 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 4 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 4 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 3-422](#), and/or [Section 3-423](#) 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. 94-28, § 3, eff. 5-27-94; Am. Ord. 94-37, § 1, eff. 6-24-94; Am. Ord. 2002-11, § 4, eff. 3-19-02; Ord. 2004-101, § 1, eff. 11-15-04; Am. Ord. 2006-16, § 7, eff. 3-10-06; Am. Ord. 2011-1, § 18, eff. 3-7-11).*

**SEC. 3-422. - 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 3-421](#) and this [Section 3-422](#)

(2)

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

(i)

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

(ii)

The right of the alternate payee to elect an option under [Section 3-417](#) 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 (as defined in [Section 2-401\(a\)\(2\)](#)) shall be determined solely by the compensation earnable (as defined in [Section 3-301\(b\)\(4\)](#)) by the member during the period of marriage or domestic partnership;

(v)

For purposes of applying the benefit formula of [Section 3-411](#) 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 service. Only the compensation earnable by the member during the period of marriage or domestic partnership and prior to the date of separation shall be used to determine average compensation.

(ii)

The alternate payee's retirement allowance shall be eligible for cost-of-living increases under this Article 4.

(iii)

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

(6)

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

(b)

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

(1)

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

(2)

The court order complies with the provisions set forth in [Section 3-421](#), including the provision that the alternate payee will not be considered to be a surviving spouse or surviving domestic partner under [Section 3-415](#) or any other Section of this Article 4.

(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 3-421](#). 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 3-408](#) or [3-415](#) 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 3-421\(b\)\(3\)](#) 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 3-421\(b\)\(3\)](#) 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 his or her alternate payee's allowances payable as single life annuities shall not exceed the actuarial present value of the member's allowance 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 3-415](#) or any other Section of this Article 4 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 domestic partnerships, disabled child qualified under [Section 3-415\(c\)](#), or dependent parents, the court order may provide for the division of the community property interest in the death benefit under [Section 3-408](#). (Added Ord. 94-28, § 4, eff. 5-27-94; Am. Ord. 94-37, § 1, eff. 6-24-94; Am. Ord. 95-42, §§ 18, 19, eff. 6-23-95; Am. Ord. 2002-11, § 5, eff. 3-19-02; Am. Ord. 2004-101, § 2, eff. 11-15-04; Am. Ord. 2006-16, § 8, eff. 3-10-06).

### **SEC. 3-423. - 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 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 3-417](#) selected by the member at retirement, except that any life annuity payable only for the retired member's life may be modified as set forth in [Section 3-423\(c\)](#) 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 3-417](#) 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 his or her 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 3-415](#) or under any other Section of this Article 4.

(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 4, 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 3-417](#) 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 3-418](#) 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 retired member's 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. 94-28, § 5, eff. 5-27-94; Am. Ord. 94-37, § 1, eff. 6-24-94; Am. Ord. 2002-11, § 6, eff. 3-19-02; Am. Ord. 2004-98, § 4, eff. 11-15-04; Am. Ord. 2004-101, § 3, eff. 11-15-04; Am. Ord. 2006-16, § 9, eff. 3-10-06).

#### SEC. 3-424. - 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 3-417](#) (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 3-401](#) (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;

(iii)

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 highest average monthly compensation earnable by a member during any thirty-six consecutive months of service prior to commencing participation in DROP used for purposes of determining average compensation under [Section 3-401](#) (Definition);

1.

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

2.

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

(iv)

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 3-424\(c\)\(3\)](#) for that month has been credited to the account.

(2)

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

(3)

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

(4)

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

(5)

The Board shall set the annual effective drop interest rate at a level it deems in its sole discretion necessary to maintain the cost neutrality of the DROP program. The Board shall not set the annual effective DROP interest rate lower than 3 percent below the average net rate of return as determined in [Section 3-424\(d\)\(4\)](#) nor higher than that average net rate of return.

(6)

If the average net rate of return determined in [Section 3-424\(d\)\(4\)](#) 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 3-405](#) (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. , 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 3-413](#) (Allowance at Disability Retirement), if the Board grants the application, whether for an service-connected or nonservice-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 [3-424\(f\)](#) and [3-424\(g\)\(2\)](#).

(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 3-424\(g\)\(2\)](#); or

(ii)

A designated DROP beneficiary who is not listed in [Section 3-424\(f\)\(2\)\(i\)](#) 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 3-424\(f\)\(2\)\(i\)](#) shall be entitled to select a form of distribution under [Section 3-424\(g\)\(2\)](#); or

(b)

A designated DROP beneficiary who is not listed in [Section 3-424\(f\)\(2\)\(i\)](#) 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 3-424(f) and 3-424(g)(2).

(h)

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

(1)

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

(2)

Death of the member; or

(3)

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

(4)

Voluntary termination of a member's employment; or

(5)

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

(i)

**General DROP Provisions.**

(1)

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

(2)

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

(3)

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

(j)

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

(1)

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

(2)

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

(k)

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

*(Added Ord. 97-66, § 1, eff. 12-18-97; Am. Ord. 2000-73, § 1, eff. 12-11-00; Am. Ord. 2001-72, § 11, eff. 11-10-01; Am. Ord. 2006-16, § 10, eff. 3-10-06; Am. Ord. 2011-1, § 19, eff. 3-7-11; Am. Ord. 2012-4, § 2, eff. 3-15-12).*

### **SEC. 3-425. - RECIPROCITY BETWEEN THE FIRE AND POLICE RETIREMENT SYSTEM AND THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM.**

(a)

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

(b)

#### **Limitations On Application Of This Section.**

(1)

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

(i)

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

(ii)

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

(2)

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

(3)

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

(4)

Persons entering the System from a reciprocal system shall be subject to the provisions applicable to the second tier of this Retirement System.

(c)

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

(1)

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

(2)

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

(3)

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

(i)

The member has attained the age of fifty years; and

(ii)

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

(iii)

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

(4)

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

(i)

The member has attained the age of fifty years; and

(ii)

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

(iii)

The salary for service in the reciprocal system constitutes compensation of a member of this Retirement System for purposes of calculating average compensation.

(5)

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

(i)

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

(ii)

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

(6)

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

(i)

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

(ii)

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

(d)

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

(e)

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

(f)

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

*(Added Ord. 2002-4, § 1, eff. 2-18-02)*

#### **SEC. 3-426. - 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 4 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. 2006-16, § 11, eff. 3-10-06).*