

SAMPLE DOMESTIC RELATIONS ORDER
Fire and Police Tier 2 Active, Combined Account

NOTE: This sample order applies to divorcing parties, one of whom is an active member of the City of Fresno Fire and Police Retirement System (2nd Tier), who have selected the combined account option.

This sample order is merely to assist attorneys in preparing a domestic relations order. It is not warranted that this sample order is appropriate in each individual case. The parties should always consult with their own attorneys before using this sample order. You may, of course, use other language; however, any order must be consistent with the provisions of the Fresno Municipal Code. Please note that neither the City of Fresno Fire and Police Retirement Board nor its agents are permitted to provide legal advise to you.

The parties must fill in the blanks in paragraphs 3, 4, 7 and 9 before submitting this order to staff for review. Please contact Retirement staff for the information needed to complete paragraph 9. In paragraph 7(a)(ii), express portions of years in decimals, e.g., 7.2 years. Please read this sample order in conjunction with the Retirement Systems' community property pamphlet. The System reserves the right to modify this order.

1. Intent. This order is intended to satisfy the requirements of Article 17A of Chapter 2 of the Fresno Municipal Code concerning domestic relations orders. The parties acknowledge that this order is not subject to the federal Employee Retirement Income Security Act of 1974 or to amendments to ERISA ("ERISA"), such as the Retirement Equity Act of 1984. This order is entered pursuant to the California Family Code.

2. Claimant. The name of the claimant to which this order applies is the City of Fresno Fire and Police Retirement System ("System"). The parties acknowledge that only the benefits provided by the System are affected by this Order, and that this Order cannot and does not create benefits or rights not provided by the System.

3. Names. The names, last known mailing addresses, and related information of the parties are as follows:
 - a. Employee (Member):
Name: _____
Address: _____

SS No: _____
Birth date: _____

 - b. Spouse (Non-Member):
Name: _____
Address: _____

SS No: _____

Birth date: _____

4. Period of Marriage. It is agreed that the period of marriage was from the date of marriage specified below to the date of separation specified below:

- a. Date of marriage: _____
- b. Date of separation: _____

5. Combined Account Option. The parties hereby elect the combined account option, also referred to in the Fresno Municipal Code at section 2-1739A(b) as the retirement option.

6. General Provisions. The parties agree that:

- a. the System will not make any payments to the Non-Member until the Member retires or dies;
- b. the Non-Member will not be considered to be a surviving spouse of the Member for any purpose;
- c. no retirement allowances or other benefits are payable to the parents of the Non-Member or to the children of the Non-Member who were stepchildren of the Member;
- d. the surviving spouse, if any, of the Non-Member shall not be considered a surviving spouse for any purpose under the System; and
- e. the Non-Member or the surviving spouse, if any, of the Non-Member shall not be entitled to receive any form of disability retirement.

7. Service Retirement. The parties shall divide the community's interest in the Member's retirement allowance from the System as follows:

- a. The community's interest equals the product of: (i) the Member's service retirement benefit as of the date of the Member's retirement, multiplied by (ii) a fraction, the numerator of which is _____ years, i.e., the number of years of marriage during which the Member was employed by the City of Fresno and a member of the System, and the denominator of which is the total number of years of the member's employment with the City of Fresno under the System at the time of retirement.

- b. The community interest is awarded _____% to the Member and _____% to the Non-Member.
8. Non-Member=s rights in the Post Retirement Supplemental Benefit (APRSB@). The PRSB will be divided in the same manner and ratio as defined in paragraph 7(b) above. The parties acknowledge that the PRSB is not a guaranteed benefit and may increase, decrease, or be eliminated.
9. Deferred Retirement Option Program (ADROP@). The Member, as of the date of separation, possessed a balance of \$_____ in the Member=s DROP account. The DROP account will be divided in the same manner and ratio as defined in paragraph 7(b) above.
10. Options at Service Retirement.
- a. At the time of retirement, unless the Non-Member elects a different form of payment as permitted in paragraph (b) below, the entire community interest (including the Non-Member=s share) will be paid over the lifetime of the Member in an optional form permitted by the System and selected by the Member in writing, assuming for purposes of this paragraph that the retirement benefit for the Member=s life alone constitutes an option. For any benefits payable under this paragraph , the Non-Member shall be entitled to name as a beneficiary of the Non-Member=s community property interest after the Non-Member=s death a person with an insurable interest in the Non-Member=s life. The Non-member may name a beneficiary by completing the form then in use by the System and by returning it to the System. If the Non-Member does not name a beneficiary or if no named beneficiary is living, the benefit otherwise payable to the Non-Member=s beneficiary shall be paid to the Non-Member=s estate.
- b. At the time of retirement, in lieu of the optional form selected by the Member in paragraph (a) above, the Non-Member=s interest in the Member=s retirement allowance may be paid over the lifetime of the Non-Member in an optional form permitted by the System and

selected by the Non-Member in writing, subject to the actuarial adjustment set forth in Fresno Municipal Code section 2-1739A(b)(4)(A).

11. Disability Retirement. If the Member retires due to disability prior to the age the Member would have first been eligible to retire for service, the Member=s benefit, shall be paid as follows:
 - a. Until the Member attains the age at which the Member would have first been eligible to retire for service, all disability retirement benefits will be paid to the Member in the form selected by the Member. If the Member dies before the service retirement age, any amount payable from the System with respect to the Member=s death is the Member=s separate property.
 - b. Beginning at the age the Member would have first been eligible to retire for service and pursuant to the form of payment selected by the Member at the time the Member retired for disability, the disability retirement benefits will be divided pursuant to paragraph 7, using the assumption that the Member continued to be employed by the City of Fresno under the System until reaching the age the Member was first eligible to retire for service. The Non-Member=s share shall be paid as provided in paragraph 10.
12. Death Benefit. In the absence of a surviving spouse qualified under the Fresno Municipal Code or unmarried children under the age of 18 or dependent parents of the Member, the parties shall divide the community's interest in the death benefit under Fresno Municipal Code Section 2-1723A in the same manner as the service retirement benefit in paragraph 7 of this order.
13. COLA. Any cost of living adjustments hereinafter applicable to the Member's benefit if the dissolution had not occurred shall be applied to the benefits received by the Member and the Non-Member.
14. Time of Payment. The System shall begin making payments to the Non-Member upon the date on which the System first begins making payments to the Member in the nature of service retirement benefits.
15. Separate Property. Any retirement benefit or allowance, or any portion of a retirement benefit or allowance,

that is not awarded in this order to the Non-Member shall be the sole and separate property of the Member.

16. Statutory Limits. In no event shall this order be interpreted to require the System to:
- a. provide benefits with a greater actuarial value than it would otherwise pay, or
 - b. make payments to the Non-Member which are already required to be paid to another spouse under a prior order, or
 - c. provide any form of benefit or option not provided by the System.

17. Taxes. The Member and the Non-Member shall each be responsible for and pay any taxes due in connection with his or her receipt or distributions from the System.

18. Notices. Notice of change of address shall be made in writing to the System, addressed as follows, or to such other address as the System may specify in a written notice to the parties:

City of Fresno Fire and Police Retirement Board
2600 Fresno Street, Room 2162
Fresno, CA 93721-3619

No notice or document shall be deemed to be given to the System unless such notice or document is sent by certified mail, return receipt requested, to the above address.

19. Forms. The Member and the Non-Member shall each sign all forms, letters and other documents as required to effect the distribution(s) described herein and the intent of this order.

20. Constructive Trustee. The Member shall act as constructive trustee of any benefits assigned to the Non-Member under this order which may be paid to or received by the Member. The Member as trustee shall promptly pay or transmit any such benefits to the Non-Member at the Non-Member=s last known address. The Non-Member shall act as constructive trustee of any benefits assigned to the Member under this order which may be paid to or received by the Non-member. The Non-Member as trustee shall promptly pay or transmit any such benefits to the Member at the Member=s last know address.

21. Applicable Law. This order shall be administered and interpreted in conformity with the Fresno Municipal Code and other applicable law. If the retirement provisions of the Fresno Municipal Code applicable to this

order are amended, then the Member and the Non-Member shall immediately take the steps necessary to amend this order to comply with any such amendments, changes and/or modifications. The Member and the Non-Member shall be responsible for any of the costs and/or expenses associated with any such amendment.

22. Retention of Jurisdiction. The Member, the Non-Member, and the Court intend that this order meet all requirements of a domestic relations order under the Fresno Municipal Code and other applicable laws of the State of California, and the Court shall reserve jurisdiction to modify this order for the purpose of meeting or monitoring its implementation. The Court's reservation of jurisdiction shall be liberally construed to effect the provisions of this order and to resolve any disputes that may arise among the parties and the System concerning benefit payments or any other aspect of this order. If any portion of this order is rendered invalid, illegal, unconstitutional or otherwise unenforceable, the Court reserves jurisdiction to make an appropriate adjustment to effectuate the intent of the parties. Any future attorneys fees or costs incurred with respect to future modifications or interpretation of this order will not be assessed against the System.

F&P Tier 2 Active Combined.wpd