

Part 3 - RETIREMENT BOARD AND OTHER OFFICERS

3.36.300 - Retirement board - Administration and control authority.

The retirement system established pursuant to the provisions of this Chapter 3.36 and the retirement fund provided for in this Chapter 3.36 shall be managed, administered and controlled by that certain board of administration entitled "board of administration for police and fire department retirement plan" which has been established pursuant to the provisions of Chapter 2.08, Part 12 of the San José Municipal Code.

(Prior code § 2903.100.)

3.36.310 - Retirement board - Powers and duties.

The retirement board shall have all the powers and duties given to it in this Chapter 3.36, including but not limited to, the powers and duties specified in this Part 3. Notwithstanding anything in this part to the contrary, the retirement board shall not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

(Prior code § 2903.101; Ord. 28886.)

3.36.320 - Retirement board - Additional powers and duties.

The retirement board shall have any and all other powers imposed upon or granted to it by the provisions of Article XV of the Charter of the city, or by any other provisions of this Chapter 3.36.

(Prior code § 2903.113.)

3.36.325 - Retirement board - Personnel matters.

The city manager shall seek the advice and consent of the retirement board on the appointment, evaluation, discipline or termination of the director of retirement services, and the hiring, evaluation, discipline or termination of the assistant director of retirement services, or their equivalent positions. Notwithstanding the foregoing, the city manager may appoint, hire, evaluate, discipline or terminate the director of retirement services or the assistant director of retirement services with or without the advice or consent of the retirement board. Nothing in this chapter shall limit any authority of the city manager under the San José City Charter, San José Municipal Code, and any applicable city policies.

(Ord. 29139.)

3.36.330 - Retirement board - Meetings - Quorum - Voting.

The retirement board shall hold regular meetings monthly at a time and place to be determined by the board. Special meetings may be held at any time and place upon the call of its president or of a quorum of the members of the board. Until at least seven seats on the board are filled for the first time after adoption of the ordinance increasing the board to nine members, four members of the board shall be necessary to constitute a quorum for the board to take action, although a lesser number may adjourn from time to time. Once seven seats on the board have been filled for the first time after adoption of the ordinance increasing the board to nine members, a majority of the total number of member seats, filled or vacant, shall be

necessary to constitute a quorum, although a lesser number may adjourn from time to time. The board shall act by resolution, order or motion. All meetings shall be open and public.

(Prior code § 2903.114; Ord. 28787.)

3.36.340 - Retirement board - Secretary - Retirement and benefits administrator duties.

The director of retirement services shall be the secretary of the retirement board. The director shall keep a record of all proceedings of the board in the same manner as is required for the keeping of records of all proceedings of the city council.

(Prior code § 2903.115; Ords. 21624, 26034.)

3.36.350 - Rules and regulations - Scope.

Subject to the provisions of this Chapter 3.36 and to all applicable provisions of the Charter of the city, the board may make and enforce reasonable rules and regulations for the administration, management and control of the provisions of this chapter and of the retirement system and fund provided for herein; and each member of this system, each person retired thereunder and each person or estate entitled to or receiving any benefits under the provisions of this chapter is and shall be subject to the provisions of this chapter and to said rules and regulations.

(Prior code § 2903.102.)

3.36.360 - Duties of other city officers.

The city treasurer and the city auditor shall perform such duties with respect to this retirement system and the retirement fund as the board of administration may from time to time direct, and all such other duties as may be required of such officers by other provisions of this chapter or by the Charter of the city. No additional compensation shall be received by any of said officers for said services.

(Prior code § 2903.116.)

3.36.370 - Determination of employee eligibility and determination and modification of benefits.

The board, subject to the provisions of this Chapter 3.36, shall determine who are employees of the city eligible for membership in this retirement system. Except as provided in Section 3.36.380 regarding decisions of the independent medical panel (or where the independent medical panel's determination is appealed, the administrative law judge), the board is the sole judge of the conditions under which persons may be admitted to and receive or continue to receive benefits under this system, and shall determine, modify or terminate benefits for service or disability, or any other benefits provided for in this chapter.

(Prior code § 2903.103; Ord. 29879.)

3.36.380 - Medical service and advice.

- A. The board may enter into contractual arrangements for such medical services and advice, and may secure and pay reasonable compensation for independent medical examiners, as the board deems necessary to effectuate the terms of this chapter. Such contracts for medical services shall be entered into in the name of the board of administration for the police and fire department retirement plan. The

cost of obtaining such medical services and advice, and any cost for appeals therefrom to an administrative law judge shall be administrative expenses of the plan.

- B. Effective as of March 31, 2017 with respect to applications for disability benefits under the plan, the board shall appoint an independent medical panel of three medical experts to evaluate and approve or deny, by a majority vote, all disability applications. The board shall establish processes and procedures by which the independent medical panel shall carry out and document its responsibilities. Once the independent medical panel is formed, responsibility for reviewing disability applications and making disability determinations will solely be the responsibility of the independent medical panel, or if the decision of the independent medical panel is appealed, an administrative law judge. The independent medical panel may, upon its own initiative or upon request, reassess the status of a disability retirement recipient to confirm whether the recipient's disability continues. The individuals who may be appointed to such panel by the board shall be determined as follows:
1. Individuals shall be recruited to serve on the independent medical panel by the board using the city's established request for proposal process.
 2. Each individual selected to serve on the independent medical panel shall be approved by a vote of no less than six of the nine members of the board and shall serve for a four-year term.
 3. Individuals serving on the independent medical panel shall have experience in varying fields of medicine and shall meet the following minimum qualifications:
 - a. Ten years of practice after completion of residency; and
 - b. Practicing or retired board certified physician; and
 - c. No current or previous employment with the city; and
 - d. Except for prior service on the independent medical panel established under this Section 3.36.380, is not providing or has not provided medical services to the city or retirement boards; and
 - e. No prior experience as a qualified medical evaluator or agreed medical evaluator.

(Prior code § 2903.104; Ords. 25084, 29879.)

3.36.385 - Authority to secure other contractual services.

- A. In addition to the authority to enter into contractual arrangements for medical services as provided in Section 3.36.380 and the authority to enter into contractual arrangements for investment related services as provided in Part 4 of this chapter, the board is authorized to select, enter into contractual arrangements with, and pay reasonable compensation to persons to perform the following services for the board:
1. Actuarial services.
 2. Auditing services.
 3. Investment manager search services.
 4. Investment performance evaluation services.
 5. Proxy voting services.
 6. Other consultant services which the board deems necessary to carry out its duties and responsibilities under this retirement plan.
- B. The contracts described in subsection A. shall be entered into in the name of the board of administration for the police and fire department retirement plan.

(Ords. 24723, 25084.)

3.36.400 - Actuarial evaluation and investigation - Interest rates.

The board shall keep in convenient form such data as is necessary for actuarial evaluation of this system. As of April 1, 1962, and thereafter at the end of periods not to exceed five years, the retirement board shall cause to be made an actuarial investigation into the mortality, disability, service and compensation experience of members and persons receiving benefits and an actuarial evaluation of the assets and liabilities of this system.

(Prior code § 2903.105.)

3.36.410 - Mortality, service and other tables - Revision of rates of contribution.

- A. Upon the basis of any or all of such investigations, evaluations and determinations, the board shall adopt such mortality, service and other tables as may be necessary, and shall fix and from time to time change the rates of monthly contribution required of members and of the city as may be necessary to make this system at all times actuarially sound in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act") and to provide the benefits provided for in this retirement plan; provided that, as may be otherwise provided elsewhere in this chapter, the proportionate share of contributions on behalf of the city and members who are not tier 2 members shall at all times be in the ratio of three to eight (3:8). For tier 2 members, except as provided in Section 3.36.410.B, the proportionate share of contributions on behalf of the city and tier 2 members shall at all times be in the ratio of one for the city to one for the tier 2 members (1:1) (sharing equally), including any unfunded actuarially accrued liability.
1. Notwithstanding the foregoing, the following shall apply to the manner of determining contributions on behalf of the city and members who prior to August 4, 2013 for police and prior to January 1, 2015 for fire were non-tier 2 members of this plan and then became tier 2 members prior to March 31, 2017 but on and after March 31, 2017 remain in the plan but are no longer considered tier 2 members as defined under Section 3.36.020.15. Any cost, including but not limited to any unfunded actuarial accrued liability, associated with benefit changes adopted on March 31, 2017 for such members and any amounts associated with moving such members from tier 2 status to non-tier 2 status, will be amortized as a separate liability over sixteen years or other period determined by the board. Notwithstanding the cost sharing ratio for non-tier 2 members described in the first paragraph of Section 3.36.410.A above, the costs described in this Subsection 3.36.410.A.1. shall at all times be shared in the ratio of one for the city and one for the affected member (1:1) and will be reflected as soon as practicable in the monthly contribution rates for such members.
 2. Notwithstanding the foregoing, the following shall apply to the manner of determining contributions on behalf of the city and members who accept employment in the police department or fire department of the city on or after January 1, 2013 who is otherwise eligible for this plan and who was an active member in another California public retirement system, with which this plan has reciprocity under Part 16, and who has a break in service of less than six months from that covered employment and employment with the city, other than those who meet the definition of new members as defined by Government Code Section 7522.04(f) as may be amended, but on and after March 31, 2017 remain in the plan but are no longer considered tier 2 members under the definition of tier 2 member under Section 3.36.020.15. Any cost, including but not limited to any unfunded actuarial accrued liability, associated with benefit changes adopted on March 31, 2017 for such members and any amounts associated with moving such members from tier 2 status to non-tier 2 status, will be amortized as a separate liability over sixteen years or other period determined by the board. Notwithstanding the cost sharing ratio for non-tier 2 members described in the first paragraph of Section 3.36.410.A above, the costs described in this Subsection 3.36.410.A.2. shall at all times be shared in the ratio of one for the city and one for the affected member (1:1) and will be reflected as soon as practicable in the monthly contribution rates for such members.

- B. Notwithstanding Section 3.36.410.A, the following shall apply to the manner of determining contributions on behalf of the city and members who are tier 2 members on or after March 31, 2017:
1. The costs, including any unfunded actuarial accrued liability, associated with the tier 2 benefit changes adopted on March 31, 2017 for members who were tier 2 members prior to March 31, 2017, will be amortized as a separate liability over sixteen years or other period determined by the board and will be reflected as soon as practicable in contribution rates to be shared equally among the city and impacted tier 2 members and such increased rates shall not be subject to the incremental increases in amounts associated with unfunded actuarial accrued liability described in Section 3.36.410.B.2.
 2. Other than provided in Section 3.36.410.A, in determining member contribution rates, to the extent an unfunded actuarial accrued liability is determined to exist with respect to the plan, tier 2 members will contribute toward the amount of such amortized unfunded actuarial accrued liability by increasing the tier 2 member contribution rate by one-third of one percent of compensation each year until such time as the cost of the unfunded actuarial accrued liability is being shared equally by the tier 2 members and the city. Until such time as the tier 2 members and the city are sharing such cost equally, the city will include in its contribution rate the amount of the amortized unfunded actuarial accrued liability that would otherwise have been paid by the tier 2 members in such year.

(Prior code § 2903.106; Ords. 29198, 29266, 29879.)

3.36.420 - Determination of age, service or compensation where records are inadequate.

Whenever it is impractical for the retirement board to determine from the records of the city, and from other evidence before it, the length of service, the compensation or the age of any member of this retirement system, then in such event the board may estimate for the purposes hereof such length of service, compensation or age. Each employee shall file with the board such information respecting his age, length of service or compensation as the board may require.

(Prior code § 2903.107.)

3.36.430 - Accounts and recordkeeping.

The retirement board shall keep any and all records and accounts reasonably necessary for the management, administration or control of this retirement system, including, but not limited to:

- A. Records of all contributions made by any and all members of the system or made by the city;
- B. Records of all moneys in the retirement fund and of the investment and disposition of such moneys; and
- C. The names of all persons receiving benefits under the retirement system, the nature of such benefits and the amounts paid to each therefor.

(Prior code § 2903.108; Ord. 25992.)

3.36.440 - Annual report.

- A. Within ninety days after the end of each fiscal year, or if later, within thirty days after submission to the city council of an audited annual fiscal report of the retirement system's funds, the board shall submit to the city council and city manager an annual report for such preceding fiscal year. The report shall contain a statement of the board's work for such period, and shall show all receipts and disbursements

and the balance remaining in the retirement fund after such payments. The report may contain recommendations for or against changes in the retirement system.

- B. A copy of such annual report shall also be sent to the headquarters of the police department and to each city firehouse within the city.

(Prior code § 2903.110; Ords. 18767 § 2, 1977, 25992.)

3.36.450 - Hearings - Authorized when.

The board may in its discretion hold hearings for the purpose of determining any question presented to it involving any right, benefit or obligation of a person under this chapter, provided that any such person aggrieved by such determination may, if the board has not held a hearing with regard to such determination, petition the board in writing for a hearing. Such request for a hearing must be filed within thirty days from and after the determination of the board. The board shall within thirty days from and after such request hold a hearing, after which hearing the board may affirm, reverse or modify its prior determination. Notwithstanding the foregoing, any decisions regarding a determination related to a member's disability shall be subject to review only in accordance with the process described in Section 3.36.960.

(Prior code § 2903.112; Ord. 29879.)

3.36.460 - Power to administer oaths and issue subpoenas.

The retirement board shall have the power to administer or require oaths and affirmations, to issue subpoenas to compel the attendance of witnesses, or to compel by subpoena the production of books, papers and documents and to take and hear testimony concerning any matter or thing pending before the board. If any person so subpoenaed neglects or refuses to appear or to produce any book, paper or document as required by said subpoena, or shall refuse to testify before the board or answer any questions which a majority of such board shall decide to be proper and pertinent, the board shall have the power to initiate proceedings in the proper courts to have such person be declared guilty of contempt. The chief of police shall, upon request of the board, have such subpoenas served by a police officer or officers.

(Prior code § 2903.111.)

3.36.470 - Hearings - Rules and procedures.

Whenever the board in its discretion holds any hearing or hearings on any matter, or is required by any of the provisions of this chapter to hold any hearing or hearings shall be conducted in accordance with rules or regulations adopted by the board. The rules of evidence generally applicable in the courts shall not be binding upon the board; hearsay and any and all other evidence which the board deems relevant and proper may be admitted and considered. No person shall have any right to demand or require that any or all evidence be sworn, although the board may permit or require all or any evidence to be sworn if it so desires. No person shall have any right to subpoena, nor to require the board to subpoena, any witness or witnesses nor any evidence, although the board may subpoena witnesses or evidence if it so desires. No person shall have any right to cross-examine any witness or witnesses, although the board may permit, in its discretion, such cross-examination as it deems necessary or advisable. Any and all rights or privileges granted to any and all persons by the provisions of this chapter are and shall be subject to the provisions and limitations of this Section.

(Prior code § 2903.117.)

3.36.480 - Direct transfers of eligible rollover distributions.

- A. If, under the provisions of this chapter, a person becomes entitled to a distribution which is an eligible rollover distribution, the person may elect to have the distribution or any portion thereof paid directly to an eligible retirement plan specified by the person.
- B. The election made pursuant to this section shall be in accordance with the terms and conditions established by the board.
- C. Upon the exercise of the election by a person pursuant to this section, the distribution from the retirement fund of the amount designated by the person, once distributable under the provisions of this chapter, shall be made in the form of a direct transfer to the eligible retirement plan so specified.
- D. For the purposes of this section, "eligible rollover distribution" means a distribution from the retirement fund which constitutes an eligible rollover distribution within the meaning of Section 401(a)(31)(C) of the Internal Revenue Code, consisting of any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Section 415 of the Internal Revenue Code or any distribution that is reasonably expected to total less than two hundred dollars during the year. Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only: (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. For purposes of this Section 3.36.480, "spouse" has the meaning set forth in federal law.
- E. For purposes of this section, "eligible retirement plan" means a plan which constitutes an eligible retirement plan within the meaning of Section 401(a)(31)(D) of the Internal Revenue Code, consisting of one or more of the following:
 - 1. An individual retirement account described in Section 408(a) of the Internal Revenue Code;
 - 2. An individual retirement annuity described in Section 408(b) of the Internal Revenue Code;
 - 3. An annuity plan described in Section 403(a) of the Internal Revenue Code;
 - 4. A qualified trust described in Section 401(a) of the Internal Revenue Code;
 - 5. Effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;
 - 6. Effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement plan; or
 - 7. Effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

- F. For purposes of this section, "distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective July 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

(Ords. 24814, 28886.)

3.36.485 - Review of proposed amendments.

- A. Except as provided in subsection B., prior to the adoption of any ordinance amending the police and fire department retirement plan, a copy of the proposed ordinance shall be provided to the board for the board's review and recommendation.
 - 1. The board may, but is not required to, submit a report or recommendation on the proposed amendment to the city council.
 - 2. If the board declines or fails to submit a report or recommendation on a proposed amendment within sixty days of receipt of the proposed ordinance by the secretary to the board, the city council may proceed to adopt or not adopt the ordinance without first receiving a report or recommendation from the board.
 - 3. Nothing in paragraph 2. shall be deemed to preclude the board from thereafter submitting a report or recommendation to the city council.
- B. In any case where the city council finds that there is a need to adopt an ordinance amending the system within a time period which would not allow for a sixty-day review period, the council may act on the ordinance without first submitting it to the board, and the following procedures shall apply:
 - 1. At the time the council passes the ordinance for publication of title or, in the case of an urgency ordinance, at the time the council adopts the ordinance, the council shall refer the ordinance to the board for study and consideration.
 - 2. Following its study, the board may submit to the council a recommendation that the council take one or more of the following actions:
 - a. Repeal the ordinance.
 - b. Readopt the provisions of the ordinance with such amendments, additions or changes, if any, as the board may wish to recommend.
 - c. Make such other changes or provisions as the board may recommend.
 - 3. Upon receipt of the board's recommendation, the council may implement or disapprove the recommendation.

(Ords. 24922, 24979.)

3.36.490 - Direct trustee-to-trustee transfers.

- A. If a member of this plan becomes eligible to purchase permissive service credit in this plan and elects to make such purchase through a lump sum deposit, the plan will accept a direct trustee-to-trustee transfer of funds from an eligible deferred compensation plan as defined in Section 457(b) of the Internal Revenue Code if such transfer is:

1. For the purchase of permissive service credit as defined in Section 415(n)(3)(A) of the Internal Revenue Code; or
 2. A redeposit of withdrawn contributions pursuant to Section 3.36.710.
- B. If required by the provisions of the Internal Revenue Code or the regulations promulgated under the Internal Revenue Code, the plan will account separately for funds received through a direct trustee-to-trustee transfer from an eligible deferred compensation plan.

(Ord. 26829.)