

## 2. CODE OF ORDINANCES – 3.28.100-3.28.260 Retirement Board & Other Officers

### 3.28.100 - Retirement board - Designated.

The retirement system established by the provisions of this Chapter 3.28, and the retirement fund provided for in this chapter, shall be managed, administered and controlled by that certain board of administration entitled "board of administration for federated city employees retirement system" which has been established by and pursuant to the provisions of Sections 2.08.1000 through 2.08.1090, inclusive, of the San José Municipal Code.

(Prior code § 2904.1050.)

### 3.28.110 - Retirement board - Powers and duties.

The retirement board shall have all the powers and duties given it by the provisions of this Chapter 3.28, including but not limited to, the powers and duties specified in this Part 2. 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 § 2904.1051; Ord. 28885.)

### 3.28.115 - 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.)

### 3.28.120 - Retirement board - Accounts and recordkeeping required.

- A. The retirement board shall keep or cause to be kept any and all records and accounts reasonably necessary for the management, administration or control of this retirement system, including but not limited to records of all contributions made by any and all members of the system or made by the city, and records of all moneys in the retirement fund and of the investment and distribution of such moneys.
- B. In particular, the board shall keep such records and accounts as may be necessary to show:
  - 1. The total accumulated normal contributions of members;
  - 2. The total accumulated prior service contributions of members;
  - 3. The accumulated contributions of the city held for the benefit of members on account of current service;
  - 4. All other accumulated contributions of the city, which shall include the amounts available to meet the obligation of the city on account of prior service of members.

5. The names of all persons receiving benefits under the retirement system, the nature of such benefits and the amounts paid to each person therefor.

(Prior code § 2904.1060; Ord. 25993.)

### 3.28.130 - Retirement board - Prohibited financial transactions.

A board member or employee of the board shall not, directly or indirectly:

- A. Have any interest in the making of any investment, or in the gains or profits accruing therefrom;
- B. For himself, or as an agent or partner of others, borrow any funds or deposits of this system, nor use such funds or deposits in any manner except to make such current and necessary payments as are authorized by the board;
- C. Become an endorser, surety or obligor on investments by the board.

(Prior code § 2904.1065.)

### 3.28.140 - Retirement board - Authority to make and enforce rules and regulations.

Subject to the provisions of this chapter and to all applicable provisions of the Charter of the City of San José, 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 hereunder 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 § 2904.1052.)

### 3.28.150 - Retirement board - Authority to secure medical service and advice.

- A. The Board may enter into contractual arrangements for such medical service and advice, and may secure and pay reasonable compensation for such 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 Federated City Employees Retirement System. 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 June 16, 2017 with respect to applications for disability benefits under the Plan, the Board shall appoint an independent medical panel of three (3) 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 be the sole 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 four (4) of the seven (7) members of the Board and shall serve for a four (4)-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 (10) 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 3.28.150, 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 § 2904.1054; Ords. 25092, 29904.)

#### 3.28.155 - Authority to secure other contractual services.

- A. In addition to the authority to enter into contractual arrangements for medical services as provided in Section 3.28.150 and the authority to enter into contractual arrangements for investment related services as provided in Part 3 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 federated city employees retirement system.

(Ords. 24696, 25092.)

#### 3.28.160 - Actuarial investigations - Determination of rate of interest.

The board shall keep in convenient form such data as is necessary for the actuarial evaluation of this system. The board shall cause an actuarial investigation to be made from time to time and as often as it may deem such to be reasonably necessary to keep the plan actuarially sound, but not less frequently than once each five years, commencing from and after July 1, 1975. The actuarial investigation shall consist of a report as to the mortality, service and compensation experience of members and persons receiving benefits, an actuarial valuation of the assets and liabilities of this system, and such other actuarial investigations as may be relevant to and for the benefit of the system. From time to time the board shall determine the rate of interest being earned on the retirement fund.

(Prior code § 2904.1055.)

#### 3.28.170 - Financial reports.

The board shall cause to be issued, as of the date of the investigation and valuation made pursuant to Section 3.28.160, a financial statement showing an actuarial valuation of the assets and liabilities of this system. A statement as to the accumulated cash and securities in the retirement fund as certified by the auditor shall also be submitted at the same time.

(Prior code § 2904.1061.)

### 3.28.180 - Authority to determine employee status and benefits.

The Board, subject to the provisions of this Chapter, shall determine who are employees of the City eligible for membership in this Retirement System. Except as provided in Section 3.28.150 regarding decisions of the independent medical panel or, where the independent medical panel's determination is appealed to an administrative law judge, the Board is the sole judge of the conditions under which persons may be admitted to and received or continue to receive benefits under this system, and shall determine, modify or terminate benefits for service or disability or death or any other benefits provided for in this Chapter.

(Prior code § 2904.1053; Ord. 29904.)

### 3.28.190 - Change in employee status - Board notification required.

The director of human resources shall give to the board such notice as it may require of the change of status of any member, resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death, and other pertinent information.

(Prior code § 2904.1063; Ord. 29120.)

### 3.28.200 - Authority to adopt tables, revise contribution rates.

A. Upon the basis of any or all of such investigations, valuations and determinations, the Board shall adopt such mortality, service and other tables, actuarially assumed annual rate of return, and other actuarial assumptions as it may deem reasonably necessary, and, subject to such limitations as are set forth elsewhere in this Chapter, it shall fix and from time to time make such revisions or changes in the rates of contribution required of members and of the City as it may determine reasonably necessary to provide the benefits provided for by this retirement plan and 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"); provided that, as may be otherwise provided elsewhere in this Chapter, the share of the normal cost portion of contributions made to the Plan on behalf of the City and members who are not Tier 2 members shall at all times be shared in the ratio of three to eight (3:8), with the City bearing the total cost of any associated actuarially accrued unfunded liability for such members. For Tier 2 members, except as provided in Section 3.28.200.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 had been prior members of this Plan and then became Tier 2 members prior to June 16, 2017 but on and after September 30, 2012 remain in the Plan but are no longer considered Tier 2 members as defined under Section 3.28.030.28. The costs, including but not limited to, any unfunded actuarial accrued liability, associated with benefit changes adopted on June 16, 2017 for such members any amounts associated with moving such members from Tier 2 status to non-Tier 2 status, will be amortized as a separate liability over twenty (20) years or other period determined by the Board. Notwithstanding the cost

sharing ratio for non-Tier 2 members described in the first paragraph of this Section 3.28.200.A above, the costs described in this Section 3.28.200.A.1 shall at all times be shared in a ratio of one for the City and one for the affected member (1:1) and will be reflected as soon as practicable as an increase in the monthly contribution rates for these affected 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 on or after September 30, 2012 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 21, and who has a break in service of less than six (6) 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 June 16, 2017 remain in the Plan but are no longer considered Tier 2 members under the definition of Tier 2 member under Section 3.28.030.28. Any cost, including but not limited to any unfunded actuarial accrued liability, associated with benefit changes adopted on June 16, 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 twenty (20) years or such other period determined by the Board. Notwithstanding the cost sharing ratio for non-Tier 2 members described in the first paragraph of Section 3.28.200.A above, the costs described in this subsection 3.28.200.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 3.28.200.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 June 16, 2017:
1. The costs, including any unfunded actuarial accrued liability, associated with the Tier 2 benefit changes adopted on June 16, 2017 for members who were Tier 2 members prior to June 16, 2017, will be amortized as a separate liability over twenty (20) 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 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 3.28.200.B.2.
  2. Other than provided in Section 3.28.200.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 (0.33%) 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 § 2904.1056; Ords. 27436, 29904.)

### 3.28.210 - Determination of age, service and compensation when records are inadequate.

- A. 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 in this retirement system, it 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 or any other information which may affect his status as the board may require.
- B. If there is a disagreement between any member and the board with respect to the length of service, compensation or age of any member, or if any member refuses or fails to give the board a statement of his city service, compensation or age or other information requested by the board, the board shall

hold a hearing and upon the basis of available testimony and available records determine such length of service, compensation or age.

(Prior code § 2904.1058.)

#### 3.28.230 - Adjustment of contributions and payments.

If more or less than the correct amount of contribution required of members or the city is paid, proper adjustment shall be made in connection with subsequent payments, or such adjustments may be made by direct cash payments between the member or the city and the board. Adjustments to correct any other errors in payments to or by the board may be made in the same manner.

(Prior code § 2904.1064.)

#### 3.28.240 - Hearings authorized when.

- A. The Board in its discretion may hold hearings for the purpose of determining any question presented to it involving any right, benefit or obligation of any person under this Chapter. Any applicant for any benefits may file an application for rehearing of his or her application for benefits within thirty (30) days after written notice of the determination of the Retirement Board has been sent by mail to the applicant or his or her attorney of record, upon any of the following grounds:
  - 1. That the Retirement Board acted without and in excess of its powers;
  - 2. That the order, decision or award was procured by fraud;
  - 3. That the evidence does not justify the determination of the Retirement Board;
  - 4. That the applicant has discovered new evidence material to him or her which he or she could not with reasonable diligence have discovered or procured at the hearing.
- B. The determination of the Retirement Board on any said application for rehearing shall be made within sixty (60) days from and after the date of filing of said application.
- C. 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 Sections 3.28.1250, 3.28.1370.C, 3.28.1410, 3.28.1445 and/or 3.28.1449, as may be applicable.

(Prior code § 2904.1059; Ord. 29904.)

#### 3.28.250 - Power to administer oaths, 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 the production of books, papers and documents, and to take and hear testimony concerning any matter pending before the board. If any person so subpoenaed neglects or refuses to appear or 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 the board decides to be proper and pertinent, the board shall have the power to initiate proceedings in the proper court to have such person declared guilty of contempt. The chief of police shall, on request of the board, have such subpoenas served by a police officer or officers.

(Prior code § 2904.1066.)

#### 3.28.260 - Retirement board - Annual report.

Within ninety days after the end of each fiscal year, or if later, within thirty days after the submission to the city council of an audited annual fiscal report of the retirement system's funds required by ordinance, 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.

(Prior code § 2904.1062; Ord. 18767 § 4, 1977, 25993.)