

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING CHAPTER 3.49 OF TITLE 3 OF THE SAN
JOSE MUNICIPAL CODE TO COMPLY WITH THE
CORONAVIRUS AID, RELIEF, AND ECONOMIC
SECURITY ACT (CARES ACT) AND SETTING EVERY
COMMUNITY UP FOR RETIREMENT ENHANCEMENT
ACT (SECURE ACT)**

WHEREAS, the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) was enacted by Congress on December 20, 2019 with the primary objective to increase access to and encourage retirement savings; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted by Congress on March 27, 2020 with the primary objective to help ease some of the financial burdens facing Americans in the wake of the COVID-19 pandemic; and

WHEREAS, the CARES Act and SECURE Act require an amendment to the City's the Defined Contribution Plan for Unit 99 Employees relating to the mandatory provisions for the required minimum distribution age increase to age 72, required minimum distribution waivers, and beneficiary payment period; and

WHEREAS, the CARES Act and SECURE Act require an amendment to the City's Defined Contribution Plan for Unit 99 Employees relating to the optional provisions for Coronavirus-related distributions, in-service distribution at age 59½, and qualified birth and adoption distributions up to \$5000; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), it has been determined

that the provisions of this Ordinance do not constitute a project, under File No. PP17-008; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 3.49.130 of Chapter 3.49 of Title 3 of the San José Municipal Code is amended to read as follows:

3.49.130 Distribution of benefits; election.

- A. A participant may elect the method of payment and the settlement options for distribution in the event of separation from service, no later than thirty days before the commencement of such benefits. Effective July 1, 2021, if a participant is at least fifty-nine and a half years of age, the participant may take distributions from the participant's account, even if the participant has not had a separation from service.
- B. A participant may elect the method of payment and the settlement options for distribution in the event of the participant's death at any time before his or her death.
- C. If the participant fails to make an election of the method of payment before his or her death while still in employment status, the participant's beneficiary may elect the method of payment at any time before payments are due.
- D. If no election of the method of payment has been made by the participant or the participant's beneficiary within the times provided for in this chapter, the benefits payable to the participant or the participant's beneficiary, less any federal or state

income taxes required to be withheld, shall be payable in a lump sum, subject to applicable eligible rollover distribution provisions under the plan.

E. To the extent permitted under the Internal Revenue Code and IRS guidance, additional distribution provisions may be included under the plan document.

SECTION 2. Section 3.49.131 of Chapter 3.49 of Title 3 of the San José Municipal Code is amended to read as follows:

3.49.131 Method of payment of benefits upon occurrence of severance event.

- A. In the event of termination of employment because of retirement, disability, separation from service or other severance event or attainment of age fifty-nine and a half, except death, the full benefits credited to the participant's account plus or minus subsequent investment gains or losses, but less any federal or state income taxes required to be withheld, shall be distributed to the participant in any one or more of the following ways:
1. In a lump sum;
 2. In monthly, quarterly, semiannual, or annual installments, or, for a participant eligible for an annuity payout option, installments during the lifetime of the participant with or without a provision for a period certain, but in no case less frequently than annual payments. Life expectancy shall be actuarially determined by the city based on the date the distribution shall begin. Each installment payment shall not be less than fifty dollars, unless such payment is the entire balance remaining in the participant's account.
- B. The amount payable with respect to the participant shall be paid at such times specified by the Secretary of the United States Treasury pursuant to regulations promulgated by said Secretary.
- C. No payment option may be selected by a participant unless it satisfies a good faith interpretation of the requirements of Internal Revenue Code Section 401(a)(9).

SECTION 3. Section 3.49.134 of Chapter 3.49 of Title 3 of the San José Municipal Code is amended to read as follows:

3.49.134 Payment of benefits after death.

- A. After the death of a participant, the remaining balance credited to the participant's account, less any federal or state income taxes required to be withheld by law, shall be distributed to participant's beneficiaries in the manner designated by the participant pursuant to the plan document.
- B. Notwithstanding any provision of this plan to the contrary, all payments under the plan shall comply with a reasonable, good faith interpretation of the requirements of Internal Revenue Code Section 401(a)(9), including the incidental benefit rule set forth in Internal Revenue Code Section 401(a)(9)(G) and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto, as specified in the plan.

PASSED FOR PUBLICATION of title this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk