

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING CHAPTER 3.48 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 Deferred Compensation Plan 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 Deferred Compensation Plan relating to the optional provisions for Coronavirus-related distributions, loan limit increase and repayment relief, 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 3.48.050 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

3.48.050 Participation in the plan.

- A. Each employee may elect to become a participant of the Plan and defer payment of part of his or her includible compensation by executing a participation agreement and filing it with City or Plan administrator before the beginning of the month in which the deferral is to be effective. For deferral elections made in taxable years beginning after December 29, 2022, such elections shall become effective as soon as administratively practicable after the election.
- B. The deferred amount must equal at least twenty-five dollars (\$25.00) per payroll period, exclusive of any service charge or such other minimum as the City Manager may determine.
- C. A participation agreement shall be effective for the first payroll period of the next month following its execution and filing with City or Plan administrator, unless a later payroll period is designated by the employee. For participation elections made in taxable years beginning after December 29, 2022, such elections shall become effective as soon as administratively practicable after the election. The participation

agreement shall continue from payroll period to payroll period and remain in full force and effect unless terminated as provided in Section 3.48.050 D.

- D. A participant may terminate his or her participation in the Plan, and thereby terminate further deferral of includible compensation, by filing with the City or Plan administrator an executed notice of termination of contributions prior to effective date of termination. Once terminated, a former participant cannot rejoin the Plan during the month in which termination occurred; however, the former participant may elect to become a participant in a subsequent month. No amounts shall be payable to an employee upon terminating his or her participation in the Plan unless otherwise due, pursuant to Section 3.48.130.
- E. Each period served by a person in the uniformed services shall, upon reemployment under the Uniformed Service Employment and Reemployment Act of 1994, as it may be amended from time to time (USERRA), be deemed to constitute service with the employer maintaining the Plan for the purpose of determining the accrual of benefits under the Plan, all to the extent required by and as provided under USERRA. Notwithstanding any provision in the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u) for additional elective deferrals a participant can make upon return from qualified military service.

SECTION 2. Section 3.48.131 of Chapter 3.48 of Title 3 of the San José Municipal Code is amended to read as follows:

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

The method of payment of benefits upon the occurrence of termination of employment, or other severance event shall be made in accordance with the provisions pursuant to the Basic Plan Document. To the extent permitted under the Internal

Revenue Code and IRS guidance, additional distribution provisions that do not require a severance event may be included under the Basic Plan Document.

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