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**PERSONNEL SERVICES DEPARTMENT**

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DATE: August 19, 2015

TO: YVONNE SPENCE, CMC  
City Clerk's Office

FROM:  JEFF CARDELL, Director  
Personnel Services Department

SUBJECT: CORRECTION TO REPORT TO COUNCIL, RECOMMENDING THE ADDITIONS OF SECTIONS 3-356 AND 3-570 TO THE FRESNO MUNICIPAL CODE

On July 30, 2015, Personnel Services presented a Report to the City Council, File ID #15-685, recommending the additions of Sections 3-356 and 3-570 to the Fresno Municipal Code. It has since come to our attention that the report Background incorrectly cited a City Ordinance Number as 9-56. The correct City Ordinance Number is 91-56.

Accompanying this memorandum are revised pages reflecting this change.

Thank you for your assistance with this matter. Please call me at extension 6964 if you have any questions.

Approved:

  
Yvonne Spence, CMC

Date:

8/21/15

Attachment

## REPORT TO THE CITY COUNCIL

July 16, 2015

**FROM:** JEFF CARDELL, Director  
Personnel Services Department

**BY:** KEN PHILLIPS, Labor Relations Manager  
Personnel Services Department

### SUBJECT

..Title

1. \*\*\*BILL NO. B-25 – (Intro. 7/16/2015) (For adoption) – Adding Section 3-356 to Chapter 3, Article 3 of the Fresno Municipal Code relating to the establishment of a Qualified Excess Governmental Benefit Arrangement in the City of Fresno Fire and Police Retirement System
2. \*\*\*BILL NO. B-26 – (Intro. 7/16/2015) (For adoption) - Adding Section 3-570 to Chapter 3, Article 5 of the Fresno Municipal Code relating to the establishment of a Qualified Excess Governmental Benefit Arrangement in the City of Fresno Employees Retirement System

..Body

### RECOMMENDATIONS

It is recommended City Council approve the introduction of the ordinances adding Sections 3-356 and 3-570 to the Fresno Municipal Code relating to the establishment of Qualified Excess Governmental Benefit Arrangements in the City of Fresno Fire and Police Retirement System and the City of Fresno Employees Retirement System, respectively.

### EXECUTIVE SUMMARY

The attached ordinances will establish Replacement Benefit Plans known as a Qualified Excess Governmental Benefit Arrangements (“QEBA”s) in the respective systems to protect the systems’ tax-exempt status should an employee retire and receive a retirement benefit beyond the Internal Revenue Service (“IRS”) statutory limits. The Internal Revenue Code (“IRC”) limits the amount of annual retirement benefits an employee can receive. However, some City employees who were hired on or before June 28, 1991, may earn vested benefits beyond the statutory limits. Should an employee retire and receive a retirement benefit beyond the IRC statutory limits, the employer’s retirement plan could lose its tax-exempt status. The respective QEBA plans will compensate City retirees for the difference, if any, between the benefits an employee may be entitled to under the terms of the retirement systems and limits on benefits that may be paid from a qualified retirement plan under the IRC. (IRC 415) If the Plans are adopted by the City Council, ICE MILLER, the joint counsel for the City and Retirement Boards, has advised the plans will need to be submitted to the IRS to obtain approval in the form of a Private Letter Ruling.

## **BACKGROUND**

Effective June 29, 1991, City Ordinance No. 91-56, amended the FMC to incorporate the statutory benefit limits of IRC 415 into the retirement plans for each City of Fresno retirement systems on a prospective basis. However, employees hired on or before June 28, 1991, may have vested rights in benefits that were in the Fresno Municipal Code prior to City Ordinance No. 91-56. The IRC allows for the creation of the QEBAs to protect the systems' tax-exempt status should an employee retire and receive a retirement benefit beyond the IRS statutory limits because of the vested benefits of employees hired on or before June 28, 1991.

A qualified governmental excess benefit arrangement must be separately administered and separately funded apart from the underlying qualified pension plan. Under this proposed arrangement, the separate funding requirement does not result in additional pension costs over and above the costs that would otherwise be incurred in the absence of the IRC Section 415 limits. This is because the benefits paid from the Replacement Benefits Plan will correspond with an equal and offsetting reduction in contributions paid by the City to the Retirement Systems.

If approved, all Members, Retirees, and Beneficiaries participating in the Retirement Systems on or before June 28, 1991 will be eligible, if necessary, to participate in the proposed Excess Benefit Plans. All Members hired on or after June 29, 1991, are already subject to the benefit limitations contained in IRC Section 415(b).

The City provided notice to the bargaining units and did not receive a request to meet regarding the development and implementation of Replacement Benefit Plans.

In addition, the Retirement Boards have considered and approved the proposed Replacement Benefit Plans on April 8, 2015. They have also been reviewed and approved by the Controller/Finance Director. The City Attorney's Office has approved the QEBAs as to form, as drafted by special counsel, ICE MILLER. Adoption of these Municipal Code amendments is recommended to ensure an employee's receipt of retirement benefits does not adversely affect the tax exempt status of the retirement plans.

## **ENVIRONMENTAL FINDINGS**

Not applicable.

## **LOCAL PREFERENCE**

Not applicable.

## **FISCAL IMPACT**

The cost of developing the plans and obtaining approval is estimated at approximately \$50,000. The benefits provided by the plan do not result in any additional benefit expenses. There is no additional cost to the City for the QEBAs. Any benefits provided by the QEBA's will be funded from offsetting credits against City contributions ultimately paid to the Retirement Systems.

Attachments:

Ordinance No. \_\_\_\_\_ Adding Section 3-356 Chapter 3, Article 3 of the FMC

Ordinance No. \_\_\_\_\_ Adding Section 3-570 Chapter 3, Article 5 of the FMC