

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTION 3-422 OF THE FRESNO MUNICIPAL CODE, RELATING TO REDEPOSIT BY MEMBERS OF THE SECOND TIER OF THE FIRE AND POLICE RETIREMENT SYSTEM OF CONTRIBUTIONS WITHDRAWN BY FORMER SPOUSES.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 3-422 of the Fresno Municipal Code is amended to read:

SECTION 3-422. - DISSOLUTION OR LEGAL SEPARATION OR TERMINATION PRIOR TO A MEMBER'S RETIREMENT.

(a) **Separate account option.**

(1) **Purpose.** The purpose of the separate account option is to permit a member and an alternate payee to divide the member's retirement allowance and benefits (including statutorily provided monthly installments payable after a member's death to his or her surviving spouse, surviving domestic partner, children or parents) prior to retirement into separate and distinct accounts for the member and for the alternate payee, as set forth in a court order which meets the requirements of Section 3-421 and this Section 3-422.

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval:  _____

Ordinance No.

(2) **Court Order.** In the event of a legal separation or dissolution or termination, the Board shall comply with a court order incident thereto which contains the following provisions:

(i) The division of the accumulated member contributions and credited service applicable to periods of service during the marriage or domestic partnership into two separate and distinct accounts in the name of the member and the alternate payee;

(ii) The right of the alternate payee to elect an option under Section 3-417 and designate a beneficiary with respect to the alternate payee's separate account;

(iii) The right of the alternate payee to a refund of accumulated contributions in the alternate payee's separate account;

(iv) For purposes of determining the amount of any retirement allowance payable to the alternate payee, the average compensation (as defined in Section 2-401(a)(2)) shall be determined solely by the compensation earnable (as defined in Section 3-301(b)(4)) by the member during the period of marriage or domestic partnership;

(v) For purposes of applying the benefit formula of [Section 3-411] for determining the amount of any

retirement allowance payable to the alternate payee, the age of the alternate payee shall be used.

(3) Refund of Contributions to an Alternate Payee.

(i) An alternate payee who has been awarded a separate account shall possess the right to a refund of accumulated member contributions in that separate account at any time after the court order has been filed with the Retirement System.

(ii) The alternate payee shall file a written application with the Retirement System on a form provided by the System to obtain the refund.

(iii) Upon filing the application for a refund with the Retirement System, the alternate payee shall from that point on be deemed to have permanently waived any and all rights the alternate payee may have possessed in the Retirement System based on the member's employment, including any and all rights to any benefit or retirement allowance or any survivor benefits.

(iv) If, as of the date of separation of the member and his or her spouse or the equivalent date for a domestic partnership as determined in the court proceedings, the member did not possess sufficient credited service to retire for service, then the alternate

payee's only form of payment under this separate account option will be a refund of the accumulated member contributions allocated to his or her separate account.

(v) If an alternate payee has withdrawn his or her portion of the accumulated member contributions, the alternate payee shall not be allowed to redeposit those contributions with the Retirement System.

(4) **Retirement of Alternate Payee.** An alternate payee shall be deemed to be retired only if:

(i) The alternate payee files a written application with the Retirement System on a form provided by the System;

(ii) The member and the alternate payee have both attained the minimum age required for a service retirement; and

(iii) On the date of separation of the member and the alternate payee or the equivalent date for a domestic partnership as determined in the court proceedings, the member possessed sufficient credited service to retire for service. A member who possessed sufficient credited service to retire before the division shall be deemed to continue to do so after the division, and so shall the alternate payee.

(5) **Calculation of the Alternate Payee's Retirement Allowance.**

(i) The alternate payee's retirement allowance shall consist of an annuity based upon the alternate payee's accumulated contributions and a pension based upon the alternate payee's service. Only the compensation earnable by the member during the period of marriage or domestic partnership and prior to the date of separation shall be used to determine average compensation.

(ii) The alternate payee's retirement allowance shall be eligible for cost-of-living increases under this Article 4.

(iii) No survivor or death benefits will be payable upon the death of the alternate payee, and such alternate payee upon remarriage or reestablishment of domestic partnership shall not be entitled to elect any of the optional forms of benefit.

(6) **Death of Alternate Payee Prior to Retirement of Alternate Payee.** If the alternate payee dies prior to retirement, then the accumulated contributions in the alternate payee's separate account shall be paid to the alternate payee's beneficiary as designated to the Retirement System on a form provided by the System. If a beneficiary has not been designated

at the time of death or if the designated beneficiary is not living at the time of death, the accumulated contributions shall be paid to the alternate payee's estate. No other death benefits will be payable as a result of the death of the alternate payee.

[(7) **Redeposit of Withdrawn Contributions.** If an alternate payee of a member receives a refund under subsection (a)(3) of this section, an active non-DROP member who complies with all of the requirements of this subsection (a)(7) may make an irrevocable election to redeposit to receive credit for the service that had been allocated to the alternate payee. The irrevocable election shall be made on a form provided by the Retirement System.

(i) The amount of the redeposit shall be as set forth below:

(1) all contributions and interest distributed to the alternate payee,

(2) all additional interest which would have been credited to the member's account had such contributions not been withdrawn,

(3) in the case of members electing to make repayment other than in one lump sum, interest on the unpaid balance of the amount payable to the System under such an election, beginning on the effective date of such election, at the rate of interest

currently being used from time to time under the System,

(4) any administrative cost, and

(5) such other moneys needed to make the system whole, including an estimate of any actuarial loss to the system due to the election.

(ii) The Retirement Office shall provide written notice to a member whose Alternate Payee has withdrawn contributions from the Retirement System.

(iii) A member may make a written request to receive an actuarial fee proposal to determine the redeposit amount under this subsection (a)(7)(i) no later than one year after the date of notice to the member of the member's option to redeposit contributions. If the member does not make a request for an actuarial fee proposal within the time period set forth herein, the member shall be deemed to have irrevocably elected not to have the service allocated to the alternate payee credited to the member.

(iv) Upon receipt of the actuary's fee proposal, the member shall have 30 days from the date of receipt to pay by lump sum to the Retirement System the actuary's fee proposal. If the member does not make full payment within the time period set forth herein, the member shall be

deemed to have irrevocably elected not to have the service allocated to the alternate payee credited to the member.

(v) Upon receipt of the actuary's report determining the cost of the redeposit, the member shall have 30 days from the date of notice to make the irrevocable election to redeposit by filing a fully completed written statement of election with the Retirement System on a form provided by the System, including an election to pay by lump sum or city payroll deduction. If the member does not make an election to redeposit within the time period set forth herein, the member shall be deemed to have irrevocably elected not to have the service allocated to the alternate payee credited to the member.

(vi) The entire amount due under section (a)(7)(i) shall be deposited no later than the earlier of entry into DROP or retirement.

(vii) If an electing member does not redeposit the entire amount due as provided in subsection (a)(7)(i) prior to the earlier of DROP participation or retirement and the failure is due to the member's termination of system membership or death, payment shall be deducted from the member's final payroll check. If funds in the final check are insufficient to satisfy the remaining balance under subsection (a)(7)(i), the

member's retirement account shall be credited with the amount of service as determined by the Board attributable to the amount of payments made as of the date of termination or death. An electing member must provide express authorization for this payment which shall be made in writing at the time of the irrevocable election on a form provided by the Retirement System.

(viii) An electing member who does not redeposit the entire amount prior to the earlier of DROP participation or retirement and the failure is due to being on leave without pay during all or part of the repayment period shall be allowed to pay by lump sum to the Retirement Office all missed payments or have any remaining balance re-amortized and paid prior to DROP participation or retirement, whichever is applicable. Notwithstanding anything in section 3-424 to the contrary, at no time will a member with an unpaid balance be allowed to enter DROP.

(ix) At no time will a member be allowed to rescind an election to redeposit pursuant to this subsection (a)(7).

(x) Notwithstanding the foregoing redeposit limitations, an active, non-DROP member whose Alternate Payee has withdrawn contributions from the Retirement System shall have a one-hundred-twenty-day period

beginning on XXX 1, 2019 within which to initiate the redeposit process under this subsection (a)(7)(iii).

(xi) The Board shall adopt such rules and procedures as are necessary or appropriate to implement this subsection (a)(7).]

(b) **Combined Account Option.** The Retirement System will comply with a court order incident to a legal separation or dissolution or termination which divides the community property interests of a member and the alternate payee, provided that:

(1) The alternate payee's interest is not to be paid before the member retires or dies, and

(2) The court order complies with the provisions set forth in Section 3-421, including the provision that the alternate payee will not be considered to be a surviving spouse or surviving domestic partner under Section 3-415 or any other Section of this Article 4.

(3) The court order may provide that the alternate payee's interest in the member's retirement allowance be paid over the lifetime of the member under the optional form of payment allowed by the System and selected by the member.

(i) With respect to the alternate payee's interest in the member's retirement allowance, the alternate payee may on a form provided by the System designate a

permitted beneficiary as set forth in Section 3-421. If the alternate payee predeceases the member, the person so designated shall receive until the member's death the benefit previously paid to the alternate payee.

(ii) If a benefit is payable under Section 3-408 or 3-415 upon the member's death, as long as payments are payable under those provisions, one-half of the community property share thereof may be payable to the alternate payee or a permitted beneficiary as set forth in Section 3-421(b)(3) of the alternate payee.

(iii) If the member predeceases the alternate payee and the member has chosen option 2 or 3, the alternate payee or the permitted beneficiary as set forth in Section 3-421(b)(3) of the alternate payee may receive, as long as payments are payable under the selected option, one-half of the community property share of that portion of the allowance which would be continued after the member's death, regardless of dependents.

(4) In lieu of the payment method specified in subsection (3) above, the court order may provide that the alternate payee's interest in the member's retirement allowance be paid under any optional form of payment allowed by the

Retirement System over the lifetime of the alternate payee (instead of over the lifetime of the member), provided that,

(i) The sum of the actuarial present values of the member's and his or her alternate payee's allowances payable as single life annuities shall not exceed the actuarial present value of the member's allowance had they been payable to the member, assuming the member had never been married to the alternate payee or had never established a domestic partnership with the alternate payee; and

(ii) No survivor benefits under Section 3-415 or any other Section of this Article 4 are payable to the surviving spouse of the alternate payee.

(5) In the absence of a qualifying surviving spouse, qualifying domestic partner, unmarried children under the age of eighteen or children under the age of eighteen not members of domestic partnerships, disabled child qualified under [Section 3-415(c)], or dependent parents, the court order may provide for the division of the community property interest in the death benefit under [Section 3-408].

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2019.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2019
Mayor Approval/No Return: _____, 2019
Mayor Veto: _____, 2019
Council Override Vote: _____, 2019

YVONNE SPENCE, MMC CRM
City Clerk

BY: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
[Name] Date
[Title]