

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING SECTION 3-332 AND SECTION 3-353 OF THE
FRESNO MUNICIPAL CODE TO MODIFY THE DROP
PROVISIONS OF THE FIRST TIER OF THE FIRE AND POLICE
RETIREMENT SYSTEM

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

SECTION 1. Section 3-332 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-332. - SERVICE RETIREMENT.

Retirement of a member for service shall be made by the Retirement Board as follows:

- (1) [Subject to Section 3-353(e)(2) except in the case of a member who prior to entering DROP had ceased making contributions under this section.] E[e]very member who attains age sixty, who shall have completed ten years of service after qualifying for service retirement, shall not be required to make further contributions to the ~~R~~etirement ~~F~~und-[:] ~~H~~if such member shall not have completed ten years of service after qualification for service retirement, then the member shall be required to contribute to the Retirement Fund only until such ten years of service are completed;
- (2) Any member may retire upon written application to the Retirement Board, stating what time the member desires to be retired, provided that said member shall be entitled to be credited, at the time so specified for the member's retirement, with at least ten years of service in the aggregate, and shall have attained the age of fifty years.

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: 

SECTION 2. Section 3-353 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-353. - DEFERRED RETIREMENT OPTION PROGRAM ("DROP").

(a) Purpose of DROP.

- (1) It is the intent of this section to create a voluntary deferred retirement option program ("DROP") for members.
- (2) DROP is designed to be an alternate method of receiving retirement benefits.
- (3) DROP is intended to be cost neutral to the System.
- (4) DROP is intended to provide additional flexibility to the System by providing members with an additional method of receiving their retirement benefits.
- (5) It is the intent of DROP not to jeopardize in any way the tax-qualified status of the System under the Internal Revenue Code. The provisions of this section may at any time be modified, with such modifications being given retroactive effect, if necessary to maintain the System's tax-qualified status.

(b) Eligibility and Election to Participate in DROP.

- (1) Any member who has attained age 50 and who possesses sufficient credited service to be eligible for a service retirement shall be eligible to participate in DROP.
- (2) The election to participate in DROP shall be voluntary and irrevocable. The election shall:
 - (i) Be made on a form provided by the System;
 - (ii) ~~Designate~~Affirm a period of participation not to exceed one hundred and twenty (120) months;
 - (iii) Affirm that the member, on the date the member commences participation in DROP, shall cease accruing service credits;

- (iv) Affirm that the member agrees to terminate City employment no later than completion of the ~~designated~~ DROP participation period;
 - (v) Constitute an application for service retirement no later than the end of the ~~designated~~ DROP participation period; and
 - (vi) Include the member's irrevocable election among the options in Section 3-341 (Optional Modification of Allowances).
- (3) A member making the election shall execute such waivers with respect to state and federal employment discrimination and related laws, such releases, and such covenants as are required by the City or the System.
- (4) By electing to participate in DROP:
- (i) A member becomes subject to all of the provisions of this section;
 - (ii) For a member whose retirement allowance is determined under Section 3-301(a) (Definitions), average compensation shall be determined solely by reference to the rank or ranks held by the member prior to the date the member commences participation in DROP;
 - 1. If a member is entitled to convert a sick or holiday or other leave balance into a lump sum cash payment upon retirement, the dollar value of the member's leave balance as of the effective date of DROP participation shall be divided by the member's years of service, and the resulting quotient shall be included in the compensation of each rank held by the member for purposes of determining average compensation under Section 3-301(a)(Definitions);
 - 2. The employee contributions due with respect to the leave balance shall be charged against the member's DROP account;

(iii) For a member whose retirement allowance is determined under Section 3-302 (Alternate Definition of Average Compensation), average compensation shall be determined solely by the average monthly compensation earnable by a member during the three years of employment occurring immediately prior to the date the member commences participation in DROP;

1. If a member is entitled to convert a sick or holiday or other leave balance into a lump sum cash payment upon retirement, the dollar value of the member's leave balance as of the effective date of DROP participation shall be divided by thirty-six, and the resulting quotient shall be added to the average monthly compensation earnable by a member during the three years of employment immediately prior to commencing participation in DROP used for purposes of determining average compensation under Section 3-302 (Alternate Definition of Average Compensation);
2. The employee contributions due with respect to the leave balance shall be charged against the member's DROP account;

(iv) Any changes in leave balances occurring after the member commences participation in DROP shall not affect in any manner the amounts credited to the member's DROP account or the member's retirement allowance, whether for service or disability, payable to the member; and

(v) A member shall have DROP benefits credited to a DROP account pursuant to subsection (c) of this section.

(c) DROP Accounts and DROP Benefits.

- (1) A DROP account is a nominal, bookkeeping account established within the System for each DROP participant. No System assets shall be separately segregated for any DROP account; a DROP participant shall not have a claim on any specific assets of the System.
- (2) Amounts credited to a member's DROP account shall be vested, except to the extent deemed necessary by the Board in its sole discretion to maintain the System's tax-qualified status under the Internal Revenue Code.
- (3) [Unless adjusted pursuant to Section 3-353(l)(1)(iv), a] A member's DROP account shall be credited monthly with an amount which represents [one hundred percent (100%) of] the service retirement allowance which the member would have received if the member had retired on the date the member commenced DROP participation.
- (4) [Unless adjusted pursuant to Section 3-353(l)(1)(iii), t] The monthly amount credited to a member's DROP account shall reflect [one hundred percent (100%) of] any cost-of-living adjustments otherwise applicable to retired members.
- (5) A member's DROP account shall be credited monthly with interest pursuant to subsection (d) of this section.

(d) Interest Crediting to DROP Accounts.

- (1) Each DROP account shall be credited monthly with interest at the nominal monthly interest rate equivalent to the annual effective DROP interest rate adopted by the Board. The nominal monthly interest rate shall apply to the balance in each DROP account as of the beginning of each month and shall be applied before the monthly amount described in Section 3-353(c)(3) for that month has been credited to the account.
- (2) The Board shall set an annual effective DROP interest rate, which shall apply to each DROP account during the retirement system's fiscal year in which the Board set the rate.

- (3) In setting the annual effective DROP interest rate, the Board shall review and consider the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP.
- (4) The Board shall review the net rate of return earned by the System's entire investment portfolio for each of the five prior fiscal years, including realized and unrealized gains and losses and as reduced by all investment expenses. These net rates of return shall be certified by the System's Retirement Administrator. The sum of the five net rates of return shall be divided by five to provide an average net rate of return that will be credited to the DROP accounts during the fiscal year.
- (5) ~~[Unless adjusted pursuant to Section 3-353(l)(1)(i)]The Board shall set the annual effective drop interest rate at a level it deems in its sole discretion necessary to maintain the cost neutrality of the DROP program.[.] T[t]he Board shall not set the annual effective DROP interest rate lower than 3 percent below [equal to] the average net rate of return as determined in Section 3-353(d)(4)[, except that the annual effective DROP interest rate set by the Board shall not be less than zero percent] nor higher than that average net rate of return.~~
- ~~(6) If the average net rate of return determined in Section 3-353(d)(4) is negative, the Board shall set a negative annual effective DROP interest rate, i.e., each DROP account balance shall be reduced accordingly.~~

(e) Additional DROP Provisions.

- (1) The effective date of DROP participation for a member shall be the first of the month following the date the Board approves the member's fully completed DROP application.

- (2) [Notwithstanding section 3-332(1) except in the case of a member who prior to entering DROP had ceased making contributions under that section.] F[f]or a member whose effective date in DROP is prior to the effective date of Ordinance No. 2011-1 and notwithstanding Section 3-319 (Normal Contributions of Members), the member shall cease making contributions to the System[:]; F[f]or a member whose effective date of participation in DROP is on or after the effective date of Ordinance No. 2011-[1,] the member shall continue to make contributions [of] which [one hundred percent (100%)] shall be deposited into the member's DROP account [unless adjusted pursuant to Section 3-353(l)(1)(ii)].
- (3) If a member becomes disabled while participating in DROP, the member shall be eligible to apply for disability retirement and shall be subject to the same disability eligibility requirements under Section 3-335 as if the member were not in DROP. Notwithstanding Section 3-336 (Allowance at Disability Retirement), if the Board grants the application, whether for a service-connected or non-service-connected disability, the amount of the disability retirement allowance shall be the same as the amount then being credited monthly to the member's DROP account. However, if the Board determines that the disability is service-connected, the amount of the aggregate disability retirement allowance which equals (or is less than) fifty-five percent of the member's average compensation shall be in the nature of workmen's compensation and shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.
- (4) If a member dies due to non service-connected causes while participating in DROP, the member shall be deemed to have died after retirement.

(5) If a member dies on or after June 1, 2008 while participating in DROP and the Board determines that the causes are service-connected, the member shall be deemed to have suffered a service-connected death, with the survivorship benefit to be comprised solely of two-thirds the monthly amount currently being credited into the member's DROP account, adjusted for any optional modification elected by the member, and the balance in the DROP account paid pursuant to Sections 3-353(f) and 3-353(g)(2). If any benefits paid under this section are paid as a survivor annuity to the surviving spouse (or former spouse) or child(ren) of a member who qualifies as a public safety officer within the meaning of Section 101(h) of the Internal Revenue Code, and such member is killed in the line of duty, such monthly death allowance shall be nontaxable to the extent allowed by Section 101(h) of the Internal Revenue Code. However, if the member or the member's death does not qualify under Section 101(h) of the Internal Revenue Code, then, if the Board determines that the member's death was service-connected, the amount of the monthly death allowance which equals (or is less than) fifty percent (50%) of the member's average compensation shall be in the nature of workmen's compensation and shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.

(6) If a member marries while participating in DROP, the marriage shall be deemed to have occurred prior to the member's retirement only for purposes of satisfying any applicable benefit eligibility requirement.

(f) Designation of DROP Beneficiary.

(1) A member electing to participate in DROP shall designate a beneficiary of the member's DROP account.

- (2) If a member dies while participating in DROP,
- (i) A designated DROP account beneficiary who is either a surviving spouse or surviving domestic partner of the member or a child under the age of 18 of the member or a dependent parent of the member shall be entitled to select a form of distribution under Section 3-353(g)(2); or
 - (ii) A designated DROP beneficiary who is not listed in Section 3-353(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or
 - (iii) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.
- (3) No DROP beneficiary designation shall modify a member's community property obligations under California law.

(g) Distribution of DROP Account.

- (1) Upon termination of DROP participation and upon retirement from the City, a member shall:
- (i) Receive the amounts credited to the member's DROP account, including interest; and
 - (ii) Begin receiving a monthly retirement allowance in the amount being credited to the member's DROP account.
- (2) A member upon the completion of the ~~designated~~ DROP participation period shall select one of the following as the form of distribution of the member's DROP account:
- (i) A lump sum; or

(ii) An amount payable monthly in equal monthly installments in accord with applicable provisions of the Internal Revenue Code;

1. The member shall be entitled to select an installment pay-out period not to exceed ~~the lesser of ten years or~~ the joint life expectancies of the member and the member's spouse;
2. The balance in the member's DROP account during the installment pay-out period shall be credited with simple interest monthly at the actuarially assumed interest rate;
3. No cost-of-living adjustment shall be made to the monthly amount;
4. Payments of the monthly amount shall terminate when the balance in the DROP account is reduced to zero;
5. If the retired member dies prior to receipt of the member's entire DROP account, then:
 - (a) A designated DROP beneficiary who is listed in Section 3-353(f)(2)(i) shall be entitled to select a form of distribution under Section 3-353(g)(2); or
 - (b) A designated DROP beneficiary who is not listed in Section 3-353(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or
 - (c) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.

6. The retired member may at any time request immediate payment of the entire balance remaining in the member's DROP account; or
- (iii) Such other form of distribution, as is adopted by the Board and in accord with applicable provisions of the Internal Revenue Code.
- (3) No distribution shall be made from a member's DROP account until the member terminates DROP participation.
- (4) If a member dies while participating in DROP, the member's DROP account shall be paid pursuant to Sections 3-353(f) and 3-353(g)(2).
- (h) **Termination of DROP Participation.** A member's participation in DROP shall automatically terminate upon the earliest occurrence of any of the following events:
- (1) Completion of the member's ~~designated~~ DROP participation period; or
 - (2) Death of the member; or
 - (3) Approval by the Board of the member's application for a disability retirement; or
 - (4) Voluntary termination of a member's employment; or
 - (5) Involuntary termination of a member's employment, whether or not for cause, including layoffs or reductions in force and including the conclusion of any administrative or judicial appeals process.
- (i) **General DROP Provisions.**
- (1) The right is reserved at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions relating to DROP. But no amendment shall be enacted which has the effect of decreasing the amount credited to a member's DROP account.

- (2) The Board shall enact such rules and procedures as are necessary or appropriate to administer DROP.
 - (3) The Board shall issue annually to each DROP participant a statement of that member's DROP account balance.
 - (4) The refund of the dependent portion of a member's normal contribution rate under Section 3-319 (Normal Contributions of Members) shall not be made until the member terminates DROP participation and retires.
- (j) **Compliance with Applicable Provisions of the Internal Revenue Code and other Federal Laws.**
- (1) It is intended that DROP shall not jeopardize the tax-qualified status of the System under the Internal Revenue Code. Full rights are reserved to modify this section to the extent necessary or appropriate to insure that DROP complies with applicable federal laws, regulations, and administrative rulings.
 - (2) Notwithstanding any other provision in this section, the DROP program shall be subject to the sections of the Internal Revenue Code applicable to governmental plans, as amended, and the regulations and rulings under those sections.
- (k) **Employment Status During DROP Participation.** The employment status of a member electing to participate in DROP shall not be affected by that election.

[(l) Adjustments to maintain the cost neutrality of DROP.]

- (1) Notwithstanding any other provision in this Section 3-353 to the contrary, based on the Board's review and consideration of the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP, the Board shall adopt the following

modifications to DROP in the order listed only as determined by the Board to be necessary to maintain the cost neutrality of DROP.

(i) Set the annual effective DROP interest rate determined pursuant to Section 3-353(d)(5) to a percentage rate below the average net rate of return as determined in Section 3-353(d)(4) but not below zero percent.

(ii) Reduce the percentage of the member's contributions deposited into the member's DROP account pursuant to Section 3-353(e)(2) below one hundred percent (100%), with the difference credited to the Retirement Fund.

(iii) Reduce the percentage of cost-of-living adjustments reflected in the monthly amount credited to a member's DROP account pursuant to Section 3-353(c)(4) below one hundred percent (100%). Any such reduction in cost-of-living adjustments during DROP participation will continue to be reflected in the member's monthly retirement allowance received pursuant to Section 3-353(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.

(iv) Reduce the percentage of the service retirement allowance credited monthly to a member's DROP account pursuant to Section 3-353(c)(3) below one hundred percent (100%). Any such reduction will not be reflected in the member's monthly retirement allowance received pursuant to Section 3-353(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.]

SECTION 3. 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, TODD STERMER, 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 _____, 2024.

AYES :

NOES :

ABSENT :

ABSTAIN :

Mayor Approval: _____, 2024

Mayor Approval/No Return: _____, 2024

Mayor Veto: _____, 2024

Council Override Vote: _____, 2024

TODD STERMER, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:

ANDREW JANZ,
City Attorney

BY: _____
Deputy Date

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING SECTION 3-332 AND SECTION 3-353 OF THE
FRESNO MUNICIPAL CODE TO MODIFY THE DROP
PROVISIONS OF THE FIRST TIER OF THE FIRE AND POLICE
RETIREMENT SYSTEM

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

SECTION 1. Section 3-332 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-332. - SERVICE RETIREMENT.

Retirement of a member for service shall be made by the Retirement Board as follows:

- (1) [Subject to Section 3-353(e)(2) except in the case of a member who prior to entering DROP had ceased making contributions under this section,] [e]very member who attains age sixty, who shall have completed ten years of service after qualifying for service retirement, shall not be required to make further contributions to the [R]etirement [F]und[;] [i]f such member shall not have completed ten years of service after qualification for service retirement, then the member shall be required to contribute to the Retirement Fund only until such ten years of service are completed;
- (2) Any member may retire upon written application to the Retirement Board, stating what time the member desires to be retired, provided that said member shall be entitled to be credited, at the time so specified for the member's retirement, with at least ten years of service in the aggregate, and shall have attained the age of fifty years.

Date Adopted:
Date Approved
Effective Date:
City Attorney Approval: _____

Page 1 of 14

Ordinance No. _____

SECTION 2. Section 3-353 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-353. - DEFERRED RETIREMENT OPTION PROGRAM ("DROP").

(a) Purpose of DROP.

- (1) It is the intent of this section to create a voluntary deferred retirement option program ("DROP") for members.
- (2) DROP is designed to be an alternate method of receiving retirement benefits.
- (3) DROP is intended to be cost neutral to the System.
- (4) DROP is intended to provide additional flexibility to the System by providing members with an additional method of receiving their retirement benefits.
- (5) It is the intent of DROP not to jeopardize in any way the tax-qualified status of the System under the Internal Revenue Code. The provisions of this section may at any time be modified, with such modifications being given retroactive effect, if necessary to maintain the System's tax-qualified status.

(b) Eligibility and Election to Participate in DROP.

- (1) Any member who has attained age 50 and who possesses sufficient credited service to be eligible for a service retirement shall be eligible to participate in DROP.
- (2) The election to participate in DROP shall be voluntary and irrevocable. The election shall:
 - (i) Be made on a form provided by the System;
 - (ii) [Affirm] a period of participation not to exceed one hundred and twenty (120) months;
 - (iii) Affirm that the member, on the date the member commences participation in DROP, shall cease accruing service credits;

- (iv) Affirm that the member agrees to terminate City employment no later than completion of the DROP participation period;
 - (v) Constitute an application for service retirement no later than the end of the DROP participation period; and
 - (vi) Include the member's irrevocable election among the options in Section 3-341 (Optional Modification of Allowances).
- (3) A member making the election shall execute such waivers with respect to state and federal employment discrimination and related laws, such releases, and such covenants as are required by the City or the System.
- (4) By electing to participate in DROP:
- (i) A member becomes subject to all of the provisions of this section;
 - (ii) For a member whose retirement allowance is determined under Section 3-301(a) (Definitions), average compensation shall be determined solely by reference to the rank or ranks held by the member prior to the date the member commences participation in DROP;
 - 1. If a member is entitled to convert a sick or holiday or other leave balance into a lump sum cash payment upon retirement, the dollar value of the member's leave balance as of the effective date of DROP participation shall be divided by the member's years of service, and the resulting quotient shall be included in the compensation of each rank held by the member for purposes of determining average compensation under Section 3-301(a)(Definitions);
 - 2. The employee contributions due with respect to the leave balance shall be charged against the member's DROP account;

(iii) For a member whose retirement allowance is determined under Section 3-302 (Alternate Definition of Average Compensation), average compensation shall be determined solely by the average monthly compensation earnable by a member during the three years of employment occurring immediately prior to the date the member commences participation in DROP;

1. If a member is entitled to convert a sick or holiday or other leave balance into a lump sum cash payment upon retirement, the dollar value of the member's leave balance as of the effective date of DROP participation shall be divided by thirty-six, and the resulting quotient shall be added to the average monthly compensation earnable by a member during the three years of employment immediately prior to commencing participation in DROP used for purposes of determining average compensation under Section 3-302 (Alternate Definition of Average Compensation);
2. The employee contributions due with respect to the leave balance shall be charged against the member's DROP account;

(iv) Any changes in leave balances occurring after the member commences participation in DROP shall not affect in any manner the amounts credited to the member's DROP account or the member's retirement allowance, whether for service or disability, payable to the member; and

(v) A member shall have DROP benefits credited to a DROP account pursuant to subsection (c) of this section.

(c) DROP Accounts and DROP Benefits.

- (1) A DROP account is a nominal, bookkeeping account established within the System for each DROP participant. No System assets shall be separately segregated for any DROP account; a DROP participant shall not have a claim on any specific assets of the System.
- (2) Amounts credited to a member's DROP account shall be vested, except to the extent deemed necessary by the Board in its sole discretion to maintain the System's tax-qualified status under the Internal Revenue Code.
- (3) [Unless adjusted pursuant to Section 3-353(l)(1)(iv), a] member's DROP account shall be credited monthly with an amount which represents [one hundred percent (100%) of] the service retirement allowance which the member would have received if the member had retired on the date the member commenced DROP participation.
- (4) [Unless adjusted pursuant to Section 3-353(l)(1)(iii), t]he monthly amount credited to a member's DROP account shall reflect [one hundred percent (100%) of] any cost-of-living adjustments otherwise applicable to retired members.
- (5) A member's DROP account shall be credited monthly with interest pursuant to subsection (d) of this section.

(d) Interest Crediting to DROP Accounts.

- (1) Each DROP account shall be credited monthly with interest at the nominal monthly interest rate equivalent to the annual effective DROP interest rate adopted by the Board. The nominal monthly interest rate shall apply to the balance in each DROP account as of the beginning of each month and shall be applied before the monthly amount described in Section 3-353(c)(3) for that month has been credited to the account.
- (2) The Board shall set an annual effective DROP interest rate, which shall apply to each DROP account during the retirement system's fiscal year in which the Board set the rate.

- (3) In setting the annual effective DROP interest rate, the Board shall review and consider the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP.
- (4) The Board shall review the net rate of return earned by the System's entire investment portfolio for each of the five prior fiscal years, including realized and unrealized gains and losses and as reduced by all investment expenses. These net rates of return shall be certified by the System's Retirement Administrator. The sum of the five net rates of return shall be divided by five to provide an average net rate of return that will be credited to the DROP accounts during the fiscal year.
- (5) [Unless adjusted pursuant to Section 3-353(l)(1)(i)] to maintain the cost neutrality of the DROP[,] [t]he Board shall set the annual effective DROP interest rate [equal to] the average net rate of return as determined in Section 3-353(d)(4)[, except that the annual effective DROP interest rate set by the Board shall not be less than zero percent].

(e) **Additional DROP Provisions.**

- (1) The effective date of DROP participation for a member shall be the first of the month following the date the Board approves the member's fully completed DROP application.
- (2) [Notwithstanding section 3-332(1) except in the case of a member who prior to entering DROP had ceased making contributions under that section,] [f]or a member whose effective date in DROP is prior to the effective date of Ordinance No. 2011-1 and notwithstanding Section 3-319 (Normal Contributions of Members), the member shall cease making contributions to the System[;] [f]or a member whose effective date of participation in DROP is on or after the effective date of Ordinance No. 2011-[1,] the member shall continue to make contributions [of] which [one hundred percent (100%)]

shall be deposited into the member's DROP account [unless adjusted pursuant to Section 3-353(l)(1)(ii)].

- (3) If a member becomes disabled while participating in DROP, the member shall be eligible to apply for disability retirement and shall be subject to the same disability eligibility requirements under Section 3-335 as if the member were not in DROP. Notwithstanding Section 3-336 (Allowance at Disability Retirement), if the Board grants the application, whether for a service-connected or non-service-connected disability, the amount of the disability retirement allowance shall be the same as the amount then being credited monthly to the member's DROP account. However, if the Board determines that the disability is service-connected, the amount of the aggregate disability retirement allowance which equals (or is less than) fifty-five percent of the member's average compensation shall be in the nature of workmen's compensation and shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.
- (4) If a member dies due to non service-connected causes while participating in DROP, the member shall be deemed to have died after retirement.
- (5) If a member dies on or after June 1, 2008 while participating in DROP and the Board determines that the causes are service-connected, the member shall be deemed to have suffered a service-connected death, with the survivorship benefit to be comprised solely of two-thirds the monthly amount currently being credited into the member's DROP account, adjusted for any optional modification elected by the member, and the balance in the DROP account paid pursuant to Sections 3-353(f) and 3-353(g)(2). If any benefits paid under this section are paid as a survivor annuity to the surviving spouse (or former spouse) or child(ren) of a member who qualifies as a public safety officer within the

meaning of Section 101(h) of the Internal Revenue Code, and such member is killed in the line of duty, such monthly death allowance shall be nontaxable to the extent allowed by Section 101(h) of the Internal Revenue Code. However, if the member or the member's death does not qualify under Section 101(h) of the Internal Revenue Code, then, if the Board determines that the member's death was service-connected, the amount of the monthly death allowance which equals (or is less than) fifty percent (50%) of the member's average compensation shall be in the nature of workmen's compensation and shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.

- (6) If a member marries while participating in DROP, the marriage shall be deemed to have occurred prior to the member's retirement only for purposes of satisfying any applicable benefit eligibility requirement.

(f) Designation of DROP Beneficiary.

- (1) A member electing to participate in DROP shall designate a beneficiary of the member's DROP account.
- (2) If a member dies while participating in DROP,
 - (i) A designated DROP account beneficiary who is either a surviving spouse or surviving domestic partner of the member or a child under the age of 18 of the member or a dependent parent of the member shall be entitled to select a form of distribution under Section 3-353(g)(2); or
 - (ii) A designated DROP beneficiary who is not listed in Section 3-353(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or

(iii) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.

(3) No DROP beneficiary designation shall modify a member's community property obligations under California law.

(g) Distribution of DROP Account.

(1) Upon termination of DROP participation and upon retirement from the City, a member shall:

(i) Receive the amounts credited to the member's DROP account, including interest; and

(ii) Begin receiving a monthly retirement allowance in the amount being credited to the member's DROP account.

(2) A member upon the completion of the DROP participation period shall select one of the following as the form of distribution of the member's DROP account:

(i) A lump sum; or

(ii) An amount payable monthly in equal monthly installments in accord with applicable provisions of the Internal Revenue Code;

1. The member shall be entitled to select an installment pay-out period not to exceed the joint life expectancies of the member and the member's spouse;

2. The balance in the member's DROP account during the installment pay-out period shall be credited with simple interest monthly at the actuarially assumed interest rate;

3. No cost-of-living adjustment shall be made to the monthly amount;

4. Payments of the monthly amount shall terminate when the balance in the DROP account is reduced to zero;
 5. If the retired member dies prior to receipt of the member's entire DROP account, then:
 - (a) A designated DROP beneficiary who is listed in Section 3-353(f)(2)(i) shall be entitled to select a form of distribution under Section 3-353(g)(2); or
 - (b) A designated DROP beneficiary who is not listed in Section 3-353(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or
 - (c) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.
 6. The retired member may at any time request immediate payment of the entire balance remaining in the member's DROP account; or
- (iii) Such other form of distribution, as is adopted by the Board and in accord with applicable provisions of the Internal Revenue Code.
- (3) No distribution shall be made from a member's DROP account until the member terminates DROP participation.
 - (4) If a member dies while participating in DROP, the member's DROP account shall be paid pursuant to Sections 3-353(f) and 3-353(g)(2).
- (h) **Termination of DROP Participation.** A member's participation in DROP shall automatically terminate upon the earliest occurrence of any of the following events:

- (1) Completion of the member's DROP participation period; or
- (2) Death of the member; or
- (3) Approval by the Board of the member's application for a disability retirement; or
- (4) Voluntary termination of a member's employment; or
- (5) Involuntary termination of a member's employment, whether or not for cause, including layoffs or reductions in force and including the conclusion of any administrative or judicial appeals process.

(i) **General DROP Provisions.**

- (1) The right is reserved at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions relating to DROP. But no amendment shall be enacted which has the effect of decreasing the amount credited to a member's DROP account.
- (2) The Board shall enact such rules and procedures as are necessary or appropriate to administer DROP.
- (3) The Board shall issue annually to each DROP participant a statement of that member's DROP account balance.
- (4) The refund of the dependent portion of a member's normal contribution rate under Section 3-319 (Normal Contributions of Members) shall not be made until the member terminates DROP participation and retires.

(j) **Compliance with Applicable Provisions of the Internal Revenue Code and other Federal Laws.**

- (1) It is intended that DROP shall not jeopardize the tax-qualified status of the System under the Internal Revenue Code. Full rights are reserved to modify this section to the extent

necessary or appropriate to insure that DROP complies with applicable federal laws, regulations, and administrative rulings.

- (2) Notwithstanding any other provision in this section, the DROP program shall be subject to the sections of the Internal Revenue Code applicable to governmental plans, as amended, and the regulations and rulings under those sections.

(k) **Employment Status During DROP Participation.** The employment status of a member electing to participate in DROP shall not be affected by that election.

[(l) Adjustments to maintain the cost neutrality of DROP.

- (1) Notwithstanding any other provision in this Section 3-353 to the contrary, based on the Board's review and consideration of the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP, the Board shall adopt the following modifications to DROP in the order listed only as determined by the Board to be necessary to maintain the cost neutrality of DROP.

- (i) Set the annual effective DROP interest rate determined pursuant to Section 3-353(d)(5) to a percentage rate below the average net rate of return as determined in Section 3-353(d)(4) but not below zero percent.
- (ii) Reduce the percentage of the member's contributions deposited into the member's DROP account pursuant to Section 3-353(e)(2) below one hundred percent (100%), with the difference credited to the Retirement Fund.
- (iii) Reduce the percentage of cost-of-living adjustments reflected in the monthly amount credited to a member's DROP account pursuant to Section 3-353(c)(4) below one hundred percent (100%). Any such reduction in cost-of-living adjustments during DROP participation will continue to be reflected in the

member’s monthly retirement allowance received pursuant to Section 3-353(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.

- (iv) Reduce the percentage of the service retirement allowance credited monthly to a member's DROP account pursuant to Section 3-353(c)(3) below one hundred percent (100%). Any such reduction will not be reflected in the member’s monthly retirement allowance received pursuant to Section 3-353(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.]

SECTION 3. 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, TODD STERMER, 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 _____, 2024.

AYES :
NOES :
ABSENT :
ABSTAIN :
Mayor Approval: _____, 2024
Mayor Approval/No Return: _____, 2024
Mayor Veto: _____, 2024

Council Override Vote: _____, 2024

TODD STERMER, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:

ANDREW JANZ,
City Attorney

BY: _____
Deputy Date

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING SECTION 3-410 AND SECTION 3-424 OF THE
FRESNO MUNICIPAL CODE TO MODIFY THE DROP
PROVISIONS OF THE SECOND TIER OF THE FIRE AND
POLICE RETIREMENT SYSTEM

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

SECTION 1. Section 3-410 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-410. - SERVICE RETIREMENT.

Retirement of a member for service shall be made by the Retirement Board as follows:

- (1) [Subject to Section 3-424(e)(2) except in the case of a member who prior to entering DROP had ceased making contributions under this section, e]Every member who attains age sixty, who shall have completed five years of service after qualifying for service retirement shall not be required to make further contributions to the Retirement Fund. If such member shall not have completed five years of service after qualification for service retirement, then the member shall be required to contribute to the Retirement Fund only until those five years of service are completed;
- (2) Any member may retire upon written application to the Retirement Board, stating what time the member desires to be retired, provided that said member shall be entitled to be credited, at the time so specified for the member's retirement, with at least five years of service in the aggregate, and shall have attained the age of fifty years.

Date Adopted:
Date Approved
Effective Date:
City Attorney Approval: _____



SECTION 2. Section 3-424 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-424. - DEFERRED RETIREMENT OPTION PROGRAM ("DROP").

(a) Purpose of DROP.

- (1) It is the intent of this section to create a voluntary deferred retirement option program ("DROP") for members.
- (2) DROP is designed to be an alternate method of receiving retirement benefits.
- (3) DROP is intended to be cost neutral to the System.
- (4) DROP is intended to provide additional flexibility to the System by providing members with an additional method of receiving their retirement benefits.
- (5) It is the intent of DROP not to jeopardize in any way the tax-qualified status of the System under the Internal Revenue Code. The provisions of this section may at any time be modified, with such modifications being given retroactive effect, if necessary to maintain the System's tax-qualified status.

(b) Eligibility and Election to Participate in DROP.

- (1) Any member who has attained age 50 and who possesses sufficient credited service to be eligible for a service retirement shall be eligible to participate in DROP.
- (2) The election to participate in DROP shall be voluntary and irrevocable. The election shall:
 - (i) Be made on a form provided by the System;
 - (ii) ~~Designate~~Affirm a period of participation not to exceed one hundred and twenty (120) months;

- (iii) Affirm that the member, on the date the member commences participation in DROP, shall cease accruing service credits;
 - (iv) Affirm that the member agrees to terminate City employment no later than completion of the ~~designated~~ DROP participation period;
 - (v) Constitute an application for service retirement no later than the end of the ~~designated~~ DROP participation period; and
 - (vi) Include the member's irrevocable election among the options in Section 3-417 (Optional Modification of Allowances).
- (3) A member making the election shall execute such waivers with respect to state and federal employment discrimination and related laws, such releases, and such covenants as are required by the City or the System.
- (4) By electing to participate in DROP:
- (i) A member becomes subject to all of the provisions of this section;
 - (ii) For a member whose retirement allowance is determined under Section 3-401 (Definitions), average compensation shall be determined solely by reference to the rank or ranks held by the member prior to the date the member commences participation in DROP;
 - (iii) If a member is entitled to convert a sick or holiday or other leave balance into a lump sum cash payment upon retirement, the dollar value of the member's leave balance as of the effective date of DROP participation shall be divided by thirty-six, and the resulting quotient shall be added to the highest average monthly compensation earnable by a member during any thirty-six consecutive months of

service prior to commencing participation in DROP used for purposes of determining average compensation under Section 3-401 (Definition);

1. The employee contributions due with respect to the leave balance shall be charged against the member's DROP account;
2. Any changes in leave balances occurring after the member commences participation in DROP shall not affect in any manner the amounts credited to the member's DROP account or the member's retirement allowance, whether for service or disability, payable to the member; and

(iv) A member shall have DROP benefits credited to a DROP account pursuant to subsection (c) of this section.

(c) DROP Accounts and DROP Benefits.

- (1) A DROP account is a nominal, bookkeeping account established within the System for each DROP participant. No System assets shall be separately segregated for any DROP account; a DROP participant shall not have a claim on any specific assets of the System.
- (2) Amounts credited to a member's DROP account shall be vested, except to the extent deemed necessary by the Board in its sole discretion to maintain the System's tax-qualified status under the Internal Revenue Code.
- (3) [Unless adjusted pursuant to Section 3-424(l)(1)(iv), a]A member's DROP account shall be credited monthly with an amount which represents [one hundred percent (100%) of] the service retirement allowance which the member would have received if the member had retired on the date the member commenced DROP participation.

- (4) ~~[Unless adjusted pursuant to Section 3-424(l)(1)(iii), t]~~The monthly amount credited to a member's DROP account shall reflect ~~[one hundred percent (100%) of]~~ any cost-of-living adjustments otherwise applicable to retired members.
- (5) A member's DROP account shall be credited monthly with interest pursuant to subsection (d) of this section.

(d) Interest Crediting to DROP Accounts.

- (1) Each DROP account shall be credited monthly with interest at the nominal monthly interest rate equivalent to the annual effective DROP interest rate adopted by the Board. The nominal monthly interest rate shall apply to the balance in each DROP account as of the beginning of each month and shall be applied before the monthly amount described in Section 3-424(c)(3) for that month has been credited to the account.
- (2) The Board shall set an annual effective DROP interest rate, which shall apply to each DROP account during the retirement system's fiscal year in which the Board set the rate.
- (3) In setting the annual effective DROP interest rate, the Board shall review and consider the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP.
- (4) The Board shall review the net rate of return earned by the System's entire investment portfolio for each of the five prior fiscal years, including realized and unrealized gains and losses and as reduced by all investment expenses. These net rates of return shall be certified by the System's Retirement Administrator. The sum of the five net rates of return shall be divided by five to provide an average net rate of return.

- (5) ~~[Unless adjusted pursuant to Section 3-424(l)(1)(i)]~~The Board shall set the annual effective drop interest rate at a level it deems in its sole discretion necessary to maintain the cost neutrality of the DROP program.~~[.]~~ ~~T~~~~[t]~~he Board shall ~~not~~ set the annual effective DROP interest rate ~~lower than 3 percent below~~ [equal to] the average net rate of return as determined in Section 3-424(d)(4)~~[, except that the annual effective DROP interest rate set by the Board shall not be less than zero percent]~~ ~~nor higher than that average net rate of return.~~
- (6) ~~If the average net rate of return determined in Section 3-424(d)(4) is negative, the Board shall set a negative annual effective DROP interest rate, i.e., each DROP account balance shall be reduced accordingly.~~

(e) **Additional DROP Provisions.**

- (1) The effective date of DROP participation for a member shall be the first of the month following the date the Board approves the member's fully completed DROP application.
- (2) ~~[Notwithstanding section 3-410(1) except in the case of a member who prior to entering DROP had ceased making contributions under that section.]~~ ~~F~~~~[f]~~or a member whose effective date in DROP is prior to the effective date of Ordinance No. 2011-1 and notwithstanding Section 3-405 (Normal Contributions of Members), the member shall cease making contributions to the System. For a member whose effective date of participation in DROP is on or after the effective date of Ordinance No. [2011-1], the member shall continue to make contributions [of] which [one hundred percent (100%)] shall be deposited into the member's DROP account [unless adjusted pursuant to Section 3-424(l)(1)(ii)].

- (3) If a member becomes disabled while participating in DROP, the member shall be eligible to apply for disability retirement and shall be subject to the same disability eligibility requirements under Section 3-412 as if the member were not in DROP. Notwithstanding Section 3-413 (Allowance at Disability Retirement), if the Board grants the application, whether for a service-connected or non-service-connected disability, the amount of the disability retirement allowance shall be the same as the amount then being credited monthly to the member's DROP account. However, if the Board determines that the disability is service-connected, the amount of the aggregate disability retirement allowance which equals (or is less than) fifty percent (50%) of the member's average compensation shall be in the nature of workmen's compensation and shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.
- (4) If a member dies due to non service-connected causes while participating in DROP, the member shall be deemed to have died after retirement.
- (5) If a member dies on or after June 1, 2008 while participating in DROP and the Board determines that the causes are service-connected, the member shall be deemed to have suffered a service-connected death, with the survivorship benefit to be comprised solely of two-thirds the monthly amount currently being credited into the member's DROP account, adjusted for any optional modification elected by the member, and the balance in the DROP account paid pursuant to Sections 3-424(f) and 3-424(g)(2). If any benefits paid under this section are paid as a survivor annuity to the surviving spouse (or former spouse) or child(ren) of a member who qualifies as a public safety officer within the meaning of Section 101(h) of the Internal Revenue Code, and such member is killed in

the line of duty, such monthly death allowance shall be nontaxable to the extent allowed by Section 101(h) of the Internal Revenue Code. However, if the member or the member's death does not qualify under Section 101(h) of the Internal Revenue Code, then, if the Board determines that the member's death was service-connected, the amount of the monthly death allowance which equals (or is less than) fifty percent (50%) of the member's average compensation shall be in the nature of workmen's compensation and shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.

- (6) If a member marries while participating in DROP, the marriage shall be deemed to have occurred prior to the member's retirement only for purposes of satisfying any applicable benefit eligibility requirement.

(f) Designation of DROP Beneficiary.

- (1) A member electing to participate in DROP shall designate a beneficiary of the member's DROP account.
- (2) If a member dies while participating in DROP,
 - (i) A designated DROP account beneficiary who is either a surviving spouse or surviving domestic partner of the member or a child under the age of 18 of the member or a dependent parent of the member shall be entitled to select a form of distribution under Section 3-424(g)(2); or
 - (ii) A designated DROP beneficiary who is not listed in Section 3-424(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or

(iii) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.

(3) No DROP beneficiary designation shall modify a member's community property obligations under California law.

(g) Distribution of DROP Account.

(1) Upon termination of DROP participation and upon retirement from the City, a member shall:

- (i) Receive the amounts credited to the member's DROP account, including interest; and
- (ii) Begin receiving a monthly retirement allowance in the amount being credited to the member's DROP account.

(2) A member upon the completion of the ~~designated~~ DROP participation period shall select one of the following as the form of distribution of the member's DROP account:

- (i) A lump sum; or
- (ii) An amount payable monthly in equal monthly installments in accord with applicable provisions of the Internal Revenue Code;

- 1. The member shall be entitled to select an installment pay-out period not to exceed ~~the lesser of ten years or~~ the joint life expectancies of the member and the member's spouse;

2. The balance in the member's DROP account during the installment pay-out period shall be credited with simple interest monthly at the actuarially assumed interest rate;
3. No cost-of-living adjustment shall be made to the monthly amount;
4. Payments of the monthly amount shall terminate when the balance in the DROP account is reduced to zero;
5. If the retired member dies prior to receipt of the member's entire DROP account, then:
 - (a) A designated DROP beneficiary who is listed in Section 3-424(f)(2)(i) shall be entitled to select a form of distribution under Section 3-424(g)(2); or
 - (b) A designated DROP beneficiary who is not listed in Section 3-424(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or
 - (c) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.
6. The retired member may at any time request immediate payment of the entire balance remaining in the member's DROP account; or
- (iii) Such other form of distribution, as is adopted by the Board and in accord with applicable provisions of the Internal Revenue Code.

- (3) No distribution shall be made from a member's DROP account until the member terminates DROP participation.
- (4) If a member dies while participating in DROP, the member's DROP account shall be paid pursuant to Sections 3-424(f) and 3-424(g)(2).
- (h) **Termination of DROP Participation.** A member's participation in DROP shall automatically terminate upon the earliest occurrence of any of the following events:
 - (1) Completion of the member's ~~designated~~ DROP participation period; or
 - (2) Death of the member; or
 - (3) Approval by the Board of the member's application for a disability retirement; or
 - (4) Voluntary termination of a member's employment; or
 - (5) Involuntary termination of a member's employment, whether or not for cause, including layoffs or reductions in force and including the conclusion of any administrative or judicial appeals process.
- (i) **General DROP Provisions.**
 - (1) The right is reserved at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions relating to DROP. But no amendment shall be enacted which has the effect of decreasing the amount credited to a member's DROP account.
 - (2) The Board shall enact such rules and procedures as are necessary or appropriate to administer DROP.
 - (3) The Board shall issue annually to each DROP participant a statement of that member's DROP account balance.

(j) **Compliance with Applicable Provisions of the Internal Revenue Code and other Federal Laws.**

- (1) It is intended that DROP shall not jeopardize the tax-qualified status of the System under the Internal Revenue Code. Full rights are reserved to modify this section to the extent necessary or appropriate to insure that DROP complies with applicable federal laws, regulations, and administrative rulings.
- (2) Notwithstanding any other provision in this section, the DROP program shall be subject to the sections of the Internal Revenue Code applicable to governmental plans, as amended, and the regulations and rulings under those sections.

(k) **Employment Status During DROP Participation.** The employment status of a member electing to participate in DROP shall not be affected by that election.

[(l) **Adjustments to maintain the cost neutrality of DROP.**

- (1) Notwithstanding any other provision in this Section 3-424 to the contrary, based on the Board's review and consideration of the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP, the Board shall adopt the following modifications to DROP in the order listed only as determined by the Board to be necessary to maintain the cost neutrality of DROP.
 - (i) Set the annual effective DROP interest rate determined pursuant to Section 3-424(d)(5) to a percentage rate below the average net rate of return as determined in Section 3-424(d)(4) but not below zero percent.

- (ii) Reduce the percentage of the member's contributions deposited into the member's DROP account pursuant to Section 3-424(e)(2) below one hundred percent (100%), with the difference credited to the Retirement Fund.
- (iii) Reduce the percentage of cost-of-living adjustments reflected in the monthly amount credited to a member's DROP account pursuant to Section 3-424(c)(4) below one hundred percent (100%). Any such reduction in cost-of-living adjustments during DROP participation will continue to be reflected in the member's monthly retirement allowance received pursuant to Section 3-424(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.
- (iv) Reduce the percentage of the service retirement allowance credited monthly to a member's DROP account pursuant to Section 3-424(c)(3) below one hundred percent (100%). Any such reduction will not be reflected in the member's monthly retirement allowance received pursuant to Section 3-424(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.]

SECTION 3. 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, TODD STERMER, 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 _____, 2024.

AYES :

NOES :

ABSENT :

ABSTAIN :

Mayor Approval: _____, 2024

Mayor Approval/No Return: _____, 2024

Mayor Veto: _____, 2024

Council Override Vote: _____, 2024

TODD STERMER, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:

ANDREW JANZ,
City Attorney

BY: _____
Deputy Date

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING SECTION 3-410 AND SECTION 3-424 OF THE
FRESNO MUNICIPAL CODE TO MODIFY THE DROP
PROVISIONS OF THE SECOND TIER OF THE FIRE AND
POLICE RETIREMENT SYSTEM

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

SECTION 1. Section 3-410 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-410. - SERVICE RETIREMENT.

Retirement of a member for service shall be made by the Retirement Board as follows:

- (1) [Subject to Section 3-424(e)(2) except in the case of a member who prior to entering DROP had ceased making contributions under this section, e]very member who attains age sixty, who shall have completed five years of service after qualifying for service retirement shall not be required to make further contributions to the Retirement Fund. If such member shall not have completed five years of service after qualification for service retirement, then the member shall be required to contribute to the Retirement Fund only until those five years of service are completed;
- (2) Any member may retire upon written application to the Retirement Board, stating what time the member desires to be retired, provided that said member shall be entitled to be credited, at the time so specified for the member's retirement, with at least five years of service in the aggregate, and shall have attained the age of fifty years.

Date Adopted:
Date Approved:
Effective Date:
City Attorney Approval: _____

Page 1 of 14

Ordinance No. _____

SECTION 2. Section 3-424 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-424. - DEFERRED RETIREMENT OPTION PROGRAM ("DROP").

(a) Purpose of DROP.

- (1) It is the intent of this section to create a voluntary deferred retirement option program ("DROP") for members.
- (2) DROP is designed to be an alternate method of receiving retirement benefits.
- (3) DROP is intended to be cost neutral to the System.
- (4) DROP is intended to provide additional flexibility to the System by providing members with an additional method of receiving their retirement benefits.
- (5) It is the intent of DROP not to jeopardize in any way the tax-qualified status of the System under the Internal Revenue Code. The provisions of this section may at any time be modified, with such modifications being given retroactive effect, if necessary to maintain the System's tax-qualified status.

(b) Eligibility and Election to Participate in DROP.

- (1) Any member who has attained age 50 and who possesses sufficient credited service to be eligible for a service retirement shall be eligible to participate in DROP.
- (2) The election to participate in DROP shall be voluntary and irrevocable. The election shall:
 - (i) Be made on a form provided by the System;
 - (ii) [Affirm] a period of participation not to exceed one hundred and twenty (120) months;

- (iii) Affirm that the member, on the date the member commences participation in DROP, shall cease accruing service credits;
 - (iv) Affirm that the member agrees to terminate City employment no later than completion of the DROP participation period;
 - (v) Constitute an application for service retirement no later than the end of the DROP participation period; and
 - (vi) Include the member's irrevocable election among the options in Section 3-417 (Optional Modification of Allowances).
- (3) A member making the election shall execute such waivers with respect to state and federal employment discrimination and related laws, such releases, and such covenants as are required by the City or the System.
- (4) By electing to participate in DROP:
- (i) A member becomes subject to all of the provisions of this section;
 - (ii) For a member whose retirement allowance is determined under Section 3-401 (Definitions), average compensation shall be determined solely by reference to the rank or ranks held by the member prior to the date the member commences participation in DROP;
 - (iii) If a member is entitled to convert a sick or holiday or other leave balance into a lump sum cash payment upon retirement, the dollar value of the member's leave balance as of the effective date of DROP participation shall be divided by thirty-six, and the resulting quotient shall be added to the highest average monthly compensation earnable by a member during any thirty-six consecutive months of

service prior to commencing participation in DROP used for purposes of determining average compensation under Section 3-401 (Definition);

1. The employee contributions due with respect to the leave balance shall be charged against the member's DROP account;
2. Any changes in leave balances occurring after the member commences participation in DROP shall not affect in any manner the amounts credited to the member's DROP account or the member's retirement allowance, whether for service or disability, payable to the member; and

(iv) A member shall have DROP benefits credited to a DROP account pursuant to subsection (c) of this section.

(c) DROP Accounts and DROP Benefits.

- (1) A DROP account is a nominal, bookkeeping account established within the System for each DROP participant. No System assets shall be separately segregated for any DROP account; a DROP participant shall not have a claim on any specific assets of the System.
- (2) Amounts credited to a member's DROP account shall be vested, except to the extent deemed necessary by the Board in its sole discretion to maintain the System's tax-qualified status under the Internal Revenue Code.
- (3) [Unless adjusted pursuant to Section 3-424(l)(1)(iv), a] member's DROP account shall be credited monthly with an amount which represents [one hundred percent (100%) of] the service retirement allowance which the member would have received if the member had retired on the date the member commenced DROP participation.

- (4) [Unless adjusted pursuant to Section 3-424(l)(1)(iii), t]he monthly amount credited to a member's DROP account shall reflect [one hundred percent (100%) of] any cost-of-living adjustments otherwise applicable to retired members.
- (5) A member's DROP account shall be credited monthly with interest pursuant to subsection (d) of this section.

(d) Interest Crediting to DROP Accounts.

- (1) Each DROP account shall be credited monthly with interest at the nominal monthly interest rate equivalent to the annual effective DROP interest rate adopted by the Board. The nominal monthly interest rate shall apply to the balance in each DROP account as of the beginning of each month and shall be applied before the monthly amount described in Section 3-424(c)(3) for that month has been credited to the account.
- (2) The Board shall set an annual effective DROP interest rate, which shall apply to each DROP account during the retirement system's fiscal year in which the Board set the rate.
- (3) In setting the annual effective DROP interest rate, the Board shall review and consider the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP.
- (4) The Board shall review the net rate of return earned by the System's entire investment portfolio for each of the five prior fiscal years, including realized and unrealized gains and losses and as reduced by all investment expenses. These net rates of return shall be certified by the System's Retirement Administrator. The sum of the five net rates of return shall be divided by five to provide an average net rate of return.

- (5) [Unless adjusted pursuant to Section 3-424(l)(1)(i)] to maintain the cost neutrality of the DROP[,] [t]he Board shall set the annual effective DROP interest rate [equal to] the average net rate of return as determined in Section 3-424(d)(4)[, except that the annual effective DROP interest rate set by the Board shall not be less than zero percent].

(e) Additional DROP Provisions.

- (1) The effective date of DROP participation for a member shall be the first of the month following the date the Board approves the member's fully completed DROP application.
- (2) [Notwithstanding section 3-410(1) except in the case of a member who prior to entering DROP had ceased making contributions under that section,] [f]or a member whose effective date in DROP is prior to the effective date of Ordinance No. 2011-1 and notwithstanding Section 3-405 (Normal Contributions of Members), the member shall cease making contributions to the System. For a member whose effective date of participation in DROP is on or after the effective date of Ordinance No. [2011-1], the member shall continue to make contributions [of] which [one hundred percent (100%)] shall be deposited into the member's DROP account [unless adjusted pursuant to Section 3-424(l)(1)(ii)].
- (3) If a member becomes disabled while participating in DROP, the member shall be eligible to apply for disability retirement and shall be subject to the same disability eligibility requirements under Section 3-412 as if the member were not in DROP. Notwithstanding Section 3-413 (Allowance at Disability Retirement), if the Board grants the application, whether for a service-connected or non-service-connected disability, the amount of the disability retirement allowance shall be the same as the amount then being credited

monthly to the member's DROP account. However, if the Board determines that the disability is service-connected, the amount of the aggregate disability retirement allowance which equals (or is less than) fifty percent (50%) of the member's average compensation shall be in the nature of workmen's compensation and shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.

- (4) If a member dies due to non service-connected causes while participating in DROP, the member shall be deemed to have died after retirement.
- (5) If a member dies on or after June 1, 2008 while participating in DROP and the Board determines that the causes are service-connected, the member shall be deemed to have suffered a service-connected death, with the survivorship benefit to be comprised solely of two-thirds the monthly amount currently being credited into the member's DROP account, adjusted for any optional modification elected by the member, and the balance in the DROP account paid pursuant to Sections 3-424(f) and 3-424(g)(2). If any benefits paid under this section are paid as a survivor annuity to the surviving spouse (or former spouse) or child(ren) of a member who qualifies as a public safety officer within the meaning of Section 101(h) of the Internal Revenue Code, and such member is killed in the line of duty, such monthly death allowance shall be nontaxable to the extent allowed by Section 101(h) of the Internal Revenue Code. However, if the member or the member's death does not qualify under Section 101(h) of the Internal Revenue Code, then, if the Board determines that the member's death was service-connected, the amount of the monthly death allowance which equals (or is less than) fifty percent (50%) of the member's average compensation shall be in the nature of workmen's compensation and

shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.

- (6) If a member marries while participating in DROP, the marriage shall be deemed to have occurred prior to the member's retirement only for purposes of satisfying any applicable benefit eligibility requirement.

(f) Designation of DROP Beneficiary.

- (1) A member electing to participate in DROP shall designate a beneficiary of the member's DROP account.
- (2) If a member dies while participating in DROP,
 - (i) A designated DROP account beneficiary who is either a surviving spouse or surviving domestic partner of the member or a child under the age of 18 of the member or a dependent parent of the member shall be entitled to select a form of distribution under Section 3-424(g)(2); or
 - (ii) A designated DROP beneficiary who is not listed in Section 3-424(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or
 - (iii) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.
- (3) No DROP beneficiary designation shall modify a member's community property obligations under California law.

(g) Distribution of DROP Account.

- (1) Upon termination of DROP participation and upon retirement from the City, a member shall:
 - (i) Receive the amounts credited to the member's DROP account, including interest;
and
 - (ii) Begin receiving a monthly retirement allowance in the amount being credited to the member's DROP account.
- (2) A member upon the completion of the DROP participation period shall select one of the following as the form of distribution of the member's DROP account:
 - (i) A lump sum; or
 - (ii) An amount payable monthly in equal monthly installments in accord with applicable provisions of the Internal Revenue Code;
 1. The member shall be entitled to select an installment pay-out period not to exceed the joint life expectancies of the member and the member's spouse;
 2. The balance in the member's DROP account during the installment pay-out period shall be credited with simple interest monthly at the actuarially assumed interest rate;
 3. No cost-of-living adjustment shall be made to the monthly amount;
 4. Payments of the monthly amount shall terminate when the balance in the DROP account is reduced to zero;
 5. If the retired member dies prior to receipt of the member's entire DROP account, then:

- (a) A designated DROP beneficiary who is listed in Section 3-424(f)(2)(i) shall be entitled to select a form of distribution under Section 3-424(g)(2); or
- (b) A designated DROP beneficiary who is not listed in Section 3-424(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or
- (c) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.

6. The retired member may at any time request immediate payment of the entire balance remaining in the member's DROP account; or

(iii) Such other form of distribution, as is adopted by the Board and in accord with applicable provisions of the Internal Revenue Code.

(3) No distribution shall be made from a member's DROP account until the member terminates DROP participation.

(4) If a member dies while participating in DROP, the member's DROP account shall be paid pursuant to Sections 3-424(f) and 3-424(g)(2).

(h) **Termination of DROP Participation.** A member's participation in DROP shall automatically terminate upon the earliest occurrence of any of the following events:

- (1) Completion of the member's DROP participation period; or
- (2) Death of the member; or
- (3) Approval by the Board of the member's application for a disability retirement; or

- (4) Voluntary termination of a member's employment; or
- (5) Involuntary termination of a member's employment, whether or not for cause, including layoffs or reductions in force and including the conclusion of any administrative or judicial appeals process.

(i) **General DROP Provisions.**

- (1) The right is reserved at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions relating to DROP. But no amendment shall be enacted which has the effect of decreasing the amount credited to a member's DROP account.
- (2) The Board shall enact such rules and procedures as are necessary or appropriate to administer DROP.
- (3) The Board shall issue annually to each DROP participant a statement of that member's DROP account balance.

(j) **Compliance with Applicable Provisions of the Internal Revenue Code and other Federal Laws.**

- (1) It is intended that DROP shall not jeopardize the tax-qualified status of the System under the Internal Revenue Code. Full rights are reserved to modify this section to the extent necessary or appropriate to insure that DROP complies with applicable federal laws, regulations, and administrative rulings.
- (2) Notwithstanding any other provision in this section, the DROP program shall be subject to the sections of the Internal Revenue Code applicable to governmental plans, as amended, and the regulations and rulings under those sections.

(k) **Employment Status During DROP Participation.** The employment status of a member electing to participate in DROP shall not be affected by that election.

[(1) Adjustments to maintain the cost neutrality of DROP.

(1) Notwithstanding any other provision in this Section 3-424 to the contrary, based on the Board's review and consideration of the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP, the Board shall adopt the following modifications to DROP in the order listed only as determined by the Board to be necessary to maintain the cost neutrality of DROP.

(i) Set the annual effective DROP interest rate determined pursuant to Section 3-424(d)(5) to a percentage rate below the average net rate of return as determined in Section 3-424(d)(4) but not below zero percent.

(ii) Reduce the percentage of the member's contributions deposited into the member's DROP account pursuant to Section 3-424(e)(2) below one hundred percent (100%), with the difference credited to the Retirement Fund.

(iii) Reduce the percentage of cost-of-living adjustments reflected in the monthly amount credited to a member's DROP account pursuant to Section 3-424(c)(4) below one hundred percent (100%). Any such reduction in cost-of-living adjustments during DROP participation will continue to be reflected in the member's monthly retirement allowance received pursuant to Section 3-424(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.

(iv) Reduce the percentage of the service retirement allowance credited monthly to a member's DROP account pursuant to Section 3-424(c)(3) below one hundred percent (100%). Any such reduction will not be reflected in the member's monthly retirement allowance received pursuant to Section 3-424(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.]

SECTION 3. 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, TODD STERMER, 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 _____, 2024.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2024

Mayor Approval/No Return: _____, 2024

Mayor Veto: _____, 2024

Council Override Vote: _____, 2024

TODD STERMER, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:

ANDREW JANZ,
City Attorney

BY: _____
Deputy Date

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING SECTION 3-566 OF THE FRESNO MUNICIPAL
CODE TO MODIFY THE DROP PROVISIONS OF THE
EMPLOYEES RETIREMENT SYSTEM

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

SECTION 1. Section 3-566 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-566. - DEFERRED RETIREMENT OPTION PROGRAM ("DROP").

(a) **Purpose of DROP.**

- (1) It is the intent of this section to create a voluntary deferred retirement option program ("DROP") for members.
- (2) DROP is designed to be an alternate method of receiving retirement benefits.
- (3) DROP is intended to be cost neutral to the System.
- (4) DROP is intended to provide additional flexibility to the System by providing members with an additional method of receiving their retirement benefits.
- (5) It is the intent of DROP not to jeopardize in any way the tax-qualified status of the System under the Internal Revenue Code. The provisions of this section may at any time be modified, with such modifications being given retroactive effect, if necessary to maintain the System's tax-qualified status.

(b) **Eligibility and Election to Participate in DROP.**

- (1) Any member who has attained age 55 and who possesses sufficient credited service to be eligible for a service retirement shall be eligible to participate in DROP. The

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: 

eligibility age of fifty-five may be reduced to an age not less than age fifty, provided the member consents in writing to the early retirement reduction provisions set forth in section 3-541(4).

(2) The election to participate in DROP shall be voluntary and irrevocable. The election shall:

- (i) Be made on a form provided by the System;
- (ii) ~~Designate~~[Affirm] a period of participation not to exceed one hundred and twenty (120) months;
- (iii) Affirm that the member, on the date the member commences participation in DROP, shall cease accruing service credits;
- (iv) Affirm that the member agrees to terminate City employment no later than completion of the ~~designated~~ DROP participation period;
- (v) Constitute an application for service retirement no later than the end of the ~~designated~~ DROP participation period; and
- (vi) Include the member's irrevocable election among the options in Section 3-554 (Optional Modification of Allowances).

(3) A member making the election shall execute such waivers with respect to state and federal employment discrimination and related laws, such releases, and such covenants as are required by the City or the System.

(4) By electing to participate in DROP:

- (i) A member becomes subject to all of the provisions of this section;
- (ii) For a member whose retirement allowance is determined under Section 3-501 (Definitions), average final compensation shall be determined solely by reference

to the position or positions held by the member prior to the date the member commences participation in DROP; and

(iii) A member shall have DROP benefits credited to a DROP account pursuant to subsection (c) of this section.

(c) DROP Accounts and DROP Benefits.

- (1) A DROP account is a nominal, bookkeeping account established within the System for each DROP participant. No System assets shall be separately segregated for any DROP account; a DROP participant shall not have a claim on any specific assets of the System.
- (2) Amounts credited to a member's DROP account shall be vested, except to the extent deemed necessary by the Board in its sole discretion to maintain the System's tax-qualified status under the Internal Revenue Code.
- (3) [Unless adjusted pursuant to Section 3-566(l)(1)(iv), a] A member's DROP account shall be credited monthly with an amount which represents [one hundred percent (100%) of] the service retirement allowance which the member would have received if the member had retired on the date the member commenced DROP participation.
- (4) [Unless adjusted pursuant to Section 3-566(l)(1)(iii), t] The monthly amount credited to a member's DROP account shall reflect [one hundred percent (100%) of] any cost-of-living adjustments otherwise applicable to retired members.
- (5) A member's DROP account shall be credited monthly with interest pursuant to subsection (d) of this section.

(d) Interest Crediting to DROP Accounts.

- (1) Each DROP account shall be credited monthly with interest at the nominal monthly interest rate equivalent to the annual effective DROP interest rate adopted by the Board.

The nominal monthly interest rate shall apply to the balance in each DROP account as of the beginning of each month and shall be applied before the monthly amount described in Section 3-566(c)(3) for that month has been credited to the account.

- (2) The Board shall set an annual effective DROP interest rate, which shall apply to each DROP account during the retirement system's fiscal year in which the Board set the rate.
- (3) In setting the annual effective DROP interest rate, the Board shall review and consider the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP.
- (4) The Board shall review the net rate of return earned by the System's entire investment portfolio for each of the five prior fiscal years, including realized and unrealized gains and losses and as reduced by all investment expenses. These net rates of return shall be certified by the System's Retirement Administrator. The sum of the five net rates of return shall be divided by five to provide an average net rate of return.
- (5) ~~[Unless adjusted pursuant to Section 3-566(l)(1)(i)]~~ ~~The Board shall set the annual effective drop interest rate at a level it deems in its sole discretion necessary~~ to maintain the cost neutrality of the DROP ~~program.~~ ~~T~~[t]he Board shall ~~not~~ set the annual effective DROP interest rate ~~lower than 3 percent below~~ [equal to] the average net rate of return as determined in Section 3-566(d)(4) [, except that the annual effective DROP interest rate set by the Board shall not be less than zero percent] ~~nor higher than that average net rate of return.~~
- ~~(6) If the average net rate of return determined in Section 3-566(d)(4) is negative, the Board shall set a negative annual effective DROP interest rate, i.e., each DROP account balance shall be reduced accordingly.~~

(e) **Additional DROP Provisions.**

- (1) The effective date of DROP participation for a member shall be the first of the month following the date the Board approves the member's fully completed DROP application.
- (2) For a member whose effective date in DROP is prior to the effective date of Ordinance No. 2011-2 and notwithstanding Section 3-523 (Normal Contributions of Members) and Section 3-533(e) (Cost of Living Adjustment), the member shall cease making contributions to the System. For a member whose effective date of participation in DROP is on or after the effective date of Ordinance No. 2011-2, the member shall continue to make contributions [of] which [one hundred percent (100%)] shall be deposited into the member's DROP account [unless adjusted pursuant to Section 3-566(l)(1)(ii)].
- (3) If a member becomes disabled while participating in DROP, the member shall be eligible to apply for disability retirement and shall be subject to the same disability eligibility requirements under Section 3-546 as if the member were not in DROP. Notwithstanding Section 3-547 (Allowance at Disability Retirement), if the Board grants the application, whether for a service-connected or non-service-connected disability, the amount of the disability retirement allowance shall be the same as the amount then being credited monthly to the member's DROP account. However, if the Board determines that the disability is service-connected, the amount of the aggregate disability retirement allowance which equals (or is less than) one-third of the member's final compensation shall be in the nature of workmen's compensation and shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.

- (4) If a member dies due to non service-connected causes while participating in DROP, the member shall be deemed to have died after retirement.
 - (5) If a member dies on or after June 1, 2008 while participating in DROP and the Board determines that the causes are service-connected, the member shall be deemed to have suffered a service-connected death, with the survivorship benefit to be comprised solely of one-half the monthly amount currently being credited into the member's DROP account, adjusted for any optional modification elected by the member, and the balance in the DROP account paid pursuant to Sections 3-566(f) and 3-566(g)(2). If the Board determines that the member's death was service-connected, the amount of the survivorship benefit which equals (or is less than) one-third of the member's final compensation shall be in the nature of workmen's compensation and shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.
 - (6) If a member marries while participating in DROP, the marriage shall be deemed to have occurred prior to the member's retirement only for purposes of satisfying any applicable benefit eligibility requirement.
- (f) **Designation of DROP Beneficiary.**
- (1) A member electing to participate in DROP shall designate a beneficiary of the member's DROP account.
 - (2) If a member dies while participating in DROP,
 - (i) A designated DROP account beneficiary who is either a surviving spouse or surviving domestic partner of the member or a child under the age of 18 of the member or a dependent parent of the member shall be entitled to select a form of distribution under Section 3-566(g)(2); or

(ii) A designated DROP beneficiary who is not listed in Section 3-566(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or

(iii) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.

(3) No DROP beneficiary designation shall modify a member's community property obligations under California law.

(g) Distribution of DROP Account.

(1) Upon termination of DROP participation and upon retirement from the City, a member shall:

(i) Receive the amounts credited to the member's DROP account, including interest; and

(ii) Begin receiving a monthly retirement allowance in the amount being credited to the member's DROP account.

(2) A member upon the completion of the ~~designated~~ DROP participation period shall select one of the following as the form of distribution of the member's DROP account:

(i) A lump sum; or

(ii) An amount payable monthly in equal monthly installments in accord with applicable provisions of the Internal Revenue Code;

1. The member shall be entitled to select an installment pay-out period not to exceed ~~the lesser of ten years or~~ the joint life expectancies of the member and the member's spouse;

2. The balance in the member's DROP account during the installment pay-out period shall be credited with simple interest monthly at the actuarially assumed interest rate;
 3. No cost-of-living adjustment shall be made to the monthly amount;
 4. Payments of the monthly amount shall terminate when the balance in the DROP account is reduced to zero;
 5. If the retired member dies prior to receipt of the member's entire DROP account, then:
 - (a) A designated DROP beneficiary who is listed in Section 3-566(f)(2)(i) shall be entitled to select a form of distribution under Section 3-566(g)(2); or
 - (b) A designated DROP beneficiary who is not listed in Section 3-566(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or
 - (c) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.
 6. The retired member may at any time request immediate payment of the entire balance remaining in the member's DROP account; or
- (iii) Such other form of distribution, as is adopted by the Board and in accord with applicable provisions of the Internal Revenue Code.
- (3) No distribution shall be made from a member's DROP account until the member terminates DROP participation.

- (4) If a member dies while participating in DROP, the member's DROP account shall be paid pursuant to Sections 3-566(f) and 3-566(g)(2).
- (h) **Termination of DROP Participation.** A member's participation in DROP shall automatically terminate upon the earliest occurrence of any of the following events:
- (1) Completion of the member's ~~designated~~-DROP participation period; or
 - (2) Death of the member; or
 - (3) Approval by the Board of the member's application for a disability retirement; or
 - (4) Voluntary termination of a member's employment; or
 - (5) Involuntary termination of a member's employment, whether or not for cause, including layoffs or reductions in force and including the conclusion of any administrative or judicial appeals process.
- (i) **General DROP Provisions.**
- (1) The right is reserved at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions relating to DROP. But no amendment shall be enacted which has the effect of decreasing the amount credited to a member's DROP account.
 - (2) The Board shall enact such rules and procedures as are necessary or appropriate to administer DROP.
 - (3) The Board shall issue annually to each DROP participant a statement of that member's DROP account balance.
- (j) **Compliance with Applicable Provisions of the Internal Revenue Code and other Federal Laws.**

- (1) It is intended that DROP shall not jeopardize the tax-qualified status of the System under the Internal Revenue Code. Full rights are reserved to modify this section to the extent necessary or appropriate to insure that DROP complies with applicable federal laws, regulations, and administrative rulings.
 - (2) Notwithstanding any other provision in this section, the DROP program shall be subject to the sections of the Internal Revenue Code applicable to governmental plans, as amended, and the regulations and rulings under those sections.
- (k) **Employment Status During DROP Participation.** The employment status of a member electing to participate in DROP shall not be affected by that election.

[(l) Adjustments to maintain the cost neutrality of DROP.]

- (1) Notwithstanding any other provision in this Section 3-566 to the contrary, based on the Board's review and consideration of the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP, the Board shall adopt the following modifications to DROP in the order listed only as determined by the Board to be necessary to maintain the cost neutrality of DROP.
 - (i) Set the annual effective DROP interest rate determined pursuant to Section 3-566(d)(5) to a percentage rate below the average net rate of return as determined in Section 3-566(d)(4) but not below zero percent.
 - (ii) Reduce the percentage of the member's contributions deposited into the member's DROP account pursuant to Section 3-566(e)(2) below one hundred percent (100%), with the difference credited to the Retirement Fund.
 - (iii) Reduce the percentage of cost-of-living adjustments reflected in the monthly amount credited to a member's DROP account pursuant to Section 3-566(c)(4)

below one hundred percent (100%). Any such reduction in cost-of-living adjustments during DROP participation will continue to be reflected in the member's monthly retirement allowance received pursuant to Section 3-566(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.

(iv) Reduce the percentage of the service retirement allowance credited monthly to a member's DROP account pursuant to Section 3-566(c)(3) below one hundred percent (100%). Any such reduction will not be reflected in the member's monthly retirement allowance received pursuant to Section 3-566(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.]

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, TODD STERMER, 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 _____, 2024.

AYES :
NOES :
ABSENT :
ABSTAIN :
Mayor Approval: _____, 2024
Mayor Approval/No Return: _____, 2024
Mayor Veto: _____, 2024
Council Override Vote: _____, 2024

TODD STERMER, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
ANDREW JANZ,
City Attorney

BY: _____
Deputy Date

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING SECTION 3-566 OF THE FRESNO MUNICIPAL
CODE TO MODIFY THE DROP PROVISIONS OF THE
EMPLOYEES RETIREMENT SYSTEM

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

SECTION 1. Section 3-566 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-566. - DEFERRED RETIREMENT OPTION PROGRAM ("DROP").

(a) **Purpose of DROP.**

- (1) It is the intent of this section to create a voluntary deferred retirement option program ("DROP") for members.
- (2) DROP is designed to be an alternate method of receiving retirement benefits.
- (3) DROP is intended to be cost neutral to the System.
- (4) DROP is intended to provide additional flexibility to the System by providing members with an additional method of receiving their retirement benefits.
- (5) It is the intent of DROP not to jeopardize in any way the tax-qualified status of the System under the Internal Revenue Code. The provisions of this section may at any time be modified, with such modifications being given retroactive effect, if necessary to maintain the System's tax-qualified status.

(b) **Eligibility and Election to Participate in DROP.**

- (1) Any member who has attained age 55 and who possesses sufficient credited service to be eligible for a service retirement shall be eligible to participate in DROP. The

Date Adopted:

Page 1 of 12

Date Approved

Effective Date:

City Attorney Approval: _____

Ordinance No. _____

eligibility age of fifty-five may be reduced to an age not less than age fifty, provided the member consents in writing to the early retirement reduction provisions set forth in section 3-541(4).

- (2) The election to participate in DROP shall be voluntary and irrevocable. The election shall:
 - (i) Be made on a form provided by the System;
 - (ii) [Affirm] a period of participation not to exceed one hundred and twenty (120) months;
 - (iii) Affirm that the member, on the date the member commences participation in DROP, shall cease accruing service credits;
 - (iv) Affirm that the member agrees to terminate City employment no later than completion of the DROP participation period;
 - (v) Constitute an application for service retirement no later than the end of the DROP participation period; and
 - (vi) Include the member's irrevocable election among the options in Section 3-554 (Optional Modification of Allowances).
- (3) A member making the election shall execute such waivers with respect to state and federal employment discrimination and related laws, such releases, and such covenants as are required by the City or the System.
- (4) By electing to participate in DROP:
 - (i) A member becomes subject to all of the provisions of this section;
 - (ii) For a member whose retirement allowance is determined under Section 3-501 (Definitions), average final compensation shall be determined solely by reference

to the position or positions held by the member prior to the date the member commences participation in DROP; and

- (iii) A member shall have DROP benefits credited to a DROP account pursuant to subsection (c) of this section.

(c) DROP Accounts and DROP Benefits.

- (1) A DROP account is a nominal, bookkeeping account established within the System for each DROP participant. No System assets shall be separately segregated for any DROP account; a DROP participant shall not have a claim on any specific assets of the System.
- (2) Amounts credited to a member's DROP account shall be vested, except to the extent deemed necessary by the Board in its sole discretion to maintain the System's tax-qualified status under the Internal Revenue Code.
- (3) [Unless adjusted pursuant to Section 3-566(l)(1)(iv), a] member's DROP account shall be credited monthly with an amount which represents [one hundred percent (100%) of] the service retirement allowance which the member would have received if the member had retired on the date the member commenced DROP participation.
- (4) [Unless adjusted pursuant to Section 3-566(l)(1)(iii), t]he monthly amount credited to a member's DROP account shall reflect [one hundred percent (100%) of] any cost-of-living adjustments otherwise applicable to retired members.
- (5) A member's DROP account shall be credited monthly with interest pursuant to subsection (d) of this section.

(d) Interest Crediting to DROP Accounts.

- (1) Each DROP account shall be credited monthly with interest at the nominal monthly interest rate equivalent to the annual effective DROP interest rate adopted by the Board.

The nominal monthly interest rate shall apply to the balance in each DROP account as of the beginning of each month and shall be applied before the monthly amount described in Section 3-566(c)(3) for that month has been credited to the account.

- (2) The Board shall set an annual effective DROP interest rate, which shall apply to each DROP account during the retirement system's fiscal year in which the Board set the rate.
- (3) In setting the annual effective DROP interest rate, the Board shall review and consider the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP.
- (4) The Board shall review the net rate of return earned by the System's entire investment portfolio for each of the five prior fiscal years, including realized and unrealized gains and losses and as reduced by all investment expenses. These net rates of return shall be certified by the System's Retirement Administrator. The sum of the five net rates of return shall be divided by five to provide an average net rate of return.
- (5) [Unless adjusted pursuant to Section 3-566(l)(1)(i)] to maintain the cost neutrality of the DROP, [t]he Board shall set the annual effective DROP interest rate [equal to] the average net rate of return as determined in Section 3-566(d)(4)[, except that the annual effective DROP interest rate set by the Board shall not be less than zero percent].

(e) Additional DROP Provisions.

- (1) The effective date of DROP participation for a member shall be the first of the month following the date the Board approves the member's fully completed DROP application.
- (2) For a member whose effective date in DROP is prior to the effective date of Ordinance No. 2011-2 and notwithstanding Section 3-523 (Normal Contributions of Members) and Section 3-533(e) (Cost of Living Adjustment), the member shall cease making

contributions to the System. For a member whose effective date of participation in DROP is on or after the effective date of Ordinance No. 2011-2, the member shall continue to make contributions [of] which [one hundred percent (100%)] shall be deposited into the member's DROP account [unless adjusted pursuant to Section 3-566(l)(1)(ii)].

- (3) If a member becomes disabled while participating in DROP, the member shall be eligible to apply for disability retirement and shall be subject to the same disability eligibility requirements under Section 3-546 as if the member were not in DROP. Notwithstanding Section 3-547 (Allowance at Disability Retirement), if the Board grants the application, whether for a service-connected or non-service-connected disability, the amount of the disability retirement allowance shall be the same as the amount then being credited monthly to the member's DROP account. However, if the Board determines that the disability is service-connected, the amount of the aggregate disability retirement allowance which equals (or is less than) one-third of the member's final compensation shall be in the nature of workmen's compensation and shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.
- (4) If a member dies due to non service-connected causes while participating in DROP, the member shall be deemed to have died after retirement.
- (5) If a member dies on or after June 1, 2008 while participating in DROP and the Board determines that the causes are service-connected, the member shall be deemed to have suffered a service-connected death, with the survivorship benefit to be comprised solely of one-half the monthly amount currently being credited into the member's DROP account, adjusted for any optional modification elected by the member, and the balance

in the DROP account paid pursuant to Sections 3-566(f) and 3-566(g)(2). If the Board determines that the member's death was service-connected, the amount of the survivorship benefit which equals (or is less than) one-third of the member's final compensation shall be in the nature of workmen's compensation and shall be nontaxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.

- (6) If a member marries while participating in DROP, the marriage shall be deemed to have occurred prior to the member's retirement only for purposes of satisfying any applicable benefit eligibility requirement.

(f) Designation of DROP Beneficiary.

- (1) A member electing to participate in DROP shall designate a beneficiary of the member's DROP account.
- (2) If a member dies while participating in DROP,
 - (i) A designated DROP account beneficiary who is either a surviving spouse or surviving domestic partner of the member or a child under the age of 18 of the member or a dependent parent of the member shall be entitled to select a form of distribution under Section 3-566(g)(2); or
 - (ii) A designated DROP beneficiary who is not listed in Section 3-566(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or
 - (iii) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.
- (3) No DROP beneficiary designation shall modify a member's community property obligations under California law.

(g) Distribution of DROP Account.

- (1) Upon termination of DROP participation and upon retirement from the City, a member shall:
 - (i) Receive the amounts credited to the member's DROP account, including interest;
and
 - (ii) Begin receiving a monthly retirement allowance in the amount being credited to the member's DROP account.
- (2) A member upon the completion of the DROP participation period shall select one of the following as the form of distribution of the member's DROP account:
 - (i) A lump sum; or
 - (ii) An amount payable monthly in equal monthly installments in accord with applicable provisions of the Internal Revenue Code;
 1. The member shall be entitled to select an installment pay-out period not to exceed the joint life expectancies of the member and the member's spouse;
 2. The balance in the member's DROP account during the installment pay-out period shall be credited with simple interest monthly at the actuarially assumed interest rate;
 3. No cost-of-living adjustment shall be made to the monthly amount;
 4. Payments of the monthly amount shall terminate when the balance in the DROP account is reduced to zero;
 5. If the retired member dies prior to receipt of the member's entire DROP account, then:

- (a) A designated DROP beneficiary who is listed in Section 3-566(f)(2)(i) shall be entitled to select a form of distribution under Section 3-566(g)(2); or
- (b) A designated DROP beneficiary who is not listed in Section 3-566(f)(2)(i) shall receive a DROP account distribution in the form of a lump sum; or
- (c) If the designated DROP beneficiary is not then living, the balance in the DROP account in the form of a lump sum shall be distributed to the estate of the DROP participant.

6. The retired member may at any time request immediate payment of the entire balance remaining in the member's DROP account; or

(iii) Such other form of distribution, as is adopted by the Board and in accord with applicable provisions of the Internal Revenue Code.

(3) No distribution shall be made from a member's DROP account until the member terminates DROP participation.

(4) If a member dies while participating in DROP, the member's DROP account shall be paid pursuant to Sections 3-566(f) and 3-566(g)(2).

(h) **Termination of DROP Participation.** A member's participation in DROP shall automatically terminate upon the earliest occurrence of any of the following events:

- (1) Completion of the member's DROP participation period; or
- (2) Death of the member; or
- (3) Approval by the Board of the member's application for a disability retirement; or
- (4) Voluntary termination of a member's employment; or

- (5) Involuntary termination of a member's employment, whether or not for cause, including layoffs or reductions in force and including the conclusion of any administrative or judicial appeals process.

(i) General DROP Provisions.

- (1) The right is reserved at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions relating to DROP. But no amendment shall be enacted which has the effect of decreasing the amount credited to a member's DROP account.
- (2) The Board shall enact such rules and procedures as are necessary or appropriate to administer DROP.
- (3) The Board shall issue annually to each DROP participant a statement of that member's DROP account balance.

(j) Compliance with Applicable Provisions of the Internal Revenue Code and other Federal Laws.

- (1) It is intended that DROP shall not jeopardize the tax-qualified status of the System under the Internal Revenue Code. Full rights are reserved to modify this section to the extent necessary or appropriate to insure that DROP complies with applicable federal laws, regulations, and administrative rulings.
- (2) Notwithstanding any other provision in this section, the DROP program shall be subject to the sections of the Internal Revenue Code applicable to governmental plans, as amended, and the regulations and rulings under those sections.

(k) Employment Status During DROP Participation. The employment status of a member electing to participate in DROP shall not be affected by that election.

[(1) Adjustments to maintain the cost neutrality of DROP.

- (1) Notwithstanding any other provision in this Section 3-566 to the contrary, based on the Board's review and consideration of the most current actuarial report from the Board's actuary evaluating the cost neutrality of DROP, the Board shall adopt the following modifications to DROP in the order listed only as determined by the Board to be necessary to maintain the cost neutrality of DROP.
- (i) Set the annual effective DROP interest rate determined pursuant to Section 3-566(d)(5) to a percentage rate below the average net rate of return as determined in Section 3-566(d)(4) but not below zero percent.
 - (ii) Reduce the percentage of the member's contributions deposited into the member's DROP account pursuant to Section 3-566(e)(2) below one hundred percent (100%), with the difference credited to the Retirement Fund.
 - (iii) Reduce the percentage of cost-of-living adjustments reflected in the monthly amount credited to a member's DROP account pursuant to Section 3-566(c)(4) below one hundred percent (100%). Any such reduction in cost-of-living adjustments during DROP participation will continue to be reflected in the member's monthly retirement allowance received pursuant to Section 3-566(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.
 - (iv) Reduce the percentage of the service retirement allowance credited monthly to a member's DROP account pursuant to Section 3-566(c)(3) below one hundred percent (100%). Any such reduction will not be reflected in the member's monthly

retirement allowance received pursuant to Section 3-566(g)(1)(ii) upon termination of DROP participation and upon retirement from the City.]

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, TODD STERMER, 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 _____, 2024.

AYES :

NOES :

ABSENT :

ABSTAIN :

Mayor Approval: _____, 2024

Mayor Approval/No Return: _____, 2024

Mayor Veto: _____, 2024

Council Override Vote: _____, 2024

TODD STERMER, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:

ANDREW JANZ,
City Attorney

BY: _____
Deputy Date