

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO,  
CALIFORNIA, AMENDING SECTIONS 3-547, 3-550, 3-552,  
AND 3-566(e) OF THE FRESNO MUNICIPAL CODE  
RELATING TO THE DISABILITY, DEATH AND DROP  
PROVISIONS OF THE EMPLOYEES RETIREMENT  
SYSTEM

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

SECTION 1. Section 3-547 of the Fresno Municipal Code is amended to read as follows

SEC. 3-547. - ALLOWANCE AT DISABILITY RETIREMENT.

On or after the effective date of retirement for disability  
under Section 3-546, a member,

(a) if the member's disability, in the opinion of the Board, is service-  
connected, shall receive a retirement allowance which shall consist  
of:

(1) An annuity which shall be the actuarial equivalent of the  
member's accumulated contributions at the time of such  
retirement, and

(2) A pension derived from the contributions of the city which,  
together with the annuity provided by the member's  
accumulated contributions, shall make the retirement  
allowance equal to the greater of:

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Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:  \_\_\_\_\_

Ordinance amending / adding: \_\_\_\_\_

Ordinance No. \_\_\_\_\_

- (i) One and eight-tenths per cent of the member's final compensation multiplied by the number of years of city service credited to the member; or,
- (ii) One-third of the member's final compensation; or,
- (iii) if such member has qualified for retirement for service under this article, the amount of the member's service retirement allowance.

[(3) The benefits provided by this subsection are in the nature of workmen's compensation and shall be excluded from income to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.]

SECTION 2. Section 3-550 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-550. CONTINUATION OF RETIREMENT ALLOWANCES AFTER DEATH.

- (a) Upon the death of a retired member after retirement, including retired members receiving allowances[, including a service-connected disability retirement allowance in accordance with Section 3-547(a),] on the effective date of this section, one-half of the retirement allowance as it was at death, before modification under an option, shall be continued throughout life to the retired member's surviving spouse or surviving domestic partner. If there be no surviving spouse or surviving domestic partner entitled to an

allowance hereunder, or if the surviving spouse or surviving domestic partner so entitled dies before every child of such deceased member attains the age of eighteen years, then the allowance which the surviving spouse or surviving domestic partner would have received had the spouse or domestic partner lived shall be paid to the retired member's child or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any allowance after marrying or establishing a domestic partnership and no non-disabled child shall receive any allowance after attaining the age of eighteen years. Should the member leave no surviving spouse or surviving domestic partner and no children under the age of eighteen years but leave a child or children who, pursuant to terms and conditions adopted by the Retirement Board, is or are determined by the Board to have been disabled prior to age eighteen and whose disability continues past age eighteen, the child or children while so disabled shall collectively receive a monthly allowance equal to that which a surviving spouse or surviving domestic partner would have received. Should said retired member leave no surviving spouse or surviving domestic partner so entitled, no children under the age of eighteen years, and no disabled child whose disability continued past the age of eighteen years, but leave a parent or parents dependent upon the retired

member for support, the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving spouse or surviving domestic partner otherwise would have received, during such dependency. Contributions necessary for the payment of the continuance of one-half of allowances of retired members who are receiving allowances on the operative date of this section, shall be provided from the reserve held by the Retirement System on account of active members, the necessary amount being transferred upon said effective date from said reserves to the reserves held by the Retirement System to meet obligations on account of benefits that have been granted.

- (b) With respect to members retiring on or before the effective date of Ordinance No. 2000-5, an allowance shall be paid under this section to a surviving spouse only if the spouse was married to the retired member at least one year prior to retirement. With respect to members retiring after the effective date of Ordinance No. 2000-5, an allowance shall be paid under this section to a surviving spouse only if the spouse was married to the retired member as of the date of retirement or to a surviving domestic partner only if the domestic partnership had been established on or before the date of retirement.

[(c) If the member was receiving a service-connected disability retirement in accordance with Section 3-547(a) or Section 3-

566(e)(3) at the time of the member's death, the allowance provided in subsection (a) of this Section shall constitute a continuation of the member's service-connected disability retirement and shall be non-taxable to the extent allowed by Section 104(a)(1) of the Internal Revenue Code.]

SECTION 3. Section 3-552 of the Fresno Municipal Code is amended to read as follows:

**SEC. 3-552. ALLOWANCE AFTER DEATH BEFORE SERVICE RETIREMENT.**

- (a) Upon the death before retirement of a member who has credit for five or more years of continuous city service, and on account of whose death the benefit provided for in accordance with Section 3-537(a) is otherwise payable, a monthly allowance shall be paid as hereinafter provided in this section.
- (b) If the member is qualified at death for service retirement, the monthly allowance shall be equal to one-half of the monthly retirement allowance, prior to modification under options provided for in accordance with Section 3-554, which the member would have been entitled to receive if the member had retired for service on the day next following the date of his death. If the member at death is under age fifty-five, the monthly allowance shall be equal to one-half the monthly service retirement allowance, prior to modification under any such options, which the member had earned to the date of death, based on the member's city service to

and including the date of death, but assuming for the purpose of computing such retirement allowance that the member was age fifty-five at death.

- (c) The monthly allowance shall be payable:
- (1) To the member's surviving spouse qualifying under subsection (f) of this section who was married to such member or to the member's surviving domestic partner qualifying under subsection (f) of this section with whom the member had established a domestic partnership; or
  - (2) If there is no qualifying surviving spouse or qualifying surviving domestic partner, or if such spouse or such domestic partner dies, to unmarried children, including stepchildren, of the member collectively, who are under eighteen years of age; or
  - (3) Should the member leave no qualifying surviving spouse or qualifying surviving domestic partner and no children under eighteen years of age but leave a child or children who, pursuant to terms and conditions adopted by the Retirement Board, is determined to have been disabled prior to age eighteen and whose disability continues past age eighteen, to such disabled child or children during the period of disability; or

- (4) Should the member leave no qualifying spouse or qualifying surviving domestic partner or no child under eighteen or no disabled child whose disability continued past age eighteen, but leave a parent or parents dependent upon the member for support, to such parent, or parents collectively, during such dependency.
- (d) The monthly allowance shall be in lieu of the death benefit otherwise payable as provided for in accordance with Section 3-537(a). If, upon the death of the member, there is any person qualifying for the allowance, then any designation made by the member, pursuant to Section 3-537, of a beneficiary to be paid the death benefit shall be of no force or effect, but a person qualifying for the allowance or such person's guardian may elect, before the first payment on account of it, to receive such death benefit in lieu of the allowance. The accumulated contributions of the member shall be applied toward providing the allowance, and the balance not so provided shall be payable from contributions of the city.
- (e) The monthly allowance shall begin to accrue on the day next following the date of death of the member, and payments to the surviving spouse or surviving domestic partner shall continue until death, and to or on account of children with respect to each non-disabled child until the attainment of age eighteen, death or prior marriage or domestic partnership and with respect to each disabled

child whose disability continues past age eighteen until death, marriage, establishment of a domestic partnership, or cessation of the disability. If payment of the allowance provided by this section is stopped because of death of the surviving spouse or surviving domestic partner, or the attainment of the age eighteen years by, or the death or marriage or establishment of a domestic partnership of, a non-disabled child, or the death or marriage or establishment of a domestic partnership or cessation of disability of a disabled child whose disability continued past the age of eighteen, or the death or cessation of dependency of a parent, before the sum of the monthly payments made equals the death benefit provided for in accordance with Section 3-537(a), a lump sum equal to the difference shall be paid, to the surviving children of the member, share and share alike [and, if none, to the member's estate].

- (f) With respect to members whose death occurs on or before the effective date of Ordinance No. 2000-5, an allowance shall be paid under this section to a surviving spouse only if the spouse was married to the member prior to the occurrence of the injury or onset of the illness which resulted in the member's death. With respect to members whose death occurs after the effective date of Ordinance No. 2000-5, an allowance shall be paid under this section to a surviving spouse only if the spouse was married to the member prior to the date of the member's death or to a surviving domestic



partner only if the domestic partner had established a domestic partnership with the member prior to the date of the member's death.

[(g) If the Board determines that a member's death was service-connected, the amount of the survivor benefit paid under this Section which equals 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. However, 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 was killed in the line of duty, then the monthly death allowance shall be nontaxable to the extent allowed by Section 101(h) of the Internal Revenue Code.]

SECTION 4. Section 3-566 of the Fresno Municipal Code at subsections (e)(3) and (e)(4) is amended by adding the following:

(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 3-553(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 which shall be deposited into the member's DROP account.

- (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] ~~an industrial or non-industrial~~ 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.]

(65) 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.

SECTION 5. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

\* \* \* \* \*

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

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2021  
Mayor Approval/No Return: \_\_\_\_\_, 2021  
Mayor Veto: \_\_\_\_\_, 2021  
Council Override Vote: \_\_\_\_\_, 2021

YVONNE SPENCE, MMC CRM  
City Clerk

By: \_\_\_\_\_  
Deputy Date

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Jenni DeRuosi Date  
Deputy City Attorney III