

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, AMENDING SECTIONS 3-408, 3-413, 3-415,
and 3-424(e) OF THE FRESNO MUNICIPAL CODE
RELATING TO THE DISABILITY, DEATH AND 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 3-408 of the Fresno Municipal Code is amended to read as
follows:

SEC. 3-408. DEATH BENEFITS

- (a) Upon the death before retirement of a member, the Retirement System shall be liable for a death benefit, which, if an amount be due under paragraph (3) of this subsection or an allowance be payable under Section 3-416, and if there be a surviving spouse or surviving domestic partner or surviving children or parents, shall be paid in monthly installments and to the surviving spouse or surviving domestic partner and children and parents as prescribed therein; otherwise such death benefit shall be paid to such person having an insurable interest in the member's life as the member shall nominate by written designation duly executed and filed with the Retirement Board or, if the member has not designated such a person or if the person so designated is not living at the time of the

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Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:  _____

Ordinance No.: _____

payment, to the member's estate. Such death benefits shall consist of:

- (1) The member's accumulated contributions, and in addition thereto;
- (2) An amount equal to one-sixth of the member's compensation earnable during the six months immediately preceding the member's death multiplied by the member's completed years of service as a member of the System not to exceed six, and if such death is service-connected, in the opinion of the Retirement Board, in addition thereto;
- (3) An amount sufficient, when added to the amounts provided in the next preceding paragraphs (1) and (2) to provide, when applied according to mortality tables and interest rate adopted by the Board, a monthly death allowance, equal to the service retirement allowance which the member would have received if the member had retired for service on the day of the member's death, provided the member was at least fifty years of age, and was entitled to be credited with at least twenty years of service, but such allowance shall not be less than one half of the member's average compensation; otherwise, equal to one-half of the member's average compensation, to be paid to the surviving spouse or surviving domestic partner, to continue as long as the spouse or domestic partner shall live; or if there be no

qualifying surviving spouse or qualifying surviving domestic partner, or if the spouse or domestic partner shall die, to the unmarried child or children of such member who are unmarried or not in a domestic partnership, collectively, under the age of eighteen years, to continue until every such child dies or marries or attains age eighteen; provided that no child shall receive any allowance after marrying or attaining age eighteen. [Should the member leave no surviving spouse or surviving domestic partner and no children under the age of eighteen 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 otherwise would have received.]

Should the member leave no surviving spouse or surviving domestic partner and 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 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. If payment of the allowance be stopped because of death of the surviving spouse or death of the surviving domestic partner or attainment of the age of eighteen years by, or the death or marriage of, a child, [or cessation of disability in a child whose disability continued past the age of eighteen years,] or the death or cessation of dependency of a parent, before the sum of the monthly payments made shall equal the sum of the amounts provided in the next preceding paragraphs (1) and (2), then an amount equal to the difference between said sums shall be paid in one amount, to the surviving children of the deceased member, share and share alike [and, if none, to the member's estate].

- (b) Upon the death of a member who, after five years of service, has discontinued service and elected to allow his or her accumulated contributions to remain in the Retirement Fund, the Retirement System shall be liable, in the event the member dies four or more months after the discontinuance of service, for a death benefit consisting of the member's accumulated contributions only. Such benefits shall be paid ~~to the member's estate, or~~ to such person as the member has nominated or shall nominate by written

designation duly executed and filed with the Retirement Board [and, if none, to the member's estate].

- (c) A member, or a beneficiary after the death of a member, may elect, by written designation duly executed and filed with the Retirement Board, to have the death benefit provided in this section paid in monthly or annual installments instead of in one lump sum, subject to such rules and regulations as the Board may adopt.
- (d) A person, while a member or after retirement, shall have the right to revoke the nomination of a beneficiary made by him or her under the Retirement System, and to nominate a beneficiary in lieu thereof, ~~of all~~ by written designation duly executed and filed with the Retirement Board, provided that this right shall not extend to beneficiaries nominated under Options [2A, 2B, 3A, and 3B], Section 3-417 [(Optional Modification of Allowances at Retirement)].
- (e) With respect to members retiring on or before the effective date of Ordinance No. 2000-4, 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 sustaining of the injury or the onset of the illness which resulted in the member's death or, if such date was more than one year prior to his or her death, only if the spouse was married to the member at least one year prior to the member's death. With respect to members retiring after the effective date of

Ordinance No. 2000-4, an allowance shall be paid under this section to a surviving spouse only if the spouse was married to the member prior to the ~~death of the member~~ [member's date of retirement] or to a surviving domestic partner only if the domestic partner had established a domestic partnership with the member prior to the ~~death of the member~~ [member's date of retirement].

[(f) 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 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 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.]

SECTION 2. Section 3-413 (a) is amended to read as follows:

SEC. 3-413. - ALLOWANCE AT DISABILITY RETIREMENT.

Upon retirement for disability as provided in Section 3-412, a member,

(a) If his/her disability, in the opinion of the Board, is service-connected, shall receive

(1) A disability annuity which shall be the actuarial equivalent of his/her accumulated contributions at the time of his/her retirement; and

(2) A disability pension purchased by contribution of the city, which together with the annuity provided by his/her accumulated contributions, shall make his/her total retirement allowance equal to one-half of his/her average compensation, or if he/she be qualified for service retirement, such pension shall be an amount which together with the annuity provided by his/her accumulated normal contributions, shall equal the retirement allowance he/she would receive if retired for service, but not less than one-half of his/her average compensation.

[(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.]

(b) If his/her disability, in the opinion of the Board, is not service-connected, shall receive

(1) A disability annuity which shall be the actuarial equivalent of his/her accumulated contributions at the time of his/her retirement; and

- (2) A disability pension purchased by the contributions of the city, which, together with the annuity provided by his/her accumulated contributions, shall make the retirement allowance equal to the ~~greater~~ [greatest] of:
- (i) thirty-three (33.00) percent of the member's average compensation; or
 - (ii) one and one-half (1.50) percent of the member's average compensation multiplied by the number of years of service credited to the member; or
 - (iii) the amount of the member's service retirement allowance, provided that the member is eligible to retire for service.

SECTION 3. Section 3-415 of the Fresno Municipal Code is amended to read as follows:

SEC. 3-415. - CONTINUATION OF RETIREMENT ALLOWANCES
AFTER DEATH.

- (a) Upon the death of a member, due to other than service-connected cause, after qualification for service retirement at or over age fifty, with credit for at least five years of service and on account of whose death the benefit provided for in Section 3-408(a), (1) and (2) is otherwise payable, or after retirement, regardless of cause, two-thirds of the retirement allowance to which the member would have been entitled if the member had retired for service at the time of death, or two thirds of the member's retirement allowance as it was

at death, [including a service-connected disability retirement allowance in accordance with section 3-413(a)] as the case may be, and both before modification under an option, shall be continued, throughout life, to the surviving spouse or to the surviving domestic partner.

- (b) Upon the death of a member, due to other than service-connected cause, prior to the member's attainment of age fifty, with credit for at least ten years of service and on account of whose death the benefit provided for in Section 3-408(a), (1) and (2) is otherwise payable, two-thirds of the retirement allowance ~~to which the member would have been entitled had the member continued in the service and retired at age fifty~~, before modification under an option, earned by the member's service as of the date of death, [or, if the member was receiving a service-connected disability retirement in accordance with Section 3-413(a) at the time of the member's death, two-thirds of such service-connected disability retirement,] shall be continued, throughout life to the surviving spouse or to the surviving domestic partner.

- (c) If there be no surviving spouse or surviving domestic partner entitled to an allowance under this section, 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 such surviving spouse or surviving

domestic partner would have received had the spouse or domestic partner lived shall be paid to the 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 the member leave no surviving spouse or surviving domestic partner so entitled, no children under the age of eighteen years, and no disabled children whose disability continued past the age of eighteen years, but leave a parent or parents dependent upon the member for support, the parents so dependent shall collectively receive a monthly allowance equal to that which such surviving spouse or surviving domestic partner otherwise would have received during such dependency. If payment of the allowance

payable under this section because of death before retirement be [is] stopped because of death of the surviving spouse or surviving domestic partner or attainment of the age of eighteen years or establishment of a domestic partnership by, or the death or marriage of, a child, or the death or marriage or establishment of a domestic partnership or cessation of disability in a child whose disability continued past the age of eighteen years, or the death or cessation of dependency of a parent, before the sum of the monthly payments made shall equal the sum of the amounts, which except for this section, would have been payable under Section 3-408(a), (1) and (2), then an amount equal to the difference between said sums shall be paid in one amount, to the surviving children of the deceased member, share and share alike.

- (d) The allowance provided in subsection (b) of this section shall be in lieu of the death benefit otherwise payable as provided in Section 3-408(a), (1) and (2), but, notwithstanding any other provision of this article, 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.
- (e) With respect to members whose death occurs on or before the effective date of Ordinance No. 2000-4, an allowance shall be paid under this section to a surviving spouse, in the case of death before retirement, only if the spouse was married to the member prior to

the date of the sustaining of the injury or the onset of the illness which resulted in death, or, in the case of death after retirement, only if the spouse was married to the member at least one year prior to retirement. With respect to members whose death occurs after the effective date of Ordinance No. 2000-4, an allowance shall be paid under this section (1) to a surviving spouse, in the case of death before retirement, only if the spouse was married to the member prior to the date of death, or, in the case of death after retirement, only if the spouse was married to the member as of the date of retirement or (2) or to a surviving domestic partner, in the case of death before retirement, only if the domestic partner had established a domestic partnership with the member prior to the date of death, or, in the case of death after retirement, only if the domestic partner had established a domestic partnership with the member as of the date of retirement.

[(f) If the member was receiving a service-connected disability retirement in accordance with Sec. 3-413(a) or Sec. 3-424(e)(3) at the time of the member's death, the allowance provided either in subsection (a) or subsection (b) 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 4. Section 3-424 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. 2011-1 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-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 3-412] 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.]

- (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