

## **SAMPLE DOMESTIC RELATIONS ORDER**

### Fire and Police Tier 1 Retired, Option 2 or Option 3 Allowance

**NOTE:** This sample order applies to divorcing parties, one of whom is a retiree under of the City of Fresno Fire and Police Retirement System (1st Tier), who selected an Option 2 or Option 3 at the time of retirement.

This sample order is merely to assist attorneys in preparing a domestic relations order. It is not warranted that this sample order is appropriate in each individual case. The parties should always consult with their own attorneys before using this sample order. You may, of course, use other language; however, any order must be consistent with the provisions of the Fresno Municipal Code. Please note that neither the City of Fresno Fire and Police Retirement Board nor its agents are permitted to provide legal advise to you.

The parties must fill in the blanks in paragraphs 3, 4, 6, 7 and 9 before submitting this order to staff for review. Please contact Retirement staff for the information needed to complete paragraphs 6 and 9. Please read this sample order in conjunction with the Retirement Systems' community property pamphlet. The System reserves the right to modify this order.

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1. Intent. This order is intended to satisfy the requirements of Article 17 of Chapter 2 of the Fresno Municipal Code concerning domestic relations orders. The parties acknowledge that this order is not subject to the federal Employee Retirement Income Security Act of 1974 or to amendments to ERISA ("ERISA"), such as the Retirement Equity Act of 1984. This order is entered pursuant to the California Family Code.
  
2. Claimant. The name of the claimant to which this order applies is the City of Fresno Fire and Police Retirement System ("System"). The parties acknowledge that only the benefits provided by the System are affected by this Order, and that this Order cannot and does not create benefits or rights not provided by the System.
  
3. Names. The names, last known mailing addresses, and related information of the parties are as follows:
  - a. Former Employee (Retiree):  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
SS No: \_\_\_\_\_  
Birth date: \_\_\_\_\_
  
  - b. Spouse (Non-Member):  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
SS No: \_\_\_\_\_  
Birth date: \_\_\_\_\_

4. Period of Marriage. It is agreed that the period of marriage was from the date of marriage specified below to the date of separation specified below:

- a. Date of marriage: \_\_\_\_\_
- b. Date of separation: \_\_\_\_\_

5. General Provisions. The parties agree that:

- a. the Non-Member will not be considered to be a surviving spouse of the Retiree for any purpose;
- b. no retirement allowances or other benefits are payable to the parents of the Non-Member or to the children of the Non-Member who were stepchildren of the Retiree;
- c. the surviving spouse, if any, of the Non-Member shall not be considered a surviving spouse for any purpose under the System;
- d. the Non-Member or the surviving spouse, if any, of the Non-Member shall not be entitled to receive any form of disability retirement; and
- e. the parties are not entitled to change the form of payment under Fresno Municipal Code Section 2-1733 selected by the Retiree at retirement.

6. Form of Retirement Benefit. The form of retirement benefit selected by the Retiree at the time of retirement was \_\_\_\_\_, payable over the life of the Retiree and: (insert name of beneficiary). That form cannot be, and is not, changed by this order.

7. Determination of Retiree and Non-Member's Share of Retirement Allowance. The Retiree and the Non-Member have agreed that their respective percentage interests in the Retiree's retirement allowance are as follows:

Retiree \_\_\_\_\_ %  
Non-Member \_\_\_\_\_ %

Total 100%

8. Non-Member's rights in the Post Retirement Supplemental Benefit ("PRSB"). The PRSB will be divided in the same manner and ratio as defined in paragraph 7 above. The parties acknowledge that the PRSB is not a guaranteed benefit and may increase, decrease, or be eliminated.
9. Deferred Retirement Option Program ("DROP"). The Member, as of the date of separation, possessed a balance of \$\_\_\_\_\_ in the Member's DROP account. The DROP account will be divided in the same manner and ratio as defined in paragraph 7 above.
10. Retiree's Retirement Allowance. After the receipt and approval of this order by the System, the System shall pay to the Retiree the percentage specified in paragraph 7 of the Retiree's retirement allowance in the same form as specified in paragraph 6 above.
11. Non-Member's Retirement Allowance. After receipt and approval of this order by the System, the System shall pay to the Non-Member a monthly retirement allowance determined as follows:
  - a. During the joint lifetimes of the Retiree and the Non-Member, the Non-Member shall receive the percentage specified in paragraph 7 of the Retiree's retirement allowance.
  - b. If the Non-Member predeceases the Retiree, then during the remainder of the Retiree's life the portion of the retirement allowance previously paid to the Non-Member will be paid to the Non-Member's beneficiary as specified in paragraph 13.
  - c. If the Non-Member survives the Retiree and is named in paragraph 6, then the Non-Member shall receive the entire survivor annuity under the option specified in paragraph 6.
  - d. If the Non-Member survives the Retiree and is not named in paragraph 6, the

Non-Member shall receive the percentage specified in paragraph 7 of the survivor annuity under the option specified in paragraph 6. If the Non-Member predeceases the person named in paragraph 6, i.e., the recipient of the survivor annuity, then the Non-Member's beneficiary shall continue to receive the Non-Member's beneficiary shall continue to receive the Non-Member's share until the death of the person named in paragraph 6.

12. COLA. Any cost of living adjustments hereinafter applicable to the Retiree's benefit if the dissolution had not occurred will, if not already in that form, be converted to a percentage increase. From the effective date of the cost of living increase, both the Retiree's and Non-Member's monthly benefit shall be increased by the percentage so determined.
13. Non-Member's Beneficiary. The Non-Member shall be entitled to name as a beneficiary a person with an insurable interest in the Non-Member's life who shall be eligible for the benefits set forth in paragraph 11. The Non-Member shall name a beneficiary by completing the form then in use by the System and returning it to the System. If the Non-Member does not name a beneficiary or if no named beneficiary is living, the benefit otherwise payable to the Non-Member's beneficiary shall be paid to the Non-Member's estate.
14. Separate Property. Any retirement benefit or allowance, or any portion of a retirement benefit or allowance, that is not awarded in this order to the Non-Member shall be the sole and separate property of the Retiree.
15. Statutory Limits. In no event shall this order be interpreted to require the System to:
  - a. provide benefits with a greater actuarial value than it would otherwise pay, or
  - b. make payments to the Non-Member which are already required to be paid to another spouse under a prior order, or

c. provide any form of benefit or option not provided by the System.

16. Retention of Jurisdiction. The Member, the Non-Member, and the Court intend that this order meet all requirements of a domestic relations order under the Fresno Municipal Code and other applicable laws of the State of California, and the Court shall reserve jurisdiction to modify this order for the purpose of meeting or monitoring its implementation. The Court's reservation of jurisdiction shall be liberally construed to effect the provisions of this order and to resolve any disputes that may arise among the parties and the System concerning benefit payments or any other aspect of this order. If any portion of this order is rendered invalid, illegal, unconstitutional or otherwise unenforceable, the Court reserves jurisdiction to make an appropriate adjustment to effectuate the intent of the parties. Any future attorneys fees or costs incurred with respect to future modifications or interpretation of this order will not be assessed against the System.

F&P TIER 1 RETIRED OPTION 2 & OPTION 3