

**CITY OF FRESNO FIRE AND POLICE RETIREMENT BOARD**

**CITY OF FRESNO EMPLOYEES RETIREMENT BOARD**

**RULES AND REGULATIONS**

**(INCORPORATING ADOPTED AMENDMENTS THROUGH OCTOBER 27, 2020)**

**CITY OF FRESNO FIRE AND POLICE RETIREMENT BOARD  
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CITY OF FRESNO EMPLOYEES RETIREMENT BOARD**

<b>RULES AND REGULATIONS</b>
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**ARTICLE 1. OFFICERS OF THE BOARD**

SECTION 1. Officers Designated. The officers of the Board shall be a Chair and a Vice-Chair, who shall be members of the Board elected by the Board annually at the first regular meeting in July, and who shall serve at the pleasure of the Board, and a Secretary as provided in the Code.

SECTION 2. Powers and Duties of Officers.

(a) The Chair shall act as presiding officer at all meetings of the Board, swear witnesses in all proceedings of the Board where sworn testimony is taken, and exercise and perform such other powers and duties as are conferred upon the Chair by law and these rules and regulations.

(b) The Vice-Chair shall have and perform all the powers and duties of the Chair in the absence of the Chair from the City or from any meeting of the Board or whenever the Chair is unable for any reason to act.

(c) The Secretary shall:

(1) Keep and record the minutes of all meetings of the Board, and furnish a copy of the minutes of each regular meeting and subsequent special meeting to each member of the Board prior to the next regular meeting;

(2) Keep complete files of all communications to the Board, all pleadings and documents filed with the Board, and all other necessary records of the Board;

(3) Act as custodian of the minutes and of all the books, documents, papers, and records of the Board;

(4) At the request of the Board, the legal counsel to the Board, the City Attorney, or any party or the attorney of any party to any hearing or other proceeding before the Board, issue in the name of the Board, subpoenas ordering the attendance of any person as a witness, or the production of evidence, at any meeting of the Board;

(5) Perform such other duties as the Board may from time to time prescribe.

SECTION 3. Conflict of Interest Code. The Conflict of Interest Code set forth in section 2-901 of the Fresno Municipal Code constitutes each Board's Conflict of Interest Code.

## **ARTICLE 2. MEETINGS**

SECTION 1. Regular Meetings. The regular meetings of the Board shall normally be held on the second Wednesday and the fourth Tuesday of every month, at 1 p.m., at the Retirement Office or such other place and time as shall be determined by the Board and announced by posting notice thereof on the official bulletin board at the City Hall. Whenever a regular meeting date falls on a holiday, such regular meeting shall be held at the same hour on the next regular business day, unless the Board fixes a different day for such meeting and the time and place is entered in the minutes of a previous regular meeting.

SECTION 2. Special Meetings. A special meeting may be held at any time at the call of the Chair, or, in the Chair's absence or inability or unwillingness to act, at the call of three (3) members of the Board. Notice of each special meeting shall be given by (1) posting a notice thereof in a location that is freely accessible to members of the public and (2) delivering personally or by mail or facsimile a written notice thereof to each member of the Board and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice must be posted and delivered personally or by mail or facsimile at least twenty-four (24) hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted, and no other business shall be considered at such meeting. Such written notice may be dispensed with as to any member of the Board who at or prior to the time of the meeting convenes files with the Secretary a written waiver of notice. Such waiver may be given by telegram or facsimile. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

SECTION 3. Adjourned Meetings. The Board may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the Secretary may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the same manner as provided in Section 2 of this article for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within twenty-four (24) hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified in these rules and regulations for regular meetings.

Whenever the Chair determines that the business for a meeting does not involve an action of the Board or involves an action which can reasonably and without prejudice be delayed to an ensuing meeting, the Chair may declare an adjourned meeting. The Chair shall first inform the members of the proposed action. If there is no objection therefrom, the Chair or the Chair's designee shall at the time and place set for the meeting, adjourn it to the next ensuing regular meeting.

SECTION 4. Presiding Officer. Duties. In the absence of both the Chair and the Vice-Chair from any meeting, the Secretary shall call the meeting to order and the Board shall elect from among the members present a temporary Chair who shall preside at the meeting until the Chair or Vice-Chair shall arrive at the meeting. The presiding officer shall have the power and duty to preserve strict order and decorum at all meetings. The Presiding Officer shall state, when appropriate, each question before a vote is called for thereon, announce the results of the vote on each matter, and shall decide all questions of order, subject, however, to an appeal to the Board, in which event a majority vote of the Board shall conclusively determine such question of order. The Presiding Officer shall be entitled to vote on all questions.

SECTION 5. Section 5. Quorum and Voting. For purposes of approving the consent calendar, any three Board members shall constitute a quorum. For purposes of taking any other action or for providing direction to staff, three Board members, including one elected member and one appointed member, shall constitute a quorum, except, that in the event of an emergency as determined by all members present, any three Board members shall constitute a quorum.

For purposes of deciding all business coming before the Board, the affirmative votes of any three Board members shall be sufficient to take action or to give direction to staff.

SECTION 6. Resolutions and Motions. The actions and decisions of the Board at any meeting shall be expressed by motion, duly seconded and voted upon by the members. The ayes, noes, and the members present and not voting shall be entered upon the minutes of the meeting. Unless a member states that he or she is not voting, silence shall be recorded as an affirmative vote.

SECTION 7. Order of Business. At the regular meetings of the Board, the following ordinarily shall be the order of business:

1. Call to Order
2. Roll Call
3. Approval of Minutes of Prior Meeting
4. Agenda Changes
5. Set Time and Date for Next Meeting
6. Adopt Consent Calendar
7. Disability Hearings
8. Staff Initiated Items
9. Board Initiated Items
10. General Discussion Items
11. Information Items
12. Unscheduled Oral Communications/Public Comments
13. Proposed Agenda Items
14. Employee Personnel Issues
15. Adjournment

The Board shall provide an opportunity for public comment on any agenda item prior to taking action on that item. The presiding officer shall normally limit the comments of each member of the public to three (3) minutes but at their sole discretion may allow up to five (5) minutes. The presiding officer may vary the order of business whenever in his or her discretion it will expedite the conduct of the meeting.

SECTION 8. Other Rules for Conduct of Meetings. The latest edition of Robert's Rules of Order shall govern in all matters of procedure not otherwise provided for by law or in these rules and regulations.

SECTION 9. Agenda Proceedings.

(a) **Agenda.** The order of business of the Board shall be conducted from a written agenda prepared by the Chair or the Chair's designee. Matters to be brought before the Board shall, if possible, be processed as provided in this section. The Chair shall decide what items of business shall be acted upon, and place such items of business on the agenda for any regular or special meeting of the Board. A board member may request the Secretary to place any matter on the agenda, and it shall be so placed unless the Chair or Vice-Chair rules that the matter is not germane to Board business as provided by law. In the case of such ruling, the Secretary shall place the request and the ruling before the Board for its decision at the next regular meeting.

(b) **Submittals.** Employees, employee representatives, and other persons to whom this rule reasonably applies, shall, where possible, submit in writing requests to appear and requests for consideration of matters to the Secretary by 10 a.m. of the fourteenth (14th) calendar day preceding any regular meeting at which the matter is to be considered or the appearance made. The written request shall, if possible, contain such information including rules and regulations and authorities involved, so as to allow a full consideration of the matter, including the jurisdiction of the Board to consider the matter.

(c) **Posting and Distribution of Agenda.** The Secretary will post the agenda of a regular meeting in a location freely accessible to the public at least seventy-two (72) hours before the time set for the meeting. The Secretary will endeavor to make said request (and other materials to be considered by the Board) available for distribution to interested employee organizations at least seventy-two (72) hours before the time set for the meeting. This distribution shall include mailing of copies of the agenda and all supporting materials to any organization which has requested such information. Matters personal to an individual which should be kept confidential in the opinion of, based on exercise of a reasonable discretion by, the Secretary, need be distributed only to board members.

(d) **Emergency Matters.** In the event a matter to be considered or appearance is an emergency situation, the time limits of seventy-two (72) hours and one (1) week may be waived by a majority vote of the Board, providing an attempt is made to comply with the other requirements of this section, and proof is first received as to the necessity of immediate consideration. In the event the need to take action arose subsequent to the posting of the agenda, the Board by a two-thirds (2/3) vote (or, if less than two-thirds (2/3) of the members are present, by an unanimous vote) may waive the time limits, subject to the same provisos as emergency matters. Unnecessary delay or lack of diligence shall not be a ground for immediate consideration. The matter may be heard and considered by the Board under such circumstances except that should harm occur to any person, or interference with the public service occur because of the failure to publicize and distribute the matter, the matter may be heard, but no action will be taken. In that event, however, the Board may request that any concerned parties either change their actions or cease from taking action until the matter can be fully heard and remedied.

(e) **Tabled or Laid Over Matters.** The Secretary will keep a record of tabled or laid over matters and scheduled hearings.



### **ARTICLE 3. COMMITTEES**

SECTION 1. Ad Hoc Committees. The Chairs shall jointly appoint such Ad Hoc committees composed of less than a quorum of the membership of each Board as the Boards shall from time to time authorize to investigate and report to the Boards on matters assigned to the Ad Hoc committees. Each Chair may appoint such other Ad Hoc committee as appropriate to investigate and report on matters of concern to that Board.

SECTION 2. Ad Hoc Committee Procedures. Each Ad Hoc committee may adopt rules of procedure consistent with these rules. Board members who are not members of an Ad Hoc committee may attend meetings of the Ad Hoc committee but shall not vote on Ad Hoc committee recommendations.

### **ARTICLE 4. AMENDMENTS TO RULES**

SECTION 1. Amendments to Rules and Regulations. These rules and regulations may be amended at any regular or special meeting of the Board by three affirmative votes when at least ten (10) days' written notice of the proposed presentation of such amendment at such meeting has been given all members of the Board in the manner prescribed herein for special meetings, or when announcement of the proposed presentation of such amendment was recorded in the minutes of the previous regular meeting of the Board.

### **ARTICLE 5. DEFINITIONS**

SECTION 1. Definitions of Terms. For the purposes of these rules and regulations certain words, phrases, and terms shall be construed as specified in this section.

(a) "Board" shall mean the City of Fresno Fire and Police Retirement Board and, separately, the City of Fresno Employees Retirement Board.

(b) "Code" shall mean the Fresno Municipal Code.

(c) "by law" shall mean the Code, the Charter of the City of Fresno, the Constitution of the State of California, or any law of the State of California made applicable to chartered cities.

(d) "day" shall mean calendar day. When a date by which an act is required to be performed under these rules falls on a Saturday, Sunday, or holiday, the date shall be extended to the next day that is not a Saturday, Sunday, or holiday.

## **ARTICLE 6. ELECTIONS OF EMPLOYEE MEMBERS**

SECTION 1. Electoral Units of Elected Employee Members. Elected employee Board members shall be elected from the following units:

- (a) Firefighter Board Member: firefighters;
- b. Police Board member: sworn police officers and airport public safety officers/supervisors, but not including civilian positions, such as dispatchers or community service officers;
- c. Manual worker Board member: manual worker employees in bargaining units represented by Stationary Engineers Local 39 or IBEW Local Union 100;
- d. Clerical or supervisory worker Board member: (i) clerical and supervisory employees in bargaining units represented by the Fresno City Employees Association or the City of Fresno Professional Employees Association or City of Fresno Management Employees Association or Amalgamated Transit Union Local 1027 and (ii) non-represented management employees.

SECTION 2. Term of Office. The term of office of an elected employee Board member shall be four (4) years, with the term ending on the last day of June of the fourth year. Each city management Board member shall serve until his or her replacement has been appointed by the Mayor and approved by the City Council. The Board member chosen by the other four (4) members shall serve until he or she resigns or is replaced.

SECTION 3. Time for Holding Elections. Elections of Board members to be elected by and from the city employees affected shall be conducted in the month of June of the last year of each such member's term of office; provided, that the first such election conducted pursuant to this article shall be held at a time prescribed by the Board.

SECTION 4. Secretary Shall Conduct Election. The Secretary shall conduct the election pursuant to the rules set forth in this article. Whenever in this article any act is required to be performed by the Secretary, such act may be performed by the Secretary or any person acting under the Secretary's supervision.

SECTION 5. Notice of Election.

(a) The Secretary shall give notice of the election to be held not less than fifty (50) nor more than seventy-five (75) calendar days prior to the last day for receiving ballots. The notice shall be given by posting on the bulletin board in the lobby of the City Hall and at not less than four (4) other conspicuous places in and about the buildings and premises of the city as selected by the Secretary and distributed to all other relevant locations to the extent possible and distributed through the City's internal mail system to each member.

(b) The notice shall be in substantially the following form:

"NOTICE OF ELECTION OF MEMBER OF

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RETIREMENT BOARD

NOTICE IS HEREBY GIVEN that an election will be held among the \_\_\_\_\_ members of the \_\_\_\_\_ Retirement System to elect a \_\_\_\_\_ member of the \_\_\_\_\_ Retirement Board for the term (unexpired term) ending \_\_\_\_\_, 20\_\_.

All \_\_\_\_\_ members of the \_\_\_\_\_ Retirement System are eligible to become candidates for membership on the Board. Any member desiring to become a candidate for election may obtain a nomination petition from the Secretary to the Boards whose address is \_\_\_\_\_.

Candidates may qualify for placement of their names on the ballot by filing with the Secretary, on or before 5:00 p.m. on \_\_\_\_\_, 20\_\_, a nomination petition, on the form obtained from the Secretary, signed by not less than 25 nor more than 35 members of the \_\_\_\_\_ Retirement System.

Ballots will be mailed on or before \_\_\_\_\_, 20\_ to all \_\_\_\_\_ Members of the \_\_\_\_\_ Retirement System addressed to each member's most recent home address contained in the System's records. If you do not receive a ballot by \_\_\_\_\_, 20\_, please telephone or visit the Retirement Office to obtain a ballot. Ballots must be returned in the envelope accompanying the ballot and addressed to the Board's independent, outside auditor and received by the auditor on or before 5:00 p.m. on \_\_\_\_\_, 20\_.

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*Secretary of the Retirement Board*

SECTION 6. Elections: Summary of Timelines The following information is provided to summarize specific dates for notices, petitions, issuance of petitions, receipt and counting of ballots, and the certification of the election results for elected employee Board members.

- (a) Time for Holding Election.  
Elections shall be conducted in the month of June of the last year of an elected Board member's term of office.
- (b) Notice of Election.  
Notice of the election shall be provided not less than fifty (50) nor more than seventy-five (75) calendar days prior to the last day for receiving ballots which is the second Friday in June.

- (c) Date for Issuance of Nomination Petitions.  
Petitions shall be available from the Secretary on and after the last Friday in April of the year of the election.
- (d) Petitions and Candidate Statements Due.  
Petitions and optional candidate statements are due not later than 5:00 p.m. on the second Friday in May of the year of the election.
- (e) Mailing of Ballots.  
Ballots shall be mailed not later than the last Friday in May of the year of the election.
- (f) Final Date for Receipt of Ballots.  
The last day for receiving ballots cast in the election shall be the second Friday in June of the year of the election.
- (g) Ballot counting date and time.  
The ballots shall be counted on the Tuesday following the last day for receiving the ballots at 9:00 a.m. at the Retirement Office.
- (h) Certification of Election.  
The Secretary shall certify the results of the election on or before June 30 of the year of the election.
- (i) Swearing in of elected candidate.  
The candidate having received the highest number of votes for each office voted upon shall be deemed elected and shall be given the oath of office by the Secretary and assume his or her office on July 1, or, if July 1 be a holiday, on the first business day thereafter.

SECTION 7. Qualifications for Nominations.

(a) Candidates for membership on the Board may qualify for placement of their names on the ballot by filing with the Secretary, not later than the second Friday in May of the year of the election, a nomination petition signed by not less than twenty-five (25) nor more than thirty-five (35) members of the Retirement System who are entitled to vote for the candidate.

(b) The petition shall be on forms obtainable from the Secretary on and after the last Friday in April of the year of the election. Any member of the Retirement System eligible to vote for the candidate may circulate a petition. No member shall sign the nomination petition of more than one (1) candidate, and if any member shall sign more than one petition, his or her signature shall count on only the first petition filed.

(c) In addition to his or her signature, each signer of a nomination petition shall add the date of his or her signature, the job title of his or her position with the city, and the department in which he or she is employed. If any of this material is absent, the signature shall be rejected.

(d) Every nomination petition filed with the Secretary shall have attached thereto a declaration, under penalty of perjury, of the person who circulated the petition that he or she saw the written signature of each of the members who signed the petition and that they are the signatures of the persons whose names they purport to be. Each such petition shall also be accompanied by a declaration of the candidate, under penalty of perjury, that the candidate will accept the nomination and will serve as a board member if elected, and that the candidate wishes his or her name to be placed on the ballot in the form set forth in such declaration. The candidate may also submit a statement of 200 words or less giving the candidates qualifications and platform, which will be distributed with the ballots. Said statement must be submitted with the petition, or it will not be published.

#### SECTION 8. Ballots.

(a) Voting shall be by sealed ballot. The names of the candidates who have qualified for placement on the ballot shall be listed in alphabetical order, and under the name of each candidate there shall appear the job title of the position in the city service held by the candidate, except that if an incumbent is running, his or her name shall appear first on the ballot, and under his or her name shall appear the word "Incumbent." Each group of candidates shall be headed by the designation of the office and the words "Vote for one."

(b) The ballot shall contain instructions that the voter shall place no marks or writing upon the ballot except a mark in the box after the name of the candidate voted for.

(c) There shall be furnished with the ballot delivered to each voter an inner envelope, and an outer return envelope addressed to the Board's Independent Auditor. The ballot shall contain instructions that the voter, after marking his or her ballot, shall insert it into and shall seal the inner envelope but shall place no identifying marks thereon, and shall then insert the inner envelope into the outer envelope, write his or her name and department in the upper left-hand corner of the outer envelope, and mail or deliver the same to the Board's Independent Auditor.

(d) The placing by a voter of any marks or writing on the ballot or inner envelope which identify the voter, or the failure of a voter to seal the inner envelope after placing the ballot therein, shall render the voter's ballot void.

#### SECTION 9. Roster of Members. Mailing of Ballots.

(a) The Secretary shall cause to be prepared a roster of the employees who are members of the Retirement System as of May 1 of the year of the election and who are entitled to vote in the election. Such roster shall be prepared from the Retirement Office records, and shall contain the names and job titles of all employees of the city from whose pay deductions for contributions to the Retirement System are being made or are authorized and who are entitled to vote for the officer or officers to be voted upon at the election. Except as hereinafter provided, such roster shall govern in all questions of entitlement to be a candidate or to vote at the election.

(b) Not later than the last Friday in May of the year of the election the Secretary shall mail to each member whose name appears on the roster, at his or her home address as shown on the city records, one copy of the prepared ballot with envelopes and with optional candidate statements.

(c) Any member whose name was erroneously omitted from the roster or who, though his or her name is on the roster, claims he or she did not receive a ballot, and any employee who becomes a member after May 1, may personally request a ballot from the Secretary at any time prior to 12 o'clock noon on the last day for receiving ballots. If the Secretary finds the requesting person is a member entitled to vote and has not voted, the Secretary shall add the person's name and job title to the roster, if it was omitted therefrom, and shall deliver a ballot to the person, whereupon such person may cast his or her ballot and deliver it to the Secretary.

**SECTION 10. Procedure Upon Receipt of Ballots. Counting the Votes. Assumption of Office by Person Elected.**

(a) On the Tuesday morning following the last day for receiving ballots, the Board's Independent Auditor along with the Secretary shall check the name written on the outer envelope of each completed and returned ballot against the roster. If the name written on the outer envelope of the completed ballot appears on the roster, the outer envelope shall be removed and the inner envelope deposited unopened into a locked ballot box; otherwise, the ballot shall be rejected and placed, without opening the outer envelope, into a separate file or receptacle.

(b) On the Tuesday morning following the last day for receiving ballots, the Board's Independent Auditor and the Secretary shall commence the count of the votes. The count shall be conducted in the Office of the Secretary and may be witnessed by any candidate or other interested member(s). The votes cast for each candidate shall be recorded and totaled on a tally sheet.

(c) On or before June 30 of the year of the election the Secretary shall certify the results of the election. The certification shall show the total votes cast in the election and the votes cast for each candidate for each office voted upon. The Secretary shall post a copy of his or her certification on the bulletin board in the lobby of the City Hall and shall file a copy thereof with the Board, at its first meeting in July, for inclusion in the minutes.

(d) The candidate having received the highest number of votes for each office voted upon shall be deemed elected and shall be sworn by the Secretary and assume his or her office on July 1, or, if July 1 be a holiday, on the first business day thereafter.

**SECTION 11. Preservation of Election Records.** All records and papers, including the roster, outer envelopes, rejected ballots, tallied ballots and tally sheet shall be preserved by the Secretary for at least sixty (60) calendar days following the election and shall be available in the Office of the Secretary or inspection by any interested person.

**SECTION 12. Elections to Fill Vacancies Occurring during Term. Consolidation of Elections.**

(a) Whenever for any reason a vacancy occurs in the office of an employee Board member, including an impending vacancy as defined in subsection (c), the Board may call for a special election to fill the vacancy as early as the next regular meeting after notice of the vacancy is given and in any event shall call for a special election to fill the vacancy no later than the next regular meeting after the vacancy occurs. The Board shall adopt a calendar for the election based upon the same time

schedule as established in this article for the conduct of regular elections, the last day for receiving ballots to be fixed as the second Friday of the second month following the month in which the call is made. Such special election shall be conducted in accordance with this article. On the first day of the month following the month in which the election is conducted, the person elected shall be sworn and take office for the unexpired term of the office.

(b) If any such vacancy occurs on or after April 1 of the year in which the term of the vacant office expires, no special election shall be called to fill the vacancy for the unexpired term. If any such vacancy, ~~or~~ including an impending vacancy as defined in subsection (c), occurs not less than fifty-five (55) calendar days nor more than seventy-five (75) calendar days prior to the last day for receiving ballots in a regular or special election for the office of the other employee board member, a special election shall not be called, but the election of a successor for the unexpired term shall be consolidated and held with such regular or special election, and the person elected shall be sworn and take office on the first day of the month following the month in which the election is held.

(c) An impending vacancy occurs on the day when an employee board member files with the Secretary his or her written resignation from the office of board member or his or her written application for service retirement or on the day when an employee board member tenders his or her resignation from the city service, and in such resignation or application fixes the effective date of his or her resignation or retirement at a future time which is on or prior to the date when the other employee board member to be elected in a regular or special election will take office. In the event such resignation or application is rescinded or amended to change the effective date to a time later than the date on which such other employee board member will take office, and such rescission or amendment is in writing and the original or a true copy thereof is filed with the Secretary not later than the last day for posting of notice of such election, no impending vacancy shall be deemed to have occurred; otherwise, such resignation or retirement application shall be deemed an irrevocable resignation of such employee board from membership on the Board as of the effective date specified therein. If any such rescission or amendment is so filed with the Secretary after the Secretary has posted notice of the election to fill the impending vacancy, the Secretary shall immediately withdraw such notice and post a new notice stating that no election for that office will be held.

SECTION 13. Dispensing With Election Where Only One Qualified Candidate. Whenever at the close of the time for filing nomination petitions only one candidate has qualified for placement on the ballot for the election of an employee board member, the Secretary shall make a certification of that fact, naming the candidate, and shall post a copy of such certification on the bulletin board in the lobby of the City Hall. Upon the making and posting of such certification, such candidate shall be deemed elected to the office and no election shall be held for the office. The Secretary shall file a copy of such certification with the Board, at its next regular meeting, for inclusion in the minutes. The person so deemed elected shall be sworn and take office at the same time and in the same manner as if an election had been held.

## **ARTICLE 7. PROCEDURES FOR HEARINGS**

SECTION 1. Purpose of Hearing Procedures. The purpose of this article is to provide a procedure for acting upon applications by individual members, beneficiaries, or department heads to the Board for a determination of rights, benefits and privileges inuring to them or their legal survivors, heirs, or representatives under the System, including applications for disability retirement, to the end that applications may be fairly and expeditiously processed. Another purpose of this article is to insure that, when a hearing is required, a member or beneficiary will receive notice of the hearing and be given an opportunity to present his or her case before the Board or before a duly appointed hearing officer. A further purpose of this article is to insure that the Board shall have before it sufficient information including information from an impartial medical examiner, to arrive at an informed decision on the matter before it.

SECTION 2. Authority for Hearing Procedures. These rules are adopted pursuant to the authority vested in the Board by sections 904 and 910 of the City of Fresno Charter and Articles 3, 4 and 5 of the Municipal Code of the City of Fresno.

SECTION 3. Definitions As Used In Hearing Procedures. Unless otherwise indicated, the words and phrases used herein shall be defined pursuant to the definitions set forth in Articles 3, 4 and 5 of the Municipal Code of the City of Fresno and as set forth in Article 5 of these rules.

SECTION 4. Scope of Hearing Procedures. These procedures shall apply to applications filed by department heads or their designees, by members, or by beneficiaries.

SECTION 5. Hearing Applications (including applications for disability retirement).

(a) Form of Application. All applications for retirement benefits shall be set forth on forms provided by the Board and shall be sworn to or made under penalty of perjury.

(b) Applications for Disability Retirement filed by Employee . A member wishing to file a disability application must make an appointment with a retirement counselor who will explain the disability process, prepare a preliminary calculation for the employee and provide the member with the necessary forms and information.

(c) Applications for Disability Retirement Filed by Department Heads. The Secretary within five (5) calendar days after receipt of an application filed by a department head shall serve a copy upon the member on whose behalf the application is being submitted and shall notify the member of his or her right to either support or oppose the application and to be represented by legal counsel at his or her own



expense. The secretary shall also schedule an appointment for the member to meet with a retirement counselor for the explanation of the retirement process and the preparation of a preliminary benefit calculation. No action will be taken on any disability application until the employee has been afforded the opportunity of a counseling session.

(d) Disability Application Process.

(i) The retirement counselor will advise the member or department on how to assemble the documentation needed for processing the disability application.

(ii) Staff shall determine a deadline for the submission of medical records and shall notify the applicant of that deadline and, after that deadline has passed, shall provide the applicant with a copy of those records.

(iii) The Board's legal counsel shall review the assembled medical records and determine if the records are sufficient for placement on the Board's consent calendar for consideration by the Board.

(1) If the application is placed on the consent calendar and the application is not granted or is pulled from consideration by a Board member then staff, assuming the matter is not thereafter returned to the consent calendar, shall provide written notice to the applicant of the option to elect between a formal hearing or an informal hearing, with staff to schedule an informal hearing if the applicant does not make an election within fifteen days of the date on the notice.

(iv) If the Board's legal counsel concludes that the medical records are insufficient, the applicant's file shall be referred to the outside independent medical review. The outside independent medical reviewer shall issue a report recommending the granting or denial of the application.

(v) Upon staff's receipt of the medical advisor's final report, staff shall provide a copy of the report to the applicant, along with written notification of the option to elect between a formal hearing or an informal hearing, with staff to schedule an informal hearing if the applicant does not make an election within fifteen days of the date on the notice.

In situations where the reviewer concludes that the medical reviewer's report should not be provided to the applicant, report copies shall be provided to the applicant's counsel, if represented.

SECTION 6. Informal Hearings.

(a) Unless notice is waived by the member and the department head, the Secretary shall cause a notice of the time and place of the informal hearing to be delivered or mailed to the member, the department head, and other interested parties at least ten (10) days prior to the hearing.

(b) At an informal hearing, the proceedings need not be recorded. The matter may be considered solely upon (1) the documentary evidence, including written medical reports if applicable, (2) the records of the System, (3) the report of the independent medical advisor, and (4) presentations made by the member, his or her representative, and the head of the office or department in which the member was or is employed or his or her designee.

(c) The Board shall issue and have served upon the member, the department head, and other interested parties written findings of fact and conclusions concerning applications considered in an informal hearing.

SECTION 7. Formal Hearings.

(a) If the member or department head requests a formal hearing as set forth in section 5(d)(vi), the Board or its designee shall decide whether the hearing shall be conducted by the Board or by a hearing officer appointed by the Board;

(b) If the Board decides to conduct the hearing itself, the hearing shall be set for a Board meeting, whether regular or special, at the earliest practicable time which allows adequate notice to the member, the department head, and to all interested parties;

(c) The Secretary shall cause a notice of the time and place of the hearing to be delivered or mailed (one copy via certified mail and one copy via regular mail) to the member, mailed to the department head, and mailed to all interested parties at least twenty (20) days prior to the hearing. On the request of the member or the department head, the hearing may be set for an earlier time, unless an interested party objects, in which event the time of the hearing will be determined by the Chair;

(d) If the Board decides that the hearing is to be conducted by a hearing officer, it will appoint an individual appearing on a list of neutral arbitrators provided by the State Conciliation Service or the American Arbitration Association, a member of the State Bar of California, or other qualified person to serve as the hearing officer. The hearing officer shall hold the hearing at the earliest practicable time which allows adequate notice to the member, the department head, and to all interested parties, including the Secretary, and shall hold the hearing at such place as may be most convenient to the hearing officer, to the member, the department head, and to all interested parties. The Board shall pay the hearing officer a reasonable fee for his or her services.

(e) Prior to the convening of a formal hearing pursuant to section 8 of Article 7 and upon notice to the member and department head and an opportunity to object,

the official file including in the case of an application for disability retirement all medical records and reports, and any written argument submitted in support of or in opposition to an application, shall be submitted to the Board or the hearing officer.

SECTION 8. Procedures for Formal Hearings. Formal hearings before a hearing officer or the Board shall be conducted in the following manner:

(a) Presiding Officer. The Chair or the hearing officer shall preside over the hearing and shall be known as the presiding officer. The presiding officer shall exercise such control over the proceedings as may be reasonable and necessary. In addition to other duties, the presiding officer shall rule on the admissibility of evidence.

(b) Order of Presentation of Evidence. Unless the presiding officer decides to the contrary in a particular hearing, hearings shall proceed in the following manner:

(i) The presiding officer will read the title of the case and ask for the appearance of all parties. The presiding officer will inquire if all parties are ready to proceed.

(ii) If all parties are ready to proceed, the presiding officer shall admit into evidence as a single exhibit all papers in the official file showing the regularity of the proceedings, including the notice of hearing.

(iii) A copy of the application and of any statement of the applicant accompanying the application shall be received into evidence. In the case of Board hearings, the Secretary or another person authorized by the presiding officer shall summarize the application.

(iv) The person filing the application shall present his or her evidence and shall bear the burden of proof. With respect to disability retirement applications filed by a department head, the member shall bear the burden of proof concerning the issue of whether the disability is service-connected, i.e, whether it arises out of and in the course of employment.

(v) Each other party shall then present his or her evidence in the order determined by the presiding officer.

(vi) Each party may present rebuttal evidence.

(vii) The presiding officer may request the independent medical examiner to offer the medical advisor's opinion on any of the issues in dispute at the hearing, the reasons for the opinion, and the medical advisor's evaluation of the evidence and argument submitted by the parties, with either party entitled to cross examine the medical advisor on any of the advisor's testimony.

(viii) Witnesses, including physicians or other medical professionals, may testify in person or otherwise, including teleconferencing or videoconferencing.

(ix) The presiding officer will inquire if the member has any other evidence to present to the Board.

(x) Upon the conclusion of the submission of evidence, the presiding officer will inquire if the parties are ready to submit the matter for decision. When the matter is submitted to the presiding officer for decision, the hearing will be closed, except for the limited purpose of receiving written argument.

(c) Rules of Evidence. (i) The hearing will not be conducted according to the rules of evidence applicable to civil litigation. Any relevant evidence of the type upon which reasonable persons are accustomed to rely in the conduct of serious affairs shall be admitted into evidence, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence in civil litigation. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding, unless it would be admissible in civil actions. Medical reports shall be deemed not to be hearsay.

(ii) Oral evidence shall be taken only on oath or affirmation. A hearing officer shall have the same authority as the Board to issue subpoenas and to administer oaths.

(iii) Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses on any matter relevant to the issues. If the person filing the application or other party does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.

(iv) The refusal of any applicant or party to submit to examination or to answer relevant questions shall be grounds for considering such questions, for the purpose of the hearing, to be answered unfavorably to the refusing party, and such refusal may result in dismissing the application of the applicant or party seeking affirmative relief.

#### SECTION 9. Decisions In Hearings Before The Board.

(a) In formal or informal hearings held before the Board, the Board shall issue written findings of fact and conclusions.

(b) In formal or informal hearings held before the Board on applications for disability retirement, the Board shall issue findings of fact and conclusions on the following issues:

(i) Whether or not the member has waived entitlement to a disability retirement in respect to the particular incapacity or aggravation giving rise to the application;

(ii) Whether the member is disabled;

- (iii) Whether the member is incapacitated for the performance of duty;
- (iv) Whether the member's incapacity is permanent or of extended duration;
- (v) The number of years of service completed by the member; and
- (vii) A description of the medical condition(s) and/or psychological condition(s) upon which the application for disability is granted or denied.

(c) The Board shall also issue findings of facts and conclusions (1) concerning whether the member's incapacity is the result of an service-connected injury or disease, i.e., whether the injury or disease was caused by his or her employment, and (2) identifying each injury or disease giving rise to the disability, e.g., cardiac, orthopedic, psychological, etc. Notwithstanding the following section, the Board may render an interim decision and reserve jurisdiction on these issues for no more than one (1) year from the date of its interim decision for the sole purpose of considering evidence unavailable as of the date of the Board's decision.

(d) No member of the Board who did not either hear the evidence or review the transcript of the hearing and the documents admitted into evidence shall vote on the matter. A tie vote will be deemed to constitute a denial of the application or that portion of the application upon which the vote is taken.

#### SECTION 10. Decisions In Formal Hearings Before A Hearing Officer.

(a) In formal hearings held before a hearing officer, the hearing officer shall issue written proposed findings of fact, conclusions, and decisions and shall submit them to the Secretary no later than fifteen (15) calendar days after receipt of the court reporter's transcript.

(b) With respect to formal hearings on applications for disability retirement benefits, the decision of the hearing officer shall include a summary of the evidence and shall include findings of fact and conclusions concerning each of the issues set forth in sections 9(b) and, 9(c).

(c) The Secretary shall serve copies of the hearing officer's proposed decision upon the parties to the hearing who shall then have ten (10) calendar days after the date of service to file with the Secretary written objections to the proposed decision.

(d) Upon receiving the proposed findings of fact, conclusions, and decision of the hearing officer, the Board may:

(i) Approve and adopt the proposed findings, conclusions, and decision of the hearing officer, or

(ii) Require that it be provided with a transcript of all testimony and all other evidence received by the hearing officer. Upon receipt thereof, the Board shall take such action as is supported by the evidence, including but

not limited to modifying the hearing officer's proposed findings, conclusions, and decision, or

(iii) Refer the matter back, with or without instructions, to the hearing officer for further proceedings, or

(iv) Approve a disability application and reserve jurisdiction on the issue of whether the member's incapacity was the result of an service-connected injury or disease for one (1) year from the date of the Board's decision for the sole purpose of considering evidence unavailable as of the date of the Board's decision.

SECTION 11. Notice of Decision After An Informal or Formal Hearing. The Secretary shall give written notice of the decision to the member, the department head, and each interested party within ten (10) calendar days following the date the Board renders its decision, whether through adopting the proposed decision of a hearing officer or otherwise. The notice shall include the following:

- a. The member's name and job class;
- b. a copy of the Board's decision, including the date on which the Board rendered its decision;
- c. reference to the Board's notice that was given before the hearing;
- d. reference that the member has been given a full opportunity to offer evidence;
- e. a paragraph outlining the evidence reviewed and applied;
- f. in the case of conflicting evidence, a paragraph explaining the Board's reasoning; and
- g. a statement substantially as follows: "This decision shall become final thirty (30) days after the date of mailing of this notice unless an application for rehearing is filed with the Secretary within that time."

SECTION 12. Application for Rehearing After Either An Informal Or Formal Hearing.

(a) Within fifteen (15) calendar days after written notice of the Board's decision at either an informal or formal hearing has been personally served or sent by mail to the parties to the hearing or their attorneys of record, the member or department head may file with the Secretary an application for rehearing of any application.

(b) The application for rehearing shall be in writing and shall specify which of the grounds set forth in section 3-311 or 3-511, as applicable, of the Fresno Municipal Code forms the basis for the application of rehearing.

(c) Except for newly discovered evidence which could not with reasonable diligence have been produced at the hearing, the Board shall not hear evidence on the application for rehearing but may consider argument by the parties. The Board shall render its decision on the application for rehearing within thirty (30) calendar days after the filing of the application. If the Board does not act within that time period, the application shall be deemed denied, and the determination of the Board on the initial application shall be deemed final and conclusive.

(d) The Secretary shall give written notice to the parties to the hearing of the disposition of the application for rehearing within five (5) calendar days after the Board renders its decision upon the application. If the Board fails to act within the time prescribed in section 3-312 or 3-511, as applicable, of the Fresno Municipal Code, the Secretary shall give notice to the parties within five (5) calendar days after the final date upon which the Board could have taken action. The Secretary shall include in the notice the date upon which the Board took action or the date upon which the time prescribed in section 3-312 or 3-511, as applicable, of the Fresno Municipal Code expired.

#### SECTION 13. Continuances Of Informal or Formal Hearings.

(a) Prior to the opening of either a formal or informal hearing, the Secretary, the Chair, or the hearing officer may continue the hearing to a later meeting or date, with the consent of all other parties. In the absence of consent by all parties, the request will be determined by the Board or by the hearing officer.

(b) During a hearing the Board or the duly appointed hearing officer may continue the hearing to another time and place, may allow additional evidence to be presented, may order additional medical examinations, or may allow other evidence to be gathered and presented, which in the opinion of the Board or hearing officer is required for the proper consideration of the application; provided, however, that a hearing shall not be held open for the submission of written argument for more than fifteen (15) calendar days after the close of evidence.

SECTION 14. Reporter of Proceedings. The proceedings of all formal hearings for disability retirement benefits shall be reported verbatim by a certified shorthand reporter at the expense of the Board. Other hearings may be reported upon the direction and at the expense of the Board or at the election and expense of any interested party.

SECTION 15. Service of Notice. Whenever these rules require service of any notice or paper by mail, the notice or paper may be served personally upon a party or may be deposited in the United States mail, postage prepaid, in a sealed envelope addressed to the party to whom it is to be delivered at his or her last known address. The delivery is deemed completed at the time of the deposit.

SECTION 16. Governmental Records. Certified copies of a report or record of any governmental agency, board, division, or bureau will be accepted as evidence in lieu of the original thereof.

SECTION 17. Physicians' Reports as Evidence. The Boards require the submission of medical evidence in the form of written reports. These reports shall include:

- (a) An acknowledgment that the physician has reviewed the job description for the patient's job classification;
- (b) The nature and history of the patient's injury or illness;
- (c) The patient's complaints;
- (d) The source for the facts that are set forth in the sections on history and complaints;
- (e) The findings on examination;
- (f) The medical treatment indicated;
- (g) An opinion as to the existence of a disability and its extent;
- (h) An opinion as to whether the disability is permanent or of extended duration;
- (i) An opinion as to the cause of the disability, including an opinion as to whether or not the patient's incapacity is a result of an service-connected injury or disease, i.e., whether the injury or disease arises out of and in the course and scope of employment;
- (j) An opinion as to whether or not the patient is incapacitated physically or mentally for the performance of his or her employment duties;
- (k) The reasons for each of these opinions; and
- (l) Whether there exists any other treatment which is likely to remedy the disability.

SECTION 18. Procedures Furnished to Applicant. A copy of this Article 7 shall be furnished to the member at the member's initial counseling session for the disability process and to any interested party at the time that the notice of hearing is given.

SECTION 19. Judicial Review. In those cases where a party is entitled to judicial review of the proceedings before the Board, notice shall be provided to the member and separately to the member's representative if any, together with a proof of service to each, showing the date of service, indicating that any petition to a court must be filed within ninety (90) days from the date the notice of the Board's decision is personally delivered to the party, or, if served by mail, within ninety (90) days of the date of mailing. (C.C.P. section 1094.6).

## **ARTICLE 8. GENERAL BOARD PROCEDURES AND REQUIREMENTS**

SECTION 1. Evidence of Birthdate. An individual at the time the individual is hired as an employee with the City of Fresno in a job classification eligible for participation in the City of Fresno Fire and Police Retirement System or in the City of Fresno Employees' Retirement System shall submit to the Retirement Board or its designee evidence of his or her date of birth. Submission of a certified copy of a birth certificate is the preferred form of evidence. If the



individual states in writing under penalty of perjury that he or she has attempted to obtain a birth certificate, has failed to do so, and describes the reasons for the failure, then the Retirement Board will accept reasonable alternative evidence of the individual's date of birth, such as a certificate of baptism or other document.

## **ARTICLE 9. DIRECT ROLLOVER POLICY**

SECTION 1. Purpose. The purpose of this article is to establish regulations for the implementation of the "eligible direct rollover" rules applicable to tax-exempt retirement plans pursuant to the Unemployment Compensation Amendments of 1992 (PL 102-318).

### SECTION 2. Definitions Applicable to this Article

(a) "Distributee" means a member, a surviving spouse, or a former spouse under a domestic relations order which is treated as a qualified domestic relations order to the extent provided in Internal Revenue Code Section 414(p)(11), and such other persons as come within the meaning of the term as used in Section 401(a)(31)(A) of the Internal Revenue Code.

(b) "Eligible rollover distribution" means a distribution from the Fund which constitutes an eligible rollover distribution within the meaning of Section 401(a)(31)(C) of the Internal Revenue Code, i.e., any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made (I) for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary; or (II) for a specified period of ten (10) years or more;

(ii) any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; or

(iii) the portion of any distribution that is not includable in gross income.

(c) "Eligible retirement plan" means a plan which constitutes an eligible retirement plan within the meaning of Section 401(a)(31)(D) of the Internal Revenue Code, including an individual retirement account described in section 408(a) of the Internal Revenue Code, an individual retirement annuity described in section 408(b) of the Internal Revenue Code, an annuity plan described in section 403(a) of the Internal Revenue Code, or a qualified trust described in section 401(a) of the Internal Code that is a defined contribution plan, the terms of which permit the acceptance of rollover distributions. In the case of an eligible rollover distribution to a surviving spouse or a surviving former spouse, an eligible retirement plan means only an individual retirement account or individual retirement annuity.

(d) "Fund" means the retirement fund of the applicable retirement system.

(e) "IRA" includes both an individual retirement account and an individual retirement annuity.

(f) "Secretary" includes the Secretary for the Retirement Board and the Secretary's designee.

### SECTION 3. Regulations

(a) Election Available. Subject to the provisions of these regulations, each person who becomes entitled to receive an eligible rollover distribution may elect to have the distribution or any portion thereof paid directly to an eligible retirement plan designated by the Distributee or to have the distribution paid to the Distributee.

(b) Written Notice. The Secretary shall provide written notice of the election to each Distributee who becomes entitled to an eligible rollover distribution. The notice shall be in a form approved by the Board and shall be given to the Distributee not less than thirty (30) days nor more than ninety (90) days prior to the date of the distribution, i.e., the date of the check. At the time the written notice is provided, the Secretary shall provide to the Distributee a Distribution Election Form to be completed by the Distributee.

(c) Filing of Election. The Distributee shall file the Distribution Election Form with the Secretary no earlier than thirty (30) days and no later than ninety (90) days after receipt of the Form. If the Distributee elects to have the distribution paid directly to an eligible retirement plan, the Distributee shall provide the following information with the Form:

(i) The Distributee shall provide a statement from the plan designated by the Distributee that the plan is or is intended to be an individual retirement account, an individual retirement annuity, a qualified contribution trust described in Internal Revenue Code Section 401(a), or a qualified annuity plan described in Section 403(a), and that the plan will accept the direct rollover for the benefit of the Distributee.

(ii) In the case where the Distributee has elected to have the distribution paid to an IRA, the Distributee shall provide the name of the IRA, the IRA number, and the name and address of the trustees or custodian (e.g., the financial institution where the IRA is held).

(iii) In the case where the Distributee has elected to have the distribution paid to an employer's eligible retirement or annuity plan, the Distributee shall provide the legal name of the plan, the Employer's Identification Number (EIN) for the plan, and the address of the plan trustee or custodian.

(d) Waiver of Thirty (30)-Day Election Period. The Distributee may waive the thirty (30)-day period between the giving of the written notice described in Section 3(c)

and the distribution by making an affirmative election to make or not to make a direct rollover only if both of the following conditions are satisfied:

(i) The Distributee has received the written notice provided by the Secretary.

(ii) The plan administrator clearly informs the Distributee that the Distributee has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect the distribution (and, if applicable, a particular distribution option).

(e) Election for Portion of Distribution Paid to Eligible Retirement Plan. A Distributee may elect to have a portion of the eligible rollover distribution paid to an eligible retirement plan and the remainder paid to the Distributee.

(f) Distribution to More Than One Eligible Retirement Plan. A Distributee shall not be permitted to have an eligible rollover distribution made to more than one eligible retirement plan.

(g) Form of Distribution. Eligible rollover distributions shall be made by check drawn on the Fund.

If the distribution is to be made to the Distributee, the check shall be made payable to the Distributee. If the distribution is to be made to an eligible retirement plan, the check shall be made payable to the trustee or custodian of the eligible retirement plan. For example, if the eligible retirement plan is "IRA of Joan A. Member" and the trustee is "Acme Bank", the payee line of the check would read "Acme Bank as trustee of IRA of Joan A. Member". Unless the name of the Distributee is included in the name of the eligible retirement plan, the check shall also indicate that it is for the benefit of the Distributee. For example, the payee line of a check for the benefit of George Doe would read "Trustee of XYZ Corp. Savings Plan FBO George Doe".

(h) Retroactive Payments. If a distribution includes retroactive payments, the distribution of those retroactive payments shall have the same characteristics as the ongoing payments for purposes of determining whether the distribution is an eligible rollover distribution.

(i) Default in Election. If the Distributee fails to make an affirmative election with respect to the eligible rollover distribution on or before the ninetieth (90th) day after receipt of the written notice, the Distributee shall be deemed to have elected not to make a direct rollover election and the distribution shall be made to the Distributee.

(j) Distributions to Which This Article Is Applicable. This Article applies to all eligible rollover distributions made from the Fund after December 31, 1992.

## **ARTICLE 10. CONTINUANCE OF ALLOWANCE TO DISABLED CHILD**

SECTION 1. Purpose. The purpose of this article is to set forth the terms and conditions for the continuance of retirement allowances to disabled children over the age of eighteen, pursuant to Fresno Municipal Code sections 3-330, 3-338, 3-408, 3-415, 3-550, and 3-552.

SECTION 2. Definitions Applicable to this Article

(a) "Child" means a natural child of a member, adopted or stepchild of a member, and a child as to whom a member is a legal guardian. A child is included in this definition even if the child does not reside with the member, provided that the member while alive paid more than half of the support for the child.

(b) "Disabled" means being unable, due to a medically proven physical or mental injury or illness or both, to engage in any gainful employment for which the child is reasonably qualified by education, training, or experience.

SECTION 3. Eligibility Requirements. A child is eligible for a continuance of an allowance pursuant to Fresno Municipal Code section 3-330 or 3-338 or 3-408 or 3-415 or 3-550 or 3-552, as applicable, and for a single PRSB benefit pursuant to Fresno Municipal Code section 3-354 or 3-567, as applicable, provided that all of the following are true as of the child's eighteenth birthday:

- (a) The child is disabled; and
- (b) The child's disability is permanent or of extended duration; and
- (c) The child's disability is due to a physical or mental injury or illness which was diagnosed by a physician prior to the child's eighteenth birthday; and
- (d) The child is incapable of supporting himself or herself; and
- (e) The child's disability is the primary factor in the child's incapacity to support himself or herself; and
- (f) The child or his or her parent or guardian fully complies with section 8.

SECTION 4. Amount of Allowance. Regardless of the number of children of a member who qualify under this article, only a single allowance shall be paid, with the allowance being divided on a pro rata basis amount the eligible children. If the child or children had as parents or guardians individuals one of whom is a member of one City of Fresno system and the other of whom is a member of the other City of Fresno system, only a single allowance shall be paid, with that allowance coming from the system paying the largest allowance. If both parents or guardians were members of the same City of Fresno Retirement System, only a single allowance shall be paid, with that allowance coming from the system with the largest allowance.

SECTION 5. Termination of Eligibility. A child shall cease to be eligible to receive the allowance described in section 3 of this article 109 as of the date any of the following apply:

- (a) The child's disability which existed at age eighteen ceases; or
- (b) The child, notwithstanding the disability, is capable of self-support; or
- (c) The child dies; or
- (d) The child marries; or
- (e) The child or his or her parent or guardian refuses or fails to provide the information set forth in section 8.

SECTION 6. Reduction in Amount of Allowance. The allowance otherwise payable to a child shall be reduced as follows:

- (a) The retirement allowance otherwise payable to an eligible child shall be reduced dollar-for-dollar by the amount of income, whether earned or unearned, received by the child in excess of \$25,000.00 a calendar year; and
- (b) The retirement allowance otherwise payable to an eligible child shall be reduced dollar-for-dollar by the amount of gifts (both financial and in-kind) or grants or long-term disability insurance benefits or public payments, such as but not limited to Social Security disability payments, received by the child; and
- (c) The retirement allowance shall be offset by any amounts recovered by or for the child in litigation, or in settlement of litigation, arising out of the injury or illness giving rise to the disability; and
- (d) If a retirement allowance is payable to the child from both retirement systems, the child shall only receive one allowance which shall be the larger of the two.

SECTION 7. Exclusion of Child from this Article

- (a) A child otherwise eligible for continuance of allowance shall not receive an allowance while:
  - (i) incarcerated in a county jail or state or federal penitentiary in the United States or abroad; or
  - (ii) refusing to undergo reasonable treatment for the disability; or
  - (iii) institutionalized at public expense.
- (b) A child shall not be eligible for continuance of allowance if:
  - (i) the disability arises directly or indirectly from the use of alcohol or of controlled substances; or

(ii) the member whose child is otherwise eligible for continuance of allowance is a deferred vested member pursuant to Fresno Municipal Code section 3-328, 3-406, or 3-535.

SECTION 8. Verification of Child's Status. A child or his or her parent or guardian shall supply such verification of status as is required by the Retirement Board and shall otherwise cooperate with the Board, including but not limited to the following:

- (a) Submission of medical or psychological reports as required by the Board at least annually; and
- (b) Submission of medical or psychological records as required by the Board; and
- (c) Submission of the first page of the federal income tax return of the parent or guardian claiming the child as an exemption; and
- (d) Completion of an authorization of release of medical records; and
- (e) Completion of the Board's initial application form; and
- (f) Completion of the Board's annual verification of status form; and
- (g) Agreement to be examined by a physician or physicians selected by the Board; and
- (h) Submission to the Board of court or settlement documents concerning any litigation in which the child or his or her parent or guardian is a plaintiff or a class representative or class member and which arises out of the illness or injury giving rise to the child's disability; and
- (i) Submission of information concerning the child's earned income; and
- (j) Submission of information concerning the child's unearned income, including capital gains income, interest and dividend and rental income, and Social Security disability payments.

SECTION 9. Authority of Retirement Board. The Retirement Board retains plenary authority to interpret these rules and make eligibility determinations. The Retirement Board retains plenary authority to decrease, increase, modify, amplify, delete, or add to any of the terms and conditions set forth in this article.

SECTION 10. Hearings. A child who is denied benefits under this article shall be entitled to appeal that denial administratively pursuant to article 7 of these rules.

SECTION 11. Contemporaneous Construction. These rules constitute a contemporaneous construction of the 2000 amendments to Fresno Municipal Code sections 3-

330, 3-338, 3-408, 3-415, 3-550, and 3-552 to provide for the continuance of allowances to disabled children past age eighteen.

## **ARTICLE 11. ACTUARIAL ASSUMPTIONS**

SECTION 1. Actuarial Assumptions of the City of Fresno Fire and Police Retirement System Used for Determining Retirement Allowances. The actuarial assumptions for the City of Fresno Fire and Police Retirement System, as of June 30, 2016, are as follows:

**Actuarial Interest Rate    7.25%**

### **Service**

Members Headcount - Weighted RP-2014 Healthy Annuitant Mortality Table (separate tables for males and females), projected 20 years with the two-dimensional scale MP-2015, with no setback for males and set forward one year for females

Beneficiaries Headcount - Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional scale MP-2015, with no setback for males and set forward one year for females, weighted 20% male and 80% female

### **Disability**

Members Headcount - Weighted RP-2014 Healthy Annuitant Mortality Table (separate tables for males and females), projected 20 years with the two-dimensional scale MP-2015, set forth four years

Beneficiaries Headcount - Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional scale MP-2015, with no setback for males and set forward one year for females, weighted 20% male and 80% female

SECTION 2. Actuarial Assumptions for the City of Fresno Employees Retirement System Used for Determining Retirement Allowances

The actuarial assumptions for the City of Fresno Employees Retirement System, as of June 30, 2016, are as follows:

**Actuarial Interest Rate    7.25%**

### **Service**

Members Headcount - Weighted RP-2014 Healthy Annuitant Mortality Table (separate tables for males and females), projected 20 years with the two-dimensional scale MP-2015, set forward one year

Beneficiaries Headcount - Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional scale MP-2015, set forward one year. weighted 35% male and 65% female

## **Disability**

Members Headcount - Weighted RP-2014 Healthy Annuitant Mortality Table (separate tables for males and females), projected 20 years with the two-dimensional scale MP-2015, set forth four years

Beneficiaries Headcount - Weighted RP-2014 Healthy Annuitant Mortality Table projected 20 years with the two-dimensional scale MP-2015, set forward one year. weighted 35% male and 65% female

SECTION 3. The Boards shall periodically receive recommendations from their actuary as to the appropriate revision of these actuarial assumptions.

## **ARTICLE 12. DIRECT TRUSTEE-TO-TRUSTEE TRANSFERS DEFERRED COMPENSATION (SECTION 457) FUNDS**

SECTION 1. The purpose of this policy is to establish rules for the implementation of direct trustee-to-trustee transfers of deferred compensation (section 457) funds to one of the City of Fresno Retirement Systems, as permitted by the Economic Growth and Tax Relief Reconciliation Act of 2001.

SECTION 2. If a member of either system eligible to purchase permissive service credit in the system elects to make such a purchase through a lump sum deposit, the applicable system will accept a direct trustee-to-trustee transfer of funds from an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code and which is located within the State of California.

SECTION 3. Such transfers shall only be permitted for a redeposit of withdrawn contributions or for the purchase of permissive service credit as defined in section 415(n)(3)(A) of the Internal Revenue Code.

SECTION 4. The systems shall comply with applicable regulations issued by the Internal Revenue Service, including regulations (if any) as to the accounting for such transfers.

SECTION 5. The effective date of this article is November 1, 2002.

## **ARTICLE 13. DROP DISTRIBUTION OPTIONS**

SECTION 1. Pursuant to the relevant provisions of the Municipal Code, the Retirement Boards hereby adopt the separate and distinct distribution options for payments out of the member's DROP account that are set forth in sections 2, 3 and 4 of this article 13.

SECTION 2. A member, upon completion of the DROP participation period, may select as a DROP distribution period a specific length of time which shall not exceed, in the case of a married couple or registered domestic partnership, the joint life expectancies of the member



and the member's spouse or registered domestic partner and, in the case of an unmarried member, the life expectancy of the member. A member, upon completion of the DROP participation period and before commencement of a retirement annuity, may elect to receive as a lump sum payment all or part of the member's DROP account. Any amount remaining in the member's DROP account shall be distributed to the member based on the DROP distribution period selected. Any amounts withdrawn may not be redeposited.

SECTION 3. A member who terminated DROP participation prior to December 1, 2020, who upon retirement selected a DROP distribution option composed of monthly installments may apply for an Emergency DROP Lump Sum Distribution. The participant must present evidence that there is an emergency that will result in a severe financial hardship as solely determined by the Board. An emergency is defined as a severe financial hardship resulting from a sudden and unexpected illness or accident of the participant and dependents; loss of property due to casualty; or other similar extraordinary circumstances directly impacting the retiree. If the Emergency DROP Lump Sum Distribution is approved by the Board, upon distribution from the retiree's DROP account, the remaining DROP account balance will be recalculated and distributed based on the remaining DROP distribution period. Any amounts withdrawn from a DROP account may not be re-deposited. Effective December 1, 2020, Section 3 of article 13 is suspended until further action of the Boards.

SECTION 4. The provisions set forth in Municipal Code, sections 3-353g(2)(ii)(2-6), 3-424g(2)(ii)(2-6), and 3-566g(2)(ii)(2-6) shall apply to these options.

SECTION 5. The Boards and each of them retain the right to modify or terminate these options.

SECTION 6. This amendment shall become effective as provided in article 4 of these Joint Board Rules.

**ARTICLE 14.**  
**ELECTION TO PAY HEALTH INSURANCE**  
**PREMIUMS FOR PUBLIC SAFETY OFFICERS**

SECTION 1. Section 402(l) of the Internal Revenue Code authorizes governmental defined benefit retirement plans to redirect on behalf of public safety officers who retire after reaching normal retirement age or who retire for disability up to \$3,000 in retirement benefits to pay for health insurance premiums for such retirees on a pre-tax basis.

SECTION 2. In the event an eligible retired public safety officer makes the election provided by Internal Revenue Code ("IRC") Section 402(l) to have amounts up to the maximum amount specified in IRC Section 402(l)(2) distributed from the City of Fresno Fire and Police Retirement System to pay for qualified health insurance premiums, then, upon the request of the eligible retired public safety officer, retirement staff will provide information to the retiree regarding the normal retirement age under the City of Fresno Fire and Police Retirement System and the amount actually paid by the City of Fresno Fire and Police Retirement System for qualified health insurance premiums.

SECTION 3. Definitions. For the purpose of this article 14, the following definitions shall apply:

A. "Eligible retired public safety officer" means a person who has retired under the terms of the City of Fresno Fire and Police Retirement System by reason of either:

- i. Disability; or
- ii. Service retirement after attainment of normal retirement age.

B. "Public safety officer" shall have the meaning given by Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)).

C. "Qualified health insurance premiums" means premiums paid to the City Health Trust for coverage for the eligible retired public safety officer and, during the lifetime of the retired public safety officer, coverage for his or her spouse and dependents, including domestic partners who qualify as dependents under the Internal Revenue Code.

D. "Normal retirement age" means age fifty.

SECTION 4. This article is effective for qualified health insurance premiums paid after December 31, 2006.



### **HISTORY OF JOINT BOARD RULES AND REGULATIONS**

1. Rules and Regulations adopted, including Article 6, November 13, 1962.
2. Article 6, Section 9, subsection (b) amended and subsection (c) added March 29, 1966, Resolution No. 26.
3. Article 2, Section 1 amended to change time from 3 p.m. to 4 p.m., October 13, 1970, Minute Resolution.
4. Article 7 added January 12, 1971, Minute Resolution.
5. Article 2, Section 5 amended December 14, 1971.
6. Article 2, Section 9 added July 11, 1972.
7. Article 2, Section 3 amended February 13, 1973, by addition of second paragraph.

8. Article 7, Sections 1 and 2 amended October 3, 1973.
9. Revision and Restatement of Rules and Regulations, making the Rules and Regulations gender neutral; changing the meeting day and time in Article 2, Section 1; adding facsimile to Article 2, Section 2; deleting the Secretary's non-ministerial role in Article 2, section 3 (second paragraph); changing the order of business in Article 2, section 7; deleting the Secretary's non-ministerial role in Article 2, section 9; changing the submittal time and date in Article 2, Section 10; throughout Article 6, deleting reference to the City Clerk; deleting existing Article 7 and replacing it with a new Article 7, amended March 25, 1993.
10. Article 8, Section 1 added February 9, 1994.
11. Article 2, Sections 2, 7, and 9 amended May 11, 1994.
12. Article 9, added April 8, 1995.
13. Article 1, section 2(c)(4) amended; Article 2, sections 5 and 7 amended; Article 3, section 1 amended and sections 2-4 added; Article 5, section 1(a) amended; Article 6, a new section 1 added and existing sections renumbered, renumbered section 8(d) amended; Article 7, sections 9(c) and 17 amended; all as of October 9, 1996.
14. Article 6, sections 1-11 amended, as of August 11, 1999
15. Article 10, approved November 8, 2000.
16. Article 7, revised sections 1 amended, section 5(a) amended, 5(b) amended, 5(c) amended, 5(d) amended, 6(b) amended, 7(c) amended, 8(b)(vii) amended, 8(b)(viii) added, 8(b)(ix) added, 9(b)(vii) added, 9(d) amended, 11(a-g) amended, 17, 17(h) amended, 17(i) amended, 17(j) amended, 17(k) amended, 18 amended, adopted May 16, 2001.
17. Article 11, added August 8, 2001.
18. Article 12, added October 15, 2001 (Temporary Rule: expires May 1, 2002)
19. Article 12, Section 8 amended April 10, 2002 (Temporary Rule: expires November 1, 2002.)
20. Article 12, expired/deleted November 1, 2002.
21. Article 7, Sections 8(b)(iv), 9(c)), 10(c)), 10(d)(iv), 17(I), all amended November 5, 2002.
22. Article 12, added effective November 5, 2002.
23. Article 3, section 2 amended replacing the term "Finance" with the term "Investment", effective February 12, 2003.

24. Article 7, amended section 5 (b) and (c), deleting the terms "voluntary" and "involuntary" from the text; amended section 5 (d) (vi), effective May 22, 2003.
25. Article 13, added effective June 16, 2004.
26. Article 2, amended section 7, Order of Business, adding Disability Hearings as Item No. 7, renumbering order where appropriate.
27. Article 7, amending Section 4(d) to require that all disability retirement application documents shall be reviewed by legal counsel and/or the Board's independent medical advisor; introduced March 19, 2005, adopted April 25, 2005.
28. Article 6, amending Section 12(a) to clarify the issue of when a Board may call a special election to fill a vacancy in an elected employee Board member seat.
29. Article 13, **section 1** amended; **section 3** new language; renumbered **section 4** formerly section 3 and amended Fresno municipal code numbering; renumbered **section 5** formerly section 4, **section 6** renumbered formerly section 5 and revised effective date for section 3 only. Introduced 2/13/2008, adopted 3/12/2008.
30. Article 14, Election to pay health insurance premiums for Public Safety Officers, Intro F/P 2/12/2008, Adopt F/P 3/12/2008; Intro ERS 3/12/2008; Adopt ERS 4/9/2008.
31. Article 3, amendment to Article 3 Sections 1 through 3 of the Joint Board Rules on Committees. Intro by Joint Boards 06/11/2008, adopted by Joint Boards 7/24/2008.
32. Adopted by the Joint Boards on 10/12/2011: restructuring of the Boards' governance structure – Title page, Table of Contents, Article 2 sections 1, 9(c)(e), Article 3 sections 1-4; renumbering of the Fresno Municipal Code Sections, Article 1 section 3, Article 7 sections 2 and 3, Section 12(b)(d), Article 10 sections 1, 3, 7(b)(ii), 11, Article 13 sections 4 and 5;
33. Adding City of Fresno Management Employees Association as a unit under the clerical or supervisory worker Board member – Article 6 section 1 (d);
34. General System name clarification – Table of Contents, Title page; Article 4; Article 5 section 1(a); Article 8 section 1; Article 11 section 1, Article 14 sections 2, 3;
35. Clarification as directed by the Boards under Article 10 Continuance of Allowance to Disabled Child provisions regarding single payment if both parents were in the same retirement system with allowance coming from the highest allowance – Article 10 section 4, 6(c);
36. Updating of actuarial assumptions in Article 11 – Article 11 sections 1 and 2.
37. Article 11. Actuarial Assumptions updated to clarify the Boards actuarial assumptions. Introduced by the Joint Boards on 8/14/2013 and adopted by the Joint Boards on 9/11/2013.

38. Article 13. DROP Distribution Options amended to allow for an Emergency Lump Sum Distribution from a retiree's DROP account. Introduced 8/14/2013 / Adopted 9/11/2013. [Amendment includes the deletion of Section 7.]
39. Article 11 – Actuarial Assumptions presented to Boards on 5/24/2016. Amendments introduced on 10/12/2016 / adopted on 10/25/2016.
40. Article 7 – Amended Section 5(d) to provide appropriate time for notice of an election for an informal or formal hearing pursuant to a member's application for disability retirement. Adopted on 8/8/2018.
41. Article 2 – Amended Section 7 adding “three (3) minutes but at their sole discretion may allow up to” *before* the existing words “five (5) minutes”.
42. Article 2 – Amended Section 7 changing the order of business, moving Employee Personnel Issues to occur right before Adjournment. Introduced on 11/27/2018 and adopted on 12/9/2018.
43. Article 7 – Amended Section 5(d) Disability Application Process providing an exception to those applications pulled and thereafter returned to the Consent Calendar not requiring an informal or formal hearing; and 10(a) Decisions in Formal Hearings before a Hearing Officer extends the due date for the Hearing Officer's written report, and two minor clerical changes to Sections 5(c) and (d). Introduced 2/13/2019/Adopted 3/13/2019.
44. Article 2 – Amended language in Section 5 Quorum – Introduced on 2/13/2019/Adopted 3/13/2019.
45. Article 7 – Amended Section 7 of Article 7 adding subsection (3), renumbering subsections (b)(vii) and (b)(ix) as (b)(ix) and (b)(x), and adding subsection (b)(viii). Introduce 12/11/2019/Adopt 01/08/2020.
46. Article 13 – Amended language of Article 13 approved by outside tax counsel that includes changes to Sections 1 through 6 with key amendments to Sections 3 and 4; deleting current Section 3 relative to partial lump sum payouts and amendment to Section 4 relative to Emergency Lump sum Distribution requests. Introduced 10/14/2020, Adopted 10/27/2020.