City of FRESNO **REPORT TO THE CITYCOUNCIL**

AGENDA ITEM NO.	1M
COUNCIL MEETING:	01-27-11
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	Mark Scott

January 27, 2011

FROM: MARK SCOTT, City Manager
JAMES C. SANCHEZ, CITY ATTORNEY

BY: TOMMI R. SAGHATELIAN, Deputy City Attorney
City Attorney's Office

SUBJECT: ADOPT ORDINANCE AMENDING SECTIONS OF FRESNO MUNICIPAL CODE TO COMPLY WITH SETTLEMENT REACHED BETWEEN ACTIVE AND RETIRED FRESNO CITY EMPLOYEES; CLARIFY PENSIONABLE ITEMS FOR DROP MEMBERS.

EXECUTIVE SUMMARY

The proposed ordinance change complies with and clarifies a settlement reached between active and retired City of Fresno Employees, the City, and the Retirement Board in 2007. This is the last and largest of the employee benefit claims asserted against City and the Retirement Board in 2003. Changes to the "Definitions" section of 3-501, and Changes to the Deferred Retirement Option Program, ("DROP") of Section 3-566 of the Fresno Municipal Code, clarify items of compensation which will or will not be considered pensionable at retirement. We recommend Council introduce the attached Ordinance for adoption at its next meeting.

BACKGROUND

In 2003, litigation was filed in the Fresno County Superior Court by Fresno Active or Retired Employees ("FORCE") against City and Retirement, seeking compensation and permanent changes to the code regarding pensionable compensation. The parties have been in compliance with the terms of the settlement since August 3, 2007. The ordinance changes are consistent with the City's historical practice, and also set the terms in perpetuity per the intent of the parties.

The Deferred Retirement Option Program ["DROP"] at FMC Section 3-566 is modified by deleting language which suggested that the "cash out" of sick leave or holiday pay could be construed as compensable compensation. The settlement clarified that employee "cash outs" of sick leave or holiday pay at retirement do not constitute pensionable compensation; hence, the section is deleted to avoid confusion. This clarification is consistent with established California case law.

Changes to the "Definitions" section applicable to employee retirement is as follows: Section 3-501 is modified to add new Section 3-501(i) (5)-(7) to provide definitions of holiday pay, administrative leave allowances, miscellaneous pay and vehicle allowance. These new definitions are consistent with City's existing practices and do not change retirement Board policy or practice. Adds a reference that calculation of holiday leave as pensionable shall be determined pursuant to the terms of the settlement. Clarifies cash-out at retirement of accumulated leave balances are not included as compensation for any retirement purpose.

A new subsection of "Miscellaneous Pay" in the "Definitions" FMC Section 3501(i)5 (iii), have been defined and agreed to as pensionable compensation including bilingual pay, court appearances, standby pay, uniform allowance, educational incentive and certificate pay. The listing of 'miscellaneous pay' is attached to this Staff Report.

RECOMMENDATIONS
Adopt the proposed Code amendments to comply with the terms of the Settlement Agreement.

FISCAL IMPACT
In light of the fact that the clarification does not change historical practices, there will be no fiscal impact. The failure to implement the clarifications potentially violates the parties' negotiated settlement and exposes the City to significantly increased retirement costs should the Retirement Board be obligated to include the post-retirement cash out of sick leave and holiday pay within the definitions of pensionable compensation.

Attachments: Proposed Ordinance; Items of Miscellaneous Pay

TRS:nd (54241nd/trs) (-1-07-10)

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SUBSECTION (i) OF SECTION 3-501 and SUBSECTION (b) OF 3-566 OF THE FRESNO MUNICIPAL CODE, RELATING TO THE CLARIFICATION OF COMPENSATION ISSUES FOR THE EMPLOYEES RETIREMENT SYSTEM.

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

SECTION 1. Subsection (i) of Section 3-501 of the Fresno Municipal Code is amended to read:

(i) The various types of compensation are as follows:

(1) "Compensation", as distinguished from benefits under Division 4 of the Labor Code of the State of California, shall mean the remuneration payable in cash by the city, plus the monetary value, as determined by the Council, or if the Council shall not have so determined, then by the Retirement Board, of board, lodging, fuel, laundry and other advantages allowed as remuneration by the city. For individuals who first became members in the System before July 1, 1996, there shall be no limit on the compensation taken into account in determining his or her benefits. For individuals who first became members in the System on or after July 1, 1996, the annual compensation of each member taken into account under the System for any year shall not exceed the maximum amount provided in Internal Revenue Code Section 401(a)(17). In applying this rule for

individuals who first became members on or after July 1, 1996, the following special rules shall apply:

(i) For the plan year commencing July 1, 1996, the maximum amount is $150,000 as adjusted for cost of living increases by the Secretary of the Treasury. Each subsequent year that maximum is subject to further adjustments for cost of living increases in accordance with regulations issued by the Secretary of the Treasury. Any such increases shall be automatically incorporated into this Code without the need for specifically amending this Code each time the maximum is adjusted.

(ii) If any individual is part of the family of a highly compensated employee in the group consisting of the ten most highly compensated employees paid the greatest compensation by the city during the plan year, then such individual shall not be considered a separate employee. Compensation paid to such individual by the city shall be treated as if it were paid to the highly compensated employee. In applying this rule, the term "family" shall include only the spouse of the highly compensated employee and any lineal descendants of the highly compensated employee who have not attained age nineteen before the end of the plan year and the term "highly compensated employee" shall refer to those employees defined in Internal Revenue Code Section 414(g).

(iii) If the provisions of subsection (ii) above are applied to any member and his or her family in the aggregate, the compensation counted for

each aggregated employee shall be reduced pro rata to stay within the limit of subsection (i), except that if any family member is not participating in any qualified retirement plan sponsored by the city, then the compensation counted for that family member shall be reduced to zero before any other reductions are made under this subsection.

(2) "Compensation earnable" by a member shall mean the compensation as determined by the Retirement Board, which would have been earned by the member had he worked, throughout the period under consideration, the average number of days ordinarily worked by persons in the same grade or class of positions as the positions held by him during such period, and at the rates of pay attached to such positions. The compensation for any absence shall be based on the compensation earnable by him at the beginning of the absence, and that for such time prior to his first entering city service, as may be necessary to complete the three consecutive years required in the calculation of "final compensation," shall be based on the compensation earnable by him in the position first held by him in such service.

(3) "Final compensation" shall mean the highest average monthly compensation earnable by a member during any period of three consecutive years during his membership in the System, using the rate of pay in effect at the time of retirement (including, as to any member retiring on or after July 1, 1976, and prior to August 1, 1976, and as to any member retiring on or after

July 1 and prior to August 1 of any fiscal year thereafter, any adjustment of such rate of pay made pursuant to a memorandum of understanding with a formally recognized employee organization approved by the Council prior to January 1 of that fiscal year) and calculated as follows: The compensation attached, as of the date of retirement, including such adjustment thereto as specified above, to the lowest position held during the three highest consecutive years plus one-thirty-sixth of the difference between it and the compensation attached to any higher position held during that period for each month and fraction thereof the higher position was held. For the purposes of this Code, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for such breaks. If a break in service did not exceed six months in duration, time included in the break and compensation earnable during such time shall be included in computation of final compensation, but time included in the break which is in excess of six months and the compensation earnable during such excess time shall be excluded in computation of final compensation.

(4) When the compensation of a member is a factor in any computation to be made under this article, there shall be excluded from such computation any compensation based on overtime such as, but not limited to, differentials for holidays, any compensation payable, upon separation from city service, for unused accumulated vacation, for unused accumulated annual

leave, and any bonus or award payable solely for achievement of proficiency in any skill and not based on any additional or higher duties performed or to be performed by the recipient thereof. "Overtime," for the purposes of this article, is the aggregate city service performed by an employee as a member in excess of the hours of work considered normal for employees on a full-time basis.

[(5) When the compensation of a member is a factor in any computation under this article, there shall be included in such compensation:

(i) "Holiday Pay", defined to mean pay received by a member over and above the member's regular base pay, i.e., pay received in a typical paycheck for the member, due to working on a holiday in the payroll period to which the paycheck applies. Holiday Pay does not include holiday pay paid at an overtime rate;

(ii) "Administrative Leave Allowance" or "Pay in Lieu of Administrative Leave", defined to mean pay received by employees in lieu of base administrative leave. The term does not include pay received by employees in lieu of merit administrative leave;

(iii) "Miscellaneous Pay", defined to mean those items of miscellaneous pay included in pensionable compensation as of August 31, 2007, and, in addition, bilingual pay, court appearance standby pay, uniform allowance, educational incentive pay, certificate pay, and no other pay; and

(iv) "Vehicle Allowance", defined to mean payments to members for a vehicle allowance in the form of a flat monthly stipend. The term does not include vehicle allowance paid on the basis of cents per mile.

(6) When the compensation of a member is a factor in any computation to be made under this article, there shall be excluded from such computation:

(i) Premiums paid for employee medical, dental, prescription drug, vision, life, long-term disability insurance, or for professional dues or memberships or license renewal fees, which shall not be included as compensation for any retirement purpose, including but not limited to calculating service or disability retirement allowances or survivor continuances.

(ii) Cash-outs at retirement of accumulated leave balances shall not be included as compensation for any retirement purpose, including but not limited to, calculating service or disability retirement allowances or survivor continuances. Accumulated leave balances at the time an active employee enters DROP shall not be included as compensation for any retirement purpose, including but not limited to, calculating service or disability retirement allowances or survivor continuances.

(7) When Holiday Leave of a member is a factor in any computation to be made under this article, the Holiday Leave shall be determined pursuant to the settlement stipulation in *FORCE, et al v. City of Fresno Employees Retirement Board*, Fresno Superior Court Case No. 03 CECG 02595 HAC, effective August 31, 2007.

SECTION 2. Subsection (b) of 3-566 of the Fresno Municipal Code is amended to read:

(b) Eligibility and Election to Participate in DROP.

(1) Any member who has attained age 55 and who possesses sufficient credited service to be eligible for a service retirement shall be eligible to participate in DROP. The eligibility age of fifty-five may be reduced to an age not less than age fifty, provided the member consents in writing to the early retirement reduction provisions set forth in section 3-541(4).

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

(i) Be made on a form provided by the System;

(ii) Designate a period of participation not to exceed one hundred and twenty (120) months;

(iii) Affirm that the member, on the date the member commences participation in DROP, shall cease accruing service credits;

(iv) Affirm that the member agrees to terminate City employment no later than completion of the designated DROP participation period;

(v) Constitute an application for service retirement no later than the end of the designated DROP participation period; and

(vi) Include the member's irrevocable election among the options in Section 3-554 (Optional Modification of Allowances).

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

(4) By electing to participate in DROP:

(i) A member becomes subject to all of the provisions of this section;

(ii) For a member whose retirement allowance is determined under Section 3-501 (Definitions), ~~average~~ [final] compensation shall be determined solely by reference to the ~~rank~~ [position] or ~~ranks~~ [positions] held by the member prior to the date the member commences participation in DROP; [and]

~~(iii) If a member is entitled to convert a sick or holiday or other leave balance into a lump sum cash payment upon retirement, the dollar value of the member's leave balance as of the effective date of DROP participation shall be divided by thirty-six, and the resulting~~

~~quotient shall be added to the highest average monthly compensation earnable by a member during period of three consecutive years of membership in the System prior to commencing participation i DROP used for purposes of determining final compensation under Section 3-501 (Definition);~~

~~1. The employee contributions due with respect to the leave balance shall be charged against the member's DROP account;~~

~~2. Any changes in leave balances occurring after the member commences participation in DROP shall not affect in any manner the amounts credited to the member's DROP account or the member's retirement allowance, whether for service or disability, payable to the member; and~~

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

SECTION 3. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

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

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the ___ day of _____, 2011.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2011
Mayor Approval/No Return: _____, 2011
Mayor Veto: _____, 2011
Council Override Vote: _____, 2011

REBECCA E. KLISCH
City Clerk

BY:_____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY:_____
Tommi R. Saghatelian
Deputy

[TRS/52989dlv/nd/dlv:ord] (01-07-11)

	Pensionable Earnings
A01	Computer Tech Support Pay
A02	Assignment Pay-Animal Trainer
A03	Assignment Pay-Street Sweep
A04	Assign Pay-Concrete Milling
A05	Assign-Qual Applicator Cert
A06	Assign-Irrigation
A07	Assignment-CSD-Graffiti
A08	Assignment-Specific Project
A10	Assignment-Training
A13	Assignment-Sup-Police Records
A15	Assign-Spray Paint-over 30 ft
A19	Standby Pay(End Shift to Next)
A20	Standby Pay (Days Off)
A22	On Call - 15 minutes @ base rt
A23	B/C Standby Pay
A30	Acting Pay
A32	IBEW Leadworker - 10%
A33	PeopleSoft Assignment Pay
A34	Structural Eng/Code Compl Exp
A35	Prof Eng Premium-5%
A36	Prof Eng Premium - 2 1/2%
A37	PeopleSoft Premium - 16%
A39	IBEW Lead for OT
A40	Prof Eng Premium - 10%
A41	Prof Eng Premium - 7.2%
A42	Prof Eng Premium - 1-1/2%
A43	IBEW Lead 2OT
A44	Employee Development Stipend
A46	IBEW Standby ($20)
A47	IBEW Standby ($112)
A51	CFMEA Performance Stipend
A52	Stipend Refund
A57	Hazardous Confined Space Pay
A59	Employee Devlp Stipend $40/mo
A60	IBEW Hol Stndby $10
A61	IBEW Spec Hol Stndby $42
A69	B/C STIPEND PENSIONABLE
AWD	Award/Pay for Performance
B01	Records Incentive Pay 1
B02	Records Incentive Pay 2
B03	Records Incentive Pay 3
C01	Certificate Pay-Engineer Reg
C02	Certificate Pay-CPA
C03	Certificate Pay-Cert Prof Sec
C06	Bilingual Pay - A-Pension
C08	Certificate Pay-Architect Reg
C29	Certificate Pay - CIA
N01	Shift Pay - Evening
N02	Shift Pay - Night
N04	Shift Pay - ATU Bus Drivers
N05	B/C Evening Shift
N08	B/C Evening Shift
N09	B/C Night Shift
R14	Retroactive Premium Pay