

POLICE & FIRE DEPARTMENT RETIREMENT PLAN
Policy on Procedure Regarding Cancellation and Termination of
Retirement Allowances

Approved by Board on 4/7/22

Purpose of this Policy

Whereas, the City of San José Charter § 1504(e) provides that, if a member of the San José Police and Fire Department Retirement Plan (“Plan”) commits treason or is convicted of a felony, then any portion of that member’s retirement allowance may be cancelled or terminated.

Whereas, the City of San José Municipal Code § 3.36.830 grants the Board of Administration (“Board”) the sole discretionary authority to cancel or terminate any and all service retirement allowances for a member convicted of a felony or treasonous conduct.

Whereas, San José Municipal Code § 3.36.1150 grants the Board the sole discretionary authority to cancel or terminate any or all disability retirement allowances for a member convicted of a felony or treasonous conduct.

Whereas, this Policy provides the procedures that the Board shall follow in making a determination under City of San José Municipal Code § 3.36.830 for service retirement allowances and City of San José Municipal Code § 3.36.1150 for disability retirement allowances, as specified herein, absent exigent circumstances.

- 1) **Due Process:** Upon the Plan’s receipt of information that a member has been convicted of a felony or treasonous conduct, the Plan shall provide:
 - a. **Written Notice:** shall be sent to the member, and any affected beneficiary of the member to the extent locatable, at least 90 days in advance of the proceeding identified in subdivision (ii) below with the following:
 - i. The applicable San José Municipal Code provision under which the Board will consider a potential cancellation and termination of the member’s retirement allowance;
 - ii. The date, time and place for a scheduled public proceeding for the Board to determine whether to apply the applicable San José Municipal Code provision to the member’s retirement allowance;
 - iii. Notice to the member and any affected beneficiary of the member regarding their right to appear, individually or by counsel, and

present evidence, argument and/or objections to the Board at the scheduled public proceeding;

- iv. Notice to the member and any affected beneficiary of the member regarding the process and timing for exchange of any written materials between the member/affected beneficiary and staff to be provided to the Board prior to the scheduled proceeding; and
- v. A copy of this Policy.

b. Scheduled Proceeding:

- i. Staff of the Office of Retirement Services and the Plan's legal counsel, assisted by others as they may require, shall present a summary of the member's conviction and retirement allowance, and may provide a recommendation as to the application of San José Municipal Code § 3.36.830 or San José Municipal Code § 3.36.1150, for the Board's consideration.
- ii. The member and any affected beneficiary of the member, individually or through counsel, shall have an opportunity to appear and be heard before the Board, including to present evidence, argument and objections in support of their position.
- iii. Both sides may present relevant evidence, argument and objections, including by written documents or oral testimony, and may call witnesses on their behalf. The City and other interested parties may do the same, at the discretion of the Board.
- iv. The Board may exercise its subpoena power to command the appearance of witnesses or presentation of documents at the proceeding, and may place witnesses under oath as it determines is appropriate.
- v. The Board need not apply formal rules of evidence during the proceeding.
- vi. The proceeding shall occur during a publicly agendized meeting of the Board.
- vii. The proceeding shall be recorded by video, audio, and/or stenographically.
- viii. The Board Chair or designee shall preside over the proceeding.

- c. Board Determination: The Board shall deliberate and render a determination by majority vote of those present on whether and how to apply the relevant San José Municipal Code provision to the member's retirement allowance, which shall be reflected in the Board's Minutes. The Board's determination shall be final and binding. The member may contest the Board's determination under the civil writ procedures set forth in California Code of Civil Procedure § 1085.

- d. Further Proceedings: The Board may take further action as it deems appropriate under the circumstances, subject to this Policy.