

**ORDINANCE NO. 1698**

**AN ORDINANCE TO AMEND SECTION 1.336, TRUSTEE, OF CHAPTER 9, EMPLOYEE RETIREMENT SYSTEM, OF TITLE I, ADMINISTRATION, OF THE CODE OF THE CITY OF SOUTHFIELD, BY INSERTING A NEW SECTION 1.336 IN PLACE OF THE EXISTING 1.336.**

**THE CITY OF SOUTHFIELD ORDAINS:**

**SECTION 1.**

That Section 1.336 of Chapter 9 of Title I of the Code of the City of Southfield be amended to insert a new Section 1.336 in the place of the existing 1.336, which new Section 1.336 shall read as follows:

**SEC. 1.336. TRUSTEE.**

The board shall be the trustee of the assets of the retirement system. It shall have full power and authority to invest and reinvest such assets, subject to the provisions of the Public Employee Retirement System Investment Act, Act 314 of the Public Acts of 1965, as amended, and as it might from time to time be amended or replaced by successor acts. The board shall have full power to hold, sell, purchase, assign, transfer and dispose of any securities and investments in which any monies of the system have been invested as well as the proceeds of the investment and any monies belonging to the system. A Trustee shall discharge his or her duties and act with the care, skill, prudence and diligence under the circumstances then prevailing which a prudent person, acting in a similar capacity and familiar with those matters, would use in the conduct of a similar enterprise with similar aims. The Board shall render a report to the Mayor and the City Council on or before the first day of February of each year, showing the fiscal transactions of the Retirement System for the year ending on the preceding thirtieth day of June, the amounts of accumulated cash and securities in the various funds of the System, and the last balance sheet showing the financial condition of the Retirement System by means of an actuarial valuation of the assets and liabilities of the Retirement System. The Board shall retain the services of one or more investment consultants who shall be responsible for assisting the Board with oversight of the Retirement System's investment portfolio. Such investment consultant shall be a registered advisor with the United States Securities and Exchange Commission and shall be a nationally recognized institutional investment consultant with expertise in the investment of public pension plan assets. Any such investment consultant shall acknowledge in writing its role as investment fiduciary with respect to the Retirement System as defined in Act 314, as amended. The investment consultant shall provide quarterly investment performance reports to the board which shall include monitoring and evaluation of the retirement system's investment managers. The board will provide copies of the investment performance reports to the Mayor and City Council on a quarterly basis.

**SECTION 2.**

Should any section, clause, or paragraph of this ordinance be declared by a court of competent jurisdiction to be invalid, the same will not affect the validity of the ordinance as a whole or part thereof other than the part declared to be invalid.

**SECTION 3.**

All ordinances, parts of ordinances or codes in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

**SECTION 4.**

This ordinance shall take effect upon publication.

KENSON J. SIVER, Mayor

SHERIKIA L. HAWKINS, City Clerk

Introduced: October 22, 2018  
Enacted: October 29, 2018  
Published: November 15, 2018

ORDINANCE NO. 1491 (plus changes of Ordinance 1531, 1534, 1551 and 1570)

**CHAPTER 9.EMPLOYEE RETIREMENT SYSTEM**

**Sec. 1.311. Employee retirement system; effective date.**

The city employee retirement system, heretofore established pursuant to section 6.5(b)(2) of the Charter, is hereby continued. The effective date of the retirement system is July 1, 1965. Unless otherwise provided herein, all provisions relating to the Tax Reform Act of 1986 shall be effective July 1, 1989, all provisions related to the Uruguay Round Agreements Act, the Uniform Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and all provisions related to the Community Renewal Tax Relief Act of 2000 shall be effective January 1, 1997.

**Sec. 1.312. Short title.**

This chapter may be cited as the city employee retirement system ordinance.

**Sec. 1.313. Definitions.**

When used in this chapter, the following words and phrases shall have the following meanings, unless a different meaning is clearly indicated by the context:

- (1) *Accumulated contributions* shall mean the sum of (a) all amounts deducted from the compensation of a member, plus (b) all single-sum contributions made by the member and credited to his or her individual account, together with regular interest thereon.
- (2) *Actuarial equivalent* shall mean a benefit of equivalent value when computed on the actuarial assumption basis specified in section 1.343.
- (3) *Board* shall mean the employees retirement board as established in section 11.22 of the City Charter
- (4) *City* shall mean the City of Southfield, Michigan, and shall include its several departments, commission, boards and agencies.
- (5) *City council* or *council* shall mean the City Council of the City of Southfield, Michigan.
- (6) *Commission* shall mean the administrative civil service commission of the city.

(7) *Compensation* shall mean the salary or wages paid an employee for personal services rendered to the employer including (a) vacation pay and holiday pay, (b) sick leave pay while absent from work, (c) longevity pay, (d) items of deferred compensation as provided by the city, (e) for nonunion employees hired prior to June 1, 2005, payment in consideration of unused vacation accumulation, up to a maximum of two (2) times the annual benefit, (f) for nonunion employees hired on or after June 1, 2005, payment in consideration of unused vacation accumulation up to a maximum of 100 hours and (g) items of a similar nature as provided by administrative rule and regulation. Compensation for purposes of retirement shall not include (a) remuneration for overtime services, (b) allowances for clothing, equipment, travel and similar items, (c) reimbursement for expenses incurred, (d) payment in consideration of unused sick leave accumulations, (e) salary, wages or other items which are the basis of benefits under another retirement program, excluding F.I.C.A., (f) items of a similar nature as provided by administrative rule and regulation, (g) for limitation years beginning after December 31, 1997, for purposes of applying the limitations of section 415 of the Internal Revenue Code, compensation paid or made available during such limitation years shall include any elective deferral (as defined in section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of sections 125 or 457 of the Internal Revenue Code, and (h) for limitation years beginning on and after January 1, 2001, for purposes of applying the limitations described herein, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code. For purposes of section 415 of the Internal Revenue Code, compensation shall mean compensation actually paid during the limitation year and the limitation year shall be the retirement system year or such other consecutive 12-month period over which compensation is otherwise determined under the retirement system. The annual compensation of each employee taken into account in determining benefit accruals in any retirement system year beginning after December 31, 2001, shall not exceed \$200,000. Annual compensation means compensation during the retirement system year or such other consecutive 12-month period over which compensation is otherwise determined under the system (the determination period). In determining benefit accruals in years beginning after December 31, 2001, the annual compensation limit for determination periods beginning before January 1, 2002 shall be \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001. The \$200,000 limit on annual compensation shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(8) *Court* shall mean the 46<sup>th</sup> District Court

(9) *Credited service* shall mean personal service rendered to the employer and credited to a member to the extent provided in this chapter (see section 1.316).

(10) *Eligible spouse* shall mean the spouse of a member by legal marriage at the time of the member's retirement.

(11) *Employee* shall mean any person regularly employed in the service of the employer as a career employee.

(12) *Employer* shall mean the city or the 46th District Court.

(13) *Final average compensation* shall mean one-sixtieth of the sum of a member's compensation during the period of sixty (60) consecutive months of credited service producing the highest sum, which period of sixty (60) consecutive months shall be within the period of one hundred twenty (120) consecutive months of credited service immediately preceding retirement or termination of membership, whichever comes first. Effective July 1, 1998, for employees hired prior to June 1, 2005 "final average compensation" shall mean one thirty-sixth of the sum of a member's compensation during the period of thirty-six (36) consecutive months of credited service producing the highest sum, which period of thirty-six (36) consecutive months shall be within the period of sixty (60) consecutive months of credited service immediately preceding retirement or termination of membership, whichever comes first.

(14) *Management group employee* shall mean an appointed employee who is not a member of the classified civil service, and, for purposes of this chapter, the city clerk and the city treasurer

(15) *Member* shall mean any employee who is included in the membership of the retirement system in accordance with the terms of this chapter.

(16) *Regular interest* shall mean five percent (5%) per annum, or such other rate or rates as determined from time to time by the council, compounded annually.

(17) *Retirement system* or *system* shall mean the city employee retirement system created and established by Ordinance 388, as from time to time amended and continued.

(18) *Standard form of (normal, early, deferred or disability) pension* shall mean a monthly amount payable as provided in this chapter, as of the first day of each calendar month in which the retired member is living.

(19) As used in this chapter, the masculine gender shall include the feminine and words of the singular number with respect to persons shall include the plural, and vice versa.

**Sec. 1.314. Membership in retirement system.**

(1) Subject to subsection (3) of this section, each eligible employee shall become a member of the retirement system beginning with his or her date of hire as an employee.

(2) Subject to subsection (3) of this section and effective on and after April 23, 1984, every employee of the 46th District Court (hereinafter "court"), who was first hired by the court prior to January 1, 1984, may make an irrevocable written election, within thirty (30) days following April 23, 1984, to become a member upon the commission's determination that he or she has completed at least six (6) full months of service with the court. Effective July 1, 1980, every judge of the court may, at his or her option, become a member and shall be entitled to receive benefits as provided in this chapter. Court employees who elect to become members pursuant to this subsection (2) shall receive credited service in the same manner as other members

(3) The following persons shall not be eligible for membership in the retirement system:

(a) Any employee classified by the city as a non-career or seasonal employee;

(b) Any person whose services are compensated on an independent contractual or fee basis, with the exception of persons funded through the Federal Job Training Partnership Act of 1983, who elect to become members hereunder on or before December 30, 1983;

(c) Any employee of the police and fire departments subject to the provisions of Act 78 of Public Acts of 1935, as amended;

(d) The mayor and all members of the council during their terms of office;

(e) Any person who is included by law in any other pension or retirement system by reason of his or her compensation paid by the city, except the Federal Social Security Old-Age, Survivors' and Disability Insurance Program, or its successor.

(f) Any judge of the 46<sup>th</sup> District Court who was first elected or appointed on or after March 31, 1997, to the extent that such membership is precluded by state law.

(4) Management group employees hired or elected after August 1, 2007 may, within sixty (60) days of their employment, irrevocably elect to opt out of participation and

) membership in the retirement system and to instead participate in another city sponsored retirement plan. The election must be in writing and filed with the retirement system and the human resources department. Employees electing to opt out of the retirement system will not be eligible for re-enrollment at a future date.

(5) Non union employees hired on or after June 1, 2005, but prior to August 1, 2007, who at the time of employment were provided participation in the city's defined contribution plan, shall have until November 1, 2007 to irrevocably opt out of membership in the retirement system and continue participation in the city's defined contribution plan.

(6) Should any legal impediment which excludes a person from the retirement system be removed according to law, such person will be permitted to participate in the retirement system upon written request to the board for a re-determination of membership status. If the board shall determine that the impediment has been removed, the person may become a member of the system as of the date the impediment was removed. Any person whose membership in the retirement system is established pursuant to this subsection shall be entitled only to those benefits which are in effect on or after the date the impediment was removed. This provision shall be effective as of April 23, 1984.

(7) Any employee or person who is aggrieved by a determination of his or her membership status may appeal such determination, in writing, to the board.

**Sec. 1.315. Termination of membership; restoration of credited service.**

) Should any member who has less than ten (10) years of credited service cease to be employed in a position covered by the retirement system, for any reason except retirement, he or she shall thereupon cease to be a member and his or her credited service at that time shall be forfeited by him or her. In the event a member is reemployed in a position covered by the system, he or she shall again become a member. All credited service previously forfeited shall be restored upon the completion of thirty (30) months of continuous service following such reemployment, provided he or she returns to the system the amount, if any, of accumulated contributions withdrawn from the system, together with regular interest thereon, within that period of time, and as determined by the board. Any pension to which a reemployed member shall be entitled shall be computed according to the provisions of this chapter as this chapter was in force at the time the member last ceased to be employed prior to his or her current reemployment unless the member has completed thirty (30) months of continuous service following such reemployment, in which case any pension to which the member shall be entitled shall be computed according to the provisions of this chapter as this chapter was in force at the time such member last ceased to be employed prior to his or her retirement.

### **Sec. 1.316. Service credit.**

The board shall fix and determine by appropriate rules and regulations the amount of service to be credited to any member, provided that:

- (1) Service rendered prior to April 28, 1958, shall not be recognized for any purposes of the retirement system.
- (2) Credit for service rendered on or after April 28, 1958, and prior to July 1, 1965, shall only be used for the purpose of determining the member's eligibility to retire pursuant to sections 1.319, 1.320 or 1.321 and not for the purpose of computing the amount of his or her benefits.
- (3) For nonunion members hired on or after June 1, 2005 and prior to August 1, 2007, credit for service rendered during this period shall only be used for the purpose of determining the member's eligibility to retire pursuant to sections 1.319, 1.320 or 1.321 and not for the purpose of computing the amount of his or her benefits, unless the member elects to purchase this service credit in accordance with subsection (5).
- (4) For a member who was a person elected to the office of clerk or treasurer after June 1, 2005, unless the person was serving as clerk or treasurer or was a member of the system on June 1, 2005, credit for service rendered prior to August 1, 2007 shall only be used for the purpose of determining the member's eligibility to retire pursuant to sections 1.319, 1.320 or 1.321 and not for the purpose of computing the amount of his or her benefits, unless the clerk or treasurer elects to purchase this service credit in accordance with section (5).
- (5) Nonunion members elected or hired after June 1, 2005 but prior to August 1, 2007, who at the time of employment were provided participation in the city's defined contribution plan, shall have until November 1, 2007 to elect to purchase their total service rendered to the employer from June 1, 2005 to August 1, 2007. Service not purchased shall be treated in accordance with subsections (3) and (4). The city will obtain an actuarial calculation which specifies the total cost of such purchase. Employees electing to purchase said service shall cause to be transferred to the retirement system a portion of their account balance in the defined contribution plan that equals the total actuarial cost of such purchase on or before November 1, 2007. Should such balance be less than the determined purchase cost, the employee shall transfer the entire defined contribution plan balance and shall pay whatever additional amount as may be necessary to equal the total cost of such purchase. The board may develop rules and procedures regarding this purchase of service that are not addressed herein.
- (6) The provisions of subsections (3) and (5) herein shall not apply to a 46<sup>th</sup> District Court employee hired prior to September 1, 2005.



**Sec. 1.317. Military service credit.**

If an employee who, while employed by the employer, was called to or entered any armed service of the United States, and who has been or shall be on active duty in such armed service during time of war or period of compulsory military service, such armed service actually required of him or her shall be credited to him or her in the same manner as if he or she had served the employer without interruption, provided that:

(1) He or she reenters the employ of the employer, in a position covered by the retirement system, within ninety (90) days from and after termination of such armed service actually required of him or her; and

(2) In no case shall any member be credited with more than five (5) years of service for all such armed service rendered by him or her. In any case of doubt as to the period to be so credited any member, the board shall have the final power to determine such period. During the period of such armed service and until his or her return to the employ of the employer in a position covered by the system, his or her contributions to the system shall be suspended and his or her accumulated contributions shall continue to be credited with regular interest.

Notwithstanding any provision of the retirement system to the contrary, contributions, benefits and service credited with respect to qualified military service will be provided in accordance with section 414(u) of the Internal Revenue Code.

**Sec. 1.318. Duty disability service credit.**

(1) In the event a member, while employed by the employer, becomes incapacitated for duty as a result of a personal injury or disease arising out of and in the course of an actual performance of duty in the employ of the employer, and workers' compensation is paid on account of the member's incapacity arising out of and in the course of employment with the employer, the member shall have such period of incapacity credited to him or her as credited service in the same manner as if the member had served the employer without interruption, provided that the member:

(a) Reenters the employ of the city in a position covered by the retirement system within ninety (90) days from and after termination of such incapacity; and

(b) Repays to the retirement system all amounts of accumulated contributions the member withdrew therefrom at the time he or she became or during the period he or she was incapacitated, together with regular interest from the date of withdrawal to the date of repayment; and

(2) In case of doubts as to the period to be so credited any member, the board shall have the final power to determine such period. During the period of such incapacity and until his or her return to the employ of the city in a position covered by the system, his or her contributions to the system shall be suspended, and his or her accumulated contributions shall continue to be credited with regular interest.

### **Sec. 1.319. Normal retirement.**

(1) Any member hired prior to June 1, 2005, who (a) has attained age sixty-five (65) years and has five (5) or more years of credited service; (b) has attained age sixty-two (62) and has twenty (20) or more years of credited service; (c) has attained age fifty-seven (57) and has twenty-five (25) or more years of credited service; or (d) is a non-union member and the sum of his or her age and credited service, including fractional years thereof, equals or is greater than eighty-two (82), shall be eligible for normal retirement.

(2) Any member hired on or after June 1, 2005, who (a) has attained age sixty-five and has ten (10) or more years of credited service; (b) has attained age sixty-two (62) and has twenty (20) or more years of credited service; or (c) has attained age fifty-seven (57) and has twenty-five or more years of credited service, shall be eligible for normal retirement.

(3) Any member desiring to retire shall file a written application with the board, on a form furnished by the board. Such application shall specify the member's date of normal retirement. Upon such application for retirement, the member shall be retired as of the date set forth in the application, and the member shall be entitled to a pension as provided in section 1.322.

(4) In accordance with section 401(a)(9) of the Internal Revenue Code and the regulations thereunder, which are incorporated herein by reference, a member's retirement benefit shall be distributed to him or her not later than April 1 of the calendar year following the later of:

(a) The calendar year in which the member attains age seventy and one-half (70 1/2) years, or

(b) The calendar year in which the member retires.

(5) Distributions from the retirement system will comply with the requirements of Internal Revenue Code section 401(a)(9) and the regulations thereunder, including requirements regarding the beginning date for distributions and the period over which a member's interest in the retirement system will be distributed.

A member's interest in the trust must begin to be distributed by the later of (i) April 1 of the calendar year following the calendar year that the member attains the age of 70½, or (ii) April 1 of the calendar year the member retires. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of IRC § 401(a)(9) in accordance with the regulations under IRC § 401(a)(9) that were proposed in January 2001, notwithstanding any provision in the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective

) date of final regulations under § IRC 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

- (a) Effective date. The provisions of this subsection will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (b) Precedence. The requirements of this subsection will take precedence over any inconsistent provisions of the Plan.
- (c) Requirements of Treasury Regulations Incorporated. All distributions required under this subsection shall be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.
- (d) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this subsection, other than paragraph (c), distributions may be made under a designation made on or before January 1, 1984 in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to section 242(b)(2) of TEFRA.

#### ) TIME AND MANNER OF DISTRIBUTION

- (e) Required Beginning Date. The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date.
- (f) Death of Member Before Distributions Begin. If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (i) If the member's surviving spouse is the member's sole designated beneficiary, then, except as provided in the Plan, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age 70½, if later.
  - (ii) If the member's surviving spouse is not the member's sole designated beneficiary, then, except as provided in the Plan, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.
  - (iii) If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest

will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

- (iv) If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this paragraph (f) will apply, other than paragraph (f)(i), as if the surviving spouse were the member.

For purposes of paragraph (f) and paragraphs (k), (l) and (m), distributions are considered to begin on the member's required beginning date (or, if paragraph (f)(iv) applies, the date distributions are required to begin to the surviving spouse under paragraph (f)(i)). If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph (f)(i)), the date distributions are considered to begin is the date distributions actually commence.

- (g) Form of Distribution. Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with paragraphs (h) through (m) of this subsection. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions will be made in accordance with the requirements of section 401(a)(9) of the IRC and the Treasury regulations. Any part of the member's interest which is in the form of an individual account described in section 414(k) of the IRC will be distributed in a manner satisfying the requirements of section 401(a)(9) of the IRC and the Treasury regulations that apply to individual accounts.

#### DETERMINATION OF AMOUNT TO BE DISTRIBUTED EACH YEAR.

- (h) General Annuity Requirements. If the member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
  - (i) The annuity distributions will be paid in periodic payments made at intervals not longer than one year;
  - (ii) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in paragraphs (k) through (m);
  - (iii) Once payments have begun over a period certain, the period certain

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will not be changed even if the period certain is shorter than the maximum permitted.

- (i) Amount Required to Be Distributed by Required Beginning Date. The amount that must be distributed on or before the member's required beginning date or, if the member dies before distributions begin, the date distributions are required to begin under paragraphs (f)(i) or (ii) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.
  - (j) Additional Accruals after First Distribution Calendar Year. Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
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#### REQUIREMENTS FOR MINIMUM DISTRIBUTIONS WHERE MEMBER DIES BEFORE DATE DISTRIBUTIONS BEGIN.

- (k) Member Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the member's entire interest will be distributed, beginning no later than the time described in paragraphs (f)(i) or (ii), over the life of the designated beneficiary or over a period certain not exceeding:
    - (i) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death; or
    - (ii) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.
  - (l) No Designated Beneficiary. If the member dies before the date distributions
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begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

- (m) **Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.** If the member dies before the date distribution of his or her interest begins, and the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection will apply as if the surviving spouse were the member, except that the time by which distributions must begin will be determined without regard to paragraph (f)(i).

#### DEFINITIONS.

- (n) ***Designated Beneficiary.*** The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under section 401(a)(9) of the code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- (o) ***Distribution Calendar Year.*** A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year, which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph (f).
- (p) ***Life Expectancy.*** Life expectancy as computed by use of the single life table in section 1.401(a)(9)-9 of the Treasury regulations.
- (q) ***Required Beginning Date.*** The date specified in this subsection.

#### **Sec. 1.320. Early retirement.**

Any member who (a) has attained age fifty-seven (57) and has twenty (20) or more years of credited service, or (b) has attained age sixty (60) and has ten (10) or more years of credited service, may retire upon written application filed with the board, on a form furnished by the board. Such application shall specify the member's date of early retirement, which may be any day prior to the member's sixty-fifth birthday. Upon such early retirement, the member shall be entitled to a pension as provided in section 1.322.

**Sec. 1.321. Vested deferred pension.**

(1) Should any member who has ten (10) or more years of credited service cease to be employed in a position covered by the retirement system for any reason except his or her retirement, such member shall be entitled to a vested deferred pension, payable at age sixty-five (65), based on his or her final average compensation and credited service as of the date of termination and computed according to the provisions of section 1.322 as the section was in force at the time of such member's separation from covered employment, provided that the member does not withdraw his or her accumulated contributions from the retirement system. Any member entitled to a vested deferred pension in accordance with this section may elect to have his or her monthly pension begin on the later of:

- (a) His or her sixtieth (60th) birthday; and
- (b) The date a written application is filed with the board.

Any vested deferred pension which, pursuant to a member's election, begins prior to the first day of the calendar month following the member's sixty-fifth (65th) birthday, shall be reduced in accordance with the second sentence of section 1.322(3).

(2) Any member who has twenty (20) or more years of credited service and ceases to be employed in a position covered by the retirement system for any reason other than his or her retirement shall be entitled to a vested deferred pension beginning on his or her sixty-second birthday; any member who has twenty-five (25) or more years of credited service and ceases to be employed in a position covered by the retirement system for any reason other than his or her retirement shall be entitled to a vested deferred pension beginning the first day of the calendar month next following his or her fifty-seventh birthday. Any non-union member hired prior to June 1, 2005 who has ten (10) or more years of credited service and ceases to be employed after January 1, 2003 in a position covered by the retirement system for any reason other than his or her retirement shall be entitled to a vested deferred pension beginning on the date on which the sum of his or her age and credited service, including fractional years thereof, equals eighty-two (82). Such pensions as provided in this subsection, shall not be reduced under section 1.322(3), shall be based on the member's final average compensation and credited service as of the date of the termination of his or her employment and shall be computed according to the provisions of section 1.322(2) as the section was in force at the time of such member's separation from covered employment, provided that the member does not withdraw his or her accumulated contributions from the retirement system.

**Sec. 1.322. Standard form of pension; amount.**

(1) The standard form of pension, whether for normal, early, deferred or disability retirement, shall consist of an amount payable as of the first day of each calendar month in which the retired member is living; provided, however, that should the retired member die before he or she has received in pension payments an aggregate amount equal to his or her accumulated contributions standing to his or her credit at the time of retirement, the difference between his or her accumulated contributions and the aggregate amount of pension payments received by him or her shall be paid to such person or persons as he or she shall have nominated by written designation duly executed and filed with the city. If there be no such designated person or person surviving the retired member, such difference shall be paid to his or her estate. In the event that the retired member was a member who retired on or after July 1, 1998, or had elected an optional form of pension, as provided in section 1.323(2), then such option shall be honored, and the return of such accumulated contributions, less aggregate amount of pension payments received, shall not be applicable.

(2) Upon a member's retirement, he or she shall receive a standard form pension equal to two percent (2%) of his or her final average compensation multiplied by his or her credited service (in years and fractional years) which shall be paid for life with the provision that if the retired member's death occurs before one hundred twenty (120) monthly payments have been made, such remaining standard form of pension shall be commuted to a single sum and paid to such person or persons and in such shares as the retired member shall have nominated by written designation duly executed and filed with the board, or if there be no such designated person or persons surviving the retired member, to the estate of the last survivor among the retired member and the designated person or persons. For members hired on or after June 1, 2005, the maximum pension shall be 70% of the member's final average compensation. Effective January 1, 2003, upon retirement, a nonunion member hired prior to June 1, 2005 shall receive a standard form of pension equal to two and one half percent (2.50%) of his or her final average compensation multiplied by his or her credited service (in years and fractional years), which shall be paid for life with the provision that if the retired member's death occurs before one hundred twenty (120) monthly payments have been made, such remaining standard form of pension shall be commuted to a single sum and paid to such person or persons and in such shares as the retired member shall have nominated by written designation duly executed and filed with the board, or if there be no such designated person or persons surviving the retired member, to the estate of the last survivor among the retired member and the designated person or persons. The standard form pension shall be subject to subsection (3) of this section, and the member shall have the right to receive his or her pension under an option as provided in section 1.323 in lieu of a standard form of pension.



(3) If a member elects early retirement in accordance with section 1.320 or early commencement of his or her vested deferred pension in accordance with subsection 1.321(1), his or her standard form of pension shall be reduced. If any member retires based upon attaining age sixty (60) with ten (10) or more years of credited service, as provided in section 1.320 OR 1.321(1), his or her pension calculated in accordance with subsection (2) above shall be reduced one-half of one percent (0.5%) multiplied by the number of complete calendar months the date he or she elects his or her pension to begin precedes the first day of the month coincident with or immediately following the date he or she would reach age sixty-five (65). If a member retires on or after reaching age fifty-seven (57) with twenty (20) or more years credited service, as provided in section 1.320, his or her pension provided in subsection (2) of this section shall be reduced by one-half of one percent (0.5%) multiplied by the number of complete calendar months the date he or she elects his or her pension to begin precedes the date he or she would reach age sixty-two (62).

(4) The defacto operation of the Retirement System, since July 1, 1998, consisted of a defined benefit plan (commonly referred to as a pension plan) and a defined contribution plan (commonly referred to as an annuity plan) which have been treated by the City as two separate qualified plans under the provisions of the Internal Revenue Code. The Board will continue the two plans within the Retirement System and take action which may be required by Internal Revenue Service rules and regulations and the tax laws to maintain the qualified status of the plans under Section 401(a) or any other applicable section of the Internal Revenue Code. The defined contribution plan and the defined benefit plan together will provide the total retirement benefit payable from the Retirement System in accordance with the Retirement System Ordinance.

**Sec. 1.323. Pension options; survivor pension.**

(1) Under such rules and regulations as the board shall adopt, a member may elect to receive an optional form of pension in lieu of his or her standard form of pension. The amount of such optional form of pension shall be determined in accordance with subsection (2) of this section.

(2) The board shall make available the following optional forms of pension in lieu of the standard form of pension:

(a) *Option A, joint and one hundred (100) percent survivor pension.* A member who elects option A shall receive a reduced monthly pension payable during his or her lifetime, with the further provision that such reduced monthly pension shall be payable following the death of the member during the remaining lifetime, if any, of the member's eligible spouse. The monthly amount of the

option A pension shall be the actuarial equivalent of the standard form of pension to which the member would otherwise be entitled.

(b) *Option B, joint and 50% survivor pension.* A member who elects option B shall receive a monthly pension calculated as a standard form of pension payable during his or her lifetime, with the further provision that fifty percent (50%) of such monthly pension shall be payable following the death of the member during the remaining lifetime, if any, of the member's eligible spouse.

(3) Upon the death of any member while an active employee on or after the date he or she acquires ten (10) or more years of credited service his or her eligible spouse shall automatically become eligible to receive a pension computed according to section 1.322(2), which shall not be reduced under section 1.322(3), in the same manner as if the member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have satisfied the age and service requirements for retirement as provided in section 1.319. Effective July 1, 1998, for a nonunion member without an eligible spouse, such pension shall be for one hundred twenty (120) months commuted to a single sum and paid to such person or persons and in such shares as the member shall have nominated by written designation duly executed and filed with the city, or if there be no such designated person or persons surviving the member, to the estate of the last survivor among the member and the designated person or persons.

**Sec. 1.324. Nonduty disability defined; nonduty disability pension; amount.**

(1) Upon application to the board by a member or his or her department head, such member with ten (10) or more years of credited service who becomes totally and permanently disabled for duty in the employ of the employer as a result of causes occurring not in his or her actual performance of duty may be retired; provided, that a physician selected by the board, after medical examination of the member, certifies to the board that the member is mentally or physically totally disabled for duty in the employ of the employer, and that such disability will probably be permanent. Under provisions of this section the employer may, upon proper certification by a physician selected by the board, elect to place the member in another classification wherein the member shall be subject to the conditions in effect governing that classification.

(2) Upon his or her retirement on account of disability, as provided in section 1.324(1) a member shall receive a pension computed according to section 1.322(2), which shall not be reduced under section 1.322(3), subject to subsection (3) of this section. Prior to the date of his or her retirement, the member may elect to receive his or her pension under an option provided in section 1.323 in lieu of the standard form of pension.

(3) Any benefit which may be paid or payable on account of the disability of a member under any employer-financed salary continuation plan, sickness and accident insurance, long-term disability plan, workers' compensation or other similar program, except benefits under the Federal Social Security Old-Age, Survivors' and Disability Insurance Program or its successor, shall be offset against and payable in lieu of any pensions payable from the retirement system on account of the same disability.

**Sec. 1.325. Duty-connected disability; retirement benefits; amount; lump-sum settlement; eligibility; records.**

(1) In the event a member becomes totally and permanently disabled for duty in the employ of the employer as a result of causes directly related to his or her actual performance of duty while an employee, such member may be retired by the city; provided, that a physician selected by the board, after examination of the member, certifies to the board that the member is mentally or physically totally disabled for duty and that such disability will probably be permanent. Under provisions of this section, the employer may, upon proper certification by a physician selected by the board, elect to place the member in another classification wherein the member shall be subject to the conditions in effect governing that classification.

(2) In the event that a member is certified as totally and permanently disabled in accordance with subsection (1) of this section as a result of a duty-connected injury and, further, that the employer does not exercise its option or is unable to place the member in another classification due to the nature of the disability, then the member shall be entitled to full retirement benefits as if he or she would have actively in the employ of the employer until age sixty (60); provided, that at the time of total and permanent disability eligibility the member had not previously attained age sixty (60).

(3) The monthly equivalent of any benefits, including lump sum settlements, which may be paid or payable on account of a duty-connected disability to any member under any salary continuation plan, sickness and accident insurance, long-term disability plan, workers' compensation or other similar program, except benefits under the Federal Social Security Old-Age, Survivors' and Disability Insurance Program or its successor, which benefits are financed in whole or in part by the employer, shall be offset against any payable in lieu of any pensions payable under the retirement system on account of the same disability.

(4) If a disability retirant becomes engaged in a gainful occupation, business or employment, his or her disability pension shall not exceed the difference between his or her annual rate of compensation at the time of his or her retirement and his or her annual pay and earnings from such occupation, business or employment. The disability

retirant shall make all income and/or earnings records available to the board upon request for verification of eligibility. The board may, upon failure to so comply or falsification, terminate retirement payments.

**Sec. 1.326. Disability retirement; physical examination.**

The board may require any member who is retired according to the provisions of section 1.324 or section 1.325 to submit to an examination conducted by a physician selected by the board, which examination may be required not more than once annually. If it appears to the satisfaction of the board that the member's disability has been removed, the member may be required to return to work. Should the member refuse to return to work or to submit to the aforesaid physical examination, the disability pension payments shall cease. Any member who is aggrieved by the application of the provision of this section shall have a right of appeal by application therefor, in writing, to the board.

**Sec. 1.327. Benefit levels; effective date.**

(1) The benefit levels as provided in this chapter, including disability benefits, shall be effective only for members retiring on or after thirty (30) days following April 23, 1984.

(2) All retired members and beneficiaries of retired members being paid a monthly pension on July 1, 1998 shall have their pensions permanently increased. Beginning January 1, 1999, each such retired member and beneficiary shall be paid a monthly pension increased by the percentage change in the annual average consumer price index from the calendar year a monthly pension first became payable to the retired member or beneficiary, as the case may be, to 1998. As used in this subsection, the term "consumer price index" means the U.S. Department of Labor Bureau of Labor Statistics consumer price index for all urban consumers (CPI-U), U.S. City Average, all items, 1982-84=100. Optional forms of pensions shall be based on retired members' increased pensions.

(3) All retired members and beneficiaries of retired members being paid a monthly pension on December 31, 2002 shall receive an additional pension payment of fifty dollars (\$50.00) per month, effective January 1, 2003. This payment shall be made until such time as the payment is modified or terminated at the sole discretion of the council.

(4) Forfeitures shall not be applied to increase the benefits which any employee or member would otherwise receive under the retirement system.

(5) Notwithstanding any provision of the retirement system to the contrary, benefits and contributions shall be limited in accordance with section 415 of the Internal Revenue Code, which is hereby incorporated by reference.

(6) The benefit provisions of this plan for employees of the 46<sup>th</sup> District Court as of the effective date of this ordinance shall be as set forth in the plan for non union members. Notwithstanding any provision of the retirement system to the contrary, court employees hired prior to September 1, 2005 shall be eligible for those retirement benefits granted to non union members hired prior to June 1, 2005. Court employees hired on or after September 1, 2005 shall be eligible for those retirement benefits granted to non union members under the terms of the plan.

**Sec. 1.328. Members' contributions.**

(1) Each active member shall contribute an amount to the retirement system as required by city council resolution, the commission, and applicable collective bargaining agreements. The contributions of nonunion members and employees of the 46<sup>th</sup> District Court made on or after June 1, 2005 shall be contributed to the retirement system in accordance with Section 414 (h) of the Internal Revenue Code as provided in subsection (3).

(2) The officer or officers responsible for making up the payroll shall cause the contributions provided for in this section to be deducted from the compensation of each member on each and every payroll, for each and every payroll period, so long as he or she is a member of the system. The member's contributions provided for in this section shall be made notwithstanding that the minimum compensation provided by law for any member is thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for in this section. Payment of the member's compensation less such deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the member during the period covered by such payment, except as to the benefits provided by this chapter. When deducted, each of the contribution shall be paid to the retirement system and shall be credited to the member's individual account from whose compensation such deduction was made.

(3) Employer pick-up arrangement. This subsection is enacted effective April 15, 2007 pursuant to section 414(h) of the Internal Revenue Code and shall be applicable to nonunion members and members of those collective bargaining units who have negotiated with the city for the inclusion of this section in its applicable current collective bargaining agreement. An employer pick-up arrangement is established whereby a percentage of employee contributions to the retirement system shall be paid by the city in lieu of contributions by the employees. The terms and conditions of the employer

pick-up arrangement shall be in accordance with the provisions of 414(h)(2) of the Internal Revenue Code, related Treasury regulations, and other applicable law. Upon implementation, solely for the purpose of compliance with section 414(h) of the Internal Revenue Code, the city shall pick-up a percentage of member contributions required by the retirement system for all compensation earned by the member after implementation. The provisions of this subsection are mandatory, and the member shall have no option concerning the pick-up or to receive the contributed amount directly instead of having them paid by the city to the retirement system. In no event may implementation occur other than at the beginning of a pay period. Member contributions picked-up under the provisions of this subsection shall be treated as city contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked-up member contributions shall be included in the determination of the member's gross annual compensation for all other purposes under federal and state laws. Member's contributions picked-up under this subsection shall continue to be designated member contributions for all purposes of the retirement system and shall be considered part of the member's compensation for purposes of determining the amount of the member's contribution.

#### **Sec. 1.329. Regular interest.**

The city shall allow and credit regular interest to the members' contributions to the retirement system.

#### **Sec. 1.330. Refund of member's contribution.**

(1) Should an employee cease to be a member before he or she has satisfied the age and service requirements for retirement provided in section 1.319, and is not otherwise entitled to apply for a pension, he or she shall be paid his or her accumulated contributions standing to his or her credit in the retirement system upon his or her demand in writing on forms furnished by the board.

(2) Effective July 1, 1998, for those members hired prior to June 1, 2005, upon the commencement of such member's monthly pension pursuant to section 1.319, 1.320, 1.321, 1.324 or 1.325, or upon the commencement of the monthly pension of a member's eligible spouse or nominated beneficiary pursuant to section 1.323(3), he or she shall be paid the member's accumulated contributions standing to the member's credit in the retirement system which were made prior to June 1, 2005, together with regular interest thereon.

**Sec. 1.331. Death before retirement.**

Should a member die before his or her retirement becomes effective and no pension is or becomes payable on account of his or her death, his or her accumulated contributions standing to his or her credit in the retirement system at the time of his or her death shall be paid to such person or persons as he or she shall have nominated by written designation duly executed and filed with the board. If there be no such designated person or person surviving such member, his or her accumulated contributions shall be paid to his or her estate.

**Sec. 1.332. Rules for refunds.**

(1) Payments of accumulated contributions, as provided in sections 1.330 and 1.331, may be made according to such rules and regulations as the board shall from time to time adopt.

(2) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Retirement System to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(a) Definitions.

(i) Eligible rollover distribution: An eligible rollover distribution is 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: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made 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 for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(ii) Eligible Retirement Plan: An eligible retirement plan is 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 Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(iii) Distributee: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, or an eligible domestic relations order under Act 46 of the Public Acts of 1991, as amended, are distributees with regard to the interest of the spouse or former spouse.

(iv) Direct rollover: A direct rollover is a payment by the retirement system to the eligible retirement plan specified by the distributee.

(b) If a distribution is one to which sections 401(a)(11) and 417 of the Internal Revenue Code do not apply, such distribution may commence less than 30 days after the notice required under section 1.411(a)-11(c) of the Income Tax Regulations is given, provided that:

(i) The board clearly informs the member that the member has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and

(ii) The member, after receiving the notice, affirmatively elects a distribution.

(3) This subsection shall apply to distributions made after December 31, 2001.

(a) For purposes of the direct rollover provisions in this section, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Internal Revenue Code and an eligible plan under section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to account separately for amounts transferred into such plan from the Retirement System. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former



spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, or an eligible domestic relations order under Act 46 of the Public Acts of 1991, as amended.

(b) For purposes of the direct rollover provisions in this section, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Internal Revenue Code that agrees to account separately for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

**Sec. 1.333. Title to contributions.**

A member shall have no right, title or interest in the contributions made by him or her except as is specifically provided in this chapter.

**EMPLOYER CONTRIBUTIONS AND FINANCING**

**Sec. 1.334. Employer contributions.**

The liabilities of the retirement system shall be determined annually under accepted actuarial principles and shall be financed by annual employer contributions to the retirement system appropriated by the city council, such contributions to be determined in accordance with the provisions of subsections (1) and (2) set forth below:

(1) The appropriations for members' current service shall be a percentage of their annual compensation which will produce an amount which, if paid annually by the employer during their future service, will be sufficient at the time of their retirement to provide the pension reserves not financed by members' future contributions for the portions of the pensions to be paid them based upon their future service; and

(2) The appropriations for members' and retired members' accrued service shall be a percentage of the annual compensation of members which will produce an amount which, if paid annually by the employer over a period of years to be determined by the city council, will amortize, at regular interest, the unfunded accrued service liabilities.

Upon termination of the retirement system or upon complete discontinuance of contributions under the retirement system, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable.

**Sec. 1.335. Deficiency in funds.**

If the amount appropriated in the budget in any fiscal year, together with retirement system assets not needed to cover members' accumulated contributions, is insufficient to pay in full the amounts due in such year to all retired members and their beneficiaries, the amount of such insufficiency shall thereupon be provided by the employer.

**Sec. 1.336. Trustee.**

The city council shall be the trustee of the assets of the retirement system. It shall have full power and authority to invest and reinvest such assets, subject to the provisions of Act 314 of the Public Acts of 1965, as amended, and as it might from time to time be amended or replaced by successor acts. The city council shall have full power to hold, sell, purchase, assign, transfer and dispose of any securities and investments in which any monies of the system have been invested as well as the proceeds of the investment and any monies belonging to the system.

**Sec. 1.337. Administration of retirement system.**

- (1) In accordance with section 11.22 of the Charter, the responsibility for the administration of the retirement system is vested with the board. The board shall have all such powers as may be necessary to carry out the provisions of this section. The board may, from time to time, establish rules and regulations for the administration of the retirement system and the transaction of system business. In making any such rules and regulations, the board shall pursue uniform policies and shall not discriminate in favor of or against any employee or group of employees. Such provision against discrimination is not intended to apply to differentials between groups of employees based upon negotiated and council-approved labor contracts. The board may, upon recommendation of the city administrator, create an advisory board consisting of members of the system. Such advisory board shall have no authority other than to advise the board.

- (2) The retirement system is intended to qualify as a pension plan and trust meeting the requirements of sections 401(a) and 501(a) of the Internal Revenue Code, as now in effect or hereafter amended, and shall be administered so as to fulfill this intent. The board may amend the retirement system plan provisions by resolution to comply with the internal revenue code and related authority in order to maintain the qualified status of the plan.
- (3) The regular terms of office of the board shall be as follows:
- (a) The terms of the three (3) members of the commission shall coincide with and be identical to said commissioners' terms of office.
  - (b) The term of the member appointed by the Mayor shall be four (4) years. The initial term of office for said member shall expire on March 31, 2007
  - (c) The term for the elected active members of the retirement system shall be four (4) years. The initial term of office for the one (1) elected active member obtaining the largest number of votes shall expire on March 31, 2007. The initial term of office for the one (1) elected active member receiving the second largest number of votes shall expire on March 31, 2005.
  - (d) The term for the elected retired employee member of the retirement system shall be for two (2) years. The initial term of office for the retired employee member shall expire on March 31, 2005.
- (4) Each member of the board shall serve until the expiration of his or her term of office or until his or her death, incapacity, resignation, or removal. Removal from the board shall occur as follows:
- (a) The members of the commission may be removed as provided in section 6.5(a) of the Charter.
  - (b) The member appointed by the Mayor may be removed as provided in section 5.2 of the Charter.
  - (c) An elected active member of the retirement system shall be removed if he or she ceases to be an active member.
  - (e) Vacancies in the elected positions on the board shall be filled within 120

days, for the unexpired term, in the same manner as the position was previously filled.

**Sec. 1.338. Restricted use of funds.**

All monies and assets of the retirement system shall be held for the exclusive purpose of meeting the disbursements for pensions and other payments authorized by this chapter and shall be used for no other purpose whatsoever.

**Sec. 1.339. Correction of errors.**

Should any change or error in the records of the employer or the board result in any person receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct such error and, as far as is practicable, shall adjust the payment of the benefit in such manner that the actuarial equivalent of the benefit to which such person was correctly entitled is paid.

**Sec. 1.340. Subrogation.**

If a person becomes entitled to a pension or other benefit payable by the retirement system as the result of an accident or injury caused by the act of a third party, the city shall be subrogated to the rights of the person against such third party to the extent of the benefits to which the city pays or becomes liable to pay.

**Sec. 1.341. Assignments prohibited.**

The right of a person to a pension, to the return of accumulated contributions, the pension itself, any pension option, any other right accrued or accruing to any member, retired member or beneficiary of any monies belonging to the retirement system, shall not be subject to execution, garnishment, attachment or any other process of law whatsoever and shall be unassignable, except as is specifically provided in this chapter; provided, that if a member is covered by a group insurance or prepayment plan participated in by the employer and should such member be permitted and elect to continue such coverage as a retired member, he or she may authorize the employer to have deducted from his or her pension the payments required of him or her to continue coverage under such group insurance or prepayment plan; provided further, that the employer shall have the right to set off for any claim arising from embezzlement by or fraud of a member, retired member, or beneficiary of a member or retired member.

**Sec. 1.342. Pension suspended.**

In the event a retired member is reemployed by the employer in a position covered by the retirement system, payment of his or her pension shall be suspended during the period of his or her reemployment. During the period of his or her reemployment by the employer, a retired member shall not again become a member of the retirement system.

**Sec. 1.343. Actuarial assumptions.**

Effective July 1, 1984, the 1971 group annuity mortality table (set back five (5) years for females) with an interest rate of seven percent (7%) per year, compounded annually, shall be used for all actuarial valuations and other calculations required in the operation of the system except those specifically provided to the contrary in this chapter. For purposes of determining actuarial equivalent optional forms of payment under section 1.323, unisex factors assuming ninety percent (90%) of all members are male shall be used. For purposes of adjusting any benefit or limitation under section 415 of the Internal Revenue Code, the mortality table used shall be the table prescribed by the United States Secretary of the Treasury in accordance with section 415(b)(2)(E)(v) of the Internal Revenue Code. The board may, from time to time, and upon written recommendation of the actuary, adjust and otherwise change the actuarial assumptions in order to reflect retirement system experience and trends.

**Sec. 1.344. Validity.**

If any provision, section, subsection, paragraph, sentence, clause, phrase or word contained in this chapter is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions, sections, subsections, paragraphs, sentences, clauses, phrases and words of this chapter, or the chapter in its entirety.

BRENDA L. LAWRENCE, Mayor

NANCY L. M. BANKS, City Clerk

Ordinance 1570:

Introduced: July 13, 2009

Enacted: July 13, 2009

Published: August 9, 2009

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF SOUTHFIELD BY AMENDING SECTIONS 1.313, 1.322, 1.323 AND 1.330 OF CHAPTER 9 OF TITLE 1 OF SAID CODE.

THE CITY OF SOUTHFIELD ORDAINS:

Section 1.

The Code of the City of Southfield is hereby amended by amending Sections 1.313, 1.322, 1.323, and 1.330 of Chapter 9, Employee Retirement System, of Title I, Administration, to read as follows:

1.313. Definitions.

- (11) "Final average compensation" shall mean one sixtieth (1/60th) of the sum of a member's compensation during the period of sixty (60) consecutive months of credited service producing the highest sum, which period of sixty (60) consecutive months shall be within the period of one hundred twenty (120) consecutive months of credited service immediately preceding retirement or termination of membership, whichever comes first. Effective July 1, 1998, for a non-union member, "final average compensation" shall mean one thirty-sixth (1/36th) of the sum of a member's compensation during the period of thirty-six (36) consecutive months of credited service producing the highest sum, which period of thirty-six (36) consecutive months shall be within the period of sixty (60) consecutive months of credited service immediately preceding retirement or termination of membership, whichever comes first.
- (13) "Regular interest" shall mean five percent (5%) per annum, or such other rate or rates as determined from time to time by the council, compounded annually.

1.322 Standard Form of Pension: Amount.

- (1) The standard form of pension, whether for normal, early, deferred or disability retirement, shall consist of an amount payable as of the first day of each calendar month in which the retired member is living; provided, however, that should the retired member die before he or she has received in pension payments an aggregate amount equal to his or her accumulated contributions standing to his or her credit at the time of retirement, the difference between his or her accumulated contributions and the aggregate amount of pension payments received by him or her shall be paid to such person or persons as

he or she shall have nominated by written designation duly executed and filed with the city. If there be no such designated person or person surviving the retired member, such difference shall be paid to his or her estate. In the event that the retired member was a non-union member who retired on or after July 1, 1998, or had elected an optional form of pension, as provided in section 1.323(2), then such option shall be honored, and the return of such accumulated contributions, less aggregate amount of pension payments received, shall not be applicable.

- (2) Upon a member's retirement, he or she shall receive a standard form of pension equal to two (2) percent of his or her final average compensation multiplied by his or her credited service (in years and fractional years). Effective July 1, 1998, upon a non-union member's retirement, he or she shall receive a standard form of pension equal to two and one quarter (2.25%) percent of his or her final average compensation multiplied by his or her credited service (in years and fractional years), which shall be paid for life with the provision that if the retired member's death occurs before one hundred twenty (120) monthly payments have been made, such remaining standard form of pension shall be commuted to a single sum and paid to such person or persons and in such shares as the retired member shall have nominated by written designation duly executed and filed with the city, or if there be no such designated person or persons surviving the retired member, to the estate of the last survivor among the retired member and the designated person or persons. The standard form of pension shall be subject to subsection (3) of this section, and the member shall have the right to receive his or her pension under an option as provided in section 1.323 in lieu of a standard form of pension.

1.323. Pension Options: Survivor Pension.

- (2) The commission shall make available the following optional forms of pension in lieu of the standard form of pension:

- (b) Option B. Joint and 50% Survivor Pension.

A member who elects Option B shall receive a reduced monthly pension payable during his or her lifetime, with the further provision that 50% of such reduced monthly pension shall be payable following the death of the member during the remaining lifetime, if any, of the member's eligible spouse. The reduced pension payable during the lifetime of the member under this Option B shall be the actuarial equivalent of the standard form of pension otherwise payable to the member. Effective July 1, 1998, for a non-union member, the pension payable during the lifetime of the member under this Option B shall be equal to two and one quarter

(2.25%) percent of his or her final average compensation multiplied by his or her credited service (in years and fractional years), with the further provision that 50% of such monthly pension shall be payable following the death of the member during the remaining lifetime, if any, of the member's eligible spouse.

- (3) Upon the death of any member while an active employee on or after the date he or she acquires ten (10) or more years of credited service his or her eligible spouse shall automatically become eligible to receive a pension computed according to section 1.322, in the same manner as if the member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have satisfied the age and service requirements for retirement as provided in section 1.320. Upon the remarriage or death of the eligible spouse, the pension shall terminate. Effective July 1, 1998, for a non-union member without an eligible spouse, such pension shall be paid for one hundred twenty (120) months to such person or persons and in such shares as the member shall have nominated by written designation duly executed and filed with the city, or if there be no such designated person or persons surviving the member, such pension shall be commuted to a single sum and paid to the estate of the last survivor among the member and the designated person or persons.

#### 1.330. Refund of Member's Contribution.

Should an employee cease to be a member before he or she has satisfied the age and service requirements for retirement provided in section 1.319, and is not otherwise entitled to apply for a pension, he or she shall be paid his or her accumulated contributions standing to his or her credit in the retirement system upon his or her demand in writing on forms furnished by the commission. Effective July 1, 1998, upon the commencement of a non-union member's monthly pension pursuant to sections 1.319, 1.320, 1.321, 1.324 or 1.325, or upon the commencement of the monthly pension of a non-union member's eligible spouse or nominated beneficiary pursuant to section 1.323(3), he or she shall be paid the member's accumulated contributions standing to the member's credit in the retirement system.

#### Section 2.

Should any section, clause, or paragraph of this ordinance be declared by a court of competent jurisdiction to be invalid, the same will not affect the validity of the ordinance as a whole or part thereof other than the part declared to be invalid.



Section 3.

All ordinances, parts of ordinances or codes in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Section 4.

This ordinance shall become effective upon passage and publication.

Donald F. Fracassi, Mayor

Mary A. Bonner, City Clerk

*Introduced:* 12/15/98

*Enacted:* 01/25/99

*Published:* 01/28/99

1995  
ORDINANCE NO. 1385

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF SOUTHFIELD BY AMENDING SECTION 1.321 OF CHAPTER 9 OF TITLE I OF SAID CODE.

THE CITY OF SOUTHFIELD ORDAINS:

SECTION 1.

The Code of the City of Southfield is hereby amended by amending Section 1.321 of Chapter 9, Employee Retirement System, of Title I, Administration, to read as follows:

1.321 Vested Deferred Pension.

(1) Should any member who has ten (10) or more years of credited service cease to be employed in a position covered by the retirement system for any reason except his or her retirement, such member shall be entitled to a vested deferred pension, payable at age sixty-five (65), based on his or her final average compensation and credited service as of the date of termination and computed according to the provisions of section 1.322 as the section was in force at the time of such member's separation from covered employment, provided that the member does not withdraw his or her accumulated contributions from the retirement system. Any member entitled to a vested deferred pension in accordance with this section may elect to have their monthly pension begin the first day of the calendar month next following the later of :

- (1) His or her sixtieth birthday, and
- (2) The date a written application therefor is filed with the city.

Any vested deferred pension which, pursuant to a member's election, begins prior to the first day of the calendar month following the member's sixty-fifth birthday, shall be reduced in accordance with the first sentence of section 1.322(3).

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(2) Any member who has twenty (20) or more years of credited service and ceases to be employed in a position covered by the retirement system for any reason other than his or her retirement shall be entitled to a vested deferred pension beginning the first day of the calendar month next following his or her sixty-second birthday; any member who has twenty-five (25) or more years of credited service and ceases to be employed in a position covered by the retirement system for any reason other than his or her retirement shall be

entitled to a vested deferred pension beginning the first day of the calendar month next following his or her fifty-seventh birthday. Such pension, which shall not be reduced under Section 1.322(3), shall be based on the member's final average compensation and credited service as of the date of the termination of his or her employment and computed according to the provisions of Section 1.322(2) as the section was in force at the time of such member's separation from covered employment, provided that the member does not withdraw his or her accumulated contributions from the retirement system.

## SECTION 2.

Should any section, clause, or paragraph of this ordinance be declared by a court of competent jurisdiction to be invalid, the same will not affect the validity of the ordinance as a whole or part thereof other than the part declared to be invalid.

## SECTION 3.

All ordinances, parts of ordinances or codes in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

## SECTION 4.

This ordinance shall become effective upon passage and publication.

DONALD F. FRACASSI, Mayor

MARY A. BONNER, City Clerk

Introduced: 08/21/95

Enacted: 09/18/95

Published: 10/23/95

**ORDINANCE NO. 1485**

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF SOUTHFIELD BY DELETING CHAPTER 9, EMPLOYEE RETIREMENT SYSTEM, OF TITLE I, ADMINISTRATION, AND INSERTING IN LIEU THEREOF A NEW CHAPTER 9 OF TITLE I

THE CITY OF SOUTHFIELD ORDAINS:

**SECTION 1**

The Code of the City of Southfield is hereby amended by deleting Chapter 9 of Title I and inserting in lieu thereof a new Chapter 9 of Title I, which shall read as follows:

**CHAPTER 9.EMPLOYEE RETIREMENT SYSTEM**

**Sec. 1.311. Employee retirement system; effective date.**

The city employee retirement system, heretofore established pursuant to section 6.5(b)(2) of the Charter, is hereby continued. The effective date of the retirement system is July 1, 1965. Unless otherwise provided herein, all provisions relating to the Tax Reform Act of 1986 shall be effective July 1, 1989, all provisions related to the Uruguay Round Agreements Act, the Uniform Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and all provisions related to the Community Renewal Tax Relief Act of 2000 shall be effective January 1, 1997.

**Sec. 1.312. Short title.**

This chapter may be cited as the city employee retirement system ordinance.

**Sec. 1.313. Definitions.**

When used in this chapter, the following words and phrases shall have the following meanings, unless a different meaning is clearly indicated by the context:

- (1) *Accumulated contributions* shall mean the sum of (a) all amounts deducted from the compensation of a member, plus (b) all single-sum contributions made by the member and credited to his or her individual account, together with regular interest thereon.

incapacity and until his or her return to the employ of the city in a position covered by the system, his or her contributions to the system shall be suspended, and his or her accumulated contributions shall continue to be credited with regular interest.

#### **Sec. 1.319. Normal retirement.**

(1) Any member who has attained age sixty-five (65) years and has five (5) or more years of credited service may retire upon written application filed with the commission, on a form furnished by the commission. Such application shall specify the member's date of normal retirement. Upon such application for retirement, the member shall be retired as of the date set forth in the application, and the member shall be entitled to a pension as provided in section 1.322.

(2) In accordance with section 401(a)(9) of the Internal Revenue Code and the regulations thereunder, which are incorporated herein by reference, a member's retirement benefit shall be distributed to him or her not later than April 1 of the calendar year following the later of:

(1) The calendar year in which the member attains age seventy and one-half (70 1/2) years, or

(2) The calendar year in which the member retires.

(3) With respect to distributions under the retirement system made for calendar years beginning on or after January 1, 2001, the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code will be applied in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the retirement system to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

#### **Sec. 1.320. Early retirement.**

Any member who has attained age fifty-seven (57) and has twenty (20) or more years of credited service, or any other member who has attained age sixty (60) and has ten (10) or more years of credited service, or effective January 1, 2003, any non-union member whose age plus credited service, including fractional years thereof, equals eighty-two (82) may retire upon written application filed with the commission, on a form furnished by the commission. Such application shall specify the member's date of early

retirement, which may be any day prior to the member's sixty-fifth birthday. Upon such early retirement, the member shall be entitled to a pension as provided in section 1.322.

**Sec. 1.321. Vested deferred pension.**

(1) Should any member who has ten (10) or more years of credited service cease to be employed in a position covered by the retirement system for any reason except his or her retirement, such member shall be entitled to a vested deferred pension, payable at age sixty-five (65), based on his or her final average compensation and credited service as of the date of termination and computed according to the provisions of section 1.322 as the section was in force at the time of such member's separation from covered employment, provided that the member does not withdraw his or her accumulated contributions from the retirement system. Any member entitled to a vested deferred pension in accordance with this section may elect to have his or her monthly pension begin on the later of:

- (a) His or her sixtieth (60th) birthday; and
- (b) The date a written application therefor is filed with the city.

Any vested deferred pension which, pursuant to a member's election, begins prior to the first day of the calendar month following the member's sixty-fifth (65th) birthday, shall be reduced in accordance with the first sentence of section 1.322(3).

(2) Any member who has twenty (20) or more years of credited service and ceases to be employed in a position covered by the retirement system for any reason other than his or her retirement shall be entitled to a vested deferred pension beginning on his or her sixty-second birthday; any member who has twenty-five (25) or more years of credited service and ceases to be employed in a position covered by the retirement system for any reason other than his or her retirement shall be entitled to a vested deferred pension beginning the first day of the calendar month next following his or her fifty-seventh birthday. Effective January 1, 2003, any non-union member who has ten (10) or more years of credited service and ceases to be employed in a position covered by the retirement system for any reason other than his or her retirement shall be entitled to a vested deferred pension beginning on the date on which the sum of his or her age and credited service, including fractional years thereof, equals eighty-two (82). Such pension, which shall not be reduced under section 1.322(3), shall be based on the member's final average compensation and credited service as of the date of the termination of his or her employment and computed according to the provisions of section 1.322(2) as the section was in force at the time of such member's separation from covered employment, provided that the member does not withdraw his or her accumulated contributions from the retirement system.

**Sec. 1.344. Validity.**

If any provision, section, subsection, paragraph, sentence, clause, phrase or word contained in this chapter is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions, sections, subsections, paragraphs, sentences, clauses, phrases and words of this chapter, or the chapter in its entirety.

**SECTION 2**

Should any section, clause, or paragraph of this ordinance be declared by a court of competent jurisdiction to be invalid, the same will not affect the validity of this ordinance as a whole or part thereof other than the part declared to be invalid.

**SECTION 3**

All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

**SECTION 4**

This ordinance shall become effective upon passage and publication.

BRENDA L. LAWRENCE, Mayor

NANCY L. M. BANKS, City Clerk

Introduced: November 18, 2002.

Enacted: December 16, 2002

Published: January 17, 2003