

ORDINANCE NO. ORD-11-01

First Reading : January 3, 2011
Public Hearing : January 18, 2011

Approved:
Published:
Effective:

Chapter 18
Employees Retirement System

An Ordinance to Amend the Code of the City of Ann Arbor by Repeal of Chapter 18, Employees Retirement System, Title I, of the Code and Adding a New Chapter 18, Employees Retirement System, Title I of Said Code

The City of Ann Arbor Ordains:

Section 1: That Chapter 18, Employees Retirement System, of Title I of the Code of the City of Ann Arbor be repealed in its entirety and a new Chapter 18, Employees Retirement System, be added to Title I of said Code to read as follows:

1:551. Existing System.

The City of Ann Arbor Employees Retirement System (the "Retirement System" or "Retirement Ordinance"), as previously established for the purpose of providing Retirement Allowances to certain City employees and retired employees of the City and survivor benefits to their eligible beneficiaries, has been maintained continuously subject to certain amendments in accordance with the provisions of this chapter and the Ann Arbor City Charter. All rights and benefits heretofore accruing to any person under a previous City Retirement System shall remain in full force and effect.

The City now wishes to amend and restate the Retirement Ordinance in its entirety as hereinafter set forth. The provisions of the amended and restated Retirement Ordinance shall apply only to a Member who accrues Service on or after July 1, 2010, except as otherwise specified herein. If a Member (or person claiming a benefit with respect to a Member, as applicable) terminated employment, died, became disabled, or otherwise became entitled to a benefit prior to July 1, 2010 (or other specified effective date), benefits under the Retirement System shall be determined and paid in accordance with the Retirement Ordinance as in effect as of the date such termination of employment, death or disability, or other benefit entitlement occurred.

1:552. Definitions.

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

(1) *Accumulated Contribution.* The sum of all amounts deducted from the Compensation of a Member and credited to the Member's individual account to the Annuity Savings Fund under section 1:572, together with applicable interest thereon, at the Accumulated Contribution Interest Rate set forth in section 1:552(2). Prior to January 1, 2010, such contributions were deducted from non-union Members' Compensation and made on an after-tax basis. Beginning with the first pay period which begins in January 2010, non-union Member contributions are made on a pre-tax basis pursuant to the "Pick-Up" Feature (as provided at Code Section 414(h)) of section 1:572(b). Prior to August 1, 2010, such contributions were deducted from the compensation of members of the Teamsters Police Deputy Chiefs bargaining unit, Local 214 Teamsters Civilian Supervisors bargaining unit and Teamsters Police Professional Assistants bargaining unit on an after tax basis. Beginning with the first pay period which begins in August 2010, the member contributions of the employees of the Teamsters Police Deputy Chiefs bargaining unit, Local 214 Teamsters Civilian Supervisors bargaining unit and Teamsters Police Professional Assistants bargaining unit are made on a pre-tax basis, pursuant to the "pick-up" feature of section 1.572(b).

(2) *Accumulated Contribution Interest Rate.* Effective as of February 1, 2011, the interest rate used for the growth of Accumulated Contributions credited to a Member's individual account in the Annuity Savings Fund which rate shall be set by the Board annually. Such interest credited under this section 1:552(2) shall be compounded quarterly.

(3) *"Actuarial Equivalency" or "Actuarially Equivalent"* means a benefit of equivalent value to the benefit it replaces, as further provided in section 1:585.

(4) *Actuarial Equivalency Interest Rate.* Effective as of February 1, 2011, the interest rate used for Actuarial Equivalency purposes, including (without limitation) calculating the effect of an annuity withdrawal under section 1:566(2) on a Member's Retirement Allowance, which is currently 7% per annum. This rate shall be subject to change by Ordinance amendment, and pursuant to collective bargaining where applicable.

(5) *Annuity.* An annual amount derived from the Accumulated Contributions of a Member, payable in equal monthly installments throughout the future life of a person.

(6) *Annuity Reserve.* The present value of all payments to be made on account of any annuity. The Annuity Reserve shall be computed upon the basis of the RP 2000 combined mortality table projected to 2007 set forward two years for males, set back three years for females and 7% interest rate, per annum.

(7) *Annuity Savings Fund.* The accounting fund established within the Retirement System as described in section 1:572.

(8) *Beneficiary.* Any person or persons designated as such by the Member on a form supplied by the Board and filed with the Retirement System to receive benefits payable upon the Member's death under the provisions of section 1:566, 1:567, 1:568, 1:570 and 1:571.

(a) If no such designation is in effect at the time of the death of the Member, or if no person so designated shall survive the Member, the Beneficiary shall be the Spouse of the

Member, if then living; otherwise his children in equal shares with the then living children of a Member's deceased child taking their parent's share equally; or if the deceased Member has no surviving Spouse, children, or grandchildren, the legal representative of such deceased Member; or if there shall be no such legal representative duly appointed and qualified within six months of the date of death of such deceased Member, then such persons as, at the date of his death, would be entitled to share in the distribution of such deceased Member's estate under the provisions of the statute governing intestate succession, then in force and effect in the State of Michigan.

(b) In the event a Beneficiary designated by the Member or determined under (a) above survives the death of the Member but subsequently dies before receiving the benefits to which he/she was entitled, the successor Beneficiary shall be any successor Beneficiary who was designated by the Member, or, if none, the Member's benefits shall be paid to the legal representative of the deceased Beneficiary; or if there shall be no such legal representative duly appointed and qualified within six months of the date of death of such deceased Beneficiary, then to such persons as, at the date of his death, would be entitled to share in the distribution of such deceased Beneficiary's personal estate under the provisions of the statute governing the descent of intestate property, then in force and effect in the State of Michigan.

(c) A Member's designation of the Member's Spouse as the Beneficiary shall be automatically revoked as of the date of such Member's divorce from such Spouse unless otherwise provided in qualified domestic relations order or domestic relations order described in section 1.576; provided that a Member may, after the divorce, file a new written designation of his or her former spouse as the Beneficiary.

The determination by the Board of the identity of such person or persons shall be final, conclusive and binding on all persons, and the Board shall be fully protected and shall incur no liability regardless of any error that it may make in such determination.

(9) **Board.** Board of Trustees or Board of the Retirement System provided for in this chapter.

(10) **Break in Service.** A period during which the Member is not contributing to the Retirement System, except that a period of payment under workers' compensation shall not constitute a Break in Service nor shall a period of temporary employment preceding permanent status for which the employee elects to purchase service credit, in accordance with section 1:561. For an employee who does not return from a leave of absence, the break starts with the last day of pay status.

(11) **City.** The City of Ann Arbor, Michigan.

(12) **City Council.** City Council or Council means the City Council of Ann Arbor, Michigan.

(13) **Code.** The Internal Revenue Code ("IRC") of 1986, as amended from time to time, including applicable regulations thereunder. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provision of any legislation which amends or replaces such section or subsection.

(14) **Compensation.** The taxable W-2 salary or wages paid a Member by the City for personal services rendered while in the employ of the City as reported in Box 1 of IRS Form W-2.

- (a) Compensation shall be increased by:
 - (i) amounts deferred by a Member under a deferred compensation plan under Code Section 457(b),
 - (ii) amounts deferred in accordance with the City's 125 flexible spending plan and/or voluntary employees beneficiary association (VEBA),
 - (iii) any pre-tax employee contributions to the Retirement System, and
 - (iv) worker's compensation benefits paid to a Member for a period of 52 weeks after the injury giving rise to the worker's compensation benefits.
- (b) Compensation shall not include:
 - (i) car allowance payments,
 - (ii) cell phone stipends,
 - (iii) allowances for clothing and equipment,
 - (iv) amounts contributed by the City for a Member under a deferred compensation plan,
 - (v) fire meals pay,
 - (vi) severance pay,
 - (vii) taxable life insurance premiums paid by the City on behalf of a Member,
 - (viii) taxable City vehicle use,
 - (ix) worker's compensation benefits paid to a Member after 52 weeks for the injury giving rise to the worker's compensation benefits, and
 - (x) differential wage payments as described in Code Section 3401(h)(2).
- (c) In case a Member's remuneration is not all paid in money, the City Administrator shall fix the value of that part of the remuneration which is not paid in money.
- (d) Lump sum payments paid upon retirement for accumulated time banks to Members of the following employee groups shall be includable or excludable in the calculation of Final Average Compensation as follows:
 - (i) Non-Union – For Members hired prior to January 1, 1980, Final Average Compensation shall include lump sum payments for up to 960 hours sick time, up to 2 years vacation time, accumulated comp time and up to 32 hours personal leave time. For Members hired on or after January 1, 1980, but prior to January 25, 1982, Final Average Compensation shall include lump sum payments for up to 480 hours sick time, up to 2 years vacation time, accumulated comp time and up to 32 hours personal leave time. For Members hired on or after January 25, 1982, Final Average Compensation shall include lump sum payments for up to 2 years vacation time, accumulated comp time and up to 32 hours personal leave time but shall not include any payment for accumulated sick time.
 - (ii) AFSCME – For Members hired prior to January 1, 1982, Final Average

Compensation shall include lump sum payments for up to 60 days sick time, up to 2 years vacation time, accumulated comp time and up to 32 hours of personal leave time. For Members hired on or after January 1, 1982, Final Average Compensation shall include up to 2 years vacation time, accumulated comp time and up to 32 hours personal leave time but shall not include any payment for accumulated sick time.

(iii) Ann Arbor Police Officer Association – For Members hired into the department after January 1, 1982, Final Average Compensation shall include lump sum payments for accumulated personal leave time up to the annual maximum but shall not include any payments for accumulated sick, vacation and/or compensatory time banks.

(iv) Command Officers Association of Michigan – For Members hired into the department after January 1, 1982, Final Average Compensation shall include lump sum payments for accumulated personal leave time up to the annual maximum but shall not include any payments for accumulated sick, vacation and/or compensatory time banks.

(v) Police Deputy Chiefs – For Members hired into the department after January 1, 1982, Final Average Compensation shall not include any lump sum payments for accumulated sick, personal leave, vacation and/or comp time banks.

(vi) Firefighters – For Members hired into the department after July 1, 1982, Final Average Compensation shall not include any lump sum payments for accumulated sick, vacation and/or comp time banks.

(vii) Safety Service Dispatcher and former Communications Operators – For members hired into the department after June 30, 1982, Final Average Compensation shall include lump sum payments for up to 32 hours of personal leave time but shall not include any payments for accumulated sick, vacation and/or comp time banks.

(viii) Police Service Specialists – For Members hired prior to January 1, 1982, Final Average Compensation shall include lump sum payments for up to 960 hours sick time, up to 2 years vacation time, accumulated comp time and up to 32 hours of personal leave time. For Members hired into the department on or after January 1, 1982, but on or before June 30, 1982, Final Average Compensation shall include lump sum payments for up to 2 years vacation time, accumulated comp time and up to 32 hours of personal leave time but shall not include payment for accumulated sick time. For Members hired into the department after June 30, 1982, Final Average Compensation shall include lump sum payment for up to 32 hours personal leave time but shall not include any payments for accumulated sick, vacation time banks.

(ix) Police Professional Assistants – For Members hired on or after June 30, 1981, Final Average Compensation shall include lump sum payment for accumulated comp time and for up to 32 hours of personal leave time but shall not include any payments for accumulated sick, or vacation time banks.

(x) Teamsters (Supervisors) Civilian – For Members hired on or after July 1, 1980, Final Average Compensation shall include lump sum payments for up to 2 years

vacation time, accumulated comp time and up to 32 hours personal leave time but shall not include any payment for accumulated sick time bank (unless the Member entering the this bargaining unit transferred from another City position in which case said Member shall continue to have the same amount of sick leave included in Final Average Compensation as said Member had before.)

(e) In the event a Retirant is paid Compensation for personal services rendered to the City as a Member prior to retirement (including, without limitation, payments for retroactive collectively bargained pay increases relating to periods of employment prior to retirement), such Compensation, for Final Average Compensation purposes only, shall be considered as received by the Retirant on the day prior to his/her effective retirement date. Member contributions, if otherwise applicable, shall be deducted from such Compensation. The amount of the Retirant's pension provided in section 1:564(1) shall be recomputed to the Retirant's date of retirement if the payment of such Compensation results in an increase in the Retirant's Final Average Compensation. No interest shall be payable to a Retirant or Beneficiary for increased benefits paid after commencement of a pension pursuant to this provision.

(f) Annual Compensation in excess of the following amounts shall not be taken into account for any purpose of the Retirement Ordinance:

(i) For plan years beginning on or after January 1, 1989 and before July 1, 1996, the annual Compensation of each Member taken into account for determining all benefits provided under the Retirement Ordinance for any determination period shall not include any amounts in excess of the annual compensation limit (originally \$200,000) provided for in IRC § 401(a)(17) prior to the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") and adjusted for inflation in the manner provided by IRC § 401(a)(17); and

(ii) For plan years beginning on or after July 1, 1996, the annual compensation of each Member taken into account for determining all benefits under the Retirement Ordinance shall not exceed the annual compensation limit provided for in IRC § 401(a)(17), as amended by the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") (\$200,000 in 2002). This limit may be adjusted as required by federal law for qualified government plans (as defined at Code Section 414(d)) and shall be further adjusted for inflation in the manner provided by IRC § 401(a)(17).

For purposes of Code Section 401(a)(17), Annual Compensation means compensation recognized under the Retirement Ordinance during the Retirement System's Fiscal Year or such other consecutive 12-month period over which Compensation is otherwise determined under the Retirement Ordinance. The cost-of-living adjustment in effect for a calendar year under Code Section 401(a)(17) applies to annual Compensation for the determination period that begins with or within such calendar year.

(15) *Credited Service*. The sum of a Member's prior Service and membership Service to the extent credited the Member by the Board of Trustees determined pursuant to section 1:561.

(16) *Custodian*. Any person or corporate entity designated as the Custodian pursuant to section 1:556(3).

(17) *Deferred Vested Retirement Allowance.* The Retirement Allowance as provided at section 1:565.

(18) *Early Retirement Allowance.* The Retirement Allowance as provided at section 1:564(2).

(19) *Final Average Compensation.*

(a) The average annual Compensation amount determined by dividing (i) a Member's total Compensation paid during the Member's highest paid 36 consecutive calendar months of Credited Service (excluding any Breaks in Service) within the last 10 years of the Member's employment with the City; by (ii) 3; PROVIDED that in calculating the Member's highest paid 36 consecutive calendar months, no more than the number of normal pay dates for a 36-month period shall be taken into account.

(b) If a Member has fewer than 3 years of Credited Service, the Final Average Compensation shall be the average of the annual Compensation paid to a Member for the total period of Credited Service.

(c) If less than 12 months of Service was credited in a year, the Compensation utilized for the year shall be annualized by dividing the Compensation earned by the Service credited;

(20) *Firefighter.* Any employee of the fire services unit holding the rank of firefighter, including probationary firefighter, or higher rank, but shall not include:

(a) Any person temporarily employed by the City as a firefighter; or

(b) Any civilian employee of the fire services unit.

(21) *Funding Interest Rate.* Effective as of February 1, 2011, the interest rate used by the System for actuarial funding purposes as set by the Board, subject to review not less frequently than every six years, which rate is currently 7% per annum.

(22) *General City Member.* Any Member except a Police Officer or Firefighter member.

(23) *Health Benefit Fund.* The accounting fund established within the Retirement System pursuant to Code Section 401(h) which provides for the payment of benefits for medical expenses of Retirants and qualified beneficiaries, all of which is more fully defined and described in section 1:595.

(24) *Member.* Any person who is included in the membership of the Retirement System pursuant to section 1:559.

(25) *Normal Retirement Allowance.* The Retirement Allowance as provided at section 1:564(1).

(26) *Other Qualified Adult.* As used in section 1:570, the term 'Other Qualified Adult' means, to the extent permitted by law, the one unmarried adult person so designated by the unmarried Member provided the following requirements are met with respect to the Member and the Other Qualified Adult:

(1) The Member and the Other Qualified Adult share a common residence and have done so for at least the past eighteen (18) months.

(2) The Other Qualified Adult cannot inherit from the Member under the laws of intestate succession in the State of Michigan.

(3) At least one of the following is true:

(i) The Member and the Other Qualified Adult have a durable power of attorney for health care for the other; or

(ii) The Member and the Other Qualified Adult have a durable power of attorney for financial management of the other.

(27) *Pension*. An annual amount, derived from money provided by the City, payable in equal monthly installments throughout the future life of a person or for a temporary period as provided in this chapter.

(28) *Pension Contingency Reserve*. A reserve in addition to the actuarially determined Annuity Reserve and Pension Reserve for Retirants and Beneficiaries as determined by the Board at an amount not to exceed 20% of the Annuity Reserve and Pension Reserve for Retirants and Beneficiaries.

(29) *Pension Reserve*. The present value of all payments to be made on account of any Pension. The Pension Reserve shall be computed upon the basis of the RP 2000 combined mortality table projected to 2007 set forward two years for males, set back three years for females and 7% interest rate per annum.

(30) *Pension Reserve Fund*. The accounting fund established within the Retirement System as described in section 1:580.

(31) 'Pick-up' Feature. A feature under Code Section 414(h) that converts the mandatory after-tax employee Accumulated Contribution under section 1:552(1) into a City contribution, with the resulting tax-treatment for the Member being that the Accumulated Contribution is considered made on a pre-tax basis rather than an after-tax basis. "Pick up" when used as a verb refers to the processing of such a contribution.

(32) *Police Officer*. Any employee of the police services unit of the City holding the rank of patrol officer, including probationary patrol officer, or higher rank; but shall not include:

(a) Any person temporarily employed by the City as a Police Officer, or

(b) Any civilian employee of the police services units.

(33) *Qualified Transfer*. A transfer of excess assets to the Health Benefit Fund described in sections 1:552(28) and 1:595, and which further satisfies the requirements of Code Section 420.

(34) *Retirant*. Any Member who retired with an immediate pension or Retirement Allowance payable by the Retirement System.

(35) *Retirement Allowance*. The straight-life annual pension benefit prescribed at sections 1:564, 1:565 or 1:568.

(36) *Retirement Reserve Fund*. The accounting fund established within the Retirement System as described in section 1:573.

(37) *Retirement System or System*. The City of Ann Arbor Employees Retirement System created and maintained in accordance with the provisions of the Retirement Ordinance pursuant to this chapter.

(38) *Retirement System Fiscal Year or "Plan Year"*. The twelve (12) consecutive month period beginning with July 1 and ending on June 30.

(39) *Service*. Personal service rendered to the City by an officer or employee while a Member of the Retirement System as defined in section 1:561, military service qualifying under sections 1:561(b) and 1:561(c), and service recognized under the Reciprocal Retirement Act, in accordance with section 1:561(e) of the Retirement Ordinance.

(40) *Services Area Administrator*. The person holding such job title in a City department. As used in section 1:568, if an employee is employed in a unit or office that is not within a services area headed by a Services Area Administrator, the term Services Area Administrator means instead the City Administrator, City Attorney, Administrator of the Fifteenth District Court, Executive Director of the Housing Commission, Executive Director of the Retirement System or Executive Director of the Downtown Development Authority, as appropriate, who has responsibility for oversight of the office, unit or agency where the employee is employed.

(41) *Social Security Salary*. A Member's annual salary, or the portion thereof, which is subject to Federal Social Security Taxes.

(42) *Spouse*. As used in section 1:570, the term "spouse" means a person of the opposite sex to whom the deceased Member or Retirant was legally married at the termination of employment with the City.

(43) *Terminated Vested Member*. A former Member who terminates City employment without entitlement to an immediate Retirement Allowance under section 1:564, but who retains entitlement to a Deferred Vested Retirement Allowance as described in section 1:565.

(44) *Trust Fund or Fund*. All the money, securities and other property held by the Board of Trustees as Trustee pursuant to this Retirement Ordinance and with any trust instrument(s) executed in connection therewith.

(45) *Trustee*. Each of the persons appointed or elected pursuant to section 1:553 or 1:554 for the administration and management of funds of the Retirement System.

1:553. Board of Trustees; Responsibilities and Duties; Composition.

(1) The general administration, management and responsibility for the proper operation of the Retirement System and for making effective and construing the provisions of this Retirement Ordinance shall be vested in the Board of Trustees previously established by the Ann Arbor Charter, consistent with applicable state and federal laws and regulations. A Trustee or other fiduciary under the Retirement System shall

discharge his or her duties with respect to the Retirement System solely in the interest of the Members and Beneficiaries for the exclusive purpose of providing benefits to Members and Beneficiaries and paying reasonable expenses of administering the Retirement 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 be a quasi-judicial body consisting of 9 Trustees as follows:

- (a) The City administrator, to serve by virtue of the office.
 - (b) The City's chief financial officer, to serve by virtue of the office.
 - (c) Three Trustees appointed by the Council, to serve at the pleasure of the Council.
 - (d) Two Trustees elected by the general City Members from their own number.
 - (e) One Trustee elected by the Firefighter Members from their own number.
 - (f) One Trustee elected by the Police Officer Members from their own number.
- (2) The Trustees shall serve without additional compensation for their services as Trustees, except that Member Trustees shall suffer no loss in compensation on account of their services as Trustees.
- (3) The election of Member Trustees provided in paragraphs (d), (e) and (f) of subsection (1) of this section shall be held in accordance with rules and regulations as the Board shall from time to time adopt.

1:554. Trustees' Terms of Office; Vacancies on Board.

- (1) The regular term of office of the appointed citizen Trustees and the Member elected Trustees shall be 3 years.
- (2) If a vacancy occurs in the office of an appointed citizen Trustee, the Mayor of the City, within 30 days of the date of vacancy, shall fill the vacancy by appointment for the unexpired term.
- (3) If a vacancy occurs in the office of a Member elected Trustee, the vacancy shall be filled within 90 days of the date of vacancy, for the portion of the unexpired term, in the same manner as the position was previously filled.

No new Trustee shall be responsible for any act or omission which occurred prior to becoming a Trustee.

1:555. Board Meetings; Quorum.

- (1) All meetings shall be held in accordance with the Michigan Open Meetings Act, MCLA Section 15.261 *et seq.*, which Act is incorporated by reference in this Retirement Ordinance.
- (2) The Board shall hold meetings regularly, at least 1 in each month, and shall designate the time and place thereof. It shall adopt its own rules of procedure and shall

keep a record of its proceedings.

(3) Five (5) Trustees shall constitute a quorum. Each Trustee shall be entitled to 1 vote on each question before the Board. Five (5) concurring votes are required for a decision of the Board.

1:556. Chairpersons; Officers; Check Writing; Administrative Services; Other Agents and Counsel.

(1) Chairpersons and Secretary. At its meeting in February of each year, the Board shall elect from its membership a chairperson, vice chairperson and secretary.

(2) Finance Officer. The Board shall appoint a finance officer who shall administer the Trust Fund's investment portfolio consistent with Board direction. Such finance officer may, at the Board's discretion, be the City's chief financial officer, who would then perform the same duties with respect to the Trust Fund that he/she is required by the Ann Arbor City Charter to perform respecting the general funds and accounts of the City.

(3) Custodian. The City Treasurer shall be the Treasurer of the Retirement System. The City Treasurer shall be the Custodian of the assets of the Retirement System unless the Board designates a corporate custodian. To be eligible for designation, a corporate custodian shall be a custodian bank which is a member of the federal reserve system or a clearing corporation or such other custodial service provider as permitted by the provisions of P.A. 1965, No. 314, as amended, being Section 38.1132, *et seq.* of MCLA. [38.1140f]

The Custodian shall accept and receive all sums of money deposited with it from time to time pursuant to the terms of this Retirement Ordinance, and shall hold and administer those monies and the increment earnings and income thereon in the Trust Fund for the exclusive benefit of Members and their Beneficiaries.

All payments from funds of the Retirement System under the custody of the City Treasurer (or a corporate Custodian, as the case may be) shall be authorized in advance by a specific or continuing resolution of the Board of Trustees. At least two signatures authorized by resolution of the Board shall be required for any disbursements made by checks, vouchers, direct deposit or electronic funds transfer. A duly attested copy of each resolution designating such individuals and bearing upon its face specimen signatures of those individuals shall be filed with the Treasurer and the Board's designated custodial service provider.

No Retirement System disbursements shall be permitted unless it shall have been previously authorized by the Board. A duly attested copy of each resolution authorizing payment from funds of the Retirement System under the custody of a corporate custodian shall be filed with the Treasurer. As the Treasurer of the Retirement System, the City Treasurer shall have unrestricted access to the records of all Retirement System financial activity, expenditures and revenues.

(4) Legal. The Board shall appoint a Legal Advisor.

(5) Services. The Board shall have the authority to employ an Executive Director for the

Retirement System upon such terms and conditions as determined by the Board. The Executive Director shall serve in a ministerial and non-fiduciary capacity. The individual in this position shall have no discretionary authority regarding a claim for benefits under the Retirement System and no discretionary authority or control over Retirement System assets. Subject to the foregoing, the Board, by resolution, may delegate to the Executive Director responsibility for ministerial and non-fiduciary administration of the Retirement System. No delegation under this provision shall be construed as a delegation of the Board's fiduciary responsibility to the Retirement System, its Members, Retirants or Beneficiaries. The Board may employ an Executive Director pursuant to section 6(a), (b), (c) or (d).

(6) The Board may employ, retain, or utilize such professional, clerical and other services as are necessary for the proper operation of the Retirement System in any of the following manner:

(a) Subject to the provisions of section 5.18 of the Ann Arbor City Charter, City employees, upon the request of the Board, may be assigned to the Retirement System for the proper operation of the Retirement System. Said employees shall be subject to the supervision of the Board. The Board shall have the authority to establish job descriptions and promulgate rules and regulations appropriate for the Retirement System in addition to those adopted by City Council under sections 5.18(b) and 5.18(d) of the Ann Arbor City Charter for City employees supervised by the Board. The supervision of City employees by the Board shall not serve to impair the authority and responsibility of the City Administrator under the Ann Arbor City Charter for personnel services. The Board shall annually reimburse the City for the actual costs of these employees as determined by a method jointly agreed upon by the Board and the City.

(b) The Board may employ individuals as it deems reasonably necessary for the proper operation of the Retirement System as employees of the Retirement System. An individual hired under this subsection shall not be considered an employee of the City for any purposes. Employees of the Retirement System shall be subject to the supervision, rules and regulations of the Board. It shall be the sole responsibility of the Board to comply with all federal, state and local law and regulations. The Board may enter into an agreement with the City to provide reasonable benefit(s) to Board employees which are comparable to the benefit(s) and provided by the City to its non-union employees. In that event, the Board shall reimburse the City for said costs, if any. The City shall be under no obligation to enter into, maintain or in any manner modify, amend or otherwise alter its contract with City benefit service provider(s) to allow coverage of the Board's employees in the event of a request by the Board for the provision of benefit(s) to the Board's employees under the City's benefit plan(s).

(c) The Board may utilize City staff for such functions as personnel administration, accounting, banking, payroll services and purchasing and the Board shall comply with all established City control procedures and policies related to these services. The Board shall reimburse the City for the actual costs of these services as determined by a method jointly agreed upon by the Board and the City.

(d) The Board may contract with professional, clerical or other service providers as it deems necessary for the proper operation of the Retirement System. These service providers may include, but shall not be limited to, investment advisors and consultants, custodial banks which are members of the federal reserve system, actuaries, auditors and legal counsel. A service provider under this subsection shall be an independent contractor and not an employee of the Retirement System or the City for any purposes. The Board shall have the authority to enter into contracts, or retainer agreements, and to pay reasonable compensation and expenses for services rendered with the current or accumulated income of the Retirement System.

(e) No person or entity employed pursuant to this section 1:556(6)(a), (b), (c) and (d) who is not otherwise a fiduciary as defined under Public Act 314 (such as an investment advisor, for example, and not by way of limitation), shall serve as a fiduciary of the Retirement System nor shall the Board delegate any of its fiduciary duties to such person or entity.

(7) The Board shall have the authority to lease or purchase such real or personal property, facilities, equipment and supplies as it deems necessary for the proper operation of the Retirement System. The Board shall obtain insurance it deems necessary to protect the property, assets, Trustees and staff of the Retirement System. To the extent that the Board may list the City as an additional insured party, the Board, upon written notification from the City, shall list the City as an additional insured party provided; however, the City shall pay for any additional costs required for the City to be listed as such.

1:557. Records and Annual Report.

The System's Finance Officer shall keep, or cause to be kept, in convenient form, such data as shall be necessary for the actuarial valuation of the assets and liabilities of the Retirement System. The Board shall likewise keep, or cause to be kept, in convenient form, such additional data as is required to properly report the operations of the Retirement System. On or before the first day of February of each year, the Board shall render a report to the mayor and the Council showing the fiscal status of the Retirement System for the preceding fiscal year, and the last balance sheet showing the financial condition of the Retirement System and the actuarial valuation of its assets and liabilities.

1:558. Actuarial Funding Assumptions, Tables and Factors.

The Retirement System shall be funded on an actuarial basis as set forth in the Retirement Ordinance and in accordance with Michigan Constitution of 1963 Article 9, Section 24 and Michigan Public Act 314 of 1965 (MCLA Section 38.1132 *et seq.*). After consultation with an actuary, the Board shall adopt such mortality and other tables of experience as are necessary for the funding of the Retirement System on an actuarial basis.

City contributions shall be determined by an annual actuarial valuation using reasonable actuarial cost methods, interest assumptions, mortality and other experience

assumptions that meet the standards of the Actuarial Standards Board/American Academy of Actuaries.

The Board shall review the actuarial funding assumptions used to fund the Retirement System. Such review shall occur not less frequently than once every six years and may occur more frequently if the Board determines that extraordinary actuarial experience or other changed circumstances should call for an earlier review.

1:559. Membership in the Retirement System.

(a) The membership of the Retirement System shall include all officers and employees of the City. Officers of the City who are eligible for membership in the Retirement System shall become Members on the date they assume the office to which they have been elected or appointed. No officer who becomes a Member of the System shall lose any service credit acquired prior to becoming an officer of the City.

(b) Employees and former employees of the Fifteenth District Court shall be members of the Retirement System subject to the following conditions:

(1) Subject to the provisions of sections 1:560 and 1:572(c), persons who were employees of the City and the Fifteenth District Court may have their Service credit determined by combining the periods of employment with the City and the Fifteenth District Court.

(2) The Final Average Compensation shall be computed on the basis of Compensation provided by the City and shall not include portions of compensation provided by the State of Michigan.

(3) In lieu of the foregoing, persons who have been employed by both the City and the Fifteenth District Court may elect to have retirement benefits from the City and from the Fifteenth District Court determined in accordance with the Reciprocal Retirement Act, Public Act No. 88 of 1961, as amended, being MCLA 38.1101, et seq.

(c) Employees of the Board of the Retirement System may be eligible for membership in the Retirement System subject to approval of the Board.

(d) No person shall be eligible for membership in the Retirement System:

(1) Solely by reason of membership on the Council.

(2) Solely by reason of services provided to the City or the Board on a fee or contractual basis.

(3) Who received Compensation from the City of less than \$400.00 per year for 3 consecutive years.

(4) Solely by reason of employment by the City as a school crossing guard.

(5) Solely by reason of employment by the City on a temporary basis.

(6) Who is the City Administrator, City Attorney, City Clerk, the head of any administrative department, the head of the City's personnel/human resources function, or Mayor's secretary, **provided** that the individual employee enters into

alternative retirement arrangements at the time of initial employment, meeting the applicable requirements of Treasury Regulation Section 1.401(k)-1(a)(3)(iv).

(7) Who is an employee of the Board and upon commencement of employment, has not been determined by the Board to be a Member of the Retirement System.

(8) Is a Retirant of the Retirement System.

(e) In all cases of doubt, the Board shall decide who is a Member within the meaning of the provisions of this chapter.

1:560. Termination of Membership; Return to Employment.

(a) Except for Members who qualify for a deferred vested retirement described in section 1:565, membership in the Retirement System ends upon the termination of employment. Members eligible for a Deferred Vested Retirement Allowance maintain membership in the Retirement System solely to draw a future benefit in accordance with section 1:565.

(b) Subject to 1:560(d), a person returning to City employment within 3 years of the date of his termination of employment, may have retirement benefits computed using the credited Service accrued as of the date of termination of employment.

(c) Subject to 1:560(d), a person returning to City employment more than 3 years after his termination of employment may also use the prior credited Service, but such credited Service shall be reduced by the period by which the Break in Service exceeds 3 years.

(d) Service earned prior to termination of employment shall be reinstated provided the rehired employee repays, in the manner provided in 1:572(c), to the Annuity Savings Fund all amounts the employee may have withdrawn therefrom, together with interest thereon at the Accumulated Contribution Interest Rate set forth in section 1:552(2), from the date of withdrawal to the date of repayment. Upon failure to make such repayment, the prior Service shall be disregarded, and retirement benefits attributable to the period of employment after rehire shall be the same as for a new employee.

1:561. Service Credit for Retirement.

(a) General Requirements. The Board shall fix and determine, by appropriate rules and regulations, the amount of Credited Service to be credited any Member. Members shall receive Service credit as follows:

(i) Firefighting platoon personnel: A month of service credit shall be credited for each calendar month during which 100.8 or more regular (non-overtime) hours of Compensation is paid to a full-time Member. In no case shall less than 100.8 hours of service rendered in any calendar month be credited as a month of service to a full-time Member.

(ii) All other Members: A month of service credit shall be credited for each calendar month during which 80 or more regular (non-overtime) hours of Compensation is paid to a full-time Member. In no event shall less than 80 hours of Service rendered

in any month be credited as a month of service to a full-time Member.

At the time of Early or Normal Retirement, a Member's Credited Service shall be determined based on the Member's date of hire and termination date (excluding any breaks in services.) A partial month's credit shall be credited to the nearest half month as Credited Service as follows:

- (1) 0-8 calendar days – Member receives no additional service credit;
- (2) 9-23 calendar days – Member receives .50 month (1/2 month) service credit; or
- (3) 24 calendar days and over – Member receives 1 complete month of service credit.

A Member must satisfy the Credited Service requirements for retirement eligibility purposes without regard to the crediting of additional service to the nearest half month. In no case shall less than 8 months of Service rendered in a fiscal year be credited as a year of Credited Service, nor shall more than 1 year of Credited Service be credited any Member for all Service rendered in any Fiscal Year.

The Board shall maintain a Service account for each Member. At the end of each fiscal year the Board shall enter into the account on behalf of each Member the Credited Service earned in such Retirement System Fiscal Year. The City shall provide the Board, or its designee, on an as needed basis earned Credited Service account data for a Member.

(b) Service--Intervening Military Service. Should any Member who while employed by the City be called or enlist, or was called or enlisted, in the military, naval, marine, air, or other armed service of the United States Government during time of war, or other national emergency recognized by the Council, and should said Member be re-employed by the City within 90 days following the date of termination of required service, then such "war service" shall be recognized as City Service by the Board, provided that the employee returns to the Annuity Savings Fund all amounts the employee may have withdrawn therefrom at the time of entrance into, or while in, such armed service, together with interest thereon, at the Accumulated Contribution Interest Rate set forth in section 1:552(2), from the date of withdrawal to the date of repayment, as provided in section 1:572(c). In cases of doubt as to the period to be credited any Member, the Board shall have final power to determine such period. During the period of such war service, and until return to City service, the said Member's contributions to the Annuity Savings Fund shall be suspended and the balance therein shall be accumulated with interest thereon, at the Accumulated Contribution Interest Rate set forth in section 1:552(2).

(c) Service--Non-Intervening Military Service. A Member, who prior to becoming an employee of the City, has served in any armed service of the United States (whether inducted or enlisted) shall have periods of active duty lasting 30 or more days, included in the Member's Service account if all of the following conditions are satisfied:

- (1) The Member has at least 5 years of credited Service, excluding any credited Service acquired for intervening military service under the provisions of subsection (b) above. Service time which has been purchased shall not be credited towards the

satisfaction of a Member's 5-year vesting requirement;

(2) The Member submits a written application and supporting documentation to the Board of Trustees of the Retirement System;

(3) A Member purchasing military service credit shall pay into the Annuity Savings Fund described under section 1:572 five percent (5%) of the Member's annual Compensation multiplied by the period of credited Service being purchased in accordance with the applicable rules and regulations as adopted by the Board of Trustees of the Retirement System. The Member shall purchase the military service by either a lump-sum payment or fixed payments through payroll deduction at any time prior to retirement. Payments made to the Annuity Savings Fund for the purchase of military service shall not be refunded to a Member under any annuity withdrawal option at section 1:566(2) or in the event of termination of employment.

(A) In the event of termination of membership in the Retirement System for reasons other than retirement, a former Member who had elected to purchase military service credit by way of payroll deduction (or his Beneficiary), shall complete the purchase and pay all amounts due by means of a lump-sum payment within 60 days of termination. If payment in full is not completed within said 60-day period, the Board of Trustees' actuary shall calculate the amount of Service to be credited based upon the amount of contributions paid into the Annuity Savings Fund at the time of the Member's termination;

(B) A Beneficiary may elect to purchase military service credit based on a deceased Member's period of military service by lump-sum payment within 60 calendar days after the death of a Member. An application for military service credit by a Beneficiary must be filed with the Retirement System in compliance with all terms and conditions stated in this section as if the military service credit had been purchased by the Member.

(4) Military service can be purchased in increments of no less than one month not to exceed 4 years of military service.

(5) Credited Service shall not be granted for periods of military service which are or could be used for obtaining or increasing a benefit from another federal, state or local publicly supported retirement system, except for Service that is or would be credited under the federal government for service in the reserves; and

(6) Only military service of Members who spent time in the armed services of the United States as indicated as active service on the Member's military service separation papers (DD-214 or equivalent form) shall qualify for purchase. Active service for active duty training for the reserves or national guard program shall be eligible for purchase as military service credit provided the Member shall have been discharged or released from active military service under honorable conditions.

(d) Notwithstanding any provision of the Retirement Ordinance to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with IRC § 414(u) and regulations thereunder.

(e) Effective with respect to deaths occurring on or after January 1, 2007, the survivors

of a Member who dies while performing qualified military service (as defined in Code Section 414(u)) are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Ordinance as if the Member had resumed and then terminated employment with the City on account of his/her death. For these purposes, the Member shall be credited with Service under section 1:561 during the period of qualified military service.

(f) Effective on and after July 1, 2009, if the City makes “differential wage payments” as defined in Code Section 3401(h)(2) to individuals performing qualified military service, then (1) the individual receiving a differential wage payment shall be treated as an employee of the City; and (2) the differential wage payment shall be treated as Compensation for purposes of Code Section 415(c)(3) under section 1:587.

(g) Reciprocal Retirement Act Service Credit. The City has elected to become a reciprocal retirement system within the meaning of the Michigan Reciprocal Retirement Act, hereinafter RRA (MCLA Section 38.1101 *et seq.*) but has not adopted section 38.1106 (Section 6) of the RRA. The City recognizes service under the RRA only for eligibility and for purposes of determining the early retirement reduction factors. The provisions of the RRA are incorporated into this Retirement Ordinance by reference as though fully set forth herein.

(h) Service--Temporary Employment. A Member may elect to receive Service for periods of temporary employment leading directly to permanent employment with the City by agreeing to pay into Annuity Savings Fund an amount equal to the Accumulated Contributions that would have been required and accrued as if such person had been a Member of the Retirement System during the period of temporary employment. The election must be made within 60 days after (a) obtaining permanent status and (b) being notified by the Board of the right to make such election. Temporary service in a student training or student intern program or on a contractual basis is not eligible for Service credit under this section. This provision shall be effective for periods of temporary employment beginning after July 1, 1979.

1:562. Normal or Early Retirement.

A Member may retire upon satisfaction of the applicable age and service requirements as follows:

(1) Early Retirement

(a) General City Members – Age 50 with 20 or more years of Service.

(b) Firefighter or Police Officer Members – Age 50 with 20 or more years of Service.

(2) Normal Retirement

(a) General City Members – Age 60 with 5 or more years of Service, or age 50 with 25 or more years of Service.

(b) Firefighter or Police Officer Members – Age 55 with 5 or more years of Service, or 25 years of Service regardless of age.

The Member files written application with the Board setting forth the date, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, upon which retirement is to be effective.

(3) Upon retirement, a General City Member shall be paid a Retirement Allowance provided for in section 1:564(1)(a), a Firefighter or Police Officer Member shall be paid a Retirement Allowance provided for in section 1:564(1)(b).

(4) Once a Member satisfies the requirements for voluntary retirement, the Member's right to a Retirement Allowance is nonforfeitable.

1:563. [Reserved]Special Retirement Window Allowance.

1:563A. [Reserved]Early Retirement Option Program for Eligible Members Represented by COAM and AAPOA.

1:564. Service Retirement Allowance.

(1) Normal Retirement Allowance. Upon retirement, pursuant to section 1:562(2), a Member shall receive a straight life Normal Retirement Allowance, payable monthly, in whichever of the following amounts applies:

(a) For General City Members, 2.5% of Final Average Compensation multiplied by the number of years of Credited Service and any fraction thereof.

(b) For Firefighter and Police Officer Members, 2.75% of Final Average Compensation multiplied by the number of years of Credited Service and any fraction thereof.

(2) Early Retirement Allowance. In the event a Member retires pursuant to section 1:562(1), the Member shall receive the Normal Retirement Allowance provided in paragraph (1) of this section, reduced by one-third of one percent multiplied by the number of months and fraction of a month in the period from the Early Retirement date to the date the Member would attain Normal Retirement under section 1:562. The provisions of this paragraph shall not be applicable to ordinary death benefits provided in section 1:567 or disability benefits provided in section 1:568.

1:565. Deferred Vested Retirement Allowance.

A Member with 5 or more years of Service who terminates employment for any reason other than retirement (as provided in section 1:562), disability (as provided in section 1:568), or death shall be a Terminated Vested Member entitled to a Deferred Vested Retirement Allowance upon reaching the age of 60 years. The Deferred Vested Retirement Allowance shall be calculated pursuant to the provisions of section 1:564(1) in effect at the time of termination of employment. The Deferred Vested Retirement Allowance shall be subject to recomputation in accordance with section 1:552(14)(e) with respect to Compensation received after termination of employment for personal services rendered prior to the date of termination. The Deferred Vested Retirement Allowance shall begin, and the terminated vested membership shall end, following the month the Member reaches the age of 60 years and applies for a Deferred Vested

Retirement Allowance.

A Terminated Vested Member whose age and Service total at least 50 at the time of termination of employment may elect at the time of (i) termination of employment; (ii) benefit commencement; or (iii) on a date in between the Member's termination of employment and benefit commencement, to withdraw his Accumulated Contributions in the percentages specified in section 1:566(2) and shall have the Deferred Vested Retirement Allowance reduced by the actuarial equivalent of the amount of withdrawn Accumulated Contributions. A Terminated Vested Member returning to the employ of the City may not receive the Deferred Vested Retirement Allowance until again terminating employment and applying for a Deferred Vested Retirement Allowance.

1:566. Alternate Forms of Payment Options.

(1) Prior to the effective date of the Member's Normal, Early, Disability, or Deferred Vested Retirement, but not thereafter, a Member may, in lieu of being paid a straight life Retirement Allowance for his/her life, elect to receive the Actuarial Equivalent of the straight life Retirement Allowance, computed as of the effective date of his retirement, in the form of a reduced Retirement Allowance Payment Option as described under Options I, II, III, IV or V below.

Option I--Modified Cash Refund. A Retirant shall be paid a reduced Retirement Allowance for life with the provision that upon the Retirant's death, the difference, if any, between the Retirant's Accumulated Contributions at the time of retirement and the aggregate amount of cash refund annuity payments (as defined below) made shall be paid to such person or persons as he/she shall have nominated by written designation duly executed and filed with the Board. If no such designated person survives the Retirant, then such difference, if any, shall be paid to his or her legal representatives. As used in this Option, the term "annuity payments" means the portion of the Retirant's Retirement Allowance derived from the Retirant's Accumulated Contributions at the time of retirement, as determined by the actuary.

Option II--100% Survivor. A Retirant shall be paid a reduced Retirement Allowance for life with the provision that upon the death of a Retirant, the reduced Retirement Allowance shall be continued throughout the life of and paid to such person as the Retirant shall have nominated by written designation duly executed and filed with the Board prior to the effective date of retirement. If the nominated survivor Beneficiary dies prior to the Retirant, the amount of the Retirant's monthly Retirement Allowance shall revert to the straight life Retirement Allowance amount described in (1) above and shall be paid to the Retirant for the remainder of his life. If both the Retirant and Beneficiary die before receiving an aggregate amount of Retirement Allowance payments equal to the Member's Accumulated Contributions at retirement, as reduced by any payment under section 1:566(2), the difference, if any, between said Retirant's Accumulated Contributions and the aggregate amount of Retirement Allowance paid, shall be paid from the Pension Reserve Fund to the legal representative of the Retirant or Beneficiary, whomever died last.

Option III--50% Survivor. A Retirant shall be paid a reduced Retirement Allowance for

life with the provision that upon the death of a Retirant, 1/2 the reduced Retirement Allowance shall be continued throughout the life of and paid to such person as the Retirant shall have nominated by written designation duly executed and filed with the Board prior to the effective date of retirement. If the nominated survivor Beneficiary dies prior to the Retirant, the amount of the Retirant's monthly Retirement Allowance shall revert to the straight life Retirement Allowance amount described in (1) above and shall be paid to the Retirant's for the remainder of his life. If both the Retirant and Beneficiary die before receiving an aggregate amount of Retirement Allowance payments equal to the Member's Accumulated Contributions at retirement, as reduced by any payment under section 1:566(2), the difference, if any, between said Retirant's Accumulated Contributions and the aggregate amount of Retirement Allowance paid, shall be paid from the Pension Reserve Fund to the legal representative of the Retirant or Beneficiary, whomever died last.

Option IV--Period Certain of 60, 120 or 180 Monthly Payments. This provision shall apply to Members of the Retirement System who commence to receive a Retirement Allowance on or after February 1, 2011. A Retirant shall be paid a reduced Retirement Allowance payable for life with the provision that upon the Retirant's death before receiving 60, 120 or 180 monthly Retirement Allowance payments as so elected by the Retirant, the monthly payment shall be continued to the Beneficiary or Beneficiaries in equal shares (including any contingent Beneficiary or Beneficiaries after the death of the first named survivor Beneficiary) as the Retirant shall have designated on a form and filed with the Board of Trustees until a total of 60, 120 or 180 monthly payments have been made. Should the death of the Retirant and all designated Beneficiaries occur before the period certain number of payments elected by the Retirant have been made, the actuarial present value of the remaining period certain payments shall be paid in a lump sum to the legal representative of the last to survive of the Retirant and the named Beneficiary, or if there shall be no such legal representative duly appointed and qualified within six months of the date of death of such last survivor, then such persons as, at the date of death of such last survivor, would be entitled to share in the distribution of such last survivor's estate under the provisions of the statute governing intestate succession, then in force and effect in the State of Michigan.

Option V--Social Security Adjustment Option. A General City Member who retires prior to the age the General City Member becomes entitled to full social security benefits may elect to be paid a straight life Retirement Allowance actuarially equated to provide an increased Retirement Allowance payable to the aforementioned age and a reduced Retirement Allowance thereafter. The Retirant's increased Retirement Allowance, payable to such age, shall approximate the sum of the reduced Retirement Allowance to be payable after that age, and the primary social security benefits to which the Retirant will be entitled.

If a Retirant receiving a reduced retirement allowance under Option II or Option III is subsequently divorced from the Spouse who is the designated survivor beneficiary, the election of a reduced retirement allowance form of payment shall be considered void by the Retirement System if the judgment of divorce, award, or order of the court, or an amended judgment of divorce or award or order of the court provides that the election

of a reduced retirement allowance form of payment under Option II or Option III is to be considered void by the Retirement System and the Retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the Retirement System. If the Retirant's election of payment under Option II or Option III is considered void by the Retirement System under this paragraph, the Retirant's Retirement Allowance shall revert to a straight life retirement allowance effective the first of the month following the date the Retirement System receives a certified copy of the judgment of divorce, award, or order of the court. This paragraph does not supersede a judgment of divorce, award, or order of the court in effect on the effective date of the amendatory ordinance that added this paragraph. This paragraph does not require the Retirement System to distribute or pay retirement assets on behalf of a Retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

(2) Annuity option.

(a) In addition to the options under subsection (1) above, a Member who

(i) has attained his Early Retirement under section 1:562(1) or Normal Retirement under section 1:562(2) while in City employment (or, in the case of former City Health Department and Ann Arbor Training and Employment Center employees, while in Washtenaw County employment) and who has elected to retire in accordance with section 1:562;

(ii) who has attained age 60 and is eligible for a Deferred Vested Retirement Allowance under section 1:565; or

(iii) who qualifies for a disability retirement under section 1:568 while in City employment, and who elects to retire in accordance with said section,

may elect to be paid in a single payment 25%, 50%, 75% or 100% of the Member's Accumulated Contributions and thereafter shall be paid a reduced Retirement Allowance as provided at 1:566(2)(c).

(b) The election by a Terminated Vested Member whose age and Service total at least 50 at the time of termination of employment to make a partial or 100% withdrawal of Accumulated Contributions as provided in 1:566(2)(a) may generally be exercised only (i) at the time a Member terminates employment with the City, or (ii) when payment of a Retirement Allowance begins. An election by a Member to withdraw Accumulated Contributions other than at the times described in (i) or (ii), shall require that the Member withdraw 100% of the balance of the Member's Accumulated Contributions credited to the Member's individual account in lieu of any partial withdrawal option of 25%, 50%, or 75% of his Accumulated Contributions.

(c) Effective as of February 1, 2011, if a Member withdraws Accumulated Contributions pursuant to this section 1:566(2), the Member's straight life Retirement Allowance shall be reduced by the Actuarial Equivalent of the amounts withdrawn. For purposes of determining Actuarial Equivalency under this section 1:566(2), the following shall apply in lieu of any conflicting provisions of this chapter.

(i) The withdrawn Accumulated Contributions shall be credited with hypothetical interest at the Actuarial Equivalency Interest Rate set forth in section 1:552(4) from the date of withdrawal to the Member's Normal Retirement under section 1:562(or if later, the date on which Retirement Allowance payments are to begin after Normal Retirement under section 1:562.)

(ii) The resulting single sum shall be converted to an Actuarially Equivalent amount of straight life Normal Retirement Allowance using the 1971 group annuity mortality table for males set back (0 years for males and 5 years for females) blended 95% male and 5% female mortality table and seven percent (7%) interest factors, PROVIDED that in the case of a withdrawal under section 1:566(2)(a)(iii) such conversion shall be performed using the 1971 group annuity mortality table for males, set forward 10 years for males and set back 5 years for females, blended 95% male and 5% female.

(d) The Actuarial Equivalency Interest Rate provision of 1:566(2)(c) shall also apply to deferral periods on or after February 1, 2011 for Annuity withdrawals which occurred prior to that date. The interest rate applied to such withdrawals prior to February 1, 2011, shall be at the rates of Regular Interest as previously provided under the Ordinance and as determined by the Board through this date. For purposes of this subparagraph (d), the term 'Regular Interest' shall mean that as previously provided under the prior Ordinance for the period through January 31, 2011.

(e) For the avoidance of doubt, if a Terminated Vested Member, whose age and service do not total at least 50 at the time of termination of employment, elects to withdraw his Accumulated Contributions prior to benefit commencement, no Retirement Allowance shall be paid.

(3) Direct Rollover option. This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Retirement Ordinance 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 as a direct rollover. For purposes of this section, the following definitions shall apply:

(a) *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: (A) any distribution that is one of 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; (B) any distribution to the extent such distribution is required under IRC § 401(a)(9) relating to minimum distribution requirements, and (C) any distribution made upon the hardship of the Member. Effective January 1, 2002, 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 IRC § 408(a) or (b), or to a qualified plan described in IRC §§ 401(a) or 403(b) that agrees to separately account 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.

(b) *Eligible Retirement Plan.* An “Eligible Retirement Plan” means as follows: (A) an individual retirement account described in IRC § 408(a), (B) an individual retirement annuity described in IRC § 408(b), (C) an annuity plan described in IRC § 403(a), (D) Effective January 1, 2002, an annuity contract described in IRC § 403(b), (E) Effective January 1, 2002, an eligible plan under IRC § 457 which is maintained by a state or political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Retirement System; (F) a qualified trust described in IRC § 401(a), that accepts eligible rollover distributions; or (G) effective January 1, 2008, a Roth IRA, subject to the requirements of IRC § 408A(c)(3).

(c) *Distributee.* A “Distributee” includes an employee or former employee. In addition, the employee’s or former employee’s surviving Spouse or former Spouse who is an alternate payee under a domestic relations order is a Distributee with regard to the interest of the surviving Spouse. Effective July 1, 2010, the non-Spouse beneficiary of a Member or former Member also may be a distributee with regard to the interest of the non-Spouse beneficiary that is directly transferred to an individual retirement account described in IRC § 408(a) or an individual retirement annuity described in IRC § 408(b).

(d) *Direct Rollover.* A “Direct Rollover” is a payment by the Retirement System to the eligible retirement plan specified by the distributee.

1:567. Ordinary Death Benefits Prior to Retirement.

If a Member with at least 5 years of Service dies prior to retirement, the applicable ordinary death benefits provided under paragraphs (1) through (3) shall be paid, provided that no benefits shall be paid under this section if any benefits are paid under section 1:566 or 1:570.

(1) If the Member has in force an Option II election under section 1:566 and as further provided below in this section 1:567(1), the designated Beneficiary shall immediately receive the same Retirement Allowance which would have been payable if the Member had retired the day preceding the Member’s death, whether or not the Member had attained Normal Retirement under section 1:562. The Board shall provide to all Members with at least 5 years of Service and who have not yet retired, written notice of the right to elect Option II as a preretirement death benefit, and shall provide rules and forms pursuant to which such Option II preretirement death benefit may be elected, de-selected, and re-selected, as the case may be.

(2) If the Member does not have an Option II election in force as provided in 1:567(1) but is survived by a current Spouse, the surviving Spouse shall immediately receive the

same Retirement Allowance which would have been payable if the Member had retired the day preceding the Member's death and elected the Option II, whether or not the Member had attained Normal Retirement under section 1:562.

(3) If the Member does not have an Option II election in force as provided in 1:567(1) and is not survived by a current Spouse, or upon a Member's election, a lump sum equal to 80% of the actuarial present value of the deceased Member's accrued Normal Retirement Allowance under section 1:564(1) shall be paid to the Member's legal representative. Such actuarial present value shall be calculated as if the Member had retired the day preceding the Member's death, whether or not the Member had attained Normal Retirement under section 1:562 and shall not be less than the Member's Accumulated Contributions.

1:568. Disability Retirement.

(1) Disability with Five Years or More of Service. Upon the application of a Member, or his Services Area Administrator, a Member who:

- (a) Is in the service of the City;
- (b) Has 5 or more years of Service; and
- (c) Has become or becomes totally and permanently incapacitated from performing the customary duties of the Member's City employment by reason of a personal injury or disease.

may be retired by the Board, if:

(i) After a medical examination of the Member made by or under the direction of a physician designated by the Board, the physician certifies to the Board (A) that the Member is mentally or physically totally incapacitated from performing the customary duties of the Member's City employment; (B) that such incapacity will probably be permanent; and

(ii) The report of the physician is concurred in by the Board.

(2) Disability with Less than Five Years of Service. Any Member with less than 5 years of Service shall have the service requirement provided in paragraph (1)(b) of this section waived if:

(a) The Board finds the Member is totally and permanently incapacitated from performing the customary duties of the Member's City employment, as the natural and proximate result of a personal injury or disease arising out of and in the course of the Member's actual performance of duty in the employ of the City, and

(b) The Member is in receipt of worker's compensation on account of the Member's total and permanent incapacity occurring as the result of City employment.

(3) Upon the Member's retirement on account of disability, as provided in subsections (1) and (2), a Member shall receive a disability retirement allowance computed according to subsections (1) and (2) of section 1:564. If the Retirant was a General City Member, the disability Retirement Allowance payable to Normal Retirement under

section 1:562 shall not be less than 18% of the Member's Final Average Compensation, nor shall the Member's disability Retirement Allowance payable after attainment of the Member's Normal Retirement under section 1:562 be less than the sum of 12% of the portion of the Member's Final Average Compensation which is not in excess of the Member's Social Security Salary and 18% of the portion of the Member's Final Average Compensation which is in excess of the Member's Social Security Salary. If the Retirant was a Police Officer or Firefighter, the Member's disability Retirement Allowance shall not be less than 25% of the Member's Final Average Compensation. Disability Retirement Allowances payable as provided in this chapter shall be subject to subsection (4) and the re-examination provisions of section 1:569. The foregoing percentage minimums of this section 1:568(3) shall pertain to the straight life benefit payable to the Member, prior to actuarial adjustment for any optional form of payment selected pursuant to section 1:568(6).

(4) Any benefits which are paid or payable under the provisions of any workers' compensation law shall be offset against and payable in lieu of any disability Retirement Allowance provided by this section until attainment of (i) age 60 years if a General City Member and is a member of the (a) AFSCME; or (b) Police Service Specialists employee groups; or (ii) age 55 years if the Member was a Police Officer or Firefighter and is a member of the (a) Ann Arbor Police Officers Association; (b) Command Officers Association of Michigan; or (c) Police Deputy Chiefs employee groups. Workers' compensation benefits shall include redemptions and settlements in lieu of periodic benefits, but shall not include payments or allocations for past, present and future medical expenses, rehabilitation and/or retraining expenses, statutory fees, or attorney fees. A disability Retirement Allowance shall not be reduced by workers' compensation where the Member is a non-union employee or a member of the (a) Teamsters (Supervisors) Civilians; (b) Police Clerical; or (c) Fire Fighter employee groups.

(5) Upon termination of the period for payment of the Retirant's worker's compensation benefits, if any, arising on account of City employment, a disability Retirant shall be given membership Service credit for the statutory period the Retirant was in receipt of worker's compensation benefits. The Member's disability Retirement Allowance shall be recomputed to include such additional Service credit. In no case shall such additional Service credit include any period beyond attainment of age 60 years if the individual was a General City Member or age 55 years if the Member was a Police Officer or Firefighter. If a disability Retirant is in receipt of a workers' compensation redemption lump sum settlement amount, the membership Service credit shall include the period arrived at by dividing the said single sum by the Retirant's weekly worker's compensation award. The redemption settlement amount for purposes of calculating additional Service credit shall be the total settlement amount which is subject to offset as provided herein.

(6) Upon disability retirement, a Member shall have the right to elect an option provided for in section 1:566, subject to the condition that, if any benefits are paid under section 1:570 on account of the death of a disability Retirant, (a) no benefits shall be paid to a survivor Beneficiary under an Option II or III election, and (b) if the disability Retirant dies before he/she has received in Retirement Allowance payments an

aggregate amount equal to, but not exceeding the Member's Accumulated Contributions standing to the Member's credit in the Annuity Savings Fund at the time of the Member's retirement, the difference between the Member's Accumulated Contributions and the aggregate amount of Retirement Allowance payments received shall be paid to the Member's designated Beneficiary, if living.

1:569. Disability Retirants' Re-examination.

(a) At least once each year during the first 5 years following the retirement of a Member with a disability Retirement Allowance, and at least once in each 3-year period thereafter, the Board may, and upon the Retirant's application shall, require any disability Retirant who has not attained his Normal Retirement under section 1:562 to undergo a medical examination to be made by or under the direction of a physician designated by the Board. If the Retirant refuses to submit to such medical examination in any such period, his disability Retirement Allowance may be suspended by the Board until his withdrawal of such refusal. If such refusal continues for 1 year, all his rights in and to a disability Retirement Allowance may be revoked by the Board.

If the physician reports to the Board that the disability Retirant is physically and mentally able and capable of resuming employment with the City similar to the Retirant's pre-disability position, and the Board concurs in the report of the physician, a disability Retirant shall be returned to active employment at the City at which time the disability Retirement Allowance shall be discontinued. The City shall be allowed reasonable latitude in placing the returned disability Retirant in a position commensurate with the position held at the time of disability retirement during which time this disability Retirement Allowance shall be continued until returned to City employment.

(b) A disability Retirant who has been or is returned to service in the employ of the City shall again become a Member of the Retirement System. The disability Retirant's Credited Service at the time of his disability retirement shall be restored to his credit, and if applicable, shall be increased for the period when he/she was in receipt of a disability Retirement Allowance as provided in section 1:568(4), or has otherwise been determined eligible by the Board under its authority in section 1:560. If the disability Retirant has prior to his return to service in the employ of the City elected to be receive an annuity payment under section 1:566(2), the returning employee shall repay previously withdrawn annuity funds as required by 1:572(c).

(c) This section 1:569 shall apply to all Members receiving a disability Retirement Allowance on or after February 1, 2011, including, without limitation, such Members whose disability Retirement Allowance commenced prior to February 1, 2011.

1:570. Duty Death Benefits.

Effective January 1, 2006, in the event (1) a Member dies as the result of a personal injury or disease arising out of and in the course of employment by the City, or (2) a disability Retirant dies prior to attaining Normal Retirement under section 1:562 and within a period of 3 years immediately following his disability retirement as the result of the same injury or disease for which the Member retired, and in either case the Member's death, injury or disease resulting in death is found by the Board to be a work-

related death, injury or disease resulting in death in accordance with Sections 301 and 415 of the Worker's Disability Compensation Act of 1969, as amended (MCL 418.301 or 418.415) or successor provisions of law, having occurred as the natural and proximate result of causes arising out of and in the course of actual performance of duty in the service of the City, the applicable benefits provided in paragraphs (1) through (7) of this section, shall be paid, subject to the condition that the death of the said Member or Retirant is a compensable death under the Worker's Disability Compensation Act.

(1) Amounts paid under the Worker's Disability Compensation Act to a surviving Spouse or the child or children of a deceased Member or Retirant shall be offset against and payable in place of benefits provided under paragraphs (3) and (4) of this section. If the benefits under the Worker's Disability Compensation Act are less than the benefits payable, under paragraphs (3) and (4) of this section, the amount to be paid out of the funds of the Retirement System shall be the difference between the benefits provided under the Worker's Disability Compensation Act and the benefits provided under paragraph (3) and (4) of this section.

(2) In the case of a deceased Member, the Member's Accumulated Contributions standing to his/her credit in the Annuity Savings Fund at the time of the Member's death shall be paid in accordance with section 1:571.

(3) The surviving Spouse or, to the extent allowed by law, Other Qualified Adult as described in section 1:552(26) shall receive a pension computed in the same manner as if the Member had (a) retired effective the day preceding the date of the Member's or Retirant's death, (b) been credited with a minimum of 25 years of Service credit if the Member or Retirant had less than 25 years of Service at the time of death, (c) elected Option II provided for in section 1:566(1), and (d) nominated the Spouse or Other Qualified Adult as a survivor Beneficiary.

(4) In the event there is no surviving Spouse (or to the extent allowed by law, Other Qualified Adult), the child or children of the deceased retired Member or Retirant shall receive a pension as if the Member had (a) retired the day preceding the date of the Member's or Retirant's death, (b) been credited with a minimum of 25 years of Service credit if the Member or Retirant had less than 25 years of Service at the time of death, and (c) elected a reduced straight life Retirement Allowance with monthly payments guaranteed for the period from the date of death until the youngest child would attain the age of 18. Each child shall receive an equal share of the guaranteed payments until each child attains the age of 18, at which time the total guaranteed payments shall be reapportioned in equal shares to the remaining children under the age of 18.

(5) In the event worker's compensation benefits are paid, upon termination of the statutory period for payment of worker's compensation to the surviving Spouse of the said deceased Member or Retirant, the said surviving Spouse shall receive a surviving Spouse's pension equal to the greater of (a) the surviving Spouse's weekly worker's compensation converted to an annual basis or (b) the surviving Spouse benefit payable in accordance with paragraph (3) of this section. Said pension to continue until death.

(6) In the event worker's compensation benefits are paid, upon termination of the statutory period for payment of worker's compensation to the child or children of the said deceased Member or Retirant, the said children shall each receive a child's pension equal to the greater of (a) the child's weekly worker's compensation converted to an annual basis; said child's pension to terminate upon his/her attainment of age 18 years, or death or marriage prior thereto or (b) the survivor Beneficiary benefits payable in accordance with paragraph (4) of this section. Should the surviving Spouse's pension be terminated by reason of the surviving Spouse's death, as provided in paragraph (5) of this section, and should an unmarried child or children under age 18 years survive the said surviving Spouse, each such child's pension shall be increased by a proportionate share of said surviving Spouse's pension.

(7) Upon termination of the statutory period for payment of worker's compensation to the parent or parents of said deceased Member or Retirant, the said parent or parents shall each receive a parent's pension equal to the parent's weekly worker's compensation converted to an annual basis; said parent's pension to terminate upon the parent's death.

1:571. Refund of Accumulated Contributions.

(a) Non-Vested Member. A Member who ceases to be an employee of the City, for any reason except the Member's death, and is not entitled to a Retirement Allowance provided for in this chapter, the Member shall automatically be paid all of the Accumulated Contributions credited to the Member in the Annuity Savings Fund as the Member shall demand in writing on forms furnished by the Board.

(b) If a Member dies before retirement, the Accumulated Contributions standing to the Member's credit in the Annuity Savings Fund shall automatically be paid, except as otherwise provided in this chapter, to such person or persons as the Member shall have nominated by written designation duly executed and filed with the Board. If the designated person or persons do not survive the Member, the Accumulated Contributions shall be paid to the legal representative. If this subparagraph (b) applies and a benefit is also payable under this Ordinance, that benefit shall be reduced by the Actuarial Equivalent of the Accumulated Contributions paid pursuant to this section 1:571(b).

1:572. Annuity Savings Fund.

(a) The Annuity Savings Fund is the accounting fund which shall be credited with (i) Member mandatory contributions as provided at 1:572(b) below, (ii) repayment of Accumulated Contributions by rehired Members including any applicable interest charges, and (iii) any interest allocated at the Accumulated Contribution Interest Rate set forth in section 1:552(2) to Accumulated Contributions; and which shall be charged with refunds, payments and transfers of Accumulated Contributions as provided in this Retirement Ordinance.

(b) Effective February 1, 2010, contributions of members who are represented by the International Association of Fire Fighters (IAFF), Local 693 shall be 6% of the

Compensation paid by the City. Effective July 1, 2010, contributions of non-union employees shall be 6% of the compensation paid by the City. Effective August 1, 2010, contributions of members who are represented by the Teamsters Police Deputy Chiefs bargaining unit, Local 214 Teamsters Civilian Supervisors bargaining unit and Teamsters Police Professional Assistants, shall be 6% of the compensation paid by the City. The contributions of any other Member shall be 5% of the Compensation paid by the City. Member contributions shall be deducted only from amounts paid to a Member which are considered Compensation for purposes of this Chapter.

Prior to January 1, 2010, non-union employee Member contributions were made on an after-tax basis. Effective with the first payroll checks issued in January, 2010, the City shall "pick-up" the non-union employee Member contributions for all Compensation earned on and after January 1, 2010. Prior to August 1, 2010, member contributions of the Teamsters Police Deputy Chiefs bargaining unit, Local 214 Teamsters Civilian Supervisors bargaining unit and Teamsters Police Professional Assistants bargaining unit were made on an after-tax basis. Effective with the first payroll checks issued in August, 2010, the City shall "pick-up" the Teamsters Police Deputy Chiefs bargaining unit, Local 214 Teamsters Civilian Supervisors bargaining unit and Teamsters Police Professional Assistants bargaining unit contributions for all compensation earned on and after August 1, 2010. The contributions so picked up shall be treated as City contributions in determining tax treatment under the Code. The City shall pick up the non-union employee Member contributions and the member contributions of the Teamsters Police Deputy Chiefs bargaining unit, Local 214 Teamsters Civilian Supervisors bargaining unit and Teamsters Police Professional Assistants bargaining unit from funds established and available for non-union employee Member salaries and member salaries of the Teamsters Police Deputy Chiefs bargaining unit, Local 214 Teamsters Civilian Supervisors bargaining unit and Teamsters Police Professional Assistants bargaining unit, which funds would otherwise have been designated as Member contributions and paid to the pension fund. Non-union employee Member contributions and member contributions of the Teamsters Police Deputy Chiefs bargaining unit, Local 214 Teamsters Civilian Supervisors bargaining unit and Teamsters Police Professional Assistants bargaining unit picked up by the City pursuant to this subsection shall be treated for all other purposes of this and other laws of the City in the same manner and to the same extent as non-union employee Member contributions and member contributions of the Teamsters Police Deputy Chiefs bargaining unit, Local 214 Teamsters Civilian Supervisors bargaining unit and Teamsters Police Professional Assistants bargaining unit made prior to the effective date of this subsection. The non-union employee Member contributions and contributions of the Teamsters Police Deputy Chiefs bargaining unit, Local 214 Teamsters Civilian Supervisors bargaining unit and Teamsters Police Professional Assistants bargaining unit so picked up shall not be included in gross income for tax purposes until such time as they are distributed by refund or benefit payment.

Monies contributed under subsection (b) shall be accounted for, by non-union employee Member and members of the Teamsters Police Deputy Chiefs bargaining unit, Local 214 Teamsters Civilian Supervisors bargaining unit and Teamsters Police Professional Assistants bargaining unit, so as to separately reflect each non-union employee

Member's and members of the Teamsters Police Deputy Chiefs bargaining unit's, Local 214 Teamsters Civilian Supervisors bargaining unit's and Teamsters Police Professional Assistants bargaining unit's after-tax Accumulated Contributions (and interest thereon, at the Accumulated Contribution Interest Rate set forth in section 1:552(2) applicable thereto) and pick-up Accumulated Contributions (and the interest thereon, at the Accumulated Contribution Interest Rate set forth in section 1:552(2) applicable thereto).

The officer or officers responsible for making up the payroll shall cause the contributions provided for in this section to be deducted from the Compensations of each Member on each and every payroll, for each and every payroll period so long as such Member remains a Member in the employ of the City. The Member's contributions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any Member shall be changed thereby. Every Member shall be deemed to consent and agree to the deductions made and provided for herein and payment of Compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by said person during the period covered by such payment, except as to benefits provided by this chapter. The amount of contributions to be deducted from the Compensation of each Member for each and every payroll when deducted shall be paid to the Retirement System and shall be credited to the individual Annuity Savings Fund account of the Member from whose Compensation the deduction was made.

(c) In addition to the Member contributions, as provided in (b) above, a Member shall deposit in the Annuity Savings Fund, by a single contribution or by an increased rate of contribution as approved by the Board, all amounts previously withdrawn from, and not repaid to, the Annuity Savings Fund, together with interest computed from the date of withdrawal to the date of repayment of Accumulated Contributions at the Accumulated Contribution Interest Rate set forth in section 1:552(2). An agreement to repay must be signed by the Member by November 1, 1980, or within 1 year of the Member's return to City employment, whichever is later, and repayment with interest must be made by means of contributions at not less than double the amounts required by section 1:572(b). When such an agreement is signed, Service shall be reinstated in accordance with section 1:560. In case the Member terminates from City employment before repayment is completed, the Retirement Allowance otherwise payable shall be reduced by the Actuarial Equivalent of the repayment amount outstanding at the time of termination.

(d) Upon retirement, the balance of Accumulated Contributions of any Member shall be transferred from the Annuity Savings Fund to the Retirement Reserve Fund.

1:573. Other Operating Funds.

(1) The Retirement Reserve Fund is the accounting fund from which shall be paid all Annuities and Pensions payable as provided in this chapter. Should a disability Retirant return to active Service in the employ of the City, the Retirant's Annuity Reserve at that time shall be transferred from the Retirement Reserve Fund to the Annuity Savings Fund and shall be credited to the Retirant's individual account therein and the Retirant's

Pension Reserve at that time shall be transferred from the Retirement Reserve Fund to the Pension Reserve Fund.

(2) Effective June 30, 1975, the Board shall establish a pension adjustment account within the Retirement Reserve Fund. The initial account balance shall be \$1,078,288. Each June 30 thereafter continuing through June 30, 2011, the account shall be increased by the positive difference or decreased by the negative difference, as the case may be, between the balance in the Retirement Reserve Fund after credited interest at the Funding Interest Rate set forth in section 1:552(21) and additional interest, if any, as provided by subsection 1:575(a) and the sum of (1) the balance in the pension adjustment account; (2) the Annuity and Pension Reserve for Annuities and Pensions being paid Retirants and Beneficiaries; and (3) the Pension Contingency Reserve. Each July 1 thereafter continuing through June 30, 2011, the account shall be reduced by the Pension Reserve for the pension adjustment, if any, which became effective as of July 1, pursuant to subsections (1) and (2) of section 1:592.

(3) Effective July 1, 2011 and each July 1 thereafter, the pension adjustment account shall be the account to which a percentage of excess earnings shall be credited and interest accrued, both as provided herein, and to which distributions under section 1:592 shall be charged. "Excess earnings," as used herein, shall mean the excess, if any, of (1) the recognized rate of return on the actuarial value of retirement system assets, greater than (2) three-quarters of one percent (.75%) over the actuarial assumed rate of return, multiplied by (3) the actuarial present value of benefits being paid retired members and survivor beneficiaries, as reported in the annual actuarial valuation. Commencing with the actuarial report dated June 30, 2011, upon receipt of the annual actuarial valuation for each fiscal year (July 1 – June 30), the Board shall credit the pension adjustment account at the end of the then current fiscal year, with the excess earnings, if any, earned in the prior fiscal year. Notwithstanding the foregoing, the Board shall credit no excess earnings to the pension adjustment account in any fiscal year in which the City funded status of the Retirement System is below one hundred percent (100%) based upon the actuarial funded status.

(a) Prior to crediting of the prior year's excess earnings, the balance in the pension adjustment account as of the last day of the fiscal year shall be credited with the interest based upon the recognized rate of return on the actuarial value of retirement system assets for the prior fiscal year; however, said recognized rate of return shall not be greater than the actuarially assumed rate of investment return.

(b) The balance in the pension adjustment account after crediting of the prior year's excess earnings shall not exceed an amount equal to the total amount of the pension benefits paid by the Retirement System to retirees and beneficiaries in the prior fiscal year as reflected in the annual actuarial report.

(c) The aggregate cost of pension benefit adjustments and supplemental benefit distributions pursuant to Subsection 1:592(2) shall be charged to the pension adjustment account.

(4) The Pension Reserve Fund shall be the fund in which shall be accumulated reserves for the payment of all pensions payable from funds provided by the City. Upon

the basis of such mortality and other experience tables and interest at the Funding Interest Rate set forth in section 1:552(21), the actuary shall annually compute the pension reserve (1) for pensions being paid Retirants and Beneficiaries, and (2) covering service rendered and to be rendered by Members. The said pension reserves shall be financed by annual appropriations to be made by the City Council, determined according to subparagraphs (a), (b) and (c) of this subsection.

(a) The appropriation for Members' current Service shall be a percent of their annual Compensations which will produce an amount which, if paid annually by the City during their future Service, and taking into account actuarial gains and funding credits as determined by the actuary, will be sufficient to provide the reserves, at the time of their retirements for the portions of the pensions to be paid them based upon their future Service; and

(b) The appropriation for Members' accrued Service shall be a percent of their annual Compensations which will produce an amount which, if paid annually by the City over a period of years to be determined by the Board, and taking into account actuarial gains and funding credits as determined by the actuary, will amortize, at the Funding Interest Rate set forth in section 1:552(21), the unfunded pension reserves for the accrued Service portions of the pensions to which they may be entitled; and

(c) The appropriation for pensions being paid Retirants and Beneficiaries shall be a percent of the annual Compensations of Members which will produce an amount which, if paid annually by the City over a period of years to be determined by the Board, and taking into account actuarial gains and funding credits as determined by the actuary, will amortize, at the Funding Interest Rate set forth in section 1:552(21), the unfunded pension reserves for pensions being paid Retirants and Beneficiaries.

(d) All Pensions shall be paid from the Retirement Reserve Fund. Upon the retirement of a Member or at the time a pension becomes payable to a Beneficiary on account of the death of a Member, the reserve for such pension shall be transferred from the Pension Reserve Fund to the Retirement Reserve Fund. The Board may from time to time transfer from the Pension Reserve Fund to the Retirement Reserve Fund such additional amounts as it determines to be necessary for the proper maintenance of the Retirement Reserve Fund.

(e) In the event the amounts appropriated in the budget in any year are insufficient to pay in full the amounts due in said year to all Retirants and Beneficiaries of the Retirement System, the amount of such insufficiency shall thereupon be provided by the appropriating authorities of the City.

(f) The maintenance of the various funds of the Retirement System set forth and required in this chapter shall be interpreted to refer to the accounting fund of the Retirement System and shall not require the actual segregation of assets in the various accounting funds of the Retirement System.

(5) The Board shall annually certify to the City Council, according to the established City budget procedure, the amount of the City's annual contribution, as determined by the annual valuation by the Retirement System's actuary, to fund the Retirement

System during the ensuing fiscal year and the City shall appropriate and pay such amount to the Retirement System. The City shall remit such payment no later than June 30 of the Plan Year to which the annual contribution applies.

(6) The Board shall annually prepare a budget and a budget statement which shall explain the budget and shall contain an outline and explanation of the proposed financial policies of the Board relating to its current and future investment operations. The budget as approved by the Board shall be submitted to City Council for reporting purposes in accordance with applicable law. Payment for all expenses necessary in connection with the administration and operation of the Retirement System shall be paid from the earnings of the Retirement System in accordance with applicable law. The Board shall have the sole authority to enter into contracts and make expenditures for the Retirement System.

(7) The Retirement System shall publish and make available a summary annual report available to the Members, Retirants and Beneficiaries, and the general public. The financial records of the Retirement System shall be subject to the annual audit of the City. The Board shall fully comply with all applicable statutory and municipal budgetary and accounting procedures and provide access to and/or documentation of all revenues from all sources, the amount of expenditures for each purpose, the amount of indebtedness, the fund balances at the close of each fiscal year, and any other information as may be required by law as part of the City's annual financial report to the state treasurer.

1:574. Investment Management of Retirement System Assets; Prudent Investor Rule.

(1) Board of Trustees. The Board of Trustees of the Retirement System shall serve as the Trustee of the Trust Fund and the "investment fiduciary" thereof, as defined at Michigan P.A. 314 of 1965 (as amended) Section 12c.(1) ("P.A. 314."). The Board shall have full power to invest and reinvest the assets of the Trust Fund subject to the terms, conditions, limitations, and restrictions imposed by P.A. 314.

The Board shall have the right to employ suitable agents and counsel, and to pay their reasonable compensation and expenses. The Board shall not be liable for any neglect, omission or wrongdoing of any such agent or counsel, and shall not be deemed imprudent by reason of its acting or refraining from acting in reliance on advice of counsel, provided that reasonable care shall have been exercised in selecting such agent or counsel for such employment, and thereafter in monitoring such agent or counsel.

(2) Investment Manager. The Board shall have the right to name and delegate investment authority and duty to an Investment Manager. Upon such action by the Board the Investment Manager shall assume from the Board the authority and duty to direct the investment and management of all or a portion of the Trust Fund; provided that:

- (i) A written acknowledgment by the Investment Manager shall be delivered to the Board whereupon the Investment Manager shall be the investment fiduciary with

respect to the investment and management of the Trust Fund (or designated portion thereof) and the Board shall have no responsibility therefor.

(ii) Any transfer of investment and management authority to an Investment Manager may be revoked by the Board, or by written resignation of the Investment Manager upon receipt by the Board of same.

(iii) The appointment, selection and retention of a qualified Investment Manager shall be solely the responsibility of the Board.

For purposes of this section, the term "Investment Manager" means any investment fiduciary (other than the Board or any other person named herein as a fiduciary) who: (a) has the power to manage, acquire or dispose of any property of the trust; (b) is (i) registered as an investment adviser under either the Investment Advisers Act of 1940 or the Uniform Securities Act as set forth in Public Acts of 1964, No. 265, being Sections 451.501 and 457.818 of Michigan Compiled Laws; (ii) a bank as defined under the Investment Advisors' Act of 1940; or (iii) an insurance company qualified to perform services described in clause (a) under the laws of more than one state; and (c) has acknowledged in writing that he/she/it is an investment fiduciary with respect to the assets of the Retirement System.

(3) Unless otherwise delegated to an Investment Manager as described in (1)(b) above, the Board shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the assets of the Retirement System have been invested, as well as the proceed of the investments and any moneys belonging to the Retirement System. There shall be kept on deposit sufficient cash to meet payments and liquidity needs. All assets of the Retirement System shall be held for the sole purpose of meeting disbursements for Pensions, Annuities, and other payments authorized by the provisions of this chapter, and shall be used for no other purpose.

1:575. Interest Allowable.

(1) The Board shall, at the end of each fiscal year, allow and credit (a) interest at the Accumulated Contribution Interest Rate set forth in section 1:552(2) on a Member's individual balances in the Annuity Savings Fund at the beginning of the fiscal year and (b) interest at the Funding Interest Rate as set forth in section 1:552(21), on the mean balance in the Retirement Reserve Fund (including the pension adjustment account) during the fiscal year. At the end of each fiscal year, the Board shall review the 5-year moving average annual total return rate on the investments of the Retirement System, and also the actuarial funded status of the Retirement System. On the basis of this review, the Board shall decide whether any additional interest shall be credited to the Retirement Reserve Fund.

The amounts so credited as provided in this subsection shall be charged to the undistributed investment income account within the Pension Reserve Fund.

(2) All investment income realized on the monies and investments of the Retirement System shall be credited to the undistributed investment income account of the Pension Reserve Fund. If the balance in the account at the end of the fiscal year is insufficient

to credit the amounts stipulated in subsection (1), the difference shall be charged to the Pension Reserve Fund. Any balance remaining in the account after crediting all amounts stipulated in subsection (1) shall be closed to the Pension Reserve Fund.

1:576. Assignment of Interests Prohibited.

(1) Benefits under this Retirement Ordinance shall be subject to the Michigan Public Employee Retirement Benefit Protection Act (the "Benefit Protection Act"), Michigan Compiled Laws 38.1681 et seq. Neither the principal of the Trust Fund nor any of the income therefrom, nor interest in the Trust whatever, shall be subject to any conveyance, transfer or assignment by any Member, Retirant, or Beneficiary, nor shall the same be pledged as collateral by any Member, Retirant, or Beneficiary, nor shall the same be subject to any claim of any creditor of any Member, Retirant, or Beneficiary through legal process or otherwise. It is the intention to place the absolute title to all property which shall constitute the assets of the Trust in the Trustee, with power to pay out the same and distribute the Trust assets as provided in this Retirement Ordinance. Any attempted sale, conveyance, assignment or pledge of any of the funds or properties held in Trust, or any part thereof, or of any income from the Trust, by any Member, Retirant, or Beneficiary shall be null and void, and shall not be recognized by the Board of Trustees.

(2) The right of a Member or Retirant to a benefit under the Retirement System may be subject to an award of court in accordance with the Public Employee Retirement Benefit Protection Act (Public Act 100 of 2002 - MCL 38.1684(2)); the Support and Parenting Time Enforcement Act (Public Act 295 of 1982 - MCL 552.601 et seq.); and eligible domestic relations order (EDRO) under the Eligible Domestic Relations Order Act (Public Act 46 of 1991 – MCL 38.1701 et seq.) and to any other domestic relations order of a court pertaining to alimony or child support.

(a) Unless the Member has already commenced to receive benefits in an annuity form, an EDRO may divide the value of the Member's benefits between the Member and the alternate payee, in which case, the value of the benefits payable to the alternate payee shall be deducted from the Member's benefits. The alternate payee shall have the right to receive such benefits in any form available to a Member, except a joint and survivor annuity for the alternate payee and his or her subsequent spouse, and commencing at any time after the Member attains his earliest retirement age (as specified in section 1:552(1)) but prior to the Member's Required Distribution Date (as defined in section 1:586) and, as specified in the EDRO or as specified by the alternate payee if the EDRO does not specify a time for payment.

(b) If a Retirant has already started to receive his or her benefits, a domestic relations order ("DRO") may not change the form of payment elected at the time of retirement except as provided in section 1:566(1). However, the DRO may order that all or any portion of the annuity payments otherwise payable to the Retirant be paid to the alternate payee.

(c) The Retirement System may, in the sole discretion of the Board of Trustees, charge for the cost to review the EDRO or DRO by the Retirement System's actuary

or attorney. An order shall not be an EDRO or DRO unless it includes directions on who will pay such charges. In the event a portion of a Member's benefit is assigned to an alternate payee pursuant to an EDRO, the alternate payee's choice of a form of payment shall not affect the right of the Member to independently elect a form of payment of the remainder of benefits.

1:577. Correction of Errors in Records and in Administration.

If any change or error in the records results in any Member, Retirant or Beneficiary receiving from the Retirement System more or less than he/she would have been entitled to receive had the records been corrected, the Board shall seek to recover such overpayment or underpayment by correcting such errors in payments and as far as practicable shall adjust the future payments so that the actuarial present value of the actual payments is equal to the actuarial value of correct payments.

1:578. Reserved.

Editor's note: Ord. No. 44-99, § 16, adopted Oct. 18, 1999, repealed § 1:578, which pertained to retroactive social security taxes. See the Code Comparative Table.

1:579. Other Provisions of Law, Charter or Ordinance.

(a) The former police and fire retirement plans having been repealed by the electors of the City at the election held on November 5, 1946, the amounts contributed either directly by or through the efforts of members, plus interest at 2½% per annum, compounded annually, shall remain as a credit to each Member's Annuity Savings Fund account, according to the ratio that his own contributions from salary bear to the total contributions of all present Members from salary. The remainder, having been paid into the Pension Reserve Fund, shall remain a part thereof.

(b) The pension of retired members of the police and fire retirement plan in effect prior to November 5, 1946, shall be computed according to section 1:564 of this chapter and shall be paid from the Pension Reserve Fund from funds transferred thereto from the police and fire retirement plan. If this amount is insufficient, the remainder shall be paid by direct appropriation.

1:580. Special Tax.

For the purposes of creating and maintaining a fund for the payment of the pensions and benefits hereunder, the City Council shall cause to be levied each year a tax not to exceed 2½ mills on all taxable real estate and personal property situated within the City. This tax shall be in addition to any other limitation imposed on the tax rates of the City by charter provision or by state law. In the annual budget the revenues from the imposition of this tax will be applied to the Pension Reserve Fund of the Retirement System before said revenues are used for any other benefits, including but not limited to insurance benefits. Funding of the Retirement System shall be sufficient to satisfy legal requirements. In the annual budget, the administrator shall review and explain the funding contribution to the Pension Reserve Fund recommended by the Board of Trustees of the City of Ann Arbor Employees Retirement System.

The City Council shall appropriate from the revenues of this tax and contribute to the Pension Reserve Fund, at a minimum, an actuarially determined amount that will ensure funds are sufficient to cover pensions earned by active Members for services to be performed in the current year, pensions earned by active Members for services already performed, and actual pensions to be paid to Retirants, as further provided in this Ordinance. In the event the City Council appropriates an amount different from that recommended by the Board, the City Council shall meet with the Board to discuss the appropriation.

1:581. Former Employees Transferred to Washtenaw County.

For former City health department and Ann Arbor Training and Employment Center employees who transferred to similar positions with Washtenaw County upon the dissolution of those City departments in 1975 and 1983, respectively, the following provisions shall apply, notwithstanding any other provision in this chapter.

- (1) Credited service in the Washtenaw County Employees' Retirement System shall be considered City Service for the purpose of meeting all Service requirements of this chapter, but not for the purpose of computing benefit amounts under this chapter.
- (2) Compensation paid by Washtenaw County shall be considered City compensation for the purpose of computing Final Average Compensation under the City Retirement System.
- (3) In cases where age or service requirements differ between the City Retirement System and the Washtenaw County retirement system, the lower age or service requirements shall apply under this chapter.
- (4) When a person applies for Retirement System benefits, the person shall make simultaneous application to both City and county retirement systems to be eligible for City benefits.
- (5) A determination of disability by the Washtenaw County Retirement Commission shall be binding on the Board.

1:582. Reserved.

Editor's note: Ord. No. 44-99, § 17, adopted Oct. 18, 1999, repealed § 1:582, which pertained to insurance benefit fund. See the Code Comparative Table.

1:583. Reversion of Funds to City Prohibited, Exceptions.

All assets of the Retirement System shall be held and invested for the sole purpose of meeting the obligations of the Retirement System and shall be used for no other purpose. No part of the corpus or income held in trust under the provisions of this chapter shall be used for, or diverted to, purposes other than for the exclusive benefit of the Members, Retirants and Beneficiaries of the Retirement System prior to satisfaction of all Retirement System obligations, except that:

- (a) If the City determines that any contribution, or any portion thereof, was made by a good faith mistake of fact, then the Board of Trustees shall upon written request of the

City return the contribution, or such portion thereof, to the City within one (1) year after such determination; however, any earnings attributable to the amounts to be returned shall not be returned to the City, while losses attributable to such amounts shall reduce the amount to be returned; and

(b) If, after termination or partial termination of the Retirement System, by formal action of the City or for any other reason, the accrued benefits of all Members, Retirants and other Retirement System Beneficiaries and all other Retirement System liabilities have been paid, then, any residual assets of the Retirement System shall revert to the City.

(c) The Board of Trustees and its employees are prohibited from having a beneficial interest, direct or indirect, in an investment of the Retirement System; borrowing from the Retirement System; and receiving any pay or emolument (except the occasional gifts or other considerations, the value of which shall not exceed \$50.00 on any one occasion, nor exceed \$100.00 in value in the aggregate during any one Plan Year) from any individual or organization providing services to the Retirement System.

1:584. Amendment and Discontinuance, Termination of Retirement System, Accrued Benefits Nonforfeitable.

(1) The City may amend, modify or terminate this Ordinance subject to any limitations imposed by (a) the Michigan Constitution of 1963, Article 9, Section 24, as amended, (b) Michigan Public Act 314 of 1965, as amended, and (c) collective bargaining agreements (including, without limitation, any features of such agreements resulting from binding arbitration pursuant to Michigan Public Act 312 of 1969).

(2) In the event of the discontinuance, termination or partial termination of the Retirement System, the rights of all Members to benefits accrued to the date of such termination or partial termination, to the extent funded as of such date, shall be vested and nonforfeitable. The discontinuance, termination or partial termination shall be carried out in all respects in conformance with the Code and with applicable statutes, rules or regulations of the State of Michigan, or any duly constituted agency thereof.

1:585. Actuarial Equivalencies.

(1) "Actuarial Equivalency" or "Actuarially Equivalent" means a benefit of equivalent value to the benefit it replaces based upon the following actuarial assumptions to be used by the Retirement System's actuary in determinations hereunder:

(a) Mortality: 1971 Group Annuity Mortality Table for males set back (0 years for males and 5 years for females) blended 95% males and 5% females.

(b) Interest: For purposes of Actuarial Equivalency between the standard form of payment (straight life pension) described in section 1:564 and the optional forms of payment described in section 1:566(1): the Actuarial Equivalency Interest Rate set forth in section 1:552(4). For purposes of determining the remaining amount of pension payable in the straight life form after a Member has withdrawn his Accumulated Contributions under section 1.566(2): the Actuarial Equivalency Interest Rate set forth in section 1:552(4).

(2) In the event of a change in these actuarial assumptions as applicable to any Member, Actuarially Equivalent benefits for affected Members after the date of such change shall be the greater of (a) or (b) below:

(a) The Actuarial Equivalent of the benefit accrued to the date of change, based upon the Member's Final Average Compensation and Credited Service (both determined as of the date of change) and the provisions of the Retirement Ordinance as of the date of change, including the Actuarial Equivalency factors prior to the date of change, or

(b) The Actuarial Equivalent of a benefit based upon all Final Average Compensation and Credited Service determined as of the date of calculation after the amendment, and based upon the terms of the Retirement Ordinance after the amendment, applying the new Actuarial Equivalency factors.

(3) The actuarial early retirement reduction and reduction of the dollar limit if the employee has less than 10 years of participation under IRC § 415 do not apply to income received as a Pension or Annuity as a result of an employee's personal injury, sickness or death and shall be administered in accordance with IRC § 415(b)(2), as amended.

1:586. Required Distribution.

Distributions from the Retirement System shall comply with the requirements of IRC § 401(a)(9) and the regulations thereunder. A Member's interest in the trust must begin to be distributed by the Member's Required Beginning Date, being the later of (i) April 1 of the calendar year following the calendar year that the employee attains the age of 70½, or (ii) April 1 of the calendar year the Member retires. With respect to distributions under the Retirement System made for calendar years beginning on or after January 1, 2001, the Retirement System 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 Retirement Ordinance 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.

In the case of a distribution in the form of a joint and survivor annuity, if the survivor beneficiary is not the Member's Spouse, the method of payment selected must assure that the periodic annuity payable to the survivor annuitant must not at any time on or after the Member's Required Beginning Date, as defined above and in applicable Treasury Regulations, exceed the applicable percentage of the annuity payment payable to the Member using the table prescribed in the applicable provisions of Treasury Regulation Section 1.401(a)(9)-6.

Effective on September 8, 2009, the U.S. Department of Treasury issued final regulations under Code Section 401(a)(9) to permit a governmental plan to comply with the required minimum distribution rules of Code Section 401(a)(9) by using a reasonable and good faith interpretation of the statute. The Retirement Ordinance shall be

administered accordingly.

1:587. Limitations on Benefits and Contributions.

(1) Notwithstanding anything contained in this Retirement Ordinance to the contrary, effective July 1, 2009, the benefits payable under the Retirement Ordinance to any Member shall not exceed the amount permitted under Code Section 415 with respect to a governmental plan as defined in Code Section 414(d). The limitations of Code Section 415, as from time to time amended and adjusted, are hereby incorporated by reference. In applying such limitations, the following provisions shall apply:

(a) Without limiting the foregoing, annual adjustments to the limitations of Code Section 415 that are made pursuant to Section 415(d) shall be taken into account in applying this section (e), to the maximum extent permissible under § 1.415(d)-1 of the Income Tax Regulations.

(b) For purposes of this section (1) only, where separate governmental plans are maintained by different governmental units, such units are treated, along with the employer that adopts this Retirement Ordinance, as a single "Employer" in accordance with the aggregation requirement under Code Section 415(f) (as modified by Code Section 415(h)), pursuant to a reasonable and good faith interpretation of the rules and definitions under Code Section 415 and Sections 414(b), (c), (m) and (o) of the Code.

(c) Where the Member's Employer-provided benefits (determined as of the same age) under all plans required to be aggregated with this Retirement Ordinance for the purposes of Code Section 415 would exceed the limitations of Code Section 415 as applicable to a government plan, then benefits will be reduced plan by plan, until the limitations of Code Section 415 are no longer exceeded, in reverse order of the Member's initial participation date thereunder, beginning with the plan under which the Participant's participation began most recently. If a Member commenced participation in two or more such plans on the same date, benefits under those plans shall be reduced in alphabetical order, beginning with the plan whose name is first alphabetically.

(d) Notwithstanding the foregoing, nothing in this section (1) shall reduce benefits accrued by a Member under the Retirement Ordinance as of December 31, 2007, pursuant to Retirement Ordinance provisions that were adopted and in effect before April 5, 2007, if such Retirement Ordinance provisions met the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code Section 415 in effect as of December 31, 2007 (the "Pre-Amendment Provisions"). In addition, nothing in this section (1) shall reduce the benefits that would have been accrued by a Member under the Retirement Ordinance immediately prior to July 14, 2009 pursuant to the Pre-Amendment Provisions; *provided*, that this sentence shall apply only to the extent that such benefits would otherwise be reduced, under the provisions of section (1) as in effect after July 13, 2009, by reason of a change in the provisions of section (e) that was not legally required in order to comply with Section 415 of the Code or the final regulations promulgated thereunder

(e) Where an annual increase under Code Section 415(d) is made to the dollar limitation described in Code Section 415(b)(1)(A) effective after a Member's severance from employment with the Employer (or, if earlier, after the Retirement Allowance starting date in the case of a Member who has commenced receiving benefits), such annual increase shall apply, in calculating the limitations applicable to such Member's benefits.

(f) The Board will advise affected Members of any adjustments to their Accrued Benefit required by the limitations under this section.

(g) The Code Section 415(c)(3) definition of "compensation" shall include differential wage payments as described in Code Section 3401(h)(2).

(2) *Acceptance of rollover distributions.* The Retirement System will accept an eligible rollover distribution for the purchase of Credited Service, including military service under section 1:561 for Members authorized to elect membership in the Retirement System and purchase prior City Service under section 1:559(d)(6); and for the repayment of previously withdrawn Accumulated Contributions (section 1:560). Upon receipt of sufficient documentation that the plan from which a distribution is to occur is qualified in accordance with applicable Code provisions, the Retirement System will accept a rollover distribution from the following:

(a) an individual retirement account or annuity described in Code Sections 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includible in gross income;

(b) a qualified plan described in Code Sections 401(a) or 403(a), including after-tax employee contributions;

(c) an annuity contract described in Code Section 403(b),, excluding after-tax employee contributions; and

(d) an eligible plan under Code Section 457(b) 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. The Retirement System shall provide a separate accounting for any after-tax contributions received, and earnings thereon.

1:588. RESERVED.

1:589. Internal Revenue Code Qualifications.

(1) The City intends the Retirement System to be a qualified pension plan under § 401 of the Code, and that the trust be exempt under Code § 501(a) as such rules apply to governmental plans (as defined at Section 414(d) of the Code). The City shall be responsible for the preparation, adoption, and submission to the Internal Revenue Service of amendments to the Retirement Ordinance due to changes in applicable provisions of the Code, state law, or other applicable regulations. It shall be the City's responsibility to maintain the Retirement Ordinance as a tax-qualified retirement plan as to form and the City shall make best efforts to submit the Retirement Ordinance to the Internal Revenue Service for tax-qualification ruling letters as appropriate to ensure the

Retirement Ordinance has a current IRS ruling letter on its tax-qualified status.

(2) The Board shall operate and administer the Retirement System so as to fulfill the purpose of maintaining a tax-qualified Retirement System.

1:590. Implementation and Guarantee Section.

No amendment to this Retirement Ordinance shall diminish or impair any Member's accrued financial benefits (in violation of Article 9, Section 24 of the Michigan Constitution of 1963, as amended) under the Retirement Ordinance as constituted prior to such amendment. If at any time it shall appear that an amendment to this Retirement Ordinance would diminish or impair benefits contrary to the preceding sentence, the Board of Trustees shall construe the terms of the Retirement Ordinance to achieve, as nearly as possible, the same result as would have occurred under the Retirement Ordinance prior to such amendment.

1:591. Mandatory Bargaining Subjects.

Notwithstanding any other provisions of this chapter of the Ann Arbor City Code, any matter relating to the Retirement System provided for herein and applicable to current Members represented by a collective bargaining agent is a mandatory subject of bargaining under the Public Employment Relations Act, Act No. 336 of the Public Acts of 1947, being Sections 423.201 to 423.216 of the Michigan Compiled Laws.

1:592. Post Retirement Adjustments.

(1) Minimum Benefit. Effective July 1, 2000, and each July 1 thereafter, the Board shall increase the amount of each pension benefit payable to a retiree or beneficiary of a retiree who had five or more years of credited service at the time of retirement by a pension adjustment amount which shall be the difference between \$9,800 and the current annual retirement benefit paid to the retiree or beneficiary. Said \$9,800 amount, however, shall be reduced by five percent (5%) for each year of credited service less than 20 years. For Members of the Retirement System who commence to receive a Retirement Allowance on or after July 1, 2011, said \$9,800 amount is to be further reduced by the corresponding percentage reduction in the retiree's straight life retirement allowance based upon the retiree's election of an early retirement in accordance with section 1:564(2) and/or a Retirement Allowance Option provided in section 1:566, and/or for the amount of a withdrawal of Accumulated Contributions under section 1:566(2). Said \$9,800 amount shall be indexed based upon the National Consumer Price Index, each July 1, beginning July 1, 2001, prior to any applicable credited service reduction.

(2) Pension Adjustments and Supplemental Benefits. Annually, the Board, in consultation with its actuary and upon receipt of the actuarial report for each fiscal year, shall determine whether to grant a permanent pension benefit adjustment or pay a one-time supplemental benefit based upon the amount, if any, of funds from the pension adjustment account which may be distributed to eligible retirees and beneficiaries. The aggregate cost of such benefit adjustment or supplemental benefit distribution shall be funded by a transfer from the pension adjustment account to the pension reserve. There

shall be no pension benefit adjustment or supplemental benefit paid unless the amount available in the pension adjustment account is equal to or greater than one percent (1%) of the total pension payroll. The term "total pension payroll" as used herein shall mean the total amount of pension benefits paid to retirees and beneficiaries in the prior fiscal year as reflected in the annual actuarial report. Eligibility for participation under this subsection shall be determined in accordance with subparagraph (a) and paid in accordance with either subparagraph (b) or (c) of this subsection.

(a) Eligibility. Eligibility for participation in a pension benefit adjustment or a supplemental benefit distribution shall be determined in accordance with the following:

(i) A retiree who retires under section 1:562(1) shall be eligible to participate beginning the first day of the fiscal year following the fiscal year containing the fifth anniversary of his/her effective date of retirement. A beneficiary of a deceased retiree shall be eligible to participate beginning the first day of the fiscal year following the fiscal year containing the date the retiree would have otherwise satisfied the eligibility condition herein.

(ii) A disability retiree or disability retiree's surviving beneficiary shall be eligible to participate beginning the first day of the fiscal year following the fiscal year containing the first anniversary of the effective date of disability retirement.

(iii) In the case of a survivor beneficiary who is receiving a duty death or non-duty death pension benefit, said beneficiary shall be eligible to participate beginning the first day of the fiscal year following the fiscal year containing the first anniversary of the effective date of the duty death or non-duty death pension benefit payable to said beneficiary.

(b) Benefit Adjustments. Effective July 1, 2011 and each July 1 thereafter, the Board may increase the amount of each pension payable to all eligible retirees as defined in section 1:592(2)(a) in accordance with sub item (i) or (ii) below.

(i) Each Pension that is to be adjusted may be increased by a uniform percentage of the current retirement allowance, but in no case less than \$10.00 a month. No increase shall be granted on any July 1 if the percentage amount of increase is less than 1.0%.

(ii) Each Pension that is to be adjusted may be increased by an amount determined in accordance with the point system as provided in section 1:592(3) (c).

(c) Supplemental Benefit Distributions. Effective July 1, 2011 and each July 1 thereafter, the Board may authorize a one-time supplemental benefit distribution to eligible retirees. The annual total supplemental distribution amount shall not exceed an amount equal to 1/12 of total pension payroll. Distributions shall be paid in a lump sum and paid in such manner and method as approved by the Board. The distribution of benefits hereunder from the pension adjustment account shall not be considered a permanent increase in the rate of Retirement Allowance to be paid and shall not create a liability for its continuance. Supplemental benefit distributions shall

be based upon a point system and paid in the following manner:

- (i) Each retiree receives one (1) point for each full year of retirement as of the first day of the fiscal year for the year in which the distribution is to occur;
- (ii) Each retiree receives one (1) point for each full year of service credit for actual service rendered in the employ of the City;
- (iii) Points are summed for all eligible retirees as of the first day of the fiscal year for the year in which the distribution is to occur; and
- (iv) The total annual benefit distribution amount as determined by the Board is multiplied by the ratio of a retiree's points to the total points of all retirees (i.e., the sum of (i) and (ii) divided by (iii) multiplied by the total annual distribution amount).
- (v) Notwithstanding the foregoing, no individual distribution to a retiree shall be made if the amount of the distribution is less than twenty-five dollars (\$25.00).

1:593. Re-Employment of Retirant.

Except as otherwise provided in this Retirement Ordinance, in the event a Retirant or Beneficiary of the Retirement System is employed by the City or the Board, payment of the Retirant's or Beneficiary's Pension shall continue during the period of re-employment. During the period of re-employment by the City or the Board, the Retirant shall not again become a Member of the Retirement System.

1:594. Denial of Benefit Claim; Appeal.

Claims for benefits under the Retirement Ordinance shall be made in writing to the Board. In the event a claim for benefits is wholly or partially denied by the Board, the Board shall, within a reasonable period of time, but not later than ninety (90) days after receipt of the claim, notify the claimant in writing of the denial of the claim. If the claimant shall not be notified in writing of the denial of the claim within ninety (90) days after it is received by the Board, the claim shall be deemed denied. A notice of denial shall be written in a manner calculated to be understood by the claimant, and shall contain (i) the specific reason or reasons for denial of the claim, (ii) a specific reference to the pertinent Retirement Ordinance provisions upon which the denial is based, (iii) a description of any additional material or information necessary for the claimant to perfect the claim, together with an explanation of why such material or information is necessary, and (iv) an explanation of the Retirement Ordinance's review procedure.

Within sixty (60) days of the receipt by the claimant of the written notice of denial of the claim, or within sixty (60) days after the claim is denied as set forth above, if applicable, the claimant may file a written request with the Board that it conduct a full and fair review of the denial of the claimant's claim for benefits, including the conducting of a hearing, if deemed necessary by the Board. In connection with the claimant's appeal of the denial of his benefit, the claimant may review pertinent documents and may submit issues and comments in writing. The Board shall render a decision on the claim appeal promptly, but not later than sixty (60) days after the receipt of the

claimant's request for review, unless special circumstances (such as the need to hold a hearing, if necessary), require an extension of time for processing, in which case the sixty (60) days prior may be extended to one hundred and twenty (120) days. The Board shall notify the claimant in writing of any such extension. The decision upon review shall (i) include specific reasons for the decision, (ii) be written in a manner calculated to be understood by the claimant and (iii) contain specific references to the pertinent Retirement Ordinance provisions upon which the decision is based. The Board shall notify the City of any applications for retirement benefits under the Ordinance which are received by the Board, such notice to be given in advance of granting such benefits, and to be provided electronically or by other means mutually agreed on between the City and Board.

1:595. Health Benefit Fund.

The Health Benefit Fund is the accounting fund which shall be credited with (i) contributions by the City for the purpose of funding all or a portion of the cost of providing health insurance coverage to eligible retired members and other qualified beneficiaries, and (ii) investment experience allocated to the Health Benefit Fund, and which shall be charged with all, or a portion of, applicable premiums or contract charges for such coverage. Eligibility for coverage and the portion of the premium or contract charge to be paid from the Health Benefit Fund shall be determined in accordance with section 1:596. Except as provided at section 1:595(1), contributions to the Health Benefit Fund by the City, when added to any City contributions for life insurance protection provided by the Retirement System, shall not exceed 25% of the total actual contributions to the Retirement System (other than contributions to fund past Service) for all years since the Health Benefit Fund has been in effect and shall be reasonable and ascertainable. Amounts allocated to the Health Benefit Fund may only be used for retiree health benefits described in section 1:596 and in the City's Retiree Health Care Benefits Plan and Trust, and may not be used for any purpose other than providing such retiree health benefits or until the satisfaction of all liabilities under section 1:596, at which time any amount remaining in the Health Benefit Fund shall be returned to the City. Amounts in the Health Benefit Fund shall be allocated to separate 401(h) subaccounts which shall be established for any key employee (as defined in Code Section 416(i)(I)) of the City, and benefits may be paid only from such key employee's subaccount. The City shall not contribute any amounts to the Health Benefit Fund or a welfare benefit fund (as defined in Code Section 419(e)(1)) with respect to Qualified Current Retiree Health Liabilities as defined in Code Section 420(e)(1)(A) for which transferred assets are required to be used as described in section 1:595(1)(c) below.

(1) *Code Section 420 Transfer of Excess Assets to the Health Benefit Fund.* In addition to contributions made directly by the City under section 1:595, the Health Benefit Fund may be funded by a Qualified Transfer of "Excess Assets" of the Retirement System to the Health Benefit Fund. "Excess Assets" means those assets in excess of the Retirement System's (i) full funding limit; or (ii) 125% of the Retirement System's current liability (as described in Code Section 412(c)(7)(B)). The Qualified Transfer of assets does not otherwise count against the limits on City contributions described in section 1:595 to the Health Benefit Fund. The Qualified Transfer of excess assets is subject to

the requirements described below:

(a) *Limitation on Number of Qualified Transfers Per Taxable Year.* No more than one transfer of excess assets under this section 1:595(1) during a taxable year of the City; PROVIDED that in no event shall any such Qualified Transfer be made after December 31, 2013.

(b) *Limit on Amount of Transfer.* The amount of excess assets transferred from the Retirement System to the Health Benefit Fund shall not exceed the amount reasonably estimated to be paid during the tax year of the transfer for "Qualified Current Retiree Health Liabilities" as defined in Code Section 420(e)(1)(A). The amount to be transferred shall be reduced by the ratio of (i) assets (as of June 30 preceding the Plan Year of the transfer) previously set aside to pay for the Qualified Current Retiree Health Liabilities (as defined in Code Section 420(e)(1)(B)(i)), to pay for the Qualified Current Retiree Health Liabilities, to (ii) the present value of the Qualified Current Retiree Health Liabilities for all Plan Years (as defined in Code Section 420(e)(1)(B)(ii)). In the event the amount transferred exceeds the amount used to pay Qualified Current Retiree Health Liabilities, the excess (including income thereon) shall be returned from the Health Benefit Fund to the Retirement System.

(c) *Use of Transferred Assets.* Any assets (and any income allocable thereto) of the Retirement System transferred to the Health Benefit Fund shall be used only to pay reasonably estimated Current Retiree Health Liabilities (other than liabilities of key employees not taken into account under Section 420(e)(1)(D)) for the taxable year of the transfer. For purposes of this section, any amount paid out of the Health Benefit Fund shall be treated as first being paid out of excess assets transferred to the Health Benefit Fund pursuant to this section 1:595(1) and income thereon.

(d) *Accelerated Vesting Requirement.*

(i) An employee who is a Member in the Retirement System on the date of the transfer shall be 100% vested on the date of the Qualified Transfer in his then currently accrued benefit in the Retirement System, in the same manner as if the Retirement System had terminated immediately before the Qualified Transfer.

(ii) A Member who separated from service at the City during the one-year period ending on the date of the Qualified Transfer shall be 100% vested in his then currently accrued benefit as if the Retirement System had terminated immediately before his separation from service.

A Member who vests in an accrued benefit under this section 1:595(1)(d) shall nonetheless be subject to the vesting requirements of section 1:563, or 1:565 with respect to future benefit accruals in the Retirement System. In the case of a Member who becomes vested pursuant to section 1:595(1)(d)(ii) above, which Member has been paid his Accumulated Member Contributions and has accordingly forfeited his Credited Service, such Member shall have his accrued benefit based upon his previously forfeited Credited Service retroactively reinstated and vested, provided that the vested accrued benefits so reinstated and vested shall be reduced by the actuarial equivalent of his Accumulated Member Contributions previously paid to him/her.

(e) *Maintenance of Applicable Retiree Health Care Costs.* As more fully set forth in Section 1:734(1) of the City's Retiree Health Care Benefits Plan and Trust, in the event of a Qualified Transfer after December 17, 1999, the City shall maintain levels of Applicable Employer Retiree Health Costs during the Cost Maintenance Period, as such terms are defined in Section 1:734(1) of the City's Retiree Health Care Benefits Plan and Trust.

(f) *Maintenance of Applicable Retiree Health Care Benefits.* As is more full set forth in Section 1:734(2) of the City Retiree Health Care Benefits Plan and Trust, in the event of a Qualified Transfer occurring before December 17, 1999, the City shall maintain levels of Applicable Employer Retiree Health Benefits during the Health Benefits Period, as such terms are defined in Section 1:734(2) of the City Retiree Health Care Benefits Plan and Trust.

(g) *Key Employees Excluded.* Assets transferred to the Health Benefit Fund cannot be used to pay the retiree health benefits of any Member who was a key employee (within the meaning of Code Section 416(i)(11)) at any time during the Plan Year ending within the tax year of the City in which the Qualified Transfer was made. If an employee is a key employee with respect to any Plan Year, such employee shall not be taken into account in computing Qualified Current Retiree Health Liabilities for such taxable year, or in calculating Applicable Employer Retiree Health Costs during the Cost Maintenance Period as such terms are defined in Section 1:734(1) of the City's Retiree Health Care Benefits Plan and Trust.

(h) *Limitation of City Deductions.* The City shall not be entitled to a deduction for (i) amounts transferred to the Health Benefit Fund in a Qualified Transfer (nor for any excess Qualified Transfer funds returned to the Retirement System pursuant to Code Section 420(c)(1)(B)(i)); (ii) for amounts which are used from the Health Benefit Fund to pay retiree health benefits which otherwise would have been deductible in the tax year of the Qualified Transfer had the expenses been paid directly by the City; nor (c) for any retiree health benefits for the year of the Qualified Transfer that are paid directly by the City, except such expenses which exceed the excess (if any) of the amount of the Qualified Transfer reduced by the amounts paid from the Health Benefit Fund pursuant to (g)(ii) above.

(2) Notwithstanding anything to the contrary in this Retirement Ordinance, excess amounts transferred under section 1:595(1)(b). "Limit on Amount of Transfer" shall not exceed state law limitations as set forth in Michigan Compiled Laws Annotation (MCLA) 38.571 which section is incorporated by reference in this Retirement Ordinance.

1:596. Retiree Health Care Benefits.

(1) The eligibility for health insurance coverage, the specific health insurance coverage, the conditions of which would lead to loss of coverage, and the cost to the City and the covered individuals provided after the retirement or death of a retired Member shall be as described in the City's Retiree Health Care Benefits Plan and Trust.

(2) The City's share of the cost of retiree health insurance benefits provided under this section shall, to the extent such account has sufficient funds, be paid from the separate

account as described in section 1:595.

1:597. Forfeiture of Retirement Allowance.

A Member or Retirant who is convicted of or enters a plea of *nolo contendere* accepted by the court for a felony as defined in P.A. No. 350 of 1994, as amended, and which arises out of his service as a public employee may, by order of the court, have all or part of his Retirement Allowance forfeited. If a court orders such forfeiture, the order shall comply with the legal requirements of P.A. No. 350 of 1994, as amended, which are incorporated by reference.

1:598. Employment Rights.

Subject to the re-hire provisions of Section 1:569 under the disability reexam provisions, the Retirement System shall not be construed as giving an employee any right to be retained in the service of the City without its consent nor shall the Retirement System interfere with the right of the City to discharge an employee, nor shall an employee be given any right, claim or interest in any benefits of the Retirement System except upon fulfillment of the conditions and requirements of the Retirement System.

1:599. Applicable Laws.

The Retirement System shall be construed and enforced under the laws of the State of Michigan and any applicable federal law, rule or regulation, and all of the provisions hereof shall be administered in accordance therewith.

1:600. Severability.

If any section or part of a section of the Retirement Ordinance is for any reason held to be invalid or unconstitutional, such holding shall not be construed as affecting the validity of the remaining sections of the Retirement Ordinance or the Retirement Ordinance in its entirety.

Section 2: This Ordinance shall take effect on the tenth day following legal publication.