



Legislation Text

File #: 09-0518, Version: 1

An Ordinance to Amend the Code of the City of Ann Arbor by Amending Section 1:552 adding New Subsection 1:552(28), 1:552(29) and 1:552(30), and adding New Sections which New Sections shall be Designated as Sections 1:595 and 1:596 of Chapter 18, Employees Retirement System, of Title I of the Code of the City Of Ann Arbor (Ordinance No. ORD-09-20)

Attached for your review and approval is an amendment of Chapter 18, which is the Employees Retirement System (Pension) ordinance. The recommended ordinance changes revise the pension & VEBA plans to establish appropriate language for transfers to meet current IRS regulations and consistency between the provisions of both Code Chapters

To meet IRS regulations, the City needs to address an issue with respect to certain transfer of excess earnings from the Pension system to the VEBA trust.

These transfers occurred in the years 2003 through 2006 and totaled \$21.6 mil. The IRS has approved a plan to correct the transfers over a five year period, which includes credit for previous contributions, interest, or those contributions and re-directing approximately \$17 million of future VEBA contributions to the pension system.

The effect of these corrections will be to increase pension funding and restrain VEBA pre-funding for the five years. In short, the funds are just being re-allocated within the two systems.

Outside pension counsel has drafted this amendment to conform with Internal Revenue Service requirements related to the funding of Health Benefit Funds. The amendment specifies how transfers to the Health Benefits Fund can be accomplished and limitations on the numbers and amounts of transfers and the allowable uses of transferred assets. The amendment makes the other relevant adjustments.

Prepared by: Nancy Niemela, Senior Assistant City Attorney; Mary Joan Fales, Senior Assistant City Attorney

Reviewed by: Stephen K. Postema, City Attorney; Tom Crawford, CFO/Finance and Administrative Services Area Administrator

Approved by: Roger W. Fraser, City Administrator

ORDINANCE NO. ORD-09-20

First Reading : June 1, 2009
Public Hearing : June 15, 2009

Approved: June 15, 2009
Published: June 21, 2009
Effective: July 1, 2009

EMPLOYEES RETIREMENT SYSTEM

An Ordinance To Amend The Code of the City of Ann Arbor By Amending Section 1:552 Adding New Subsection 1:552(28), 1:552(29) and 1:552(30), And Adding New Sections Which New Sections Shall Be Designated As Sections 1:595 And 1:596 Of Chapter 18, Employees Retirement System, Of Title

I Of The Code Of The City Of Ann Arbor

The City of Ann Arbor Ordains:

Section 1. That Section 1:552 of Chapter 18 of Title 1 of the Code of the City of Ann Arbor be amended to read as follows:

1:552. Definitions.

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

- (1) *Board*. The Board of Trustees of the Retirement System provided in this chapter.
- (2) *Retirement system* or *systems*. The City of Ann Arbor Employees Retirement System.
- (3) *Member*. Any person who is included in the membership of the retirement system.
- (4) *Covered member*. Any member who is covered under the federal social security old age survivors' and disability insurance program on account of City employment.
- (5) *Non covered member*. Any member who is not covered under the federal social security old age survivors' and disability insurance program on account of City employment.
- (6) *Police officer* or *firefighter member* or *police officer* and *firefighter*. In the case of a 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; and, in the case of a firefighter, any employee of the fire services unit of the City holding the rank of firefighter, including probationary firefighter, or higher rank. The terms "police officer or firefighter member" and "police officer and firefighter" shall not include:
 - (a) Any person temporarily employed by the City as a police officer or firefighter, or
 - (b) Any civilian employee of either the police or fire services units.
- (7) *General City member*. Any member except a police officer or firefighter member.
- (8) *Retirant*. Any member who retired with a pension or retirement allowance payable by the retirement system.
- (9) *Beneficiary*. Any person, except a retirant, who is in receipt of or has entitlement to a pension, retirement allowance, or other benefit payable by the retirement system.
- (10) *Service*. Personal service rendered to the City by an officer or employee of the

City.

(11) *Credited service.* The sum of a member's prior service and membership service to the extent credited the member by the Board of Trustees.

(12) *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, except that for purpose of calculating the special window allowance in accordance with section 1:563 any period of approved unpaid leave granted an employee by the City shall not be considered a break in service. Member contributions shall be due and payable for any period of approved unpaid leave used in calculating an employee's special window allowance.

(13) *Regular interest.* Such rate or rates of interest per annum, compounded annually, as the Board shall from time to time adopt.

(14) *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, together with applicable regular interest thereon.

(15) *Compensation.* The remuneration, exclusive of fees, paid a member by the City for personal services rendered to the City. 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. Compensation includes amounts deferred under a deferred compensation plan and any amount deferred in accordance with the City's Section 125 flexible benefits plan and/or a voluntary employees beneficiary association (VEBA). For purposes of the special window allowance in accordance with section 1:563, compensation shall not include any retroactive payment for personal services rendered to the City.

(16) *Final average compensation.*

(a) The average of the highest annual compensation received by a member during 3 successive years of service (excluding any breaks in service) within the last 10 years of the member's employment with the City;

(b) If a member has fewer than 3 years of service, the final average compensation shall be the average of the annual rates of compensation for the total years of service. 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;

(c) Final average compensation may include compensation paid to a retirant for personal services rendered as a member prior to retirement in accordance with Section 1:564(5);

(d) Notwithstanding the provisions of 16(a)--(c), final average compensation for purposes of the special window allowance shall be calculated in accordance with Section 1:563.

(17) *Annuity*. An annual amount derived from the accumulated contributions of a member, payable in equal monthly installments throughout the future life of a person.

(18) *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.

(19) *Retirement allowance*. The sum of the annuity and the pension.

(20) *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 such mortality table and regular interest as the Board shall from time to time adopt.

(21) *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 such mortality and other tables of experience, and regular interest, as the Board shall from time to time adopt.

(22) *Pension contingency reserve*. A reserve in addition to the actuarially determined annuity and pension reserves for retirants and beneficiaries and is to be determined by the Board at an amount not to exceed 20% of the annuity and pension reserves for retirants and beneficiaries.

(23) *Early retirement age*:

(a) Except as provided in (c), age 55 years for general City members;

(b) Age 50 years for police officers and firefighter members;

(c) Age 50 years for nonunion employees, or for union employees with collective bargaining agreements specifying age 50 as the early retirement age.

(24) *Voluntary retirement age*:

(a) Age 60 years for general City members who entered or enter the employ of the City after December 31, 1953;

(b) Age 55 years for police officers and firefighter members; or effective July 1, 2001, the age at which 25 years of credited service is acquired, whichever occurs first, for police officer and firefighter members;

(c) Effective July 1, 2001, age 50 years or at such older age at which 25 years of credited service is acquired for nonunion employees or union

employees for whom the benefits of this subsection are specified in a collective bargaining agreement.

(d) Any combination of age and years of credited service which equals 75, for general City members who elect to retire under the provisions of section 1:563;

(25) *Social security salary.* A member's annual salary, or the portion thereof, which is subject to federal social security taxes.

(26) *Services area administrator.* As used in Sections 1:563 and 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.

(27) *Spouse.* As used in Section 1:569, the term "spouse" means the person to whom the deceased member or retirant was married at the termination of employment with the City.

(28) 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 retirees and qualified beneficiaries, all of which is more fully defined and described in Section 1:595.

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

(30) Code. The Internal Revenue Code of 1986, as amended. 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.

Section 2. That Chapter 18 of Title 1 of the Code of the City of Ann Arbor be amended to add the following new section 1:595:

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 percent 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 Benefits 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.

(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.

(gh). *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.

Section 3. That Chapter 18 of Title 1 of the Code of the City of Ann Arbor be amended to add the following new section 1:596:

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.

Section 4. In the event any court of competent jurisdiction shall hold any provision of this Ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 5: This Ordinance shall take effect on the tenth day following legal publication.