



Legislation Text

File #: 10-1323, **Version:** 1

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 (Ordinance No. ORD-11-01)

Attached is the proposed ordinance revision of Chapter 18 of the City Code which states the provisions of the City of Ann Arbor Retirement System (hereafter the "Ordinance" or "Retirement System"). It reflects changes required by federal tax law and suggested by Michigan law. Additionally, it reflects input from many sources, including proposed amendments prepared by the Pension Board of Trustees and its counsel, suggestions from City personnel, input from Pension Board members, and input from employee member union groups (and respective legal counsel), obtained in several union meetings.

The Ordinance is intended to meet tax-qualification requirements of the Internal Revenue Code. The standard practice for assuring that the Ordinance as constituted meets tax law requirements is to apply for a ruling letter from the Internal Revenue Service ("IRS"). The Ordinance has a ruling, but it is out of date and fails to reflect current tax requirements. The deadline for seeking a current ruling is January 31, 2011, after which time the IRS ruling request cycle for a governmental retirement plan closes. Failure to file a ruling request by then would make it impossible to obtain a ruling until February 1, 2013. It would be too late to get a ruling on a number of current tax law requirements, some of which the Ordinance is already past-due in meeting. Accordingly, City personnel, the Pension Board members and various employee group representatives have worked diligently to present the Ordinance for approval by City Council in order to meet the January 31, 2011 filing deadline.

In addition to the federal tax law issues, the Ordinance as configured was vague, and imprecise, often with respect to critical components pertaining to the calculation of retirement benefits. One key example: two of the three elements of the pension calculation ("Compensation/Final Average Compensation" and "Service") are not accurately or fully described in the Ordinance as currently configured. It is in the best interest of the City, the Pension Board and Retirement System members that the Ordinance meet federal tax law requirements (which require that the Ordinance define "definitely determinable benefits.") As a matter of state law and clarity of contract, it is similarly important that the Ordinance (a) be configured in a coherent fashion, (b) be written in a clear and concise fashion to avoid ambiguities, as in determining key components of a benefit calculation; (c) reflect current Board administrative practices; and (d) reflect whatever provision is made regarding retirement benefits in the City personnel policies, and in each groups' collective bargaining agreement, where applicable.

The Ordinance has undergone a major restructuring as well as specific legal and administrative

revisions. For that reason, it is recommended that Council adopt the changes replacing the existing ordinance chapter with the newly formatted chapter, rather than as a series of section amendments. The Ordinance modifications do not involve changes in the benefits or contribution levels (such as changing the benefit multiplier or the member contribution rate). There are no 'accrued financial benefit' takeaways in the modified Ordinance as such would be prohibited by limitations imposed by (a) the Michigan Constitution of 1963, Article 9, Section 24, as amended, (b) Michigan Public Act 314, as amended, and (c) collective bargaining agreements [including without limitation, any features from binding arbitration pursuant to Michigan Public Act 312 of 1969].

As noted above this version of the Ordinance has been reviewed by City personnel, the Pension Board members, and union representatives (to include their legal counsel).

The more notable changes to the Ordinance fall into three principal categories:

- Changes required by federal tax laws and suggested by Michigan law
- Changes for clarification and ease of reading
- Changes proposed by the Pension Board which are member improvements

The more notable changes suggested are summarized in the attached chart.

Approval of the Ordinance is recommended.

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Reviewed by: Robyn Wilkerson, HR and Labor Relations; Tom Crawford, CFO/Finance and Administrative Services Administrator; Stephen K. Postema, City Attorney

Approved by: Roger W. Fraser, City Administrator

(See Attached Ordinance)