



City of Ann Arbor

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Legislation Text

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An Ordinance to Amend Sections 1:552, 1:564, 1:566, 1:569, 1:574, 1:587, and 1:595 of Chapter 18, Employees Retirement System, Title I, of the Code of the City of Ann Arbor (Ordinance No. ORD-11-10)

On January 18, 2011, City Council passed Ordinance No. ORD-11-01 which repealed and replaced Chapter 18, Employee Retirement System, of Title I of the Code of the City of Ann Arbor in its Entirety and added a New Chapter 18, Employee Retirement System, of Title I of said Code.

Subsequent to the adoption of ORD-11-01, City staff has identified several technical corrections to the published ordinance. In addition to correction of erroneous cross-references, numbering sequencing, and insertion of references for clarity, the following technical text amendments are proposed:

- The proposed amendment to 1:552(19), Final Average Compensation, most closely reflects past administrative practice in determining a Member's FAC.
- The proposed amendment to 1:564 replaces, in ORD-11-01 a provision that was intended to be revised from the prior version of ordinance at Section 1:564(4) and included in ORD-11-01 but was inadvertently not carried forward into the text of ORD-11-01.

The proposed technical amendments have been reviewed by the City Attorney and outside legal counsel and are recommended.

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Approved by: Tom Crawford, Interim City Administrator

ORDINANCE NO. ORD-11-10

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EMPLOYEES RETIREMENT SYSTEM

An Ordinance to Amend Sections 1:552, 1:564, 1:566, 1:569, 1:574, 1:587, and 1:595 of Chapter 18, Employees Retirement System, 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, Employees Retirement System, of Title I 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 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 2 years for males, set back 3 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 6 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 6 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 \$200,000.00) 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") (\$200,000.00 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 which is one-third of (i) or (ii) below, whichever is greater:~~determined by dividing~~

(i) ~~a~~A Member's total Compensation paid during the Member's highest paid last 36 consecutive months of Credited Service (whether or not calendar months) (excluding any Breaks in Service) within the last 10 years of the Member's employment with the City; ~~by~~

(ii) A Member's total Compensation paid during any three consecutive calendar years within the last 10 years of the Member's employment with the City. For the avoidance of doubt, such calendar years shall begin on January 1. 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 36 consecutive months 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 12 month period (being a 12-consecutive month period if 1:552(19)(i) applies to the calculation, or a calendar year if 1:552(19)(ii) applies to the calculation), the Compensation utilized for such 12 months ~~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 6 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 1 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)~~(a) The Member and the Other Qualified Adult share a common residence and have done so for at least the past 18 months.

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

~~(3)~~(c) At least 1 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 2 years for males, set back 3 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 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.

Section 2: That Section 1:564 of Chapter 18, Employees Retirement System, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

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.

If a Retirant dies before receiving straight life Retirement Allowance payments equal to the Member's Accumulated Contributions at the time of retirement, as reduced by an election under 1:566(2), the difference between said Accumulated Contributions and the aggregate amount of Retirement Allowance paid shall be paid from the pension Reserve Fund to such person or persons as shall have been nominated by written designation filed with the Board. If there has been no such designation, the difference shall be paid to the Member's legal representative. No payment shall be made under this paragraph if the Retirant has elected an alternate form of payment under Section 1:566.

(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 1/3 of 1 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.

Section 3: That Section 1:566 of Chapter 18, Employees Retirement System, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

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 pursuant to Section 1:564(1), 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, $\frac{1}{2}$ 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 6 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 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 1 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 10 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.

Section 4: That Section 1:569 of Chapter 18, Employees Retirement System, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

1:569. Disability Retirants' Re-Examination.

(1) (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.

(b2) 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(5), 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).

(c3) 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.

Section 5: That Section 1:574 of Chapter 18, Employees Retirement System, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

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:

(ia) 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.

(iib) 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.

(iiic) 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 Advisers' Act of 1940; or (iii) an insurance company qualified to perform Services described in clause (a) under the laws of more than 1 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.

Section 6: That Section 1:587 of Chapter 18, Employees Retirement System, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

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 2 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),⁷ 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.

Section 7: That Section 1:595 of Chapter 18, Employees Retirement System, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

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 1 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 (eiii) 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)₋₁ "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 8: This Ordinance shall take effect on the tenth day following legal publication.

CERTIFICATION

I hereby certify that the Council of the City of Ann Arbor, Michigan, adopted the foregoing ordinance at its regular session of July 5, 2011.

Date

Jacqueline Beaudry, City Clerk

John Hieftje, Mayor

I hereby certify that the foregoing ordinance received legal publication on the Ann Arbor City Clerk's Webpage on July 7, 2011.

Jacqueline Beaudry, City Clerk