



## Legislation Text

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**File #:** 12-0434, **Version:** 1

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An Ordinance to Amend Sections 1:552.1(2) and 1:564(2) of Chapter 18, Employees Retirement System, of Title I of Code of the City of Ann Arbor (Ordinance No. ORD-12-09)  
The proposed amendments to Chapter 18 accomplish two technical changes to the City's retirement ordinance.

First, the amendment documents the process used to establish the interest rate used for crediting participant contribution accounts under the Retirement System. Historically the Retirement Board has had a uniform practice of using for each year the average annual rate of return on overall Retirement System assets for the preceding ten years. Benefits counsel in consultation with the City Attorney's Office and the City's CFO have recommended that this Retirement Board practice for arriving at the rate should be described explicitly in the ordinance. Codifying this practice will provide consistency and evidence of compliance with the tax laws governing qualified plans.

Second, the amendment corrects a language error that was included in the ordinance revision adopted effective February 1, 2011. That revision misstated the methodology for calculating a participant's early retirement benefit. The present amendment effectively restores the previous language (prior to the Feb. 1, 2011 revision). The proposed corrective amendment has no impact on plan operation, under which early retirement benefits have continued to be calculated in a bifurcated way as provided for under the pre-February 1, 2011, ordinance despite the incorrect introduction of the language providing for a uniform reduction.

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ORDINANCE NO. ORD-12-09

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### EMPLOYEES RETIREMENT SYSTEM

### AN ORDINANCE TO AMEND SECTION OF CHAPTER OF TITLE OF THE CODE OF THE CITY OF ANN ARBOR.

The City of Ann Arbor ordains:

Section 1. That Section 1:552.1 of Chapter 18 of Title I of the Code of the City of Ann Arbor be amended to read as follows:

### **1:552.1. - Definitions A-F.**

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). Prior to August 14, 2011, such contributions were deducted from the compensation of Members of the Police Service Specialists bargaining unit on an after tax basis. Beginning with the pay period beginning August 14, 2011, the member contributions of the employees of the Police Service Specialists 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, [for each calendar year, be the average annual total return rate on the investments of the Retirement System for the ten years preceding such calendar year.](#) 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 1/3 of (i) or (ii) below, whichever is greater:

- (i) A Member's total Compensation paid during the Member's 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;
- (ii) A Member's total Compensation paid during any 3 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.

(b) If a Member has fewer than 36 consecutive months 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 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 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.

Section 2. That Section 1:564(2) of Chapter 18 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 **sum of (a) and (b) below:**

(a) **An immediate single life annuity which shall be the actuarial equivalent of the Member's accumulated contributions in the annuity saving fund at the time of such retirement, plus**

(b) **A pension:**

- (i) **Which when added to the annuity described in 1:564(2)(a) above, would provide a retirement allowance equal to the Normal Retirement Allowance provided described in paragraph (1) of this Section,**
- (ii) **reduced by 1/3 of 1% 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 eligibility for Normal Retirement under Section 1:562(2).**

The provisions of this paragraph **Section 1:562(2)** shall not be applicable to ordinary death benefits provided in Section 1:567 or disability benefits provided in Section 1:568.

Section 3. If this ordinance amendment or any portion thereof is held to be invalid by any court of



competent jurisdiction, said decision shall not effect the validity of the remaining provisions.

Section 4. This ordinance shall take effect then days following passage and publication.