



Legislation Text

File #: 17-1130, **Version:** 1

An Ordinance to Amend Sections 1:553, 1:555, and 1:605 of Chapter 18, Employees Retirement System, Title I of the Code of the City of Ann Arbor, to Limit Participation by Certain Part-Time Employees, to Implement Changes Required by Federal Law Related to Military Service and to Correct a Scrivener's Error (Ordinance No. ORD-17-15)

Attached is the proposed ordinance revision to Chapter 18, Employees Retire System. The proposed amendments implement the following specific changes to the ordinance:

- (a) changes the previous exclusion of employees from participation in the pension plan from individuals who were paid less than \$400.00 per year for 3 consecutive years, to part time employees who work less than 80 hours per calendar month. Currently, the City has a small number of part-time employees who work only a few hours per month. Under the current pension language, they are required to contribute 6% of their pay to the pension, although they will not be eligible for a retirement pension in the future. Their contributions are later returned to them. This change allows those part time employees to be exempted from the contributions.
- (b) changes the language relating to employees who serve in the military to comply with federal law (USERRA) regarding the repayment of pension contributions after return from service.
- (c) Corrects a scrivener's error related to the City's contribution to the new Dual Pension Plan for certain new hires. The amount of the City's contribution is 5.2%, not the previously noted 6%.

The proposed amendments have been reviewed by Counsel for the Employee Retirement System Board of Trustees.

Approval of the amendments to the Ordinance is recommended.

Prepared by: Nancy L. Niemela, Senior Assistant City Attorney

Reviewed by: Robyn Wilkerson, HR and Labor Relations

Tom Crawford, CFO/Finance and Administrative Services Administrator

Approved by: Howard S. Lazarus, City Administrator

ORDINANCE NO. ORD-17-15

First Reading: August 21, 2017

Approved: September 5, 2017

Public Hearing: September 5, 2017

Published: September 7, 2017

Effective: September 17, 2017

EMPLOYEES RETIREMENT SYSTEM

An Ordinance to Amend Sections 1:553, 1:555 and 1:605 of Chapter 18, Employees Retirement System, Title I of the Code of the City of Ann Arbor to Implement Changes Required by Federal Law Related to Military Service, and Changes to the City's Part-Time Job Classification.

The City of Ann Arbor Ordains:

Section 1. That Section 1:553 of Chapter 18 of Title 1 of the Code of the City of Ann Arbor be amended to read as follows:

1:553. - Membership in the Retirement System.

- (a) The membership of the Retirement System shall include all officers and employees of the City unless otherwise excluded under subparagraph (d). Officers of the City who are eligible for membership in the Retirement System shall become Members on the date they assume the office to which they have been elected or appointed. No officer who becomes a Member of the System shall lose any Service Credit acquired prior to becoming an officer of the City.
- (b) Employees and former employees of the Fifteenth District Court shall be Members of the Retirement System subject to the following conditions:
 - (1) Subject to the provisions of sections [1:554](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?and=1:554) [1:554](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?and=1:565) and [1:565](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?and=1:565) and [1:565](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?and=1:565) (f), persons who were employees of the City and the Fifteenth District Court may have their Service credit determined by combining the periods of employment with the City and the Fifteenth District Court.
 - (2) The Final Average Compensation shall be computed on the basis of Compensation provided by the City and shall not include portions of compensation provided by the State of Michigan.
 - (3) In lieu of the foregoing, persons who have been employed by both the City and the Fifteenth District Court may elect to have Retirement Benefits from the City and from the Fifteenth District Court determined in accordance with the Reciprocal Retirement Act, Public Act No. 88 of 1961, as amended, being MCLA 38.1101 et seq.
- (c) Employees of the Board of the Retirement System may be eligible for Membership in the Retirement System subject to approval of the Board.
- (d) No person shall be eligible for Membership in the Retirement System:
 - (1) Solely by reason of Membership on the Council.
 - (2) Solely by reason of Services provided to the City or the Board on a fee or contractual basis.
 - (3) Solely by reason of employment by the City in a position that is classified as part-time, working less than 960 hours per year or less than 80 hours in a calendar month.
 - (4) Solely by reason of employment by the City as a school crossing guard.
 - (5) Solely by reason of employment by the City on a temporary basis.
 - (6) Who is the City Administrator, City Attorney, City Clerk, the head of any administrative department, the head of the City's personnel/human resources function, or Mayor's secretary, provided that the individual employee enters into alternative Retirement arrangements at the time of initial employment, meeting the applicable requirements of Treasury Regulation Section 1.401(k)-1(a)(3)(iv).
 - (7) Who is an employee of the Board and upon commencement of employment, has not been determined by the Board to be a Member of the Retirement System.

- (8) Who is a Retirant of the Retirement System.
- (e) An employee who is a Dual Retirement Plan Participant is a Member of the Retirement System, provided, however, that only those Members who also meet the requirements of [section 1:602 <https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?nodeld=TITIAD_CH18EMRESY_1_602DE>](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?nodeld=TITIAD_CH18EMRESY_1_602DE)(14) and [1:603 <https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?nodeld=TITIAD_CH18EMRESY_1_603>](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?nodeld=TITIAD_CH18EMRESY_1_603) to participate in the Dual Retirement Plan are Dual Retirement Plan Participants.
- (f) In all cases of doubt, the Board shall decide who is a Member within the meaning of the provisions of this chapter.

Section 2: That Section 1:555 of Chapter 18 of Title 1 of the Code of the City of Ann Arbor be amended to read as follows:

1:555. - Service Credit for Retirement.

- (a) *General Requirements.* The Board shall fix and determine, by appropriate rules and regulations, the amount of Credited Service to be credited any Member. Except as provided below, Members shall receive Service credit for both the Traditional and Dual Retirement Plans as follows:
- (i) *Firefighting platoon personnel:* A month of service credit shall be credited for each calendar month during which 100.8 or more regular (non-overtime) hours of Compensation is paid to a full-time Member. In no case shall less than 100.8 hours of service rendered in any calendar month be credited as a month of service to a full-time Member.
 - (ii) *All other Members:* A month of service credit shall be credited for each calendar month during which [80 <https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?nodeld=TITIAD_CH18EMRESY_1_80>](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?nodeld=TITIAD_CH18EMRESY_1_80) or more regular (non-overtime) hours of Compensation is paid to a full-time Member. In no event shall less than 80 hours of Service rendered in any month be credited as a month of service to a full-time Member. At the time of Early or Normal Retirement, a Member's Credited Service shall be determined based on the Member's date of hire and termination date (excluding any breaks in services). A partial month's credit shall be credited to the nearest half month as Credited Service as follows:
 - (1) 0-8 calendar days-Member receives no additional service credit;
 - (2) 9-23 calendar days-Member receives 0.50 month (½ month) service credit; or
 - (3) 24 calendar days and over-Member receives 1 complete month of service credit.

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

Year.

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

- (b) *Service-Intervening Military Service.* Should any Member leave City employment to perform qualified uniformed service within the meaning of the Uniform Services Employment and Reemployment Act of 1994 (“USERRA”) and should said Member be re-employed by the City within the time limits specified under USERRA, then such uniformed service leave time shall be recognized as continuous City Service by the Board subject to payment of the employee contributions as provided in this section. During the period of such uniformed service, and until return to City service, the Member’s contributions to the Annuity Savings Fund shall be suspended and the balance therein shall be accumulated with interest thereon, at the Accumulated Contribution Interest Rate set forth in [section 1:552.1](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1) [\(<https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1)
- (2). A re-employed Member has a period of up to three times the length of the period of uniformed service (to a maximum of five years) to make-up any employee contributions missed while in uniformed service in order to receive the same benefit as if the Member had remained continuously employed during the period of such uniformed service. The reemployed Member may also return to the Annuity Savings Fund all amounts the employee may have withdrawn therefrom at the time of entrance into, or while in, such uniformed service, together with interest thereon, at the Accumulated Contribution Interest Rate set forth in [section 1:552.1](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1) [\(<https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1)
- (2), from the date of withdrawal to the date of repayment, as provided in [section 1:565](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:565) [\(<https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:565](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:565)
- (f). The Member has a period of up to three times the length of period of the uniformed service (to a maximum of 5 years) to repay these amounts. In cases of doubt as to the period to be credited any Member, the Board shall have final power to determine such period.
- (c) *Service-Non-Intervening Military Service.* A Member, who prior to becoming an employee of the City, has served in any armed service of the United States (whether inducted or enlisted) shall have periods of active duty lasting 30 or more days, included in the Member’s Service account if all of the following conditions are satisfied:
- (1) The Member who is covered by [section 1:552.1](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1) [\(<https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1)
- (20)(a) has at least 5 years of credited Service, excluding any credited Service acquired for intervening military service under the provisions of subsection (b) above. Service time which has been purchased shall not be credited towards the satisfaction of a Member’s 5- year vesting requirement. The Member who is covered by [section 1:552.1](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1) [\(<https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1](https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?section=1:552.1)
- (20)(b), has at least 10 years of credited Service, excluding any credited Service acquired for intervening military service under the provisions of subsection (b) above. Service time which has been purchased shall not be credited toward the satisfaction

- of such Member's 10-year vesting requirement;
- (2) The Member submits a written application and supporting documentation to the Board of Trustees of the Retirement System;
 - (3) A Member purchasing military service credit shall pay into the Annuity Savings Fund described under section 1:565 5% of the Member's annual Compensation multiplied by the period of credited Service being purchased in accordance with the applicable rules and regulations as adopted by the Board of Trustees of the Retirement System. The Member shall purchase the military service by either a lump-sum payment or fixed payments through payroll deduction at any time prior to retirement. Payments made to the Annuity Savings Fund for the purchase of military service shall not be refunded to a Member under any annuity withdrawal option at [section 1:559](#) https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances? (2) or in the event of termination of employment.
 - (A) In the event of termination of membership in the Retirement System for reasons other than retirement, a former Member who had elected to purchase military service credit by way of payroll deduction (or his Beneficiary), shall complete the purchase and pay all amounts due by means of a lump-sum payment within 60 days of termination. If payment in full is not completed within said 60-day period, the Board of Trustees' actuary shall calculate the amount of Service to be credited based upon the amount of contributions paid into the Annuity Savings Fund at the time of the Member's termination;
 - (B) A Beneficiary may elect to purchase military service credit based on a deceased Member's period of military service by lump-sum payment within 60 calendar days after the death of a Member. An application for military service credit by a Beneficiary must be filed with the Retirement System in compliance with all terms and conditions stated in this section as if the military service credit had been purchased by the Member.
 - (4) Military service can be purchased in increments of no less than 1 month not to exceed 4 years of military service.
 - (5) Credited Service shall not be granted for periods of military service which are or could be used for obtaining or increasing a benefit from another federal, state or local publicly supported retirement system, except for Service that is or would be credited under the federal government for service in the reserves; and
 - (6) Only military service of Members who spent time in the armed services of the United States as indicated as active service on the Member's military service separation papers (DD-214 or equivalent form) shall qualify for purchase. Active service for active duty training for the reserves or national guard program shall be eligible for purchase as military service credit provided the Member shall have been discharged or released from active military service under honorable conditions.
 - (7) The provisions of this [section 1:555](#) https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances? (c) shall not apply to Credited Service or benefits under the Dual Retirement Plan.
- (d) Notwithstanding any provision of the Retirement Ordinance to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with IRC § 414(u) and regulations thereunder.
 - (e) Effective with respect to deaths occurring on or after January 1, 2007, the survivors of a

Member who dies while performing qualified military service (as defined in Code Section 414(u)) are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Ordinance as if the Member had resumed and then terminated employment with the City on account of his/her death. For these purposes, the Member shall be credited with Service under [section 1:555](#) https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances? during the period of qualified military service.

- (f) Effective on and after July 1, 2009, if the City makes "differential wage payments" as defined in Code Section 3401(h)(2) to individuals performing qualified military service, then (1) the individual receiving a differential wage payment shall be treated as an employee of the City; and (2) the differential wage payment shall be treated as Compensation for purposes of Code Section 415(c)(3) under [section 1:573](#) https://www.municode.com/library/mi/ann_arbor/codes/code_of_ordinances?
- (g) *Reciprocal Retirement Act Service Credit.* The City has elected to become a reciprocal retirement system within the meaning of the Michigan Reciprocal Retirement Act, hereinafter RRA (MCLA Section 38.1101 et seq.) but has not adopted section 38.1106 (Section 6) of the RRA. The City recognizes service under the RRA only for eligibility and for purposes of determining the early retirement reduction factors. The provisions of the RRA are incorporated into this Retirement Ordinance by reference as though fully set forth herein.
- (h) *Service-Temporary Employment.* A Member may elect to receive Service for periods of temporary employment leading directly to permanent employment with the City by agreeing to pay into Annuity Savings Fund an amount equal to the Accumulated Contributions that would have been required and accrued as if such person had been a Member of the Retirement System during the period of temporary employment. The election must be made within 60 days after (a) obtaining permanent status and (b) being notified by the Board of the right to make such election. Temporary service in a student training or student intern program or on a contractual basis is not eligible for Service credit under this section. This provision shall be effective for periods of temporary employment beginning after July 1, 1979. Service credited for periods of temporary employment shall also count towards vesting the Dual Retirement Plan but no Dual Retirement Plan benefits shall accrue by reason of temporary employment.

Section 3: That Section 1:605 of Chapter 18 of Title 1 of the Code of the City of Ann Arbor be amended to read as follows:

- (1) The City shall contribute to the Trust Fund an amount equal to five and two tenths percent (5.2%) of each Dual Retirement Plan Member's Compensation for the Plan Year while a Dual Retirement Plan Member. City Contributions shall be accounted for separately in the City Contribution Account.
- (2) The amount of City Contributions provided hereunder shall be amended from time to time in accordance with [section 1:630](#) https://library.municode.com/mi/ann_arbor/codes/code_of_ordinances? for Dual Retirement Plan Members covered by a collective bargaining agreement and by resolution of the City Council in accordance with [section 1:630](#) https://library.municode.com/mi/ann_arbor/codes/code_of_ordinances? for all other Dual Retirement Plan Members.

- (3) Contributions made to the Trust Fund by the City shall be irrevocable, except as provided at [section 1:629 <https://library.municode.com/mi/ann_arbor/codes/code_of_ordinances?nodeId=TITIAD_CH18EMRESY_1_629REFUPREX>](https://library.municode.com/mi/ann_arbor/codes/code_of_ordinances?nodeId=TITIAD_CH18EMRESY_1_629REFUPREX).
- (4) All amounts forfeited by reason of separation before a Dual Retirement Plan Member becomes fully vested shall be used as contributions to the Dual Retirement Plan and shall offset and reduce City contributions.

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 ten days after passage and publication.

CERTIFICATION

I hereby certify that the foregoing ordinance was adopted by the Council of the City of Ann Arbor, Michigan at its regular session of September 5, 2017.

(Date)

Jacqueline Beaudry, Ann Arbor City Clerk

Christopher Taylor, Mayor

I hereby certify that the foregoing ordinance received legal publication on the City Clerk's webpage on September 7, 2017.

Jacqueline Beaudry, Ann Arbor City Clerk