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Title: An Ordinance to Amend Sections 1:700, 1:702, 1:704, 1:717, 1:723, 1:724 and 1:747 of Chapter 21, Retiree Health Care Benefits Plan and Trust, Title I, of the Code of the City of Ann Arbor (Ordinance No. ORD-11-13)

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8/4/2011	1	City Council	Adopted on Second Reading	Pass
7/18/2011	1	City Council	Approved on First Reading	Pass

An Ordinance to Amend Sections 1:700, 1:702, 1:704, 1:717, 1:723, 1:724 and 1:747 of Chapter 21, Retiree Health Care Benefits Plan and Trust, Title I, of the Code of the City of Ann Arbor (Ordinance No. ORD-11-13)

On June 6, 2011, City Council passed Resolution R-11-219 directing the Interim City Administrator and City Attorney to prepare for City Council action the necessary amendments to Chapter 21 of the City Code to limit non union employees hired after July 1, 2011 to participation in City-provided health care benefits plan in retirement through an access only style plan. The access only style plan would allow those retirees to obtain health care coverage through the City in their retirement but paid for by the retiree.

The attached ordinance amendments to Chapter 21 defines and closes the class of individuals who are eligible to participate in and become Retirees of the City of Ann Arbor Retiree Health Benefits Plan and Trust.

Prepared by: Mary Joan Fales and Nancy Niemela, Senior Assistant City Attorneys

Reviewed by: Stephen K. Postema, City Attorney

Approved by: Tom Crawford, Interim City Administrator

ORDINANCE NO. ORD-11-13

First Reading : July 18, 2011

Approved: August 4, 2011

Public Hearing : August 4, 2011

Published: August 16, 2011

Effective: August 26, 2011

RETIREE HEALTH CARE BENEFITS PLAN AND TRUST

An Ordinance to Amend Sections 1:700, 1:702, 1:704, 1:717, 1:723, 1:724 and 1:747 of Chapter 21, Retiree Health Care Benefits Plan and Trust, Title I, of the Code of the City of Ann Arbor.

The City of Ann Arbor Ordains:

Section 1: That Section 1:700 of Chapter 21, Retiree Health Care Benefits Plan and Trust, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

1:700. Purpose.

The purpose of the Plan and Trust is to provide health and life insurance benefits or such other benefits approved by the City or approved by collective bargaining agreements for the welfare of certain Retirees of the City who are eligible to receive a retirement benefit from the City of Ann Arbor Employees' Retirement System (the "Retirement Plan") and the eligible Dependents of such Retirees; provided, however, that any Employee with an employment or reemployment commencement date on or after July 1, 2011, into a non-union position with the City generally shall not be eligible for City-subsidized coverage under the Plan as further explained in Sections 1:704(22), 1:717 and 1:723.

The Plan and Trust taken as a whole shall constitute a "voluntary employees' beneficiary association" (VEBA) under Section 501(c)(9) of the Internal Revenue Code of 1986, as amended, and is created for the exclusive purpose of providing benefits through policies issued by duly licensed commercial insurance companies, through a fund of self-insurance, or through any other lawful means of providing group health, and life insurance in accordance with any and all applicable City Personnel Rules and regulations and Collective Bargaining Agreements between the City and applicable Collective Bargaining Associations, for the benefit of the City of Ann Arbor Employees' Retirement System Retirees and beneficiaries who are eligible to participate in accordance with the Plan. The City intends the benefits to be provided by the establishment and maintenance of a trust fund in conformance with all applicable federal statutes and regulations, state, and local law.

The City reserves the right to enter into insurance agreements, and to modify, alter or amend such agreements from time to time, with commercial insurance carriers, health maintenance organizations, preferred provider organizations or any other qualified entity currently existing or created for the purpose of providing benefits under the Plan.

Section 2: That Section 1:702 of Chapter 21, Retiree Health Care Benefits Plan and Trust, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

1:702. Interpretation and law; construction.

The Plan is intended to qualify as an accident and health Plan and a group health plan under applicable provisions of the current Internal Revenue Code, (Sections 105, 106 and 162), the regulations promulgated under each, and applicable Federal and Michigan law. Where not governed by Michigan law, this Plan shall be construed and enforced according to the applicable federal laws, and all provisions hereof shall be administered according to such federal laws. If any provisions of the Plan shall be for any reason invalid or unenforceable, the remaining provisions nevertheless shall be carried into effect. The Plan is exempt from certain market reform and consumer protection provisions of the Patient Protection and Affordable Care Act of 2010 as this Plan is a stand alone group health plan that covers only Retirees and does not cover any active employees of the City.

Neither the establishment of the Plan nor the Trust nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any person covered under the Plan and Trust or other person any legal or equitable right against the City, its elected or appointed official or employees, the Trustees or any individual Trustee, except as may otherwise be provided in this chapter.

Neither the City nor the Trustees shall be responsible for the validity of any insurance agreement issued in connection with the Plan or Trust or for the failure on the part of the insurer to make payments provided by such insurance agreement, or for the action of any person which may delay payment or render an insurance agreement null and void or unenforceable in whole or in part.

Section 3: That Section 1:704 of Chapter 21, Retiree Health Care Benefits Plan and Trust, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

1:704. Definitions.

For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them by this section:

- (1) Base Plan means the benefits in effect at the time of an Employee's retirement as provided by the policy or the comprehensive program in place at the time of the Employee's retirement (exclusive of HMO, PPO and other alternative Plans) or by a substantially equivalent policy or program at the election of the City.
- (2) Child-Dependent means a Participant's or Retiree's unmarried child through the end of

the year in which he or she attains the age of 19 years.

(3) City means the City of Ann Arbor, Michigan.

(4) Code means the Internal Revenue Code of 1986, as amended. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provision of any legislation which amends or replaces such section or subsection.

(5) Collective Bargaining Agreements means any written agreement, supplemental agreement, memorandum of understanding, final arbitrator's decision, judicial decision or decision of any public Board or agency, by and between applicable Collective Bargaining Associations and the City, and any amendments, continuations, or renewals, which require the City or any other entity to make payments into group health and life insurance programs for employees who are members of the City of Ann Arbor's Employees' Retirement System.

(6) Collective Bargaining Associations means those associations which have elected to participate in this Plan and Trust.

(7) Contributions means the payment required to be made to the Trust by the City under the terms of the Plan and Trust or under any applicable existing Collective Bargaining Agreements or any future Collective Bargaining Agreements for the purpose of providing group health and life insurance for Retirees and beneficiaries covered by the Plan.

(8) Dependent means a Participant's or Retiree's Child-Dependent, Family Dependent (F-Rider), Sponsored Dependent or Spouse.

(9) Domestic Partner means a Participant's or Retirees domestic partner by legal partnership provided that in the case of a surviving partner such partnership status exists on the Participant's or Retiree's date of death.

(10) Effective date means the date of City Council adoption of this ordinance upon which the terms and conditions of this Plan and Trust shall become effective.

(11) Employee means a person employed by the City.

(12) Family Dependent (F-Rider) means an unmarried child of a Participant or Retiree, who has attained the age of 19 through the end of the year in which they attain the age of 25; or an unmarried child who is (1) is totally and permanently disabled (mentally or physically) and incapable of self-support, provided the disability arose before the child attained the age of 19 years and the Participant or Retiree has submitted satisfactory proof of such Dependent's incapacity not later than 31 days after the end of the year in which such Dependent attains the age of 19, (ii) receives over half of his or her support from the Participant or Retiree or surviving Spouse in accordance with the United States Internal Revenue Code's definition of "Dependent," and (iii) the disability has been certified at enrollment and thereafter at reasonable intervals in accordance with the Plan by a licensed physician.

(13) Insurance Agreement means the health insurance Plan(s) and any amendment(s) thereto, including any substitute insurance agreement with a commercial insurance carrier, health maintenance organization, preferred provider organization, or any other qualified entity currently existing or created for the purpose of providing benefits under the Plan. The term "insurance agreement" shall include the plural where applicable.

(14) Health Care Benefits means group health care benefits as currently provided and any other future health care related benefits as may be determined to be part of the Plan pursuant to City personnel rules and regulations and/or Collective Bargaining Agreements.

(15) Insurance Carrier means a commercial health insurance carrier, health maintenance organization, preferred provider organization or other qualified entity designated by the City to provide benefits under the Plan.

(16) Major Life Event Changes means marriage, birth of a child, legal adoption, legal separation, divorce, legal guardianship, death, or marriage of a Dependent child.

(17) Participant means an Employee who meets the following requirements:

- (a) Who is an Employee or officer of the City except as provided in subparagraph (c), and whose participation has not terminated under other applicable provisions of the Plan.

- (b) Who is an Employee granted health coverage under a separation agreement, settlement or court order.
- (c) No person shall be considered a Participant of the Plan who:
 - 1) Is a member of the Ann Arbor City Council.
 - 2) Is compensated for services to the City on a fee or contractual basis.
 - 3) Received an average of less than \$400.00 per year for 3 consecutive years.
 - 4) Is employed as a school crossing guard.
 - 5) Is employed on a temporary, seasonal, casual, or contractual basis, or a permanent part-time employee working fewer than twenty (20) hours per week.
 - 6) Is the city administrator, police chief, or mayor's secretary and has elected not to be a member of the retirement system, unless the respective individual has a contractual agreement with the City for the provision of health benefits at retirement.

In all cases of doubt, the Trustees shall decide who is a participant within the meaning of the provisions of this Plan and Trust provided such decision is consistent with the City personnel rules and regulations and/or Collective Bargaining Agreements.

(18) Plan means the Retiree Health Care Benefits Plan of the City as described in this document and any subsequent amendments, and any insurance agreement(s), Collective Bargaining Agreements, or other applicable insurance policy documents incorporated by reference into the Plan. A description of the health and life benefits provided to Retirees, Spouses and Dependents under this Plan is maintained by the Plan Administrator. The Plan is the Plan provided for in Part B of this chapter.

(19) Plan Administrator means the person, persons, firm, corporation or insurance company or companies, appointed by the City to administer the Plan. The Plan Administrator shall be responsible for the day to day operations of the Plan who shall carry out the directives of the City.

(20) Qualified Beneficiary means any person satisfying the benefit eligibility requirements of the Plan and shall be in accordance with the resolutions and decisions of the Trustees, so long as the right of any such persons to participate and/or to be eligible for benefits from the Plan is not prohibited by the insurance laws and regulations of the State of Michigan, the United States Internal Revenue Code, any applicable federal law, and the rules, regulations and court decisions governing those statutes.

(21) Plan year means the period commencing on July 1 and ending on June 30 of each year.

(22) Retiree means:

(a) a Subsidized Retiree or Non-Subsidized Retiree (as described in subparagraphs (b) and (c) below) who retired from employment with the City and is receiving a retirement benefit allowance from the City of Ann Arbor Employees' Retirement System, but shall not include:

- (i) any individual with less than five (5) years of service (as defined under the Retirement Plan) as a participant, unless specifically stipulated in the Retirement Plan; or
- (ii) any individual receiving a retirement benefit allowance as a deferred Retiree under the Retirement Plan,

(b) Subsidized Retiree means an individual:

- (i) who is considered a Retiree actively receiving coverage under the Plan as of July 1, 2011;
- (ii) whose employment is covered under a collective bargaining agreement and retires from employment with the City receiving a retirement benefit allowance from the Retirement Plan; or

(iii) who is actively employed in a non-union position with the City on June 30,

2011, and thereafter retires from employment with the City receiving a retirement benefit allowance from the Retirement Plan.

In no event shall a Subsidized Retiree include any individual who is hired or reemployed into a non-union position with the City on or after July 1, 2011 (unless such individual is a Subsidized Retiree covered by this Plan as of his/her date of reemployment with the City).

(c) Non-Subsidized Retiree means an individual who is hired or reemployed into a non-union position with the City on or after July 1, 2011 (unless such individual is a Retiree covered by this Plan as of his/her date of reemployment with the City).

(23) Retirement Plan means the City of Ann Arbor Employees' Retirement System, as provided in Chapter 18, Title I of the Ann Arbor City Code, as amended.

(24) Sponsored Dependent means an individual not eligible as a family Dependent who is related to the Retiree by blood, marriage, or legal adoption and who is a member of the Retiree's household and receives over half of his or her support from the Retiree or surviving Spouse in accordance with the United States Internal Revenue Code's definition of "Dependent."

(25) Spouse means a Participant's or Retiree's Spouse by legal marriage provided that in the case of a surviving Spouse such marriage status exists on the Participant's or Retiree's date of death.

(26) Trust means the declaration of Trust of the City of Ann Arbor Health Care Benefits Plan as provided for in Part C of this chapter.

(27) Trust Administrator means the person, persons, firm, corporation or insurance company or companies, appointed by the Trustees to administer the Trust. The Trust Administrator shall be responsible for the day to day operations of the Trust and who shall carry out the directives of the Trustees.

(28) Trustee(s) means the Retiree health care Board of Trustees or a member of the Retiree

Health Care Board of Trustees of the Trust as provided for in this Part C of this chapter.

Section 4: That Section 1:717 of Chapter 21, Retiree Health Care Benefits Plan and Trust, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

1:717. Eligibility.

In order to be eligible for post-retirement health care benefits during any Plan Year, an individual must:

- (1) be a Retiree of the City who on the date of retirement from the City elects to receive coverage from the Plan; and
- (2) have been a Participant of this Plan, or
- (3) be a Spouse of an individual who meets the eligibility requirements above, provided that the Spouse remains legally married to the Participant/Retiree during the Participant's/Retiree's lifetime and that, in the case of a surviving Spouse, the Retiree had either:
 - (a) a contractual agreement with the City to provide health benefits at retirement which included the right to name a beneficiary, or
 - (b) elected an Option II or Option III form of retirement and nominated his or her surviving Spouse as beneficiary of the option benefit (the surviving Spouse benefit shall not terminate upon remarriage; however coverage shall not extend to the surviving Spouse's successive Spouse and/or Dependents); or
- (4) be a Child-Dependent of an individual who meets the eligibility requirements above; and in the event of the Retiree's death, the Retiree had either
 - (a) a contractual agreement with the City to provide health benefits at retirement which included the right to name a beneficiary, or

(b) elected an Option II or Option III form of retirement, and there is a surviving Spouse or surviving Dependent as named beneficiary; or

(5) be a Sponsored Dependent of an individual who meets the eligibility requirements above, provided that the Retiree bears the cost during Retiree's lifetime and that, in the event of the Retiree's death, the Retiree had either

(a) a contractual agreement with the City to provide health benefits at retirement which included the right to name a beneficiary and there is a surviving named beneficiary, or

(b) elected an Option II or Option III form of retirement and there is a surviving named beneficiary and the cost is not born by the Plan and Trust; or

(6) be a Family Dependent of an individual who meets the eligibility requirements above, provided that the Retiree bears the cost during Retiree's lifetime and that, in the event of Retiree's death, the Retiree had either

(a) a contractual agreement with the City to provide health benefits at retirement which included the right to name a beneficiary and there is a surviving named beneficiary, or

(b) elected an Option II or Option III form of retirement and there is a surviving named beneficiary and the cost is not borne by the Plan and Trust; or

(7) be a Domestic Partner of an individual who meets the eligibility requirements above, subject to the provisions of the City Code, City Council resolutions and/or Collective Bargaining Agreement(s); or

(8) be the surviving Spouse, Child-Dependent, or Domestic Partner of a former Participant, who on the date preceding the individual's date of death, was an employee; provided, the surviving Spouse, Child-Dependent, or Domestic Partner is eligible for duty death and/or non-duty death benefits payable from the Retirement Plan; or

- (9) be an individual granted health coverage under a settlement agreement between the City and the individual; or
- (10) be an individual granted health coverage under a court order, provided
 - (a) that the individual produces satisfactory documentation at the time of application for benefits, and
 - (b) that the City reserves the right to challenge the validity of the court order and that if such a challenge proves successful that the cost of any benefits provided be reimbursable to the Trust; or
- (11) be a Retiree, Retiree's Spouse or Child-Dependent who was in receipt of benefits at the time of the effective date of this Plan.

Notwithstanding anything to the contrary in Chapter 21 or other chapters of the City's Ordinance, a Non-Subsidized Retiree may voluntarily elect coverage under the Plan upon becoming eligible to participate, provided that he/she shall bear the entire premium or contribution cost (without any subsidy from the City) for his/her coverage (and his/her eligible Dependents' coverage) under the Plan, which costs are determined by the City.

Section 5: That Section 1:723 of Chapter 21, Retiree Health Care Benefits Plan and Trust, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

Section 1.723. Health care benefits, general.

Beginning on the effective date, the City shall provide health care benefits to each eligible Retiree and, if elected, to his or her eligible Dependents. The benefits provided under the Plan are those set forth in the Plan and/or insurance agreement, Collective Bargaining Agreements and the City personnel rules and regulations. The insurance agreement(s), Collective Bargaining Agreements and City personnel rules and regulations are incorporated herein by this reference. A complete description of benefits provided under the Plan, inclusive of those set forth in the Collective Bargaining Agreements and City personnel rules and regulations, shall be maintained by the City or the Plan Administrator.

In accordance with the Plan and/or insurance agreement with the insurance carrier and subject to

Sections 1:707 and 1:720, Subsidized Retirees and their eligible Dependents will be entitled to the benefits in effect at the time of the Subsidized Retiree's retirement ("Base Plan"). These benefits may be provided under the same policy or program in place at the Subsidized Retiree's retirement or under a substantially equivalent policy or program at the discretion of the City. All Subsidized Retirees, and/or eligible Dependents who were in receipt of retiree health care benefits at the time of enactment of this Plan and Trust shall continue to be eligible for the same benefits.

In accordance with the Plan and/or insurance agreement with the insurance carrier and subject to Sections 1:707 and 1:720, Non-Subsidized Retirees may voluntarily enroll themselves and their eligible Dependents for coverage under this Plan when they first become eligible for retiree coverage pursuant to Section 1:717; such enrollment must be accomplished in the manner and by the deadline established by the Plan Administrator and the terms of the Plan. Non-Subsidized Retirees will be solely responsible to pay for their (and their eligible Dependents) premium or contribution cost of coverage under the Plan. The City will not subsidize or pay for a Non-Subsidized Retiree's cost of such voluntarily elected coverage (provided, however, that a Non-Subsidized Retiree could use a retiree health reimbursement account balance, to the extent one is available and as permitted by law, to pay for his/her cost of coverage under the Plan).

Section 6: That Section 1:724 of Chapter 21, Retiree Health Care Benefits Plan and Trust, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

Section 1:724. Alternative policies or programs.

The City, in its discretion, in addition to the Base Plan, may offer alternative policies or benefit structures to Participants, Retirees, Spouses and/or Dependents. Participants or Retirees and their Spouses and/or Dependents may transfer from one policy or benefit structure to another policy or benefit structure during open enrollment periods. However, any additional cost above the Base Plan shall be borne by the Participant or Subsidized Retiree or the Participant's or Subsidized Retiree's Spouse and/or Dependents (Non-Subsidized Retirees bear the entire cost of the Base Plan or any alternative policies or benefit structures made available to them and voluntarily elected by them and/or their eligible Dependents).

Section 7: That Section 1:747 of Chapter 21, Retiree Health Care Benefits Plan and Trust, of Title I of the Code of the City of Ann Arbor be amended to read as follows:

1:747. Funding.

(1) For the purpose of creating and maintaining a fund for the payment of health care benefits payable as

provided in this chapter, the City, subject to 1:747(2), shall be required to pay to the Trust an amount consistent with the actuarial valuations and calculations made by the actuary for the Trust to result in a prefunded Plan. Such contributions shall also be made in accordance with any Collective Bargaining Agreements between the Collective Bargaining Associations and the City and this Trust, and such other regulations of the Board of Trustees as are not inconsistent with the authority stated in this chapter.

- (2) The source of City contributions to the Trust shall be appropriations from the pension and benefit levy authorized by City charter. Unless, by actuarial determination, it is satisfactorily established that a lesser percentage is needed, the City shall cause the pension and benefit levy to be set at the maximum allowable levy subject to any tax limitation imposed upon tax rates by City Charter or by state law until the Trust is fully funded. The contribution paid over to the Trust shall be the balance of the levy, after deduction of the City's pension reserve obligation and the payment of social security contributions. Qualified beneficiaries (including Subsidized and Non-Subsidized Retirees and/or their eligible Dependents) shall contribute those amounts required for additional or voluntary coverage under the Plan as optioned by such Qualified Beneficiaries .
- (3) Subject to the tax provisions of the City Charter and state law, the Trustees may, to the extent matters are not set forth in the Trust, in their discretion decide the manner and means of payments, the procedures to be followed in making the payments, and the forms required to accompany the payments to the Trustees. Upon determination by the Trustees of these matters, the Trustees shall provide written notice to the City and to the Collective Bargaining Associations and require payments by the City to be made pursuant to the rules and regulations of the Trust.
- (4) Time is of the essence in making and processing all payments to the Trust. The parties recognize that the regular and timely payments of contributions are essential to the operation of the Trust and the providing of benefits under various insurance programs.

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 August 4, 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 August 11, 2011.

Jacqueline Beaudry, City Clerk