

**CITY OF POMPANO BEACH
Broward County, Florida**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 34, "CITY POLICY," OF THE POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 34.010, "DEFINITIONS," SECTION 34.012, "BOARD OF TRUSTEES," SECTION 34.026, "OPTIONAL FORMS OF RETIREMENT BENEFITS," SECTION 34.0261 "REQUIRED DISTRIBUTION OF BENEFITS," SECTION 34.0262, "ROLLOVER DISTRIBUTIONS TO ELIGIBLE RETIREMENT PLANS," SECTION 34.039, "MAXIMUM PENSION," AND SECTION 34.040, "COMPLIANCE WITH INTERNAL REVENUE CODE," TO UPDATE AND REFLECT THE TAX COMPLIANCE LANGUAGE, TO PROVIDE DETAILS REQUIRED BY THE INTERNAL REVENUE SERVICE AND INDICATING OPTIONAL PROVISIONS APPLYING; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pompano Beach has established a retirement plan for its general employees, which is codified in Sections 34.010 through 34.040 of the City Code of Ordinances; and

WHEREAS, recent changes to Federal laws and regulations require that various amendments be made to the Plan in order to maintain its status as a qualified plan under Section 401(a) of the Internal Revenue Code; and

WHEREAS, the City Commission has received and reviewed an actuarial impact statement from the Retirement Board's actuary relating to the amendments set forth herein; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 34.010, "Definitions," of Chapter 34, "City Policy," shall be amended as follows:

GENERAL EMPLOYEES' RETIREMENT SYSTEM.

§ 34.010 DEFINITIONS.

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

...

AVERAGE MONTHLY EARNINGS. One thirty-sixth of the earnings paid for the highest completed 78 bi-weekly pay periods preceding the actual retirement or termination date of a member times 1.0048. Compensation in excess of limitations set forth in Section 401(a)(17) of the Internal Revenue Code (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code) shall be disregarded. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

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SECTION 2. That Section 34.012, "Board of Trustees," of Chapter 34, "City Policy," shall be amended by adding a new paragraph (C) at the end thereof as follows:

§ 34.012 BOARD OF TRUSTEES.

...

(C) Effective as of January 1, 1989, the Board of Trustees may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

SECTION 3. That Section 34.026, “Optional Forms of Retirement Benefits,” of Chapter

34, “City Policy,” shall be amended as follows:

§ 34.026 OPTIONAL FORMS OF RETIREMENT BENEFITS.

...

(D) *Required Distribution of Benefits.* The entire interest of an employee a member shall be required to be distributed pursuant to § 34.0261 of this code. ~~no later than the required beginning date, or beginning no later than the required beginning date over the life of the employee, the lives of the employee and a designated beneficiary, a period not extending beyond the life expectancy of the employee, or a period not extending beyond the life expectancy of the employee and a designated beneficiary.~~ The required beginning date is April 1 of the calendar year following the calendar year in which the employee reaches age 70½ for all plan participants. ~~A designated beneficiary is any individual designated as a beneficiary by the employee.~~ The actuarial assumption which shall be used for calculation purposes under this plan shall be: 1971 Group Annuity Mortality Tables for Males at 7% interest.

...

SECTION 4. That Section 34.0261, “Required Distribution of Benefits,” of Chapter 34,

“City Policy,” shall be amended as follows:

§ 34.0261 REQUIRED DISTRIBUTION OF BENEFITS.

~~The entire interest of an employee shall be distributed no later than the required beginning date, or beginning no later than the required beginning date, over the life of the employee, the lives of the employee and a designated beneficiary, a period not extending beyond the life expectancy of the employee, or a period not extending beyond the life expectancy of the employee and a designated beneficiary. For all plan participants, the “required beginning date” is April 1 of the calendar year following the calendar year in which the employee reaches age 70½ or retires, if later. A “designated beneficiary” is any individual designated as a beneficiary by the employee.~~

Notwithstanding any other provision of this plan to the contrary, the plan shall pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The plan is subject to the following conditions:

(A) If any retirement income is payable before the member's death:

(1) It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70½) years or the calendar year in which he retires.

(2) The distribution shall commence not later than the calendar year defined in subsection (A) above and (i) shall be paid over the life of the member or over the lifetimes of the member and his designated beneficiary, or (ii) shall be paid over the period extending not beyond the life expectancy of the member or the life expectancies of the member and his designated beneficiary.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before his entire interest in the plan has been distributed, the remaining portion of such interest in the plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.

(B) If the member's death occurs before the distribution of his interest in the plan has commenced, his entire interest in the plan shall be distributed within five (5) years of his death, unless it is to be distributed in accordance with the following rules:

(1) If the member's surviving spouse is the sole designated beneficiary, the member's remaining interest in the plan is distributed or begins to be distributed by December 31 of the calendar year immediately following the calendar year in which the member died or by December 31 of the calendar year in which the participant would have attained age 70½, if later, and if the surviving spouse dies before the distribution to the surviving spouse begins, this section shall be applied as if the surviving spouse were the plan member; or

(2) If the member's surviving spouse is not the sole designated beneficiary, the member's remaining interest is to be distributed over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary; and such distribution begins no later than December 31 of the calendar year immediately following the calendar year of the member's death.

(C) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

(D) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five percent (25%) of the cost for all of the members' benefits received from the plan.

(E) Notwithstanding the other provisions of the plan or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

SECTION 5. That Section 34.0262, “Rollover Distributions to Eligible Retirement Plans,” of Chapter 34 “City Policy,” shall be amended as follows:

§ 34.0262 ROLLOVER DISTRIBUTIONS TO ELIGIBLE RETIREMENT PLANS.

(A) This section applies to distributions made on or after January 1, ~~2002~~ 1993. Notwithstanding any provision of the system 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 plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(B) *Definitions.*

(1) ***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: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee ~~of~~ or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code (“IRC”); and the portion of any distribution that is not includible in gross income. Effective January 1, 2002, ~~Any~~ portion of any distribution which would be includible in gross income will be an eligible rollover distribution if the distribution is made to (i) an individual retirement account described in IRC Section 408(a), to an individual retirement annuity described in IRC Section 408(b) or to a qualified contribution plan described in IRC Section 401(a); (ii) on or after January 1, 2007, to a qualified defined benefit plan described in IRC Section 401(a) or to an annuity contract described in IRC Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), 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; or (iii) on or after January 1, 2008, to a Roth IRA described in IRC Section 408A, or annuity described in section 408(a) or 408(b) of the Internal Revenue Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Internal Revenue Code 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.~~

(2) ***ELIGIBLE RETIREMENT PLAN.*** An eligible retirement plan is (i) an individual retirement account described in section 408(a) of the Internal Revenue Code IRC, (ii) an individual retirement annuity plan described in section 408(b) of the Internal Revenue Code IRC, an annuity plan described in section 403(a) of the ~~Internal Revenue Code IRC,~~ (iv) a qualified trust described in section 401(a) of the IRC, (v) effective January 1, 2002, an eligible deferred compensation plan described in section 457(b) of the Internal Revenue Code IRC, IRC which is maintained by an eligible employer described in section 457(e)(1)(A) of the Internal Revenue Code IRC, and which agrees to separately account for amounts transferred into such plan from this plan, (vi) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code IRC, and (vii) effective January 1, 2008, a Roth IRA described in Section 408A of the IRC, or a qualified trust described in section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. Effective January 1, 2002, this definition shall apply in the case of an eligible distribution to the surviving spouse.

(3) ***DISTRIBUTEES.*** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse are distributees with regard to the interest of the spouse. Effective January 1, 2009, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the IRC. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(4) ***DIRECT ROLLOVER.*** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(C) Rollovers or transfers into the Fund. On or after January 1, 2002, the Plan will accept, solely for the purpose of purchasing continuous service if the purchase of continuous service is allowed, permissible member requested transfers of funds from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:

(1) Transfers or direct rollovers or member rollover contributions from other plans. The Plan will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the ~~Code~~ IRC, from an annuity contract described in section 403(b) of the ~~Code~~ IRC or from an eligible plan under section 457(b) of the ~~Code~~ IRC 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 Plan will also accept legally permissible member requested transfers of funds from other retirement or pension plans.

(2) Member rollover contributions from IRAs. The Plan will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the ~~Code~~ IRC that is eligible to be rolled over and would otherwise be includible in gross income.

SECTION 6. Section 34.039, "Maximum Pension," of Chapter 34, "City Policy," is

hereby amended as follows:

§ 34.039 MAXIMUM PENSION.

~~Effective January 1, 2002, the maximum pension payments of the Plan will in all respects comply with section 415 of the Internal Revenue Code, and the regulations promulgated thereunder.~~

(A) Basic limitation. Notwithstanding any other provisions of the plan to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the IRC for a qualified pension plan.

(B) Participation in other qualified plans: aggregation of limits.

(1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the IRC maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the IRC maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.

(C) *Basic 415(b) limitation.* Subject to the adjustments hereinafter set forth, the maximum amount of annual benefit payable with respect to a member under this plan shall not exceed one hundred sixty thousand dollars (\$160,000.00). For purposes of applying this limitation, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the IRC) and to rollover contributions (as defined in Section 415(b)(2)(A) of the IRC). The "benefit attributable" shall be determined in accordance with Treasury Regulations. For purposes of this section, the following benefits shall not be taken into account:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under Section 415(b)(2) of the IRC and Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the IRC.

(D) *Adjustments to basic 415(b) limitation for form of benefit.* If the benefit under the plan is other than the annual benefit specified in subsection (C) above, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the IRC limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the IRC does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(a) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or

(b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present

value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the IRC (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the IRC); or

(3) For a benefit paid in a form to which Section 417(e)(3) of the IRC applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the IRC limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions:

(a) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(b) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the IRC (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the IRC); or

(c) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate the in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the IRC (Notice 2008-85 or any subsequent Internal

Revenue Service guidance implementing Section 417(e)(3)(B) of the IRC, divided by 1.05.

(E) *Other adjustments in limitations.*

(1) In the event the member's retirement benefits become payable before age sixty-two (62), the one hundred sixty thousand dollar (\$160,000.00) limitation prescribed by this section shall be reduced in accordance with regulations issued by the secretary of the treasury pursuant to the provisions of Section 415(b) of the IRC, so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000.00) annual benefit beginning at age sixty-two (62).

(2) The reductions provided for in (E)(1) above shall not be applicable to disability benefits or pre-retirement death benefits.

(3) The reductions provided for in (E)(1) above shall not be applicable in the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service.

(4) The reductions provided for in (E)(1) above shall be applied separately with each change in the benefit structure to the extent provided for in treasury regulations.

(F) *Less than ten years of service.* The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of credited service with the city shall be the amount determined under subsection (C) of this section multiplied by a fraction, the numerator of which is the number of the member's years of credited service (but no less than one (1)) and the denominator of which is ten (10). The reduction provided for in this subsection shall not be applicable to disability benefits or pre-retirement death benefits.

(G) *Ten thousand dollar limit.* Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the limitations set forth in this section if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the city contributes, do not exceed ten thousand dollars (\$10,000.00) for the applicable plan year and for any prior plan year and the city has not at any time maintained a qualified defined contribution plan in which the member participated.

(H) *Effect of COLA without a Lump Sum Component on 415(b) Testing.* Effective on and after January 1, 2009, for purposes of applying the

limits under Section 415(b) of the IRC (the "Limit") to a member with no lump sum benefit, the following will apply:

(1) a member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under § 34.038 of the code;

(2) to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under § 34.038 of the code, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the IRC dollar limit under Section 415(d) of the IRC, and the regulations thereunder.

(I) *Effect of COLA with a Lump Sum Component on 415(b) Testing.* On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the IRC and applicable Treasury Regulations.

(J) *Section 415(c) limitations on contributions and other additions.* After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to Section 415(d) of the IRC) or 100% of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the IRC and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the IRC shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the IRC and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the

IRC and will be determined without regard to any rules under Section 3401(a) of the IRC that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the IRC).

(a) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the IRC. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the IRC.

(b) For limitation years beginning on and after January 1, 2008, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

1. the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

2. the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

3. payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in this paragraph are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the IRC) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

An employee who is in qualified military service (within the meaning of Section 414(u)(1) of the IRC) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(c) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2008, a member's compensation for purposes of this subsection shall not exceed the annual limit under Section 401(a)(17) of the IRC.

(K) Service purchases under section 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the IRC will be treated as met only if:

(1) the requirements of Section 415(b) of the IRC are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the IRC, or

(2) the requirements of Section 415(c) of the IRC are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the IRC.

(3) For purposes of applying this section, the plan will not fail to meet the reduced limit under Section 415(b)(2)(C) of the IRC solely by reason of this subsection and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the IRC solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit—

(a) recognized by the plan for purposes of calculating a member's benefit under the plan,

(b) which such member has not received under the plan, and

(c) which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (b), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the plan.

(5) The plan will fail to meet the requirements of this section if---

(a) more than five (5) years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(b) any nonqualified service credit is taken into account under this paragraph before the member has at least five (5) years of participation under the plan.

(6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to---

(a) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the IRC),

(b) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (a)) of an education organization described in Section 170(b)(1)(A)(ii) of the IRC which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(c) service as an employee of an association of employees who are described in clause a., or

(d) military service (other than qualified military service under Section 414(u) of the IRC) recognized by the plan.

In the case of service described in clause (a), (b), or (c), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the IRC or Section 457(e)(17)(A) of the IRC applies (without regard to whether the transfer is made between plans maintained by the same employer)—

(a) the limitations of paragraph (5) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(b) the distribution rules applicable under federal law to the plan will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible member, the limitation of Section 415(c)(1) of the IRC shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the plan before January 1, 1998.

(L) *Modification of contributions for 415(c) and 415(n) purposes.* Notwithstanding any other provision of law to the contrary, the plan may modify a request by a member to make a contribution to the plan if the amount of the contribution would exceed the limits provided in Section 415 of the IRC by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the plan may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the IRC.

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the IRC, the plan may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(M) *Repayments of Cashouts.* Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another

governmental plan maintained by the city shall not be taken into account for purposes of Section 415 of the IRC, in accordance with applicable Treasury Regulations.

(N) *Reduction of benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such member.

(O) *Cost-of-living adjustments.* The limitations as stated in subsections (A), (B), (D) and (F) herein shall be adjusted to the time payment of a benefit begins in accordance with any cost-of-living adjustments prescribed by the secretary of the treasury pursuant to Section 415(d) of the IRC.

SECTION 7. Section 34.040, "Compliance with Internal Revenue Code," of Chapter 34,

"City Code," is hereby amended as follows:

§ 34.040 COMPLIANCE WITH INTERNAL REVENUE CODE.

~~Notwithstanding any other provision of this Plan, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with section 414(u) of the Internal Revenue Code.~~

(A) All references to the Internal Revenue Code or IRC mean the Internal Revenue Code of 1986, as amended. This plan is expressly subject to the condition that the Internal Revenue Service shall issue a favorable determination letter to the effect that the plan continues to meet the requirements of the Federal Internal Revenue Code and regulations issued thereunder with respect to employee's trusts.

(B) Notwithstanding any other provision of this Plan, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with section 414(u) of the Internal Revenue Code.

(C) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in

chapter 43 of title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in the plan, are entitled to any additional benefits that the plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.


(D) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in chapter 43 of title 38, United States Code)) from the city shall be treated as employed by the city, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

SECTION 8. If any provision of this Ordinance or the application thereto to any person or circumstances is held invalid, such invalidity shall not affect any provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 9. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 8th day of June, 2010.

PASSED SECOND READING this 22nd day of June, 2010.



LAMAR FISHER, MAYOR

ATTEST:



MARY L. CHAMBERS, CITY CLERK

GBL/jrm
5/21/10 (egr)
L:ord/ch34/2010-227