

## EMPLOYEE'S RETIREMENT SYSTEM INDEX

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## Chapter 40 Employee's Retirement System<sup>1</sup>

### Sec. 40-1. Retirement system continued; effective date.

The City of St. Joseph Employee's Retirement System, established by ordinance adopted June 14, 1948, and amended February 6, 1956; August 15, 1960; December 10, 1962; July 20, 1970; July 19, 1971; March 13, 1972; July 1, 1977; September 11, 1978; January 24, 1983; May 23, 1984; August 6, 1984; October 8, 1984; January 7, 1985; February 11, 1985; March 4, 1985; October 12, 1987; January 11, 1988; June 11, 1990; August 27, 1990; January 7, 1991; February 4, 1991; October 14, 1991; June 7, 1993; January 9, 1995; March 3, 1997; August 18, 1997; August 30, 1999; January 10, 2000; June 18, 2001; May 21, 2002, March 8, 2010; June 6, 2011; February 27, 2012; and January 7, 2013 is amended as follows. The effective date of the Retirement System remains July 1, 1948.

This restatement will apply to individuals employed by the city on and after the effective date of the restatement. The retirement rights of an individual whose city employment terminated before the effective date of this restatement will be governed by the provisions of the retirement system in effect on the date the individual last terminated employment.

(Ord. of 1-11-21(3))

### Sec. 40-2. Definitions.

The following words and phrases used in this chapter, unless a different meaning is clearly indicated by the context, shall have the following meanings:

*Accumulated contributions* means the sum of all amounts deducted from the compensation of a member and credited to the member's individual account in the members savings fund, together with regular interest thereon.

*City* means the City of St. Joseph.

*Beneficiary* means any person, except a retirant, who is in receipt of, or who is designated to receive, a pension or other benefit payable by the retirement system.

*Board* means the board of trustees provided in this chapter.

*Commission* means the Commission of the City of St. Joseph.

*Compensation* means a member's salary or wages paid by the city for personal services rendered by the member to the city, including base pay, shift differential, longevity pay and pay in lieu of holidays, but excluding overtime pay, allowances for clothing, food and equipment, and all lump sum payments made by the city pursuant to the provisions of a sick-leave, vacation-leave or compensatory time program. In case a member's compensation is not all paid in money, the city manager shall fix the value of the portion of the member's compensation which is not paid in money. Compensation shall be determined in accordance with the applicable collective bargaining agreement or other employment agreement, if any, or city personnel policies if there is no other agreement.

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<sup>1</sup>Editor's note(s)—Ord. of 1-11-21(3) repealed the former Ch. 40, §§ 40-1—40-4, 40-6—40-16, 40-18—40-45, and enacted a new Ch. 40 as set out herein. The former Ch. 40 pertained to similar subject matter and derived from Ord. of 3-12-12(1); Ord. of 3-12-12(2); and Ord. of 1-7-13.

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*Credited service* means the service credited a member as provided in this chapter.

*Employee*, for the purpose of the retirement system, means any person in the employ of the city whose services are compensated by the city. The term "employee" shall include officers of the city.

*Final average compensation* means the average of the last three consecutive years of annual compensation received by a member for credited service immediately preceding the date the member's employment by the city last terminates. If the member has less than three years of credited service, the member's final average compensation shall be the average of the member's compensation for the member's total period of service. Final average compensation shall be calculated in accordance with the applicable collective bargaining agreement or other employment agreement, if any, or city personnel policies if there is no other agreement. For purposes of calculating final average compensation the term "year" shall mean the period corresponding back from the member's effective retirement/separation date. In the event the member's periods of service immediately preceding the member's effective retirement/separation date do not result in the highest final average compensation, the member's benefits will be calculated based upon a calendar year basis. The periods of time to be used for final average compensation shall be consecutive. Compensation shall be credited to the period in which it is paid; however, retroactive pay, if any, shall be credited to the period(s) in which it would have been paid/earned and not to the period in which the lump sum payment is received.

*Final compensation* means a member's annual rate of compensation at the time the member's city employment last terminates.

*Fire member or firefighter* means any employee in the fire department of the city who holds the rank of firefighter, including probationary firefighter, or higher rank. The term "fire member" or "firefighter" shall not include (1) any person who is privately employed as a firefighter, nor (2) any person who is temporarily employed as a firefighter, nor (3) any civilian employee in the fire department.

*General member* means any member except a public safety or fire member.

*Insurable interest* means reasonable basis, founded on the relations of the parties, either monetary or contractual or by blood or affinity, supporting the continued life of the member.

*Member* means any person who is included in the membership of the retirement system.

*Pension* means an annual amount payable, in equal monthly installments by the retirement system, throughout the future life of a person, or for a temporary period, as provided in the ordinance.

*Pension reserve* means the present value of all future payments to be made on account of any pension. A pension reserve shall be computed upon the basis of such mortality and other tables of experience, and regular interest as the board shall from time to time adopt.

*Public safety member or public safety officer* means any employee in the public safety department of the city who holds the rank of public safety officer, including probationary public safety officer, or higher rank. This shall include, but not be limited to, eligible members of the St. Joseph Police Officers Association collective bargaining unit and the St. Joseph Command Officers Association collective bargaining unit. The term "public safety member" or "public safety officer" shall not include (1) any person who is privately employed as a public safety officer, nor (2) any person who is temporarily employed as a public safety officer, nor (3) any civilian employee in the public safety department.

*Regular interest* means such rate or rates of interest per annum, compounded annually, as the Board shall from time to time adopt.

*Regular full-time employee* means a permanent employee who is scheduled an average of at least 32 hours per week over a calendar year or over the 365 days corresponding back from the member's hire date.

*Retirant* means any member who retires with a pension payable by the retirement system.

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*Retirement* means a member's withdrawal from city employment with a pension payable by the retirement system.

*Retirement system* or *system* means the City of St. Joseph Employee's Retirement System.

*Service* means personal service rendered to the city by an employee of the city.

*Voluntary retirement age* shall be age 60 years, and voluntary retirement age shall be age 50 years for a public safety or fire member who has acquired 25 or more years of credited service. Voluntary retirement age shall be the age and/or service requirements specifically referenced in the applicable collective bargaining agreement.

*Worker's compensation period* means the period a member, retirant or beneficiary is in receipt of weekly worker's compensation on account of a member's disability or death arising out of and in the course of the member's city employment. If the member is paid a single sum in lieu of the member's future worker's compensation, the member's "worker's compensation period" shall be the sum of the period, if any, the member was in receipt of weekly worker's compensation plus the period arrived at by dividing that single sum by the member's weekly worker's compensation award. In the absence of a weekly worker's compensation award, the award, for the purpose of this definition, shall be considered to be one-half of one percent of the member's final average compensation. The single sum weekly worker's compensation award shall not include attorney fees, amounts specifically allocated for past, present, and future medical expenses, and statutory redemption fees.

(Ord. of 1-11-21(3))

### **Sec. 40-3. Management of retirement system.**

The general administration, management and responsibility for the proper operation of the retirement system and for construing and making effective the provisions of this chapter are vested in a board of trustees.

The board of trustees is a quasi-judicial body and shall be the trustees of the retirement system. In exercising its authority, the board of trustees shall exercise the care, skill, prudence and diligence under the circumstances then prevailing, that a person of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character with like aims.

The board of trustees shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the retirement ordinance including, in addition to any specific powers provided for in the retirement ordinance, but without limiting the generality of the foregoing, the power:

- (1) To administer the retirement ordinance, including the management of the retirement ordinance and making effective the provisions of the retirement ordinance.
- (2) To administer oaths.
- (3) To create and maintain records.
- (4) To issue subpoenas and compel the production of evidence and attendance of witnesses in connection with any hearings or proceedings of the board of trustees.
- (5) To make and adopt such reasonable rules and regulations as may be necessary or convenient to carry out the duties of the board of trustees and activities of the retirement system, including any rules and regulations necessary to preserve the status of the retirement system as a qualified pension plan under the provisions of the Internal Revenue Code of the United States, as amended, or under successor or related provisions of law.
- (6) To designate committees and to designate committee participants, including individuals who may not be participants in the retirement system.

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- (7) To employ such personnel and other services as are necessary to comply with the provisions of the retirement ordinance.
  - (8) To pay the expenses of operating the retirement system from the assets of the retirement system, to the extent such expenses are not paid directly by the city.
  - (9) To determine who is a member within the meaning of the provisions of the retirement ordinance. To adopt the actuarial assumption of the retirement system in consultation with its actuary.

(Ord. of 1-11-21(3))

#### **Sec. 40-4. Board membership.**

- (a) The board of trustees shall consist of five trustees, as follows:
  - (1) A city commissioner to be selected by the commission, to serve at the pleasure of the commission.
  - (2) The city manager, to serve by virtue of the position.
  - (3) A citizen who is an elector of the city and who is not a member, retirant or beneficiary of the retirement system, to be appointed by the commission.
  - (4) A public safety or fire member to be elected by the public safety and fire members.
  - (5) A general member to be elected by the general members.
- (b) The public safety or fire member trustee and the general member trustee shall be elected under such rules and regulations as the board shall from time to time adopt.

(Ord. of 1-11-21(3))

#### **Sec. 40-5. Reserved.**

#### **Sec. 40-6. Trustee's term of office; compensation; oath of office.**

- (a) The term of office of the citizen trustee, public safety or fire member trustee, and general member trustee, shall be three years, one such term to expire September 30 of each year.
- (b) The trustees shall serve without additional compensation for their services as trustees. The trustee shall be reimbursed for necessary and reasonable travel expenses and employee members shall suffer no loss of compensation in fulfilling their duties as a trustee.
- (c) Before assuming the duties of trustee, each trustee shall qualify by taking an oath of office to be administered by the city clerk.
- (d) To the extent authorized or permitted by law, the board of trustees shall be indemnified and held harmless by the city against any and all liabilities, including legal fees and expenses, arising out of any act or omission made in good faith pursuant to the provisions of the plan, other than a willful failure to discharge fiduciary obligations of which a board member is aware. There shall be no indemnification where a board member is judicially determined to have incurred liability due to fraud, gross negligence, or malfeasance in the exercise and performance of the board member's duties.

(Ord. of 1-11-21(3))

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#### **Sec. 40-7. Vacancy on board.**

In the event any trustee, except the appointed citizen trustee, ceases to be employed by the city, or if any trustee, except the city manager, fails to attend scheduled meetings of the board for three consecutive meetings, the trustee shall be considered to have resigned from the board and the board shall, by resolution, declare that office of trustee vacated as of the date of adoption of such resolution. A trustee may be removed from office in accordance with Public Act 314 of 1965, as amended.

(Ord. of 1-11-21(3))

#### **Sec. 40-8. Filling vacancy on board.**

Any vacancy occurring in the office of trustee shall be filled, within 90 days after the date the vacancy occurred, for the unexpired portion of the term in the same manner as the office was previously filled.

(Ord. of 1-11-21(3))

#### **Sec. 40-9. Board meetings; quorum; trustee's vote.**

- (a) The board shall hold meetings regularly, at least once in each three months, and shall designate the time and place thereof. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be open to the public.
- (b) Three attending trustees shall constitute a quorum at any meeting of the board. Each trustee shall be entitled to one vote on each question before the board and at least three concurring votes shall be necessary for a decision by the trustees at any meeting of the board.

(Ord. of 1-11-21(3))

#### **Sec. 40-10. Officers of retirement system; employment of services.**

- (a) The board shall elect from its own members a chairperson and a chairperson pro-tem.
- (b) The board shall appoint a secretary, who shall be an employee of the city.
- (c) The board shall appoint as medical director, a physician or an organization of physicians who are not eligible to participate in the retirement system as a member, retirant or beneficiary. The medical director shall be responsible to and shall hold office at the pleasure of the board. The medical director shall arrange for and pass upon all medical examinations required under this chapter, shall investigate all essential statements and certificates of a medical nature submitted in connection with a claim for a disability or duty death pension, and shall report, in writing, to the board their conclusions on medical matters referred to the medical director by the board.
- (d) The director of finance shall be treasurer of the retirement system and shall be the custodian of its assets unless the board of trustees designates a corporate custodian, which shall be a federal or state-chartered bank or trust company.
- (e) The board may employ accounting, actuarial, investment, legal, medical and other services as it shall determine to be necessary in the proper operation of the retirement system.

(Ord. of 1-11-21(3))

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**Sec. 40-11. Records; annual report.**

The secretary shall keep, or cause to be kept, such data as shall be necessary for an actuarial valuation of the assets and liabilities of the retirement system. The board shall annually render a report to the commission showing the fiscal transactions of the system for the year ended the preceding June 30, and a balance sheet showing the financial condition of the system by means of an actuarial valuation of its assets and liabilities.

(Ord. of 1-11-21(3))

**Sec. 40-12. Adoption of experience tables; and regular interest.**

The board shall from time to time adopt such mortality and other tables of experience, and a rate or rates of regular interest, as are necessary in the proper operation of the retirement system.

(Ord. of 1-11-21(3))

**Sec. 40-13. Membership.**

- (a) All persons who are regular full-time employees of the city, and all persons who become regular full-time employees of the city, shall be included in the membership of the retirement system, except as provided in subsection (b) of this section.
- (b) The membership of the retirement system shall not include (1) any person whose service to the city is compensated on a fee basis; nor (2) any independent contractor; nor (3) any regular part-time or temporary employee, provided, that such exclusion shall not remove from membership an employee who was a member of the retirement system prior to February 27, 2012; nor (4) the city manager, provided the individual was not a member of the retirement system at the time of appointment as city manager and the individual's exclusion is agreeable to both the individual and the city commission; nor (5) a retirant of the retirement system; nor (6) any individual who participates in any other pension or retirement system provided by the city, such election shall be irrevocable and shall be binding on the individual and any beneficiary of the individual. Pension or retirement system, as referenced in this section, shall not include an eligible deferred compensation plan provided by the city.
- (c) In any case of doubt as to the status of any employee with respect to membership in the retirement system, the board shall decide the question.

(Ord. of 1-11-21(3))

**Sec. 40-14. Termination of membership.**

Except as is otherwise specifically provided in this chapter, should any member no longer be employed by the city, for any reason except retirement or death, or upon becoming excluded from membership as provided in Section 40-13, the individual shall thereupon cease to be a member and the member's credited service at that time shall be forfeited. In the event the individual is re-employed by the city in a position eligible for retirement system membership, the individual shall again become a member. If re-employment occurs within a period of five years after the date the individual last separated from city membership, the credited service last forfeited by the member shall be restored to the member's credit, provided the member returns to the members savings fund, within 90 days of membership, all amounts withdrawn, together with regular interest from the date of withdrawal to the date of repayment. Upon retirement or death, the individual shall thereupon cease to be a member.

(Ord. of 1-11-21(3))

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**Sec. 40-15. Credited service.**

The service rendered by a member shall be credited by the board in accordance with such rules and regulations, consistent with the provisions of this chapter, as the board shall from time to time adopt. In no case shall less than ten days of service rendered by a member in any calendar month be credited as a month of service; nor shall less than ten months of service rendered by a member in any calendar year be credited as a year of service; nor shall more than one year of service be credited a member for all service rendered in any calendar year.

Members who are in receipt of worker's compensation will be granted service credit for the period during which they are in receipt of workers compensation. No service credit will be earned during any period without pay including unpaid leaves of absence including leaves under FMLA.

(Ord. of 1-11-21(3))

**Sec. 40-16. Military service credit.**

Any member who, while employed by the city, enters any armed service of the United States, and is on active duty in such armed service during time of war or period of compulsory military service, shall have such armed service actually required of the individual credited as city service in the same manner as if the individual had served the city uninterruptedly: Provided, that (1) the individual returns to city employment within one year after the date of termination of such armed service actually required; (2) the individual returns to the members savings fund the amount, if any, withdrawn therefrom at the time the individual entered or while in such armed service, together with regular interest from the date of withdrawal to the date of repayment; and (3) in no case shall more than six years of city service be credited any member for all such armed service rendered. In any case of doubt as to the period to be so credited any member, the board shall have final power to determine such period. During the period of such armed service and until the individual's return to city employment, the individual's contributions to the retirement system shall be suspended and any balance standing to the member's credit in the member's savings fund shall accumulate regular interest. The provisions of this section, as amended, shall not reduce the amount of military service standing to a member's credit as of June 30, 1970.

(Ord. of 1-11-21(3))

**Sec. 40-17. Reserved.****Sec. 40-18. Voluntary retirement.**

Any member who either (1) has attained or attains voluntary retirement age and has 10 or more years of credited service, or (2) acquires 30 or more years of credited service prior to the member's voluntary retirement age, may retire upon written application filed with the board setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, the member desires to be retired. Upon the member's retirement a member shall receive a pension provided in Section 40-20.

(Ord. of 1-11-21(3))

**Sec. 40-19. Compulsory separation from city employment.**

- (a) A public safety or fire member shall be separated from city employment the first day of the calendar month next following the month in which the member attains age 65. A member who is subject to separation from city employment as provided in subsection (a) of this section shall retire upon application to the board of trustees.



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- (b) If, at the time of the member's separation from city employment as provided in this section, and the member has ten or more years of credited service, the member shall be retired and the member shall receive a pension provided in Section 40-20.

(Ord. of 1-11-21(3))

### **Sec. 40-20. Pension.**

- (a) Upon a member's retirement as provided in this chapter, the member's retirement shall be calculated as follows:
- (1) Unless otherwise specified in the applicable collective bargaining agreement or other employment agreement, members shall be paid a straight life pension equal to the number of years, and fraction of a year, of their credited service multiplied by 2.25 percent of their final average compensation with a maximum of 40 years of credited service. For employees hired before February 1, 2010 and retiring on or after January 1, 1997, pension benefits will be increased every July 1 in an amount equal to the percentage increase in the CPI-U (all cities) for the twelve months ending in the March immediately preceding the adjustment date, with the maximum annual percentage increase being two and one-half percent. The first annual adjustment shall occur on the July 1 which is at least six months after the retirement date. Subsequent annual adjustments shall be made each July 1 thereafter based on the amount of the pension benefit being paid immediately prior to the adjustment date. Pension benefits accrued on and after July 1, 2011 shall not be adjusted for the increase described in this section.
  - (2) Prior to the member's retirement, any member may elect to be paid pension under an option provided in Section 40-22 in lieu of a straight life pension.

(Ord. of 1-11-21(3))

#### **Sec. 40-20.1. Terminal payment.**

In the event a retirant dies before the retirant has received in straight life pension payments an aggregate amount equal to the retirant's accumulated contributions standing to the retirant's credit in the members savings fund at the time of retirement, the difference between the retirant's accumulated contributions and the aggregate amount of straight life pension payments received by the retirant shall be paid to such person or persons as the retirant shall have nominated by written designation duly executed and filed with the board. If there be no such designated person surviving the retirant, such difference, if any, shall be paid to the retirant's estate. No benefits shall be paid under this section on account of the death of a retirant if the retirant elected to receive a pension under an option provided in Section 40-22 in lieu of a straight life pension except where the retirant's designated beneficiary is also deceased. In this event, the amount of the employee's standing credit in the member's savings fund shall be paid to the retirant's estate.

(Ord. of 1-11-21(3))

#### **Sec. 40-20.2. Internal Revenue Code limitations—Qualified retirement system.**

If any benefit that is or becomes payable under this plan is in conflict with limitations set by the Internal Revenue Code, the Internal Revenue Code shall govern.

The retirement system is intended and has been administered to be a qualified pension plan under Section 401 of the Internal Revenue Code, as amended, and the trust is an exempt organization under Section 501 of the Internal Revenue Code, as amended. The retirement system is a government plan under IRC 414D and is administered for the exclusive benefit of the plan's member and their beneficiaries. The board of trustees may

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adopt such additional provisions to the retirement system so as to fulfill this intent. The applicable sections of the Internal Revenue Code are contained in the plan as an exhibit which is incorporated by reference. The board of trustees shall at all times administer the retirement system in compliance with the provisions of the Internal Revenue Code which are applicable to public employee retirement plans and are hereby incorporated by reference.

(Ord. of 1-11-21(3))

#### **Sec. 40-21. Deferred retirement.**

In the event a member who has ten or more years of credited service leaves city employment prior to attaining voluntary retirement age, for any reason except retirement or death, the former member shall be entitled to a pension provided in Section 40-20 in accordance with the applicable section in effect at the time the member left city employment. The former member's pension shall begin the first day of the calendar month next following the date the former member's application for same is filed with the board on or after the former member attains age 60, except that in the case of a public safety or fire member who has acquired 25 or more years of credited service, the former member's pension shall begin the first day of the calendar month next following the date the former member's application for same is filed with the board on or after the former member attains age 50. If the individual withdraws the accumulated contributions from the member's savings fund, the former member shall thereupon forfeit the right to a deferred pension provided in this section. In no case shall the former member receive service credit for the period of the former member's absence from city employment, except as is specifically provided in this chapter. Until the beginning date of the former member's pension, the accumulated contributions standing to the former member's credit in the member's savings fund shall be credited with regular interest.

(Ord. of 1-11-21(3))

#### **Sec. 40-22. Pension options.**

- (a) Prior to the date of a member's retirement, but not thereafter, a member may elect to receive the member's pension as a straight life pension payable throughout the member's life, or the member may elect to receive the actuarial equivalent, at that time, of a straight life pension in a reduced pension payable throughout the member's life, and nominate a beneficiary in accordance with the provisions of Options A, B or C, set forth below:
  - (1) *Option A.* Pension for ten years certain and life thereafter under Option A, subject to subsection (b) of this section, a retirant shall receive a reduced pension payable throughout the retirant's life with the provision that if the retirant dies before the retirant has received 120 monthly pension payments the payments shall be continued for the remainder of the period of 120 months to such person or persons, in equal shares, as the retirant shall have nominated by written designation duly executed and filed with the Board. If no such designated person survives the retirant, such remaining monthly payments shall be continued and paid to the estate of the survivor of the retirant and the retirant's last surviving beneficiary.
  - (2) *Option B.* 100 percent survivor pension (formerly called option 2): Under Option B, subject to subsection (b) of this section, upon the death of a retirant, the retirant's reduced pension shall be continued throughout the life of and paid to such person having an insurable interest in the retirant's life as the retirant shall have nominated by written designation duly executed and filed with the board prior to the date of the retirant's retirement.
  - (3) *Option C.* 50 percent survivor pension (formerly called option 3): Under Option C, subject to subsection (b) of this section, upon the death of a retirant, one-half of the retirant's reduced pension shall be

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continued throughout the life of and paid to such person having an insurable interest in the retirant's life as the retirant shall have nominated by written designation duly executed and filed with the board prior to the date of the retirant's retirement.

- (b) If any benefit is paid or becomes payable under Section 40-30 on account of the death of a retirant, who elected to receive a pension under an option provided in subsection (a) of this section, no pension shall be paid the retirant's surviving beneficiary under the option elected by the retirant. If no pension is payable to the retirant's surviving beneficiary, as hereinbefore provided, and the retirant dies before the retirant has received in pension payments an aggregate amount equal to the accumulated contributions standing to the retirant's credit in the members savings fund at the time of the retirant's retirement, the difference between the retirant's accumulated contributions and the aggregate amount of pension payments received by the retirant shall be paid to the retirant's designated beneficiary, if living, otherwise to the retirant's estate.

(Ord. of 1-11-21(3))

### **Sec. 40-23. Non-duty death pensions.**

- (a) A member who continues in the employ of the city on or after the date the member either (1) acquires 20 years of credited service, or (2) attains age 55 years and has ten or more years of credited service, may, at any time prior to the date of his retirement elect Option B provided in Section 40-22 in the same manner as if the member were then retiring from city employment, and nominate a beneficiary whom the board finds to be dependent upon the member for at least 50 percent of the dependent's support due to lack of financial means. Prior to the date of the member's retirement, but not thereafter, the member may revoke the election of Option B and nomination of beneficiary, and the member may again prior to the date of retirement elect Option B and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an Option B election in force, the member's beneficiary, if living, shall immediately receive a pension under Option B computed in the same manner as if the member had retired the day preceding the date of the member's death, notwithstanding that the member might not have attained voluntary retirement age. If a member has an Option B election in force at the time of retirement, the member's election of Option B and nomination of beneficiary shall thereafter continue in force, unless prior to the date of retirement the member elects to receive a pension as a straight life pension or under another option provided in Section 40-22. No pension shall be paid under this subsection on account of the death of a member if any benefits are paid or will become payable under Section 40-30 on account of the member's death.
- (b) A member who continues in the employ of the city on or after the date the member either (1) acquires 20 or more years of credited service, or (2) attains age 55 years and has ten or more years of credited service, and in either case does not have an option election in force as provided in subsection (a) of this section, and (1) dies while in the employ of the city, and (2) leaves a spouse, the member's spouse shall immediately receive a pension computed in the same manner as if the member had (1) retired the day preceding the date of death, notwithstanding that the member might not have attained his voluntary retirement age, (2) elected Option B provided in Section 40-22 and nominated the member's spouse as beneficiary. No pension shall be paid under this subsection on account of the death of a member if any benefits are paid or will become payable under Section 40-30 on account of the member's death.

(Ord. of 1-11-21(3))

### **Sec. 40-24. Disability retirement.**

Upon the application of a member, or the member's department head, a member who (1) is in the employ of the city, (2) has 10 or more years of credited service, and (3) becomes totally and permanently disabled from

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performing duty in the employ of the city by reason of a personal injury or disease, may be retired by the board; but only if, the medical director, after a medical examination of the member, reports to the board (1) that the member is physically or mentally totally disabled from performing duty in the employ of the city, (2) that such disability will probably be permanent, and (3) that the member should be retired. This section is subject to Section 40-25.

(Ord. of 1-11-21(3))

#### **Sec. 40-25. Disability retirement—Service requirement waived.**

The credited service requirement of at least ten years contained in Section 40-24 shall be waived for a member if the board finds that (1) the member's total and permanent disability is the natural and proximate result of a personal injury or disease arising out of and in the course of the member's actual performance of duty in the employ of the city, and (2) the member is in receipt of worker's compensation on account of that disability.

(Ord. of 1-11-21(3))

#### **Sec. 40-26. Disability pension.**

Upon a member's retirement on account of disability as provided in Section 40-24, the member shall be paid a disability pension computed according to Section 40-20, exclusive of subsection (b). The member's disability pension shall not be less than what the member would receive for ten years of service for a non-disability retirement. The member's disability pension shall be subject to Section 40-29. Prior to the date of retirement, the member may elect to be paid a disability pension under an option provided in Section 40-22 in lieu of a straight life pension.

(Ord. of 1-11-21(3))

#### **Sec. 40-27. Reserved.**

#### **Sec. 40-28. Adjustment of duty-related disability pension.**

If a retirant is in receipt of worker's compensation on account of a disability arising out of and in the course of the retirant's city employment, upon termination of the retirant's worker's compensation period, or at the retirant's attainment of age 65 years, whichever occurs first, the retirant shall be given service credit for the period the retirant was in receipt of a disability pension and the retirant's pension shall be recomputed to include such additional service credit. The retirant's disability pension so increased shall not be less than the retirant's weekly worker's compensation award converted to an annual basis.

(Ord. of 1-11-21(3))

#### **Sec. 40-29. Re-examination of disability retirant.**

- (a) At least once each year during the first five years a retirant is receiving a disability pension, and at least once in each three-year period thereafter, the board may require the retirant, if the retirant has not attained voluntary retirement age, to undergo a medical examination to be made by or under the direction of the medical director. Should the retirant refuse to submit to any such medical examination, the board may suspend payment of the disability pension until the retirant undergoes the required medical examination. If the medical director reports to the board that the retirant is physically able and capable of resuming employment with the city, the retirant shall be returned to city employment and the disability pension shall

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terminate; provided the report of the medical director is concurred in by the board. In returning the retirant to city employment, reasonable latitude shall be allowed the city in placing the individual in a position commensurate to the type of work and rate of compensation at the time of the individual's retirement.

- (b) A disability retirant, who is returned to city employment, as provided in this section, shall again become a member of the retirement system. The member's credited service in force at the time of the member's retirement shall be restored to the member's credit. The member shall be given service credit for the period the member was receiving a disability pension if within such period the member was in receipt of worker's compensation on account of the member's total and permanent disability arising out of and in the course of the member's city employment; otherwise the member shall not be given service credit for such period.

(Ord. of 1-11-21(3))

### **Sec. 40-30. Death in line of duty.**

In the event (1) a member dies as the result of a personal injury or disease arising solely and exclusively out of and in the course of the member's city employment, or (2) a disability retirant, while in receipt of worker's compensation on account of city employment, dies prior to attaining voluntary retirement age as the result of the same injury or disease for which the individual was retired, and in either case such death, injury or disease resulting in death is found by the board to have been the result of the individual's actual performance of duty in the employ of the city, the following applicable benefits shall be paid, subject to the condition that the eligible beneficiaries apply for and are granted worker's compensation on account of the death of the member or retirant.

- (1) The deceased member's accumulated contributions standing in the member's savings fund at the time of death shall be paid according to Section 40-32.
- (2) The deceased member's spouse shall receive a pension equal to the spouse's weekly worker's compensation converted to an annual basis. The pension shall begin upon termination of the spouse's worker's compensation period and shall terminate upon the spouse's death. The term "spouse" shall not include any person whom a retirant married after retirement.
- (3) The deceased member's unmarried child or children under age 18 years shall each receive a pension equal to such child's weekly worker's compensation converted to an annual basis. A child's pension shall begin upon termination of the child's worker's compensation period and shall terminate upon the child's adoption, marriage, attainment of age 18 years, or death, whichever occurs first. If a spouse's pension provided in paragraph (b) above is terminated, each such child's pension shall be increased by an equal share of the spouse's pension.
- (4) The deceased member's parents shall each receive a pension equal to that parent's weekly worker's compensation converted to an annual basis. A parent's pension shall begin upon termination of the parent's worker's compensation period and shall terminate upon the parent's remarriage or death.

(Ord. of 1-11-21(3))

### **Sec. 40-31. Subrogation right.**

If a person becomes entitled to a pension payable by the retirement system as a result of an accident or disease caused by the act of a third party, the city shall be subrogated to the rights of that person against that third party, to the extent of the benefits the city pays or becomes liable to pay.

(Ord. of 1-11-21(3))

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**Sec. 40-32. Return of accumulated contributions.**

- (a) Should any member cease to be an officer or employee of the city before the member has satisfied the age and service requirements for retirement provided in Section 40-18, for any reason except the member's disability retirement or death, the member shall be paid the accumulated contributions standing to the member's credit in the members savings fund upon the member's written request to the board.
- (b) Should any member die and no pension becomes or will become payable by the retirement system on account of the member's death, except as provided in Section 40-30, the member's accumulated contributions standing to the member's credit in the members savings fund at the time of the member's death shall be paid to such person or persons as the member shall have nominated by written designation duly executed and filed with the board. If no such designated person survives the member, the member's accumulated contributions shall be paid to the member's estate.
- (c) In the event any member dies without heirs and without having nominated a beneficiary as provided in subsection (b) of this section, the accumulated contributions standing to the member's credit in the members savings fund at the time of the member's death may be used to pay the member's burial expense, not to exceed a reasonable sum determined by the board; provided, that the member leaves no other estate sufficient for such purpose.
- (d) Payments of accumulated contributions, as provided in this section, may be made in a single sum or in installments, as the board shall from time to time determine.
- (e) If the recipient of any accumulated contribution distribution (i) elects to have such distribution paid directly to an eligible retirement plan or IRA, and (ii) specifies the eligible retirement plan or IRA to which such distribution is to be paid (in such form and at such time as the distributing plan administrator may prescribe), the distribution will be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan.

(Ord. of 1-11-21(3))

**Sec. 40-33. Members savings fund.**

- (a) The member's savings fund (formerly called annuity savings fund) shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensations of members, and from which shall be made refunds and transfers of accumulated contributions, as provided in this chapter.
- (b) Member contributions to the retirement system shall be four percent of their annual compensation unless otherwise specified in the applicable collective bargaining agreement or other employment agreement.
- (c) The individual responsible for preparing the payroll shall cause the contributions provided in this section to be deducted from the compensations of each member on each and every payroll, for each and every payroll period, so long as the employee remains a member. The members' contributions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be changed thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of the member's compensation, less the deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the member during the period covered by such payment, except as to benefits provided by this chapter. The individual responsible for preparing payroll shall certify to the director of finance the amount of contribution to be deducted from the compensation of each member for each and every payroll and each of those amounts shall be deducted by the director of finance and when deducted shall be paid to the retirement system and shall be credited to the member's individual account in the members savings fund.

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- (d) In addition to the contributions so deducted from the compensation of a member, the member shall deposit in the member's savings fund, by a single contribution or by an increased rate of contribution as approved by the Board, the amount, if any; the member withdrew therefrom, together with regular interest from the date of withdrawal to the date of repayment. In no case shall any member be given credit for service rendered prior to the date the member withdrew the member's accumulated contributions until the member returns to the member's savings fund all amounts due the fund by him.
  - (e) Upon the retirement of a member, the member's accumulated contributions shall be transferred from the member's savings fund to the retirement reserve fund. At the expiration of a period of three years after the date an employee ceases to be a member, any balance standing to the member's credit in the members savings fund unclaimed by the member or the member legal representative, shall be transferred to the income fund, unless otherwise specifically provided in this chapter.
  - (f) The city shall pick up the member contribution required by subsection (b) of this section for all compensation earned after the effective date of this subsection. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The city shall pick up the member contributions from funds established and available in the salaries account, which funds would otherwise have been designated as member contributions and paid to the pension plan. Member contributions picked up by the city pursuant to this subsection shall be treated for all other purposes of this and other laws of the city in the same manner and to the same extent as member contributions made prior to the effective date of this subsection.

The terms and conditions of such contributions shall be in accordance with Internal Revenue Code Section 414(H)(2) and related treasury regulations and applicable law. The provisions of these sections are mandatory, and the employee shall have no option concerning the pick up or to receive the contributed amount directly instead of having such amount paid by the employer to the retirement system. In no event may implementation occur other than at the beginning of a pay period.

Employee's contributions picked up under this section shall continue to be designated employee contributions for all purposes of the retirement system and shall be considered part of the employees' compensation for the purposes of determining the amount of the employee's contribution.

(Ord. of 1-11-21(3))

#### **Sec. 40-34. Retirement reserve fund.**

The retirement reserve fund shall be the fund from which shall be paid all pensions payable as provided in this chapter. Should a disability retirant return to employ of the city the member's pension reserve, computed as of the date of the member's return, shall be transferred from the retirement reserve fund to the members savings and pension reserve fund in the same proportion as the pension reserve was originally transferred from the said funds to the retirement reserve fund. The amount transferred to the member's savings fund shall be credited to the member's individual account therein.

(Ord. of 1-11-21(3))

#### **Sec. 40-35. Pension reserve fund.**

- (a) The pension reserve fund shall be the fund to which shall be credited the contributions made by the city to the retirement system, and from which shall be made transfers as provided in this section. Upon the basis of such mortality and other experience tables, and regular interest, as the board shall from time to time adopt, the actuary shall annually compute the pension reserves for (1) service rendered and to be rendered by

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members, and (2) pensions being paid retirants and beneficiaries. The pension reserves so computed shall be financed by annual city contributions determined according to paragraphs (1), (2) and (3) of this subsection.

- (1) The city's annual contributions for members' current service shall be a percent of the members' annual compensations which will produce an amount which if paid annually by the city during their future service will be sufficient to provide the difference between (i) the pension reserves for the portions of the pensions to be paid them based upon their future service, and (ii) the present value of their future net contributions.
  - (2) The city's annual contribution for members' accrued service shall be a percent of the members' annual compensations which will produce an amount which if paid annually by the city over a period of years, to be determined by the board, will amortize, at regular interest, the unfunded pension reserves, if any, for the accrued service portions of the pensions to be paid the members.
  - (3) The city's annual contribution for pensions being paid retirants and beneficiaries shall be a percent of the members' annual compensations which will produce an amount which if paid annually by the city over a period of years, to be determined by the board, will amortize, at regular interest, the unfunded pension reserves, if any, for pensions being paid retirants and beneficiaries.
- (b) The board shall annually certify to the commission the contributions determined in subsection (a) of this section and the commission shall appropriate and the city shall pay, within the next succeeding fiscal year, the contributions so certified. When paid, the contributions shall be credited to the pension reserve fund.
  - (c) The city contributions to the retirement system to the extent necessary to provide pensions payable and to be paid on account of members employed by an instrumentality of the city shall be made from the revenues of the instrumentality.
  - (d) Upon a member's retirement, the difference between the member's pension reserve and the member's accumulated contributions shall be transferred from the pension reserve fund to the retirement reserve fund. If at the end of any fiscal year the balance in the retirement reserve fund is less than its actuarially computed liabilities, the amount of the deficiency shall be transferred from the pension reserve fund to the retirement reserve fund.

(Ord. of 1-11-21(3))

#### **Sec. 40-36. Expense fund.**

The expense fund shall be the fund to which shall be credited monies provided by the city to pay the administrative expenses of the retirement system, and from which all such expenses shall be paid.

(Ord. of 1-11-21(3))

#### **Sec. 40-37. Fiscal management.**

- (a) The Board shall be the trustees of the assets of the retirement system and shall have full power to invest and reinvest such assets in accordance with the provisions of Act No. 314 of the Public Acts of 1965, as amended, and as the Act might from time to time be amended or superseded. The board shall have the power to hold, purchase, sell, assign, transfer and dispose of any securities and investments in which any of the monies of the system have been invested, as well as the proceeds of the investments and any monies belonging to the system.
- (b) All assets of the system shall be held for the sole purpose of meeting disbursements for pensions and other benefits authorized by this chapter, and shall be used for no other purpose.



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- (c) The description of the various funds of the retirement system shall be interpreted to refer to the accounting records of the system and not to the segregation of assets in the funds of the system.

(Ord. of 1-11-21(3))

#### **Sec. 40-38. Methods of making payments.**

No payment shall be made from monies of the system unless such payment has been previously authorized by a specific or continuing resolution adopted by the board.

(Ord. of 1-11-21(3))

#### **Sec. 40-39. Income fund: allowance of regular interest.**

- (a) The income fund shall be the fund to which shall be credited all interest, dividends, and other income received from investments of the retirement system, all gifts and bequests, all unclaimed accumulated contributions as provided in this chapter, and all other monies received by the system the disposition of which is not specifically provided in this chapter. There shall be transferred from the income fund to the members savings fund, pension reserve fund, and retirement reserve fund the amounts required to credit regular interest to the fund. Whenever the balance in the income fund is more than sufficient to cover current charges to the fund, such excess may be used to provide contingency reserves or may be transferred to the pension reserve fund, as the board shall determine. Whenever the balance in the income fund is insufficient to meet the charges to the fund, the amount of such insufficiency shall be transferred to the income fund from the pension reserve. A member's accumulated contributions transferred to the income fund, as provided in this chapter, shall be paid from the income fund to the member, or the member's legal representative, upon valid claim for same approved by the board.
- (b) At the end of each fiscal year, the board shall allow and credit regular interest to each member's account in the members savings fund; such interest shall be computed upon the difference between a member's balance in the fund at the beginning of the year and the withdrawal, if any, made during the year. At the end of each fiscal year, the board shall allow and credit regular interest to the pension reserve fund and retirement reserve fund; such interest shall be computed upon the mean balances in the respective funds during the year. The interest so allowed and credited to the various funds shall be transferred from the income fund.

(Ord. of 1-11-21(3))

#### **Sec. 40-40. Assignments prohibited.**

- (a) The right of a person to a pension, to the return of accumulated contributions, the pension itself, any other right accrued or accruing to any member, retirant, or beneficiary, under the provisions of this chapter, and the monies belonging to the retirement system, shall not be subject to execution, garnishment, attachment, the operation of insolvency or bankruptcy law, or any other process of law whatsoever, and shall be unassignable, except as is specifically provided in this chapter and in accordance with Public Act 100 of 2002, as amended.
- (b) Should a member be covered by a group insurance or prepayment plan participated in by the city, and should the member be permitted to, and elect to, continue such coverage as a retirant, the member may authorize the board to have deducted from the member's pension the payments required of the member to continue coverage under such group insurance or prepayment plan.

(Ord. of 1-11-21(3))

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**Sec. 40-41. Correction of errors.**

Should any change or error in the records of the retirement system or the city result in any person receiving from the system more or less than the member would have been entitled to receive had the records been correct, the board shall correct such error and as far as practicable shall adjust the payment in such manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid.

(Ord. of 1-11-21(3))

**Sec. 40-42. Repeal of conflicting ordinance provisions.**

All provisions of ordinance inconsistent with the provisions of this chapter are hereby repealed to the extent of such inconsistency.

(Ord. of 1-11-21(3))

**Sec. 40-43. Modifications.**

For those members represented by a collective bargaining association, the retirement ordinance shall be amended by the provisions contained within the applicable collective bargaining agreements. For those members not represented by a collective bargaining association, the retirement ordinance shall be amended by the provisions contained within the administrative rules of the city (commonly referred to as the personnel policy manual) or as otherwise adopted by the city in accordance with applicable law. The separate collective bargaining agreements or personnel policy manual are incorporated by reference and will automatically update the retirement ordinance for such group or category of employees. The provision of the collective bargaining agreements or personnel policy manual shall supersede any provisions in the retirement ordinance.

(Ord. of 1-11-21(3))

**Sec. 40-44. Validity.**

If any provision, section, paragraph, sentence, clause, or phrase of this chapter is for any reason found to be invalid or inoperative or shall be held by any court to be unconstitutional, the remainder of this chapter shall nevertheless continue in full force and effect.

(Ord. of 1-11-21(3))

**Sec. 40-45. Benton Harbor—St. Joseph Joint Wastewater Treatment Plant; employees as members.**

- (a) In accordance with PA 137 of 1967, "Combined Retirement Systems," MCL 38.691; MSA 5.3900(1), as amended, the city and the Benton Harbor—St. Joseph Joint Wastewater Treatment Plant (the "joint plant") entered into a contract entitled "Social Security and Retirement System Agreement," having an effective date of January 1, 1960. By virtue of and as set forth in that agreement, the employees of the joint plant are included as member-participants of the retirement system created by this chapter, though with separate retirement funds and accounting.
- (b) As applied to joint plant employees, whenever this chapter refers to "the city," that shall be deemed to mean "the joint plant," and likewise, references to the "city commission" shall be deemed to mean "the Joint Wastewater Treatment Plant Board of Commissioners."

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- (c) In no event shall the participation of the joint plant employees in the retirement system created by this chapter cause them to be considered employees of the city.
  - (d) Should the city commission choose to provide an increase in the benefit(s) given to city employees under this chapter, the joint board of commissioners of the joint plant shall have the discretion to decline those benefit(s) increases for joint plant employees, should the joint board of commissioners feel it is appropriate to do so in the exercise of its discretion in the management of the separate retirement fund administered on behalf of the joint plant employees. Should the joint board of commissioners of the joint plant elect to decline such an increase in benefit(s), it shall provide the city with written notice of that decision within 90 days of any such benefit(s) increase approved by the city commission.

(Ord. of 1-11-21(3))

#### **Sec. 40-46. Reemployment after retirement.**

A retirant may continue to receive pension payments upon reemployment by the city provided the retirant participant is not eligible for membership in the retirement system.

(Ord. of 1-11-21(3))

#### **Sec. 40-47. Worker's compensation offset.**

The aggregate amount of any worker's compensation benefits paid to a retirant or surviving beneficiary on account of the death or disability of the member shall be deducted from and offset against any pensions payable. The worker's compensation benefits applicable to the offset shall not include attorney fees, amounts specifically allocated for past, present and future medical expenses, and statutory redemption fees.

(Ord. of 1-11-21(3))

#### **Sec. 40-48. Denial of benefit claim; appeal.**

A benefit claimant shall be notified in writing, within 30 days of the board's denial of a claim for benefits. The notification shall contain the basis for the denial. The benefit claimant may appeal the denial and request a hearing before the board. The appeal shall be in writing and filed with the retirement system within 60 days of the date of the notification of denial. The request for appeal shall contain a statement of the claimant's reasons for believing the denial to be improper. The board shall schedule a hearing of the appeal with 60 days of receipt of the request to appeal.

(Ord. of 1-11-21(3))

#### **Sec. 40-49. Effective provisions.**

A member shall be entitled to those benefits based upon the terms and conditions in effect at the time of separation from employment.

(Ord. of 1-11-21(3))

#### **Sec. 40-50. Fraud penalty.**

Whoever with intent to deceive shall make any statement or report under this plan which is untrue, or shall falsify or permit to be falsified any record or records of the plan, or who shall otherwise violate the provisions of

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this plan as it may from time to time be amended, with intent to deceive, shall be guilty of a misdemeanor and upon conviction shall be fined plus costs of prosecution not to exceed \$500.00, or shall be imprisoned for not more than 90 days, or both, in the discretion of the court.

(Ord. of 1-11-21(3))

#### **Sec. 40-51. Conflicts of interest.**

Except as otherwise provided in this chapter, no trustee and no employee of the city shall have any interest, direct or indirect, in the gains or profits arising from any investments made by the board. No person, directly or indirectly, for himself, herself or as an agent or partner of others, shall borrow any moneys of the retirement system nor shall he or she in any manner use the same, except to make payments authorized by the board. No person shall become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the system. Nothing contained in this section shall be construed to impair the rights of any member, retirant or beneficiary of the system to benefits provided by the system.

(Ord. of 1-11-21(3))

#### **Sec. 40-52. Applicable laws.**

The retirement system shall be construed and enforced under the laws of the State of Michigan and any applicable federal law, rule, or regulation, and all of the provisions hereof shall be administered in accordance therewith. The board of trustees shall have the fiduciary obligations, limitations, and authority as provided by the Public Employees Retirement System Investment Act, being Public Act 314 of 1965 (MCL 38.1132 et seq.), as amended. The board of trustees shall administer the retirement system consistent with Article 9, Section 24 of the State of Michigan Constitution. Any matter relating to the retirement system provisions applicable to current employees represented by a collective bargaining agent is a mandatory subject of bargaining under the Public Employment Relations Act (Public Act 336 of 1974), being MCL 423.201, as amended. The provisions contained in the collective bargaining agreements shall supersede any conflicting provisions contained in this chapter and the board of trustees shall administer this retirement system in accordance with applicable collective bargaining agreements.

(Ord. of 1-11-21(3))