

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2012-20

No. 276

**AN ORDINANCE IN AMENDMENT OF CHAPTER 17,
ARTICLE VI OF THE CODE OF ORDINANCES
ENTITLED: "RETIREMENT SYSTEM", AS
AMENDED**

Approved April 30, 2012

Be it ordained by the City of Providence:

SECTION 1. Chapter 17 is hereby amended to read as follows:

Sec. 17-181.1 - Purpose

Pursuant to the benefits and rights of self-government prescribed in the Providence Home Rule Charter and guaranteed by the Constitution of the State of Rhode Island, the purpose of this chapter is to preserve the health, safety and welfare of the citizens of Providence and their property and to ensure the sustainability of the employee retirement system of the city of Providence for current and retired employees by promoting the sustainability and longevity of the employees' retirement system of the City of Providence.

Sec. 17-181.2 – Legislative Findings.

It is the intention of the city council to ensure the sustainability of the employees' retirement system of the City of Providence and to advance and maintain the long-term stability of said plan. In thoroughly reviewing the condition of said plan and assessing the need for comprehensive reform thereof, including, but not limited to, the April 19, 2012 Report and Recommendations of the City Council Subcommittee on Pension Sustainability, the City Council finds and declares the following:

- (1) The City of Providence currently faces massive and growing structural budget deficits that are placing enormous strains on the City's finances.
- (2) The City's pension system is severely underfunded, with the unfunded liability at or approaching \$900 million dollars, and its ever-increasing annual costs are contributing significantly to the City's structural deficits and acute cash shortage.
- (3) The City has funded less than 31% of its total pension liability, substantially below the 70 to 80% suggested funding rate for most private businesses and governmental entities. Currently, the City's unfunded pension liability is \$900 million and the pension plan will not be fully funded for another twenty-eight (28) years. As a consequence, the Auditor General of the State of Rhode Island has labeled the City's pension as one of the highest risk plans in the State of Rhode Island.
- (4) The Annual Required Contribution (the "ARC") for the City pension system and the annual payment for the City's other post-employment benefits ("OPEB"), including retiree healthcare benefits, together total over fifty percent (50%) of the City's annual tax levy, leaving less than half of the City's tax levy to fund critical and essential City services.
- (5) According to the City's Internal Auditor, the City's projected budget deficit for the current fiscal year has been estimated at between \$23 to \$30 million dollars. The projected deficit for the next fiscal year is \$31 million dollars. Over the succeeding years, the deficit is projected by the Internal Auditor to grow dramatically to as high as \$67 million dollars in 2017. During that same time, the ARC is projected to grow steadily, such that the payment, which is over \$55 million this year, will increase to almost \$75 million in 2017. The ARC will continue to increase each year until it reaches a maximum of \$207 million in 2039, thereby consuming an ever growing and greater percentage of the City's budget. The projected ARC assumes an 8.25% rate of return on the pension investments; if the rate of return is lower, the annual projected ARC will be even higher and will further deplete the City's finances.

(6) The City's mounting deficits and pension costs will outpace any income that could be raised by an increase in the City's tax levy. According to the City's internal auditor and its outside fiscal adviser, Gary Sasse, if the City increased its tax levy for fiscal year 2014 to the maximum extent permitted by law (4%), the resulting revenue of \$13 million would be less than a third of what would be needed to close the projected structural deficit of \$50 million. Further, the increased ARC for 2014 would consume 25% of the increased tax levy, leaving only 75% of the increase to fund the deficit and other needs.

(7) The annual percentage limits on additional tax revenue and the ever-increasing ARC prevent the City from making any capital improvements such as school improvements or purchasing new equipment. Further, simply raising taxes each year to fund an ever-increasing ARC would prevent the City from attracting new business and citizens that would, in turn, grow the tax base. Finally, if left unaddressed, the persistent structural deficits, unfunded pension and OPEB liabilities, and the ever-increasing ARC, will ultimately result in the City running out of cash to pay its bills and leaving it with little choice other than to terminate employees, close schools, eliminate fire stations, deny even the most basic services to its citizens, and, ultimately, file for bankruptcy.

(8) The City has already implemented a number of cost-savings and revenue generating steps towards closing its structural budget deficits and making its pension system more sustainable. These measures have allowed the City to reduce its budget deficit for the current fiscal year from \$110 million to somewhere between \$23 and \$30 million. The City's pension obligations are, as aforesaid, a major contributor to the City's fiscal crisis. A major cost driver of the City's pension system is, in turn, the annual cost-of-living adjustments ("COLAs") enjoyed by hundreds of City retirees. More specifically, many of the retiree's pensions compound at rates ranging from as high as 3% to 6%. Approximately one-quarter of retirees are currently receiving annual COLAs of 5% to 6%. A pension with a 6% compounding COLA doubles approximately every 12 to 13 years and a pension with a 5% compounding COLA doubles approximately every 10 years.

(9) Suspension of the COLAs until the pension system attains a more secure level of funding of seventy percent (70%) would result in significant and desperately needed cost savings for the pension system and the City. This measure would immediately increase the funding of the system from its current rate of thirty-one percent (31%) to almost forty percent (40%). Further, the measure would result in a \$240 million reduction of the unfunded pension liability from \$900 million to \$659 million. The measure would also reduce the ARC and result in 100% funding of the pension system several years ahead of the current amortization schedule.

Sec. 17-181.3 - Definitions.

The following words and phrases as used in this article, unless a different meaning is plainly required by the context, shall have the following meanings:

Accumulated contributions shall mean the sum of all regular and excess amounts deducted from the compensation of a member, or credited to his/her individual account in the annuity savings fund, together with regular interest thereon.

Actuary shall mean an actuary selected from time to time by the city council.

Annual Actuarial Valuation shall mean the report issued by the actuary to the retirement board on or before the first Monday in January showing the fiscal transactions of the system for the fiscal period of the city next preceding, the amount of the accumulated cash and securities of the system and a copy of the last balance sheet showing the financial condition of the system by means of an actuarial valuation of its assets and liabilities.

Annual required contribution shall mean that amount of money required to be contributed on an annual basis, as determined by the actuary, to fund the employees' retirement system for the City of Providence.

Annuity shall mean payments for life derived from the accumulated contributions of a member. All annuities shall be paid in equal monthly installments. Notwithstanding the foregoing, for the purposes of paragraphs (b) and (c) of subsections (2) and (4) of section 17-189 of this article, "annuity" shall mean the payments for life provided by the member's accumulated contributions attributable to his/her required regular deductions, including special contributions or deductions under the provisions of section 17-188 of this article and including the amount by which his/her required regular deductions would have increased had he/she elected to increase his/her deductions as provided in subsection (1) of section 17-185 of this article, if he/she did not do so.

Annuity reserve shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity granted under the provisions of this ordinance, computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

Beneficiary shall mean any person in receipt of a pension, an annuity, a retirement allowance, or other benefit as provided by this article.

Board of investment commissioners shall mean the board of investment commissioners as set forth and defined in Section 815 of the Providence Home Rule Charter of 1980.

Class A employees shall mean general employees, including laborers, mechanics, and clerical, administrative, professional and technical workers of the City of Providence.

Class B employees shall mean members of the fire department and the police department of the City of Providence.

Critical status shall mean that, as determined by its actuary, as of the beginning of the plan year, the funded percentage of the employees' retirement system for said plan year is less than or equal to sixty percent (60%).

Employee shall mean any regular and permanent employee or officer of the City of Providence. The director of personnel shall determine who are employees within the meaning of this article.

Final compensation shall mean the average of the highest five (5) consecutive years of compensation within the last ten (10) years of service, excluding payments made for overtime or payments made for temporary or extra duties beyond the normal or regular work day.

Funded percentage shall mean the percentage equal to a fraction; the numerator of which is the actuarial value of the plan's assets, as determined by the actuary, and the denominator of which is the accrued liability of the plan, as determined by the actuary.

Members shall mean any person included in the membership of the retirement system as provided in section 17-187 of this article.

Pension shall mean annual payments for life derived from appropriations provided by the City of Providence under the provisions of this article.

Pension reserve shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

Regular interest shall mean at four (4) percent per annum, compounded annually or interest at such lower rate or rates as may be set by the retirement board but not less than three (3) percent per annum.

Retirement board shall mean the board as set forth and defined in Section 908 of the Providence Home Rule Charter of 1980.

Retirement system shall mean the employees' retirement system of the City of Providence as defined in section 17-182 of this article.

Service shall mean service as an employee of the City of Providence as described in subsection (2) of section 17-188 of this article.

Total service shall mean service creditable pursuant to section 17-188 of this article.

Sec. 17-182. - Name and date of establishment.

The retirement system created by Public Laws 1923, Chapter 489, approved May 14, 1923, implemented by Providence Home Rule Charter of 1980, adopted November, 1980, and chapter 1991-5 of the Ordinances of the city, approved February 8, 1991, was established for the purpose of providing retirement allowances for employees of the city under the management of the retirement board. It shall be known as the "Employee Retirement System of the City of Providence" and by such name shall its functions be carried out as set forth in this article.

Sec. 17-183. - Retirement system.

(1) The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this article are hereby vested in a retirement board. The retirement board shall from time to time establish rules and regulations for the administration and transaction of the business of the retirement system, and shall perform such other functions as are required for the execution of this article.

(2) The membership of the retirement board shall consist of the city treasurer, the chairperson of the city council committee on budgetary matters, or a designee appointed by the chairperson of the city council on budgetary matters, and the finance director, ex officio; two (2) members who shall not be officers or employees of the city who shall be elected by the city council; and two (2) members who shall not be officers or employees of the city appointed by the mayor and representatives of the present and retired employees of the city. The employee representatives shall be chosen from the two (2) classes of employees designated for retirement purposes, to wit, class A employees, who are all employees covered by the retirement system not otherwise designated, and class B employees, who are police officers and firefighters, otherwise known as the sworn personnel of the department of public safety. Two (2) class A employees shall be elected by the members of the system who are class A employees; one (1) class B employee shall be elected by the members of the system who are class B employees of the city fire department; one (1) class B employee shall be elected by the members of the system who are class B employees of the city police department; one (1) retired class A employee shall be elected by the retired members of the system who were class A employees; and one (1) retired class B employee shall be elected by retired members of the system who were class B employees. The election by the members shall be in accordance with such rules as the board shall adopt to govern such elections. The regular terms of elected members shall be four (4) years. Vacancies among the elected members of the board shall be filled for the unexpired term in the manner provided for the original election. The members of the retirement board shall serve without compensation.

(3) The retirement board shall report annually in detail to the city council on or before the first Monday in January, showing the fiscal transactions of the system for the fiscal period of the city next preceding, the amount of the accumulated cash and securities of the system and a copy of the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities.

(4) The city solicitor shall be the legal advisor and attorney for the retirement board. The city treasurer shall be the custodian of the funds and the treasurer thereof. The city clerk shall be the clerk of the board.

(5) The city controller shall be charged with the establishment and maintenance of such accounts and statistical records as the retirement board may require and he shall employ such clerical assistance as shall be necessary to carry out properly the provisions of this article; the city council, from time to time, shall provide by appropriations sufficient sums to pay the cost of such services.

The city council shall secure the services of an actuary who shall be the actuarial advisor for the purpose of making the actuarial computations and valuations for the retirement system as required by this article. The director of personnel shall secure the services of such physicians or legal nurse consultants as shall be necessary to provide for the medical examinations as required by this article. The city council, from time to time, shall provide by appropriation sufficient sums to pay the cost of such services.

(6) The retirement board shall collect and keep in convenient form such data as shall be necessary for the preparation of the mortality and service tables, the investment rate of return and for the compilation of such other information as shall be required for the actuarial valuation of the assets and liabilities of the retirement system.

(7) In the three-year period beginning the first day of April, 2012 and in every three-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system and make a recommendation for the investment rate of return taking into account the result of such investigation, the retirement board shall adopt for the retirement system such mortality, service and other tables as shall be deemed necessary and shall adopt the investment rate of return recommended by the actuary.

(8) On the basis of such tables as the retirement board shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the system created by this article.

(9) In the event the retirement board takes any action(s) contrary to the recommendation(s) of the actuary, the board shall within thirty (30) days, provide notice of such action(s) to all plan members, the mayor and the city council. The notice shall also be posted electronically on the retirement board's website.

Sec. 17-184. - Investment of funds.

(1) All monies not immediately required for the payment of retirement allowances or other benefits shall be invested by the board of investment commissioners for the benefit of the retirement system. The board of investment commissioners is authorized and empowered to execute the disposition and investment of the funds which are within its control in any securities and investments as would be acquired by prudent persons of discretion and intelligence in these matters, who are seeking a reasonable income and the preservation of their capital. The prudent person standard shall be that standard of care employed solely in the interest of the members and beneficiaries of the retirement system and:

(a) For the exclusive purpose of:

1. Providing benefits to members and their beneficiaries; and
2. Defraying reasonable expenses of administering the funds of the retirement system;

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(b) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(c) By diversifying the investments of the fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. The board of investment commissioners shall adopt a statement of investment objectives and policies consistent with the prudent person standard as hereinabove defined.

(2) The city controller is hereby authorized and directed to draw his/her orders upon the city treasurer for the purchase of investments, upon receipt by him/her of properly authenticated vouchers signed by the chairperson of the board of investment commissioners or by the vice-chairperson in the event of the chairperson's absence or illness. The proceeds from the sale of investments shall be paid to the city treasurer for the benefit of the funds of the retirement system.

(3) The board of investment commissioners shall annually allow regular interest on the average amount for the preceding year to the credit of the various funds of the retirement system from the interest and dividends earned from investments. Any excess earnings over the amount so credited shall be used in reducing the amount of contributions required by the city. Any deficiency shall be paid by the city.

(4) Except as herein provided, no member of the board of investment commissioners and no employee of said board shall have any interest, direct or indirect, in the gains or profits of any investment made by the said board, nor as such, directly or indirectly, receive any pay or emolument for his/her services. And no member of the board of investment commissioners or employee of said board shall, directly or indirectly, for himself/herself or as an agent, in any manner use the same, except to make such current and necessary payments as are authorized by the board of investment commissioners; nor shall any member or employee of the board of investment commissioners become an endorser or surety or become in any manner an obligor for moneys loaned or borrowed from the funds of the retirement system.

(5) The board of investment commissioners shall report annually in detail to the city council on or before the first Monday in October of each year showing the investment transactions made by the board of investment commissioners on behalf of the employee retirement system and the prior year's investment rate of return as well as the investment rate of return for the prior fifteen (15) years.

Sec. 17-185. - Method of financing.

The funds hereby created are the annuity savings fund, the annuity reserve fund, the pension accumulation fund and the pension reserve fund.

(1) *Annuity savings fund.* The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities and their withdrawal allowances. Upon the basis of such tables as the retirement board shall adopt and regular interest, the actuary of the retirement system shall determine for each class A member the proportion of the compensation which, when deducted from each payment of prospective earnable annual compensation prior to eligibility for service retirement and accumulated at regular interest until attainment of the minimum age of service retirement within the member's group, shall be computed to provide at that time an annuity equal to the pension provided on account of service as a member. Such proportion of compensation shall be computed to remain constant. In the event that the provisions of this article for the determination of the amount of the pension of a class A employee on account of the employee's service as a member shall at any time, be amended, the retirement board shall adopt, as of the effective date of such amendment, rates of contribution for class A employees computed on the basis of such amendment and such contribution rates shall apply to all members who become class A employees after said effective date at the age attained upon entrance into such class. No increase in percentage contribution rates shall be required of members who are so classified on said effective date, but any such members may elect prior to said date to contribute at the rate as so amended applicable to the member's age attained on said date and thereafter deductions shall be made from the member's compensation at such amended rate. The retirement board shall adopt as of July 1, 1989, for employees in class B who are members of the Police Department and as of July 1, 1990, for employees in class B who are members of the Fire Department, a percentage contribution rate of nine and one-half (9½) per centum, and thereafter deductions shall be made from the compensation of all members so classified at this rate, anything to the contrary in this article notwithstanding. The retirement board shall adopt as of July 1, 1974, for employees in class A, a percentage contribution rate of eight (8) per centum, and thereafter deductions shall be made from the compensation of all members so classified at this rate, anything to the contrary in this article notwithstanding. The pension contribution rate for all class B members of the Fire Department hired on or after July 1, 2011 shall be set at nine percent (9%) of their base pay and longevity; and an additional one and one half percent (1 1/2%) of their base pay and longevity to be set aside in an OPEB Trust Fund to be administered by the City. Both contributions shall be on a pre-tax basis.

The city controller shall certify the proportion of earnable compensation of each member so computed, and he or she shall deduct such proportion from the compensation of each member on each and every payroll of each department for each and every payroll period but the city controller shall not make any deductions for annuity purposes from the annual compensation of a member who elects not to contribute, if the member has completed twenty-five (25) years of creditable service and the member no longer receives pension service credits. If the member has completed twenty-five (25) years of creditable service, the controller shall continue to make deductions for annuity purposes from the annual compensation of the member if the member continues to accrue creditable service. In determining the amount earnable by members in a payroll period, the retirement board may consider the rate of annual compensation payable to such members on the first day of the payroll period as continuing throughout such payroll period and it may omit deductions from compensation for any period less than a full payroll period if an employee was not a member on the first day of the payroll period; and to facilitate the making of deductions it may modify the deduction required by any member by such an amount as shall not exceed one-tenth of one per centum of the annual compensation upon the basis of which said deduction is to be made. The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for the member's full salary or compensation; and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment except as to the benefits provided under this article. Said amounts shall be deducted and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest, to an individual account of the member from whose compensation said deduction was made.

Notwithstanding anything to the contrary, pursuant to the provisions of section four hundred and fourteen (h)(2) of the United States Internal Revenue Code, the City of Providence shall assume and pay the contributions which would be payable by the employees as members. Such contributions, although designated as employee contributions, shall be paid by the City of Providence in lieu of contributions by the employee. No employee shall have the option of choosing to receive such contributed amounts directly instead of having them paid by the City of Providence. The contributions so assumed shall be treated and identified, without limitation, as member contributions for all purposes of the retirement system.

Employee contributions assumed pursuant to this subsection shall be paid from the same source of funds used for the payment of compensation to an employee. A deduction shall be made from the employees' compensation equal to the amounts of the employees' contributions assumed by the City of Providence. These deductions, however, shall not reduce the employees' compensation for purposes of computing benefits under the retirement system pursuant to this ordinance or for purposes of determining any other member benefits.

Assumed contributions shall be transferred to the retirement system and be credited to a separate subaccount within the employees' account in order that the amounts contributed prior to the effective date of the assumption of employee contributions shall be distinguished from the amounts contributed on or after the date on which the City of Providence assumes the employees' contributions.

In addition to the contributions deducted from compensation hereinbefore provided, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the total amount which the member withdrew previously therefrom as provided in this article, or any member may deposit therein by a single payment or by an increased rate of contribution an amount to be used to provide an additional annuity. Such additional amounts so deposited shall become a part of the member's accumulated contributions except in the case of retirement, when they shall be treated as excess contributions returnable to the member in the same manner and form as the member's normal accumulated contributions. The accumulated contributions of a member, withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in the event of the member's death as provided in this article, shall be paid from the annuity savings fund. Upon retirement of a member, the member's accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund. Subject to such rules and regulations as the retirement board may provide, members who have at least three (3) years of total service may borrow from their account in the annuity savings fund for the following purposes:

- a. Medical expenses, including dental and hospital expenses.
- b. Funeral expenses.
- c. Down payment on the purchase of real estate to be used in whole or in part as the member's home, or to be used for home improvements of member's home (primary residence).
- d. Educational expenses limited to member, member's spouse, member's domestic partner, member's children and/or dependent(s).
- e. The aggregate amount of loans outstanding to any member shall never exceed the lesser of the following amounts:
 1. Fifty (50) per centum of the amount of the member's accumulated contributions.
 2. An amount, together with interest thereon, which must be repaid within ten (10) years by additional deductions from the member's compensation.
 3. No loan shall be issued for less than one thousand dollars (\$1,000.00).
- f. Prior to approval the member shall sign a sworn affidavit which specifically states the purpose for the loan.

The rate of interest payable on the unpaid balance of such loans shall be fixed at the date of commencement of the loan at the rate established by the pension system's investment rate of return on the investment portfolio, plus one (1) percent. The principal amount, together with interest thereon, shall be repaid to the retirement system in equal installments in such amounts as the board shall approve, and shall be deducted from the compensation of the member at the same time and in the same manner as the member's contributions to the retirement system are deducted. Such installments shall be at least equal to five (5) per centum of the member's compensation.

All payments of principal and regular interest made by a borrowing member shall be credited to the member's account in the annuity savings fund. The excess of the interest paid by the member over the regular interest creditable to the account of the member shall be credited to the pension accumulation fund. The amount of any benefit which becomes payable under the provisions of this article shall be determined on the basis of the member's accumulated contributions less the outstanding balance of such loan, and the pension shall be determined as if such loan had not been made. Should a beneficiary be restored to active service, the member's annuity reserve shall be transferred from the accumulation fund to the member's credit in the annuity savings fund.

(2) *Annuity reserve fund.* The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this article. Should a beneficiary retired on account of disability be restored to active service, his or her annuity shall cease and his or her annuity reserve shall be transferred to his or her credit in the annuity savings fund.

(3) *Pension accumulation fund.* The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by the City of Providence and from which such pensions and other benefits shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (a) On account of each member there shall be paid annually into the pension accumulation fund by the City of Providence for the preceding fiscal period, a certain percentage of the earnable compensation of each member to be known as the "normal contribution," and an additional percentage of the earnable compensation to be known as the "deficiency contribution." The rates per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuations. Until the first valuation, the normal contribution shall be two and sixty-seven one hundredths ($267/100$) per centum and the deficiency contribution shall be two and forty-five one hundredths ($245/100$) per centum of the salaries of all members.
- (b) On the basis of regular interest and of such mortality and other tables as shall be adopted by the retirement board, the actuary engaged by the city council to make each valuation required by this article during the period over which the deficiency contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant, which, if contributed on the basis of compensation throughout the entire period of active service would be sufficient to provide at the time of retirement the total amount of the member's pension reserve. The rate per centum so determined shall be known as the "normal contribution" rate. After the deficiency contribution has ceased to be payable, the normal contribution shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one (1) per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the retirement board and regular interest. The normal rate of contribution shall be determined by the actuary after each mortality and service investigation and shall continue in force until a new investigation and certification.
- (c) Immediately succeeding the first valuation, the actuary engaged by the city council shall compute the rate per centum of the total compensation of all members during the preceding fiscal year which is equivalent to four (4) per centum of the amount of the total pension liability on account of all members and beneficiaries not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "deficiency contribution rate." On the basis of the first actuarial valuation following the 1st day of April, 1965, the deficiency contribution rate shall be revised to provide for the liquidation of the deficiency then existing.

- (d) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rates per centum known as the normal contribution rate and the deficiency contribution rate of the total compensation earnable by all members during the preceding fiscal period; provided, however, the sum of such rates per centum need not exceed the rate per centum of the earnable salary of all members obtained by deducting from seventy (70) per centum of the total liabilities of all funds except the annuity savings fund the amount of the funds in hand to the credit of such funds and dividing the remainder by one (1) per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the retirement board and regular interest. The aggregate payment by the city into the pension accumulation fund shall be sufficient, when combined with the amount in the fund, to provide the pension payable out of the fund during the year then current.
- (e) The deficiency contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the city council, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the normal contributions to be received on account of persons who are at that time members.
- (f) All pensions with the exception of those payable on account of members who received no prior service allowance shall be paid from the pension accumulation fund.
- (g) Upon the retirement of a member not entitled to prior service allowance, an amount equal to his the member's pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(4) *Pension reserve fund.* The pension reserve fund shall be the fund from which shall be paid the pensions to members not entitled to a prior service allowance. Should any disability pension payable from said fund be canceled, the pension reserve thereon shall thereupon be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of a disability beneficiary be reduced as a result of an increase in the beneficiary's earning capacity, the amount of the annual reduction in the beneficiary's pension shall be paid annually into the pension accumulation fund during the period of such reduction.

Sec. 17-186. - Guarantee by city.

Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund and the maintenance of annuity reserves and pension reserves as provided for in this article are hereby guaranteed by the city. All income, interest and dividends derived from the deposits and investments authorized by this article shall be used as provided in this article for the payment of regular interest charges and any surplus shall be credited against the contributions required of the city and any deficit in the regular interest requirements shall be added to the city's contribution and paid by the city. Upon the basis of each actuarial valuation and appraisal provided for in this article, the finance director shall prepare and submit to the standing committee on finance of the city council on or before the first day of May in each year an itemized statement of the amounts necessary to be appropriated by the city to the various funds during the ensuing fiscal period. The city council shall make an appropriation, which the city council shall deem to be sufficient to provide for the contributions required of the city under this article and the amount so appropriated shall be included in the annual appropriation ordinance and shall be paid by the city treasury to the various funds of the system created by this article.

Sec. 17-187. - Membership of retirement system.

(1) All employees as defined in this article shall, upon their option in the case of elected officials and officials appointed for a fixed term, or under contract of their employment in the case of other such employees, become members of the retirement system, and shall receive no pension or retirement allowance from any other pension or retirement system supported wholly or in part by the city, nor shall they be required to make contributions under any other pension or retirement system of said city, anything to the contrary notwithstanding.

(2) It shall be the duty of the director of personnel to submit to the retirement board a statement showing the name, title, compensation, duties, date of birth and length of service of each member, and such other information as the retirement board may require. The retirement board shall then classify each member as either a class A employee or a class B employee. Notwithstanding the foregoing, for the purpose of the adoption of service and mortality tables pursuant to subsection (7) of section 17-183 of this article, the retirement board may classify the members in class A or in class B as may be recommended by the actuary on the basis of the service and mortality experience and approved by the retirement board.

The board shall certify to the member the class in which he is placed and the date of his/her admission to membership therein. When the duties of a member so require, the retirement board may reclassify him in another class and shall thereupon certify to him the class to which he/she has been transferred, provided that no member having fifteen (15) or more years of service creditable to him as a member of one (1) class may be so reclassified.

Should the service of any member in any period of ten (10) consecutive years after last becoming a member amount to less than five (5) years, or should he withdraw his/her accumulated contributions or should he become a beneficiary or die, he shall thereupon cease to be a member.

Sec. 17-188. - Service creditable—Generally.

- (1) The retirement board shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to a year of service, but in computing such service or in computing the compensation, it shall credit no period of more than a month's duration in which a member was absent without pay nor shall more than one (1) year of service be credited on account of all service in one calendar year.
- (2) At retirement, the total service credited a member shall consist of the service rendered by the member as an employee since last becoming a member and any additional service hereinafter provided. In no event shall the total service credited to a class B member exceed thirty-two (32) years and six (6) months; provided, however, that service rendered by such member after minimum retirement age shall not be considered as credited service unless the member has continued to make his/her required contributions after the attainment of such age.

Sec. 17-188.1. - Same—Purchase of service credit.

- (1) The city controller, shall be responsible for the determination, establishment and fixing of service creditable for previous service or military service and the cost of the purchase thereof as set forth in subsections (2), (3), (4) and (5) of this section for active members with a period of continuous service of at least one (1) year's duration. The city controller shall make a report monthly to the employee retirement board and the city council of all purchases of service credit made by any members.
- (2) Any active member of the retirement system who was on active duty in the armed services of the United States or in the merchant marine service of the United States during and period of one (1) year or more, may, by written notice filed with the city controller, pay into the retirement system within five (5) years of his/her first becoming a member, a contribution equal to ten (10) percentum of his/her compensation earnable in his/her first year of credible service multiplied by the number of years and fraction thereof in such armed service up to a maximum of four (4) years provided that he or she has received an honorable discharge. Upon such payment, anything to the contrary notwithstanding, such amount shall become part of such member's accumulated contributions and the period of service in the armed forces or merchant marines on account of which such payment was made shall be added to his/her period of service since last becoming a member. The crediting of such service shall be for the purpose of computing the amount of pension which may become payable under this article. There will be no interest charged provided that the member makes said purchase during his or her first five (5) years of first becoming a member of the retirement system, if purchased after completing five (5) years of membership, said member will be charged regular interest to date of purchase from date of enrollment into the retirement system calculated equal to the assumed investment return on the assets of the pension trust used by the actuary in the most recent actuarial valuation, compounded annually. Any active member of the retirement system prior to (date of passage), with seven (7) years or more of membership in said system, who failed to purchase creditable military service as outlined above, shall be permitted to purchase said time and said member will be charged regular interest to date of purchase from date of enrollment into the retirement system calculated equal to the assumed investment return on the assets of the pension trust used by the actuary in the most recent actuarial valuation, compounded annually. In accordance with this section, if an eligible employee who was a member terminates employment and subsequently becomes an eligible employee again, the date of first becoming a member of the retirement system shall be used to determine the applicable five (5) years of membership.
- (3) Any member who has rendered service as a member prior to his/her last becoming a member and terminated such previous service may, by written notice filed with the city controller, elect to repay into the annuity savings fund an amount equal to the amount of such member's accumulated contributions which were withdrawn by such member on account of such member's last termination of membership, together with eight (8) percentum interest compounded annually thereon from his/her last termination of membership, to the date of repayment. Upon such repayment, anything to the contrary notwithstanding, such amount shall become part of such member's accumulated contributions and the period of service on account of which such payment was made shall be added to his/her period of service since last becoming a member. The crediting of such service shall be both for the purpose of computing the amount of pension which may become payable under this article and for the purpose of determining such member's eligibility for the benefits payable hereunder and the rights of any beneficiary claiming through him.

(4) Any employee or elected officer who is an active class A member who returns to employment following a period of leave to which he is entitled under federal or state law or a period of disability for which workers' compensation or similar payments are made, may, by written notice filed with the city controller, elect to pay into the annuity savings fund an amount equal to eight (8) percentum of the base compensation which the employee or elected officer would have paid had such employee or elected officer not taken such period of leave or disability. Should said payment be made within twenty-four (24) months of the employees return from leave to active employment, said payment shall fulfill all requirements. Any such payment made subsequent to twenty-four (24) months of the employees return from leave to active employment shall include a eight (8) percentum interest compounded annually thereon from the date of the commencement of his/her period of leave or disability, to the date of repayment. Upon such payment, anything to the contrary notwithstanding, such amount shall become part of such member's accumulated contributions.

(5) Any employee or elected officer who is an active class B member who returns to employment following a period of leave to which he is entitled under Federal or State law or a period of disability for which workers' compensation or similar payments are made, may, by written notice filed with the city controller, elect to pay into the annuity savings fund an amount equal to 9.5 percentum (9.5%) of the base compensation which the employee or elected officer would have been paid had such employee or elected officer not taken such period of leave or disability together with eight (8) percentum interest compounded annually thereon from the date of the commencement of his/her period of leave or disability, to the date of repayment. Upon such payment, anything to the contrary notwithstanding, such amount shall become part of such member's accumulated contributions and the period of service on account of which such payment was made shall be added to his/her period of service since last becoming a member. The crediting of such service shall be both for the purpose of computing the amount of pension which may become payable under this article and for the purpose of determining such member's eligibility for the benefits payable hereunder and the rights of any beneficiary claiming through him.

(6) Any other employee or elected officer who is an active member and who had a period of continuous full time service of at least six (6) months' duration prior to his/her date of membership as a temporary city employee, or a CETA-financed city employee, may by, written notice filed with the city controller, elect to pay into the annuity savings fund and the pension accumulation fund an amount equal to the full actuarial value of the benefits payable under this article as of the date of payment, as computed by the actuarial advisor of the board, assuming such member shall retire on his/her normal retirement date based upon the assumptions used in the plan's actuarial valuation. Upon such payment, anything to the contrary notwithstanding, such amount paid into the annuity savings account shall become part of such member's accumulated contributions and the period of service on account of which such payment was made shall be added to his/her period of service since last becoming a member. The crediting of such service shall be both for the purpose of computing the amount of pension which may become payable under this article and for the purpose of determining such member's eligibility for the benefits payable hereunder and the rights of any beneficiary claiming through him.

(7) The city controller shall not permit the purchase of service credits in the retirement system for any period of employment as a seasonal or part-time employee or for service as a member on any part-time board or commission.

(8) In reference to any interest payment in this section, members in active service of the retirement system, who make application for purchase of service shall be notified by the city controller as to the calculation of interest and said member shall have a maximum of thirty (30) days in which to effectuate said purchase. If the payment is not received within thirty (30) days of notification by the city controller and payments are made per pay period, interest shall accrue equal to the assumed investment return on the assets of the pension trust used by the actuary in the most recent actuarial valuation, compounded annually on the balance of payments. Members may purchase service credit by an installment plan by payroll deduction not to exceed five (5) years, provided that all purchases and payments must be made prior to retirement.

Sec. 17-189. - Benefits payable.

(1) *Service retirement:* Retirement of a member on a service retirement allowance shall be made by the retirement board as follows:

- (a) Any member may retire upon his/her written application to the retirement board setting forth at what time, not less than thirty (30) nor more than ninety (90) days subsequent to the execution and filing thereof, he/she desires to be retired, provided that the said member at the time so specified for his/her retirement shall have attained the minimum age requirement for his/her class and notwithstanding that, during such period of notification, he/she may have separated from service. The minimum ages for service retirement for employees who became members on or before June 30, 1995 shall be as follows:

Class A employees: Fifty-five (55) or the age at which twenty-five (25) years of service is completed if prior thereto.

Class B employees: Fifty-five (55) or the age at which twenty (20) years of service is completed if prior thereto.

The minimum age for service retirement for employees who become members on or after July 1, 1995 shall be as follows:

Class A employees: Fifty-five (55) or the age at which thirty (30) years of service is completed if prior thereto.

Class B employees: Fifty-five (55) or the age at which twenty (20) years of service is completed if prior thereto.

- (b) Notwithstanding anything herein to the contrary, the minimum age for service retirement for Class B employees with less than (5) years of total service on the effective date of enactment of this amendment shall be fifty-five (55) or at the age at which twenty three (23) years of service.

The minimum age for service retirement for Class A employees who become members on or after July 1, 2004 shall be sixty (60) years of age and have completed at least ten (10) years of total service or thirty (30) years of total service. For members that have attained age fifty-five (55) years of age and have completed at least ten (10) but not thirty (30) years of total service, the allowance on service retirement shall be reduced five-twelfths (5/12) percent per month for each month between retirement commencement and the age of sixty (60).

The minimum age for service retirement for Class A employees who become members on or after July 1, 2009 shall be sixty-two (62) years of age and has completed at least ten (10) years of total service or thirty (30) years of total service. For members that have attained age fifty-five (55) years of age and have completed at least ten (10) but not thirty (30) years of total service, the allowance on service retirement shall be reduced five-twelfths (5/12) percent per month for each month between retirement commencement and the age of sixty (62).

This subsection (1)(b) shall not apply to members who vested with ten (10) years or more of contributing service.

- (c) Class B members of the police department hired on or after July 1, 2011 shall receive the following pension benefits: retirement eligibility at the earlier of twenty-five (25) years of total service or fifty-five (55) years of age; pension benefits of fifty percent (50%) of retirement-eligible pay at twenty-five (25) years of total service, with a maximum of seventy-five percent (75%) after thirty-five (35) years of total service.
- (d) Class B members of the fire department hired on or after July 1, 2012, who elect to retire after his/her 20th and before his/her 25th anniversary date of hire will receive the percentage of pension benefit calculation attributable to the member's years of service but shall not begin to receive payment of any pension benefit until the member's 25th anniversary date of membership in the retirement system; 25th anniversary date to be counted from the member's original date of hire, but excluding any breaks in service or purchased time. Further, a member who retires and is subject to this provision will receive any cost of living adjustment payment that he/she may be entitled to in the January of the year following his/her third anniversary of receiving pension benefit payments in accordance with this section.

Eligible Years of Service:	Designated Percentage:	Payment begins:
20 Years of service	50%	25th ann. date of
21 Years of service	52%	membership in the
22 Years of service	54%	Retirement System
23 Years of service	56%	
24 Years of service	58%	
25 Years of service	60%	

- (e) No member is eligible for pension benefits under this section unless the member has been a contributing member of the retirement system for at least ten (10) years except as provided in Section 17-189(5).

(2) *Allowance on service retirement:* Upon retirement for service a member shall receive a retirement allowance which shall consist of:

- (a) An annuity which shall be the actuarial equivalent of his/her accumulated contributions at the time of his/her retirement; and
- (b) If the member is a Class A employee who first becomes a member prior to July 1, 1996, a pension which together with his/her normal annuity, exclusive of any excess annuity, shall be equal to one-fortieth (1/40) of his/her final compensation multiplied by the first twenty (20) years of his/her total service credited and equal to one-fiftieth (1/50) of his/her final compensation multiplied by the number of years of his/her total service credited in excess of twenty (20) years; and, in addition, an excess annuity which shall be the actuarial equivalent of his/her accumulated excess contributions at the time of his/her retirement. If the member is a Class A employee who first becomes a member on or after July 1, 1996, a pension which together with his/her normal annuity, exclusive of any excess annuity, shall be equal to one-fiftieth (1/50) of his final compensation multiplied by the number of years of his/her total service credited; and, in addition, an excess annuity which shall be the actuarial equivalent of his/her accumulated excess contributions at the time of his/her retirement, provided, however, that no Class A employee shall receive a service retirement allowance, exclusive of any excess annuity, in excess of one hundred (100) percentum of his/her final compensation.
- (c) If the member is a Class B employee, a pension which together with his/her normal annuity, exclusive of any excess annuity, shall be equal to one-fortieth (1/40) of his/her final compensation multiplied by the first twenty (20) years of his/her total service credited, and equal to one-fiftieth (1/50) of his/her final compensation multiplied by the number of years of his/her total service credited in excess of twenty (20) years; and, in addition, an excess annuity which shall be the actuarial equivalent of his/her accumulated excess contributions at the time of his/her retirement, provided, however, that no Class B employee shall receive a service retirement allowance, exclusive of any excess annuity, in excess of seventy-five (75) percentum of his/her final compensation.

(3) *Disability Application Process:* Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award to the contrary:

- (a) Members will have sixty (60) days from the date of application, in which to file with the Pension Administrator/Retirement Office a complete application. A completed application shall include the following: (1) disability application, (2) a statement from a physician stating that the member is physically or mentally incapacitated for the performance of duty and he or she shall be retired (3) a copy of a birth certificate, passport, or other documentation to establish date of birth. If applying for an accidental disability benefits, the applicant must provide an injury report of the incident. If after thirty (30) days, the Board has not received a completed application, the Board shall send by registered mail, a notice to the member indicating that the outstanding documentation needed in order to complete the application and that after thirty (30) additional days an incomplete application will be returned and that the Board shall not consider that member's request for a disability benefit. Any member unable to submit a complete application within the sixty (60) day period may request an additional time to complete an application and said request shall be granted provided there is good cause for the request and the timeframe is reasonable. The Disability Subcommittee may approve the continuation of all such incomplete applications. A member may re-apply for disability benefits as long as the application is complete and submitted in its entirety to the Pension Administrator/Retirement Office within the time period as prescribed by this Act.
- (b) Upon receipt of such completed application, the Pension Administrator shall schedule medical examinations for said applicant with a physician certified in the field reasonably related to the pensioner's alleged injury. Said medical examinations shall be made and reports of the same filed with the Pension Administrator. During said period the Pension Administrator shall compile such other documents or evidence as he or she shall deem appropriate in order that the Board shall have available all reasonably pertinent information so as to review said application.
- (c) The Board shall approve or deny said application within sixty (60) days of receipt of the completed application. Once the application has been submitted to the Board, said application may be continued for an additional thirty (30) days provided good cause is shown for the request. In no event shall the application be continued beyond ninety (90) days of the Board's receipt of the completed application. In the event that the Board does not approve said application within ninety (90) days of its receipt of the completed application, the application shall be automatically be deemed denied without prejudice.
- (d) Additional time shall be granted and the application shall appear on the Retirement Board Agenda every thirty (30) days for a status report until additional information has been provided to complete said application for, but not limited to, the following: all cases of delayed medical reports, or where subsequent amendment of the issues is necessary, or where re-examination of said applicant is determined through no fault of the applicant.

(4) *Ordinary disability retirement:* Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award to the contrary, medical examination of a member for ordinary disability shall be made upon application of the head of the department in which said member is employed, or upon the application of said member or of a person acting in his/her behalf, stating that said member is physically or mentally incapacitated for the performance of duty and that he ought to be retired, provided that the member has had ten (10) or more years of total service. A medical examination of the member shall be made by three (3) physicians with a physician certified in the field reasonably related to the pensioner's alleged injury engaged by the director of personnel for this purpose, and should such medical examination show that said member is physically or mentally incapacitated for the performance of duty and ought to be retired, the physicians shall so report and certify to the retirement board and the retirement board shall retire the member for ordinary disability forthwith.

(5) *Allowance upon ordinary disability retirement:* Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award to the contrary, upon retirement for ordinary disability a member shall receive a retirement allowance, which shall consist of:

- (a) An annuity which shall be the actuarial equivalent of his/her accumulated contributions at the time of his/her retirement; and
- (b) If the member is a Class A employee, a pension which together with his/her normal annuity, exclusive of any excess annuity, shall be equal to nine-tenths (9/10) of one-fiftieth (1/50) of his/her final compensation multiplied by the number of years of the total service which would have been credited at minimum retirement age had he remained in service to such age; and in addition, an excess annuity which shall be the actuarial equivalent of his/her accumulated excess contributions at the time of his/her retirement; provided, however that no Class A employee shall receive an ordinary disability retirement allowance, exclusive of any excess annuity, in excess of forty-five (45) percentum of his/her final compensation.
- (c) If the member is a Class B employee, a pension which together with his/her normal annuity, exclusive of any excess annuity, shall be equal to nine-tenths (9/10) of one-fortieth (1/40) of his/her final compensation multiplied by the number of years of total service which would have been credited at minimum retirement age had he remained in service at such age; and, in addition, an excess annuity which shall be the actuarial equivalent of his/her accumulated excess contributions at the time of his/her retirement, provided, however, that no Class B employee shall receive an ordinary disability retirement allowance, exclusive of any excess annuity, in excess of forty-five (45) percentum of his/her final compensation.

(6) *Accidental disability retirement:* Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award to the contrary, medical examination of a member for accidental disability and investigation of all statements and certifications by said member or in his or her behalf in connection therewith shall be made upon the application of the head of the department in which such member is employed, or upon the application of the member, or of a person acting in his or her behalf, stating that such member is physically or mentally incapacitated for any substantial gainful activity, as a natural and proximate result of a single traumatic event while in the performance of duty, and certifying the definite time, place and conditions of such duty performed by said member resulting in such alleged disability and that such alleged disability is not the result of willful negligence or misconduct on the part of said member and is not the result of age or length of service and that said member should, therefore, be retired. If a medical examination conducted by three (3) physicians certified in the field reasonably related to the member's alleged injury engaged by the director of personnel and such investigation as the director of personnel may desire to make shall show that said member is physically or mentally incapacitated for any substantial gainful activity as a natural and proximate result of an accident, while in the performance of duty, and that such disability is not the result of willful negligence or misconduct on the part of said member and is not the result of age or length of service, and that such member should be retired, and the physicians who conducted the examination shall so certify to the retirement board stating the time, place and conditions of such service performed by said member resulting in such disability, the retirement board shall retire the said member for accidental disability. The application to accomplish such retirement shall be filed within eighteen (18) months of the date of the single traumatic event, unless a waiver is granted through a resolution approved by a majority of the city council. Notwithstanding any provision hereof, the director of personnel may use a physician who was engaged by the department to conduct an independent medical examination of the applicant provided that the physician is authorized to conduct independent medical examinations for Injured on Duty (IOD) for Class B members and/or approved by the Medical Advisory Board as an impartial medical examiner in the Workers' Compensation Court for Class A members.

(7) *Allowance on accidental disability retirement:* Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award to the contrary, upon retirement for accidental disability a member shall receive a retirement allowance, which shall consist of:

- (a) An annuity which shall be the actuarial equivalent of his/her accumulated contributions at the time of his/her retirement, and
- (b) A pension, in addition to the annuity, of fifty (50) percentum of his/her final compensation, or a pension equal to the amount of retirement allowance provided in subsection (2) of this section, whichever is greater. This section shall take effect on June 30, 2012 and shall apply to all new disability applications and any individual who has a disability application pending at the time of passage.
- (c) Any member who retires pursuant to section 17-189(6) Accidental Disability Retirement, in light of said member's receipt of an unreduced pension in the amount of fifty percent (50%) of retirement pay, said member shall not be entitled to his/her accumulated pension contributions, with interest, in any form, including but not limited to a lump sum or an actuarially calculated annuity.
- (d) Upon the death of a member within five (5) years after accidental disability retirement, provided that evidence shall be submitted to the retirement board proving that the death of such member was the natural and proximate result of an accident while in the performance of duty at some definite time and place, and that such death was not the result of willful negligence on his/her part, and upon application by or on behalf of the dependents of such deceased member the retirement board shall grant a pension of one-half the final compensation of such member:
 1. To his/her widow/widower, to continue during his/her widowhood/widowhood; or
 2. If there be no widow/widower, or if the widow/widower dies or remarries before any child dependent of such deceased member shall have attained the age of nineteen (19) years, then to his/her child or children under said age, divided in such manner as the retirement board in its discretion, shall determine, to continue as a joint and survivor pension of one-half of his/her final compensation until every such child dies or attains said age; or
 3. If there be no widow/widower or child under the age of nineteen (19) years surviving such deceased member, then to his/her dependent father or mother, as the deceased member shall have nominated by written designation, duly acknowledged and filed with the retirement board; or if there be no such nomination, then to his/her dependent father or to his/her dependent mother, as the retirement board in its discretion shall direct, to continue for life.

(8) *Re-examination of members retired on account of disability:*

Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award to the contrary:

- (a) *Annual Medical Certification Required:* Once each year the director of personnel hall, require all disability pensioners to undergo a medical examination, such examination to be made at the place of residence of the pensioner or other place mutually agreed upon, by a physician or physicians engaged by the director of personnel. In accordance with this section, each pensioner shall annually provide certification from a physician of their disability. Said certification shall include a detailed medical opinion in the form of an affidavit from a physician certified in the field reasonably related to the pensioner's disability. Should any such pensioner refuse to submit to such examination or to not provide proper annual certification, his or her pension shall be discontinued until his or her withdrawal of such refusal, and should his or her refusal continue for a year, all his or her rights in and to such pension shall be revoked by the retirement board after the pensioner has been provided written notice and an opportunity to be heard. If the said examination indicates that the disability of the pensioner has been removed and said pensioner has attained the age of service retirement said pension will be converted to the normal retirement benefit as if he or she had not been disabled. If the examination indicates that the disability of the pensioner has been removed and/or that the pensioner is able to return to work in any substantial gainful activity for the City of Providence and said pensioner is under the age of service retirement, his or her name shall be placed on such appropriate lists of candidates as are prepared for appointment to a position of employment in the City of Providence with a salary grade comparable to that from which he or she was last retired or said pension will be converted to a service pension as if he or she had not been disabled provided that he or she continued to pay into the pension system as a similarly situated employee and the pensioner qualifies with the service requirements set forth in this Section. Upon reinstatement to active service at a salary grade comparable to that from which he or she was last retired, he or she shall be reinstated as a member and participate in the benefits of the retirement system with credit for service rendered prior to disability retirement, and for the period during which he received the disability retirement allowance, provided that he or she continued to pay into the pension system as a similarly situated employee during his or her period of disability and provided that he or she did not refuse to accept such reinstatement when it was first offered to him or her; in the event of such refusal, the pension shall be discontinued and any rights to further benefits under the retirement system shall be based solely on his or her service rendered prior to his or her disability retirement.

(b) *Annual Financial Certification Required:* Once each year the director of personnel shall require every member in receipt of a disability retirement allowance to certify their financial status by submitting to the retirement board at least once each year an authenticated copy or duplicate original of the member's complete signed United States income tax return, with copies of W2's or other earned income documents being a statement of income from gainful occupation for the preceding twelve (12) months. Should the beneficiary be engaged in a gainful occupation or should the beneficiary be offered service as a result of the placing of his or her name on a list of candidates, the retirement board shall adjust, and from time to time readjust, the amount of his or her disability allowance to an amount which, when added to the amount of compensation then earnable by the beneficiary, shall not exceed the rate of 100% earnable compensation currently in force for the classification that the disability annuitant held prior to retirement. Said amount shall not be reduced to an amount less than what the accrued service benefit would have been provided the individual qualified for a service pension and provided that the individual continued to annually pay into the pension system as a similarly situated employee. Any adjustment in the disability retirement allowance, as aforesaid, shall be based upon the aforementioned statement(s) of income. Should any member receiving a disability retirement allowance refuse to submit or supply the board with required statements of income, as hereinbefore provided, said member's disability retirement allowance shall be discontinued until member is in compliance with the provisions hereof. Should such refusal continue for one (1) year, all rights of the member to any disability retirement allowance shall be revoked by the board. Upon a finding that a member receiving a disability retirement allowance has deliberately falsified information contained in his or her statement(s) of income, all rights of said member in any disability retirement allowance shall be revoked by the board. Prior to the revocation of any disability retirement allowance, the retirement board shall provide written notice to the member and conduct a meeting, with the retiree having the opportunity to be heard, to determine if revocation is warranted.

(c) This section shall take effect June 30, 2012 and shall apply to all members receiving an ordinary or accidental disability pension and shall not apply to surviving spouse benefits.

(9) *Accidental death benefit:* Upon the accidental death of a member before retirement, provided that evidence shall be submitted to the retirement board providing that the death of such member was the natural and proximate result of an accident while in the performance of duty at some definite time and place and that such death was not the result of willful negligence on his part, his accumulated contributions shall be paid to his estate, or to such person having an insurable interest in his life as he shall have nominated by written designation, duly executed and filed with the retirement board; and upon application by or on behalf of the dependents of such deceased member the retirement board shall grant a pension of one-half (½) the final compensation of such member:

(a) To his/her widow/widower, to continue during his/her widowhood/widowhood; or

(b) If there be no widow/widower, or if the widow/widower dies or remarries before any child of such deceased member shall have attained the age of nineteen (19) years, then to his child or children under said age, divided in such manner as the retirement board in its discretion, shall determine, to continue as a joint and survivor pension of one-half (½) of his final compensation until every such child dies or attains said age; or

(c) If there be no widow/widower or child under the age of nineteen (19) years surviving such deceased member, then to his dependent father or mother, as the deceased member shall have nominated by written designation, duly acknowledged and filed with the retirement board; or if there be no such nomination, then to his dependent father or to his dependent mother, as the retirement board in its discretion shall direct, to continue for life.

(10) *Deferred retirement benefit:* Any employee who has ten (10) or more years of total service may retire upon his written application to the retirement board setting forth at what time, not less than thirty (30) nor more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired, provided that the member, at the time so specified for his retirement, shall have fulfilled the above service requirement and notwithstanding that, during such period of notification, he may have separated from service.

(11) *Allowance upon deferred retirement:* Upon deferred retirement a member shall receive a deferred retirement allowance commencing at minimum retirement age calculated in the same manner as provided in subsection (2) of this section.

(12) *Restoration to service:* Should a beneficiary retired on a service retirement allowance or a deferred retirement benefit be restored to service the individual shall again become a member and any election of an optional benefit shall be null and void. If payment of his retirement allowance has commenced, such allowance shall cease. Upon subsequent retirement, if the individual has completed one (1) year of service following his restoration, the individual shall receive a retirement allowance based on the individual's total service before and after the individual's restoration to service; otherwise, the individual's retirement allowance shall be equal to the sum of the retirement allowance computed as of the date of the individual's previous retirement and the retirement allowance computed on the basis of the individual's service subsequent to restoration.

(13) *Withdrawal and ordinary death benefit:* Benefits upon withdrawal and ordinary death shall be payable as follows:

- (a) A member who withdraws from service or ceases to be a member for any reason other than death or retirement shall be paid on demand the accumulated contributions standing to the credit of his individual account in the annuity savings fund which were credited prior to the effective date of City of Providence's assumption of the employee's contributions pursuant to Section 17-185(1). A member retired on a deferred retirement benefit may elect, prior to the date upon which the first payment on account of his retirement allowance becomes normally due, to receive in lieu of his retirement allowance the amount of the accumulated contributions standing to the credit of his individual account in the annuity savings fund which were credited prior to the effective date of City of Providence's assumption of the employee's contributions pursuant to Section 17-185(1). Payment of such amount shall constitute a full and complete discharge of any further claim by him or any beneficiary claiming through him for benefits under this article. In either instance, a member may withdraw the accumulated contributions standing to the credit of his individual account in the annuity fund which were credited on or following the effective date of City of Providence's assumption of the employee's contributions pursuant to Section 17-185(1), but as to such funds, the employee will be liable for any taxable consequences including penalties for such a withdrawal.
- (b) Should a member die before retirement or should a retired member die within thirty (30) days after the date upon which the first payment on account of his retirement allowance becomes normally due, his accumulated contributions less the amount of any retirement allowance payments he may have received, shall be paid to his estate, or to such person as he shall have nominated by written designation, duly executed and filed with the retirement board.
- (c) Should a member who has attained minimum retirement age and who dies before retirement without his having made an election under the provisions of section 17-190 of this article be survived by a spouse, such spouse shall be entitled, in lieu of return of the member's accumulated contributions as provided under paragraph (b) of this subsection, to a benefit determined in the same manner as it would have been determined had the member retired from service on the date of his death and made an effective election of a reduced retirement allowance in accordance with option 2 under section 17-190 of this article and nominated his spouse as his designated beneficiary.
- (d) Upon the death of a retired member who has not made an optional selection as provided in section 17-190 of this article or upon the death of the survivor of a retired member and the beneficiary under an optional selection as provided in section 17-190 of this article, if such optional selection has been made and become effective, a payment shall be made to the estate of the retired member, or to the estate of the survivor as the case may be, or to such person as the retired member shall have nominated by written designation duly executed and filed with the retirement board in an amount equal to the excess, if any, of the retired member's normal accumulated contributions at retirement over the sum of the payment made on account of his pension and normal annuity, plus the excess, if any, of the retired member's excess accumulated contributions at retirement over the payments made on account of his excess annuity.
- (e) Upon the death of any Class B member who at the time of his death was eligible to retire from service, if no accidental death benefit is payable and if an effective election of an optional benefit has not been made under section 17-190, a retirement allowance equal to sixty-seven and one-half (67½) percent of the retirement allowance, exclusive of any excess annuity, that would have been paid to such member had he retired shall be paid to his surviving spouse for her lifetime until she remarries, or if there be no surviving spouse or the surviving spouse remarries, then to his dependent children until they attain eighteen (18) years of age. The benefit provided under this paragraph (c) shall be in lieu of any benefit under paragraph (c) of this subdivision (12) and shall be payable only if it exceeds the benefit otherwise provided under said paragraph (c).
- (f) Upon the death of any Class B member who has retired from service, if no pension is payable pursuant to paragraph (c) of subdivision (6) of this section, a pension equal to sixty-seven and one-half (67½) percent of the retirement allowance, exclusive of any excess annuity, paid to such retired member shall be paid to his surviving spouse, for her lifetime until she remarries, or if there be no surviving spouse or the surviving spouse remarries, then to his dependent children until they attain the age of eighteen (18).

(14) *Eligibility for an allowance:* The eligibility for a retirement allowance and the amount of such allowance shall be determined in accordance with the provisions of the ordinance to provide for the retirement of employees of the city as in effect on the last day of a member's employment.

(15) *Additional benefits for retired Class A employees and their beneficiaries:* Effective January 1, 1993, the benefits for any retired Class A employee who retired prior to January 1, 1993 or his beneficiary shall be adjusted to provide a minimum monthly retirement allowance of six hundred eighteen dollars (\$618.00); provided, however, if the member elected to receive a reduced retirement allowance in accordance with the available options, said six hundred eighteen dollar (\$618.00) minimum monthly allowance shall be reduced to

reflect the option elected. In the event the retired Class A employee has completed less than twenty-five (25) years of service, he or his beneficiary shall be entitled to receive one twenty-fifth (1/25) of the minimum monthly retirement allowance for each year of his service.

(16) *Additional benefits for retired Class B employees and their beneficiaries:* Effective January 1, 1993, the benefit for any retired Class B employee who retired prior to January 1, 1993 or his beneficiary shall be adjusted to provide a minimum monthly retirement allowance of six hundred thirty dollars (\$630.00); provided, however, if the member elected to receive a reduced retirement allowance in accordance with the available options, said six hundred-thirty dollar (\$630.00) minimum monthly allowance shall be reduced to reflect the option elected.

In the event the retired Class B employee has completed less than twenty-five (25) years of service, he or his beneficiary shall be entitled to receive one twenty-fifth (1/25) of the minimum monthly retirement allowance for each year of his service.

Sec. 17-189.1. - Revocation or reduction of retirement benefits of employees for dishonorable service.

(a) Payment of retirement allowance or annuity or other benefit or payments as provided in chapter 17 shall be for "honorable service" only.

(b) Definitions. For purposes of this section:

(1) "board" shall mean the Retirement Board of the Employees' Retirement System of the City of Providence;

(2) "crime related to his or her public employment" shall constitute "dishonorable service," and shall include any of the following conduct, whether or not the conduct results in a criminal conviction:

(A) committing or aiding or abetting the commission of embezzlement of public funds;

(B) committing or aiding or abetting the commission of any felonious theft by a public employee from his or her employer;

(C) committing or aiding or abetting the commission of bribery in connection with, or involving, a public employee;

(D) committing or aiding or abetting the commission of any felony by a public employee who willfully, and with the intent to defraud, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment; and

(E) any other misconduct or crime which the Board, by a majority vote, determines is "dishonorable service," after weighing and balancing the following factors:

- (i) the employee's length of service;
- (ii) the basis for retirement i.e., age service, disability, etc.;
- (iii) the extent to which the employee's pension has vested;
- (iv) the duties of the particular employment;
- (v) the employee's public employment history and record;
- (vi) the employee's other public employment and service;
- (vii) the nature of the misconduct or crime, whether it involved an isolated act or multiple acts, and its gravity or substantiality;
- (viii) the relationship between the misconduct or crime and the employee's public duties;
- (ix) the quality of moral turpitude or the degree of guilt and culpability, including the employee's motives and reasons, personal gain, and the like;
- (x) the availability and adequacy of penal sanctions; and
- (xi) other personal circumstances relating to the employee bearing upon the justness of forfeiture.

(3) "Employee" shall mean any current or former city elected official, or any appointed official or employee of the city, or of a city board, commission or agency, who is otherwise entitled to receive a pension.

(4) "Pension" shall include an employee's retirement allowance or annuity or other benefit or payment as provided in chapter 17.

(c) *Mandatory Board Action.* Notwithstanding any other provision of law, a pension shall be revoked or reduced by the Board under this section if an employee is convicted of, or pleads guilty or *nolo contendere*, to any crime related to his or her public employment. Any such conviction or plea shall be deemed to be "dishonorable service" and a breach of the employee's contract with his or her employer; however, for purposes of this section, "pleads guilty or *nolo contendere*" shall not include any plea of guilty or *nolo contendere* which does not result in a conviction by virtue of G.L. 1956, § 12-10-12 or § 12-18-3, as amended.

(d) *Permissive Board Action.* Notwithstanding any other provision of law, a pension may be revoked or reduced by the Board under this section if a majority of the Board determines by a preponderance of the evidence that an employee has engaged in "dishonorable service" after weighing and balancing the factors set forth in section (b)(1)(E).

(e) *Due Process.* If a majority of the members of the Board vote to consider any action to revoke or reduce any pension, the Board, before taking any such action, shall:

(1) conduct a meeting with the involved employees and inform the employee of the alleged conduct forming the basis of the contemplated Board action; and thereafter,

(2) provide the employee, and his or her spouse or domestic partner, dependents and/or designated beneficiaries, with ample notice of the relevant alleged conduct and an opportunity to be heard.

(f) *Balancing Test; Calculations.* This ordinance is intended to be equitable, rather than penal, in nature. Thus, when deciding to revoke or reduce a pension, the Board shall weigh and balance the factors set forth in section (b)(1)(E). In addition:

(1) the Board need not compare an employee's periods of dishonorable service with periods of allegedly honorable service, other than as may be required to determine the legitimate interest of an innocent spouse, domestic partner, dependent, and/or designated beneficiary, and the Board may revoke or reduce a pension even if the evidence of "dishonorable service" is limited to an isolated act by an employee who had separate periods of city employment;

(2) the Board shall decide whether the revocation or reduction shall take effect (and be calculated) from the date: (A) of the dishonorable service; or (B) the date notice was provided under section (e)(2); or (C) the date of the Board's decision under section (g); and

(3) if the Board determines to revoke or reduce a pension, the employee's contribution to the pension system shall be refunded, without interest; however, if, as of the date of the Board decision, the employee: (A) has not made full restitution for any loss proximately caused by his or her dishonorable service (including, but not limited, to, the fees and costs incurred by the Board), and/or (B) has already received pension payments, the amount of the unreimbursed loss and/or the pension payments received shall be deducted from any such refund.

(g) *Appeal and Standard of Review.*

(1) If the Board determines by a majority vote that revocation or reduction of a pension is warranted, it shall make specific factual findings in support thereof and shall render a written decision, which shall be appealable to the Superior Court as long as such an appeal is filed within twenty (20) calendar days from the date the Board decision was rendered. Such appeals shall be decided by the Superior Court sitting without a jury, and there shall be no automatic stay pending appeal.

(2) When reviewing a Board decision, the Superior Court shall not substitute its judgment for that of the Board as to the weight of evidence on questions of fact. The court may affirm the decision of the Board, or alternatively, may remand the case for further proceedings or reverse or modify the decision, if the substantial rights of the employee have been prejudiced because of findings, inferences, conclusions, or decisions of the board which are:

(A) in violation of constitutional, statutory or ordinance provisions;

(B) in excess of the authority granted to the board by ordinance;

(C) made upon unlawful procedure;

(D) affected by other error of law;

(E) clearly erroneous in view of the reliable, probative and substantial evidence of the whole record; or

(F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(h) *Separability.* The unconstitutionality or invalidity of any section or part of this ordinance shall not invalidate or impair the validity, force or effect of any other section or part thereof, which shall remain in full force and effect.

(i) *Effective Date.* This amended ordinance shall apply to all applications for pension benefits made on or after January 1, 2011.

Sec. 17-190. - Options.

Until the first payment on account of a retirement allowance becomes normally due, any member may elect to convert the retirement allowance, otherwise payable on his account after retirement, into a retirement allowance of equivalent actuarial value of one (1) of the optional forms named below. However, an election of an optional benefit shall not be effective until sixty (60) days after the date of the filing of the election thereof with the retirement board, or until thirty (30) days after the date upon which the first payment on account of his retirement allowance becomes normally due, whichever is the later, and should the member die before such election becomes effective, the benefits payable on his account shall be the same as though his election had not been filed and he had not been retired. Such optional retirement allowances shall be payable throughout life with the provisions that:

(1) *Option 1.* If he dies before he has received in payments the present value of his retirement allowance as it was at the time of his retirement, the balance shall be paid to his legal representatives, or such person having an insurable interest in his life, as he, his spouse, or his guardian so electing shall nominate by written designation duly acknowledged and filed with the retirement board.

(2) *Option 2.* Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person having an insurable interest in his life, as he, his spouse, or his guardian so electing shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement.

(3) *Option 3.* Upon his death, one-half of his lesser retirement allowance shall be continued throughout the life of and paid to such person having an insurable interest in his life, as he, his spouse, or his guardian so electing shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement.

(4) *Option 4.* Some other benefit or benefits shall be paid to either the beneficiary or to such person or persons as he, his spouse, or his guardian, so electing, shall nominate, provided such other benefit or benefits together with such lesser retirement allowance, shall be certified by the actuary of the retirement system to be of equivalent actuarial value to his benefit and shall be approved by the retirement board. Notwithstanding the foregoing provisions of this section, any member who has attained minimum retirement age may elect, in accordance with option 2, 3, or 4 above, a reduced retirement allowance with provision for benefits to his spouse or to a person having an insurable interest in his life other than his spouse. Such benefits shall be determined as of the date of his death or retirement, if prior thereto, in accordance with the provisions of the option elected and shall be in lieu of the return of the member's accumulated contributions as provided under paragraph (b) of subsection (12) of section 17-189 of this article. In the event of death prior to retirement, the benefit payable to the designated beneficiary shall be determined in the same manner as it would have been determined had the member retired from service on the date of his death. However, such election of an optional benefit shall not be effective until sixty (60) days after the date of the filing of the election thereof with the retirement board. After such election shall have become effective it shall be irrevocable except in the event that the designated beneficiary predeceases the member prior to his retirement.

Sec. 17-191. - Pensions offset by compensation benefits.

Any amounts paid or payable under the provisions of any worker's compensation law, or as the result of any action for damages for personal injuries against the city, on account of death or disability of a member, shall be offset against and payable in lieu of any benefits payable out of funds provided by the city under the provisions of this article on account of the death or disability of the member. If the value of the total commuted benefits under any such worker's compensation law or action is less than the present value on an actuarial basis of the benefits otherwise payable under this article, then the difference shall be payable under the provisions of this article.

Sec. 17-192. - Elective officers.

(1) Subject to the limitations of section 9, persons who have served as mayor, or as a city council member, for at least eight (8) full legislative years since hereinafter collectively referred to as elective officers, and who have reached the age of fifty-two (52), or have served twenty (20) consecutive years as an elective officer of the city prior to reaching such age, or have become totally and permanently disabled prior to reaching such age, shall be entitled to a retirement allowance as provided in this section.

(2) Said retirement allowance shall be computed at the rate of three hundred fifty dollars (\$350.00) per annum for each year, or fraction thereof, as an elective officer of the city, and since any withdrawal of the elective officer's contributions as provided in subsection (6) of this section; provided, however, that the total number of full years of service for which an allowance shall be paid shall not exceed twenty (20) years. Said retirement allowance shall include credit for each year or portion of any year served by said elective officer on active duty with the United States Armed Forces which credit shall be computed at the rate of three hundred fifty dollars (\$350.00) per annum for each full year or portion thereof of said military service.

(3) Said retirement allowance shall not be paid to any elective officer otherwise entitled thereto while the elective officer is receiving compensation from the city or any of its agencies, commissions or boards, except to the extent that said retirement allowance may exceed such compensation.

(4) Said retirement allowance shall not be paid to any elective officer who has been removed from office pursuant to the provisions of the Providence Home Rule Charter of 1980 or who, while receiving said retirement allowance, is finally convicted of a felony or other crime involving moral turpitude.

(5) Eligibility for and the continuance of any benefit payable under this section on account of total and permanent disability shall be subject to medical examinations in accordance with the provisions of subsections (3), (5) and (7) of section 17-189 of this article.

(6) Each elective officer of the city shall contribute three hundred fifty dollars (\$350.00) per annum of the elective officer's compensation toward the cost of the benefits provided hereunder. Such contributions with accumulated interest may be withdrawn at any time prior to the commencement of payments hereunder, provided that upon such withdrawal all rights accrued under this section with respect to any service rendered prior to the date of such withdrawal shall terminate. Should a former elective officer elect not to withdraw such contributions with interest as above provided, no interest shall be credited to the elective officer's contributions after four (4) years shall have elapsed since the elective officer ceased to be an elective officer. Required contributions hereunder from elective officers shall cease after twenty (20) years of service.

(7) Contributions under this section of

(a) an elective officer who dies before retirement allowance payments commence as provided hereunder, shall be repaid with accumulated interest to the elective officer's estate or designated beneficiary. Upon the death after retirement of an elective officer who has not made an optional selection as provided in subsection (9) of this section or upon the death of the survivor of a retired elective officer and the beneficiary under an optional selection as provided in said subsection (9) of this section, if such optional selection has been made and become effective, a payment shall be made to the estate of the retired elective officer, or to the estate of the survivor as the case may be, or to such person as the retired elective officer shall have nominated by written designation duly executed and filed with the retirement board in an amount equal to the excess, if any, of the retired elective officer's contributions as an elective officer with interest accumulated to the date of commencement of the elective officer's retirement allowance over the retirement allowance payments made in accordance with the provisions of this section.

(b) In the event a person who was an elective officer shall be deceased and who:

1. Served the required number of years necessary for benefits as an elective officer under this article but had not yet attained the age of fifty-two (52) years; or
2. Was collecting benefits under the provisions of this act; then and in such events, upon the date of the elective officer's death, a benefit of one-half of that amount to which said person should have been entitled under the provisions hereof had the elective officer survived or the elective officer was collecting, will be paid to the elective officer's surviving widow/widower so long as said surviving widow/widower shall remain sole and unmarried and said benefits shall cease immediately upon the death or remarriage of surviving widow/widower.

(8) An elective officer may make an optional selection under the same terms and conditions as provided in section 17-190 of this article in respect to the retirement allowance otherwise payable to him in accordance with the provisions of this section.

(9) Elective officers shall no longer be entitled to the retirement allowance provided for in this section, except as provided for as follows:

(a) Elective officers holding office prior to January 2015 shall be eligible to receive said allowance, in accordance with subsection (2) of this section, and shall be permitted to continue making contributions as provided for in subsection (6) of this section.

(b) Retired elective officers whose term ended January 2015 or earlier, and who have served at least eight (8) full legislative years as of January 2015, shall be entitled to receive said retirement allowance, as provided for in this section.

(10) The provisions of this section are in addition to and supplemental to the benefits provided under any other sections of this article and nothing contained in this section shall adversely affect any present or future rights arising out of membership in any city or state retirement system including that provided in this article. Any conflict or inconsistency between this section and any other sections of this article shall be resolved in favor of accomplishing the intention of this section and said conflict or inconsistent provisions shall be waived or superseded insofar as the other sections of this article are concerned.

(11) The city council of the City of Providence shall, from time to time, upon the advice of the finance director, appropriate such sums as may be necessary to carry out the provisions of this section. Any such sums thus appropriated shall be separately administered for the payment of the retirement allowances provided in this section.

Sec. 17-193. - Protection against fraud.

Every person who knowingly or willfully makes or presents or in any way procures the making or presentation of any false or fraudulent affidavit or affirmation concerning any claim for a service pension, an ordinary disability pension or an accidental disability pension or payment thereof, shall in every case forfeit a sum not exceeding two thousand five hundred dollars (\$2,500), to be sued and recovered by and in the name of the city on behalf of the employee retirement system, and when recovered, paid over to and thereupon become a part of the funds of the retirement system.

Sec. 17-194. - Cost of living adjustment.

(1) Any retired class B employee and any beneficiary of such employee who receives any service or any ordinary disability retirement allowance or any accidental disability retirement allowance pursuant to the provisions of this article shall, on the first day of January next following the third anniversary date of his/her retirement, receive a cost-of-living adjustment, in addition to the retirement allowance, in an amount equal to three (3) percent of his/her monthly retirement allowance, not compounded, on up to the first one thousand dollars (\$1,000.00) of said retirement allowance. For the purpose of said computation, credit shall be given for a full calendar year, regardless of the effective date of said retirement allowance. In each succeeding year thereafter, on the first day of January, the monthly retirement allowance shall be increased by three (3) percent, not compounded, on up to the first one thousand dollars (\$1,000.00) of the said retirement allowance, to be continued during the lifetime of said retired employee or beneficiary.

(2) Any cost-of-living adjustment granted to a retired employee or any beneficiary of said employee under this section shall be considered a voluntary gratuity. The payment of such voluntary gratuity may be reduced or suspended by ordinance at any time.

(3) Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award, all retired employees and any beneficiary of such employee who receives any service or any ordinary disability retirement allowance or any accidental disability retirement allowance pursuant to the provisions of this article, except for retirement allowances provided for in Sections 17-189(7)(d) and 17-189(9), shall have their cost-of-living adjustment suspended as of December 31 following the plan year in which the actuary's annual valuation determines the retirement system to be in critical status. Suspension of the annual cost of living adjustment shall continue until such time as the actuary determines in the annual actuarial valuation study that the plan's funded percentage is greater than or equal to seventy percent (70%). Within thirty (30) days of the actuary reporting in the annual actuarial valuation study that the plan's funded percentage is greater than or equal to seventy percent (70%), written notice shall be provided to all members that the cost-of-living adjustment shall be restored on the following January 1.

Sec. 17-195. - Limits on post-retirement benefits.

Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award:

(1) As a condition of receiving or continuing to receive retirement payments and health benefits, all retired individuals and spouses of retired individuals shall enroll in Medicare immediately upon eligibility. Any health benefits provided by the city to Medicare-eligible individuals shall be secondary to the Medicare benefits.

(2) With the exception of Medicare supplement or gap coverage, the city shall not provide Medicare-eligible retirees or Medicare-eligible spouses of retirees with health care benefits. The cost of said Medicare supplement or gap coverage shall be paid by the city and/or retiree as otherwise provided by ordinance or contract.

(3) Nothing contained in this section shall be construed to confer healthcare benefits on a retiree or retiree's spouse, which are not otherwise provided by ordinance or contract.

Sec. 17-196. – Pensions not to exceed 150% of state median household income

Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award:

(1) For all employees retiring on or after June 30, 2012, there shall be no pensions awarded in an amount greater than one hundred and fifty percent (150%) of the state median household income as determined by the American Community Survey, administered annually by the U.S. Census Bureau. The retirement board shall post annually on its website the amount equaling one hundred and fifty percent (150%) of the state median household income.

(2) All retired employees and any beneficiary of such employee who receives any service or any ordinary disability retirement allowance or any accidental disability retirement allowance pursuant to the provisions of this article, except for retirement allowances provided for in Sections 17-189(7)(d) and 17-189(9), shall have their cost-of-living adjustment suspended as of December 31 if their cost-of-living adjustment would increase their pension compensation to be greater than one hundred and fifty percent (150%) of the state median household income as determined by the retirement board based on data from the American Community Survey, administered annually by the U.S. Census Bureau.

Sec. 17-197. – Conflicts with other laws.

Notwithstanding any general or special law to the contrary, unless otherwise specified, the provisions of this chapter shall supersede any conflicting provisions in ordinance, collective bargaining agreement or interest arbitration award.

Sec. 17-198. – Severability; Indispensable Party.

The holding of any section or sections or parts hereof to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other section or part hereof. The city shall be an indispensable party in any action contesting the validity of this chapter.

Sec. 17-199. – Effective Date.

The amendments to this chapter shall take effect June 30, 2012, unless otherwise indicated.

Section 2.

The city council shall review the Cost of Living adjustments five years from the date of this passage and every subsequent five years.

IN CITY COUNCIL

APR 26 2012
FIRST READING
READ AND PASSED

Am M. Steh
CLERK

IN CITY
COUNCIL

APR 30 2012
FINAL READING
READ AND PASSED, *as amended*

Am M. Steh
PRESIDENT
Am M. Steh
CLERK

I HEREBY APPROVE.

April Taveras
Mayor

Date: 4/30/12