

AN ORDINANCE TO AMEND THE CITY OF ST. JOSEPH EMPLOYEES' RETIREMENT SYSTEM ORDINANCE

THE CITY OF ST. JOSEPH ORDAINS:

Section 1. Retirement System Continued; Effective Date.

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

Section 2. Definitions.

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

City means the City of St. Joseph.

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

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

Board means the board of trustees provided in this ordinance.

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

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

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

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

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

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

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

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

Compensation means a member's salary or wages paid by the City for personal services rendered by him to the City, including base pay, shift differential, longevity pay and pay in lieu of holidays, but excluding overtime pay, allowances for clothing, food and equipment, and all lump sum payments made by the City pursuant to the provisions of a sick-leave, vacation-leave or compensatory time program. In case a member's compensation is not all paid in money, the City Manager shall fix the value of the portion of his compensation which is not paid in money.

Final average compensation means the average of the last three (3) consecutive years of annual compensation received by a member for credited service immediately preceding the date his employment by the City last terminates. If he has less than 3 years of credited service, his final average compensation shall be the average of his compensations for his total period of service.

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

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

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

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

Police patrol member means any non-covered police member who is also a member of the St. Joseph Police Officers Association collective bargaining unit.

Police command member means any non-covered police member who is also a member of the St. Joseph Command Officers Association collective bargaining unit.

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

General member means any member except a police or fire member.

Covered member means any member who is covered by the federal social security old-age survivors' and disability insurance program on account of his City employment.

Non-covered member means any member who is not covered by the federal social security old-age survivors' and disability program on account of his City employment.

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

Worker's compensation period means the period a member, retirant or beneficiary is in receipt of weekly worker's compensation on account of a member's disability or death arising out of and in the course of his City employment. If he is paid a single sum in lieu of his future worker's compensation, his "worker's compensation period" shall be the sum of the period, if any, he was in receipt of weekly worker's compensation plus the period arrived at by dividing that single sum by his weekly worker's compensation award. In the absence of a weekly worker's compensation award, the award, for the purpose of this definition, shall be considered to be 1/2 of 1 percent of the member's final average compensation.

Voluntary retirement age shall be age 60 years, except that voluntary retirement age shall be age 55 years for a police or fire member hired before May 21, 2002 and not covered by a union contract on that date, and voluntary retirement age shall be age 50 years for a police or fire member who has acquired 25 or more years of credited service.

The masculine gender shall include the feminine gender, and words of the singular number with respect to persons shall include the plural number, and vice versa.

Section 3. Management of Retirement System.

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

Section 4. Board Membership.

- a) The board of trustees shall consist of 5 trustees, as follows:
 - A City Commissioner to be selected by the Commission, to serve at the pleasure of the Commission.
 - The City Manager, to serve by virtue of his position.
 - A citizen who is an elector of the City and who is not a member, retirant or beneficiary of the retirement system, to be appointed by the Commission.
 - A police or fire member to be elected by the police and fire members.
 - A general member to be elected by the general members.
- b) The police or fire member trustee and the general member trustee shall be elected under such rules and regulations as the board shall from time to time adopt.

Section 5. Reserved.

Section 6. Trustee's Term of Office; Compensation; Oath of Office.

- a) The term of office of the citizen trustee, police or fire member trustee, and general member trustee, shall be 3 years, one such term to expire September 30 of each year.
- b) The trustees shall serve without additional compensation for their services as trustees.
- c) Before assuming the duties of trustee, each trustee shall qualify by taking an oath of office to be administered by the City Clerk.

Section 7. Vacancy on Board.

In the event any trustee, except the appointed citizen trustee, ceases to be employed by the City, or if any trustee, except the City Manager, fails to attend scheduled meetings of the board for three (3) consecutive meetings, he shall be considered to have resigned from the board and the board shall, by resolution, declare his office of trustee vacated as of the date of adoption of such resolution.

Section 8. Filling Vacancy on Board.

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

Section 9. Board Meetings; Quorum; Trustee's Vote.

- a) The board shall hold meetings regularly, at least once in each 3 months, and shall designate the time and place thereof. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be open to the public.
- b) Three attending trustees shall constitute a quorum at any meeting of the board. Each trustee shall be entitled to one vote on each question before the board and at least 3 concurring votes shall be necessary for a decision by the trustees at any meeting of the board.

Section 10. Officers of Retirement System; Employment of Services.

- a) The board shall elect from its own members a chairman and a chairman pro-tem.
- b) The officers of the retirement system shall be the following:
 - The director of finance shall be secretary to the board and he shall be the administrative officer of the retirement system.
 - The director of finance shall be treasurer of the retirement system and he shall be the custodian of its assets.

- The city attorney shall be the legal advisor to the board.
 - The board shall appoint an actuary, who is a member of the American Academy of Actuaries, to be the technical advisor to the board of matters regarding the operation of the retirement system. He shall perform such other duties as are required of him under this ordinance.
 - The board shall appoint as medical director, a physician who is not eligible to participate in the retirement system as a member, retirant or beneficiary. He shall be responsible to and shall hold office at the pleasure of the board. He shall arrange for and pass upon all medical examinations required under this ordinance, he shall investigate all essential statements and certificates of a medical nature submitted in connection with a claim for a disability or duty death pension, and he shall report, in writing, to the board his conclusions on medical matters referred to him by the board.
- c) The board may employ investment counseling services and other services as it shall determine to be necessary in the proper operation of the retirement system. The compensation for such services shall be subject to the approval of the City Manager and the Commission.

Section 11. Records; Annual Report.

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

Section 12. Adoption of Experience Tables; and Regular Interest.

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

Section 13. Membership.

- a) All persons who are regular full-time employees of the City, and all persons who become regular full-time employees of the City, shall be included in the membership of the retirement system, except as provided in subsection (b) of this section.
- b) The membership of the retirement system shall not include (1) any person whose service to the City is compensated on a fee basis; nor (2) any independent contractor; nor (3) any regular part-time or temporary employee, provided, that such exclusion shall not remove from membership an employee who was a member of the retirement system prior to February 27, 2012; nor (4) the City Manager, provided he was not a member of the retirement system at the time of his appointment and his exclusion is agreeable to both him and the City Commission.

- c) In any case of doubt as to the status of any employee with respect to membership in the retirement system, the board shall decide the question.

Section 14. Termination of Membership.

Except as is otherwise specifically provided in this ordinance, should any member no longer be employed by the City, for any reason except his retirement or death, he shall thereupon cease to be a member and his credited service at that time shall be forfeited by him. In the event he is re-employed by the City, he shall again become a member. If his re-employment occurs within a period of 5 years after the date he last separated from City employment, his credited service last forfeited by him shall be restored to his credit, provided he returns to the members savings fund, within 90 days of rehire date, all amounts he withdrew therefrom, together with regular interest from the date of withdrawal to the date of repayment. Upon his retirement or death he shall thereupon cease to be a member.

Section 15. Credited Service.

The service rendered by a member shall be credited him by the board in accordance with such rules and regulations, consistent with the provisions of this ordinance, as the board shall from time to time adopt. In no case shall less than 10 days of service rendered by a member in any calendar month be credited as a month of service; nor shall less than 10 months of service rendered by him in any calendar year be credited as a year of service; nor shall more than one year of service be credited any member for all service rendered by him in any calendar year.

In the case of a police or fire member retiring pursuant to Sections 18, 19, 21, 24 or 25, credited service shall include one-half of the number of days of unused sick-leave which the member has accumulated on his date of retirement, up to a maximum of 12 weeks of such additional credited service.

Section 16. Military Service Credit.

Any member who, while employed by the City, enters any armed service of the United States, and is on active duty in such armed service during time of war or period of compulsory military service, shall have such armed service actually required of him credited him as City service in the same manner as if he had served the City uninterruptedly: Provided, that (1) he returns to City employment within one year after the date of termination of such armed service actually required of him; (2) he returns to the members savings fund the amount, if any, he withdrew therefrom at the time he entered or while in such armed service, together with regular interest from the date of withdrawal to the date of repayment; and (3) in no case shall more than 6 years of City service be credited any member for all such armed service rendered by him. In any case of doubt as to the period to be so credited any member, the board shall have final power to determine such period. During the period of such armed service and until his return to City employment, his contributions to the retirement system shall be suspended and any balance standing to his credit in the members savings fund shall accumulate regular interest. The

provisions of this section, as amended, shall not reduce the amount of military service standing to a member's credit as of June 30, 1970.

Section 17. Reserved.

Section 18. Voluntary Retirement.

Any member who either (1) has attained or attains his voluntary retirement age and has 10 or more years of credited service, or (2) acquires 30 or more years of credited service prior to his voluntary retirement age, may retire upon his written application filed with the board setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Upon his retirement a covered member shall receive a pension provided in Section 20, and a non-covered member shall receive a pension provided in Section 20.1.

Section 19. Compulsory Separation from City Employment.

- a) A member, except an elected officer of the City, shall be separated from City employment the first day of the calendar month next following the month in which he attains age 60 years if he is a police or fire member, or age 70 years if he is a general member, subject to subsection (b) of this section.
- b) A member who is subject to separation from City employment as provided in subsection (a) of this section may be continued in City employment for periods not to extend beyond his attainment of age 70 years upon his written request approved by the City Manager.
- c) If, at the time of his separation from City employment as provided in this section, a member has 10 or more years of credited service he shall be retired and he shall receive a pension provided in Section 20 if he is a covered member, or as provided in Section 20.1 if he is a non-covered member.

Section 20. Pension - Covered Member.

- a) Upon a covered member's retirement as provided in this ordinance, the member's retirement shall be calculated as follows:
 1. Covered members not under a collective bargaining agreement shall be paid a straight life pension equal to the number of years, and fraction of a year, of their credited service multiplied by 2.25 percent of their final average compensation with a maximum of 40 years of credited service. For employees hired before February 1, 2010 and retiring on or after January 1, 1997, pension benefits will be increased every July 1 in an amount equal to the percentage increase in the CPI-U (all cities) for the twelve months ending in the March immediately preceding the adjustment date, with the maximum annual percentage increase being two and one-half percent (2.5%). The first annual adjustment shall occur on the July 1 which is at least six (6) months

after the retirement date. Subsequent annual adjustments shall be made each July 1 thereafter based on the amount of the pension benefit being paid immediately prior to the adjustment date.

2. Covered members who come under the Public Works collective bargaining agreement shall be paid a straight life pension equal to the product of their final average compensation times the sum of 2.25 percent times the number of years, and fraction of a year, of their credited service contained within the first forty years of such service. For employees retiring on or after August 4, 1997, pension benefits will be increased every July 1 in an amount equal to the percentage increase in the CPI-U (all cities) for the twelve months ending in the March immediately preceding the adjustment date, with the maximum annual percentage increase being two and one-half percent (2.5%). The first annual adjustment shall occur on the July 1 which is at least six (6) months after the retirement date. Subsequent annual adjustments shall be made each July 1 thereafter based on the amount of the pension benefit being paid immediately prior to the adjustment date.
 3. Covered members who come under the police patrol collective bargaining agreement shall be paid a straight life pension equal to the number of years, and fraction of a year, of their credited service multiplied by 2.25 percent of their final average compensation.
 4. Covered members employed by the Benton Harbor – St. Joseph Wastewater Treatment Plant shall be paid a straight life pension equal to the number of years, and fraction of a year, of their credited service multiplied by 2.25 percent of their final average compensation. For employees retiring on or after July 1, 1997, pension benefits will be increased every July 1 in an amount equal to the percentage increase in the CPI-U (all cities) for the twelve months ending in the March immediately preceding the adjustment date, with the maximum annual percentage increase being two and one-half percent (2.5%). The first annual adjustment shall occur on the July 1 which is at least six months after the retirement date. Subsequent annual adjustments shall be made each July 1 thereafter based on the amount of the pension benefit being paid immediately prior to the adjustment date.
 5. Prior to his retirement, any covered member may elect to be paid his pension under an option provided in Section 22 in lieu of a straight life pension.
- b) In accordance with such rules and regulations as the board may from time to time adopt, a covered member who retires prior to his attainment of age 65 years may elect to have his straight life pension actuarially equated, to provide an increased pension payable to his attainment of age 65 years and a reduced pension payable thereafter. His increased pension, payable to his attainment of age 65 years, shall approximate the sum of his reduced pension payable after his attainment of age 65 years and his estimated social security primary insurance amount.

Section 20.1 Pension - Non-Covered Member.

- a) Upon the retirement of a non-covered member who is not a police or fire member, as provided in this ordinance, he shall be paid a straight life pension equal to the number of years, and fraction of a year, of his credited service multiplied by 1.85 percent of his final average compensation. Prior to the date of his retirement, he may elect to be paid his pension under an option provided in Section 22 in lieu of a straight life pension.
- b) Upon the retirement of a non-covered police or fire member who does not come under any collective bargaining agreement, he shall be paid a straight life pension equal to the product of his final average compensation times 2.50 percent times the number of years, and fraction of a year, of his credited service contained within the first 25 years of such service. Prior to the date of his retirement, he may elect to be paid his pension under an option provided in Section 22 in lieu of a straight life pension.
- c) Upon the retirement of a non-covered member who is also a police patrol member, as provided in this ordinance, he shall be paid a straight life pension equal to the product of his final average compensation times 2.50 percent times the number of years, and fraction of a year, of his credited service contained within the first 25 years of such service. Prior to the date of his retirement, he may elect to be paid his pension under an option provided in Section 22 in lieu of a straight life pension.
- d) Upon the retirement of a non-covered member who is also a police command member, as provided in this ordinance, he shall be paid a straight life pension equal to the product of his final average compensation times 2.50 percent times the number of years, and fraction of a year, of his credited service contained within the first 25 years of such service. Prior to the date of his retirement, he may elect to be paid his pension under an option provided in Section 22 in lieu of a straight life pension. For employees retiring on or after July 1, 1995, pension benefits will be increased every July 1 in an amount equal to the percentage increase in the CPI-U (all cities) for the twelve months ending in the March immediately preceding the adjustment date, with the maximum annual percentage increase being two and one-half percent (2.5%). The first annual adjustment shall occur on the July 1 which is at least six (6) months after the retirement date. Subsequent annual adjustments shall be made each July 1 thereafter based on the amount of the pension benefit being paid immediately prior to the adjustment date.
- e) Upon the retirement of a non-covered member who is also a fire member, as provided in this ordinance, he shall be paid a straight life pension equal to the product of his final average compensation times the sum of 2.5 percent (.025) times the number of years, and fraction of a year, of his credited service contained within the first 25 years of such service. In no event shall his straight life pension be less than an amount equal to the number of years, and fraction of a year, of his credited service multiplied by 1.85 percent of his final average compensation. The employee's spouse at the date of his retirement will be entitled to receive a monthly benefit equal to fifty-five percent (55%) of the employee's benefit in the event of the employee's death

after retirement. Prior to the date of his retirement, he may elect to be paid his pension under an option provided in Section 22 in lieu of a straight life pension. For employees retiring on or after July 1, 1995, pension benefits will be increased every July 1 in an amount equal to the percentage increase in the CPI-U (all cities) for the twelve months ending in the March immediately preceding the adjustment date, with the maximum annual percentage increase being two and one-half percent (2.5%). The first annual adjustment shall occur on the July 1 which is at least six (6) months after the retirement date. Subsequent annual adjustments shall be made each July 1 thereafter based on the amount of the pension benefit being paid immediately prior to the adjustment date.

Section 20.2. Terminal Payment.

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

Section 20.3. Internal Revenue Code Limitations.

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

Section 21. Deferred Retirement.

In the event a member who has 10 or more years of credited service leaves the City employment prior to his voluntary retirement age, for any reason except his retirement or death, he shall be entitled to a pension provided in Section 20 if he is a covered member, or Section 20.1 if he is a non-covered member, in accordance with the applicable section in effect at the time he left City employment. His pension shall begin the first day of the calendar month next following the date his application for same is filed with the board on or after his attainment of age 60 years, except that in the case of a police or fire member who has acquired 25 or more years of credited service, his pension shall begin the first day of the calendar month next following the date his application for same is filed with the board on or after his attainment of age 50. If he withdraws his accumulated contributions from the members savings fund, he shall thereupon forfeit his right to a deferred pension provided in this section. In no case shall he receive service credit for the period of

his absence from City employment, except as is specifically provided in this ordinance. Until the beginning date of his pension, his accumulated contributions standing to his credit in the members savings fund shall be credited with regular interest.

Section 22. Pension Options.

- a) Prior to the date of his retirement, but not thereafter, a member may elect to receive his pension as a straight life pension payable throughout his life, or he may elect to receive the actuarial equivalent, at that time, of his straight life pension in a reduced pension payable throughout his life, and nominate a beneficiary in accordance with the provisions of Options A, B or C, set forth below:
- **Option A - Pension for 10 Years Certain and Life Thereafter**
Under Option A, subject to subsection (b) of this section, a retirant shall receive a reduced pension payable throughout his life with the provision that if he dies before he has received 120 monthly pension payments the payments shall be continued for the remainder of the period of 120 months to such person or persons, in equal shares, as the retirant shall have nominated by written designation duly executed and filed with the board. If no such designated person survives the retirant, such remaining monthly payments shall be continued and paid to the estate of the survivor of the retirant and his last surviving beneficiary.
 - **Option B - 100% Survivor Pension** (formerly called option 2): Under Option B, subject to subsection (b) of this section, upon the death of a retirant, his reduced pension shall be continued throughout the life of and paid to such person having an insurable interest in the retirant's life as he shall have nominated by written designation duly executed and filed with the board prior to the date of his retirement.
 - **Option C - 50% Survivor Pension** (formerly called option 3): Under Option C, subject to subsection (b) of this section, upon the death of a retirant, one-half of his reduced pension shall be continued throughout the life of and paid to such person having an insurable interest in the retirant's life as he shall have nominated by written designation duly executed and filed with the board prior to the date of his retirement.
- b) If any benefit is paid or becomes payable under Section 30 on account of the death of a retirant, who elected to receive his pension under an option provided in subsection (a) of this section, no pension shall be paid his surviving beneficiary under the option elected by him. If no pension is payable to his surviving beneficiary, as hereinbefore provided, and the retirant dies before he has received in pension payments an aggregate amount equal to his accumulated contributions standing to his credit in the members savings fund at the time of his retirement, the difference between his accumulated contributions and the aggregate amount of pension payments received by him shall be paid to his designated beneficiary, if living, otherwise to the retirant's estate.

Section 23. Non-Duty Death Pensions.

- a) A member who continues in the employ of the City on or after the date he either (1) acquires 20 years of credited service, or (2) attains age 55 years and has 10 or more years of credited service, may, at any time prior to the date of his retirement elect Option B provided in Section 22 in the same manner as if he were then retiring from City employment, and nominate a beneficiary whom the board finds to be dependent upon him for at least 50 percent of the dependent's support due to lack of financial means. Prior to the date of his retirement, but not thereafter, the member may revoke his election of Option B and nomination of beneficiary, and he may again prior to the date of his retirement elect Option B and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an Option B election in force, his beneficiary, if living, shall immediately receive a pension under Option B computed in the same manner as if the member had retired the day preceding the date of his death, notwithstanding that he might not have attained his voluntary retirement age. If a member has an Option B election in force at the time of his retirement, his election of Option B and nomination of beneficiary shall thereafter continue in force, unless prior to the date of his retirement he elects to receive his pension as a straight life pension or under another option provided in Section 22. No pension shall be paid under this subsection on account of the death of a member if any benefits are paid or will become payable under Section 30 on account of his death.
- b) A member who continues in the employ of the City on or after the date he either (1) acquires 20 or more years of credited service, or (2) attains age 55 years and has 10 or more years of credited service, and in either case does not have an option election in force as provided in subsection (a) of this section, and (1) dies while in the employ of the City, and (2) leaves a spouse, his spouse shall immediately receive a pension computed in the same manner as if the member had (1) retired the day preceding the date of his death, notwithstanding that he might not have attained his voluntary retirement age, (2) elected Option B provided in Section 22 and nominated his spouse as beneficiary. No pension shall be paid under this subsection on account of the death of a member if any benefits are paid or will become payable under Section 30 on account of his death.

Section 24. Disability Retirement.

Upon the application of a member, or his department head, a member who (1) is in the employ of the City, (2) has 10 or more years of credited service, and (3) becomes totally and permanently disabled from performing duty in the employ of the City by reason of a personal injury or disease, may be retired by the board; but only if, the medical director, after a medical examination of the member, reports to the board (1) that the member is physically or mentally totally disabled from performing duty in the employ of the City, (2) that such disability will probably be permanent, and (3) that the member should be retired. This section is subject to Section 25.

Section 25. Disability Retirement - Service Requirement Waived.

The credited service requirement of at least 10 years contained in Section 24 shall be waived for a member if the board finds that (1) his total and permanent disability is the natural and proximate result of a personal injury or disease arising out of and in the course of his actual performance of duty in the employ of the City, and (2) he is in receipt of worker's compensation on account of that disability.

Section 26. Disability Pension - Covered Member.

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

Section 27. Disability Pension - Non-Covered Member.

Upon a non-covered member's retirement on account of disability, as provided in Section 24, he shall be paid a disability pension computed according to Section 20.1. His disability pension shall not be less than what he would receive for ten years of service for a non-disability retirement. In either case, his disability pension shall be subject to Section 29. Prior to the date of his retirement, he may elect to be paid his disability pension under an option provided in Section 22 in lieu of a straight life pension.

Section 28. Adjustment of Duty-Related Disability Pension.

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

Section 29. Re-Examination of Disability Retirants.

- a) At least once each year during the first 5 years a retirant is receiving a disability pension, and at least once in each 3 year period thereafter, the board may require the retirant, if he has not attained his voluntary retirement age, to undergo a medical examination to be made by or under the direction of the medical director. Should the retirant refuse to submit to any such medical examination, the board may suspend payment of his disability pension until he undergoes the required medical examination. If the medical director reports to the board that the retirant is physically able and capable of resuming employment with the City, he shall be returned to City employment

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

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

Section 30. Death in Line of Duty.

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

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

Section 31. Subrogation Right.

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

Section 32. Return of Accumulated Contributions.

- a) Should any member cease to be an officer or employee of the City before he has satisfied the age and service requirements for retirement provided in Section 18, for any reason except his disability retirement or death, he shall be paid his accumulated contributions standing to his credit in the members savings fund upon his written request to the board. Should the member or authorized representative fail to request a refund or to specify a method of distribution within 60 days of the member's last day of employment, the refund shall automatically be made by mailing via certified mail, return receipt requested, to the member's last known address a check payable to the member, in the proper amount, less any required withholding.
- b) Should any member die and no pension becomes or will become payable by the retirement system on account of his death, except as provided in Section 30, his accumulated contributions standing to his credit in the members savings fund at the time of his death shall be paid to such person or persons as he shall have nominated by written designation duly executed and filed with the board. If no such designated person survives the member, his accumulated contributions shall be paid to the member's estate.
- c) In the event any member dies without heirs and without having nominated a beneficiary as provided in subsection (b) of this section, his accumulated contributions standing to his credit in the members savings fund at the time of his death may be used to pay his burial expense, not to exceed a reasonable sum determined by the board; provided, that the member leaves no other estate sufficient for such purpose.
- d) Payments of accumulated contributions, as provided in this section, may be made in a single sum or in installments, as the board shall from time to time determine.
- e) If the recipient of any accumulated contribution distribution (i) elects to have such distribution paid directly to an eligible retirement plan or IRA, and (ii) specifies the eligible retirement plan or IRA to which such distribution is to be paid (in such form and at such time as the distributing plan administrator may prescribe), the distribution will be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan.

Section 33. Members Savings Fund.

- a) The members savings fund (formerly called annuity savings fund) shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensations of members, and from which shall be made refunds and transfers of accumulated contributions, as provided in this ordinance.

- b) Member contributions to the retirement system shall be as follows:
- Covered members not under a collective bargaining agreement, 4 percent of their annual compensation.
 - Covered members under the Public Works collective bargaining agreement, 3.5 percent of their annual compensation. Effective January 1, 1998, the contribution will be 3.25 percent of their annual compensation.
 - Covered members under the Police Patrol collective bargaining agreement, 4 percent of their annual compensation.
 - Covered members employed by the Benton Harbor-St. Joseph Wastewater Treatment Plant, 4 percent of their annual compensation.
 - Non-covered members shall contribute 6.5 percent of their annual compensation.
- c) The officer or officers responsible for preparing the payroll shall cause the contributions provided in this section to be deducted from the compensations of each member on each and every payroll, for each and every payroll period, so long as he remains a member. The members' contributions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be changed thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of his compensation, less the deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by him during the period covered by such payment, except as to benefits provided by this ordinance. The officer or officers responsible for preparing payroll shall certify to the director of finance the amount of contribution to be deducted from the compensation of each member for each and every payroll and each of those amounts shall be deducted by the director of finance and when deducted shall be paid to the retirement system and shall be credited to the member's individual account in the members savings fund.
- d) In addition to the contributions so deducted from the compensation of a member, he shall deposit in the members savings fund, by a single contribution or by an increased rate of contribution as approved by the board, the amount, if any, he withdrew therefrom, together with regular interest from the date of withdrawal to the date of repayment. In no case shall any member be given credit for service rendered prior to the date he withdrew his accumulated contributions until he returns to the members savings fund all amounts due the fund by him.
- e) Upon the retirement of a member, his accumulated contributions shall be transferred from the members savings fund to the retirement reserve fund. At the expiration of a period of 3 years after the date an employee ceases to be a member, any balance standing to his credit in the members savings fund unclaimed by the member or his legal representative, shall be transferred to the income fund, unless otherwise specifically provided in this ordinance.

- f) The City shall pick up the member contribution required by subsection (b) of this section for all compensation earned after the effective date of this subsection. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The City shall pick up the member contributions from funds established and available in the salaries account, which funds would otherwise have been designated as member contributions and paid to the pension plan. Member contributions picked up by the City pursuant to this subsection shall be treated for all other purposes of this and other laws of the City in the same manner and to the same extent as member contributions made prior to the effective date of this subsection.

Section 34. Retirement Reserve Fund.

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

Section 35. Pension Reserve Fund.

- a) The pension reserve fund shall be the fund to which shall be credited the contributions made by the City to the retirement system, and from which shall be made transfers as provided in this section. Upon the basis of such mortality and other experience tables, and regular interest, as the board shall from time to time adopt, the actuary shall annually compute the pension reserves for (1) service rendered and to be rendered by members, and (2) pensions being paid retirees and beneficiaries. The pension reserves so computed shall be financed by annual City contributions determined according to paragraphs (1), (2) and (3) of this subsection.
 - 1. The City's annual contributions for members' current service shall be a percent of the members' annual compensations which will produce an amount which if paid annually by the City during their future service will be sufficient to provide the difference between (i) the pension reserves for the portions of the pensions to be paid them based upon their future service, and (ii) the present value of their future net contributions.
 - 2. The City's annual contribution for members' accrued service shall be a percent of the members' annual compensations which will produce an amount which if paid annually by the City over a period of years, to be determined by the board, will amortize, at regular interest, the unfunded pension reserves, if any, for the accrued service portions of the pensions to be paid the members.

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

Section 36. Expense Fund.

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

Section 37. Fiscal Management.

- a) The board shall be the trustees of the assets of the retirement system and shall have full power to invest and reinvest such assets in accordance with the provisions of Act No. 314 of the Public Acts of 1965, as amended, and as the Act might from time to time be amended or superseded. The board shall have the power to hold, purchase, sell, assign, transfer and dispose of any securities and investments in which any of the monies of the system have been invested, as well as the proceeds of the investments and any monies belonging to the system.
- b) There shall be kept, on deposit, available cash not to exceed 5 percent of the total assets of the retirement system. All assets of the system shall be held for the sole purpose of meeting disbursements for pensions and other benefits authorized by this ordinance, and shall be used for no other purpose.
- c) The description of the various funds of the retirement system shall be interpreted to refer to the accounting records of the system and not to the segregation of assets in the funds of the system.

Section 38. Methods of Making Payments.

All payments from monies of the retirement system shall be made according to provisions of charter and ordinance governing the disbursements of monies from the City's general fund. No payment shall be made from monies of the system unless such payment has been previously authorized by a specific or continuing resolution adopted by the board.

Section 39. Income Fund: Allowance of Regular Interest.

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

Section 40. Assignments Prohibited.

- a) The right of a person to a pension, to the return of accumulated contributions, the pension itself, any other right accrued or accruing to any member, retirant, or beneficiary, under the provisions of this ordinance, and the monies belonging to the retirement system, shall not be subject to execution, garnishment, attachment, the operation of insolvency or bankruptcy law, or any other process of law whatsoever, and shall be unassignable, except as is specifically provided in this ordinance.

- b) Should a member be covered by a group insurance or prepayment plan participated in by the City, and should he be permitted to, and elect to, continue such coverage as a retirant he may authorize the board to have deducted from his pension the payments required of him to continue coverage under such group insurance or prepayment plan. The City shall have the right to set-off for any claim arising from embezzlement by or fraud of a member, retirant, or beneficiary.

Section 41. Correction of Errors.

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

Section 42. Repeal of Conflicting Ordinance Provisions.

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

Section 43. Modifications.

The Commission may enter into written agreements with individual retirants for non-standard pension payments, provided that such written agreements are filed with the City Clerk and City Finance Director.

Section 44. Validity.

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

Section 45. Benton Harbor - St. Joseph Joint Wastewater Treatment Plant; employees as members.

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

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