

**Washtenaw County Employees'  
Retirement System**

**Covering the Employees  
of the  
County of Washtenaw, State of Michigan**

Established by Resolution, effective February 1, 1948  
Restated by Ordinance, effective January 1, 1994  
Restated by Ordinance, effective June 7, 2006  
Restated by Ordinance, effective November 18, 2009



AN ORDINANCE AMENDING AND RESTATING THE PROVISIONS OF THE WASHTENAW COUNTY EMPLOYEES RETIREMENT SYSTEM TO INCORPORATE ACCUMULATED CHANGES, REMOVE OBSOLETE MATERIAL, AND TO CONFORM TO APPLICABLE PROVISIONS OF STATE AND FEDERAL LAW. BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF WASHTENAW:

that the Washtenaw County Employees Retirement System is hereby amended and restated in its entirety to read as follows:

**Retirement System Effective Date; Continuation; Purpose.**

**Section 1.** The Washtenaw County Employees Retirement System established February 1, 1948 under the authority of Section 12a of Act No. 156, of the Public Acts of 1851, as added by Act No. 249 of the Public Acts of 1943, as amended, is continued for the purpose of providing retirement income to qualifying employees and former employees, and survivor income to their qualifying beneficiaries.

**Short Title; Application; Effective Date of Restatement.**

**Section 2.** (a) This Ordinance may be cited as the Washtenaw County Employees' Retirement System Ordinance.

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

(c) This Ordinance shall be put into effect immediately upon final passage by the Board of Commissioners of the County of Washtenaw with an effective date of November 18, 2009.

**Definitions.**

**Section 3.** As used in this Ordinance:

(a) "Accumulated member contributions" means the balance in a member's individual account in the reserve for member contributions.

(b) "Actuarially equivalent" means that the two benefits being compared have equal actuarial present values. Actuarial equivalencies shall be calculated using assumptions stipulated by the Retirement Commission.

(c) “Beneficiary” means an individual who is being paid or who has entitlement to the future payment of a pension on account of a reason other than the individual’s membership in the Retirement System.

(d) “Compensation” means the salary or wages paid an employee for personal services rendered the County while a member of the Retirement System. Salary and wages shall include: longevity pay; overtime pay; pay for periods of absence from work by reason of vacation, holiday, and sickness; payments in consideration of compensatory time; payments of up to one year’s accrual of unused vacation time and such other remuneration as the Board of County Commissioners may designate from time to time by ordinance or resolution. Compensation shall not include any remuneration or reimbursement not specifically stated to be included. Compensation for members represented by collective bargaining associations shall include those items specifically referenced in the applicable collective bargaining agreement.

(e) “County” means Washtenaw County, State of Michigan, and its various offices, boards, agencies and departments.

(f) “Final average compensation” means the average of the annual compensations paid a member during the three consecutive years of credited service producing the highest average contained within the 10 years of credited service immediately preceding the member’s last termination of employment with the County, if the member has at least three years of credited service. If the member has less than three years of credited service, final average compensation means the aggregate amount of compensation paid the member divided by the member’s years and fraction of a year of credited service. Final average compensation for members represented by collective bargaining associations shall be calculated based upon the periods of service specifically referenced in the applicable collective bargaining agreement.

(g) “Pension” means a series of equal monthly payments by the Retirement System. Payment may be for a temporary period or throughout the future life of a retired member or beneficiary.

(h) “Retired member” means an individual who is being paid a pension on account of the individual’s membership in the Retirement System.

(i) “Service” means personal service rendered the County while a member of the Retirement System, including qualifying military service pursuant to Section 11, prior public service pursuant to Section 11a, and any service credited by specific Retirement Commission resolution consistent with applicable law.

### **Membership in Retirement System.**

**Section 4.** People employed in included positions are members of the Retirement System. Included positions are:

Positions held by all individuals who are employed by the County, its offices, boards, agencies or departments, in a regular position unless employed in an excluded position enumerated in Section 5.

For purposes of this section, a regular position is defined as a position that requires an employee to regularly work 50% or more of the normal work-week. Regular part-time employees shall accrue service credit based on the percentage of time worked each year.. In case of doubt, the Retirement Commission shall decide who is a member.

### **Excluded Positions.**

**Section 5.** Excluded positions are:

(a) Positions which are compensated on a basis not subject to the withholding of Federal income taxes or FICA taxes by the County or to existing fringe benefits provided by the County.

(b) Any position held by a retired member pursuant to Section 23.

(c) Members of boards and commissions paid exclusively on a per diem basis.

(d) Any position held by a person who is included by law, by action of the Board of County Commissioners, by collective bargaining agreement, by individual employment agreement or by individual choice of retirement plan, in any other pension or retirement system by reason of the compensation paid by the County, except the Federal Old Age, Survivors and Disability Insurance program.

(e) Temporary positions.

(f) Positions filled by part-time employees who are employed on a schedule totaling less than 50% of the hours of a normal work week.

(g) Positions as employees of the Washtenaw County Road Commission.

### **Termination of Membership.**

**Section 6.** An individual shall cease to be a member of the Retirement System upon termination of employment or upon becoming employed in an excluded position. Upon reemployment by the County in an included position entitling the employee to membership, the individual shall again become a member.

### **Vested Termination of Membership.**

**Section 7.** A person who ceases to be a member for a reason other than retirement or death shall be eligible to become a vested former member if the member has eight or more years of credited service, and the individual's accumulated member contributions have not been refunded. Such a person shall not receive service credit while absent from County employment.

### **Credited Service - Earned.**

**Section 8.** Service rendered by a member shall be credited to the member's individual credited service account in accordance with rules the Retirement Commission shall prescribe. On or after October 1, 2008, all employees of bargaining units transferring into the Retirement System from the Money Purchase Pension Plan ("MPPP"), in accordance with their respective collective bargaining agreements, shall be credited with 100% of the service credit earned under their MPPP account. Service shall be credited based upon calendar days of employment and to the nearest 1/12 year.

In no case shall:

(a) More than one year of credited service be credited on account of all service rendered by a member in any one calendar year.

(b) Less than 10 months of service in a calendar year be credited as a year of service.

(c) Less than 10 days of service in a calendar month be credited as a month of service.

(d) A member's accumulated contributions in the MPPP that have been assigned to an Alternate Payee under the terms of an approved Eligible Domestic Relations Order ("EDRO") or Domestic Relations Order ("DRO") be credited towards the member's account with the Retirement System.

### **Credited Service - Forfeiture.**

**Section 9.** Credited service shall be forfeited if an individual, including a vested former member, receives a refund of accumulated member contributions.

### **Section 10 (Reserved).**

### **Military Service - Conditions for Credited Service.**

**Section 11.** A member who has served in any armed service of the United States, including the National Guard or military reserve, shall be entitled to credited service for complete months of active duty, if each of the following conditions are satisfied:

(a) The member has at least 10 years of credited service;

(b) The member pays the retirement system 5% of the member's annual, full-time rate of compensation at time of payment multiplied by the years and fraction of a year of service being claimed;

(c) Armed service credited a member under this paragraph shall not exceed five years;

(d) Credited service shall not be granted for periods of military service which are or could be used for obtaining or increasing a benefit from another retirement system, except for service that is or would be credited under the federal government for service in the reserves;

(e) The member may make only one request for military service and must fully purchase the service credit within one year from the approval by the Retirement Commission, but no later than the member's retirement date. Failure to do so shall foreclose any further request and shall result in refunding without interest to the member any partial payments made for military service credit.

### **Credited Service - Purchase of Prior Public Service**

**Section 11a.** (a) Prior to retirement, Members may purchase up to ten years of additional service credit to be used when calculating the years of service for County pension purposes. Additional years of service will be limited to a maximum of ten years including prior public service, military time and any additional years of service credit which the County may grant. Prior service which was not recognized for pension purposes by a former public employer shall not be eligible for purchase.

(b) For purposes of this section:

(i) "Prior Service" means the period of employment time with another public employer and/or the County on which a pension calculation was determined by the former public employer.

(ii) "Public Employer" means the United States Government, except the military, State Government or any of their political subdivisions.

(c) The Member must be vested in the County Retirement System without the additional years of prior service to be eligible to purchase prior public service credit.

(d) If the Member seeks credit for prior service with another public employer, employment by the County shall have occurred within 15 years following the Member's separation from service of the last unit of government by which the Member was employed. Service rendered before the last break in service of more than 15 years shall not be credited.

(e) Prior public service shall not be credited if such service is also credited under the retirement plan of another public employer from which the Member retired, unless the Member irrevocably forfeits the right to such other retirement benefits.

(f) Members seeking to purchase prior service acquired with another public employer must deposit in the Retirement System an amount equal to the aggregate amount of contributions

the Member would have made had the service been acquired in the employ of the County, plus interest from the dates the contribution would have been made to the date of deposit, at rates determined by the Retirement Commission. In addition, the Member must deposit in the County Retirement System an amount equal to the aggregate amount of the contributions the employer would have made had the prior service being credited under this section been acquired in the employ of the County.

(g) Members seeking to purchase prior service acquired with the County, the Member must deposit in the Retirement System an amount equal to the aggregate amount of contributions the Member made at the time of the previous membership service plus interest from the date of withdrawal of the accumulated contributions to the date of deposit, at rates determined by the Retirement Commission. In addition, the Member must deposit in the Retirement System an amount equal to the aggregate amount of contributions the employer made at the time of previous membership service plus interest from the date of separation to the date of deposit, at rates determined by the Retirement Commission.

(h) The Retirement Commission will set the interest rate at the same rate that is used by the retirement system, which may vary from time to time.

(i) The purchase of prior public service credit shall be made consistent with this section, the rules and regulation adopted by the Retirement Commission and Sections 12a(9) and 12(a)(26) of MCL 46.12a.

*(Historical: Section 11 amended 10-08-97 by Ordinance No. 97-0191)*

### **Reciprocal Retirement System.**

**Section 12.** The Retirement System is a reciprocal retirement system under the provisions of Act 88, public acts of 1961 of the State of Michigan, as amended. Section 6 of Act 88, as amended, has not been adopted by Washtenaw County.

### **Benefit Groups- Composition**

**Section 13.** The following benefit groups are designated for the purpose of determining benefit eligibility conditions, benefit amounts, and member contribution rates, as well as other non-uniform provisions.

(a) General Benefit Group - Group A. All members not included in another benefit group.

(b) Benefit Group B. (Reserved)

(c) Benefit Group C. (Reserved)

(d) Sheriff Benefit Group - Group D (sheriff's department). All members who are (i) employed in the Washtenaw County Sheriff's Department, and either (ii) are employed in the

Classification of Deputy, Detective, Corrections Officer or Communications Officer and are represented by the Police Officers Association of Michigan, or (iii) are represented by the Command Officer Association of Michigan or (iv) are not represented by any union. All members who are employed in the Washtenaw County Sheriff's Department in a classification other than Deputy, Detective, Corrections Officers or Communications Officer and who are represented by the Police Officers Association of Michigan.

In case of doubt, the Retirement Commission shall determine the benefit group(s) that apply to a member.

### **Benefit Groups - Effect on Retirement Eligibility.**

**Section 14.** Benefit eligibility conditions shall be determined as follows:

(a) If the retiring member has five or more years of credited service earned in positions designated Benefit Group D, Benefit Group D conditions (Section 17(d)) shall apply;

(b) If the retiring member can not satisfy the requirement in (a), Benefit Group A conditions (Section 17(a) and 21(a)) shall apply.

### **Benefit Groups - Effect on Pension Amount.**

**Section 15.** If a retiring individual has credited service with more than one benefit group, then the amount of the individual's pension shall be the sum of the amounts for each benefit group in which the individual has service. The amount for each benefit group the individual has service with shall be determined as follows:

(a) Determine the amount of pension that would apply if the individual's total credited service in force had been earned with that benefit group (Sections 19 and 20).

(b) Determine the proportion of the individual's total credited service that was earned with that benefit group.

(c) Multiply (a) by (b). This is the pension amount attributable to service with the specified benefit group.

(d) Repeat steps (a), (b) and (c) for each other benefit group the individual has service with.

(e) Add the results from step (c) for each benefit group the individual has service with.

This sum is the amount of the pension under optional form of payment SL.

These calculations shall be based upon the Retirement System provisions in effect at the time of separation of benefit group or employment.

**Age Retirement - Conditions.**

**Section 16.** An individual may retire with a normal retirement pension upon satisfaction of each of the following requirements:

(a) A written application for retirement, in the form prescribed by the Retirement Commission, has been filed with the Retirement System.

(b) Employment is terminated immediately prior to the effective date of retirement, except that in the case of a vested former member employment will have terminated at an earlier date.

(c) The individual meets the applicable age and/or service requirements for retirement.

**Normal Retirement - Age and Service Requirements.**

**Section 17.** The age and/or service requirement are:

(a) General Benefit Group - Group A.

(i) The individual has attained age 60 years and has 8 or more years of credited service; or

(ii) Individuals hired on or before December 31, 2008, who have reached the age of at least 50 years and have a combination of years of service and age equaling 75 (Rule of 75) and is covered by a collective bargaining agreement which allows for the Rule of 75, or is not covered by a collective bargaining agreement; or

(iii) Individuals hired on or after January 1, 2009, who have reached the age of at least 55 years and has a combination of years of service and age equaling 75 (Rule of 75) and is covered by a collective bargaining agreement which allows for the Rule of 75, or is not covered by a collective bargaining agreement; or

(iv) In the event an individual's position with the County is eliminated, the individual has reached the age of 45 with at least 8 years of consecutive service with the County.

(b) Benefit Group B. (Reserved)

(c) Benefit Group C. (Reserved)

(d) Sheriff Benefit Group - Group D. The individual has 20 or more years of credited service earned in positions designated as Benefit Group D positions, or the individual has attained age 55 years and has 10 or more years of credited service earned in positions designated as Benefit Group D positions.

Upon retirement as provided in this section a member shall be paid a pension computed according to the Provisions of Sections 19 and 20.

*(Historical: Section 17(a) amended 11-19-97 by Ordinance No. 97-0264)*

### **Normal Retirement - Vested Former Member.**

**Section 18.** A vested former member may retire upon attainment of age 60 years if the vested former member has 8 or more years of credited service.

(a) Withdrawal of accumulated member contributions and loss of credited service shall constitute forfeiture of all rights to any pension provided by the Retirement System.

(b) Upon retirement as provided in this section a vested terminated member shall be paid a pension computed according to the provisions of Sections 19 and 20 (or corresponding sections of the Retirement Ordinance in effect for the member on the date the former member ceased to be an employee).

### **Normal Retirement - Amount of Pension.**

**Section 19.** The annual benefit amount under form of payment SL (Straight Life) is determined as follows:

(a) General Benefit Group - Group A. Two percent (.02) of the member's final average compensation multiplied by years, and fraction of a year, of credited service.

(b) Benefit Group B. (Reserved)

(c) Benefit Group C. (Reserved)

(d) Sheriff Benefit Group - Group D.

Two and one-half percent (.025) of the member's final average compensation multiplied by years, and fraction of a year, of credited service.

If the member or vested terminated member has credited service with more than one benefit group, the pension amount shall be computed in accordance with the provisions of Section 15.

### **Normal Retirement - Maximum Pension.**

**Section 20.** The maximum amount of a pension financed by County contributions is 75% (.75) of an individual's final average compensation. The pension financed by County

contributions is the annual benefit amount under form of payment SL (Section 19 or Section 15) less the annual amount of straight life pension paid for by the individual's accumulated member contributions.

**Section 21 (Reserved).**

**Section 22 (Reserved).**

**Re-employment by County - Effect on Pension Payments.**

**Section 23.** Unless otherwise provided by the County Pension Plan Act (MCL 46.12a), if a retired member becomes employed by the County, the following rules shall apply:

(a) The retired member's pension payments will be suspended effective as of the first of the month following the 60th day after the retired member's rehire date, unless reemployment by the County has ended by that date.

(b) The retired member's pension payments will be reinstated as of the first of the month following termination of the retired member's reemployment.

(c) The amount of the reinstated pension shall be the amount the retired member would have received had the retired member not become reemployed by the County.

Paragraphs (a), (b) and (c) shall not apply and pension payments shall continue without change due to reemployment by the County if:

(d) the retired member is not included as a member of the Retirement System during the period of reemployment, and

(e) the retired member is eligible only for those benefits that the County provides for retired members and those benefits required by law, and

(f) one or more of the following applies:

(i) the retired member is employed by the County for not more than 1000 hours in any 12 month period.

(ii) the retired member is elected or appointed as a County official to an office that the retired member did not hold just prior to retirement for a term of office that begins after the member's retirement date, or to the same office that the retire member held just prior to retirement for a term of office that begins at least two years after the member's retirement date.

**Form of Payment of a Pension.**

**Section 24.** A member or vested former member may elect to have pension payments made under any one, and only one, of the following forms of payment, except that Form of Payment 4 may be elected only by an individual who will receive benefits under Section 17, 18 or Section 21. The election and naming of a survivor beneficiary must be made on a form furnished by and filed with the Retirement Commission prior to the date the first pension payment is made. An election of form of payment may not be changed on or after the date the first pension payment is made. A named survivor beneficiary may not be changed on or after the date the first pension payment is made if form of payment 2 or 3 is elected. A named survivor beneficiary may be changed or may be more than one person only if form of payment SL or 1 is elected. A named survivor beneficiary must have an insurable interest in the life of the member or vested former member when named. Payment shall be made under form of payment SL if there is not a timely election of another form of payment. The amount of pension under forms of payment 1, 2, 3 and 4 shall have the same actuarial present value, computed as of the effective date of the pension, as the amount of pension under form of payments SL.

No payments shall be made to a survivor beneficiary if a duty survivor pension under Section 34 becomes payable on account of the death of the retired member.

Form of Payment SL - Straight Life Pension. The retired member is paid a pension for life under form of payment SL. All payments stop upon the death of the retired member.

Form of Payment 1 - Life Pension with Guaranteed Payments Certain. The retired member is paid a reduced pension for life under form of payment 1. Upon the death of the retired member, if the retired member received fewer monthly pension payments than were guaranteed, the named survivor beneficiary is paid a pension for the remainder of the guaranteed period in the same amount the retire member was receiving. If the named beneficiary has died before the retired member, or dies before the guaranteed period has elapsed, the actuarial present value of the remaining monthly payments shall be paid to the legal representative of the last to survive of the retired member and the named survivor beneficiary.

The number of monthly payments guaranteed may be 120. The retiring member may not elect a number of payments that exceeds the member's life expectancy as of the date of retirement. The number of payments guaranteed may not be changed on or after the date the first pension payment is made.

Form of Payment 2 - Life Payments with Full Continuation to Survivor Beneficiary. The retired member is paid a reduced pension for life under form of payment 2. Upon the death of the retired member during the lifetime of the named survivor beneficiary, the named survivor beneficiary is paid a pension until death in the same amount the retired member was receiving. Should the named survivor beneficiary die before the retired member, the retired member's pension shall be recomputed (pop-up) to a straight life pension (form of payment SL).

Form of Payment 3 - Life Payments with One-Half Continuation to Survivor Beneficiary. The retired member is paid a reduced pension for life under form of payment 3. Upon the death of the retired member during the lifetime of the named survivor beneficiary, the named survivor beneficiary is paid a pension until death of one-half the amount the retired member was

receiving. Should the named survivor beneficiary die before the retired member, the retired member's pension shall be recomputed (pop-up) to a straight life pension (form of payment SL).

Form of Payment 4 - Life Payments with Social Security Co-ordination. The retired member is paid an increased pension until age 65 and a reduced pension for life thereafter under form of payment 4. The increased pension payable until age 65 shall approximate the sum of the reduced pension payable after age 65 and the retiring member's estimated age 65 Social Security primary insurance amount. Form of payment 4 is available only to members who retire in accordance with Section 17, 18 or 21 after attaining age 60 years but before attaining age 65 years. Upon the death of the retired member, no further pension benefits will be provided.

*(Historical: Section 24 amended 05-19-99 by Ordinance No. 99-0113)*

### **Disability Retirement - Conditions.**

**Section 25.** The Retirement commission may approve disability retirement for a member who becomes incapacitated for continued employment by the County if each of the following conditions are met:

(a) Application for disability retirement is filed with the Retirement Commission by either the member or the county, while the member is in the employment of the County;

(b) The member has 10 or more years of credited service;

(c) The member undergoes all medical examinations and tests ordered by the Retirement Commission, and releases to the Retirement Commission all requested medical reports and records;

(d) A medical examination of the member is conducted or directed by the medical director;

(e) The medical director certifies to the Retirement commission that (i) the member is mentally or physically totally incapacitated for any continued employment by the County, (ii) the incapacity is likely to be permanent, and (iii) the member should be retired;

(f) The Retirement Commission concurs with the certification of the medical director.

(g) With regard to a member who is in Benefit Group D, the term "medical director," as used in this section and Section 29, shall be understood to mean a committee of the three medical doctors. The effective date of a disability retirement shall not predate the later of (i) the date of disability, and (ii) the date the member ceases to be paid by the County.

### **Disability Retirement - Pension Amount; Form of Payment**

**Section 26.** The amount of a disability pension shall be computed according to Sections 19 and 20 based upon the member's credited service and compensation earned until termination of

County employment. The disability retired member shall have the right to elect a form of payment provided in Section 24.

### **Disability Retirement - Special Provisions if Duty Incurred.**

**Section 27.** The following exceptions to the provisions of Sections 25 and 26 shall apply if the Retirement Commission finds that the member's disability is the direct and proximate result of the member's performance of duty as an employee of the County and if the member is in receipt of worker's compensation on account of the disability arising out of and in the course of county employment:

(a) The requirement of 10 years of credited service shall be waived.

(b) Credited service shall include years and fraction of a year, if any from the effective date of the disability pension to the earliest date the member would have satisfied the age and service requirements applicable to the member's benefit group (Section 17) had employment by the County continued.

(c) If the disability is the direct and proximate result of causes arising from the course of employment by the Washtenaw County Sheriff's Department, the amount of the straight life disability pension shall be 75% of final average compensation. An optional form of payment (Section 24) may be elected.

### **Disability Retirement - Limitation on Pension Amount**

**Section 28.** (a) If the straight life amount of a disability pension plus the amount of the disability retired member's considered income exceeds 70% of the disability retired member's final average compensation, then the straight life amount of the disability pension shall be reduced to the difference between 70% (75% for Sheriff Benefit Group) of the disability retired member's final average compensation and the amount of the disability retired member's considered income.

(b) A disability retired member's considered income is the annualized sum of the following amounts:

(1) Remuneration for personal services rendered in any gainful employment.

(2) Worker's compensation weekly benefits, redemptions, and settlements, on account of the same disability for which retired. If there is a redemption or settlement of the worker's compensation benefit, weekly benefits at the established amount shall be considered to continue until the weekly benefits paid after the effective date of the settlement equal the amount of the redemption or settlement. Thereafter, the member will be considered to have no income from worker's compensation benefits. Worker's compensation benefits for bona fide medical expenses, as determined by the Retirement Commission, shall not be considered income.

(3) Payments from any program of salary continuance, sickness and accident insurance, disability benefits, or program of similar purpose, financed in whole or in part by the County. Cost-of-living increases in the amount of disability benefits paid the retired member under the federal Social Security program shall be disregarded. The Retirement System shall calculate the initial amount of disability pension on the premise that the retired member is being paid federal Social Security disability benefits for a single person with average monthly earnings equal to the retired member's final average compensation. The retired member may submit evidence, satisfactory to the Retirement System, of receipt of a lesser amount of Social Security disability pension or denial of a Social Security disability pension and the amount of pension shall be recalculated taking the lesser amount or denial into account.

(4) Unemployment insurance or similar payments by reason of the member's County employment.

(c) The Retirement System shall periodically request substantiated income information from retired member. Failure to provide the requested information within 90 days of the request shall cause suspension of payment of the pension until the information is received.

(d) The provisions of this section shall apply during the period, if any, between the effective date of a disability pension and the date the disability retired member attains age 60 years. Application of the limitation shall be to the amount of pension under form of payment SL. The effect of an election of any other form of payment shall be taken into account after application of the provisions of this section.

**Disability Retirement - Continuation Subject to Reexamination; Suspension/Termination of Pension.**

**Section 29.** (a) At least once each year during the first five years following a member's retirement for disability and at least once in every three years period thereafter, the Retirement System may require a disability retired member to undergo periodic medical or other reevaluation by or under the direction of the medical director if the individual has not attained age 60 years. The medical director may designate another qualified physician to supervise the reevaluation, if the disability retired member's place of residence is outside the area considered by the Retirement Commission to be local for this purpose. If the disability retired member refuses to submit to reevaluation, payment of the pension may be suspended by the Retirement Commission. If the refusal continues for one year, the Retirement Commission may revoke the disability retired member's rights to the disability pension. A disability pension shall be terminated if the medical director reports that the disability retired member is not longer mentally or physically totally incapacitated for any continued employed by the County and the Retirement Commission concurs with the report.

(b) The membership status of a terminated disability retired member who is returned to County employment shall be governed by the provisions of Sections 4 and 5. Actual credited service at time of disability retirement shall be restored upon again acquiring membership. Credited service shall not be granted for the period of disability retirement unless the member

was in receipt of worker's compensation on account of a disability arising out of and in the course of County employment and had not attained age 70 years.

(c) A terminated disability retired member who does not reacquire membership and restoration of credited service shall have actual credited service at time of disability retirement restored if such restoration enables the individual to become a vested former member.

**Survivor Pension - Conditions for Automatic Pension to Spouse.**

**Section 30.** A pension shall be paid for life to the surviving spouse of a deceased member if each of the following conditions are met:

(a) The member has 20 or more years of credited service or has attained the age and service requirements for normal retirement.

(b) The member died while an employee of the County.

(c) No eligible domestic relations court orders to the contrary are in effect.

**Survivor pension - Amount of Automatic Pension to Spouse.**

**Section 31.** The amount of an automatic pension payable to the spouse shall be computed as if the deceased member had retired the day preceding death under the normal retirement provisions (Sections 19 and 20), elected form of payment 2 and nominated the said spouse as beneficiary (Section 24). Upon the death of the spouse, the pension shall terminate.

**Survivor Pension - Conditions for Pension to Elective Beneficiary**

**Section 32.** (a) A member may name a beneficiary for the exclusive purpose of being paid a pension under the provisions of this section. The naming of a beneficiary shall be made on a form provided by and filed with the Retirement Commission. The named beneficiary may be changed or the election revoke at any time.

(b) A pension shall be paid to the named beneficiary, if each of the following conditions are met:

(1) The member dies while an employee of the County at a time when the named beneficiary is alive.

(2) The member, at time of death, has 20 or more years of credited service; or, has attained the age and service requirements for normal retirement.

(3) The named beneficiary is found by the Retirement Commission to have been dependent upon the deceased member for at least 50% of the individual's financial support.

## **Survivor Pension - Amount of Pension to Elective Beneficiary**

**Section 33.** The amount of pension paid to the named beneficiary shall be computed as if the deceased member had retired the day preceding death under the normal retirement provisions (Sections 19 and 20), elected the form of payment 2 and elected the named beneficiary as survivor beneficiary (Section 24). The pension shall terminate upon the death of the named beneficiary.

## **Survivor Pension - Amount of Pension to Elective Beneficiary.**

**Section 34.** In the event:

- (i) a member dies while an employee of the County, or
- (ii) a disability retired member dies within three years of the date of retirement and before attaining age 60 years as a result of the same injury or disease for which the member retired and for which the member was paid a worker's compensation benefit; and
- (iii) the injury or disease resulting in death is found by the Retirement Commission to have occurred as the direct and proximate result of causes arising out of the course of the member's actual performance of duties in the employ of the County; and
- (iv) eligible beneficiaries are paid worker's compensation benefits on account of the death, the following provisions shall apply in lieu of Sections 30 through 33:
  - (a) If the member had not retired, the accumulated member contributions shall be refunded in accordance with Section 44.
  - (b) The surviving spouse of the deceased member or retired member shall receive a monthly pension equal to the spouse's weekly worker's compensation converted to a monthly basis. The spouse's pension shall begin upon termination of the worker's compensation payments and shall continue until the spouse's death. As used in this section, the term spouse means the person to whom the member or retired member was married at the time the member's or retired member's last employment with the County was terminated, and at the date of death.
  - (c) If the deceased member or retired member leaves an unmarried child or children under age 18 years, each such child shall receive a monthly pension equal to the child's weekly worker's compensation converted to a monthly basis. The child's pension shall begin upon termination of the worker's compensation payments and shall continue until the earliest of the child's adoption, marriage, attainment of age 18 years or death.
  - (d) The deceased member's or retired member's dependent parents shall each receive a monthly pension equal to such parents weekly worker's compensation converted to a monthly basis. The parent's pension shall begin upon termination of the parent's worker's compensation payments and shall continue until death.

(e) If there is a redemption or settlement of the worker's compensation payments referred to in (b), (c) or (d), weekly benefits at the established amount shall be considered to continue until the weekly benefits paid after the effective date of the settlement equal the amount of the redemption or settlement. Thereafter, the worker's compensation payments will be considered to have terminated.

(f) In no case shall the sum of the annual benefits provided in paragraphs (b), (c) and (d) of this section exceed the greater of (i) \$2,400 and (ii) two percent (2%) of the deceased member's final average compensation multiplied by the member's credited service not to exceed 25 years. If adjustment is necessary to meet this limitation, each of the benefits under (b), (c) and (d) shall be reduced proportionately.

### **Survivor Pension - Only One Pension Payable.**

**Section 35.** No pension payments shall be made under provisions of Sections 30 and 31 if any pension is or will be paid under the provisions of Sections 32 and 33. No pension payments shall be made under the provisions of Sections 30, 31, 32 and 33 if any pension is or will be paid under the provisions of Section 34.

### **Guaranteed Minimum Aggregate Payout.**

**Section 36.** If all pension payments permanently terminate before the total payments from the System on behalf of the former member equal the retired member's deceased member's or deceased vested former member's accumulated member contributions at time of retirement or death if earlier, the difference between the amount of accumulated member contributions at time of retirement or death if earlier and the aggregate amount of pension payments made shall be paid to such individual or individuals as the former member may have named on a form provided by and filed with the Retirement Commission. If no such named individual survives, the difference shall be paid to the legal representative of the last to survive of the former member and named individuals.

### **Pensions - Application.**

**Section 37.** The effective date of a member's pension shall not be less than 30 days nor more than 90 days after the member files a written application for retirement with the Retirement Commission.

### **Denial of Claim for Benefits; Appeal to Retirement Commission.**

**Section 38.** A benefit claimant shall be notified in writing within 30 days of Retirement Commission action of a denial of a claim for benefits. The notification shall contain the basis for denial. The benefit claimant may appeal the denial and request a hearing before the Retirement Commission. The appeal shall be in writing and filed with the Retirement Commission within 90 days of the date of the notification of denial. The request for appeal shall contain a statement of the claimant's reasons for believing the denial to be improper. The Retirement Commission shall schedule a hearing of the appeal within 60 days of receipt of the request for appeal.

## **Pensions - Payment.**

**Section 39.** All payments from the Retirement System shall be made according to provisions of law, and this Ordinance, and shall be made upon regular vouchers signed by the two persons designated by the Retirement Commission. A duly attested copy of the resolution adopted by the Retirement Commission designating such persons and bearing upon its face specimen signatures of such persons shall serve as authority of making such payments upon such vouchers. Payments shall only be executed based upon a specific or continuing resolution adopted by the Retirement Commission.

## **Pensions - Commencement, Duration, and Change.**

**Section 40.** (a) a normal or disability pension shall commence on the effective date of the member's or vested former member's pension. A pre-retirement survivor pension shall commence on the first day following the death of the member. A post-retirement survivor pension shall commence on the first day following the termination of the retired member's pension.

(b) Pensions are paid in 12 equal installments on the 20th day of each month.

(c) If the commencement date of a pension is not the first day of a calendar month, the amount of the first payment shall be pro-rated based upon the number of days between the commencement date and the end of the calendar month.

(d) Termination of payment of a pension shall occur at the end of the calendar month in which occurred the event causing termination. Payment shall be made for the full month of termination.

(e) A change in the amount of a pension shall occur the first day of the calendar month next following the date of the event causing the change.

## **Post-Retirement Death Benefit.**

**Section 41.** Upon the death of a retired member, the Retirement system shall pay a single payment death benefit on the member's behalf to the individual named as beneficiary for this purpose by the retired member. If there is no such named person surviving, the death benefit shall be paid to the legal representative of the deceased retired member. The Retirement Commission may provide the death benefit directly from the Retirement System or through purchase of life insurance by the Retirement System. The amount of the death benefit shall be as follows:

(a) \$2,000.00 for members of Benefit Group D, the Sheriff Benefit Group;

- (b) \$2,000.00 for general employee members of Benefit Group A, who retired on or before December 31, 2002;
- (c) \$3,500.00 for supervisor members of Benefit Group A, who retired on or before December 31, 2002;
- (d) \$7,500.00 for all members of Benefit Group A, who retired on or after January 1, 2003.

**Medical Benefits**

**Section 42.** Medical benefits are not provided by the Retirement System or administered by the Retirement Commission. Members should refer to the applicable health plan documents or collective bargaining agreements regarding medical benefits.

**Member Contributions - Amounts; Procedures.**

**Section 43.** (a) Member contributions to the Retirement System shall be deducted from each member's paychecks and shall be the following percentage of the member's annual compensation.

- (1) Benefit Group A. 7.5% as of January 1, 2009, with a shared liability of up to a 10% cap. The employer shall assume the first 2.5% increase up to the 10% cap, but if additional contributions are required by employees, a minimum of 4 months notice is required.
- (2) Benefit Group B. (Reserved)
- (3) Benefit Group C. (Reserved)
- (4) Benefit Group D. 7%

Effective January 1, 1997, the County in its sole discretion shall direct member contributions to be credited to the Retirement System and/or the VEBA Plan and Trust. An individual's member contribution to the Retirement System shall be credited to that individual's accumulated member contributions.

(b) Continuation of employment by the member shall constitute consent and agreement to the deduction of the member contributions where applicable. Payment of compensation less the deduction shall be full and complete discharge of all claims and demands for compensation for personal service rendered the County.

(c) The person responsible for preparing the County payroll shall cause the member contributions to be deducted from the compensation of each member on each and every payroll.

The deducted contributions shall be paid to the Retirement System and shall be credited to the member's individual accounts in the reserve for member contributions.

(d) Employer Pick-Up Contributions. Effective July 1, 1999, There is hereby created an employer "pick-up" program whereby a percentage of employee contributions to the Retirement System shall be paid by the County of Washtenaw in lieu of contributions by the employees. The terms and conditions of such contributions shall be in accordance with the provisions of the Internal Revenue Code Section 414(h)(2) and related Treasury Regulations and applicable law. Member Contributions. Upon implementation, the County shall solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code, pick up, for the purposes specified in that section, a percentage of member contributions required by the Retirement System for all salary earned by the member after implementation. The provisions of this section are mandatory, and the member shall have no option concerning the pick up or to receive the contributed amount directly instead of having them paid by the County to the Retirement System. In no event may implementation occur other than at the beginning of a pay period. Member contributions picked up under the provisions of this section shall be treated as county contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Members' contributions picked up under this section shall continue to be designated member contributions for all purposes of the Retirement System and shall be considered part of the member's salary for purposes of determining the amount of the member's contribution.

*(Historical: Section 43(a) amended 03-10-99 by Ordinance No. 99-0046; Section 43(d) amended 06-09-00 by Ordinance No. 99-0137)*

#### **Member Contributions - Refunds.**

**Section 44.** (a) An individual's accumulated member contributions, including credited interest, shall be refunded to the individual if all of the following conditions are met:

- (1) Employment by the County has been terminated.
- (2) The individual has not met the applicable age and service conditions for normal retirement (Section 17), or for early retirement (Section 21).
- (3) A disability pension (Sections 25-27) is not payable or being paid to the individual;
- (4) A non-duty survivor pension (Sections 30-33) is not payable or being paid on the individuals behalf.
- (5) The individual makes application for the refund on a form provided by and filed with the Retirement Commission.

(b) If an individual dies and no pension becomes or will become payable on account of the death, the individual's accumulated member contributions shall be refunded in accordance with the deceased individual's instructions made on a form provided by and filed with the Retirement Commission. If there be no such instructions or if the individuals who are to be paid the refund no longer live, the accumulated member contributions shall be refunded to the legal representative of the deceased member.

(c) Refunds of accumulated contributions, as provided for in this Ordinance, may be made in monthly installments according to such rules and regulations as the Retirement Commission shall from time to time adopt.

### **Retirement Commission - Authority and Responsibility.**

**Section 45.** The administration, management and responsibility for the proper operation of the Retirement System, and for interpreting and making effective the provisions of the Retirement Ordinance are vested in a Retirement Commission.

### **Retirement Commission - Composition.**

**Section 46.** The Retirement Commission is a quasi-judicial body and shall consist of the following seven (7) individuals:

(a) Two members of the Washtenaw County Board of Commissioners appointed by the Washtenaw County Board of Commissioners.

(b) The County Administrator or the individual designated by the County Administrator to serve in his/her place. The designation shall be made in writing and filed with the Retirement Commission.

(c) The County Finance Director.

(d) Two members of the Retirement System that are actively employed in a County Union position, to be elected as determined by the Board of Trustees of the Retirement System, provided that no more than one member Commissioner shall be from a single County department.

(e) One member of the Retirement System that is actively employed by the County in a Union or Non-Union position, to be elected by all members of the Retirement System, provided that no more than one member Commissioner shall be from a single County Department.

The Retirement Commission shall establish rules and regulations for elections required by paragraph (b) and (c).

*(Historical: Section 46 amended 06-04-03 by Ordinance No. 03-095)*

### **Retirement Commission - Term of Office; Oath of Office; Vacancies.**

**Section 47.** (a) The term of office of the member elected Commissioners shall be three years. Terms shall be staggered, as determined by the Retirement Commission, so that one term shall expire at the end of each applicable calendar year.

(b) Each commissioner shall, prior to taking office, take an oath of office administered by the County Clerk.

(c) A vacancy shall occur on the Retirement Commission if a member elected commissioner (i) ceases to be a member, or (ii) becomes employed in the County department of one of the other member-elected commissioners. A vacancy shall occur on the Retirement Commission if any commissioner resigns, is removed from office or fails to attend three consecutive meetings unless excused for cause by the commissioners attending the meetings.

(d) In the event a vacancy occurs in the position of member elected commissioner, then the Retirement Commission, by majority vote, will appoint an individual who meets the necessary qualifications to fill the remainder of the unexpired term.

*(Historical: Section 47 amended 06-04-03 by Ordinance No. 03-095)*

### **Retirement Commission - Meetings; Quorum; Voting; Record of Proceedings.**

**Section 48.** The Retirement Commission shall hold meetings regularly, at least one in each calendar quarter, and shall designate the time and place of each meeting. All meetings of the Retirement Commission shall be public and shall be held subject to the provisions of the Open Meetings Act. Notice of the meetings will be posted in the County Building prior to the meeting date. Four commissioners shall constitute a quorum at any meeting of the Retirement Commission. Each commissioner shall be entitled to one vote on each question before the Retirement Commission. At least four concurring votes shall be required for a valid action by the Retirement Commission. The Retirement Commission shall adopt its own rules of procedures and shall keep a written record of its proceedings.

*(Historical: Section 46 amended 06-04-03 by Ordinance No. 03-095)*

### **Retirement Commission - Officers; Services.**

**Section 49.** (a) The Retirement Commission shall elect from its membership a Chairperson and a Vice-Chairperson. The Chairperson shall preside over the meetings of the Retirement Commission. If the Chairperson is unable to preside over a meeting, the Vice-Chairperson shall preside over that meeting.

(b) The County Administrator shall be the Secretary to the Retirement System.

(c) The County Treasurer shall be the Treasurer of the Retirement System. The Treasurer shall be custodian of the assets of the Retirement System except as to such assets as the Retirement Commission may from time to time place in the custody of a nationally chartered bank or trust company selected by the Retirement Commission.

(d) The Retirement Commission shall appoint as the Legal Advisor an attorney who is not eligible to participate in the Retirement System as a member, retired member or beneficiary.

(e) The Retirement Commission shall appoint as the Medical Director a physician who is not eligible to participate in the Retirement System as a member, retired member or beneficiary. The medical director shall conduct or oversee all required medical examinations and shall investigate all statements and certificates of a medical nature which are presented to the Retirement Commission. The conclusions and recommendations of the medical director shall be presented to the Retirement Commission in writing.

(f) The Retirement Commission shall appoint an Actuary who shall advise the Retirement Commission on the actuarial operation of the Retirement System. Actuary shall mean a member of the American Academy of Actuaries or an individual who has demonstrated the educational background necessary to effectively render actuarial advice to the Retirement System and who has at least 5 years of relevant pension actuarial experience. A partnership or corporation may be designated as Actuary if the duties of Actuary are performed by or under the direct supervision of an individual who meets the preceding requirements.

(g) The Retirement Commission is authorized and empowered to employ such professional and other services as it requires for the proper discharge of its responsibilities. The Retirement Commission may utilize the services of County employees if made available.

*(Historical: Section 49(b) amended 02-19-97 by Ordinance No. 97-0037)*

#### **Retirement Commission - Records; Reports.**

**Section 50.** (a) The Retirement Commission shall keep such records as are required to properly manage and report the operations of the Retirement System.

(b) The Retirement Commission shall prepare an annual report for each fiscal year. The annual report shall contain information about the financial and other activities of the Retirement System during the fiscal year. A copy of the annual report and a copy of the most recent actuarial report shall be furnished to the Board of County Commissioners.

#### **Retirement Commission - Investment Authority and Restrictions.**

**Section 51.** The Retirement Commission is the trustee of the assets of the Retirement System. The Retirement Commission has the authority and power to invest and re-invest the assets of the

Retirement System subject to all terms, conditions, limitations and restrictions imposed by the State of Michigan on the investments of public employee retirement systems. The Retirement Commission may employ investment counsel to advise it in the making and disposition of investments.

In exercising its discretionary authority with respect to the management of the monies and assets of the Retirement System, the Retirement Commission shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing, that an individual of prudence acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and similar objectives.

### **Retirement Commission - Use of Assets; Prohibited Actions**

**Section 52.** (a) All assets of the Retirement System shall be held and invested for the sole purpose of meeting the legitimate obligations of the Retirement System and shall be used for no other purpose.

(b) Members of the Retirement Commission and its representatives are prohibited from:

(1) Having a beneficial interest, direct or indirect, in an investment of the Retirement System.

(2) Borrowing money or assets of the Retirement System.

(3) Receiving any pay or payment from any individual or organization providing services to the Retirement System, other than compensation for personal services or reimbursement of authorized expenses paid by the Retirement System.

### **Retirement Commission - Compensation.**

**Section 53.** County Commissioners serving on the Retirement Commission shall receive the applicable per diem allowance. Other retirement commissioners shall not be paid for their service on the Retirement Commission. All retirement commissioners may be reimbursed for the actual and necessary expenses incurred in performing their duties as retirement commissioners.

### **Retirement Commission - Experience Tables and Regular Interest**

**Section 54.** The Retirement Commission shall from time to time adopt such mortality and other tables of experience, and a rate or rates of interest as are necessary in the operation of the Retirement System on an actuarial basis.

### **Financial Objective of the Retirement System; County Contributions.**

**Section 55.** (a) The financial objective of this Ordinance is to provide for County contributions to the Retirement System each fiscal year

(i) which together with the contributions made by members during the fiscal year shall be sufficient to fully fund the cost of benefits likely to be paid on account of service rendered by members during the year, finance unfunded costs of benefits likely to be paid on account of service rendered by members prior to the current year over a period of not more than 30 years, and pay administrative expenses; and

(ii) which expressed as percents of the aggregate annual compensation of members will remain approximately level from generation to generation of County taxpayers.

(b) County contribution amounts required to meet the financial objective shall be determined by annual actuarial valuations made in accordance with generally accepted actuarial principles and in conformance with any applicable laws. The Retirement Commission shall certify to the Board of County Commissioners the amount of annual contribution needed to meet the financial objective and the Board of County Commissioners shall appropriate and cause the contribution to be paid to the Retirement System.

#### **Reserve for Accumulated Member Contributions.**

**Section 56.** (a) The reserve for accumulated member contributions is the account in which is accumulated the contributions deducted from the compensation of members and which shall be charged with refunds and transfers of accumulated member contributions

(b) A member's accumulated contributions shall be transferred from the reserve for accumulated member contributions to the reserve for pension payments if a pension becomes payable on account of the member's retirement or death.

#### **Reserve for Pension Payments.**

**Section 57.** (a) The reserve for pension payments is the account which is charged with all pension payments and refunds of accumulated member contributions which have been transferred to this account. If a disability pension is terminated and the individual again becomes a member or becomes a vested former member, the pension reserve at the date of termination of disability shall be transferred from the reserve for pension payments to reserve for member contributions and the reserve for employer contributions in the proportion transfers were made from such accounts because of the retirement.

(b) Each year following receipt of the report of the annual actuarial valuation, the balance in the reserve for pension payments shall be set equal to the actuarial present value of

pensions being paid retired members and beneficiaries by a transfer to or from the reserve for employer contributions. The pending transfer shall be taken into account by the actuary when making the actuarial valuation.

### **Reserve for Employer Contributions.**

**Section 58.** The reserve for employer contributions is the account to which is credited County contributions and from which shall be made transfers to the reserve for pension payments. If a pension becomes payable on account of a member's retirement or death, the difference between (i) the present value of the expected payments on behalf of the member and (ii) the amount transferred from the Reserve for Accumulated Member Contributions on behalf of the member shall be transferred from the Reserve for Employer Contributions to the Reserve for Pension Payments.

### **Reserve for Undistributed Investment Income.**

**Section 59.** (a) The reserve for undistributed investment income is the account to which is credited all interest, dividends, and other income from Retirement System assets; all gifts and bequests; all appropriations for System administrative expenses and, all other monies received by the Retirement System the disposition of which is not specifically provided. There shall be transferred from the reserve account all amounts required to credit interest to the other reserve accounts and to pay the administrative expenses of the System.

(b) Whenever the Retirement Commission determines that the balance in the account is more than sufficient to cover current charges, the excess or any part thereof may be used to fund contingency reserves, meet special requirements of the other reserve accounts, or be transferred to the reserve for employer contributions. Whenever the balance in the account is insufficient to cover current charges, the amount of the insufficiency shall be transferred to the account from the reserve for employer contributions.

### **Assets not Segregated.**

**Section 60.** The descriptions of the reserve accounts shall be interpreted to refer to the accounting records of the Retirement System and not to the physical separation or investment of assets by reserve account.

### **Interest Credited to Reserve Accounts.**

**Section 61.** (a) The Retirement Commission shall at the end of each fiscal year credit interest on the individual beginning of year balances in the reserve for accumulated member contributions, and on the mean balances in the reserve for pension payments and the reserve for employer contributions. Interest shall not be credited for any period after the termination of an individual's County employment. The amounts of interest so credited shall be charged to the reserve for undistributed investment income.

(b) The Retirement Commission shall determine the rate or rates of interest to be used for crediting of interest.

### **Assignments Prohibited.**

**Section 62.** (a) The right of an individual to a pension, to a refund of accumulated member contributions, the pension itself, or any other right accrued or accruing to any individual, and the monies and assets of the Retirement System, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or other process of law, except as specifically required by State of Michigan or Federal law or as provided in this Ordinance and shall be unassignable except as provided in this Ordinance or as required by State of Michigan or Federal law.

(b) If an individual is covered under a group insurance or prepayment plan participated in by the County, and makes a permitted election to continue such coverage as a retired member or as a beneficiary, the individual may authorize the Retirement Commission to deduct from the individual's pension, payments required to continue coverage under such group insurance or prepayment plan.

### **Subrogation; Right of Setoff.**

**Section 63.** (a) If an individual becomes entitled to a pension or other benefit payable by the Retirement System as a result of an accident or injury caused by the act or the failure to act of a third party, the County shall be subrogated to the rights of the individual against the third party to the extent of County financed benefits which the Retirement System pays or becomes liable to pay.

(b) The Retirement System shall have the right of setoff to recover overpayments made by the Retirement System and to satisfy and claim arising from embezzlement or fraud committed by a member, retired member, vested former member, beneficiary, or other individual having a claim to benefits.

### **Correction of Errors.**

**Section 64.** The Retirement System shall correct errors in the records of the Retirement System. The Retirement Commission shall seek to recover overpayments and shall make up underpayments. Recovery of overpayments may be accomplished by reducing the amount of future payments so that the actuarial present value of actual payments to the recipient is equal to the actuarial present value of the payments to which the recipient was correctly entitled.

### **Internal Revenue Code Qualifications.**

### **Section 65.**

(a) The Retirement System is intended and has been administered to be a qualified pension plan under § 401 of the Internal Revenue Code, as amended (“IRC” or “Code”), or successor provisions of law, including the Tax Reform Act of 1986 (TRA ‘86); the Technical and Miscellaneous Revenue Act of 1988 (TAMRA); the Unemployment Compensation Amendments of 1992 (UCA); the Omnibus Budget Reconciliation Acts (OBRA); the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA); the Uruguay Round Agreements Act of 1994 (GATT); the Small Business Job Protection Act of 1996 (SBJPA ‘96); the Taxpayer Relief Act of 1997 (TRA ‘97); the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA ‘98); the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), and other applicable laws, regulations and administrative authority. The Retirement System is a governmental plan under IRC § 414(d) and is administered for the exclusive benefit of the plan’s participants and their beneficiaries. The Retirement System trust is an exempt organization under IRC § 501. The Retirement Commission may adopt such additional provisions to the Retirement System as are necessary to fulfill this intent.

(b) **Prohibition Against Reversion.** The Retirement System and trust have been created for the exclusive benefit of the members and beneficiaries as set forth herein. The funds thereof have been established for the benefit of the members and for the operation of the Retirement System. No part of the principal and income of any of the funds of the system and trust shall revert to or be returned to the County prior to the satisfaction of all liabilities hereunder to all members, beneficiaries and anyone claiming by or through them.

(c) **Actuarial Valuation Assumptions.** Actuarial Valuation Assumptions may be changed by the Retirement Commission after consulting with the actuary. Actuarial equivalence will be determined on the basis of the interest rate and mortality tables adopted by the Retirement Commission. Actuarial assumptions that will be used to determine the amount or level of any optional benefit forms will be the actuarial equivalent of the normal retirement benefit. Optional benefits provided under the plan shall be actuarial adjusted in relation to the straight life annuity. For purposes determining the IRC § 415 limitations, the interest rate assumption will not be less than the greater of five (5%) percent or the rate specified in the plan for determining actuarial equivalence for the particular form of retirement benefit. The actuarial early retirement reduction and reduction of the Dollar Limit if the Employee has less than ten (10) years of participation under IRC § 415 do not apply to income received as a pension or annuity as a result of an employee’s personal injury, sickness or death and shall be administered in accordance with IRC § 415(b)(2), as amended.

(d) **Termination.** In the event of termination of this plan, a member’s interest under the plan as of such date is nonforfeitable on the attainment of his/her normal retirement age, as defined in IRC § 411(d)(3), to the extent funded in conformity with applicable sections of the Internal Revenue Code and Regulations. Upon a member’s termination date, the value of any forfeitable accrued benefit shall be forfeited by the member as of the termination date. The value of such forfeitures shall be used to reduce the employer’s future contributions under the Plan in accordance with IRC § 401(a)(8). No forfeitures under the Plan shall be applied to increase the benefits that any member or beneficiary would otherwise receive at any time prior to the time when the Plan may be terminated. If a member whose employment has terminated does not

retain a vested benefit under the Plan, he/she shall no longer be a member or retain or earn credited service under the Plan unless and until he/she again becomes an employee.

(e) **Merger, Consolidation or Transfer.** In conformity with Section 414(1) of the Internal Revenue Code, in the case of any transfer of assets or liabilities of this plan to any other plan, each plan participant would (if the plan then terminated) receive a benefit immediately after the transfer that is equal to or greater than the benefit the participant would have been entitled to receive immediately before the transfer (if the plan had then terminated).

(f) **Limitations of Benefits.** The Retirement System shall not pay any benefit that would exceed the benefit limitations for governmental plans as set forth in Section 415 of the Internal Revenue Code and regulations, as amended. For this purpose, compensation shall be determined in accordance with Code section 415(e)(3). In the event it should become necessary to reduce or restrict a benefit in order to comply with section 415(e), the employer-provided portion of the benefit payable under this Retirement System shall be reduced or restricted to the extent necessary.

The amount of annual benefits and contributions credited a member in any given year shall be subject to the following limitations:

(A) **Defined Benefit Plans.** The maximum permissible Annual Pension Benefit with respect to any member shall be in accordance with IRC § 415(b) which provides that such Annual Pension Benefit shall not exceed \$90,000, as adjusted for inflation (the "Dollar Limit").

(i) **Special Dollar Limitations.** If the benefit is payable prior to age 62, the dollar limitation shall be reduced to the actuarial equivalent of a benefit commencing at age 62. In the case of any full-time police or fire employee, who is a Qualified Participant as defined in IRC § 415(b)(2)(G), there is no reduction in the dollar limitation. If the benefit is not payable until after age 65, the dollar limitation shall be increased to the actuarial equivalent of a benefit commencing at age 65.

(ii) In the case of an employee who has less than ten (10) years of participation in the Plan, the Dollar Limitation shall be reduced 1/10 for each year of participation in accordance with IRC § 415(b)(5).

(B) **Defined Contribution Plans.**

(1) For limitation years beginning after December 31, 1986 the term "annual addition" means, for purposes of this section, the sum, credited to a participant's account for any limitation year, of:

- (A) Employer contributions;
- (B) Employee contributions; and
- (C) Forfeitures.

(2) Annual additions that may be contributed or allocated to a participant's account for a limitation year will not exceed the lesser of:

- (A) 100% percent of participant's compensation, within the meaning of IRC § 415(c)(3), or
- (B) \$40,000, as adjusted for increases in the cost of living pursuant to IRC § 415(d).
- (C) **Excess Benefit Payment.** The Retirement System shall not pay any benefit that would exceed the benefit limitations for governmental plans as set forth in IRC § 415 and regulations, as amended.
- (D) **Compensation.** As defined by IRC § 415(c)(3)(D) and Treas. Reg. § 1.415-2(d)(2)(i), compensation means amounts actually paid to the employee during the Limitation Year, including: wages, salary, professional fees, percentage of profits, commissions, tips and bonuses paid or made available to the member during the Limitation Year for personal services actually rendered in the course of employment, any elective deferral, and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of IRC §§ 125, 132(f) or 457.

(g) Distributions from the Retirement System will comply with the requirements of Code section 401(a)(9) and the regulations thereunder, including the following specific requirements. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of IRC § 401(a)(9) in accordance with the regulations under IRC § 401(a)(9) that were proposed in January 2001, notwithstanding any provision in the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service. Pursuant to IRC § 401(a)(9)(A)(ii), distribution of a member's benefits will begin not later than April 1 of the calendar year following the later of the calendar year in which the employee attains age 70-1/2 or the calendar year in which the employee retires.

(a) Effective date. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The requirements of this section will take precedence over any inconsistent provisions of the plan. Requirements of treasury regulations incorporated. All distributions required under this section will be determined and made in accordance with the treasury regulations under section 401(a)(9) of the Internal Revenue Code.

(b) Time and manner of distribution.

1. Required beginning date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date.

2. Death of participant before distributions begin. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(A) if the participant's surviving spouse is the participant's sole designated beneficiary, then, except as provided in the plan, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.

(B) if the participant's surviving spouse is not the participant's sole designated beneficiary, then, except as provided in the plan, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(C) if there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(D) if the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, section (b) will apply as if the surviving spouse were the participant.

For purposes of this section (b)2 and section (d), distributions are considered to begin on the participant's required beginning date (or, if section (b)(2)(d) applies, the date distributions are required to begin to the surviving spouse under section (b)(2)(a)). If annuity payments irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section (b)(2)(a)), the date distributions are considered to begin is the date distributions actually commence.

3. Form of distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections (c) and (d) of this section. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the treasury regulations. Any part of the participant's interest which is in the form of an individual account described in section 414(k) of the Code will

be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and the treasury regulations that apply to individual accounts.

(c) Determination of amount to be distributed each year.

1. General annuity requirements. If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

(A) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(B) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in section (d);

(C) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

2. Amount required to be distributed by required beginning date. The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under section (b)(2)(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, *e.g.*, bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

3. Additional accruals after first distribution calendar year. Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(d) Requirements for minimum distributions where participant dies before date distributions begin.

1. Participant survived by designated beneficiary. Except as provided in the adoption agreement, if the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in sections (b)(2)(a) or (b), over the life of the designated beneficiary or over a period certain not exceeding:

(A) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the

beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

(B) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

2. No designated beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

3. Death of surviving spouse before distributions to surviving spouse begin. If the participant dies before the date distribution of his or her interest begins, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section (d) will apply as if the surviving spouse were the participant, except that the time by which distributions must begin will be determined without regard to section (b)(2)(a).

(e) Definitions.

1. Designated beneficiary. The individual who is designated as the beneficiary under section of the plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, q&a-4, of the treasury regulations.

2. Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section (b)2.

3. life expectancy. Life expectancy as computed by use of the single life table in section 1.401(a)(9)-9 of the treasury regulations.

4. Required beginning date. The date specified in section 3.

(h) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the Retirement Commission, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee as a direct rollover. The following definitions shall apply with regard to this subsection.

(i) **Eligible rollover distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint live (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more, and any distribution to the extent such distribution is required under section 401(a)(9) of the Code. For purposes of the direct rollover provision, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in IRC § 408(a) or (b), or to a qualified plan described in IRC § 401(a) or 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(ii) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(a) of the Code, an annuity plan described in section 403(a) of the Code, an annuity contract described in IRC § 403(b), an eligible plan under IRC § 457 which is maintained by a state, political subdivision of a state and which agrees to separately account for amounts transferred into such plan or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a domestic relations order.

(iii) **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the surviving spouse.

(iv) **Direct Rollover:** A direct rollover is a payment by the Retirement System to the eligible retirement plan specified by the distributee.

(i) **Maximum Annual Earnings.** For Plan years beginning on or after January 1, 1989 and before July 1, 1996, the annual compensation of each Participant taken into account for determining all benefits provided under the Plan for any determination period shall not include any amounts in excess of the annual compensation limit (originally \$200,000) provided for in IRC § 401(a)(17) prior to the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") and adjusted for inflation in the manner provided by IRC § 401(a)(17). For Plan years beginning on or after July 1, 1996, the annual compensation of each employee taken into account shall not exceed the annual compensation limit provided for in IRC § 401(a)(17), as amended by the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93"). This limit may be adjusted as required by federal law for qualified government plans and shall be further adjusted for inflation

in the manner provided by IRC § 401(a)(17). Annual compensation means compensation during the plan year or such other consecutive 12 month period over which compensation is otherwise determined under the plan.

(j) **Military Service.** Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with IRC § 414(u) and Regulations.

(k) **Vesting.** Pursuant to IRC § 411(e) as in effect in 1974, a member shall be 100% vested in his/her accrued benefit when he or she attains Normal Retirement Age.

(l) **Plan Year.** The plan year shall be the 12 consecutive month period commencing on January 1 and each anniversary thereafter.

*(Historical: Section 65 amended 01-16-02 by Ordinance No. 02-0019)*

### **Fraud Penalty.**

**Section 66.** Whoever with intent to deceive shall make any statement or report under this Ordinance which is untrue, or shall falsify or permit to be falsified any record or records of the Retirement System, or who shall otherwise violate the provisions of this Ordinance as it may from time to time be amended, with intent to deceive, shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed \$500 plus costs of prosecution, or shall be imprisoned for not to exceed 90 days, or both, in the discretion of the Court.

### **Severability.**

**Section 67.** If any section or part of a section of this Ordinance is for any reason held to be invalid or unconstitutional, such holding shall not be construed as affecting the validity of the remaining sections of the Ordinance or the Ordinance in its entirety.

### **Repeal.**

**Section 68.** All ordinances, resolutions or other provisions of law inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.