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## ARTICLE I. GENERAL EMPLOYEES' RETIREMENT SYSTEM

### 92-1 Name and effective date.

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The City of Pontiac Employees' Retirement System, hereinafter referred to as the retirement system, is hereby established for the purpose of providing retirement allowances and death benefits for employees of the City of Pontiac under the provisions of the amendment to the Charter of the City of Pontiac, Michigan. The effective date of the retirement system shall be January 1, 1946.

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

This article shall be put into effect immediately upon final passage by the Council of the City of Pontiac with an effective date of January 1, 2009.

(Ord. passed 1-1-09, § 1)

### 92-2 Definitions.

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

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

*Actuarial equivalent* means the equivalence in the present value of various forms of payment. Present value will be determined by the retirement system's actuary based upon the mortality tables and interest rates established from time to time by the Board.

*Annuity* means an annual amount, payable in equal monthly installments for life, derived from the accumulated contributions of a member.

*Annuity reserve* means the present value of all payments to be made on account of any annuity computed upon the basis of such mortality table and regular interest as the Board shall from time to time adopt.

*Beneficiary* means any person, except a retirant, who is in receipt of a pension, retirement allowance, or other benefit, payable from funds of the retirement system.

*Board* means the Board of Trustees provided for in this chapter.

*City* means the City of Pontiac, State of Michigan, and any instrumentality of the City.

*Compensation* means a member's salary or wages paid by the City for services rendered by him to the City. In case a member's compensation is not all paid in money, the Board shall fix the value of that part of the member's compensation not paid in money. Compensation shall include those items

specifically referenced in the applicable collective bargaining agreement. For nonunion employees, final average compensation shall include 75 percent of the amount of the payment by the employer to the nonunion employee for unused sick time contained in the nonunion employee's primary sick leave bank up to a maximum of 1,500 hours. For nonunion employees, compensation shall include overtime, compensatory time, car allowance and longevity at the time of retirement.

Notwithstanding anything herein to the contrary, *annual compensation* shall mean compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the "determination period"). The annual compensation of each member taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed \$200,000.00. In determining benefit accruals in years beginning after December 31, 2001, the annual compensation limit for determination periods beginning before January 1, 2002, shall be \$150,000.00 for any determination period beginning in 1996 or earlier; \$160,000.00 for any determination period beginning in 1997, 1998, or 1999; and \$170,000.00 for any determination period beginning in 2000 or 2001. The \$200,000.00 limit on annual compensation shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

Note: *Compensation* should be specifically defined to reflect the various forms of payments received by members. Example: Salary and wages shall include longevity pay, overtime pay, shift differentials; pay for periods of absence from work by reason of vacation, holiday and sickness, lump-sum payments in consideration of unused sick time pursuant to the relevant limitations; deferred compensation amounts under deferred compensation programs recognized by the Board; Workers Compensation weekly benefits; and items of a similar nature that are recognized as compensation by the Board. Unless specifically provided by collective bargaining agreement, compensation does not include any remuneration or reimbursement not specifically described in this subsection or recognized by the Board, such as allowances for clothing, equipment, cleaning, and travel; reimbursement of expenses; bonuses; termination pay; severance pay; lump-sum payments in consideration of unused vacation leave; or the value of fringe benefits.

*Council* means the City Council of the City of Pontiac.

*Credited service* means the sum of the prior service and membership service credited to a member's service account.

*Deferred vested former member* means any person who meets the requirements of section [92-20](#).

*Final average compensation* means the highest average annual compensation received by a member during a period of five consecutive years of service contained within the member's ten years of service immediately preceding retirement. If the member has less than five years of credited service, final average compensation shall be the average of the member's annual compensations received during the member's total years of credited service. Final average compensation shall be calculated in accordance with the applicable collective bargaining agreement.

Note: This section has been amended by collective bargaining agreement to provide for a final average compensation based upon: three years of last ten for members of PPMA, SAEA, AFSCME, Local 2002, and Court/MAPE, and three years of last 12 for members of the Teamsters, Local 214.

(1) For nonunion employee-members of the retirement system (excluding Pontiac General Hospital Employees), *final average compensation* means the highest average annual compensation received by such member during a period of three consecutive years of service contained within such member's ten years of service immediately preceding retirement. If such member has less than three years' accredited service, final average compensations received during the member's total years of credited service.

(2) Effective July 1, 1996, *final average compensation* for 50th Judicial District Court Judges and nonunion employee members of the retirement system means the highest average annual compensation received by such member during a period of three consecutive years of service contained within such member's five years of service immediately preceding retirement.

(3) Effective July 1, 2002, *final average compensation* for nonunion management employee members of the retirement system means the highest average annual compensation received by such member during a period of three consecutive years of service contained within such member's ten years of service immediately preceding retirement. If such member has less than three years' accredited service, final average compensation shall be the average of such member's annual compensation received during the member's total years of credited service.

For purposes of calculating final average compensation, the term *year* shall mean the period of time consisting of 365 days (366 days in a leap year) corresponding back from the member's effective retirement/separation date. In the event the member's periods of service immediately preceding the member's effective retirement/separation date do not result in the highest final average compensation, the member's benefits will be calculated based upon a calendar year basis. The periods of time to be used for final average compensation shall be consecutive. Compensation shall be credited to the period in which it is paid; however, retroactive pay, if any, shall be credited to the period(s) in which it would have been paid/earned and not to the period in which the lump sum payment is received in accordance with Board's final average compensation (FAC) policy.

*Final compensation* means a member's annual rate of compensation at the time the member's employment with the City is last terminated. Effective November 9, 1981, for members who have rights pursuant to an amended agreement (as a result of a settlement of litigation as authorized by City Council Resolution No. 770-84 adopted November 20, 1984, and in accordance with a consent judgment dated July 23, 1985, in Oakland County Circuit Court, Case No. 83-254373CK), *final compensation* shall include the amount of payment by the employer to the employee for unused sick leave pursuant to said amended agreement.

(1) *Final compensation* means a member's annual rate of compensation at the time his employment is terminated. Effective July 1, 1996, *final compensation* for 50th Judicial District Court Judges and nonunion employee-members of the retirement system shall include 75 percent of the amount of payment by the employer to the employee for unused sick time contained in the employee's primary sick leave bank up to a maximum of 1,500 hours.

*General member* means any member.

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

*Membership service* means service rendered after December 31, 1945.

*Pension* means an annual amount, payable in equal monthly installments for life, derived from moneys provided by the City.

*Pension reserve* means the present value of all payments to be made on account of any pension 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 or fire member* or *police or fire members* means, in the case of a police officer, any employee of the Police Department of the City holding the rank of patrol officer, including probationary patrol officer, or higher rank; and in the case of the fire fighter, any employee of the Fire Department of the City holding the rank of pipeman, including probationary pipeman, or higher rank, who shall be excluded from membership in the system.

*Prior service* means service rendered prior to January 1, 1946.

*Regular interest* means such rates of interest per annum, compounded annually, as the Board shall from time to time determine; provided, that regular interest shall be determined by the Board of Trustees, but in no case shall be less than two percent per annum, compounded annually.

*Retirant* means any member who retires with a pension or retirement allowance payable pursuant to the provisions of this chapter.

*Retirement* means withdrawal from active service with a pension or retirement allowance granted under this chapter.

*Retirement allowance* means the sum of the annuity and the pension.

*Service* means service rendered to the City by a person as an officer or employee of the City while a member of the retirement system.

*Social security date* means the date the agreement between the authorized State agency and the Secretary of Health, Education and Welfare of the United States is modified to cover the eligible employees of the City under the Old-Age and Survivor's Insurance Program of the Federal Social Security Act.

*Voluntary retirement age* means age 55 years with 25 or more years of credited service, otherwise age 60 years. Voluntary retirement age shall be the age and/or service requirements specifically referenced in the applicable collective bargaining agreement.

Note: *Voluntary retirement age* has been amended by collective bargaining agreement to mean age 50 with 25 or more years of service for members of PPMA, SAEA, Court/MAPE and AFSCME, Local 2002; age 50 with 30 or more years of service for members of Teamsters, Local 214; and age 55 with ten or more years of service for members of Court/MAPE; and age 50 with 25 or more years of

service with a one-half percent reduction for each year of service under 30 for members of Teamsters, Local 214.

- (1) Effective July 1, 1996, *voluntary retirement age* for 50th Judicial District Court Judges and nonunion employee-members of the retirement system shall mean age 50 with 25 or more years of credited service; age 55 with 20 or more years of credited service; otherwise age 60 with ten or more years of credited service.

The masculine gender shall include the feminine, and words of the singular number in relation to persons shall include the plural number and vice versa. Headings are for convenience and are not controlling.

(Ord. passed 1-1-09, § 2)

### **92-3 Administration of retirement system.**

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There is hereby created a Board of Trustees in whom is vested the general administration, management, and responsibility for the proper operation of the retirement system and for making effective the provisions of this amendment. The Board shall be a quasi-judicial body consisting of 11 Trustees as follows:

- (1) A member of the City Council to be selected by the City Council.
- (2) The Mayor of the City of Pontiac.
- (3) The Finance Director of the City.
- (4) The City Council shall appoint three citizens who are electors and freeholders of the City and who are not eligible to receive benefits under this retirement system, hereinafter referred to as the citizen Trustees.
- (5) Three members of the retirement system, one of whom shall be an active member to be nominated and elected by the active members of the retirement system and two of whom shall be either active, deferred vested or retired members, nominated and elected by the active, deferred vested and retired members (hereinafter referred to as the member Trustees).
- (6) One retirant of the retirement system to be elected by the retirants of the retirement system.
- (7) One deferred vested or retired member of the retirement system who was formerly employed by Pontiac General Hospital ("PGH member") shall be nominated and elected by the deferred vested or retired members who were formerly employed by PGH, pursuant to an election or nominating procedure adopted by the PGH members. Elections shall be conducted by the PGH members and shall be held in such a manner as to afford all PGH deferred and retired members the opportunity to vote.
- (8) The election of the Trustees provided for in subsections (5) and (6) of this section shall be conducted under such rules and regulations as the Board shall adopt to govern such elections.

(9) In exercising its fiduciary responsibilities, the Board shall act for the exclusive benefit of the plan's participants and their beneficiaries and 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.

(10) The Board shall indemnify to the extent authorized or permitted by law the members of the Board, their representatives, and any other employees of the City who are deemed to be acting on behalf of the retirement system and hold them harmless against any and all liabilities, including legal fees and expenses, arising out of any act or omission made or suffered in good faith pursuant to the provisions of the plan, or arising out of any failure to discharge any fiduciary obligation imposed, other than a willful failure to discharge a fiduciary obligation of which the person was aware. There shall be no duty to indemnify where such person is judicially determined to have incurred liability due to fraud, gross negligence, or malfeasance in the exercise and performance of their duties.

(Ord. passed 1-1-09, § 3)

#### **92-4 Applicable law.**

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The Board shall administer this pension trust fund consistent with the trust fund provisions, Article 9, Section 24, of the State of Michigan Constitution and other applicable law. The Board shall have the fiduciary obligations, limitations, and authority as provided by Public Act 314 of 1965 of the State statutes, as amended. The Board shall administer this pension trust in accordance with applicable collective bargaining agreements; provided, that any increase in pension benefits, provided by collective bargaining agreement or otherwise, shall be funded by the employer; and provided further, that the assets of the pension trust funds representing current service funding shall not be used to fund such increase in benefits.

(Ord. passed 1-1-09, § 3.1)

#### **92-5 Reserved.**

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(Ord. passed 1-1-09, § 4)

#### **92-6 Trustees' regular term of office—Vacancy.**

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The regular term of office of the citizen Trustees, the employee Trustees, and the retirant Trustee provided for in sections [92-3](#)(4), (5), and (6) shall be four years, each serving until a successor is elected or appointed and qualified. If a vacancy occurs in the office of Trustee, the vacancy shall be filled within 90 days after the date of the vacancy, for the unexpired term, in the same manner as the office was previously filled. A vacancy shall occur: (1) if the Trustee ceases to be eligible for nomination for the position being held, or (2) the Trustee fails to meet the standards of attendance as adopted by the Board. Each Trustee shall within ten days after appointment or election take an oath of office to be administered by the City Clerk.

(Ord. passed 1-1-09, § 5)

## **92-7 Meetings of the Board—Compensation—Prohibited actions.**

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The Board shall hold meetings regularly, at least one in each month, 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 public. The members of the Board shall serve without compensation for their services as Trustees, and shall be reimbursed for all actual necessary expense incurred in performance of duties.

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. Members of the Board 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.

The Board shall adopt policies and procedures for the proper administration of the retirement system.

Nothing contained herein shall be construed to impair the rights of any member, retirant, or beneficiary of the retirement system to benefits provided by the retirement system.

(Ord. passed 1-1-09, § 6)

## **92-8 Each Trustee entitled to vote.**

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Six Trustees shall constitute a quorum at any meeting of the Board. Each Trustee shall be entitled to one vote in the meeting of the Board and at least six concurring votes shall be necessary for a decision by the Trustees.

(Ord. passed 1-1-09, § 7)

## **92-9 Chair of Board—Officers and professional advisors.**

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The Board shall annually elect from its members a Chairperson and a Vice Chairperson.

- (1) Secretary. The Director of Finance, ex officio, shall be the Secretary to the Board and shall supervise employees of the employer who provide services for the Board.
- (2) Treasurer. The Board may select a custodial bank or trust company to provide custodial services to the trust fund. All payments from the funds of the retirement system shall be made in accordance with law only upon resolution adopted by the Board authorizing such payment or payments.
- (3) Legal Advisor. An attorney selected by the Board of Trustees shall be the legal advisor to the Board and shall serve at the pleasure of the Board.

(4) Actuary. The Board shall appoint an actuary who shall be the technical advisor to the Board on matters regarding the operation of the retirement system and who shall perform such other duties as are required in connection therewith.

(5) Medical Director. The Board shall appoint as Medical Director a physician who is not eligible for membership in the retirement system, and who has not within five years prior to appointment as Medical Director filled an elective, appointive, or salaried office in the City or Oakland County governments; provided, that service as an intern in any City, County, or State hospital or sanitarium, and service in any military body, shall not disqualify a physician for appointment as Medical Director. The Medical Director shall be responsible to and shall hold office at the pleasure of the Board. The Medical Director shall arrange for and pass upon all medical examinations required under the provisions of this retirement system; shall investigate all essential statements and certificates of a medical nature by or on behalf of a member or beneficiary in connection with an application for disability benefits or accidental death benefits; and shall report in writing to the Board his/her conclusions on matters referred to the Medical Director.

(6) Employment of Professional and Clerical Services. The Board of Trustees may employ such professional, clerical, and other services as are required for the proper operation of the retirement system.

(7) Retirement Administrator. The Board may delegate to a Retirement Administrator the responsibility and authority to act on its behalf regarding administrative matters that are within the authority of the Board. No delegation under the provision shall be construed as a delegation of the Board's fiduciary responsibility.

The Retirement Administrator shall manage and administer the retirement system under the supervision and direction of the Board's Secretary.

The Board shall have the authority to establish job descriptions and promulgate rules and regulations appropriate for the Retirement Administrator and retirement system staff.

(Ord. passed 1-1-09, § 8)

## **92-10 System records and mortality tables.**

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(a) Records of Retirement System—Annual Report. The Secretary shall keep, or cause to be kept, in convenient form, such data as shall be necessary for an actuarial valuation of the assets and liabilities of the retirement system. The Board annually shall render a report to the Council, on or before the first day of the fifth month following the close of the fiscal year of the City of Pontiac, showing the fiscal transactions of the retirement system for the prior calendar year and a balance sheet showing the financial condition of the retirement system at the close of the prior calendar year by means of an actuarial valuation of the assets and liabilities of the retirement system.

(b) Mortality and Other Tables. The Board shall adopt such mortality and other tables of experience as are necessary in the operation of the retirement system on an actuarial basis.

(Ord. passed 1-1-09, § 9)



## **92-11 Membership.**

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(a) Membership Consists Of. The membership of the retirement system shall include (1) all employees and officials of the City who were in the service of the City on the day preceding the effective date of this retirement system and who continue in the service of the City on and after the effective date of this retirement system, and (2) all persons who become employees of the City, the City of Pontiac Police and Fire Retirement System and the City of Pontiac General Employees' Retirement System, on and after the effective date of this retirement system. The membership of the retirement system shall not include (1) any person whose services are compensated for on a contractual or fee basis, nor (2) the Medical Director, nor (3) elective officials of the City who are employed in a City position requiring less than full-time, nor (4) any employee who is not a full-time, regular employee, nor (5) any employee who has once retired on any type of retirement allowance from the retirement system, and is subsequently rehired by the City, nor (6) any police officer or firefighter who is a member of the City of Pontiac Police and Fire Retirement System, nor (7) any employee who is included by law, by action of the Council, 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 City, except the Federal Old Age, Survivors and Disability Insurance program.

(b) Right to Decide Membership. In all cases of doubt, the Board shall decide who is a member within the meaning of the provisions of this retirement system. For purposes of determining membership, employment with the City of Pontiac Police and Fire Retirement System and the City of Pontiac General Employees' Retirement System shall be considered membership positions.

(c) Notwithstanding any provision hereof to the contrary, any person who becomes a member of the retirement system as a full-time, regular employee shall remain a member of the system as long as said person remains an employee of the City, the City of Pontiac Police and Fire Retirement System and the City of Pontiac General Employees' Retirement System, even if such person shall at any time, subsequent to becoming a member of the system, become a part-time employee and not a full-time, regular employee, provided said member has not had a break in service. Credited service for such employees who are members of the system shall be computed as set forth in rules and regulations to be established by the Board of Trustees.

No person hired after April 1, 2013, shall be eligible to participate in the General Employees' Retirement System.

(Ord. passed 1-1-09, § 10)

## **92-12 Separation and re-employment.**

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Except as otherwise provided in this chapter, should any member separate from the service of the City, for any reason except retirement or death, the individual shall thereupon cease to be a member and the member's credited service at that time shall be forfeited. Provided, however, any person who has been a member of the system, and who is re-employed by the City in a position qualifying for membership in the system under the provisions of section [92-11](#), shall again become a member of the retirement system. In such case, if the re-employed member completes three years of service after re-entry, the credited service previously forfeited by the member shall be restored to the

member's credit, if the member returns to the annuity savings fund the amounts the individual may have withdrawn therefrom and not returned thereto, together with regular interest thereon from the date of withdrawal to the repayment. Upon retirement or death, the individual's membership shall terminate.

In the event a retirant or beneficiary of the retirement system is employed by the City, payment of the individual's pension shall continue and shall not be suspended during the period of employment. During the period of employment by the City, the individual shall not be a member of the retirement system.

(Ord. passed 1-1-09, § 11)

### **92-13 Service creditable.**

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The Board shall fix and determine by appropriate rules and regulations how much service in any calendar year is equivalent to a year of service, but in no case shall less than ten days' service in a calendar month constitute a month of service; nor shall less than nine months' service in a calendar year constitute a year of service; nor shall more than one year of service be credited for all service rendered in one calendar year.

(Ord. passed 1-1-09, § 12)

### **92-14 Active military service.**

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In the event any person, who, while employed by the City, was called to or entered any armed service of the United States, or any member who is called to or enters any armed service of the United States, and who has been or shall be on active duty in such armed service during time of war or other national emergency, and is re-employed by the City within 90 days from the date of termination of required armed service, then such armed service shall be credited as City service in the same manner as if the individual had served the City uninterruptedly; provided, that the member returns to the annuity savings fund all amounts withdrawn therefrom at the time the member entered, or while in such armed service, together with regular interest thereon from the date of withdrawal to the date of repayment. 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 rendered to the Federal government and until the individual's re-employment by the City, the member's contributions to the annuity savings fund shall be suspended and the balance standing to the member's credit in the said fund shall be accumulated at regular interest. 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 section 414(u) and regulations.

Effective January 1, 2007, the beneficiary of a member on a leave of absence to perform military service with reemployment rights described in IRC section 414(u) where the member cannot return to employment on account of his or her death shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would be provided under the plan had the member died as an active employee, in accordance with IRC section 401(a)37.

(Ord. passed 1-1-09, § 13)

## **92-15 Members' service accounts.**

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The Board shall credit each member's service account with the number of years and months of prior service and membership service to which he may be entitled.

(Ord. passed 1-1-09, § 14)

## **92-16 Written application to retire.**

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Any member who has attained or attains voluntary retirement age and has ten or more years of credited service may retire upon written application filed with the Board setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, the member desires to be retired. Upon retirement, a member shall receive a retirement allowance provided for in section [92-18](#).

(Ord. passed 1-1-09, § 15)

## **92-17 Reserved.**

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(Ord. passed 1-1-09, § 16)

## **92-18 Payment options.**

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Upon retirement, a member who has attained voluntary retirement age and has ten or more years of credited service shall receive a regular retirement allowance which shall consist of the benefits hereinafter set forth in this section, and the member shall have the right to elect an option provided for in section [92-25](#).

- (1) An annuity which shall be the actuarial equivalent of the accumulated contributions standing to the member's credit in the annuity savings fund at the time of the member's retirement; and
- (2)
  - a. A pension when added to the member's annuity will provide a retirement allowance equal to the number of years, and fraction of a year, of the member's credited service, multiplied by the sum of 1.5 percent of the first \$9,000.00 of the member's final average compensation and 2.0 percent of the portion of the member's final average compensation in excess of \$9,000.00. All retirement allowances effective before July 1, 1974, shall be increased July 1, 1974, by 2.5 percent multiplied by the number of complete years elapsed since the date the retirement allowance became effective. No member shall receive an increase of less than 2.5 percent.
  - b. Effective November 9, 1981, for members who have rights pursuant to an "amended agreement" (as a result of litigation as authorized by City Council Resolution No. 770-84 adopted November 20, 1984, and in accordance with a court judgment dated July 23, 1985, in Oakland County Circuit Court, Case No. 83-254373CK), a pension which when added to the member's annuity will provide a retirement allowance equal to the number of years, and fraction of a year, of the member's credited service, multiplied by the sum of 2.25 percent of the first \$9,000.00 of the member's final average compensation and 2.0 percent of the portion of the member's final average compensation in excess of \$9,000.00. Such member

shall be entitled to receive a regular or deferred retirement allowance which is the greater of the amount provided for herein or the amount based on the formula in existence as of the date of such member's separation from City employment.

c. Effective July 1, 1996, for 50th Judicial District Court Judges and nonunion employee-members of the retirement system, a pension when added to the member's annuity will provide a retirement allowance equal to the number of years, and fraction of a year, of his/her credited service, multiplied by the sum of 2.25 percent times his/her final average compensation. (This section has been amended by collective bargaining agreement to provide for a 2.25 percent multiplier for members of PPMA, AFSCME, Local 2002, and Teamsters, Local 214 (effective June 30, 2004); a 2.5 percent multiplier for members of SAEA and AFSCME, Local 2002 (effective June 30, 2005); and a two percent multiplier for members of Court/MAPE).

d. Effective July 1, 2002, a pension, when added to the annuity of a nonunion employee of the retirement system, will provide a retirement allowance equal to the number of years, and fraction of a year, of his/her credited service, multiplied by the sum of 2.5 percent times his/her final average compensation.

(3) According to such rules and regulations as the Board may from time to time adopt, any member who retires prior to his/her attainment of age 65 years may elect to have his/her retirement allowance equated on an actuarial basis to provide an increased retirement allowance payable to his/her attainment of age 65 years and a reduced retirement allowance payable thereafter. His/her increased retirement allowance payable to his/her attainment of age 65 years shall approximate the sum of his/her reduced retirement allowance to be payable after his/her attainment of age 65 years and his/her estimated Social Security primary insurance amount.

(4) In the event a retirant dies before he/she has received in retirement allowance payments an aggregate amount equal to his/her accumulated contributions standing to his/her credit in the annuity savings fund at the time of his/her retirement, the difference between his/her said accumulated contributions and the said aggregate amount of retirement allowance payments received by him/her shall be paid to such person or persons as he/she shall have nominated by written designation duly executed and filed with the Board.

If there is no such designated person or persons surviving the said retirant, such difference, if any, shall be paid to his/her legal representative. No benefits shall be paid under this subsection on account of the death of a retirant if he/she has elected an option provided for in section [92-25](#).

(5) In the event a member, who is a member at the Social Security date, retired prior to the date he/she acquires Social Security fully insured status on account of his/her City employment, the pension portion of his/her retirement allowance shall not be less than the sum of (a) \$120.00, plus (b) 1/115 of his/her final average compensation multiplied by the number of years, and fraction of a year, of his/her credited service rendered after December 31, 1945, plus (c) 1/90 of

his/her final average compensation multiplied by the number of years, and fraction of a year, of his/her credited service rendered prior to January 1, 1946.

(Ord. passed 1-1-09, § 17)

#### **92-19 Reserved.**

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(Ord. passed 1-1-09, § 17.1)

#### **92-20 Deferred retirement.**

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Should any member who has ten or more years of credited service separate from the service of the City prior to attainment of voluntary retirement age, for any reason except retirement or death, the individual shall be a vested former member during the period of absence from City service for the sole and exclusive purpose only of receiving a retirement allowance provided for in sections [92-18](#)(1), (2), (4), and (5), provided the individual does not withdraw their accumulated contributions. A vested former member's retirement allowance shall begin as of the first day of the calendar month next following the month in which the vested former member files with the Board an application for same on or after attainment of voluntary retirement age. In no case shall any such vested former member receive service credit for said period of absence from City service, except as otherwise provided in this chapter. In the event such a vested former member withdraws all or part of their accumulated contributions from the annuity savings fund, the individual shall thereupon cease to be a vested former member and the individual shall forfeit all rights in and to a deferred retirement allowance provided for in this section.

The provisions of this chapter notwithstanding, the accrued benefit for plan participants shall be nonforfeitable upon the attainment of normal retirement age. Upon termination of the system or upon complete discontinuance of City contributions under this chapter, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable.

(Ord. passed 1-1-09, § 17.2)

#### **92-21 Reorganization/reduction of workforce 2003.**

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Effective July 3, 2003, upon finding it is in the best interest of the City of Pontiac as it relates to General Employees' Retirement System nonunion employees in the executive, legislative and Stadium Building Authority branches of government, the City Council may authorize nonunion employees in cases where reorganization and/or a reduction in workforce is necessary, an employee with a minimum of 18 years of credited service whose age combined with years of service credit comprises a minimum total score of at least 70 points, said employee will be eligible to elect retirement without penalty.

Prior to City Council approving this type of retirement for nonunion employees in the executive branch, authorization from the Mayor must be obtained.

Approval of Stadium Building Authority employees shall also require the concurrence of the Pontiac Stadium Building Authority, if applicable, that nonunion stadium employees who meet the above

referenced criteria and are members of the General Employees' Retirement System shall likewise be eligible to elect retirement without penalty.

Employees who are active City employees as of May 1, 2013, who are not members of any union, who are participants in the General Employees' Retirement System, who have attained the age of 45, and who have at least 13 years of service may, by May 31, 2013, file their intention to retire, and such retirement date shall be no later than June 30, 2013.

(1) Retirement Window. Any former City of Pontiac employees who are or were members of the General Employees' Retirement System and who meet the following criteria will be eligible to participate in an early retirement:

- a. The former employee was involuntarily separated from employment with the City of Pontiac between March 23, 2009, and August 19, 2013, for reasons not connected with disciplinary action.
- b. The former employee had at least ten years of service credit in the General Employees' Retirement System at the time of separation from employment. Former employees who meet this requirement based on the Reciprocal Retirement Act shall also be eligible for this benefit. However, an employee shall not become eligible for this early retirement benefit until an employee reaches age 43.
- c. A qualifying individual retiring under this provision will have their annuity calculated based on years of service credit at the time of separation in conjunction with the applicable multiplier and formula contained in the individual's collective bargaining agreement or the individual's non-union pay plan in effect at the time of the person's separation.
- d. Annuity will be payable from the date of final City approval; provided, eligible members file their intention to retire no later than 30 days following final approval and not before final approval. There shall be no entitlement to retroactive pension payments under any circumstance.
- e. Employees who are eligible for this early retirement benefit shall not be offered any form of retiree health care until they obtain the age of 60. Such retiree health care benefit shall be strictly guided by any settlement agreement reached in the litigation entitled City of Pontiac Retired Employee Association, et al. v. City of Pontiac, et. al., U.S. District Court Case No. 2:12-cv-12830.

(Ord. passed 1-1-09, § 17.3; Ord. No. 2349, § 1, 12-21-17)

#### **92-22 Reserved.**

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(Ord. passed 1-1-09, § 17.4)

#### **92-23 Reserved.**

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(Ord. passed 1-1-09, § 17.5)

## **92-24 2000 post retirement increase.**

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(a) All persons who are receiving retirement benefits as of December 31, 2000, based upon a minimum of nine years and nine months of credited service, disability, or death, and who are not eligible to receive a post retirement increase, shall be entitled to receive an increase in their annual allowance based upon the greater of (1) two percent of their retirement allowance otherwise provided, or (2) \$1.00 per month of credited service with a minimum increase of \$120.00 and a maximum increase of \$300.00 per year. Each year such person's retirement allowance shall be increased by the identical amount, such increase to be cumulative (noncompounding) for a period of six years, which, at the end of said six-year period, shall continue at that amount thereafter.

(b) *Temporary pension increase.* All persons who are receiving retirement benefits as of August 1, 2018, and who enter pay status through August 1, 2019, shall be entitled to receive an increase in their monthly allowance of \$400.00 per month beginning September 1, 2018, through August 31, 2019, or when the CPREA litigation is resolved and health insurance will be provided to the retiree class, whichever comes first.

Cost of living allowance shall be payable on the temporary pension increase for the period of September 1, 2013, through March 31, 2015, in accordance with the appropriate bargaining agreements for retired union members based on the individual retiree's number of years of retirement and section [92-31](#) for retired nonunion members.

(Ord. passed 1-1-09, § 17.6; Ord. No. 2329, 7-23-15; Ord. No. 2337, § 1, 7-21-16; Ord. No. 2346, § 1(a), 8-1-17; Ord. No. 2356, § 1, 8-9-18)

## **92-25 Optional forms of payment.**

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(a) Prior to the effective date of the member's retirement, but not thereafter, a member may elect to receive his/her retirement allowance as a regular retirement allowance payable throughout his/her life; or he/she may elect to receive the actuarial equivalent, at that time, of his/her regular retirement allowance in a reduced retirement allowance payable throughout his/her life, and nominate a beneficiary, in accordance with the provisions of Option 1, 2, 3, 4, or 5, as hereinafter set forth. If a member does not have an option election in force at the effective date of his/her retirement, his/her retirement allowance shall be paid as a regular retirement allowance.

(1) Option 1—Cash Refund Annuity. If a retirant dies before he/she has received in the annuity portions of his/her reduced retirement allowance an aggregate amount equal to his/her accumulated contributions standing to his/her credit in the annuity savings fund at the time of his/her retirement, the difference between his/her said accumulated contributions and the said aggregate amount of annuity payments received by him shall be paid to such person or persons as he/she shall have nominated by written designation duly executed and filed with the Board. If there be no such designated person or persons surviving the said retirant, such difference, if any, shall be paid to his/her legal representative.

(2) Option 2—Joint and Survivor Allowance. Upon the death of a retirant, his/her reduced retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his/her life, as he/she shall have nominated by written designation duly executed and filed with the Board prior to the effective date of his/her retirement.

(3) Option 3—Modified Joint and Survivor Allowance. Upon the death of a retirant, one-half of his/her reduced retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his/her life, as he/she shall have nominated by written designation duly executed and filed with the Board prior to the effective date of his/her retirement.

(4) Option 4—“Pop-Up” Allowance. Upon the death of a retirant who elected a “pop-up” allowance, the retirant’s reduced retirement allowance shall be continued throughout the life of and paid to such individual, the beneficiary, who has an insurable interest in the retirant’s life and who was nominated by the retirant by written designation duly executed and filed with the Board prior to the effective date of retirement. If the person nominated as beneficiary thereunder predeceases the retirant, the retirant shall thereafter receive his/her retirement allowance as regular retirement allowance, unreduced, payable the month following the month in which the beneficiary died and for the remaining lifetime of the retirant.

(5) Option 5—“50 Percent Pop-Up” Allowance. Upon the death of a retirant who elected a “50 percent pop-up” allowance, 50 percent of the retirant’s reduced retirement allowance shall be continued throughout the life of and paid to such individual, the beneficiary, who has an insurable interest in the retirant’s life and who was nominated by the retirant by written designation duly executed and filed with the Board prior to the effective date of retirement. If the person nominated as beneficiary hereunder predeceases the retirant, the retirant shall thereafter receive his/her retirement allowance as a regular retirement allowance, unreduced, payable the month following the month in which the beneficiary died and for the remaining lifetime of the retirant.

(b) If any benefits become payable under section [92-33](#) on account of the death of retirant who was receiving a retirement allowance under Option 2, 3, or 4 above, no retirement allowance shall be paid to his/her designated beneficiary under the said Option 2, 3, or 4. If the said retirant dies before he received in retirement allowance payments an aggregate amount equal to, but not exceeding, his/her accumulated contributions standing to his/her credit in the annuity savings fund at the time of his/her retirement, the difference between his/her said accumulated contributions and the said aggregate amount of retirement allowance payments received by him shall be paid from the retirement reserve fund to his/her said designated beneficiary, if living, otherwise to his/her legal representative.

(Ord. passed 1-1-09, § 18.1)

### **92-26 Option 2 election.**

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Any member who continues in the service of the City on or after the date he/she has ten or more years of credited service may, at any time prior to the effective date of his/her retirement but not thereafter, elect Option 2 provided for in section [92-25](#), in the same manner as if he/she were then retiring from service, and nominate a beneficiary who has an insurable interest in the life of the member. Prior to the effective date of his/her retirement, a member may revoke his/her said election of Option 2 and nomination of beneficiary and may again elect the said Option 2 and nominate a beneficiary as provided in this section. Upon the death of a member who has an Option 2 election in force, his/her beneficiary, if living, shall immediately receive the same retirement allowance to which the said beneficiary would have been entitled if the said member had retired the day preceding the



date of his/her death, notwithstanding that he/she may not have attained his/her voluntary retirement age; providing that the said Option 2 shall be applied to a retirement

allowance computed according to sections [92-18](#)(1) and (2) for a beneficiary of a deceased member, and according to section [92-27](#) for a beneficiary of a deceased member. If a member has an Option 2 election in force at time of his/her retirement, his/her said election of Option 2 and nomination of beneficiary shall thereafter continue in force, unless prior to the effective date of his/her retirement he/she elects to receive his/her retirement allowance as a regular retirement allowance or according to any option provided for in section [92-25](#). No benefits shall be paid under this section on account of the death of a member if any benefits are paid under section [92-33](#) on account of his/her death.

(Ord. passed 1-1-09, § 18.2)

### **92-27 Death in service.**

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Any member who continues in the service of the City on or after the date he/she has ten or more years of credited service, and does not have an Option 2 election in force as provided in section [92-26](#), and (1) dies while in City service, and (2) leaves a surviving spouse, the surviving spouse shall immediately receive the same retirement allowance to which the said beneficiary would have been entitled if the said member had (1) retired the day preceding the date of his/her death notwithstanding that he/she may not have attained his/her voluntary retirement age, (2) elected Option 2 provided for in section [92-25](#), and (3) nominated his/her said surviving spouse, as the case may be, as beneficiary. No benefit shall be paid under this section on account of the death of a member if any benefits are paid under section [92-33](#) on account of his/her death.

(Ord. passed 1-1-09, § 18.3)

### **92-28 Disability retirement.**

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(a) Upon the application of a member, or his/her department head, a member who (1) is in the service of the City, (2) has ten or more years of credited service, (3) becomes totally and permanently incapacitated for duty in the service of the City, by reason of a personal injury or disease, may be retired by the Board; provided, the Medical Director, after a medical examination of the said member, reports to the Board (1) that said member is physically or mentally totally incapacitated for duty in the service of the City, (2) that such incapacity will probably be permanent, and (3) that such member should be retired.

(b) A member with less than ten years of credited service shall have the ten years' service requirement provided for in subsection (a) of this section waived; provided, that (1) the Board finds he/she is totally and permanently incapacitated for duty in the service of the City as the natural and proximate result of a personal injury or disease arising out of and in the course of his/her actual performance of duty in the service of the City, and (2) he/she is in receipt of Workers Compensation on account of his/her said physical or mental capacity.

(Ord. passed 1-1-09, § 19)

### **92-29 Minimum disability annuity.**

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Upon his/her retirement on account of disability as provided in section [92-28](#), a member shall receive a disability retirement allowance computed according to sections [92-18](#)(1), (2), (4), and (5), notwithstanding that he/she may not have attained his/her voluntary retirement age. In no case shall his/her disability retirement allowance payable to his/her voluntary retirement age be less than 15 percent of his/her final average compensation; nor shall his/her disability retirement allowance payable after his/her voluntary retirement age be less than the sum of 15 percent of the first \$9,000.00 of his/her final average compensation and 20 percent of the portion of his/her final average compensation in excess of \$9,000.00. To his/her voluntary retirement age, his/her disability retirement allowance shall be subject to section [92-35](#). Upon his/her retirement, he/she shall have the right to elect an option provided for in section [92-25](#).

(Ord. passed 1-1-09, § 20.1)

### **92-30 Reserved.**

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(Ord. passed 1-1-09, § 21)

### **92-31 Nonunion cost of living increase.**

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For nonunion employee members of the retirement system (excluding Pontiac General Hospital employees), the retirement allowance otherwise provided for any such member who retires on or after July 1, 1980, shall be increased upon retirement by an amount equal to two percent of the retirement allowance otherwise provided for under this chapter. Each year thereafter, such member's retirement allowance shall be increased by an identical amount, such increases to be cumulative for a period of ten years. At the end of said ten-year period, the member's initial retirement allowance shall have been increased by 20 percent and shall continue at that amount thereafter.

For 50th Judicial District Court Judges and nonunion employee-members of the retirement system, the retirement allowance otherwise provided for any such member who retires on or after July 1, 1996, shall be increased upon retirement by an amount equal to two percent of the retirement allowance otherwise provided for under this chapter. Each year thereafter such member's retirement allowance shall be increased by an identical amount, such increases to be cumulative for a period of 18 years. At the end of said 18-year period, the member's initial retirement allowance shall have been increased by 36 percent and shall continue at that amount thereafter.

Note: Pursuant to collective bargaining agreement, this section is applicable to members of SAEA, PPMA, Teamsters, Local 214, and AFSCME, Local 2002, and has been amended for Court/MAPE members to provide that the increase as calculated above shall use a percentage amount of 2.5 percent and a period of 14 years.

(Ord. passed 1-1-09, § 22)

### **92-32 Workers Compensation re-calculation.**

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Upon termination of the statutory period for payment of Workers Compensation, if any, arising on account of his/her City employment, or at this attainment of age 65 years, whichever occurs first, a disability retiree shall be given service credit for the said statutory period and his/her disability

retirement allowance shall be increased to include such additional service credit. In no case shall his/her said increased retirement allowance payable to his/her attainment of age 65 years be less than his/her weekly Workers Compensation benefits converted to an annual basis.

(Ord. passed 1-1-09, § 22.1)

### **92-33 Duty death.**

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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/her employment with the City, or (2) a disability retiree, while in receipt of Workers Compensation on account of his/her City employment, dies prior to his/her voluntary retirement age as the result of the same injury or disease for which he/she was retired, and in either case (1) or (2) such death, injury or disease resulting in death be found by the Board to have been the result of his/her actual performance of duty in the service of the City, the applicable benefits provided in subsections (1) through (5) of this section shall be paid subject to the condition that the beneficiaries eligible to pensions apply for and are in receipt of Workers Compensation on account of the death of the said member or retiree.

- (1) In the case of a deceased member, his/her accumulated contributions standing to his/her credit in the annuity savings fund shall be paid according to section [92-36](#).
- (2) The surviving spouse shall receive a pension equal to his/her Workers Compensation converted to an annual basis. Said surviving spouse's pension shall begin upon termination of the statutory period for payment of Workers Compensation and shall continue until death.
- (3) His/her unmarried child or children under age 18 years shall each receive a pension equal to such child's Workers Compensation converted to an annual basis. Said child's pension shall begin upon termination of the statutory period for payment of the child's Workers Compensation and shall continue until his/her adoption, marriage, attainment of age 18 years, or death, whichever occurs first. If a surviving spouse's pension is terminated, each such child's pension shall be increased by an equal share of said surviving spouse's pension.
- (4) His/her parents shall each receive a pension equal to such parent's Workers Compensation converted to an annual basis. Said parent's pension shall begin upon termination of the statutory period for payment of the parent's Workers Compensation and shall continue until death.
- (5) As used in this section, the term *surviving spouse* means the person to whom the said member or retiree, as the case may be, was married at the time said member's or retiree's employment with the City last terminated.

(Ord. passed 1-1-09, § 23)

### **92-34 Subrogation.**

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

(Ord. passed 1-1-09, § 24)

### **92-35 Disability re-examination and income verification.**

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(a) At least once each year during the first five years following the retirement of a member with a disability retirement allowance, and at least once in each three-year period thereafter, the Board may, and upon the retirant's application shall, require any disability retirant, who has not attained his/her voluntary retirement age, to undergo a medical examination to be made by or under the direction of the Medical Director. Should any disability retirant who has not attained his/her voluntary retirement age refuse to submit to such medical examination in any such period, the Board may suspend payment of his/her disability retirement allowance until his/her withdrawal of such refusal. If such refusal continues for one year, all his/her rights in and to a disability pension shall be forfeited by him/her. If upon such medical examination of the said retirant the Medical Director reports to the Board that the said retirant is physically able and capable of resuming employment with the City, he/she shall be returned to active service in the employ of the City and his/her disability retirement allowance shall terminate; provided, the report of the Medical Director is concurred in by the Board. In returning the said retirant to active service, as herein provided, reasonable latitude shall be allowed the City in placing him in a position commensurate to his/her type of work and rate of compensation at the time of his/her retirement. The terms and conditions of disability retirement are contained in applicable collective bargaining agreements.

Note: This section has been amended by the AFSCME, Local 2002, collective bargaining agreement to provide that the City's risk management division shall determine whether a duty disability retirant is capable of returning to active duty.

(b) A disability retirant who has been or shall be returned to active service in the employ of the City, as provided in this section, shall again become a member of the retirement system and he/she shall contribute to the retirement system at the rate applicable to his/her membership classification. His/her credited service at the time of his/her retirement shall be restored to full force and effect. He/she shall be given membership service credit for the period he/she was receiving a disability allowance provided for in this chapter if within said period he/she was in receipt of Workers Compensation on account of total and permanent disability arising out of and in the course of his/her City employment; otherwise, he/she shall not be given service credit for said period.

(c) If a disability retirant who has not attained his/her voluntary retirement age is or becomes engaged in a gainful occupation, business or employment, the amount of the disability retirement allowance shall be reduced by the amount that the disability retirement allowance plus the amount earned by the retirant exceeds the disability retirant's final compensation, or the compensation currently being paid to persons holding the same position as that last held by the disability retirant, or, if there is no such position, the compensation currently paid to the person holding the most similar position as determined by the Board, whichever is higher. Should the said retirant's earnings or the compensation paid for his/her prior position subsequently change, his/her disability retirement allowance shall be correspondingly adjusted. The Board shall be authorized to adopt rules to provide for the implementation of this provision.

(Ord. passed 1-1-09, § 25)

### **92-36 Refund of accumulated contributions.**

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- (a) Should any member cease to be an officer or employee of the City and not be entitled to a pension payable from funds provided by the City, he/she shall be paid all or part of his/her accumulated contributions standing to his/her credit in the annuity savings fund as he/she shall demand in writing on forms furnished by the Board.
- (b) Upon the death of a member, his/her accumulated contributions standing to his/her credit in the annuity savings fund at the time of his/her death shall be paid, except as otherwise provided in this chapter, to such person or persons as he/she shall have nominated by written designation duly executed and filed with the Board. If there be no such designated person or persons surviving the said member, his/her said accumulated contributions shall be paid to his/her legal representative.
- (c) In the event any member dies intestate, without heirs, and without having nominated a beneficiary as provided in subsection (b) of this section, his/her accumulated contributions standing to his/her credit in the annuity savings fund, at the time of his/her death, may be used to pay his/her burial expense, not to exceed a reasonable sum to be determined by the Board; provided, that the said deceased member leaves no other estate sufficient for such purpose.
- (d) Payments of refunds of accumulated contributions, as provided in this section, may be made in a single sum or in monthly installments as the Board shall determine.

(Ord. passed 1-1-09, § 26)

### **92-37 Annuity savings fund—Member contributions.**

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- (a) The annuity savings fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensations of members to provide for their annuities, and from which shall be paid refunds of accumulated contributions, as provided in this chapter.
- (b) Except as otherwise provided in this subsection, members are not required to contribute to the retirement system.
- (c) The officer or officers responsible for making up the payroll shall cause the contributions provided for in this section to be deducted from the compensations of each member on each and every payroll, for each and every payroll period, from the date of his/her entrance in the retirement system to the date of his/her retirement or prior separation from City service. 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 and payment of his/her compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by said person during the period by such payment, except as to benefits provided by this chapter. The officer or officers responsible for making up the payroll shall certify to the Director of Finance the amount of contributions to be deducted from the compensation of each member for each and every payroll and each of said 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 said member's individual account in the annuity savings fund.

(d) In addition to the contributions deducted from the compensations of a member, as hereinbefore provided, a member shall deposit in the annuity savings fund, by a single contribution or by an increased rate of contribution as approved by the Board, all amounts he/she may have previously withdrawn from, and not repaid to, the annuity savings fund, together with regular interest computed 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/she withdrew his/her accumulated contributions until he/she repays to the annuity savings fund all amounts due the said fund by him.

(e) Upon retirement of a member, his/her accumulated contributions shall be transferred from the annuity savings fund to the retirement reserve fund. At the expiration of a period of three years from the date an employee ceases to be a member, any balance standing to his/her credit in the annuity savings fund, unclaimed by the said member or his/her legal representative, shall be transferred to the pension reserve fund.

(Ord. passed 1-1-09, § 27)

#### **92-38 Retirement reserve fund.**

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The retirement reserve fund is hereby created. It shall be the fund from which shall be paid all annuities and pensions payable as provided in this chapter. Should a disability retiree return to active service in the employ of the City, his/her annuity reserve at that time shall be transferred from the retirement reserve to the annuity savings fund and shall be credited to his/her individual account therein; and his/her pension reserve at that time shall be transferred from the retirement reserve to the pension reserve fund.

(Ord. passed 1-1-09, § 28)

#### **92-39 Pension reserve fund.**

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The pension reserve fund is hereby created. It shall be the fund in which shall be accumulated reserves for the payment of all pensions payable from funds provided by the City. 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 (1) for pensions being paid retirees and beneficiaries, and (2) covering service rendered and to be rendered by members. The said pension reserves shall be financed by annual appropriations, to be made by the Council, determined according to subsections (1), (2), and (3) of this section.

(1) The appropriation for members' current service shall be a percent of their annual compensations which will produce an amount which if paid annually by the City during their future service will be sufficient to provide the reserves, at the time of their retirements, for the portions of the pensions to be paid them based upon their future service; and

(2) The appropriation for members' accrued service shall be a percent of their 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 for the accrued service portions of the pensions to which they may be entitled; and

(3) The appropriation for pensions being paid retirants and beneficiaries shall be a percent of the annual compensations of members 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 for pensions being paid retirants and beneficiaries;

(4) In the event the amounts appropriated in the budget in any year are insufficient to pay in full the amounts due in said year to all beneficiaries of the retirement system, the amount of such insufficiency shall thereupon be provided by the appropriating authorities of the City;

(5) Contributions to the retirement system by the City to the extent necessary to provide payment of pensions and other benefits to beneficiaries of and members employed by an instrumentality of the City shall be made from the revenues of the said instrumentality of the City;

(6) Upon the retirement of a member, or at the time a pension becomes payable to a beneficiary on account of the death of a member, the reserve for such pension shall be transferred from the pension reserve fund to the retirement reserve fund. The Board may from time to time transfer from the pension reserve fund to the retirement reserve fund such additional amounts as it determines to be necessary for the proper maintenance of the retirement reserve fund.

(Ord. passed 1-1-09, § 29)

#### **92-40 Expense reserve.**

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Amounts contributed by the system for administrative expense shall be credited to this reserve. All expenses for the administration of the system shall be charged to this reserve. The Board shall certify to the City annually the amount of its requirements for administrative expenses.

(Ord. passed 1-1-09, § 30)

#### **92-41 Management of funds.**

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(a) Management of Funds. The Board shall be the Trustees of the funds of the retirement system and shall have full power to invest and reinvest such funds subject to all terms, conditions, limitations, and restrictions imposed by the law of the State of Michigan in the making and disposing of their investments. The Board shall have the power to purchase notes, bonds, or other obligations of the City of Pontiac before or after the same are offered to the public and with or without advertising for bids.

(b) The Board shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds of the retirement system have been invested, as well as the proceeds of said investments and any moneys belonging to the retirement system. There shall be kept on deposit available cash not exceeding ten percent of the total assets of the retirement system. All funds of the retirement system shall be held for the sole purpose of meeting disbursements for pensions, annuities, and other payments authorized by the provisions of this retirement system, and shall be used for no other purpose.

(c) The description of the various funds of the retirement system in sections [92-37](#) through [92-40](#) shall be interpreted to refer to the accounting records of the retirement system and not to the segregation of moneys in the funds of the retirement system.

(Ord. passed 1-1-09, § 31)

#### **92-42 Earnings allocation—Interest creditable.**

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All interest and other earnings on moneys and investments of the retirement system shall be credited to the pension reserve fund. The Board shall, at the end of each calendar year, allow regular interest on the members' individual balances in the annuity savings fund at the beginning of the calendar year. The Board shall, at the end of each fiscal year, allow regular interest on the mean assets credited to the retirement reserve fund. The amounts of interest so credited to the annuity savings fund and the retirement reserve fund shall be charged to the pension reserve fund.

(Ord. passed 1-1-09, § 32)

#### **92-43 Assignments prohibited.**

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The right of a person to an annuity, a pension, a retirement allowance, to the return of accumulated contributions, the annuity, the pension, or the retirement allowance itself, any optional benefit, any other right accrued or accruing to any member, retirant, or beneficiary under the provisions of this chapter, and the moneys belonging to the retirement system shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever, and shall be unassignable, except as is specifically provided in this chapter and in accordance with Public Act 100 of 2002, as amended; provided, that the City shall have the right of set-off for any claim arising from embezzlement or fraud by a member.

(Ord. passed 1-1-09, § 33)

#### **92-44 Correction of errors.**

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Should any change in the records result in any member, retirant, or beneficiary receiving from the retirement system more or less than he/she 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 said member, retirant, or beneficiary was correctly entitled shall be paid.

(Ord. passed 1-1-09, § 34)

#### **92-45 Reserved.**

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(Ord. passed 1-1-09, § 35)

#### **92-46 Nonimpairment of financial benefits.**

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Any and all provisions of this retirement system may, from time to time, be modified or changed by ordinance duly adopted by the City Council of the City of Pontiac. The Council shall consult with the Board and seek its technical review of the proposed changes prior to amendment of the ordinance. The accrued financial benefits of this retirement system shall not be diminished or impaired by such



modifications or changes and subject to the conditions of Public Act 728 of 2001, as amended. All provisions of laws inconsistent with the provisions of this retirement system are hereby repealed to the extent of such inconsistency.

(Ord. passed 1-1-09, § 36)

#### **92-47 Savings clause.**

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If any provision, section, subsection, paragraph, sentence, clause, or phrase of this retirement system 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 retirement system shall nevertheless continue in full force and effect.

(Ord. passed 1-1-09, § 37)

#### **92-48 Reserved.**

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(Ord. passed 1-1-09, § 38)

#### **92-49 Reserved.**

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(Ord. passed 1-1-09, § 39)

#### **92-50 Reserved.**

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(Ord. passed 1-1-09, § 40)

#### **92-51 North Oakland Medical Center privatized.**

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This section is effective January 1, 1994, and is applicable only to persons who, on December 31, 1993, were simultaneously (1) member of the City of Pontiac General Employees' Retirement System and (2) employees of the City owned North Oakland Medical Center and who became employees of the privatized North Oakland Medical Center on January 1, 1994. With respect to the persons identified in this section:

(1) Such persons who are vested shall receive benefits from the Pontiac General Employees' Retirement System based upon final average compensation as defined by the highest average annual compensation received by a member during a period of three consecutive years of service contained within the ten years immediately proceeding the privatization of North Oakland Medical Center (January 1, 1994). If the member has less than three years of credited service, final average compensation shall be the average of the member's annual compensation received during the member's total years of credited service. The definition of *final average compensation* in section [92-2](#) is superseded for this limited purpose for this limited group of former members of the retirement system who remain vested.

(2) Such persons with vested benefits shall receive from the Pontiac General Employees' Retirement System benefits with the section [92-18\(2\)](#) 1.5 percent factor being changed to a 2.0 percent factor. Section [92-18\(2\)](#) is superseded for this limited purpose for this limited group of former members of the retirement system who remain vested.

(3) Such persons with vested benefits shall receive from the Pontiac General Employees' Retirement System benefits pursuant to the definition of *voluntary retirement age* in section [92-2](#), which is amended to provide that:

*Voluntary retirement age* is defined as age 55 with, for eligibility purposes only, 25 or more years of credited service with either the previously (prior to January 1, 1994) City owned North Oakland Medical Center or the privatized North Oakland Medical Center (or a combination thereof). The definition of *voluntary retirement age* in section [92-2](#) is superseded for this limited purpose for this limited group of former members of the retirement system who remain vested. Calculation of benefit amounts shall only include service credit as an employee of the City owned North Oakland Medical Center.

(4) The City of Pontiac, employer-sponsor with respect to the majority of members of the Pontiac General Employees' Retirement System, to the extent funds do not exist in the retirement system to provide the retirement system benefits for retired employees and beneficiaries of the North Oakland Medical Center, will provide funding in compliance with Article IX, Section 24 of the State of Michigan Constitution, the retirement system provisions, and other applicable law.

(Ord. passed 1-1-09, § 41)

#### **92-52 Internal Revenue Code qualifications.**

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(a) The retirement system is intended and has been administered to be a qualified pension plan under section 401 of the Internal Revenue Code, as amended ("IRC" or "Code"), or successor provisions of law, and other applicable laws, regulations and administrative authority. The retirement system is a governmental plan under IRC section 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 section 501. The Board of Trustees may adopt such additional provisions to the retirement system as are necessary to fulfill this intent which are incorporated by reference into this section.

(b) Notwithstanding any provision of the plan to the contrary, benefits and contributions shall be limited in accordance with section 415 of the Internal Revenue Code, which is hereby incorporated by reference.

For purposes of section 415 of the Internal Revenue Code, compensation shall mean compensation actually paid during the limitation year and the limitation year shall be the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan.

For purposes of adjusting any benefit or limitation under section 415 of the Internal Revenue Code, the mortality table used shall be the table prescribed by the United States Secretary of the Treasury in accordance with section 415(b)(2)(E)(v) of the Internal Revenue Code.

For limitation years beginning on and after January 1, 2001, for purposes of applying the limitations described herein, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code.

For limitation years beginning after December 31, 1997, for purposes of applying the limitations of section 415 of the Internal Revenue Code, compensation paid or made available during such limitation years shall include any elective deferral (as defined in section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee.

(c) **Eligible Rollover Distributions.** This section 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 section, a distributee may elect, at the time and in the manner prescribed by the Board, 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 section:

(1) **Eligible Rollover Distribution.** An *eligible rollover distribution* is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint life (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 IRC section 401(i)(9). 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 section 408(a) or (b), or to a qualified plan described in IRC section 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.

(2) **Eligible Retirement Plan.** An *eligible retirement plan* is an individual retirement account described in IRC section 408(a), an individual retirement annuity described in IRC section 408(a), an annuity plan described in IRC section 403(a), an annuity contract described in IRC section 403(b) or an eligible plan under IRC section 457 which is maintained by a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan or a qualified trust described in IRC section 401(a) 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.

(3) **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.

(4) **Direct Rollover.** A *direct rollover* is a payment by the retirement system to the eligible retirement plan specified by the distributee.

(d) Upon termination of the plan or upon complete discontinuance of contributions under the plan, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable.

(Ord. passed 1-1-09, § 42)

### **92-53 IRS minimum distribution.**

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(a) Distributions from the plan will comply with the requirements of Code section 401(a)(9) and the regulations thereunder. A member's interest in the trust must begin to be distributed by the later of (1) April 1 of the calendar year following the calendar year that the employee attains the age of 70.5, or (2) April 1 of the calendar year the member retires. 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 section 401(a)(9) in accordance with the regulations under IRC section 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.

(1) **Effective Date.** Unless an earlier effective date is specified in the plan, the provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(2) **Coordination with Minimum Distribution Requirements Previously in Effect.** If the plan specifies an effective date of this section earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this section will be determined as follows: If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this section equals or exceeds the required minimum distributions determined under this section, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this section is less than the amount determined under this section, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this section.

(3) **Precedence.** The requirements of this section will take precedence over any inconsistent provisions of the plan.

(4) **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.

(5) **TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this section, other than subsection (a)(4) of this section, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal

Responsibility Act (TEFRA) and the provisions of the plan that relate to section 242(b)(2) of TEFRA.

(b) Time and Manner of Distribution.

(1) Required Beginning Date. The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date.

(2) Death of Member before Distributions Begin. If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed, no later than as follows:

a. If the member's surviving spouse is the member'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 member died, or by December 31 of the calendar year in which the member would have attained age 70.5, if later.

b. If the member's surviving spouse is not the member'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 member died.

c. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (b) will apply as if the surviving spouse were the member.

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

(3) Form of Distribution. Unless the member'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 subsections (c) and (d) of this section. If the member'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 member'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 member'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 subsection (d) of this section;
- 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 member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under subsection (b)(2)(a) or (b) of this section) 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 member'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 member's required beginning date.

(3) Additional Accruals after First Distribution Calendar Year. Any additional benefits accruing to the member 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 Member Dies before Date Distributions Begin.

(1) Joint Life Annuities Where the Beneficiary Is Not the Member's Spouse. If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the member using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(2) Member Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the member dies before the date distribution of his or her interest begins and there

is a designated beneficiary, the member's entire interest will be distributed, beginning no later than the time described in subsection (b)(2)(a) or (b) of this section, 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 member'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.

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

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

(e) **Definitions.**

(1) *Designated beneficiary* means 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* means a calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection (b)(2) of this section.

(3) *Life expectancy* means 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* means the date specified in subsection (a) of this section.

(Ord. passed 1-1-09, § 42.1)

**92-54 Defined contribution plan.**

Effective July 1, 2002, all nonunion management employees hired by the City of Pontiac as of January 1, 2002, and elected officials in office as of January 1, 2002, will have the option of either

becoming a member of the General Employees' Retirement System or they may elect to participate in a defined contribution plan or other portable plan as designated by the City. The defined contribution plan shall be made available to nonunion management employees and elected officials of the city and said contribution rate shall be as follows: three percent of the employee's base salary shall be contributed by the employee and nine percent shall be contributed by the City of Pontiac.

The Departments of Finance and Human Resources shall be responsible for establishing guidelines and procedures for implementing and administering the defined contribution plan. Employees and elected officials who elect to participate in the defined contribution plan and who complete at least ten years of credited service, prior to or after July 1, 2002, will be eligible for health care benefits as specified in section [92-20](#).

(Ord. passed 1-1-09, § 43)

#### **92-55 Denial of benefit claim—Appeal.**

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

(Ord. passed 1-1-09, § 44)

#### **92-56 Effective provisions.**

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

(Ord. passed 1-1-09, § 45)

#### **92-57 Mandatory bargaining subjects.**

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Notwithstanding any other provisions of this article, any matter relating to the retirement system provided by this article applicable to current employees represented by a collective bargaining agent is a mandatory subject of bargaining under the Public Employment Relations Act, Act No. 336 of the Public Acts of 1947, being sections [423.201](#) to [423.216](#) of the Michigan Compiled Laws.

(Ord. passed 1-1-09, § 46)

#### **92-58 Reciprocal retirement system.**

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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. This section does not indicate adoption of section 6 of Act 88, as amended.

(Ord. passed 1-1-09, § 47)



## **92-59 Fraud penalty.**

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Whoever with intent to deceive shall make any statement or report under this article 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 article 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 \$500.00 plus costs of prosecution, or shall be imprisoned for not to exceed 90 days, or both, in the discretion of the court.

(Ord. passed 1-1-09, § 48)

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### **The Pontiac Municipal Code and Zoning Ordinance are current through Ordinance 2357, passed August 28, 2018.**

Disclaimer: The City Clerk's Office has the official version of the Pontiac Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.pontiac.mi.us/> (<http://www.pontiac.mi.us/>)

City Telephone: (248) 758-3000

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