



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 141024

Introduced December 11, 2014

Councilmember Kenney

**Referred to the
Committee on Labor and Civil Service**

AN ORDINANCE

Amending Title 22 of The Philadelphia Code, entitled "Public Employees Retirement Code," by amending various provisions to provide for provisions for participants performing qualified military service, to allow certain transfer payments for purchase of service and for purchase of service by certain classes of employees, to allow for non-spouse beneficiary rollover rights, to provide certain retroactive effective dates, and otherwise provide language required by the Internal Revenue Code, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 22 of The Philadelphia Code, entitled "Public Employees Retirement Code," is hereby amended as follows:

TITLE 22. PUBLIC EMPLOYEES RETIREMENT CODE.

CHAPTER 22-100. GENERAL PROVISIONS.

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§22-105. Definitions.

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(9) *Compensation.*

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(e) A member receiving differential wage payments (as defined in Section 3401(h)(2) of the Tax Code) shall be treated as an employee of the City and the Board may, in its sole discretion, treat differential wage payments as compensation for purposes of determining benefits under the Plan, in such manner to all members on reasonably equivalent terms. This Section shall be construed in accordance with Section 414(u)(12) of the Tax Code, Internal Revenue Service Notice 2010-15 and any superseding/subsequent guidance.

(10) *Credited service.* Any period of service as an employee for which regular member contributions are made and any other period of service for which credit is purchased in accordance with the provisions of § 22-801 (Leaves of Absence Without Pay), § 22-803 (Purchase of Prior City Service), [or] § 22-802 (Purchase of Governmental Service) or § 22-809 (Pension Credit for Former F.P.T.F. Employees), subject to such limitations and restrictions as are set forth in Chapter 22-800 (Purchase of Credited Service).

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CHAPTER 22-300. RETIREMENT BENEFITS.

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§22-305. Maximum Benefit Limitations.

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(2) *Adjustment of Limitations.*

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(b) If a benefit is to be distributed in a form other than a single or straight life annuity or joint and survivor annuity (including any death benefit payable as a survivor's annuity), the actuarial equivalent (using an interest rate, however, not less than the greater of five percent (5%) or the valuation rate adopted by the Board upon recommendation by the Board's actuary) of a single life annuity of such benefit must satisfy the limitations set forth in this Section. With respect to Retirement System years beginning on and after January 1, 1995, the actuarial equivalent for purposes of this Section shall be greater of: (1) the amount determined using the valuation rate adopted by the Board; or (2) the amount determined using the five percent (5%) interest rate. Further adjustments may be made by the Board, as permitted by Section 415 of the Tax Code and the regulations promulgated thereunder, under the appropriate circumstances including, if authorized by ordinance of Council, receipt by the Retirement System of rollover contributions or assets or liabilities transferred from another qualified plan. If the annuity starting date of the member's form of benefit is in a Retirement System year beginning after 2005, the actuarially equivalent straight life annuity pursuant to this Section shall be equal to the greatest of: (1) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the member's form

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of benefit, computed using the interest rate and mortality table referenced in the definition of Actuarial equivalent and Section 22-305(g); (2) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table as defined in Section 22-305(g); and (3) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate under Section 417(e)(3) of the Tax Code and the applicable mortality table as defined in Section 22-305(g), divided by 1.05.

* * *

(h) Pursuant to Section 415(n)(2)(A) of the Tax Code, any Service credit purchased in accordance with Sections 22-802, 22-803, 22-804, 22-805 or 22-809 shall not be taken into account in computing the limitation described in Section 22-305(1).

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§22-306. Retirement and Survivorship Benefit Options.

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(6) Required minimum distribution. In no event may a member elect (or otherwise be entitled to) a form of benefit which is payable over a period that fails to satisfy the required distribution provisions of Section 401(a)(9) of the Tax Code, including the incidental benefit distribution requirements.

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(7) Death Benefits Under USERRA. With respect to a death occurring on or after January 1, 2007, if a member dies while performing qualified military service (as defined in Section 414(u) of the Tax Code), the survivors of the member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the member had resumed and then terminated employment on account of death pursuant to Section 401(a)(37) of the Tax Code. Service credit shall include the period of a deceased member's qualified military service for purposes of determining death benefits under the Plan. This Section shall be construed in accordance with Section 401(a)(37) of the Tax Code, Internal Revenue Service Notice 2010-15 and any superseding/subsequent guidance.

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CHAPTER 22-800. PURCHASE OF CREDITED SERVICE.

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§22-802. Purchase of Governmental Service.

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(5) Installment and Transfer Payments. Payment for the purchase of governmental service may be made in accordance with Section 22-806 (Installment Payments) or Section 22-808 (Transfer Payments) of this Title, or any combination thereof.

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§22-803. Purchase of Prior City Service.

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(2) *Limit on time to purchase.* If an employee applies to restore credit for previous service, the employee must either pay the full amount calculated under subsection (1) or make arrangements within the first year of reemployment to pay such amount on the installment plan described in § 22-806 (Installment Payments) or through transfer payments described in § 22-808 (Transfer Payments). Provided, however, that members of Plan A, Plan B, Plan L, Plan Y, or Plan '10 who file beyond the one-year deadline may make such purchase by paying the additional interest provided in Section 22-807.

§22-804. Pension Credit for Former C.E.T.A. Employees.

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(3) Any payments which may be due from former C.E.T.A. employees under this Section may be paid by installment under the provisions of § 22-806 (Installment Payments) or by transfer payment under the provisions of § 22-808 (Transfer Payments).

§22-805. Election of Fire Employees and Police Employees Laid Off in 1978 and 1980 and Subsequently Reinstated to Purchase Pension Credit for the Layoff Period.

(1) Any Fire Employee or Police Employee who was laid off in 1978 or 1980 and subsequently reinstated may elect at any time to purchase pension credit in the

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employee's current pension plan for the period of time the employee was laid off, provided that any employee making such election shall be required to pay such additional contributions which would have been paid by that employee had the employee been a member of the employee's current pension plan during the layoff period, plus interest on that amount calculated from the date the employee was reinstated. Interest shall be charged at the current rate determined by the Board's actuary to compensate the Pension Fund for lost interest, currently 9% compounded annually. The employee may pay such amount either in lump sum or by the installment plan under the terms set forth in Section 22-806 (Installment Payments) [of this Ordinance], or by transfer payment under the provisions set forth in Section 22-808.

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§22-808. Transfer Payments.

(1) General. Any member who is eligible to purchase service for prior City Service, service as an F.P.T.F. employee, for time spent as a disabled member or in allowable other governmental service may pay for any such service through a direct transfer from the member's account under an eligible deferred compensation plan under Section 457(b) of the Tax Code, an annuity contract under Section 403(b) of the Tax Code, a qualified pension or profit-sharing plan under Section 401(a) of the Tax Code (including a cash or deferred arrangement under Section 401(k) of the Tax Code) (excluding amounts attributable to Roth or after-tax contributions) or an individual retirement account ("IRA") under Section 408 of the Tax Code (excluding amounts

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attributable to Roth contributions). Such a deferred compensation plan, annuity contract, cash or deferred arrangement or IRA shall be known as “the transferor plan.” To the extent applicable, such transfer payment shall be made in compliance with the provisions of Sections 457(e)(17) and 403(b)(13) of the Tax Code, respectively.

(2) *Authorization.* The member shall provide authorization for such transfer as may be required by the transferor plan.

(3) *Refund of transfers; partial credit.* If transfer payments are not sufficient to pay for the full cost of service to be purchased, and necessary payments are not completed within ninety (90) days of a member’s separation from service, the member or the member’s beneficiary may elect either (i) a refund of the total transfer payments made; or (ii) credit for that portion of service for which payment has been made (expressed in years and specified to the day), provided that in order to receive partial credit for prior City Service, pursuant to Section 22-803, the member must have made arrangements to pay for all prior City Service.

(4) *Limitation on amount of transfer payments.* A member shall not transfer amounts under this Section 22-808 which exceed the amount necessary to purchase prior City and other governmental Service available for purchase. Any portion of the transfer payment which exceeds that amount required to purchase such service shall be refunded to the member.

(5) *Limitation on use of transfer payments.* Transfer payments shall be used exclusively for the purpose of purchasing credited service as provided in Section 22-201

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(membership in certain plans); Section 22-204 (regarding disabled members); Section 22-802 (purchase of governmental service); Section 22-803 (purchase of prior City Service); and Section 22-809 (Pension Credit for Former F.P.T.F. Employees).

§22-809. Pension Credit for Former F.P.T.F. Employees.

(1) For purposes of this Section, an F.P.T.F. Employee shall mean any person hired by the Fairmount Park Trust Funds, the Fairmount Park Ranger Fund, the Commissioner of Fairmount Park - Natural Lands Restoration and Environmental Education Program or the Robert W. Ryerss Bequest who became a member of Plan Y effective July 1, 2013, and is a member of Plan Y on the date a request is made to purchase credited service as an F.P.T.F. Employee in accordance with Section 22-809(2).

(2) Pursuant to agreements between the City and District Councils 33 and 47, and specifically the documents titled Memorandum of Agreement, Transition of Benefits for Former Fairmount Park Trust Fund Employees, an F.P.T.F. Employee who continued in employment with the City after June 30, 2013, shall be entitled, at his or her individual option, to purchase credited service under the Retirement System for the period of his or her service as an F.P.T.F. Employee. This Section 22-809 shall apply to nonrepresented F.P.T.F. Employees in the same manner as it applies to represented F.P.T.F. Employees. In order to purchase such credited service, the F.P.T.F. Employee shall make payment to the Retirement System of a sum which is the product of: (a) the normal cost rate (employer plus employee) for Plan Y in effect on the date of purchase, multiplied by

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(b) the number of years of service as an F.P.T.F. Employee, multiplied by (c) the F.P.T.F. employee's rate of compensation (annualized) as of June 30, 2013. The F.P.T.F. Employee shall not pay interest on the amount calculated pursuant to the immediately preceding sentence if credited service is purchased within one (1) year of the date the notice of entitlement to distribution from the Fairmount Park Commission 401(a) Plan is sent to the F.P.T.F. Employee. A F.P.T.F. Employee who fails to purchase credited service within one (1) year of the date that the notice of entitlement to distribution from the Fairmount Park Commission 401(a) Plan is sent to the F.P.T.F. Employee shall be personally responsible for the payment of interest accrued following one (1) year of the date that the notice of entitlement to distribution from the Fairmount Park Commission 401(a) Plan is sent to the F.P.T.F. Employee. Such interest shall be paid in accordance with the interest rate provided for in Section 22-807.

(3) Any payments that may be due from a former F.P.T.F. Employee under this Section may be paid by installment under the provisions of Section 22-806 (Installment Payments) or Section 22-808 (Transfer Payments).

(4) Credited service purchased by an F.P.T.F. Employee in accordance with this Section 22-809 shall not count against the ten-year maximum limitations on the purchase of governmental service, as set forth in Section 22-802(2).

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CHAPTER 22-900. CONTRIBUTIONS.

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§22-904. Direct Rollover.

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(2) *Definitions.*

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(b) *Eligible Retirement Plan.* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Tax Code, an individual retirement annuity described in Section 408(b) of the Tax Code, an annuity plan described in Section 403(a) of the Tax Code, an eligible deferred compensation plan as defined under Section 457(b) of the Tax Code, an annuity plan described under Section 403(b) of the Tax Code, or a qualified trust described in Section 401(a) of the Tax Code, that accepts the distributee's eligible rollover distribution. [However, in the case of an eligible rollover distribution to the surviving spouse or surviving Life Partner, an eligible retirement plan is an individual retirement account or individual retirement annuity.]

* * *

(3) *Non-spouse Rollovers.* Effective January 1, 2007, a non-spouse Beneficiary who is a designated Beneficiary within the meaning of Section 401(a)(9)(E) of the Tax Code may, after the death of the member, make a Direct Rollover of a distribution to an inherited individual retirement account (IRA) established on behalf of the designated Beneficiary; provided that the distributed amount satisfied all the requirements to be an Eligible Rollover Distribution other than the requirement that the

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distribution be made to the member or the member's spouse. Such Direct Rollovers shall be subject to the terms and conditions of Internal Revenue Service Notice 2007-7 and superseding guidance including, but not limited to, the provisions in Q&A-17 thereof regarding required minimum distributions. Effective January 1, 2010, the distributions described in this Section shall be subject to Sections 401(a)(31), 402(f) and 3405(c) of the Tax Code.

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CHAPTER 22-1300. MISCELLANEOUS.

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§22-1305. Termination of Plan System.

If the several plans of retirement, disability and incidental death benefits which collectively comprise the Retirement System are completely or partially terminated, all members hereunder affected by such complete or partial termination shall be fully vested in their accrued benefits as of the date of termination to the extent the benefits are then funded in accordance with Sections 401(a)(4) and 401(a)(7) of the Tax Code as in effect on September 1, 1974, Section 1.401-1(b) of the Treasury regulations promulgated with respect to those Tax Code Sections prior to enactment of the Employee Retirement Income Security Act of 1974, as amended, Internal Revenue Service Revenue Ruling 66-11 and Section 411(e)(2) of the Tax Code. In the event of the complete discontinuance of contributions by the City under the Retirement System, the accrued benefit of each

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affected Member shall be nonforfeitable. If any assets remain after all obligations under this Retirement System have been discharged, such assets shall revert to the City.

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CHAPTER 22-1400. DEFINED CONTRIBUTION PLAN.

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§22-1404. Contributions.

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(3) *Qualified Military Leave Contributions.* Notwithstanding any provision of this Plan to the contrary, a Member who takes a leave of absence on account of qualified uniformed services leave, as defined under USERRA or other applicable law, and who returns to employment with the City within the time that such reemployment rights are protected by such law, shall be entitled to all City contributions (without any adjustment for any investment gains or losses, or earnings or expenses) as required by Tax Code Sections 414(u) and 401(a)(37). With respect to a death occurring on or after January 1, 2010, if a member dies while performing qualified military service (as defined in Section 414(u) of the Tax Code), the survivors of the member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the member had resumed and then terminated employment on account of death pursuant to Section 401(a)(37) of the Tax Code. Service credit shall include the period of a deceased member's qualified military service for purposes of

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determining death benefits under the Plan. This Section shall be construed in accordance with Section 401(a)(37) of the Tax Code, Internal Revenue Service Notice 2010-15 and any superseding/subsequent guidance.

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§22-1405. Member Accounts and Allocation of Benefits.

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(3) *Limitation on Allocations.* Allocations to Members shall not be made in excess of the limitations set forth herein. For these purposes, the limitations on allocations set forth herein are intended to comply with the limitations applicable to allocations imposed under Tax Code Section 415(c), all of which shall be determined by using the Retirement System Year as the “limitation year” as that term is used for purposes of Tax Code Section 415.

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(b) For these purposes, the term “annual addition” means the sum of the following amounts credited to a member’s account for any Retirement System year:

[for any year of City contributions, and forfeitures pursuant to this Chapter.]

(.1) City contributions allocated to a member’s account;

(.2) forfeitures;

(.3) amounts allocated, after March 31, 1984, to an individual medical account, as defined in Section 415(l)(2) of the Tax Code, which is part of a pension or annuity plan maintained by the City;

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(.4) amounts derived from contributions paid or accrued after December 31, 1985, in table years ending after such date, which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Section 419A(d)(3) of the Tax Code, under a welfare benefit fund, as defined in Section 419(e) of the Tax Code, maintained by the City; and

(.5) allocations under a simplified employee pension.

Notwithstanding the foregoing, an annual addition shall not include a restorative payment within the meaning of Internal Revenue Service Revenue Ruling 2002-45 and any superseding guidance.

(c) A Member's "compensation" for these purposes means earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the City and including any elective deferral (as defined in Tax Code Section 402(g)(3)), and any amount which is contributed or deferred by the City at the election of the Member and which is not includible in the gross income of the Member by reason of Tax Code Sections 125, 132(f)(4) or 457, but excluding the following: (i) any distributions from a plan of deferred compensation; and (ii) other amounts which received special tax benefits, or contributions made by the City (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Tax Code Section 403(b) (whether or not the amounts are actually excludible from the gross income of the Member). Effective July 1, 2010, the definition of Compensation includes payments

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made by the later of 2½ months after severance from employment, or the end of the limitation year that includes the date of severance from employment, if, absent a severance from employment, such payments would have been paid to the employee while the employee continued in employment with the City, and are regular compensation for services during the employee's regular working hours, compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar compensation. Effective as of January 1, 2010, pursuant to Section 414(u)(12) of the Tax Code, a member receiving differential wage payments (as defined in Section 3401(h)(2) of the Tax Code) shall be treated as an employee of the City and the Board may, in its sole discretion, treat differential wage payments as compensation for purposes of determining benefits under the Plan, in such manner to all members on reasonably equivalent terms, but shall treat such amounts as compensation for purposes of Section 415(c)(3) of the Tax Code and Treasury regulations Section 1.415(c)-2. This Section shall be construed in accordance with Section 414(u)(12) of the Tax Code, Internal Revenue Service Notice 2010-15 and any superseding/subsequent guidance. The definition of Compensation as set forth in this Section shall be the exclusive definition for purposes of applying the limitations of Tax Code Section 415. The definition of Compensation as set forth in Section 22-105(9) shall not apply to this Section.

(d) Notwithstanding the preceding definition of compensation in Section 22-1405(3)(c), compensation for a [disabled] member who is permanently and totally

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disabled (as defined in Section 22(e)(3) of the Tax Code) [shall, to the extent permissible under Tax Code Section 415, be] shall mean the compensation such Member would have received for the limitation year if the Member had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled. Prior to determining the Member's actual compensation for the limitation year, the Board may determine the maximum permissible amount for a member on the basis of a reasonable estimation of the member's compensation for the limitation year, uniformly determined for all members similarly situated. As soon as administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year shall be determined on the basis of the member's actual compensation for the limitation year.

* * *

(f) [If a Member's annual additions for a Plan Year exceed the limitations on annual additions set forth in Tax Code Section 415 for such Plan Year, the excess of annual additions shall be transferred from the Member's Account to the suspense Account and used to reduce aggregate City Contributions to the DC Plan in subsequent Plan Year(s).] Any correction methods for excess annual additions set forth in the Plan that were allowed pursuant to the version of Treasury regulations Section 1.415-6(b)(6) in effect with respect to any limitation year before July 1, 2007, shall not apply. However, the Plan may be eligible for self-correction under Internal Revenue Service Revenue Procedure 2013-12, 2013-4 I.R.B. 313 and any superseding guidance.

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Notwithstanding the foregoing, the Employee Plans Compliance Resolution System (EPCRS) shall be the only correction method for correcting excess annual additions.

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§22-1408. Distribution of Benefits.

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(4) *Direct Rollovers.* Notwithstanding any provision of the DC Plan to the contrary that would otherwise limit a Member's (or Beneficiary's, if applicable) election under this Section and except as provided in subsection (3)(b)(1) above, a Member (or Beneficiary, if applicable) may elect, at the time and in the manner prescribed by the Board, to have any portion of his or her distribution paid directly, as an Eligible Rollover Distribution, from the DC Plan to an Eligible Retirement Plan specified by the Member. Effective July 1, 2010, a non-spouse Beneficiary who is a designated Beneficiary within the meaning of Section 401(a)(9)(E) of the Tax Code may, after the death of the member, make a Direct Rollover of a distribution to an inherited individual retirement account (IRA) established on behalf of the designated Beneficiary; provided that the distributed amount satisfied all the requirements to be an Eligible Rollover Distribution other than the requirement that the distribution be made to the member or the member's spouse. Such Direct Rollovers shall be subject to the terms and conditions of Internal Revenue Service Notice 2007-7 and superseding guidance including, but not limited to, the provisions in Q&A-17 thereof regarding required minimum distributions. Effective

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January 1, 2010, the distributions described in this Section shall be subject to Sections 401(a)(31), 402(f) and 3405(c) of the Tax Code.

SECTION 2. Effective Dates for Section 1 of this Ordinance. The amendments provided in Section 1 of this Ordinance shall take effect as follows:

- (a) Section 22-105(9)(e) is effective as of July 1, 2009.
- (b) The amendments to Section 22-105(10) are effective as of July 1, 2013.
- (c) The additions to Section 22-305(2)(b) are effective as of July 1, 2006.
- (d) Section 22-305(2)(h) is effective for trustee-to-trustee transfers after December 31, 2001.
- (e) Section 22-306(6) is effective January 1, 1963.
- (f) Section 22-306(7) is effective for deaths occurring on or after January 1, 2007.
- (g) The amendments to Sections 22-802(5), 22-803(2), 22-804(3), and 22-805(1), insofar as they relate to Section 22-808, are effective for trustee-to-trustee transfers after December 31, 2001.
- (h) Section 22-808 is effective for trustee-to-trustee transfers after December 31, 2001.
- (i) Section 22-809 is effective July 1, 2013.
- (j) The amendments to Section 22-1305 are effective September 1, 1974.
- (k) The amendments to Section 22-1404(3) are effective January 1, 2010.

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(l) The amendments to Section 22-1405(3)(b), (d), and (f) are effective January 1, 2010.

Explanation:

[Brackets] indicate matter deleted.

Underlining indicates new matter added.