

Legislation Text

File #: 100286, **Version:** 1

Amending Title 22 of The Philadelphia Code, entitled “Public Employees Retirement Code,” to create two new Plans, entitled “Plan ’10” and “DC Plan,” for (i) certain employees hired or rehired on or after January 1, 2010; and (ii) certain electing employees; and making technical changes; all under certain terms and conditions.

WHEREAS, An Arbitration Panel constituted pursuant to Act 1968, June 24, P.L. 237, No. 111, 43 P.S. §§ 217.1, *et seq.* (“Act 111”), issued an Award dated December 18, 2009, and a Supplemental Award dated March 2, 2010, providing for a new pension plan for police members of the City’s retirement system, called “Plan ’09”; and

WHEREAS, Section 7 of Act 111, 43 P.S. § 217.7, provides that such award “shall constitute a mandate . . . to the lawmaking body of [the] political subdivision . . . with respect to matters which require legislative action”; and

WHEREAS, Council, therefore, has a mandatory duty under State law to implement the pension award; and

WHEREAS, Council now renames “Plan ’09” as “Plan ’10” and the “DC Plan,” as further described herein; now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 22 of The Philadelphia Code is hereby amended to read as follows:

TITLE 22. PUBLIC EMPLOYEES RETIREMENT CODE.

CHAPTER 22-100. GENERAL PROVISIONS.

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§ 22-104. Continuation of Divisions and Plans.

* * *

(2) Plans. The several plans of benefits that form part of the City of Philadelphia Public Employees Retirement System are designated and assigned to the foregoing divisions thereof as follows:

* * *

Plan ’10 includes (i) certain employees hired or rehired on or after January 1, 2010, subject to

election under Section 22-201(5); and (ii) certain electing employees; all as set forth in § 22-201(5).

§ 22-105. Definitions.

In addition to the definitions set forth in § 1-103(1) of the Code, the following definitions apply to this Title unless the context plainly requires otherwise:

* * *

(6) Average Final Compensation.

* * *

(d) For a member of Plan '10, average final compensation shall be the average of the member's five (5) highest annual compensations, calculated for either five (5) calendar years or five (5) anniversary years, except that for police members of Plan '10 it shall mean the five highest annual compensations during the period when contributions are required under § 22-902(2)(e). If the member has less than five (5) years of credited service, exclusive of any purchase of other governmental service, average final compensation is equal to the average annual compensation received during such period of credited service.

* * *

(9) Compensation.

(a) The gross pay, exclusive of any taxable fringe benefits, of any member for personal services as appears on the City payroll, subject to the following:

* * *

(.2) For members of Plan A, Plan B, or Plan L *and for police employee members of Plan '10*, compensation shall include base pay, leave and longevity payments paid before a member's separation from service but shall exclude overtime, holiday overtime, compensatory time, shift differentials and any lump sum payment of benefits.

(.3) For members of Plan J or Plan Y, compensation shall include base pay, leave and longevity payments, overtime and holiday overtime paid before the member's separation from service, but shall exclude compensatory time, shift differentials and any lump sum payment of benefits.

(.4) Effective July 1, 2003, for members of Plan D or Plan B *and for police employee members of Plan '10*, compensation shall include, in addition to payments provided above, the four percent (4%) stress pay paid *(increased to five percent (5%), effective July 1, 2010)*, in accordance with the collective bargaining agreement between the City and the Fraternal Order of Police.

(.5) Effective July 1, 2003, for members of Plan X or Plan A, compensation

shall include, in addition to payments provided above, [the 2-2/5 hours of]premium pay, not to exceed a maximum of four percent (4%) of base salary, in accordance with the collective bargaining agreement between the City and the International Association of Fire Fighters.

* * *

(25) Minimum retirement age. The youngest age at which an employee may retire from City service and receive full service retirement benefits, or the age at which a separated member may receive full separation service retirement benefits. The minimum retirement age for the various plans of the Retirement System is as follows:

- (1) Plan A: fifty (50);
- (2) Plan B: fifty (50);
- (3) Plan D: forty-five (45);
- (4) Plan J: fifty-five (55);
- (5) Plan L: fifty-five (55);
- (6) Plan X: forty-five (45); [and]
- (7) Plan Y: sixty (60)[.]; *and*
- (8) *Plan '10: fifty (50) for police employees.*

* * *

CHAPTER 22-200. MEMBERSHIP.

§ 22-201. Membership Upon Employment.

* * *

(2) Employees first hired on or after January 8, 1987. All employees who are hired, rehired, or first elected on or after January 8, 1987, shall be members of Plan A, Plan B, Plan L, or Plan Y of the Retirement System, except to the extent that they are afforded other options pursuant to § 22-203 (Membership After Reemployment) or are Police or Fire employees covered by subsection (3) *or* (5), or are municipal employees covered by subsection (4). Of these employees[.]:

* * *

(5) Employees first hired or assuming elected office on or after January 1, 2010. All employees who (i) are police employees; and who (ii) are hired, rehired, or first assume elected office on or after January 1, 2010; are members of Plan '10 immediately upon employment by the City or upon taking office, unless, within thirty (30) days of employment or taking office, the employee makes an irrevocable election to become a member of Plan B, L or Y, as applicable.

* * *

§ 22-203. Membership after Reemployment.

(1) Reemployment on or after January 8, 1987.

(a) Except as provided in paragraph (b) of this subsection, all separated employees who become reemployed by the City on or after January 8, 1987 become subject to the provisions of Plan A, Plan B, Plan L, [or]Plan Y, or Plan '10.

(b) The following employees shall remain subject to the provisions of the plan covering them when they separated from service with the City unless they elect, in writing, on forms provided by the Board, to transfer membership to the applicable division covered by Plan A, Plan B, Plan L, or Plan Y pursuant to § 22-205 (Optional Transfer of Membership):

* * *

(4) Employees who become reemployed on or after January 1, 2010, and who, upon previous separation from service with the City, did not withdraw their pension contributions; provided that such employee, in writing within thirty (30) days of reemployment, makes an election to remain subject to the provisions of the plan covering him or her when he or she separated from service with the City.

* * *

(2) Purchase of credit for prior City service. Any rehired employee who becomes a member of Plan A, Plan B, Plan L, [or]Plan Y, or Plan '10 pursuant to § 22-203(1) (Membership After Reemployment) and who withdrew contributions for prior service with the City may purchase credit for prior service in the member's new plan, regardless of the retirement plan to which the member had previously belonged. To purchase credit for prior service, the rehired employee must pay the amount the member contributed or would have contributed for credit if the member had been a member of Plan A, Plan B, Plan L, [or]Plan Y, or Plan '10 during the member's prior employment, plus interest at the assumed earnings rate for fund investments as determined by the Board from time to time. Requirements for the purchase of credit are provided in § 22-803 (Purchase of Prior City Service).

* * *

§22-206. *Electing Members of the Retirement System.*

(1) If an individual is a member of any plan within the Retirement System and elects to participate in the DC Plan pursuant to § 22-1403, such member shall no longer accrue any additional benefits under the original plan and shall automatically become a member of Plan '10. In such case, any credited service rendered by the member, or compensation paid to the member, after the member becomes a member of Plan '10 shall apply solely to the calculation of the member's benefit under Plan '10 and the DC Plan and shall not be considered for purposes of determining the accrued benefit under the member's prior plan. Credited service accrued by the member under the original plan shall not be considered for purposes of calculating the member's Service Retirement Benefit under Plan '10. The above notwithstanding, for purposes of determining the member's

eligibility for Service Retirement Benefits under § 22-301(1), all credited service with the City shall be considered. Prior to enrollment in the DC Plan and Plan '10, the Board shall provide to the member an estimated calculation of the member's projected total pension and retirement benefits determined as of the member's minimum retirement age. Enrollment in Plan '10 is irrevocable.

CHAPTER 22-300. RETIREMENT BENEFITS.

§ 22-301. Service Retirement Benefits.

(1) Eligibility.

* * *

(b) Subject to the provisions of paragraphs (c) and (d) below, any member of Plan A, Plan B, Plan L, [or] Plan Y, *or Plan '10* who has attained minimum retirement age and has ten (10) or more years of credited service is a vested member of the Retirement System and eligible for service retirement benefits.

* * *

(3) Amount and calculation of benefits. Annual service retirement benefits may not exceed the member's average final compensation. Annual service retirement benefits are calculated as follows:

* * *

(h) For police employee members of Plan '10, one and three quarters percent (1.75%) of average final compensation multiplied by the member's years of credited service for the first twenty (20) years of credited service.

(i) Notwithstanding the provisions of subsection (h) above, the sum of any benefits under Plan '10 plus any benefits to which a member is entitled pursuant to prior membership in another Plan under this Title shall not exceed the member's average final compensation. For purposes of this subsection (j) only, "average final compensation" shall be as defined with respect to the member's prior Plan, as set forth in § 22-105(a), (b) or (c), as applicable.

* * *

§ 22-306. Retirement and Survivorship Benefit Options.

(1) Election of options. Any member may at any time prior to retirement elect in writing one of the following options pursuant to which retirement benefits and survivorship benefits will be paid.

* * *

Option 4 - With respect to a member of Plan D, Plan J, or Plan X *and police members of Plan '10* only, the retired member will receive retirement benefits in the form of an annuity for life. If the retired member elected this option or dies without having elected any option, one-half of the amount of the member's retirement benefit, without reduction, shall be paid to the member's surviving spouse, provided that they were married at least two (2) years before retirement or the date on which a separated member became eligible to apply for retirement benefits.

* * *

(2) Failure to choose option; members of plans not eligible for Option 4. If a member of Plan A, Plan B, Plan L, or Plan Y retires without electing a retirement benefit option among Option 1, Option 2 and Option 3, the member shall receive retirement benefits without actuarial reduction except for early retirement under § 22-303 (Optional Early Retirement Benefits). Upon the member's death, subject to the provisions of subsection (3), no further benefits will be paid.

(3) Failure to designate survivor. When a member of Plan A, Plan B, Plan L, [or] Plan Y, *or Plan '10* retires without designating any survivor and then dies, no further benefits will be paid; provided, however, that if such member is survived by a spouse to whom the member had been married two (2) years or more, and with whom the member was *either* living at the time of death, or [with whom the member] had one or more children who are under the age of eighteen (18) at the time of the member's death, the member shall be deemed to have designated such spouse as the survivor under Option 1.

(4) Change of option. Until retirement, a member may revoke the election of any option under this Section, and may elect any other option, except that only members of Plan D, Plan J or Plan X *and police members of Plan '10* may elect Option 4. On retirement, subject to the provisions of § 22-702 (Designation of Survivors), the last election of any of the foregoing options shall be irrevocable.

* * *

§ 22-308. Suspension of Retirement Benefits.

(1) Retired member's return to service in Plan A, Plan B, Plan L, [or] Plan Y, *or Plan '10*. If any retired member receiving retirement benefits under the provisions of Plan A, Plan B, Plan L, [or] Plan Y, *or Plan '10* returns to the service of the City, either by appointment or election to any position for which the retired member shall thereby become entitled to wages, salary, fees, or other compensation, the member's retirement benefits shall be suspended during the period of such service.

* * *

CHAPTER 22-400. DISABILITY BENEFITS.

§ 22-401. Service-Connected Disability Retirement Benefits.

* * *

(4) Benefit Amount. Upon retirement for service-connected disability, a member shall receive an annual retirement benefit equal to seventy percent (70%) of the member's final compensation, as it may be adjusted by § 22-401(5) and § 22-306, subject to the provisions of § 22-403 (Reexamination of Disabled Members). The member may also elect to receive either a lump-sum payment equal to the member contributions to the Retirement System or, in lieu thereof, any survivor benefit option available to the member's plan under § 22-306. The member's election shall be irrevocable. A member of Plan D, Plan J or Plan X *or a police member of Plan '10* who fails to make the foregoing election prior to retirement will be deemed to have elected Option 4.

* * *

§ 22-402. Ordinary Disability Retirement Benefits.

(1) Qualification.

(a) Any member found to be mentally or physically totally incapacitated from the further performance of duty as the result of causes occurring not in the actual performance of duty to the City and who, as a member of Plan B, Plan D, Plan J, Plan L, [or]Plan Y, *or Plan '10* has had ten (10) or more years of credited service, or who as a member of Plan A or Plan X has had five (5) years of credited service, or a member of Plan B or Plan D who is totally disabled, in which case such member is considered to have had at least ten (10) years of credited service, shall be deemed retired and shall receive ordinary disability retirement benefits.

* * *

CHAPTER 22-500. DEATH BENEFITS.

§ 22-501. Service-Connected Death and Health Care Benefits.

* * *

(5) Service-connected health care benefit. If the Board determines that the death of a Police Employee or Fire Employee who had been a member of Plan A, Plan B, Plan D, [or]Plan X *or Plan '10* resulted from the performance of the duties of such member's position, a service-connected health care benefit shall become payable to the survivors of such member as set forth below. The Board shall avail itself of the services of the Medical Panel in making its determination whether the member died as a result of the performance of the duties of the member's position.

* * *

CHAPTER 22-700. BENEFICIARIES AND SURVIVORS

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§ 22-702. Designation of Survivors.

* * *

(2) Death of designated survivor. If all designated survivors of a member predecease the retired member, the member may, within one (1) year of the death of the last of such survivors, designate new survivors. In the event such redesignation is made, and if the retired member has chosen retirement benefit Option 2 or Option 3 under § 22-306, an appropriate actuarial adjustment shall be made in the benefits of the retired member. A retired member of Plan D, Plan J or Plan X *or a police member of Plan '10* who had elected Option 4 or who had failed to make an election may not designate a new survivor. If such member rejects the option to redesignate survivors, or if one (1) year elapses without the member having exercised such option, an adjustment shall be made to the retired member's benefits to reflect the absence of a survivor. Effective the first day of the month following such retiree's written rejection of the option to redesignate, or the first day of the month following the expiration of the time period to redesignate, whichever date first occurs, such retired member's benefit will be redetermined as a benefit calculated as though the member had selected no survivorship benefit option. The option provided for in this subsection is subject to the following additional conditions:

* * *

CHAPTER 22-800. PURCHASE OF CREDITED SERVICE.

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§ 22-802. Purchase of Governmental Service.

* * *

(2) Maximum purchase of service; limitation. Credited service which may be purchased for allowable other governmental employment is limited to a maximum of ten (10) years and will be permitted only with respect to service for which the member is not or will not be entitled to a vested pension from another employer. However, a member may purchase credit for prior military service for which the member is or will be entitled to a military pension, if that member's entitlement to a military pension is based in whole or in part upon service in the military reserves. A member in Plan D, Plan J or Plan X shall not be eligible to purchase such service credits unless the member had a minimum of five (5) consecutive years of credited service with the Retirement System. A member in Plan A, Plan B, Plan L, [or]Plan Y, *or Plan '10* must file applications to purchase governmental service with the Board within one (1) year following date of employment for new employees, or within one (1) year following the effective date of this Title for members of the Plan on the effective date of this ordinance. Provided, however, that members of Plan A, Plan B, Plan L, [or]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. Application for purchase of credited service shall be made on forms provided by the Board and, in the case of an application for allowable military service, shall be accompanied by a certified copy of the applicant's military record plus proof of a discharge from the Armed Forces of the United States that is characterized as "honorable" or "under honorable conditions". Such discharge shall be a condition precedent to being entitled to the purchase of credited service with respect to military service.

* * *

(4) Computation of payment for Members in Plan A, Plan B, Plan L, [and] Plan Y, *and Plan '10*. The employee may purchase governmental service by paying:

(a) The normal cost rate (employee plus employer) in effect on the date the employee becomes a member of Plan A, Plan B, Plan L, [or]Plan Y, *or Plan '10*

multiplied by

(b) The member's annual compensation at that time

multiplied by

(c) The years of credited service being purchased.

* * *

§ 22-803. Purchase of Prior City Service.

(1) Cost of purchase. If an employee is separated from City employment and withdraws contributions covering credited service, then § 22-302 (Separation Retirement Benefits), provides that the employee no longer has service credit for retirement, death or disability benefits. If such an individual is later reemployed by the City in Plan A, Plan B, Plan L, [or]Plan Y, *or Plan '10*, the employee may purchase credit for previous City service by paying the Retirement System the amount of the contributions that would have been made during the period of previous employment if the employee had then been a member of the appropriate plan of the Retirement System, together with interest thereon at the assumed earnings rate on fund investments as determined by the Board from time to time.

(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) [within the first year of reemployment]. Provided, however, that members of Plan A, Plan B, Plan L, [or]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.

* * *

§ 22-807. Interest.

Any member of Plan A, Plan B, Plan L, [or]Plan Y *or Plan '10* who desires to purchase credited service for:

(a) prior City service;

(b) leaves of absence as authorized under Section 22-801(2), this subsection (b) also to apply to members of Plan D, Plan J, or Plan X;

(c) governmental service;

(d) a period of service with the City during which membership in the Retirement System was deferred; or

(e) a period of previously ineligible temporary service, under Section 22-803(7) of this Title;

and who failed to apply within the applicable period after their date of hire or the effective date of this Title (January 13, 1999), may nevertheless purchase said service, provided that the member pays interest on the purchase amount calculated from the date the employee was hired, rehired, or returned to service after a leave of absence. A member who had not purchased a period of service during which membership was deferred or which was previously ineligible temporary service may purchase said service, provided that the member pays interest on the purchase amount calculated from the date the employee would have made contributions if the employee had been a member at the time. 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, and shall be in addition to any interest to be paid for making any installment payments under the terms set forth in Section 22-806 (Installment Payments) of this Ordinance.

CHAPTER 22-900. CONTRIBUTIONS.

* * *

§ 22-902. Member Contributions.

* * *

(2) Basic Contribution Rate. Member contributions shall be made at the following basic contribution rates:

* * *

(e) *Members of Plan '10 who are police employees, five and a half percent (5.5%) of compensation; provided that no contributions shall be required of any employee with more than twenty (20)*

years of credited service.

[(e)] (f) Members of Plan A, Plan B, Plan L, or Plan Y, such contributions as the Board shall determine based on the most recent actuarial valuation report, in accordance with the following:

(.1) Separate basic contribution rates shall be determined for members of each of Plan A, Plan B, Plan L, or Plan Y.

* * *

(.3) For members in Plan A and Plan B, the required employee contribution shall be [five] *such* percent [(5%)] of payroll *as set forth in subsection (A) below*, provided that this percentage is at least equal to thirty percent (30%) of the normal cost for members in Plan A and Plan B. If [five percent (5%)] *the percentage* of payroll *set forth in subsection (A) below* does not equal thirty percent (30%) of the normal cost, the contribution percentage will be adjusted to equal the thirty percent (30%) of the normal cost. [If] *For members of Plan B hired before January 1, 2010, and for members of Plan A, if the* [five percent (5%)] *percentage* of payroll *set forth in subsection (A)* exceeds fifty percent (50%) of the normal cost, the contribution percentage will be adjusted so as not to exceed fifty percent (50%) of such normal cost.

(A) *For members of Plan B hired before January 1, 2010, and for members of Plan A, five percent (5%). For members of Plan B hired on or after January 1, 2010, six percent (6%).*

* * *

CHAPTER 22-1400. DEFINED CONTRIBUTION PLAN.

§ 22-1401. Declaration of Purpose.

(1) *Council has enacted this Chapter 22-1400, hereby creating this defined contribution plan, for certain employees hired or rehired on or after January 1, 2010, and certain electing employees.*

§ 22-1402. Definitions.

In addition to the definitions set forth in §§ 1-103(1) and 22-105 of the Code, the following definitions apply to this Chapter.

(1) Account. The individual account established to record the Member's Account Balance under the DC Plan. A Member's Account may consist of one or more subaccounts.

(2) Account Balance. The amount allocated to a Member's Account for the benefit of such Member under the terms of the DC Plan.

(3) DC Plan. The City of Philadelphia Employees Defined Contribution pension plan and all subsequent amendments

thereto.

(4) **Eligible Retirement Plan.** Any of the following: (a) *an individual retirement account described in Tax Code Section 408(a); (b) an individual retirement annuity described in Tax Code Section 408(b); (c) an annuity plan described in Tax Code Section 403(a); (d) a qualified trust described in Tax Code Section 401(a); (e) an annuity contract described in Tax Code Section 403(b); and (f) intersect an eligible plan under Tax Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, and which accepts the Member's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the non-spousal beneficiary of a member, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.*

(5) **Eligible Rollover Distribution.** *Any distribution of all or any portion of the balance of a qualified plan described in Tax Code Section 401(a) or 403(a), an annuity described in Tax Code Section 403(b), or an eligible deferred compensation plan described in Tax Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The above notwithstanding, an Eligible Rollover Distribution does not include: (a) 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 Member or the joint lives (or joint life expectancies) of the Member and the Member's beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under Tax Code Section 401(a) (9); (c) the portion of any distribution which consists of after-tax employee contributions; and (d) any distribution which is made upon the hardship of the member.*

(6) **457 Plan.** *The City of Philadelphia Deferred Compensation Plan, an eligible deferred compensation plan established pursuant to Section 457(b) of the Tax Code.*

(7) **Fund.** *An investment vehicle maintained or offered under the DC Plan.*

(8) **Member.** *An employee who becomes a member of the DC Plan pursuant to Section 22-1403.*

(9) **Normal Retirement Age.** *Attainment of age 50 for police employees; attainment of age 60 for all other employees.*

(10) **Qualified Plan.** *Any retirement plan covering employees within the United States which is qualified under Tax Code Section 401(a) and whose assets are held by a trust exempt from taxation under Tax Code Section 501.*

(11) **Trust.** *The City of Philadelphia Employees Defined Contribution Pension Trust established in connection with the funding of the DC Plan.*

(12) **Valuation Date.** *The last day of each calendar quarter in the Retirement System Year and each other date as may be established by the Board as a valuation date for purposes of the DC Plan.*

§ 22-1403. *Membership in DC Plan.*

(1) **Newly hired and elected employees.** All members of Plan '10 shall be members in the DC Plan.

(2) **Electing members of the Retirement System.** If a police employee is a member of any other plan within the Retirement System, such member may elect to participate in the DC Plan. In such case, any credited service rendered by the member, or compensation paid to the member, after the member is enrolled in the DC Plan shall apply solely to the calculation of the member's benefit under the DC Plan and Plan '10 and shall not be considered for purposes of determining the accrued benefit under the member's original plan. Credited service accrued by the member under the original plan shall not be considered for purposes of calculating the member's benefit under DC Plan and Plan '10. The above notwithstanding, in determining the member's credited service for vesting purposes under Section 22-1406, all credited service with the City shall be considered. An election to become a member of the DC Plan must be made within ninety (90) calendar days of the effective date of this Chapter. Prior to enrollment in the DC Plan, the Board shall provide to the member an estimated calculation of the member's projected total pension and retirement benefits determined as of the member's minimum retirement age. Enrollment in the DC Plan is irrevocable.

§ 22-1404. *Contributions.*

(1) **City Contributions.** For each Retirement System Year, the City shall make a contribution to the Account of each Member equal to fifty percent (50%) of the Member's Contribution to the 457 Plan for such year. The above notwithstanding, in no event shall the City's annual contribution exceed one-and-a-half percent (1.5%) of such Member's annual Compensation. All such contributions shall be held in the Trust and administered and distributed in accordance with the terms of the DC Plan and the Trust. The City's contribution under this Section shall be offset by amounts allocated to the suspense account as provided in Sections 22-1405(3)(f) and 22-1406(2).

(2) Rollover Contributions. A Member may contribute a rollover contribution to the Trust, either by delivery of such contribution to the Board or by authorization of a contribution directly from the trustee of a Qualified Plan; provided that such Member submits written certification to the satisfaction of the Board that such contribution qualifies as an Eligible Rollover Distribution.

(a) A Rollover Contribution shall be considered as a part of the Account Balance of the contributing Member and shall be held in a subaccount separate from the subaccount that holds a Member's City contributions.

(b) Distributions from a Member's Rollover Contribution Subaccount shall be made at such time and in such manner as the distribution of other portions of the Member's Account in accordance with the provisions of the DC Plan.

(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).

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

(1) Subaccounts. A Member's Account shall be comprised of the following subaccounts:

(a) City Contribution Subaccount--the portion of each Member's Account Balance resulting from City contributions under § 22-1404(1);

(b) Rollover Contribution Subaccount--the portion of each Member's Account Balance resulting from the Member's Rollover contributions under § 22-1404(2);

(2) Valuation of Accounts. As of each Valuation Date, all contributions to and income of the Trust for the period since the most recent Valuation Date shall be credited to, and all losses and expenses of the Trust for such period shall be charged to, the Accounts maintained by the Trustee for the Members and Beneficiaries. Such credits and charges shall be made in proportion to the value of the respective Member and Beneficiary Accounts as of the beginning of such period (after recording all credits and charges required to be made as of the last preceding Valuation Date).

(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.

(a) In general, annual additions (as defined below) with respect to a Member's Account shall not exceed the lesser of:

(.1) \$40,000 as adjusted for increase in the cost-of-living under Tax Code Section 415(d), or

(.2) 100% of the Member's "compensation" defined below and within the meaning of Tax Code Section 415(c)(3) for the limitation year.

(b) For these purposes, the term "annual addition" means the sum for any year of City contributions, and forfeitures pursuant to this Chapter.

(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).* 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, compensation for a disabled member shall, to the extent permissible under Tax Code Section 415, be 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 disabled.*

(e) *If a short limitation year is created because of an amendment changing the limitation year to a different 12-consecutive month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction: (number of months in the short limitation year) ÷ 12.*

(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).*

§ 22-1406. Vesting.

(1) Member and Rollover Contributions. Each Member's Rollover Contribution Subaccount shall be 100% vested and, notwithstanding the provisions of Section 22-1302 (relating to Disqualification), non-forfeitable at all times.

(2) City contributions. Each Member's City Contribution Subaccount shall be 100% vested and, subject to the provisions of Section 22-1302 (relating to Disqualification), non-forfeitable upon completion of five (5) years of Credited Service. In the event that the Member separates from service prior to completion of five (5) years of Credited Service, the Member's City Contribution Subaccount balance shall be forfeited. Forfeited amounts shall be held in a suspense account and used to offset future contribution obligations of the City.

(3) Vesting upon Death or Disability. In the event that a Member dies or becomes disabled while employed by the City but prior to completion of five (5) years of Credited Service, the Member's Account Balance shall become 100% vested and, subject to the provisions of Section 22-1302 (relating to Disqualification), non-forfeitable.

§ 22-1407. Investment of Accounts.

(1) The Board shall designate one or more Funds for investment of the Members' Accounts. The Board may establish procedures for permitting each Member or Beneficiary to control and direct the investment of the Account and to allocate the investment returns attributable to such Member's or Beneficiary's directed investments to the Account of such Member or Beneficiary. In such event, the Board shall adopt reasonable procedures to provide Members and Beneficiaries with appropriate information concerning the Funds available under the DC Plan and to provide appropriate opportunities to change any investment elections as may be in effect from time to time.

§ 22-1408. Distribution of Benefits.

(1) Determination of Account. In the event of a Member's separation from service, whether such separation shall occur by reason of death, disability, retirement, or other separation from service, then the amount credited to such Member's Account shall be determined as of the most recent Valuation Date preceding the distribution of benefits to the Member.

(2) Form of Benefit. The only form of benefit distributable under the DC Plan shall be a lump sum distribution, except where the Board determines that the distribution must be made in installments (not to extend beyond one calendar year) in order to provide for orderly processing of the distribution or to permit reasonable administrative procedures for the valuation of the Account

being distributed.

(3) Timing of Distributions.

(a) Distribution upon Member's Death. In the event of the death of a Member, the vested Account Balance of such Member shall be paid as soon as practicable after the Plan Administrator is notified of the Member's death. Distribution of death benefits must be completed within five years of the Member's date of death or over such other period as may be permitted without resulting in a violation of Tax Code Section 401(a)(9).

(b) Distribution upon Member's Separation from Service. In the event of separation from service of a Member for any reason other than death, the vested Account Balance of such Member shall be distributed as follows:

(.1) If the vested Account Balance is \$1,000 or less, the Account Balance shall be distributed as a direct payment to such Member as soon as administratively practicable after separation from service.

(.2) If the vested Account Balance is \$5,000 or less, but more than \$1,000, the Account Balance shall be distributed as soon as administratively practicable after separation from service, as follows:

(A) Upon the written consent of the Member, by rollover to an Eligible Retirement Plan as directed by the Member (as provided in subsection (4) below) or by direct payment to the Member; or

(B) In absence of the Member's written consent, by direct transfer to an individual retirement account maintained on behalf of the Member by a trustee designated by the Board.

(.3) If the vested Account Balance exceeds \$5,000, it shall be distributed by direct payment to such Member (or by rollover to an Eligible Retirement Plan, as directed by the Member pursuant to subsection (4) below) as follows:

(A) If the Member has attained Normal Retirement Age, it shall be distributed as soon as administratively practicable after separation from service.

(B) If the Member has not attained Normal Retirement Age, it shall be distributed as soon as soon as administratively practicable after the Member attains Normal Retirement Age; or, if the Member consents to such distribution in writing, as soon as administratively practicable after receipt of such consent.

(c) Compliance with Tax Code Requirements. All forms of benefit distributions and required benefit commencement dates shall be subject to and in compliance with Tax Code Section 401(a)(9) and the regulations thereunder, including the minimum distribution incidental benefit requirement. The provisions of Tax Code Section 401(a)(9) and the regulations thereunder shall override any provision of the DC Plan inconsistent therewith.

(d) Account Balances of Separated Members. Amounts credited to the Account Balance of any Member who has separated from employment with the City shall continue to be held and invested along with all other assets of the Plan, subject to the same terms and conditions as apply to the Account Balances of active Members, including any provisions as may be in effect establishing a right of any Member to direct the investment of Account Balances maintained under the DC Plan.

(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.

§ 22-1409. Tax-Qualification of DC Plan and Trust.

(1) Incorporation of Tax Qualification Provisions. The DC Plan is designed to operate as a "tax-qualified" defined contribution plan under Tax Code Section 401(a) et. seq. In addition to the provisions of this Chapter and any provisions of general applicability as determined by the Board, only those provisions of this Title which are required for compliance with the tax-qualification provisions of the Tax Code shall apply to the DC Plan. Such provisions include, but are not limited to:

- (a) Section 22-105(9) regarding maximum compensation.
- (b) Section 22-105(35) regarding the required beginning date.
- (c) Section 22-106 regarding administration pursuant to the Tax Code.
- (d) Section 22-1002 regarding actuarial assumptions.
- (e) Section 22-1004 regarding the exclusive benefit rule.
- (f) Section 22-1303(5) through (12) regarding domestic relations orders.
- (g) Section 22-1305 regarding vesting upon termination.

(2) Contributions to the Trust. Contributions made pursuant to the DC Plan shall be held in the Trust established to provide benefits under this Plan for the exclusive benefit of the members of the DC Plan. The Board shall provide for the investment and administration of such Trust. Assets shall not be commingled or otherwise used to satisfy benefit obligations under any other plan of the Retirement System other than those benefit obligations arising from the DC Plan.

SECTION 2. Effective Date. This Ordinance shall be effective immediately, and shall apply retroactively to January 1, 2010.

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.