

TITLE 22. PUBLIC EMPLOYEES RETIREMENT CODE¹¹

Current through June 2007

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¹¹ Added, Bill No. 980843 (approved January 13, 1999). Section 2 of Bill No. 980843 states: "This Ordinance shall be effective immediately, except that the application of Sections 22-105(6) (definition of "average final compensation") and 22-202(1)(c) of Title 22, to the extent such provisions are changed from previous law in a manner not adverse to any employee, shall be effective retroactive to August 1, 1996. Further, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

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CHAPTER 22-100. GENERAL PROVISIONS

§ 22-101. Short Title.

(1) This Title shall be known and may be cited as the "City of Philadelphia Public Employees Retirement Code".

§ 22-102. Declaration of Purpose.

(1) The purpose of this Title is to carry out the intent and purpose of § 4-400(e) of the Charter by constituting the Title as a comprehensive revision and codification of those provisions of the general Municipal Retirement System Ordinances of the City in force and effect immediately prior to the adoption of this Title.

§ 22-103. Declaration of Policy.

(1) It is the legislative policy of Council that the several plans of retirement, disability, and incidental death benefits as heretofore established by the City and collectively known as the City of Philadelphia Public Employees Retirement System continue to be maintained for the City's employees and their survivors and beneficiaries, in accordance with the provisions of this Title.

§ 22-104. Continuation of Divisions and Plans.

(1) *Divisions.* The City of Philadelphia Public Employees Retirement System shall continue to be comprised of the Municipal Division Old, the Municipal Division New, the Police Division Old, the Police Division New, the Fire Division Old, the Fire Division New, and the Elected Official Division. Each such division is defined under §

22-105.

(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 A includes all current and former uniformed employees of the fire fighting forces of the Fire Department of the City appointed on or after July 1, 1988. Plan A is a plan within the Fire Division New.

Plan B includes all current and former uniformed officers and investigatory employees of the Police Department and the District Attorney's Office of the City appointed on or after July 1, 1988. Plan B is a plan within the Police Division New.

Plan D includes all current and former employees of the City who on the effective date of this Title are members, or who upon reemployment are entitled to be members, of Police-Fire Coverage Plan 50, established by an ordinance of City Council approved December 1, 1966 (Bill No. 2163), who are full-time uniformed or investigatory employees of the Police Department or the District Attorney's Office, except those who are members of the Municipal Division Old. Plan D is a plan within the Police Division Old.

Plan J includes all current and former employees of the City who on the effective date of this Title are members, or who upon reemployment are entitled to be members, of Municipal Revised Coverage Plan 60, established by an ordinance of City Council approved April 27, 1967 (Bill No. 2318), who are not included in the Police Division Old or in the Fire Division Old, and in addition:

(a) all employees represented by AFSCME District Council 47 Local 2186 who were hired by the City between January 8, 1987 and October 1, 1992, and who contribute to the Retirement System, an amount equal to the difference between the contribution that the employee has previously made to the Retirement System, and what the employee contribution would have been under Plan J during the term of the employee's employment; and

(b) all employees represented by AFSCME District Council 47 Local 2187 who were hired by the City between January 8, 1987 and October 1, 1992; and

(c) all employees represented by AFSCME District Council 33 who were hired by the City between January 8, 1987 and October 1, 1992.

Plan J is a plan within the Municipal Division Old.²²

Plan L includes all current and former officials elected in any general, municipal or special election who take office on or after January 8, 1987. Plan L is a plan within the Elected Official Division.

Plan X includes all current and former employees of the City who on the

²² Plan J amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

effective date of this Title are members, or who upon reemployment are entitled to be members of Police-Fire Coverage Plan 50, established by an ordinance of City Council approved December 1, 1966 (Bill No. 2163), who are full-time uniformed employees of the fire fighting forces of the Fire Department of the City except those who are members of the Municipal Division Old. Plan X is a plan within the Fire Division Old.

Plan Y includes all current and former municipal employees of the City (that is, those who are not members of Plan A, Plan B, or Plan J as defined in this Section), who are appointed on or after January 8, 1987. Plan Y is a plan within Municipal Division New.

§ 22-105. Definitions.³³

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:

- (1) *Accrued benefit.* That portion of a member's prospective retirement benefit that has been earned or accrued to the date of reference.
- (2) *Actuarial equivalent.* A benefit in a form other than a specified normal form of benefit provided under the Retirement System which, as of the date of reference, has the same single-sum dollar value as the benefit in the specified normal form. The actuarial assumptions to be utilized in calculating any actuarial equivalent shall include those actuarial assumptions as shall be adopted by the Board upon the recommendations of the Retirement System's actuary.
- (3) *Alternate payee.* Any spouse, former spouse, child or dependent of a member who is recognized by a domestic relations order as having a right to receive all, or a portion of, the moneys payable to the member under this Title.
- (4) *Anniversary year.* Any twelve-month period of employment ending on the same day of the year as the last day of the last full pay period before retirement.
- (5) *Approved domestic relations order.* Any domestic relations order which has been determined to be approved in accordance with § 22-1303.
- (6) *Average Final Compensation.*
 - (a) For a member of Plan J, Plan L, or Plan Y, average final compensation shall be the average of the member's three (3) highest annual compensations calculated for either three (3) calendar years or three (3) anniversary years. If the member has less than three (3) 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.
 - (b) For a member of Plan D or Plan X, average final compensation shall be the highest of:⁴⁴

³³ Subsections (12A) through (12F) added, Bill No. 990288-A (approved June 28, 1999).

⁴⁴ Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the

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(.1) the average compensation upon which contributions have been made on behalf of the member during the five (5) calendar years of employment in which such compensation is highest;

(.2) the average compensation received by the member during the twelve (12) consecutive months of the member's employment in which such compensation is highest; or

(.3) the annual compensation of the member, calculated from the final pay period, and as defined in Section 22-105(9)(a)(.1), except that such compensation shall exclude longevity payments.

(c) For a member of Plan A or Plan B, average final compensation shall be the average of the member's two (2) highest annual compensations calculated for either two (2) calendar years or two (2) anniversary years.

(7) *Beneficiary.* Any person who is designated, pursuant to the provisions of this Title, to receive death benefits earned by the member upon a member's death.

(8) *Board.* The Board of Pensions and Retirement.

(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:

(.1) After July 1, 1972, compensation for all members of Plan D or Plan X shall include only base pay and longevity payments and shall exclude such items as overtime, holiday overtime pay, compensatory time, shift differential and any lump sum payment of benefits.

(.2) For members of Plan A, Plan B, or Plan L, 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, compensation shall include, in addition to payments provided above, the four percent (4%) stress pay paid, in accordance with the collective bargaining agreement between the City and the Fraternal Order of Police.⁵⁵

(.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.⁶⁶

(b) In cases where the City is ordered to pay a fee by state legislation,

effective date of this Ordinance."

⁵⁵ Added, Bill No. 060265 (approved June 8, 2006). Section 2 of Bill No. 060265 provides: "Effective Dates. The amendments provided in Section 1 of this Ordinance shall take effect retroactive to July 1, 2003."

⁶⁶ Added, Bill No. 060265 (approved June 8, 2006). Section 2 of Bill No. 060265 provides: "Effective Dates. The amendments provided in Section 1 of this Ordinance shall take effect retroactive to July 1, 2003."

a court, or a court's delegate, the fee may be included in the compensation calculation, provided that the burden of proving the amount of any such fees paid is on the employee, and subject to compliance with any regulations by the Board of Pensions and Retirement. For example, transcript fees may be included in the compensation of a court stenographer. The Board shall, by regulation, provide for any requirements for proof of fees paid, such as deadlines and type of documents acceptable as form of proof and payment of applicable employee contributions. Under no circumstances shall the Board be required to accept proof of transcript fees and adjust pension amount for an employee after the effective date of the employee's retirement, nor after any deadline set forth in regulations adopted by the Board.⁷⁷

(c) In cases where an employee's salary is fixed by the City but paid at least partially by another agency, the compensation is equal to the total amount paid by the City and the other agency.

(d) Notwithstanding any provision of this Title to the contrary, a member's compensation taken into account for retirement benefit purposes under this Title shall not exceed the limitation under Section 401(a)(17) of the Tax Code. On and after July 1, 1996, the limitation under Section 401(a)(17) of the Tax Code means the federal Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") (Public Law 103-66, 107 Stat. 312) annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner of Internal Revenue for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Tax Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (the "determination period") beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

(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) subject to such limitations and restrictions as are set forth in Chapter 22-800 (Purchase of Credited Service).

(11) *Disabled member.* Any member who has separated from service and is receiving service-connected disability benefits or ordinary disability benefits from the Retirement System.

(12) *Domestic relations order.* Any judgment, decree or order, including approval of a property settlement agreement, entered by a court of competent jurisdiction pursuant to a domestic relations law which relates to the marital property rights of the spouse or former spouse of a member, including the right to receive all, or a portion of, the moneys payable to that member under this Title in furtherance of the equitable distribution of marital assets. The term includes orders of support as that term is defined by 23 Pa. C.S. Section 4302 (relating to definitions) and orders for the enforcement of

⁷⁷ Amended, Bill No. 051066 (approved June 8, 2006). Section 2 of Bill No. 051066 provides: "Repealer. To the extent that it is inconsistent with Section 1 of this Ordinance, the Ordinance of May 7, 1981 (Bill No. 612), amending Section 201.1(aa)(1) of the Retirement System Ordinance, is hereby repealed."

arrearages as provided in 23 Pa. C.S. Section 3703 (relating to enforcement of arrearages).

(12A) *DROP*. The deferred retirement option plan established under Section 22-310 of this Title. The DROP is not a "Plan" as that term is defined in Section 22-105(30).

(12B) *DROP account*. The total amount credited to an individual DROP participant due to participation in the DROP.

(12C) *DROP benefit*. A member's total DROP account balance at the time the member separates from active service.

(12D) *DROP entry date*. The effective date of the member's participation in DROP.

(12E) *DROP participant*. A member who is participating in the DROP.

(12F) *DROP period*. The duration of a member's participation in the DROP, from the DROP entry date to the date the member separates from active service with the City.

(13) *Elected Official*. Any individual who was elected to City office in any general, municipal or special election.

(14) *Elected Official Division*. The Elected Official Division includes all current and former officials elected in any general, municipal or special election who take office on or after January 8, 1987.

(15) *Employee*. Any employee, officer, or official who is paid from the Treasury of the City.

(16) *Final compensation*. The higher of either the rate of pay at separation from service or the total compensation for the last full year of service, including supplementary compensation received under Civil Service Regulation No. 32.

(17) *Fire Division New*. The Fire Division New includes all current and former uniformed employees of the fire fighting forces of the Fire Department of the City, who are appointed on or after July 1, 1988.

(18) *Fire Division Old*. The Fire Division Old includes all current and former employees of the City who on the effective date of this Title are members, or who upon reemployment are entitled to be members, of Police-Fire Coverage Plan 50, established by an ordinance of City Council approved December 1, 1966 (Bill No. 2163), who are full-time uniformed employees of the fire fighting forces of the Fire Department of the City except those who are members of the Municipal Division Old.

(19) *Fire employee*. Any uniformed member of the fire fighting forces of the Fire Department of the City.

(20) *Irrevocable beneficiary*. The person or persons permanently designated, in writing to the Board, by a member pursuant to an approved domestic relations order to receive all, or a portion of, benefits payable upon the death of such member.

(21) *Irrevocable survivor*. The person permanently designated, in writing to the Board, by a member pursuant to an approved domestic relations order to receive an annuity upon the death of such member.

(22) *Medical Panel*. A panel of physicians designated by the Board to conduct such medical examinations and make such investigations and certifications as may be required by this Title or the Board.

(23) *Member*. Any employee or former employee of the City who satisfies the conditions for membership in the Retirement System and the appropriate plan.

(24) *Member contributions.* Payments made to the Retirement System by a member for the provision of service retirement benefits, separation retirement benefits, optional early retirement benefits, death benefits and disability benefits.

(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).

(26) *Municipal Division New.* The Municipal Division New includes all current and former employees of the City appointed on or after January 8, 1987 who are not included in the Police Division New or the Fire Division New.

(27) *Municipal Division Old.* The Municipal Division Old includes all current and former employees of the City who on the effective date of this Title are members, or who upon reemployment are entitled to be members, of Municipal Revised Coverage Plan 60, established by an ordinance of City Council approved April 27, 1967 (Bill No. 2318) who are not included in the Police Division Old or in the Fire Division Old.

(28) *Municipal employee.* Any employee who is neither a police employee nor a fire employee.

(29) *Pickup contributions.* Regular member contributions to the Retirement System made by the City on behalf of members for current service on or after January 1, 1983.

(30) *Plan.* As to any member, the plan as stated in § 22-104 whose features apply to a particular Division during such member's period of credited service.

(31) *Police Division New.* The Police Division New includes all current and former uniformed officers and investigatory employees of the Police Department or the District Attorney's Office of the City who are appointed on or after July 1, 1988.

(32) *Police Division Old.* The Police Division Old includes all current and former employees of the City who on the effective date of this Title are members, or who upon reemployment are entitled to be members, of Police-Fire Coverage Plan 50, established by an ordinance of City Council approved December 1, 1966 (Bill No. 2163) who are full-time uniformed officers or investigatory employees of the Police Department or the District Attorney's Office, except those who are members of the Municipal Division Old.

(33) *Police Employee.* Any uniformed or investigatory employee of the Police Department or the District Attorney's Office of the City, except those who are members of the Municipal Division.

(34) *Reemployed Employee.* Any employee who had worked for the City, separated from City employment, and became an employee of the City again.

(35) *Required beginning date.* The April 1 of the calendar year next following the calendar year in which the member attains age 70-1/2, or if later, the April 1 of the

calendar year next following the calendar year in which the member retires.

(36) *Retired member.* Any member who has retired from City employment and is entitled to retirement benefits from the Retirement System.

(37) *Retirement.* Separation from service and satisfaction of all of the conditions for distribution of retirement benefits under this Title.

(38) *Retirement benefits.* Payments made to a member of the Retirement System which include service retirement benefits, separation retirement benefits, optional early retirement benefits, service-connected disability retirement benefits, and ordinary disability retirement benefits.

(39) *Retirement system.* The City of Philadelphia Public Employees Retirement System which encompasses the various plans established for the exclusive benefit of the employees of the City and their beneficiaries.

(40) *Retirement system year.* The twelve-month period commencing each July 1 and ending on the subsequent June 30.

(41) *Separate from service.* To cease to be a City employee due to death, resignation, retirement or discharge from service with the City.

(42) *Separation date.* The date on which separation from service occurs.

(43) *Survivor.* Any person who is designated to receive benefits upon the death of a retired member pursuant to the provisions of this Title.

(44) *Tax Code.* The Internal Revenue Code of 1986, as amended, and as it may be amended from time to time.

(45) *Totally disabled.* Medically incapable of any employment whatsoever.

(46) *USERRA.* The federal Uniformed Services Employment and Reemployment Rights Act of 1994 (Pub. L. 101-353, 38 U.S.C. §§ 4303 et seq.). Unless employed in a context which clearly refers to uniformed forces of the City, the terms "uniformed services" and "service in the uniformed services" shall have the respective meanings ascribed to them in USERRA (38 U.S.C. § 4303).

(47) *Vested member.* Any member who has the necessary service under the Retirement System, as provided for in § 22-302 (Separation Retirement Benefits), to be vested.

§ 22-106. Construction.

(1) *General rules.* The rules set forth in §§ 1-103(2) and 1-104 of the Code shall apply to this Title.

(2) *Construction of Title with regard to Tax Code.* This Title shall be construed and administered in such manner that the Retirement System will qualify as a qualified pension plan under Section 401(a) of the Tax Code.

(3) *References to Tax Code and other federal laws.* Except as may be otherwise specifically provided, references in this Title to provisions of the Tax Code and other federal laws, including for this purpose administrative regulations promulgated under any thereof, are intended to include such laws and regulations as in effect on the effective date of this Title and as they may hereafter be amended or supplemented or supplanted by successor provisions.

§ 22-107. Rules and Regulations.

(1) *In general.* The Board may issue rules and regulations, pursuant to Sections 8-406 and 8-407 of the Charter, to implement any of the provisions of this Title.

(2) *In relation to Tax Code.* The Board shall issue such rules and regulations not inconsistent with any provision of this Title as may be necessary to administer the Retirement System as a qualified pension plan under Section 401(a) of the Tax Code.

(3) *Preexisting regulations.* Regulations issued under any ordinance codified in this Title, but not inconsistent with its policy, shall continue in full force and effect until revoked, modified or superseded by the Board.

§ 22-108. Statutes and Ordinances Superseded; Saving Provisions.

(1) *In general.* Subject to the provisions of subsection (2) of this Section, this Title shall supersede all statutes or parts of statutes, all ordinances or parts of ordinances, and all charters and by-laws of the Board, Firemen's Pension Fund of Philadelphia and City of Philadelphia Police Pension Fund Association providing for retirement benefits to members of the Retirement System divisions and plans incorporated in this Title, as set forth in Section 22-104. This Title shall not affect any statute or part of any statute, any ordinance or part of any ordinance, or any charter or by-law of the Board, Fund and Association providing for retirement benefits to members of the Retirement System divisions and plans not listed in Section 22-104. Nor shall any provision of this Title be interpreted to alter any right or benefit currently being paid in accordance with Section 124, 125, 126, 127, 129 or 130 of the Municipal Retirement System Ordinance (Ordinance of December 3, 1956, as amended), which deal with minimum pensions for retirees, beneficiaries of retirees and surviving spouses of retirees.

(2) *Saving provision.* The provisions of this Title in so far as they are the same as those of existing ordinances are intended as a continuation of such ordinances and not as new enactments. The provisions of this Title shall not affect any act done, liability incurred, right accrued or vested, or any suit, arbitral proceeding or prosecution pending or to be instituted to enforce any right or penalty or to punish any offense under the authority of any ordinance superseded hereby.

§ 22-109. Severability.

The rules in regard to severability of Code provisions, as set forth in § 1-106 of the Code, shall apply to this Title, except that nothing in the Code shall be construed to repeal, supersede or otherwise affect Section 11 of the Ordinance of July 12, 1993 (Bill No. 589) or any other applicable ordinance containing an express legislative intent that its provisions not be severable from each other.

CHAPTER 22-200. MEMBERSHIP

§ 22-201. Membership Upon Employment.

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(1) *Employees first hired before January 8, 1987.*⁸⁸ All employees who were hired, rehired or first elected before January 8, 1987, shall be members of Plan D, Plan J or Plan X 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). Of these employees:

(a) All municipal employees are members of Plan J which covers members of the Municipal Division Old, except:

(.1) an employee appointed to a part-time or nonsalaried position with a board or commission and who was not a compensated member of such board or commission on May 18, 1978.

(b) All police employees are members of Plan D which covers members of the Police Division Old.

(c) All fire employees are members of Plan X which covers members of the Fire Division Old.

(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 are municipal employees covered by subsection (4). Of these employees.

(a) All Municipal Employees are members of Plan Y which covers members of the Municipal Division New as soon as they are employed by the City, except the following:

(.1) All employees appointed to part-time or nonsalaried positions on boards and commissions of the City on or after January 8, 1987.

(.2) All temporary employees hired for six (6) months or less. A temporary employee is not a member of the Retirement System, does not pay contributions to the Retirement System for temporary service, and does not accrue credit for temporary service.

(b) All Police Employees are members of Plan B which covers members of the Police Division New as soon as they are employed by the City.

(c) All Fire Employees are members of Plan A of the Fire Division New as soon as they are employed by the City.

(d) All elected officials are members of Plan L of the Elected Official Division as soon as they take office.

(3) *Police and Fire Employees first hired between January 8, 1987 and June 30, 1988.*

(a) All Police Employees first hired between January 8, 1987 and June 30, 1988 are members of Plan D, which covers members of the Police Division Old.

⁸⁸ Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

(b) All Fire Employees first hired between January 8, 1987 and June 30, 1988 are members of Plan X, which covers members of the Fire Division Old.

(4) *Municipal employees first hired between January 8, 1987 and October 1, 1992.*⁹⁹

(a) A municipal employee first hired between January 8, 1987 and October 1, 1992 and represented by AFSCME District Council 47 Local 2186 or Local 2187 or AFSCME District Council 33 is a member of Plan J, which covers members of the Municipal Division Old, provided that such employee contribute to the Retirement System an amount equal to the difference between the contribution that the employee has previously made to the Retirement System, and what the employee contribution would have been under Plan J during the term of the employee's employment.

(b) The employee must either pay to the Retirement System the full amount calculated by the Board under this subsection (4) or make such arrangements to pay such amount under an installment plan pursuant to § 22-806 (Installment Payments).

§ 22-202. Membership after Transfer of Employment.¹⁰**10**

(1) *Transfers between divisions.* After transferring employment between divisions, a member's retirement rights and related benefits are determined solely by the provisions of the appropriate plan of the division into which the member has transferred. Credited service under the plan of the member's previous division is automatically transferred as credited service to the appropriate plan of the member's new division except in the following cases:

(a) Any disabled member who is (or was) transferred because of Civil Service Regulation 32 may remain a member of the appropriate plan of the division to which the member belonged before the transfer.

(b) If any member of Plan D, Plan J or Plan X who is eligible to retire transfers to employment covered by another plan of the Retirement System, such member shall retain both the eligibility for retirement and the accrued benefit as determined pursuant to the provisions relating to the plan of the division from which such member has transferred.

(c) Any vested member of Plan A, Plan B or Plan L who transfers to the Municipal Division New may elect to have credited service calculated at the elected official, police or fire rate for credited service earned in the applicable elected official, police or fire plan for the member's previous service and at the municipal rate for municipal credited service earned after transfer. This election shall apply only to the

⁹⁹ Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

¹⁰¹⁰ Amended, Bill Nos. 000642 and 000656 (approved February 21, 2001). Section 3 of the Bills provided that the amendments "shall be effective immediately and shall apply to any appointments to the Police Department or the District Attorney's Office or to the Fire Department that are effective on or after the effective date" of the Ordinances.

calculation of the dollar amount of the benefit and not to the age, service and other eligibility requirements for benefits, which shall be determined by the requirements of the plan into which the member has transferred.

(d) Notwithstanding any other provision of this Title, any member of Plan D, Plan J or Plan X whose benefits have vested under any plan of the Retirement System who was on July 1, 1972 employed, or who was on June 7, 1973 employed in a position covered by a different plan, shall, upon retirement, have the option of having retirement benefits calculated on the basis of total service with the City in either the plan in which retirement benefits became vested or in the plan in which the employee was a member at the time of retirement. In any such case, the calculation of the retirement benefit shall be in accordance with the provisions of § 22-301(3)(a) (Service Retirement Benefits) and § 22-105(6)(a) ("Average Final Compensation").

(e) If any member of Plan D, Plan J or Plan X of the Retirement System is appointed Commissioner or Deputy Commissioner of the Fire or Police Department, the member shall retain membership in the plan covering the member's prior employment.

(f) If any member of Plan J or Plan Y of the Retirement System is appointed to a position:

(.1) as a uniformed or investigatory employee in the Police Department other than Commissioner or Deputy Commissioner, or in the District Attorney's Office, the member shall not become a member of the applicable Police Plan (Plan D or Plan B) until after five years' service as a police employee;

(.2) as a uniformed employee in the Fire Department other than Commissioner or Deputy Commissioner, the member shall not become a member of the applicable Fire Plan (Plan X or Plan A) until after five years' service as a fire employee.

Until completion of such five years' service, the member shall retain membership in the plan covering the member's prior employment. Such retained membership in the prior plan shall include remaining in the prior plan for eligibility and benefits calculations for any DROP participation and all other purposes of Section 22-310 of this Title. Nothing in this subsection, however, shall prevent a uniformed or investigatory employee in the Police Department or in the District Attorney's Office from being considered a "Police Employee" or a uniformed employee in the Fire Department from being considered a "Fire Employee" for the purposes of disability benefits under Chapter 22-400 or death benefits under Chapter 22-500.

§ 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.

(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):

- (.1) Employees who are receiving service or disability retirement benefits under Plan D, Plan J or Plan X;
- (.2) Employees who are entitled to separation service retirement benefits under Plan D, Plan J or Plan X; and
- (.3) Employees who, upon separation from employment with the City, when covered by Plan D, Plan J or Plan X, did not withdraw their pension contributions.

(c) If a reemployed member:

- (.1) was receiving service or disability retirement benefits; or
- (.2) is entitled to separation service retirement benefits; or
- (.3) did not withdraw the member's contributions upon separation from employment; and
- (.4) was a member of Municipal Division New, Fire Division New, Police Division New or the Elected Officials Division before reemployment which division calculated service retirement benefits for years of credited service at a rate higher than that used to calculate service retirement benefits in the member's new division, then the member's service retirement benefits for subsequent years of service shall be calculated and credited in accordance with the provisions governing the member's new division while service retirement benefits for prior years of service shall be calculated and credited at the higher rate applicable to the member's former division in the Retirement System.

(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 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 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).

§ 22-204. Reemployment of Retired Members.

(1) *Retired employees.* A retired member who is receiving retirement benefits from the Retirement System and who is rehired by the City shall have such benefits suspended for the duration of reemployment unless:

- (a) The member is rehired as an election officer, a registrar of voters, or a juror; or
- (b) The member is rehired as a member of a board or commission which does not participate in the Retirement System pursuant to § 22-201 (Membership Upon Employment).

(2) *Reemployment for less than three (3) years.* If the period of reemployment under Plan A, Plan B, Plan L, or Plan Y or is less than three (3) years, then when the reemployed member retires from City employment, the previous retirement benefits shall

resume, and the Board shall refund the member's regular contributions made during the period of reemployment, and cancel the member's service credit for that period of reemployment.

(3) *Reemployment for three (3) or more years.* If the period of reemployment under Plan A, Plan B, Plan L, or Plan Y is three (3) years or more, then when the reemployed member retires from City employment, the member's retirement benefits are redetermined to include credited service earned both before and after reemployment.

(4) *Reemployment of retired members of Plan D, Plan J or Plan X.* Any member who becomes reemployed by the City following retirement and who is receiving benefits under Municipal Revised Coverage Plan 60 or Police-Fire Coverage Plan 50, shall become a member of the appropriate plan as if the member were first employed on the date of reemployment. Notwithstanding the foregoing, such member shall be entitled to retire thereafter under the age and service provisions of the plan covering such member's employment at the time of the prior retirement. Such member shall continue to accrue service credit during the period of subsequent employment. Upon subsequent retirement, the member shall be entitled to receive the accrued benefit earned under the member's original plan together with any additional accrued benefit earned for the period of subsequent employment under the plan which covers the member upon reemployment. If a retired member reenters the service of the City and remains an employee of the City continuously for three (3) or more years after reemployment, the member may elect to retire thereafter under the age and service provisions applicable at the time of subsequent retirement with full credit for the entire service with the City both before and after the first retirement.

(5) *Accrued benefit.* In no event shall the accrued benefit of a retired member who is reemployed after retirement be less than the member's accrued benefit as of the date of the prior retirement, unless the employee has elected to transfer to a different plan upon reemployment.

(6) *Employees of a "quasi-public agency".* Any employee of a "quasi-public agency" as defined by an ordinance approved March 1, 1963 (1963 Ordinances, p. 148), as amended, who is entitled to retire or has retired under the provisions of the "quasi-public agency" retirement plan and who thereafter enters or reenters the service of the City shall not be entitled to receive credited service in the Retirement System for municipal service which has been transferred to the "quasi-public agency" or for service rendered under the "quasi-public agency" retirement plan.

(7) *Disabled Members.* A disabled member receiving service-connected disability retirement benefits shall have such benefits suspended upon reemployment and may, upon completing five (5) years of continuous reemployment with the City, purchase credited service for the period of time spent receiving service-connected disability retirement benefits. The purchase of credited service must occur prior to completion of the sixth year of reemployment unless the member enters into an installment payment plan pursuant to § 22-806 (Installment Payments). For members of Plan D, Plan J and Plan X, each year of credited service or portion thereof purchased shall cost six percent (6%) of the annual salary of the position the member separated from at the time of the member's separation to receive a service-connected disability retirement benefit plus six percent (6%) annual interest on said cost from the year separated to the date of application for repurchase under this subsection. For members of Plan A, Plan B, Plan Y

and Plan L each year of credited service or portion thereof purchased shall cost an amount determined by the total of:

(a) the product of the percentage of compensation that employees in the employee's plan were contributing at the time of the employee's separation to receive a service-connected disability retirement times the annual salary that the employee was receiving at that time; plus

(b) nine percent (9%) annual interest on the amount in (a) from the year separated to the date of application for repurchase under this subsection.

(8) *No repayment.* Reemployed members are not required to repay any retirement benefits that were received.

§ 22-205. Optional Transfer of Membership.

(1) Reemployed members of Plan D, Plan J or Plan X. Any separated employee who:

(a) had been receiving service or disability retirement benefits under Plan D, Plan J or Plan X; or

(b) is entitled to separation service retirement benefits under Plan D, Plan J or Plan X; or

(c) upon separation from employment with the City when covered by Plan D, Plan J or Plan X, did not withdraw their pension contributions, upon reemployment, may elect either to be subject to the provisions of the plan covering them when they separated from service with the City or to transfer membership to the applicable division covered by Plan A, Plan B, Plan L, or Plan Y. Such transfers are irrevocable.

(2) *Effective Date.* A membership transfer takes effect at the beginning of the first full pay period following the Board's receipt of a member's application for transfer.

(3) *Contributions.* If a member transfers membership to Plan A, Plan B, Plan L, or Plan Y, the member must pay the Retirement System the difference between the contributions made before the transfer and the amount that would have been contributed if membership had been established in such plan during previous credited service, in accordance with the provisions of § 22-803 (Purchase for Prior City Service), except that:

(a) Transferring members do not have to pay interest on contributions due.

(b) Any transferring member who had been contributing six percent (6%) of covered earnings for retirement under the previous pension plan does not have to make additional contributions.

(c) Any transferring member who had been contributing more than six percent (6%) of covered earnings for retirement under a previous pension plan is entitled to a refund of the portion of contributions in excess of six percent (6%). Such members are not paid interest on their refunds.

(d) Neither refunds nor additional payments are paid for the transfer of service credit earned before August 1, 1967.

(4) *Transfer of credited service.* In transfers of membership to Plan A, Plan B, Plan L, or Plan Y, all of the member's credited service, including service credited before the transfer, shall be transferred to the applicable plan. The transferred member shall be

treated as though membership had existed in such plan for the member's entire credited service and the member's retirement rights and benefits shall be determined solely by the new applicable plan.

CHAPTER 22-300. RETIREMENT BENEFITS

§ 22-301. Service Retirement Benefits.

(1) *Eligibility.*¹¹¹¹

(a) Any member of Plan D, Plan J or Plan X who has attained minimum retirement age and, if a member of Plan J, has one (1) or more years of credited service is a vested member of the Retirement System and eligible for service retirement benefits.

(b) Subject to the provisions of paragraphs (c) and (d) below, any member of Plan A, Plan B, Plan L, or Plan Y 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.

(c) (.1) After the effective date of this Title (January 13, 1999), members of Plan A, Plan B or Plan Y who hold positions that are both exempt from civil service and who are not entitled to be represented by a union and who are employed after the effective date of this Title shall vest their retirement benefits upon attaining five (5) years of credited service. During such vesting period, such employees shall each contribute, in addition to the employee contribution as determined in § 22-902, a proportionate contribution equal to one hundred percent (100%) of the member's share of the aggregate normal cost of the additional benefit, over the cost of 10-year vesting, afforded by such earlier vesting period.

(.2) Any members of Plan A, Plan B or Plan Y who hold positions that are both exempt from civil service and who are not entitled to be represented by a union and who are currently employed on the day immediately preceding the effective date of this Title may elect to vest their retirement benefits upon attaining five (5) years of credited service. Such election shall be irrevocable and must be made in writing on forms provided by the Board and filed with the Board within one hundred and eighty (180) days after the effective date of this Title. Such employees who make an election for a five (5) year vesting period shall each be charged for the additional benefit afforded by such earlier vesting period a proportionate contribution equal to one hundred percent (100%) of the member's share of the aggregate normal cost of the additional benefit, over the cost of 10-year vesting, afforded by such earlier vesting

¹¹¹¹ Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

period.

(.3) After the effective date of this Title (January 13, 1999), members of Plan A, Plan B or Plan Y who hold positions that are both exempt from civil service and who are not entitled to be represented by a union and who have prior City service and are reemployed after the effective date of this Title may elect to vest their retirement benefits upon attaining five (5) years of credited service. Such election shall be irrevocable and must be made in writing on forms provided by the Board and filed with the Board within one hundred and eighty (180) days following either the date of the member's reemployment or the effective date of the ordinance adding this subsection, whichever is later. Such employees who make an election for a five (5) year vesting period shall each be charged for the additional benefit afforded by such earlier vesting period a proportionate contribution equal to one hundred percent (100%) of the member's share of the aggregate normal cost of the additional benefit, over the cost of 10-year vesting, afforded by such earlier vesting period.

(.4) Any members of Plan A, Plan B or Plan Y who currently hold positions (both exempt from civil service and not entitled to be represented by a union) what would have made them eligible for 5-year vesting under subsection (c)(.2) above if they had held that position on the day immediately preceding the effective date of this Title (January 13, 1999) and who were currently employed on the day immediately preceding the effective date of this Title but who were not in such an eligible position at the time and who subsequently transferred positions without any break in service may elect to vest their retirement benefits upon attaining five (5) years of credited service. Such election shall be irrevocable and must be made in writing on forms provided by the Board and filed with the Board within one hundred and eighty (180) days after the effective date of the amending ordinance adding this subsection.

(d) (.1) After the effective date of this Title (January 13, 1999), members of Plan L who take office after the effective date of this Title shall vest their retirement benefits upon attaining credited service which shall be the lesser of two full terms in their elected office or eight (8) years. During such vesting period, such elected officials shall each contribute, in addition to the employee contribution as determined in § 22-902, a proportionate contribution equal to one hundred percent (100%) of the member's share of the aggregate normal cost of the additional benefit, over the cost of 10-year vesting, afforded by such earlier vesting period. Provided, however, that any such elected officials who, upon taking elected office, have any prior credited City service, shall not be required to vest in less than ten (10) years and pay the additional contributions, but shall have the option to elect to vest their retirement benefits upon attaining the lesser of two full terms in their elected office or eight (8) years, rather than ten (10) years, under the terms and conditions in Section 22-301(1)(c)(.3) above.

(.2) Members of Plan L who are currently holding office on the day immediately preceding the effective date of this Title may elect to vest their retirement benefits upon attaining credited service which shall be the lesser of two full terms in their elected office or eight (8) years. Such election shall be irrevocable and must be made in writing on forms provided by the Board and filed with the Board within one hundred and eighty (180) days after the effective date of this Title. Such elected officials who make an election for such a vesting period shall each be charged for the additional benefit afforded by such earlier vesting period a proportionate contribution equal to one

hundred percent (100%) of the member's share of the aggregate normal cost of the additional benefit, over the cost of 10-year vesting, afforded by such earlier vesting period.

(e) Payments for charges for additional benefits under subsections (c)(.2) and (d)(.2) above may be made in accordance with Section 22-806 (Installment Payments) of this Title.

(f) Notwithstanding the provision under subsection (c)(.2) and (d)(.2) above that the election for 5-year vesting (or other term of less than 10 years) shall be irrevocable, any member of Plan A, Plan B, Plan L or Plan Y who made such an election and paid the increased cost may, upon attaining ten (10) years service credit, elect 10-year vesting. Upon such an election, but not before being fully credited with ten (10) years' service as otherwise provided in this Code, such member shall, upon application to the Board, be refunded the cost paid by the member for the additional benefit of 5-year vesting (or other shortened term), without interest.

(g) To qualify as retired, the member must file an application for retirement benefits with the Board and the application must be approved by the Board.

(2) *Effective date.* Service retirement benefits go into effect the day after the effective date of separation from service.

(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:

(a) For a member of Plan J, two and one-half percent (2.5%) of average final compensation multiplied by the amount of credited service (expressed in years and specified to the day) for the first twenty (20) years of credited service, plus two percent (2%) of average final compensation multiplied by the amount of credited service (expressed in years and specified to the day) in excess of twenty (20) years of credited service; provided, however, that such sum shall not exceed eighty percent (80%) of the member's average final compensation.

(b) For a member of Plan D, two and one-half percent (2.5%) of average final compensation multiplied by the amount of credited service (expressed in years and specified to the day).

(c) For a member of Plan X, two and one-half percent (2.5%) of average final compensation multiplied by the amount of credited service (expressed in years and specified to the day).

(d) For a member of Plan Y, two and two-tenths percent (2.2%) of average final compensation multiplied by the amount of credited service (expressed in years and specified to the day) for the first ten (10) years of credited service, plus two percent (2%) of average final compensation multiplied by the amount of credited service (expressed in years and specified to the day) in excess of ten (10) years of credited service.

(e) For a member of Plan B, two and two-tenths percent (2.2%) of average final compensation multiplied by the amount of credited service (expressed in years and specified to the day) for the first twenty (20) years of credited service, plus two percent (2%) of average final compensation multiplied by the amount of credited service (expressed in years and specified to the day) in excess of twenty (20) years of credited service.

(f) For a member of Plan A, two and two-tenths percent (2.2%) of average final compensation multiplied by the amount of credited service (expressed in years and specified to the day) for the first twenty (20) years of credited service, plus two percent (2%) of average final compensation multiplied by the amount of credited service (expressed in years and specified to the day) in excess of twenty (20) years of credited service.

(g) For a member of Plan L, three and five tenths percent (3.5%) of average final compensation multiplied by the amount of credited service (expressed in years and specified to the day).

(4) *Fresh-Start Rules.* In no event shall the accrued benefit of any employee who is a member on the last day of the Retirement System year beginning in 1995 be less than the greater of: (a) the member's accrued benefit as of the last day of the plan year beginning in 1995, determined in accordance with the provisions of the Retirement System as in effect on such date, or (b) the member's accrued benefit determined in accordance with the benefit formula in effect on the first day of the Retirement System year beginning in 1996 based upon the member's credited service credited before and after such date.

(5) *Minimum Service Requirement.* No member of Plan J shall be eligible for service retirement benefits unless the member shall have at least one (1) year of credited service with the Retirement System. If a separated member has less than one (1) year of credited service, contributions shall be refunded upon the written request of the member. To the extent that the Retirement System provides other rights, benefits or entitlements to separated employees, such rights, benefits or entitlements shall remain in force and effect.

(6) *Time of Vesting.* A member's time of vesting shall be determined as of the end of the first full pay period following the member's vesting date.

§ 22-302. Separation Retirement Benefits.

(1) *Separation prior to minimum retirement age.* Any member who separates from service after ten (10) or more years of credited service, or such lesser vesting period as is authorized by § 22-301(1)(c) or (d), but before attaining minimum retirement age, is a vested member of the Retirement System and is entitled to separation retirement benefits, provided that such member has not withdrawn contributions made to the Retirement System.

(2) *Effective date.* Separation retirement benefits begin when the separated member reaches the minimum retirement age specified in the plan applicable to such member. A separated member may apply for optional early retirement benefits according to the provisions of § 22-303 (Optional Early Retirement Benefits).

(3) *Calculation of benefits.* Separation retirement benefits are calculated in the same manner as service retirement benefits are calculated. For calculations, see § 22-301 (Service Retirement Benefits).

(4) *Withdrawal of contributions.* Any member who separates from service may withdraw such member's contributions made to the Retirement System, without interest, any time before becoming eligible for retirement benefits. When a member withdraws such contributions, membership in the Retirement System terminates. Upon

withdrawal, the former member and his or her beneficiaries and survivors are entitled to no rights or benefits under the Retirement System, except as otherwise provided in this Title and the Regulations of the Board.

§ 22-303. Optional Early Retirement Benefits.

(1) *Eligibility.*¹²¹² The following members are eligible for optional early retirement benefits:

(a) Any member of Plan J, Plan L, or Plan Y who is age fifty-two (52) or older and had become a vested member as defined in Section 22-105(47).

(b) Any member of Plan B or Plan D who is age forty (40) or older and had become a vested member as defined in Section 22-105(47).

(c) Any member of Plan A or Plan X who is age forty (40) or older and had become a vested member as defined in Section 22-105(47).

(d) Any member of either Plan A or Plan B who has twenty-five (25) or more years of credited service, regardless of age.

(e) Any member of Plan Y who has thirty-three (33) or more years of credited service, regardless of age.

(2) *Effective date.* Optional early retirement benefits may go into effect any time between the end of active City service and the month in which the member reaches minimum retirement age.

(3) *Calculation of amount of benefits.* The yearly amount of optional early retirement benefits is the amount of the regular yearly service retirement benefit (calculated in accordance with § 22-301) reduced by one-half of one percent (1/2%) of the service retirement benefit for each month the member is younger than the minimum retirement age. This reduction does not apply to members who retire under the provisions of § 22-303(1)(d) and (e).

§ 22-304. Minimum Benefit.

The unmarried surviving spouse of any retired member of Plan D or Plan X who was married to the member for at least two (2) years prior to the member's retirement and who is not receiving or is not eligible to receive any other benefits from the Retirement System shall receive a minimum pension of two hundred and fifty dollars (\$250.00) per month. This pension shall continue until the surviving spouse remarries or dies.

¹²¹² Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

§ 22-305. Maximum Benefit Limitations.¹³**13**

(1) *General Limitation.* Except as otherwise provided in this Section, the annual retirement benefit payable to any member shall not exceed \$160,000 or such other limit as may be the maximum permissible amount for the Retirement System year pursuant to Section 415(b) of the Tax Code.

(2) *Adjustment of Limitations.*

(a) To the extent the limitations set forth herein may be from time to time adjusted by statutes, regulations or other publications issued by the Internal Revenue Service or successor agency or department, such adjusted amounts shall be substituted for the amounts set forth in this Section, provided that no such adjustment shall reduce a member's accrued benefit unless such adjustment is required to preserve the qualified status of the Retirement System. To the extent that the limitations under this Section become unnecessary by amendment of law, the limitations shall be deemed inoperative under this Title.

(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.

(c) In the event that a member's benefit is to be distributed prior to age 62, the currently effective dollar amount in subsection (1) of this Section shall be actuarially reduced to 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 of the Board's actuary) of an annual benefit equal to the dollar amount commencing at age 62, in the manner prescribed by Section 415 of the Tax Code.

(d) In the event that a member's benefit is to be distributed after age 65, the currently effective dollar amount in subsection (1) of this Section shall be actuarially increased to the actuarial equivalent (using an interest rate, however, not greater than the lesser of five percent (5%) or the valuation rate adopted by the Board upon recommendation by the Board's actuary) of an annual benefit equal to such dollar amount commencing at age 65 in the manner as prescribed by Section 415 of the Tax Code.

(e) With regard to any Police Employee, Fire Employee or Sheriff's Department Employee, subsection (c) above shall not serve to reduce the limitation set forth in subsection (1).

¹³13 Amended, Bill No. 030827 (approved December 31, 2003).

(f) Any purchase of service on or after August 5, 1997 must satisfy one of the following requirements: (1) the purchase of additional credited service cannot cause the annual retirement benefit payable to the member to exceed the limitation set forth in Section 22-305(1); or (2) the total contribution made in any plan year for the purchase of service, when combined with other amounts contributed by or on behalf of the member, cannot exceed \$40,000 or any other limitation set forth in Section 415(c)(1)(A) of the Tax Code.

(g) For purposes of determining any adjustment to limitations as required under this Section 22-305(2) for Retirement System years beginning on and after January 1, 1997, the mortality table shall be the "applicable mortality table". The applicable mortality table shall be the table prescribed by Section 415(b)(2)(E)(v) of the Tax Code and Rev. Rul. 95-6 and any subsequent statutory or regulatory provisions.

§ 22-306. Retirement and Survivorship Benefit Options.

(1) *Election of options.*¹⁴ 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 1 – The retired member will receive retirement benefits in the form of an annuity for life. If the retired member dies before having received retirement benefits equal to the amount of the retired member's total contributions, the balance of the member's contributions will be paid to the member's designated survivor as a survivorship benefit.

Option 2 – The retired member will receive an actuarially reduced retirement benefit in the form of an annuity for life. If the retired member predeceases the member's designated survivor, a survivorship benefit which equals the member's retirement benefit will be paid to the member's designated survivor for the remainder of the survivor's life. Option 2 benefits shall be calculated so that the present value of Option 2 shall equal the present value of Option 1.

Option 3 – The retired member will receive an actuarially reduced retirement benefit in the form of an annuity for life. If the retired member predeceases the member's designated survivor, a survivorship benefit which equals one-half (1/2) of the member's retirement benefit will be paid to the member's designated survivor for the remainder of the survivor's life. Option 3 benefits shall be calculated so that the present value of Option 3 shall equal the present value of Option 1.

Option 4 – With respect to a member of Plan D, Plan J or Plan X 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.

Upon the death of the surviving spouse, or if there is no surviving spouse

¹⁴ Amended, Bill No. 060244 (approved June 8, 2006).

who qualifies under the previous paragraph, the retirement benefit shall be paid to the dependent children, either natural or adopted, of the deceased member until each child attains age eighteen (18) or, if any such child remains dependent because of physical or mental infirmity, the duration of the infirmity. If there is no eligible child, the retirement benefit shall be paid to the dependent parent or parents of the deceased. Upon election of the member at any time during the member's life, any benefit otherwise payable after the member's death to a child who remains dependent at the time of the member's death because of physical or mental infirmity may instead be paid to a trust for the benefit of that child, so long as the trust meets the following conditions:

- (a) The beneficiary of the trust shall be irrevocable no later than the date of the election or death of the member, whichever occurs first;
- (b) The trust must be a valid trust under Pennsylvania law or would be but for the fact that there is no trust corpus;
- (c) The trust must be irrevocable;
- (d) The beneficiaries of the trust must be identifiable from the trust instrument;
- (e) A copy of the trust must be provided to the Pension Board within thirty (30) days of the date of the member's submission of the document designating the trust as a survivor; and
- (f) In the case of an annual benefit to be paid monthly "for life" under this Ordinance, the determining life shall be the lifetime of the irrevocable beneficiaries of the trust.

If there is no surviving spouse, dependent child or parent who qualifies, and the member dies before receiving retirement benefits equal to his or her member contributions, the balance shall be paid to the member's beneficiary.

(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 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 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 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.

(5) *Effect of designating impermissible survivor.* Survivors shall be designated in accordance with the provisions of § 22-702 (Designation of Survivors). If a member designates a survivor not within a permissible class, such designation shall be invalid and

of no effect, and any survivor shall be determined in accordance with the provisions of § 22-702 (Designation of Survivors). With respect to a member who had elected Option 1, any amount payable upon the death of such member shall be paid to the member's survivors, if any, in accordance with the provisions of § 22-702. With respect to a member who had elected Option 2 or Option 3, the additional amount that would have been paid to the member during the member's lifetime, if the member had not elected Option 2 or Option 3, shall be paid to the member's survivors, if any, in accordance with the provisions of § 22-702.

§ 22-307. Payment of Retirement Benefit.

(1) *Effective date; monthly installments.* Retirement benefits granted under the provisions of this Title shall accrue commencing the day following retirement, and shall be payable in equal monthly installments to and including the date of the member's death, and shall not be increased, decreased, revoked or suspended except as otherwise provided in this Title or this Code. Payment of retirement benefits is made at the end of each month and continues for the rest of the retired member's lifetime. When the retired member dies, benefit payments stop unless the member elected or is entitled to a survivorship benefit option pursuant to § 22-306 (Retirement and Survivor Benefit Options).

(2) *Remaining sums.* When a retired member dies and letters testamentary or of administration have not been taken out on the estate of such retired member, the Board may pay any sums remaining due directly to:

- (a) the spouse;
- (b) any person who shall have paid the funeral expenses of the member or to the political subdivision which shall have paid such funeral expenses; or
- (c) in the event neither (a) nor (b) above applies, then such sum may be applied to any outstanding funeral-related expenses.

(3) *No payments below specified amount.* If the monthly benefit which any retired or disabled member, survivor or beneficiary is or becomes entitled to receive is in an amount less than five dollars (\$5.00), the Board shall pay such person the actuarial equivalent of such benefit in a lump sum, and such payment shall satisfy in full the Retirement System's obligation to pay the monthly benefit during the entire lifetime of the retired or disabled member, survivor or beneficiary. No election may be made pursuant to § 22-306 (Retirement and Survival Benefit Options) which would result in a monthly benefit payable to any member, survivor or beneficiary of less than five dollars (\$5.00).

(4) *Payments to minors or mentally disabled.* Payments of benefits to any minor or mentally disabled person may be made to a duly appointed guardian, or natural guardian, a person having custody of or maintaining the minor, a person having custody of or maintaining the mentally disabled person, or any person who has assumed responsibility for the maintenance of the minor or mentally disabled person. "Person" under this subsection shall include an organization or institution. Payment to such person shall discharge the City, the Board and the Retirement System of any obligation with respect to such benefit.

(5) *Third party claims.* Any claim to benefits under this Title made by or on

behalf of a person other than the payee designated under this Chapter, and/or any challenge to the Board's determination of the appropriate payee shall be subject to the provisions of 20 Pa. C.S. § 8704.

(6) *Required beginning date.* Notwithstanding any provision of this Title to the contrary, payment of any retirement benefit to which a member is entitled (regardless of the nature of the retirement benefit or the option in which it is payable) shall commence on or before such member's required beginning date.

§ 22-308. Suspension of Retirement Benefits.

(1) *Retired member's return to service in Plan A, Plan B, Plan L, or Plan Y.* If any retired member receiving retirement benefits under the provisions of Plan A, Plan B, Plan L, or Plan Y 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.

(2) *Retired member's return to service in Plan D, Plan J or Plan X.* If any retired member receiving retirement benefits under the provisions of Plan D, Plan J or Plan X returns to the service of the City or any quasi-public agency with which the Pension Board has an agreement to administer the pension benefits of the employees thereof, pursuant to the Ordinance of March 1, 1963 (1963 Ordinances, p. 148), as amended, either by appointment or election to any position for which he shall thereby become entitled to wages, salary, fees, or other compensation from which deductions will be made for contributions into the Retirement System, the member's retirement benefits shall be suspended during the period of such service.

(3) Such suspensions of retirement benefits shall not apply to:

- (a) service as an election officer, a registrar of voters or as a juror;
- (b) any beneficiary or survivor other than a member; or
- (c) non-participating members of boards and commissions as provided for in § 22-201 (Membership upon Employment) of this Title.

§ 22-309. Application for Benefits.

(1) *Qualification.* To qualify for any of the benefits provided for in this Chapter, a member, a member's beneficiary, a member's survivor or the administrator of the member's estate must file an application for benefits with the Board and the application must be approved by the Board.

(a) Applications for service-connected disability retirement benefits and ordinary disability retirement benefits must be filed with the Board within one (1) year after separation from service with the City. Such application shall be acted upon by the Board promptly upon receipt thereof. Subject to the provisions of § 22-1203 (Medical Panel), the decision of the Board as to eligibility for service-connected and ordinary disability retirement benefits shall be final and conclusive.

(2) *Death benefits.* If a separated vested member dies before attaining minimum retirement age then the member's designated beneficiary or estate administrator may apply for death benefits. (See § 22-501. Service-Connected Death and

Health Care Benefits, and § 22-502. Ordinary Death Benefits (Death Benefits).)

(3) *Incapacity to apply.* In the event any member is unable, by reason of any disability, to make application personally for retirement or other benefits established by this Title, such application may be made on behalf of the member by a member's spouse, parent, son, daughter, brother, sister or legal representative.

§ 22-310. Deferred Retirement Option Plan (DROP).¹⁵

(1) *Test DROP.* The DROP described in this Section is enacted as a test for a limited duration as provided below, and will not be continued unless the specified conditions are met. It is the intent of Council that the design of this test DROP is such that the impact of the plan will not result in more than an immaterial increase in the City's normal cost of annually funding the Retirement System. Accordingly, this test DROP is subject to the following conditions:

(a) This test DROP will be tested for a period of four years. Within 30 days of the fourth anniversary of the effective date of the ordinance that adds this subsection to provide for the test DROP, the Board shall seek an analysis from its actuary as to the experience of the test DROP for the preceding four years. If the Board, based on the report of its actuary, determines that the operation of the DROP, including any accrued liability, resulted in no, or an immaterial, increase in the City's normal cost during the test period, then the DROP will cease to be a "test" DROP, and will continue under the same terms (except those relating to the "test" aspects) indefinitely unless and until further amended by Council. If the Board, based on the report of its actuary, determines that the operation of the DROP, including any accrued liability, resulted in a material increase in the City's normal cost during the test period, then the DROP shall be automatically terminated, except that no member then currently enrolled in the DROP shall be divested of any rights under the DROP.

(2) *Basic Concept of a DROP.*¹⁶ Eligible employees who elect to participate in the DROP make an irrevocable commitment to separate from City service and retire upon ceasing participation in the DROP, which they must do no later than four (4) years after entering the DROP. Such employees remain employees of the City for all other purposes (except that deductions for employee pension contributions cease and the employee no longer accrues additional service credit for City pension) and are not treated as separated from the City during their participation in the DROP. However, the determination of the retirement benefit amount is made and payment begun upon entry into the DROP, except that payments of that benefit are credited to a special DROP account subject to certain conditions, rather than to the employee directly.

(a) *Extraordinary Extension.*¹⁷ The Mayor may determine that an extraordinary circumstance exists which threatens public health, safety and welfare, and where it would be in the City's best overall interests to extend participation, participants

¹⁵ Amended, Bill No. 990288-A (approved June 28, 1999).

¹⁶ Amended, Bill No. 990555 (approved December 9, 1999). Section 2 of Bill No. 990555 provides that the Ordinance shall take effect retroactively to the effective date of Bill No. 990288-A (approved June 28, 1999).

¹⁷ Added, Bill No. 060506 (approved September 28, 2006); amended, Bill No. 060695 (approved November 16, 2006).

in the DROP who are [public safety employees] in their fourth year in the program may remain employees of the City for up to one additional year beyond the four (4) year limit under the same terms and conditions of the DROP.

(3) *Definitions.* Definition of certain terms used in this Section can be found in Section 22-105 of this Code.

(4) *Eligibility.* In order to be eligible to participate in this program, a member must be an active employee of the City and be otherwise eligible to retire under Section 22-301 and must have a minimum of ten (10) years of credited service, all as of the DROP entry date. In lieu of separating from employment and commencing receipt of service retirement benefits, any such member may enter into this program ("the DROP") on or after the date the member attains his or her "minimum retirement age" as that term is defined in Section 22-105(25), provided that the member's DROP entry date shall meet the requirements in Section 22-310(5)(a) below. For participation in the DROP to be effective, the application must be approved by the Board pursuant to Section 22-309.

(5) *Benefit Requirements and Calculation.*

(a) Except as otherwise provided by this Section, an election to participate in the DROP is irrevocable. The effective date of a member's participation in the DROP shall be the date provided on the member's application, provided that such date shall only be the beginning of a full pay period and shall not be earlier than ninety (90) days after the date the application is filed with the Board nor earlier than the member's "minimum retirement age" as that term is defined in Section 22-105(25).¹⁸¹⁸

(b) Credits to a DROP participant's DROP account consist of:

(.1) a monthly amount equal to the member's normal accrued monthly service retirement benefit as of the effective date of the member's participation in the DROP; and

(.2) interest on the member's DROP account balance computed at a rate determined by the Board and compounded monthly. The rate shall be 4.5% upon the effective date of the ordinance amending this Title to provide for this test DROP and shall be reviewed not less than annually by the Board at the beginning of each plan year. The Board may adjust the interest rate prospectively or retrospectively following such review, provided that the rate shall not exceed 10% and shall not fall below 4.5%.

(c) Credits to a member's DROP account begin on the effective date of the member's participation in the DROP and continue until the DROP participant separates from active service with the City, provided that such separation must be no later than four (4) years after the DROP entry date. Credits may not be made to a member's DROP account for a period that occurs after the member separates from active service with the City.¹⁹¹⁹

¹⁸¹⁸ Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

¹⁹¹⁹ Amended, Bill No. 990555 (approved December 9, 1999). Section 2 of Bill No. 990555 provides that the Ordinance shall take effect retroactively to the effective date of Bill No. 990288-A (approved June 28, 1999).

(d) The DROP accounts shall not be segregated from other assets of the Retirement System.

(e) *Employee contributions.* Upon a member's entry into the DROP, member contributions made to the Retirement System under Section 22-902 on behalf of that member shall cease for duration of the DROP period.

(f) *Separation and Payment of DROP benefit.* A DROP participant who separates from active service with the City is entitled to receive the member's DROP benefit in a lump sum. In addition, upon the effective date of such separation, the member shall be retired, and becomes eligible to receive a service retirement benefit, in the monthly amount calculated in Section 22-310(5)(b)(.1) above.

(g) *Re-hire.* There is no return to regular employment from a DROP. Once entering the DROP, the employee is in the DROP until separation from City service, at which point the member is retired. A retiree may be re-hired by the City, subject to the provisions of this Title (see Section 22-204), but no former DROP participant who is rehired by the City may be eligible to again participate in the DROP. A rehired retiree who had not been a former DROP participant may be eligible to enter the DROP if the employee otherwise meets the eligibility requirements of subsection 22-310(4). In such a case, the retirement benefit for purposes of credits to the DROP account shall be determined by reference to Section 22-204 of this Title.²⁰²⁰

(h) *Death of a DROP participant.* Upon the death of a DROP participant while in the DROP, the member's total DROP account balance at the time of death shall be added to any benefit payable under Chapter 22-500 of this Title and payable to the beneficiary as determined under that Chapter.

(i) *Ordinary Disability of a DROP participant.* DROP participants are not eligible for an ordinary disability retirement under Section 22-402. If a DROP participant becomes disabled and does not meet the requirements for a service-connected disability retirement, that participant shall be terminated from the DROP and separated from the City to begin a service retirement and receive the DROP benefit, as provided in Section 22-310(5)(f) above.

(j) *Service-Connected Disability of a DROP participant.* If a DROP participant applies for, and the Board grants, a service-connected disability retirement benefit under Section 22-401, the member shall be terminated from the DROP and separated from the City to begin a service-connected disability retirement and receive the

Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

²⁰²⁰ Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

DROP benefit, as provided in Section 22-310(5)(f) above, under the following conditions:

(.1) The service-connected disability retirement benefit shall be based on the compensation and service levels as determined at the DROP entry date.

(k) *Purchase of service.* Upon entry into the DROP a member's service level is frozen. Therefore, a DROP participant is not eligible to purchase any service under Chapter 22-800, provided that a DROP participant may complete any installment purchase as provided in Section 22-806(4).

(6) *Regulations.* The Board shall, by regulation, provide for additional details of implementation and interpretation of this Section.

§ 22-311. Cost-of-Living Measures for Retirees, Beneficiaries and Survivors.²¹²¹

(1) *Lump Sum Increases.* Each member who, on or before July 1, 1999, is or would be sixty (60) years of age or older and each beneficiary or survivor, of a member who was or would be sixty (60) years of age or older, who is receiving or entitled to receive a retirement benefit under this Ordinance and who, on or before July 1, 1999, will have received or been entitled to receive benefits for at least ten (10) years shall receive two lump sum bonuses in the amount of One Thousand Dollars (\$1000) plus an additional One Hundred Dollars (\$100) for each full year over ten (10) years that the member, beneficiary or survivor has received or been entitled to receive benefits. The first bonus payment shall be made no later than April 30, 1999. The second bonus payment shall be made on July 15, 2000. For purposes of this Section only, the time during which a deceased member received benefits shall be included in calculating the length of time a survivor has received benefits. Any beneficiary or survivor of a member who was killed or died in the line of duty related to the work environment shall be eligible to receive the two lump sum bonuses, if such death occurred on or before July 1, 1999 regardless of the age of the member at the time of death. In addition, for purposes of determining eligibility, any member, beneficiary or survivor who does not meet the above eligibility criteria as of July 1, 1999 but who would meet the said criteria as of July 1, 2000, such member, beneficiary or survivor is eligible only to receive the lump sum

²¹²¹ Added, Bill No. 990001-A (approved March 3, 1999). Section 3 of Bill No. 990001-A provides: "Review periods. Within sixty (60) days after every sixth anniversary of the establishment of the Pension Adjustment Fund, the Board shall determine whether the authorizations, directives, or provisions of this Ordinance should be amended. If the Board, by a majority vote of its members, determines that amendments are necessary, the board shall provide a written explanation of said amendments and make a recommendation, in writing, to City Council requesting that the amendments be implemented within one (1) year, by Ordinance. The recommendation by the Board shall also include a statement documenting the actuarial impact of any recommended amendments. City Council expressly reserves the right to amend the authorizations, directives and provisions of this Ordinance at any time as it deems necessary. Any amendment initiated by City Council shall be accompanied by a written explanation of said amendment and an actuarial impact statement documenting the impact of any recommended amendment." Section 4 of Bill No. 990001-A provides: "It is the intent of Council that should both this bill and Bill No. 980843 (adopting a new comprehensive pension Ordinance, to be codified as new Title 22 of The Philadelphia Code) become law, the provisions of this Ordinance shall be codified in new Title 22 of The Philadelphia Code. Accordingly, should both bills become law, new Section 131 as added by Section 1 of this Ordinance shall be new Section 22-311 of Title 22 (Section 2 of this Ordinance is superfluous for purposes of Bill No. 980843, because of combined provisions)." Accordingly, subsections 131.1 through 131.5 and any internal references thereto were renumbered as subsections (1) through (5).

bonus payment to be made on July 15, 2000.

(2) *Pension Adjustment Fund.*

(a) On July 1, 1999 the Board of Pensions and Retirement (the "Board") shall establish a Pension Adjustment Fund. The "fund basis" (as defined) shall be certified to the Board by its actuary which shall determine the total funded and unfunded liability of the Municipal Retirement System by valuing the total assets of the Retirement System, using the "adjusted market value of assets valuation method" (as defined) of the Pension Fund's assets. Effective June 30, 2000 and for each fiscal year thereafter, the Board shall determine whether the fund basis has been maintained and whether there are excess earnings available to be credited to the Pension Adjustment Fund pursuant to the provisions of subsection (3). The Board's determination shall be based upon the actuary's certification of the Pension Fund's total assets and prior fiscal year earnings, using the adjusted market value of the Pension Fund's assets. Available assets earnings shall be credited to the Pension Adjustment Fund as of July 1 of the then current fiscal year. The Board shall maintain (or re-establish and maintain) a Pension Adjustment Fund for each fiscal year pursuant to the requirements of this Section, provided, however, that the portion of the assets attributed to the Pension Adjustment Fund shall not be segregated from the assets of the Pension Fund. The purpose of the Pension Adjustment Fund is for the distribution of benefits as determined by the Board for retirees, beneficiaries or survivors. The Board shall make timely, regular and sufficient distributions from the Pension Adjustment Fund in order to maximize the benefits of retirees, beneficiaries or survivors. After the Board has received the actuarial certification for the fiscal year ending June 30, 2000 and every year thereafter, but not later than six (6) months following the end of every fiscal year, the Board shall develop various plans that the Board shall consider for approval, so as to ensure that if there are any funds available in the Pension Adjustment Fund on or after July 1, 2000, a distribution may be made within six (6) months and without delay in accordance with the provisions of subsection (4).

(.1) *Definitions.* In this subsection the following definitions shall apply:

"Adjusted market value of assets valuation method." For each fiscal year ending just prior to the annual valuation of the Pension Fund, take the market value at the beginning of that year, recognize cash flows of contributions and benefit payment being made on average in the middle of the year and roll those values forward based on the Pension Fund's assumed rate of return to the end of the fiscal year. This end of year value is called the expected market value. Subtract the expected market value from the actual market value at the end of the fiscal year. To the extent this difference is positive, there is an experienced gain on investments and, if negative, an experienced loss. Once the gain or loss is determined, include one-fifth of that amount in the annual valuation and defer four-fifths of the gain/loss to be recognized in each of the next four (4) fiscal years. Add up all remaining deferred gains and losses over the past five (5) years and subtract them from the market value of assets to get the "adjusted market value of assets valuation method".

"Fund basis." The actuarial funding level that has been achieved as of July 1, 1999 and which must be maintained in order for excess earnings to be available for credits to the Pension Adjustment Fund.

(3) *Credits to Pension Adjustment Fund.* For each fiscal year in which the Board establishes, re-establishes or maintains a Pension Adjustment Fund pursuant to this Section, the Board shall credit the Pension Adjustment Fund pursuant to the following parameters:

(a) The first one percent (1%) of earnings to the Pension Fund that are above the actuarial assumed earnings rate of the pension system shall remain in the Pension Fund.

(b) The Board shall credit the Pension Adjustment Fund with fifty percent (50%) of the excess earnings to the Pension Fund that are between one percent (1%) and six percent (6%) above the actuarial assumed earnings rate. For example, if the assumed earnings rate were nine percent (9%) and the actual earnings rate were ten percent (10%), the Pension Fund would retain all earnings; if the actual earnings rate were between ten percent (10%) and fifteen percent (15%), the Pension Fund would retain fifty percent (50%) of the excess earnings and the Pension Adjustment Fund would be credited with fifty percent (50%) of the excess earnings.

(c) All earnings in excess of six percent (6%) of the actuarial assumed earnings rate will remain in the Pension Fund.

(d) In determining the amount of credits to be allocated to the Pension Adjustment Fund for any fiscal year, the Board's actuary shall use the adjusted market value of assets valuation method.

(e) No credits shall be made to the Pension Adjustment Fund for any fiscal year in which the total fund basis of the Retirement System, as determined by the Board's actuary, using the adjusted market value of assets valuation method, are less than the fund basis established as of July 1, 1999.

(4) *Distributions from Pension Adjustment Fund.*

(a) Every year within sixty (60) days of the end of the fiscal year, by majority vote of its members, the Board shall consider whether sufficient funds have accumulated in the Pension Adjustment Fund to support an enhanced benefit distribution (which may include, but is not limited to, a lump sum bonus payment, monthly pension payment increases, ad-hoc cost-of-living adjustments, continuous cost-of-living adjustments or some other form of increase in benefits as determined by the Board) to retirees, their beneficiaries and their survivors, and the Board may, by majority vote of its members, authorize distributions from the Pension Adjustment Fund. The Board shall also review the accumulated assets of the Pension Adjustment Fund at least every three years to assess whether additional distributions may be appropriate. Prior to a determination that a distribution shall be made, the Board shall have an actuarial impact statement provided. No distribution shall be made unless that statement certifies that the Pension Adjustment Fund assets are sufficient to provide the full cost of the proposed benefit adjustment.

(.1) *Definitions.* In this paragraph the following definitions shall apply:

"Ad-hoc cost-of-living adjustment." A single cost-of-living adjustment that increases the retiree's, beneficiary's and survivor's benefit on a perennial basis for life.

"Continuous cost-of-living adjustment." Multiple cost-of-living adjustments which provide annual increases for retirees, beneficiaries and

survivors for life.

"Lump sum bonus payments." One time payments to retirees, beneficiaries and survivors which do not increase monthly pension payments.

(b) The Board shall report, in writing, to City Council, no later than thirty (30) days after the end of the fiscal year, any distributions that have been made or are proposed to be made from the current balance of the Pension Adjustment Fund. If no distributions were made in the previous fiscal year, the Board will explain, in writing, the reasons therefor. Subject to the availability²²²² of funds in the Pension Adjustment Fund, if no distributions have been made by no later than eighteen (18) months after the creation of the Pension Adjustment Fund, or any eighteen (18) month anniversary thereafter, and if the Board has not voted on and approved an enhanced²³²³ benefit distribution plan at that time, the Board shall notify City Council of such inaction, in writing, and explain why no distributions have been made and provide a full financial report on the current balance of the Pension Adjustment Fund. The Council expressly reserves the right to provide at any time, by ordinance, for enhanced²⁴²⁴ benefit distributions from the Pension Adjustment Fund, if the Board fails to provide for any distributions, or if deemed by Council an inadequate distribution, during any period of eighteen (18) consecutive months. The Council shall follow the same procedures as are required of the Board pursuant to this Section before any distributions may be authorized.

(c) If in any period of two (2) consecutive fiscal years, the Pension Adjustment Fund does not receive any credits, even though the Pension Fund's rate of return exceeds one percent (1%) above the actuarial assumed earnings rate in each of the two consecutive fiscal years using an adjusted market value of assets valuation methodology, the Board shall make a report, in writing, within thirty (30) days of the end of the two (2) consecutive fiscal year period to City Council to explain these circumstances. City Council reserves the right to make any amendments to the authorizations, directives or provisions of this Ordinance or to take any other action in order to correct this circumstance or any other circumstance, as the Council deems proper.

(5) It is the intent of Council that distributions to retirees, their beneficiaries and their survivors through the Pension Adjustment Fund pursuant to this Section should be funded solely from investment returns generated by Pension Fund assets. Nothing in this ordinance is intended to require the City of Philadelphia to make any contributions from the General Fund to support the Pension Adjustment Fund in any way except, by Ordinance of City Council.

CHAPTER 22-400. DISABILITY BENEFITS

²²²² Enrolled Bill No. 990001-A read "availability".

²³²³ Enrolled Bill No. 990001-A read "enhanced".

²⁴²⁴ Enrolled Bill No. 990001-A read "enhanced".

§ 22-401. Service-Connected Disability Retirement Benefits.²⁵25

(1) *Qualification.* Any member found by the Board to be permanently incapacitated from further performance of duty, which incapacity resulted solely from the performance of the duties of the member's position and was not caused by the member's own wrongful conduct, shall be retired and shall receive service-connected disability retirement benefits. To approve an application for such benefits, the Board must find that:

(a) the member is mentally or physically totally incapacitated from the further performance of the duties of the member's position;

(b) such disability is likely to be permanent;

(c) such disability existed while the member was still in the employ of the City;

(d) an application for service-connected disability retirement benefits is filed within one (1) year after separation from service, except as provided in § 22-401(3).

(2) *Procedure.*

(a) Applications for service-connected disability retirement benefits shall be acted upon by the Board promptly upon receipt thereof. Subject to the provisions of § 22-1203 (Medical Panel), the decision of the Board as to eligibility for benefits under this Section shall be final and conclusive.

(3) *Exclusivity of benefit.* No member (other than a Fire Employee represented by Local 22 of the I.A.F.F. or a Sheriff's Department employee represented by Lodge 5 of the F.O.P.) who receives or has received an award of workers' compensation benefits, and who could otherwise qualify for a service-connected disability retirement benefit, shall have the option of forgoing the service-connected disability benefit and to receive instead a retirement benefit based on service under § 22-301, § 22-302 or § 22-303 (Service, Separation Service, Optional Early Retirement Benefits) of this Title. If such a member has applied for or been granted a service retirement benefit, separation retirement benefit or early retirement benefit and also receives or has received an award of workers' compensation for total or partial disability, the Board shall treat the member's retirement application as if it were for a service-connected disability retirement benefit. If the Board finds that the member otherwise meets the requirements of subsection (1) of this Section, the member shall be so retired. If such a member has begun to receive retirement benefits under § 22-301, § 22-302 or § 22-303, the benefit shall be converted to a service-connected disability retirement benefit, effective as of the date of the member's separation from service.

²⁵25 Amended by deleting former subsections 22-401(4)(c) and 22-401(4)(d), Bill No. 040326 (became law February 17, 2005). Section 2 of Bill No. 040326 provides: "Repeal. To the extent inconsistent with this Ordinance, the Ordinance of July 12, 1993 (Bill No. 589), 1993 Ordinances at 1034, is repealed." Section 3 of Bill No. 040326 provides: "Effective Date. This Ordinance shall be effective retroactive to July 12, 1993." The deleted provisions provided for a reduction in pension for earned outside income, an associated requirement to provide copies of tax returns, and an exception for certain disabilities incurred in "heroic" circumstances. On March 21, 2005, the City Solicitor issued an Opinion advising that Council was without power to make Bill No. 040326 retroactive and that the Ordinance can lawfully be applied only with respect to current City employees who become separated and entitled to a disability pension after the latter of February 14, 2005 and the expiration of the collective bargaining agreement applicable to that employee.

(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 who fails to make the foregoing election prior to retirement will be deemed to have elected Option 4.

(a) If the member receives or is entitled to receive, for and during a period of disability, compensation from the City Treasury of the City, workers' compensation benefits or payments in the nature of workers' compensation benefits from any source, such disability retirement benefits shall be reduced by the amount of such compensation, benefits or payments for the period such compensation, benefits or payments are paid or payable even though all or part of the amount so payable may be wholly or partially commuted, except that:

(.1) for a member who is not a Fire Employee or Sheriff's Department employee specifically referenced in § 22-401(3), the service-connected disability benefits shall not be reduced on account of any medical or surgical benefits or facilities paid, payable or afforded, or any benefits for specific losses under workers' compensation received from any source, as compensation for any incapacity resulting from a completely different incident, hazard, or working condition from the one that is the basis for the member's service-connected disability retirement benefits; and

(.2) the above reduction in benefits shall not apply to any medical or surgical benefits paid or payable, or facilities afforded or any benefits for specific loss under workers' compensation for Fire Employees or Sheriff's Department employees represented by Lodge 5 of the F.O.P.

(b) In the event of a conversion from any other disability retirement benefit under § 22-401(3), the member will receive that portion of the member's contributions which had not been paid as a benefit as of the effective date of the award of workers' compensation.

(5) "*Final compensation*".²⁶ For the purposes of § 22-401(4) "final compensation" shall be calculated as defined in § 22-105(16), except that it shall be subject to a periodic adjustment in accordance with the following provisions:

(a) The periodic adjustment shall be made only with respect to a member who has been determined by the Board to be totally disabled, provided that such disability existed while the member was still in the employ of the City;

(b) It is not the intent of this Section to make the periodic adjustment available to members who, after separation from City employment, later become totally

²⁶ Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows:

"Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

disabled; the periodic adjustment under this Section shall be made only for members who have been determined by the Board to be totally disabled, as defined in this Title, and that such liability existed while the member was still in the employ of the City;

(c) With respect to a retired member who was a Civil Service employee, "final compensation" shall be annually adjusted to reflect any percentage increase in the rate of pay for positions in the employee's class during the preceding year;

(d) With respect to a retired member who as of the separation date held a position exempt from Civil Service, "final compensation" shall be annually adjusted to reflect the average percentage increase in the rate of pay of nonrepresented Civil Service employees during the preceding year;

(e) No annual adjustment under this subsection (4) shall be made until the seventh (7th) anniversary of the date of the member's service-connected disability retirement;

(f) A member's initial benefit adjustment shall be calculated as follows: in the eighth year following the member's separation from service, the member's retirement benefit shall be increased by the percentage raise, if any, given in the previous year to employees in the applicable class under subsection (c) or (d) above; there shall be no adjustment made for raises given the previous six (6) years;

(g) No annual adjustment shall be made on any anniversary date of the member's separation from service on or after the member's sixty-fifth (65th) birthday;

(h) A member determined by the Board to be totally disabled at the time of separation from service and who receives earned income while receiving service-connected disability benefits shall be automatically reclassified as not totally disabled and shall thereafter be forever ineligible for the periodic adjustment provided for in this subsection;

(i) A member also receiving Social Security disability insurance benefits shall be ineligible for any periodic adjustment under this subsection; and

(j) The periodic adjustment shall not apply to disability benefits for former Fire Employees.²⁷²⁷

§ 22-402. Ordinary Disability Retirement Benefits.²⁸²⁸

(1) *Qualification.*²⁹²⁹

²⁷²⁷ Subsection 22-401(5)(j) amended by Bill No. 000642 (approved February 21, 2001). Section 3 of the bill provided that the amendment "shall apply to any police member who separated or separates from City employment on or after March 30, 1993, provided that the City's medical director did not make a determination prior to March 30, 1993 that such member was permanently and partially disabled."

²⁸²⁸ Amended by deleting former subsection 22-402(6), Bill No. 040326 (became law February 17, 2005). Section 2 of Bill No. 040326 provides: "Repeal. To the extent inconsistent with this Ordinance, the Ordinance of July 12, 1993 (Bill No. 589), 1993 Ordinances at 1034, is repealed." Section 3 of Bill No. 040326 provides: "Effective Date. This Ordinance shall be effective retroactive to July 12, 1993." The deleted provision provided for a reduction in pension for earned outside income, and an associated requirement to provide copies of tax returns. On March 21, 2005, the City Solicitor issued an Opinion advising that Council was without power to make Bill No. 040326 retroactive and that the Ordinance can lawfully be applied only with respect to current City employees who become separated and entitled to a disability pension after the latter of February 14, 2005 and the expiration of the collective bargaining agreement applicable to that employee.

(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 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.

(b) Notwithstanding subsection (a) above, if a member in Plan B, Plan L, or Plan Y who otherwise meets the requirements of this Section separates while eligible for a vesting period lesser than ten years as is authorized by § 22-301(1)(c) or (d) and has made all necessary contributions to attain such eligibility, or completes such payments within 90 days of separation, such member shall be deemed retired and shall receive ordinary disability retirement benefits.

(2) *Procedure.*³⁰³⁰ To approve the application for such benefits the Board must find that:

- (a) the member's disability is likely to be permanent;
- (b) the disability existed while the member was in the employ of the City;
- (c) such disability is not the result of dissipation, immoral habits or practices, or was not incurred in the commission of a crime; and
- (d) the application for such benefits is filed within one (1) year after separation from service with the City, except as provided in § 22-401(3) (Service-Connected Disability Retirement Benefits).

Applications for ordinary disability retirement benefits shall be acted upon by the Board promptly upon receipt thereof. Subject to the provisions of § 22-1203 (Medical Panel) of this Title, the decision of the Board as to eligibility for benefits under this Section shall be final and conclusive.

(3) *Benefit amount.* Upon retirement for ordinary disability, a member shall receive an annual disability benefit equal to the annual service retirement benefit calculated under § 22-301(3) (Service Retirement Benefits) based upon the member's credited service.

(4) *Disqualification if qualified for service-connected disability retirement*

²⁹²⁹ Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

³⁰³⁰ Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

benefit. No member (other than a Fire Employee or Sheriff's Department employee referenced in § 22-401(3)), shall be retired on an ordinary disability retirement based on an incapacity that would entitle the member to a service-connected disability retirement benefit. Upon an application from such member for an ordinary disability retirement benefit, if the Board finds that the requirements of § 22-401(1) have been met, the member shall be retired on service-connected disability retirement benefits.

(5) *Disqualification if receiving workers' compensation benefits.* No member (other than a Fire Employee or Sheriff's Department employee referenced in § 22-401(3)) (Service-Connected Disability Retirement Benefits), shall be eligible for an ordinary disability benefit if entitled to workers' compensation benefits. Notwithstanding any other provision of this Section, if the Board shall find that a disabled member (other than a Fire Employee or Sheriff's Department employee referenced in § 22-401(3))(Service-Connected Disability Retirement Benefits) who is receiving ordinary disability benefits is also receiving or is entitled to receive, for and during this period of disability, compensation from the City Treasury of the City, workers' compensation benefits or payments in the nature of workers' compensation benefits, the Board shall terminate such disability retirement benefits. Such a termination shall not preclude the member from applying for separation service retirement benefits at retirement age, provided all other eligibility requirements are met.

§ 22-403. Reexamination and Reemployment of Disabled Members; Required Medical Treatment.

(1) *Reexamination.* The Board may, at any time and at its discretion, require a disabled member, while younger than the minimum retirement age of the applicable coverage plan, to undergo a medical examination by the Medical Panel. Examinations shall be made at the residence of the disabled member or such other place as may be designated by the Board.

(2) *Reemployment of member receiving service-connected disability benefits.* If the Board shall find that a disabled member receiving service-connected disability benefits is able to resume the duties of the member's former position or one of like status, salary, and seniority with the City, and such member shall refuse or fail to accept reassignment, reinstatement or reemployment by the City in such a position, then the Board shall order such benefits to be discontinued. Pending such reassignment, reinstatement, reemployment, or offer of the same, as herein set forth, or pending the securing of other employment, payment of the disability benefits shall be continued.

(3) *Discontinuance of ordinary disability benefits.* If the Board shall find that a disabled member receiving ordinary disability benefits is no longer mentally or physically totally incapacitated from performance of duty, the Board shall order such benefits to be discontinued.

(4) *Refusal to submit to medical examination.* If any disabled member younger than the minimum retirement age specified in the applicable coverage plan refuses to submit to a medical examination as required by the Board pursuant to subsection (1), the Board shall suspend such member's disability benefits until the member submits to a medical examination. If such refusal continues for one year from the date of the Board's initial request, the Board may revoke such member's rights to the

disability benefits and order such benefits to be discontinued.

(5) *Application for reemployment.* Upon application, a disabled member may, subject to Civil Service Regulations, be restored to employment with the City. In such event, the disability benefits shall cease and the disabled member shall resume membership in the applicable plan of the Retirement System with full credit for prior credited service.

(6) *Requirement to accept reasonable and appropriate medical care.*

(a) All disabled members (except Fire Employees or Sheriff's Department employees referenced in § 22-401(3)) shall be required to accept reasonable and appropriate medical care including, without limitation, diagnostic testing, physical therapy, and established corrective surgical procedures, as determined by the Medical Panel. The Board may terminate the benefits of any member who refuses to do so, provided that benefit payments shall not cease in such case until the resolution of any appeal to the Board, or the expiration of the appeal period, which shall be thirty (30) days after the date of the Board's letter to the member notifying the member of the Board's action to terminate.

(b) In the event the medical care ordered under § 22-403(6)(a) is to undergo surgery against the recommendation of the member's private physician, the Medical Panel shall not make a final determination without first referring the matter to a doctor from a standing panel of surgeons chosen by the Board and considering that surgeon's opinion as to the efficacy of the recommended surgery.

CHAPTER 22-500. DEATH BENEFITS

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

(1) *Death due solely to performance of member's duties.* If the Board determines that the death of a member resulted solely from the performance of the duties of such member's position and was not caused by the member's own wrongful conduct, a service-connected death benefit shall become payable. The Board shall avail itself of the services of the Medical Panel in making its determination whether the member died solely as a result of the performance of the duties of the member's position.

(2) *Benefit amount.* The service-connected death benefit shall be an amount equal to the total deceased member's contributions to the Retirement System, without interest, together with additional amounts of benefits payable as follows:

(a) A surviving spouse who was living with the member or entitled to support from such member at the time of death shall receive an annual benefit equal to sixty percent (60%) of the member's final compensation. If a child or children, under the age of eighteen (18) years also survive the deceased member, each such child shall receive an annual benefit equal to ten percent (10%) of the member's final compensation until such child attains the age of eighteen, but in no event shall the total annual amount paid to the surviving spouse and dependent children exceed eighty percent (80%) of the member's final compensation.

(b) If there is no such surviving spouse, or if the surviving spouse dies

or remarries before any surviving child of such deceased member shall have attained the age of eighteen (18) years, then each child under such age shall receive an annual benefit equal to twenty-five percent (25%) of the member's final compensation, but in no event shall the total annual benefit so paid in any one (1) year exceed seventy-five percent (75%) of the member's final compensation. If there are more than three (3) surviving children under the age of eighteen (18) years, the children shall receive equal shares of such seventy-five percent (75%) of final compensation. When any such child dies or attains the age of eighteen (18) years, there shall be a redistribution by the Board to the surviving children under such age, but in no event shall any child receive more than twenty-five percent (25%) of the member's final compensation in any one year.

(c) If there is no such surviving spouse and there is no child under the age of eighteen (18) years surviving such deceased member, then an amount equal to fifteen percent (15%) of final compensation shall be paid to the surviving father and/or mother, if any, of the deceased member if the Board, after investigation, shall find that such parent or parents were actually dependent upon such deceased member through absence of earning power as the result of disability or old age.

(d) If there is no such surviving spouse, child under the age of eighteen (18) years or dependent parent surviving such deceased member, then the ordinary death benefit calculated as provided by § 22-502(2) (Ordinary Death Benefits) shall be payable to the deceased member's beneficiary.

(3) *Proof of widowhood or dependency.* Any survivor receiving benefits pursuant to the provisions of § 22-501(2) above, shall, not later than the fifteenth day of January of each year, file with the Board proof of continued widowhood or dependency, as the case may be. Failure to file such proof shall result in the suspension of benefits until such proof has been filed.

(4) *Reduction of benefit.* Service-connected death benefits will not be reduced by any special death benefit provided by law, except workers' compensation benefits. Receipt of workers' compensation benefits for service-connected death will reduce the service-connected death benefit payments by the Retirement System by an equal amount.

(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 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.

(a) The service-connected health care benefit shall consist of regular payments on behalf of the spouse and the member's dependent children of the appropriate cost of maintaining medical, dental, optical and pharmaceutical prescription benefits for such beneficiaries at the same benefit level as would have been in force if the deceased member were still alive and employed in the same position as held at the time of death. Payments on behalf of the spouse shall cease upon remarriage. Payments on behalf of any surviving child shall cease when the child reaches the age of eighteen (18) years or, if any such child upon attaining age eighteen is and remains dependent because of physical or mental infirmity, the duration of the infirmity or, if the child is enrolled as a full-time undergraduate student, when the child ceases to be so enrolled or attains the

age of twenty-two (22) years, whichever occurs first.³¹³¹

(.1) The payments provided for above shall be made to such health care providers or insurers as were designated by the member prior to his or her death unless and until the beneficiary directs that such payments be made to a different provider or insurer.

(.2) The payments provided for above shall be made in coordination with such additional payments as may be designated by the beneficiaries under § 22-1303(2).

(.3) Whenever any beneficiary is entitled to medical, dental, optical or pharmaceutical prescription benefits as a result of a group health insurance plan derived from employment, educational, or other status, the benefits provided under such plan shall be primary and the entitlement provided herein shall be deemed secondary. In no event shall benefits be paid by the City to the extent that, together with primary benefits, payee would receive more than one hundred percent (100%) of costs for the same expense.

(b) Benefits payable pursuant to this § 22-501(5) shall be general obligations of the City and shall not be payable from the assets of the Retirement System.

(6) Notwithstanding any provision of this Title to the contrary, benefits payable to, or on behalf of, a survivor under other provisions of this Title shall not result in a reduction of any benefits payable to, or on behalf of, a survivor under § 22-501(5)(a).

§ 22-502. Ordinary Death Benefits.

(1) *Qualifications.* Ordinary death benefits are paid to the designated beneficiary of a deceased employee or vested member who has not received any retirement or disability benefits from the Retirement System.

(2) *Benefit amount.*³²³² The ordinary death benefit shall be an amount equal to the deceased member's total contributions to the Retirement System, without interest, together with an additional amount equal to the member's average final compensation multiplied by the number of completed years of credited service, and divided by the number of years of credited service required for that member to become a vested member as defined in Section 22-105(47), provided that in no event shall the additional amount exceed the deceased member's average final compensation as defined in § 22-105(a). This additional amount shall be reduced by any amount provided solely by the City under any group life insurance program.

³¹³¹ Amended, Bill No. 040755 (became law February 10, 2005). Section 2 of Bill No. 040755 provides:

"Effective Date and Retroactivity. The provisions of this Ordinance shall take effect immediately and shall apply retroactively with respect to any applications that were approved by the Board of Pensions and Retirement after the effective date of the original bill adding this benefit (Bill No. 655-A of 1986), January 23, 1986."

³²³² Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows:

"Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

(3) *Optional benefit.* ³³³³ If a deceased member had attained the applicable minimum retirement age or had become a vested member as defined in Section 22-105(47) or, if the member is a Police Employee or Fire Employee who shall be deemed as having become a vested member, the beneficiary of such member shall have the option of receiving:

- (a) the amount payable under § 22-502(2); or
- (b) the amount payable under Option 2 of § 22-306 (Retirement and Survivor Benefit Options) determined as follows:

(1) in the case of a member who had attained the minimum retirement age specified in the applicable plan, an annual benefit calculated as if the member had retired on the day preceding the member's death; or

(2) in the case of a member who had become a vested member, but had not attained the retirement age specified in the applicable plan, an annual benefit calculated as if the member had been eligible to retire and retired on the day before the member died, based on the member's attained age at the date of death.

(4) *Ordinary death benefit in lieu of service-connected death benefit.* If the deceased member's death was a service-connected death, the surviving spouse may elect to receive ordinary death benefits in lieu of service-connected death benefits. If the surviving spouse shall die before that surviving spouse's dependent child or children reach the age of eighteen (18) years, then the surviving dependent children under the age of eighteen (18) years shall receive equal shares of the annual benefit that the surviving spouse had been receiving. When any such child dies or attains the age of eighteen (18) years, there shall be a redistribution by the Board to the surviving dependent child or children under such age.

(5) *Conditions.* No spouse of a member of Plan D, Plan J or Plan X shall be entitled to receive benefits pursuant to this Section unless such spouse (a) was married to the deceased member for not less than two (2) full years before the member died, and was living with or entitled to support from such member at the date of death, or (b) was designated in writing as the beneficiary.

CHAPTER 22-600. (RESERVED)

CHAPTER 22-700. BENEFICIARIES AND SURVIVORS

§ 22-701. Designation of Beneficiaries.

³³³³ Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

The Philadelphia Code

(1) *Permissible designations.*³⁴³⁴ The designation of a member's beneficiaries must be in writing and on file with the Board during the member's employment. A member may designate as beneficiaries only individuals within the following categories:

- (a) The spouse who either lives with the member at the time of the member's death or is entitled to financial support by the member;
- (b) (1) natural or adopted child or children of the member;
(2) a trust for the benefit of a disabled natural child or a disabled adopted child of the member, providing that the following conditions are met:
 - (a) the beneficiary of the trust shall be irrevocable no later than the date of the retirement or death of the member, whichever occurs first;
 - (b) The trust must be a valid trust under Pennsylvania law or would be but for the fact that there is no trust corpus;
 - (c) the trust must be irrevocable;
 - (d) the beneficiaries of the trust must be identifiable from the trust instrument;
 - (e) a copy of the trust must be provided to the Pension Board within thirty (30) days of the date of the member's submission of the document designating the trust as a survivor; and
 - (f) in the case of an annual benefit to be paid monthly "for life" under this Ordinance, the determining life shall be the lifetime of the irrevocable beneficiaries of the trust;
- (c) parents or parent of the member;
- (d) individuals who are specifically named by the member and who are within any of the following categories:
 - (1) stepchild or foster child of the member; or
 - (2) child for whom the member stood in loco parentis; or
 - (3) individual whom the member is legally obligated to support; or
 - (4) a relative by blood or marriage; or
 - (5) any other person as designated by the employee.

(2) *Invalid designation; death of beneficiary.* If, at the time benefits become payable, the designation of beneficiaries on file with the Board is invalid, or if the designated beneficiaries predecease the member, or if the member has failed to designate any valid beneficiary, any benefits payable will be paid to the surviving relatives ranked in the highest category among those listed in § 22-701(1)(a), (b), (c) and (d), except that no benefit shall be paid to any person listed in § 22-701(1)(d) unless such person is specifically designated and survives the member. If no individual qualifies as a beneficiary as set forth herein, no benefit shall be payable except that the benefits payable pursuant to § 22-502 (Ordinary Death Benefits) shall be paid to the deceased member's estate. Categories (a) through (d), set forth in § 22-701(1), shall be deemed to have been listed in rank order of priority for purposes of this subsection. If two or more such beneficiaries are of equal rank, the benefits payable will be paid to them in equal shares

³⁴³⁴ Amended, Bill No. 041005 (approved February 10, 2005). Section 2 of Bill No. 041005 provides: "This Ordinance shall be effective retroactively from January 1, 2002."

unless the member has provided otherwise.

(3) *Beneficiary receiving other payments not affected.* Except as may be otherwise specifically provided in this Title or the Code, the rights and benefits of a beneficiary shall not be affected by the fact that the beneficiary may receive other payments from the City in a different capacity.

§ 22-702. Designation of Survivors.

(1) *Permissible designations.*³⁵ Each member shall make an irrevocable designation of survivors upon retirement. The designation of a member's survivors must be in writing and on file with the Board. A member may designate only the following individuals:

- (a) spouse;
- (b) (1) natural or adopted child or children of the member;
(2) a trust for the benefit of a disabled natural child or a disabled adopted child of the member, providing that the following conditions are met:
 - (a) the beneficiary of the trust shall be irrevocable no later than the date of the retirement or death of the member, whichever occurs first;
 - (b) The trust must be a valid trust under Pennsylvania law or would be but for the fact that there is no trust corpus;
 - (c) the trust must be irrevocable;
 - (d) the beneficiaries of the trust must be identifiable from the trust instrument;
 - (e) a copy of the trust must be provided to the Pension Board within thirty (30) days of the date of the member's submission of the document designating the trust as a survivor; and
 - (f) in the case of an annual benefit to be paid monthly "for life" under this Ordinance, the determining life shall be the lifetime of the irrevocable beneficiaries of the trust;
- (c) parents or parent of the member;
- (d) individuals who are specifically designated and who are within any of the following categories:
 - (1) stepchild or foster child of the member; or
 - (2) child for whom the member stood in loco parentis; or
 - (3) individual whom the member is legally obligated to support; or
 - (4) a relative by blood or marriage; or
 - (5) any other person as designated by the employee.
- (e) estate of the member if the member retired under Option 1 or Option 4 of § 22-306 (Retirement and Survivorship Benefit Options).³⁶

³⁵35 Amended, Bill No. 041005 (approved February 10, 2005). Section 2 of Bill No. 041005 provides: "This Ordinance shall be effective retroactively from January 1, 2002."

³⁶36 Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any

(2) *Death of designated survivor.* ³⁷37 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 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:

(a) The option may be exercised one time only.

(b) If a retired member's last survivors duly designated under this Section die before the retired member, then, upon such retiree's death:

(.1) The unpaid balance of the retired member's contributions will be paid to the member's estate if the member retired under Option 1; and

(.2) No further benefits will be paid if the retired member retired under Option 2 or Option 3.

(c) Except as otherwise provided in this Title or this Code, the rights and benefits of a survivor will not be affected by the fact that the survivor may receive other compensation from the City in a different capacity.

CHAPTER 22-800. PURCHASE OF CREDITED SERVICE

§ 22-801. Leaves of Absence Without Pay.

(1) *Leaves for ninety (90) days or less.* If a member receives approval for a leave of absence without pay for a period of ninety (90) days or less, the member may contribute to the Retirement System for the period of the leave. Upon the Board's receipt of contributions made in accordance with subsections (3) - (6) of this Section, the member will receive credited service for retirement and death benefits as if there had been no leave of absence.

(2) *Leaves for more than ninety (90) days.* If a member receives approval for a leave of absence without pay for a period of more than ninety (90) days, the member may

part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

³⁷37 For determination of benefits upon the death of a retiree who had failed to designate any survivor, see Section 22-306(3) in this Title. [Editor's note: This note appears in Bill No. 980843 (approved January 13, 1999).]

neither contribute to the Retirement System nor accrue credited service for retirement and death benefits for the period of the leave of absence except in the following cases:

(a) The member is granted a leave of absence for three (3) years or less because of such member's illness, maternity or injury.

(b) The member is granted a leave of absence with respect to which employment protections are required under USERRA or Chapter 73 of Title 51 of the Pennsylvania Consolidated Statutes (51 Pa. C.S. Ch. 73).

(c) The member is granted a leave of absence without pay in order to serve as a full-time officer or employee of a union which represents City employees.

(d) The member is granted a leave of absence for special education or training.

(e) The member is granted a leave of absence to serve in a United Nations International Peacekeeping or Police Mission. ³⁸³⁸

(3) *Basis of member contributions.*

(a) If a member makes contributions to the Retirement System for the period of an unpaid leave of absence, the amount of such contribution is based on the member's compensation rate as of the first day of the leave of absence. If contributions are made for a leave of absence, the period of the leave is included as credited service for determining retirement and death benefits. Hypothetical earnings for which credited service contributions are paid may be used in calculating final compensation or average final compensation where appropriate.

(b) A member who, in accordance with Civil Service Regulations, receives a leave of absence without pay in order to serve as a full time officer or employee of a union representing only City employees, or to secure special education or training, may continue to make contributions into the Retirement System based upon the salary the member would be receiving if the member had not been granted such leave of absence.

(4) *Time within which to make contributions.* ³⁹³⁹ If a member makes contributions to the Retirement System for the period of an unpaid leave of absence, other than an unpaid leave of absence which is subject to USERRA, [or] 51 Pa. C.S. Ch. 73, or for service in a United Nations Peacekeeping or Police Mission, the member must complete payments for credited service within ninety (90) days of the last day of the leave of absence. If a member does not complete payments within the prescribed time period, the member will not receive credited service for the period of the leave of absence. Provided, however, that members who file beyond the 90-day deadline may make such purchase by paying the additional interest provided in Section 22-807.

(5) *Time within which to make contributions for USERRA service or for service in a United Nations Peacekeeping or Police Mission.* ⁴⁰⁴⁰ If a member makes contributions to the Retirement System for a period of unpaid leave of absence and such

³⁸³⁸ Added, Bill No. 010595 (approved February 27, 2002). Section 2 of Bill No. 010595 reads as follows: "This Ordinance shall apply to leaves of absence which began on or after January 13, 1999."

³⁹³⁹ Added, Bill No. 010595 (approved February 27, 2002). Section 2 of Bill No. 010595 reads as follows: "This Ordinance shall apply to leaves of absence which began on or after January 13, 1999."

⁴⁰⁴⁰ Added, Bill No. 010595 (approved February 27, 2002). Section 2 of Bill No. 010595 reads as follows: "This Ordinance shall apply to leaves of absence which began on or after January 13, 1999."

leave of absence is subject to USERRA or 51 Pa. C.S. Ch. 73, or the leave of absence was taken to serve in a United Nations Peacekeeping or Police Mission, the member must complete the payments for credited service on or before the earlier of:

- (a) a period which is three times the duration of such leave of absence;
- or
- (b) five years.

If a member does not complete the required payments within the prescribed time period, the member will receive credited service for purposes of calculating retirement, death and disability benefits under Chapters 22-300, 22-400 and 22-500, respectively, in an amount equal to that portion of the required payments which is made within the prescribed time period. The member will receive credited service for purposes of determining vested status regardless of whether such payments are completed within the prescribed time period. Provided, however, that if a member does not complete the required payments within the prescribed time period, the member may purchase service credit for the remaining leave of absence service by paying the required payments, plus the additional interest provided in Section 22-807.

(6) *Payment of contributions after death of member.* If a member has not completed payment for the purchase of credited service for an unpaid leave of absence and dies within ninety (90) days after the last day of the leave of absence, the member's credited service will include the leave of absence only if the deceased member's beneficiary completes such payments within ninety (90) days of the member's death. If the beneficiary does not complete such payments within ninety (90) days of the member's death, no credited service will be granted for the period of the deceased member's leave of absence.

§ 22-802. Purchase of Governmental Service.

(1) *Allowable other governmental service.*⁴¹ A member of the Retirement System may purchase credited service for other governmental employment which was full-time or its prorated equivalent (as determined by the Board) and which occurred prior to the member's current employment with the City, as follows:

- (a) Service with the military (under a branch of the Armed Forces of the United States); or
- (b) Service as a State employee of the Commonwealth of Pennsylvania, or as an employee of any of its agencies, instrumentalities or general purpose political subdivisions, or with the School District of Philadelphia; or
- (c) Other service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political

⁴¹ Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

subdivision thereof, or any agency or instrumentality of any of the foregoing; or of an association of employees who are described in the foregoing clause; or of an educational organization which is a public school which provides elementary or secondary education (through grade 12), as determined under State law.

(2) *Maximum purchase of service; limitation.* ⁴²42 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 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 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.

(3) *Computation of payment for Members in Plan D, Plan J and Plan X.* In order to purchase allowable other governmental service, the member shall make payment to the Retirement System of a sum which is the product of:

(a) The average compensation received by the member for the first three (3) years of service with the City occurring after the period of governmental service being purchased; multiplied by

(b) the sum of the percentage of contributions paid by the member during the first three (3) years of service with the City plus the percentage equal to the current accruing costs to the City at the time of application, multiplied by

(c) the number of years and fraction thereof of governmental service (not to exceed ten (10) years) applied for.

In addition, the member shall pay interest at the rate of six percent (6%) per annum from the date of the member's entry into City service until the date of application.

(4) *Computation of payment for Members in Plan A, Plan B, Plan L, and Plan*

⁴²42 Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows:

"Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

Y. 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 multiplied by
 - (b) The member's annual compensation at that time multiplied by
 - (c) The years of credited service being purchased.
- (5) *Installment Payments.* Payment for the purchase of governmental service may be made in accordance with Section 22-806 (Installment Payments) of this Title.

§ 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, 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 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 who file beyond the one-year deadline, may make such purchase by paying the additional interest provided in Section 22-807.

(3) *Purchase of temporary service by members of Plan J.* A member of Plan J who was hired as a temporary employee for a period not exceeding six (6) months whose period of continuous employment extended beyond six months, and who had not been permitted to contribute to the Retirement System, may elect to purchase credited service for the period of temporary employment. Upon making such election, the member shall pay the contributions covering such period, together with interest thereon.

(4) *Purchase of temporary service by members of Plan Y.* If a temporary employee who was originally hired on or after January 8, 1987 for six (6) months or less continues to work for the City after the six (6) months are over, that employee becomes a member of Plan Y beginning with the first full pay period after the six (6) months. At that time, the employee may purchase service credit for the period of temporary service by paying contributions covering such period, together with interest thereon at the current rate determined by the Board's actuary.

(5) *Purchase of prior service by members of Plan D, Plan J, and Plan X.*

(a) If any member of Plan D, Plan J, or Plan X had previously separated, withdrawn contributions and been rehired without purchasing credit for prior City service, such member may purchase said service by paying to the system:

- (.1) the amount of any contributions withdrawn by the member;

and

- (.2) the difference between:
 - (.a) the amount of contributions paid by him during his employment; and
 - (.b) the amount of contributions he would have paid during his employment; and
- (.3) interest at the rate of six (6) per cent per annum on the amount payable under subsection (.2).

(b) If such employee did not, within one year following his reemployment, make payment to the retirement system in accordance with subsection (a) but desires to make such repayment at a time subsequent thereto, and while still employed by the City and still in Plan D, Plan J, or Plan X, he may do so by paying in addition to the amount of such required payment, interest at the rate of four per cent per annum on the total sum due as computed under subsection (a) above, from the expiration of the one-year period. In addition thereto, such employee shall pay a sum equal to one day's pay for each year or fraction thereof between the time of the expiration of the one-year period and the time of repayment.

(c) Any member who fails to make payment for prior service as hereinbefore provided, shall not receive credit for any service prior to the time of his reemployment.

(6) *Purchase of prior service during deferred membership by members of Plan D, Plan J, and Plan X.* ⁴³⁴³

(a) If any member of Plan D, Plan J, or Plan X had, at the time of his or her employment and in accordance with the applicable Retirement System Ordinance at the time, elected to defer membership in the Retirement System and had not previously purchased pension credit for the period during which membership was deferred, such member may purchase said service by paying to the system:

- (.1) the amount of contributions the member would have paid during that period of deferred membership; and
- (.2) the additional interest provided in Section 22-807.

(7) *Purchase of previously ineligible City temporary service.* ⁴⁴⁴⁴

(a) If any member has ⁴⁵⁴⁵ one or more periods of temporary service

⁴³⁴³ Subsection added, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

⁴⁴⁴⁴ Subsection added, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

⁴⁵⁴⁵ Enrolled Bill No. 000342 read "If any member of has...."

with the City for which the member is not eligible to purchase service credit under subsection 22-803(3) or (4) above, such member may purchase said service by paying to the system:

- (.1) the amount of contributions the member would have paid during that period of temporary employment; and
- (.2) the additional interest provided in Section 22-807.

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

(1) *Definitions.* For the purpose of this Section, the following definitions shall apply:

(a) *C.E.T.A. Employee.* Any person hired by the City under the Comprehensive Employment and Training Program Act established by the Federal Government.⁴⁶⁴⁶

(2) Any C.E.T.A. employees who continued in employment with the City after the termination of their C.E.T.A. employment or who later re-entered the service of the City pursuant to provisions of § 22-201 (Membership Upon Employment) are entitled, at their individual option, to purchase credited service under the Retirement System for the period of their service as C.E.T.A. employees. The employee shall be obligated to make contributions at the rate of 6% of the salary that the employee earned for the period of credited service purchased plus interest on that amount calculated from the date the employee was directly transferred from the C.E.T.A. program to permanent City employment, or, if later reemployed, the date the employee was separated from the C.E.T.A. program. Interest shall be charged at the current rate determined by the Board's actuary to compensate the Pension Fund for lost interest.

(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).

§ 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 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

⁴⁶⁴⁶ Comprehensive Employment and Training Act, enacted by Congress as Pub. L. 93-203, as added Pub. L. 95-524, § 2, Oct. 27, 1978, 92 Stat. 1912, codified at 29 U.S.C. § 801 et seq., repealed, Pub. L. 97-300, Title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357. [Editor's note: This note appears in Bill No. 980843 (approved January 13, 1999).]

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.

§ 22-806. Installment Payments.

(1) *Uniform deductions.* Any member who is eligible to purchase credited service for prior City service, time spent as a disabled member or in allowable other governmental service may pay for a such service in equal installments through payroll deductions. In addition to the cost from § 22-803 (Purchase for Prior City Service), or from § 22-802 (Purchase of Governmental Service), or from § 22-807 (Interest); or other applicable Section of this Title allowing a purchase of service credit, an employee purchasing credit on an installment basis must pay an annual six percent (6%) interest on the unpaid balance. The entire sum must be paid in five (5) years or less.

(2) *Payroll deductions; prepayment.* If the member provides written authorization, such installment payments, including necessary interest charges, will be deducted from the member's paycheck. Any member purchasing credited service for prior governmental or prior City service may at any time, without premium or penalty, prepay the unpaid installment in full.

(3) *Time limit upon separation from service.* If a member separates from service before such installment payments have been completed, the member or the member's beneficiary must pay the outstanding balance (including interest) within ninety (90) days of the date of separation from service in order to receive credit for all prior City or other governmental service.

(4) *Refund of contributions; partial credit.* ⁴⁷47 If installment 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 payments made for the purchase of prior City or other prior governmental service; or (ii) credit for that portion of prior 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 § 22-803, the member must have made arrangements to pay for all prior City service.

(5) *Suspension of pension benefits due to unpaid installments.* Upon the retirement of a member of Plan J who has failed to complete any installment payments due, retirement benefits shall be payable to the member and the member's beneficiary until such time as the retirement benefits paid equal the amount actually contributed to the Retirement System. Payment of further benefits shall be suspended until the amount of such suspended benefits equals the amount of the unpaid installments or until the

⁴⁷47 Amended, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

amount due has been paid. Thereafter, payment of retirement benefits shall be resumed to the extent the retired member or his beneficiary may be entitled.

§ 22-807. Interest. ⁴⁸48

Any member of Plan A, Plan B, Plan L, or Plan Y 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

§ 22-901. Contributions by the City of Philadelphia.

Each year the City shall pay to the Board of Pensions and Retirement, for the account of the fund described in § 22-1001, the City's share of the actuarial cost of financing the Retirement System as required by the Municipal Pension Plan Funding Standard and Recovery Act (1984, Dec. 18, P.L. 1006, No. 205, 53 P.S. § 895.101 et

⁴⁸48 Amended and subsections (d) and (e) added, Bill No. 000342 (approved January 23, 2001). Section 2 of Bill No. 000342 reads as follows: "Effective Date. This Ordinance shall be effective retroactively to January 13, 1999, except for amendments to Code Section 22-310, which shall be effective retroactively to June 28, 1999, and except that, as to members of Plan L, any part of this Ordinance that represents an increase or diminishment in the benefit rights of such members shall not apply to an elected official during any term of office to which such official was elected prior to the effective date of this Ordinance, but shall only apply to an elected official during a term of office to which such official was elected after the effective date of this Ordinance."

seq.) and as may otherwise be required by law, including, without limitation, provisions of USERRA (38 U.S.C. Section 4318(b)(1) and (3)) with respect to any liability thereunder of the City, as employer, to the Retirement System. The City shall also contribute the net proceeds of an alternative funding mechanism as defined in 53 P.S. § 895.102 if any alternative funding mechanism is used by the City, for the purposes set forth in 53 P.S. § 895.101 et seq. Such contributions shall be made within the time period set forth in 53 P.S. § 895.404.

§ 22-902. Member Contributions.

(1) *Member Contributions for Current Service.*

(a) *General Rule; exception.* Member contributions shall be made to the Retirement System on behalf of each member for current service except for any period of service in which a limitation on contributions is imposed by Tax Code Sections 401(a)(17) and/or 415 of the Tax Code.

(b) *Pickup contributions; treatment for purposes of Tax Code.* All member contributions required to be made for current service rendered by a member on or after January 1, 1983 shall be picked up by the City by means of payroll deduction and shall be treated as employer contributions for purposes of Section 414(h) of the Tax Code.

(c) *Treatment for other purposes.* For all other purposes under this Title and otherwise, such pickup contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to January 1, 1983.

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

(a) Members of Plan J who are not covered under the Federal Social Security Act, as amended, six percent (6%) of compensation.

(b) Members of Plan J who are covered by the Federal Social Security Act, as amended, three and three-quarters percent (3-3/4%) of that portion of compensation which is subject to tax under the Federal Insurance Contributions Act (26 U.S.C. Section 3101 et seq.) plus six percent (6%) of that portion of compensation which is not subject to such tax, exclusive of that portion of such tax attributable to coverage for hospital insurance benefits.

(c) Members of Plan D, six percent (6%) of compensation.

(d) Members of Plan X, six percent (6%) of compensation.

(e) 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.

(.2) For members of Plan L, and Plan Y, the required contributions shall equal thirty percent (30%) of the aggregate normal cost for all members in such plans, including but not necessarily limited to, the normal cost for service retirement benefits, separation service retirement benefits; optional early retirement benefits, disability benefits, death benefits, survivor benefits, and expenses;

provided, however, that for that portion of the benefits under Plan L which exceeds those available to members of Plan Y, the required Plan L contribution for each employee shall equal a proportionate share of one hundred percent (100%) of the aggregate normal cost of such greater benefits for all such members.

(.3) For members in Plan A and Plan B, the required employee contribution shall be five percent (5%) of payroll 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%) of payroll 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 the five percent (5%) of payroll 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.

(.4) Member contributions shall be determined as a uniform percentage of compensation for all members in a plan.

(.5) Cost to members may change yearly depending on fluctuations in the normal cost of the Retirement System. Changes in the cost to members shall take effect on the first day of the first pay period ending after the first anniversary of the actuarial valuation affecting the change.

(.6) Additional contributions may be required pursuant to the vesting provisions in Section 22-301 of this Title.

(3) *Election to cease contributions.* No member of the Retirement System will be required to pay contributions to the System after having attained the maximum allowable credited service upon which the member's pension will be calculated.

(a) When the maximum allowable credited service has been attained, whether through continuous membership by employment or through the purchase of credits for prior City service or through the purchase of credits for governmental service or leaves of absence, the employee may elect to suspend all further pension contributions. The election shall be made in writing by the employee to the Board.

(.1) The employee will be entitled to receive a refund, without interest, of all contributions made by the employee after the date of completion of the maximum allowable credited service.

(b) An employee who has attained the maximum allowable credited service through continuous membership by employment or through the purchase of credits for prior City service or the purchase of credits for leaves of absence and who had previously elected to purchase governmental service in accordance with provisions of § 22-802 may elect to forfeit credit for that service. An employee who elects to forfeit that credit shall be reimbursed the entire amount of the cost, including interest and penalties, paid by the employee for the purchase of credit for this prior governmental service.

(c) Any employee who elects to cease his/her contributions to the pension system under § 22-902(3) shall have their pension benefit frozen as of the date their employee contributions cease.

(d) For purposes of this Section, the phrase "maximum allowable credited service" means that amount of service which, when multiplied by the applicable percentage or fraction for the member's plan, as provided in § 22-301, to calculate the member's pension, would yield the maximum pension provided in this Title, expressed as a percentage of average final compensation, based on the member's average final

compensation at the time the member makes the election in § 22-902(3)(a).⁴⁹49

§ 22-903. Refund of Contributions.

(1) *Refund of total contributions.* A member who separates from service for any cause other than death, disability or retirement shall at the written request of the member be repaid the total contributions made by such member into the Retirement System, without interest. Upon the refund of such contributions, all rights of the member, any beneficiary, and any survivor of the member under this Title shall terminate.

(2) *Death of vested member before attaining retirement age.* If a member separates from service after having accrued at least ten (10) years of credited service and subsequently dies before attaining minimum retirement age, such member's contributions, if not refunded before the member died, shall be refunded without interest to the member's beneficiary unless benefits are payable under § 22-502 (Ordinary Death Benefits).

§ 22-904. Direct Rollover.

(1) *In general.* This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Retirement System 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 in a direct rollover.

(2) *Definitions.*

(a) *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:

(.1) 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 lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary; or

(.2) for a specified period of ten years or more; or

(.3) any distributions to the extent such distribution is required under Section 401(a)(9) of the Tax Code; or

(.4) the portion of any distribution that is not includible in gross income.

(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, or a qualified trust described in Section

⁴⁹49 Comment: This Section incorporates the terms of Bill No. 20, approved February 7, 1997. Subsection (d) is added to provide clarification by defining a term left undefined in the original bill. [Editor's note: This comment appears in Bill No. 980843 (approved January 13, 1999).]

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, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(c) *Distributee.* A distributee includes a member and a member's spouse. The member's surviving spouse and the member's former spouse who is the alternative payee under an approved domestic relations order, as determined under § 22-1303, are distributees with regard to the interest of the spouse or former spouse.

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

(e) *Distribution.* Payment of all or any portion of a person's interest in the Retirement System which is payable under this Title.

CHAPTER 22-1000. INVESTMENTS; ASSUMPTIONS; AND GUARANTEE

§ 22-1001. Investments.

(1) *In general.* All monies and funds held under all and any provisions of the Retirement System shall be invested in accordance with the regulations for the investment of similar State funds as set forth in the Act of March 1, 1974, (P.L. 125, No. 31), as amended (71 Pa. C.S. Section 5931), and as the same may be amended from time to time. The members of the Board shall be the trustees of the fund and shall have exclusive control and management of the fund and full power to invest and preserve the same, subject, however, to the exercise of that degree of judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion and intelligence, who are familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims. Subject to like terms, conditions, limitations and restrictions, said trustees shall have the power to hold, purchase, sell, lend, assign, pledge, transfer or dispose of any of the securities and investments in which any of the moneys of the fund shall have been invested as well as the proceeds of said investments and of any moneys belonging to said fund.

(2) *Stated interest guarantees.* All or any part of the monies and funds under all and any provisions of the Retirement System may be invested in any contracts and policies providing for stated interest guarantees, if issued by a legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania. No investment shall be made in contracts and policies issued by a company whose capital and surplus is less than \$25,000,000 on the 31st day of December next preceding the date of investment, and no such investment may exceed one-half of one percent (1/2%) of the admitted assets of said company on the 31st day of December next preceding the date of investment.

(3) *Investment in Northern Ireland.*

(a) The Board, or its designee, shall annually survey all corporations or other business entities in which the assets of the Retirement System are invested in

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order to ascertain whether:

(.1) the company, directly or indirectly, through such entities as its parent corporation, any subsidiary or affiliate is doing business in Northern Ireland or with the government of Northern Ireland or any agency or instrumentality thereof;

(.2) there is evidence of discriminatory employment practices among those companies doing business in Northern Ireland based upon the composition of their work force, employment laws;

(.3) the company has adopted or is willing to adopt the MacBride Principles;

(.4) the company has taken any affirmative action to eliminate ethnic and religious discrimination by:

(.a) increasing the representation of individuals from under-represented religious groups in the workforce, including managerial, supervisory, administrative, clerical and technical jobs;

(.b) providing adequate security for the protection of minority employees both at the workplace and while travelling to and from work;

(.c) banning provocative religious or political emblems from the workplace;

(.d) publicly advertising all job openings and making special recruitment efforts to attract applicants from under-represented religious groups;

(.e) providing that layoff, recall and termination procedures should not in practice favor particular religious groupings;

(.f) abolishing job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion or ethnic origin;

(.g) developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of minority employees;

(.h) establishing procedures to assess, identify and actively recruit minority employees with potential for further advancement;

(.i) appointing senior management staff members to oversee affirmative action efforts and the setting up of timetables to carry out affirmative action policies.

(b) The Board, on or before the first day of January of each year, shall forward to the members of Council and make available to the public the findings of its survey.

(c) No monies or funds held under any provision of the Retirement System shall remain or hereafter be invested in any corporation or other business entity doing business, either directly or indirectly, in Northern Ireland or with the government of Northern Ireland or any agency or instrumentality thereof, that is not a signatory of the MacBride Principles.

(d) Notice of the provisions of this Section shall be given to investment managers for the Retirement System and all corporations or other business entities in which the assets of the Retirement System are invested.

(4) *Prohibited Investments.* No moneys or funds held under any provision of

the Retirement System shall remain invested, or hereinafter be invested in, the stocks, securities, or other obligations of the major companies engaged in the manufacture, of tobacco or tobacco products, which companies at present are the following:

- (a) Philip Morris;
 - (b) R.J.R. Nabisco;
 - (c) Brooke Group;
 - (d) American Brands, Inc.;
 - (e) U.S.T., Inc.
- (5) *Investments in Predatory Lenders and Affiliates.*⁵⁰⁵⁰

(a) No monies or funds held under any provision of the Municipal Retirement System shall remain invested or hereinafter be invested in the stocks, securities, or other obligations of any business entity which is a high cost lender or a predatory lender or which is an affiliate of any business entity which is a high cost lender or a predatory lender pursuant to Chapter 9-2400. Prohibition Against Predatory Lending Practices.

(b) No monies or funds held under any provision of the Municipal Retirement System shall remain invested or hereinafter be invested in the securities collateralized by any interest in loans originating or purchased by any business entity which is a high cost lender or a predatory lender or which is an affiliate of any business entity which is a high cost lender or a predatory lender pursuant to Chapter 9-2400. Prohibition Against Predatory Lending Practices.

(c) The divestiture required by this subsection shall be completed within six (6) months of receipt by the Board of Pensions and Retirement of notice from the Director of the Office of Housing and Community Development that a business entity is a high cost lender or a predatory lender or an affiliate of a high cost lender or a predatory lender. During the six (6) month period, the Board of Pensions and Retirement shall make regular reports to the City Council concerning the progress of divestiture. If, prior to expiration of the six (6) month time limit for divestiture, the Board determines that completion of divestiture within the six (6) month time limit will necessitate substantial losses to the Retirement System, then the Board shall request from City Council an extension of time within which to complete divestiture.

§ 22-1002. Actuarial Assumptions.

(1) *Actuarial consultant.* The Board shall designate the actuarial consultant who shall act as technical advisor to the Board on matters regarding the operation of the Retirement System and shall perform such other duties as are required in connection therewith.

(2) *Interest rates; mortality tables; service tables; salary scales.* The interest rates to be used in calculating the earnings of the reserves of the Retirement System, and the mortality tables, service tables and salary scales to be used in connection with the Retirement System (or any plan therein as applicable), shall be those adopted from time to time by the Board on the advice of the actuarial consultant.

⁵⁰⁵⁰ Added, Bill No. 000715-A (approved April 19, 2001), effective 90 days following enactment.

(3) *Actuarial investigations; valuation of assets and liabilities.* At such times as the Board may deem it necessary, and at least once in each five-year period, the actuarial consultant shall make an actuarial investigation into the actual interest earned, mortality, service and compensation experience of the Retirement System (or any plan therein if appropriate), and shall make valuations of the assets and liabilities of the Retirement System.

(4) *Modification of assumptions.* The Board shall, from time to time, make and adopt such changes and modifications in the interest rates and mortality, service and other tables as shall be necessary for the Retirement System (or any plan therein, if appropriate).

(5) *Valuations of actuarial effect due to legislation.* Whenever the Board shall propose to Council, or Council shall have under consideration, any change in the provisions of this Title, or any other legislation affecting retirement benefits payable to City employees, the Board shall cause the actuarial consultant to make valuations of the actuarial effect of the change or such other legislation upon the assets and liabilities of the Retirement System (or any plan therein, if appropriate), and the Board shall promptly report the same, together with the Board's recommendations for approval or disapproval of the proposed change or legislation, to the Council.

§ 22-1003. Obligation of the City.

The obligations of the Retirement System and all plans therein, including benefits payable to current and future retired members and their beneficiaries and survivors, are hereby declared to be obligations of the City of Philadelphia.

§ 22-1004. Exclusive Benefit Rule.

(1) *General.* All contributions made to the Retirement System, and all earnings thereon, shall be held for the exclusive benefit of the members and their survivors and beneficiaries. Such contributions and earnings shall not be used for, nor diverted to, purposes other than for the exclusive benefit of the members and beneficiaries and survivors.

(2) *Refund of contributions.* Notwithstanding the forgoing, a member's contributions may be refunded, if such refund is permitted under this Title, provided, however, that no such refund shall be allowed if such refund would deprive the retirement System of its tax-qualified status under the Tax Code.

(3) *Expenses of the Retirement System.* Notwithstanding the forgoing, assets of the Retirement System shall be used to defray expenses relating to the administration of the Retirement System and the management of assets thereunder.

CHAPTER 22-1100. (RESERVED)

CHAPTER 22-1200. ADMINISTRATION AND

MANAGEMENT

§ 22-1201. General Powers and Duties of the Board.

(1) *General administration and management.* The general administration and management of the Retirement System is vested in the Board.

(2) *Financial statements.* At least once each year, the Board shall have prepared a financial statement summarizing the transactions of the Retirement System, and shall submit such statement to the Mayor. The Board shall maintain, in convenient form, such data as shall be necessary for actuarial valuation of the Retirement System and the plans thereunder.

(3) *Risk management.* Within seven (7) days of receipt of by the Board of an application for retirement benefits (other than survivor's benefits), the Board shall notify the City's Risk Manager of the application.

§ 22-1202. Hearings and Appeals.

(1) *In general.* Eligibility for membership in the Retirement System or the entitlement of any member, or of any person claiming through such member, to benefits accrued or rights accorded under this Title shall be determined after notice and opportunity to be heard. Any member or other claimant shall have a right to appeal to the Board any decision or determination affecting such person's claimed benefits or rights. Findings and decisions of the Board on any actions taken by the Board or any of its employees shall be final and there shall be no further appeal other than to court as provided by law.

(2) *Hearing panel.* The Board may designate any three members of the Board as a hearing panel to conduct any hearing whether on review, appeal or otherwise. The hearing panel shall take testimony and prepare a recommendation which shall be forwarded to the Board for its consideration.

§ 22-1203. Medical Panel.

(1) *Appointment.* The Board shall appoint a Medical Panel as medical examiners on behalf of the Board. Preference shall be given to physicians employed by the City Health Department. If required, other physicians may be employed by the Board to report on specific cases.

(2) *Medical examinations.* The Medical Panel shall conduct all medical examinations required under the provisions of this Title, and shall report in writing to the Board its medical findings and medical opinions upon any matter referred to it.

(3) *Disqualification.* If a medical examination involves a member of the Medical Panel or a family member of such individual, such member of the Medical Panel shall be disqualified from acting in such matter.

(4) *Disability and death benefits.* Disability retirement benefits and service-connected death benefits may be granted only after a report is submitted by the Medical

Panel. An applicant for disability benefits whose initial application has been rejected shall have the right to be reexamined for the claimed disability not more frequently than every six months. The Board may in its sole discretion grant more frequent reexaminations.

(5) *Appointment of new medical panel.* If an application is denied, the Board may, upon the request of the applicant and the presentation of satisfactory evidence, appoint a new medical panel to review the application and submit its medical findings to the Board.

§ 22-1204. Adjustment of Payments.

Should any member, survivor or beneficiary receive a benefit from the Retirement System more or less than such person is entitled to receive, the Board, on the discovery of any such error, regardless of the intentional or unintentional nature of the error, shall correct such error and, so far as practicable, shall adjust the payments which may be made for and to such person in such a manner that the actuarial equivalent of the benefit to which the person was entitled shall be paid. The Board shall also be authorized to recover any excess payment including the right to make deductions from future benefits.

CHAPTER 22-1300. MISCELLANEOUS

§ 22-1301. Waiver of Benefit.

(1) *Declination.* Any member, survivor or beneficiary entitled to any benefit under any provision of this Title may decline to accept all or any part of such benefit by a waiver signed and filed with the Board. Such waiver may be revoked in writing at any time, but no payment of the waived benefit shall be made covering the period such waiver was in effect.

(2) *Waiver of member with less than three (3) years of service.* Any member with more than one (1) but less than three (3) years of credited service on the date of such member's retirement may waive the right to receive a retirement benefit. If the member waives the right to a retirement benefit, twice the amount of the member's total contribution to the Retirement System shall be refunded to the member, without interest.

§ 22-1302. Disqualification.

(1) Notwithstanding any other provision of this Title, no employee nor any beneficiary designated by or for any employee shall be entitled to receive any retirement or other benefit or payment of any kind except a return of contribution paid into the Retirement System, without interest, if such employee:

(a) pleads or is finally found guilty, or pleads no defense, in any court, to any of the following:

(.1) Perjury committed in connection with the employee's

official duties or in any affidavit or proceeding concerning the employee's official duties or conduct;

(.2) Acceptance of a bribe for the performance, or affecting the performance or for the non-performance of the employee's official duties, or the offering or giving of a bribe to any other City employee or employee of the Commonwealth or of the United States for the performance or affecting the performance or for the non-performance of the employee's official duties;

(.3) Engaging in graft or corruption incident to or in connection with the employee's office or employment constituting a violation of the laws of the Commonwealth or the United States;

(.4) Theft, embezzlement, willful misapplication, or other illegal taking of funds or property of the City, or those of any official agency of the City, or agency, engaged in performing any governmental function for the City or the Commonwealth;

(.5) Malfeasance in office or employment;

(.6) Engaging in a conspiracy to commit any of the foregoing.

§ 22-1303. Exemption From Attachment.

(1) *Exempted from levy, sale, etc.; City offset.* Except as otherwise provided in this Section or in the Tax Code, the right of a person to benefits, the return of contributions or any benefit or right accrued or accruing to any persons under the provisions of this Title, and the moneys in the funds of the Retirement System, are hereby exempt from levy and sale, garnishment, attachment, execution, sequestration or any other process whatsoever, except that the City shall have the authority to assert or offset any claim of the City against such person and the rights or benefits arising from membership under this Title.

(2) *Designated payees.* The Director of Finance is authorized, when directed in writing by any member, survivor or beneficiary, to pay from that person's benefits, such sum or sums as that person may authorize to any designated payee or representative thereof among the following organizations:

(a) Associated Hospital Service of Philadelphia (Blue Cross and Blue Shield);

(b) Internal Revenue Service;

(c) Municipal Workers' Union - District Council 33;

(d) Philadelphia City Employees' Federal Credit Union;

(e) Philadelphia Lodge No. 5, Fraternal Order of Police;

(f) Police Beneficiary Association of Philadelphia;

(g) Policemen, Firemen and Park Guard Federal Credit Union;

(h) Police and Firemen's Medical Association;

(i) City Fire Fighters Association;

(j) Philadelphia Fire Department Relief Association;

(k) Philadelphia Police Widow's Pension Fund;

(l) The Guardian Civic League, Inc.;

(m) District Council 33 Health and Welfare Fund;

(n) Health Maintenance Organizations;

- (o) The Golden Age Club;
- (p) APTA 47 Health and Welfare;
- (q) Custodes Pacis Lodge No. 2085;
- (r) Philadelphia Emerald Society;
- (s) Law Enforcement Health Benefits;
- (t) Retired Fire Fighters' Association of Philadelphia;
- (u) German American Police Association; ⁵¹⁵¹
- (v) Local 22 Fire Political Action Committee (FIREPAC); ⁵²⁵²
- (w) AFSCME District Council 47. ⁵³⁵³

(3) *Authorization for deductions.* Authorization for deductions from retirement benefits payments shall be made in writing by the person entitled to such payments from the Retirement System upon forms prescribed and furnished by the Director of Finance. Any authorized deductions shall be made at such time and in such manner as the Director of Finance may establish. Authorization for deductions from retirement benefit payments may be revoked in writing by the authorizing person in such manner as the Director of Finance may establish. Any sum or sums withheld by the Director of Finance and not paid over to the designated payee before the effectiveness of the revocation shall be refunded to the person entitled to such sums.

(4) *City to be held harmless.* The designated payee of such deductions shall have no right to nor interest in any sums so deducted and withheld nor any right to claim the same or any part thereof until the sums deducted are actually paid over to the designated payee, nor shall the City be liable to any member for any mistake in the amount deducted and withheld.

(5) *Domestic relations orders in general.* A domestic relations order authorizing the payment of benefits to a child or former spouse of a member shall be accepted by the executive director of the Board, or by the executive director's designated representative, as an approved domestic relations order if such order meets all of the following:

- (a) does not require the Retirement System to provide any type or form of benefit or any options not already provided under this Title;
- (b) requires the Retirement System to provide no more than the total amount of benefits that the member would otherwise receive (determined on the basis of actuarial values) unless increased benefits are paid to the member or alternate payee based upon cost-of-living increases or increases based on other than actuarial value;
- (c) specifies the amount or percentage of the member's benefits to be paid by the Retirement System to each such alternate payee or the manner in which the amount or percentage is to be determined;
- (d) specifies the retirement option to be selected by the member upon retirement or states that the member may select any retirement option offered by this Title upon retirement;
- (e) specifies the name and last known mailing address, if any, of the

⁵¹⁵¹ Added, Bill No. 000122 (approved April 11, 2000).

⁵²⁵² Added, Bill No. 060627 (approved November 16, 2006).

⁵³⁵³ Added, Bill No. 060696 (approved November 16, 2006). Enrolled bill designated this subsection as (v); redesignated by Code editor.

member and the name and last known mailing address of each alternate payee covered by the order and states that it is the responsibility of each alternate payee to keep a current mailing address on file with the Retirement System;

(f) does not grant an alternate payee any of the rights, options or privileges of a member under this Title; and

(g) requires the member to execute an authorization allowing each alternate payee to monitor the member's compliance with the terms of the domestic relations order through access to information concerning the member maintained by the Retirement System.

(6) *Approval of domestic relations order.* Within a reasonable period of time after receipt of a domestic relations order, the executive director of the Board, or the executive director's designated representative, shall determine whether the order is an approved domestic relations order and notify the member and each alternate payee of this determination. Notwithstanding any other provision of law, the exclusive remedy of any member or alternate payee aggrieved by a decision of the executive director of the Board, or the director's designated representative, shall be the right to an adjudication by the Board pursuant to § 22-1202 (Hearings and Appeals).

(7) *Exceptions.* The requirements and conditions for the acceptance of a domestic relations order as set forth in subsection (5) shall not apply to any domestic relations order which is an order for support as that term is defined in 23 Pa. C.S. Section 4302 (relating to definitions) or an order for the enforcement of arrearages as provided in 23 Pa. C.S. Section 3703 (relating to enforcement of arrearages). These orders shall be accepted to the extent that they do not attach moneys in excess of the limits on attachments as established by the laws of this Commonwealth and the United States.

(8) *Irrevocable beneficiary.* Notwithstanding any other provision of this Title, a domestic relations order may provide for an irrevocable beneficiary. A domestic relations order requiring the nomination of an irrevocable beneficiary shall be deemed to be one that requires a member to nominate an alternate payee as a beneficiary and that prohibits the removal or change of that beneficiary without approval of a court of competent jurisdiction, except by operation of law. Such a domestic relations order may be certified as an approved domestic relations order by the executive director of the Board, or the director's designated representative, after the member makes such nomination, in which case the irrevocable beneficiary so ordered by the court cannot be changed by the member without approval by the court.

(9) *Irrevocable survivor.* Notwithstanding any other provision of this Title, a domestic relations order may provide for an irrevocable survivor. A domestic relations order requiring the designation of an irrevocable survivor shall be deemed to be one that requires a member to designate an alternate payee as a survivor and that prohibits the removal or change of that survivor without approval of a court of competent jurisdiction, except by operation of law. Such a domestic relations order may be certified as an approved domestic relations order by the executive director of the Board, or the executive director's designated representative, in which case the irrevocable survivor so ordered by the court cannot be changed by the member without approval by the court.

(10) *Ineligible designations of beneficiary or survivor; exception.* Notwithstanding the provisions of subsections (8) and (9) of this § 22-1303, a person ineligible to be designated as a survivor may not be designated an irrevocable survivor

and a person ineligible to be designated as a beneficiary may not be designated an irrevocable beneficiary, except that a former spouse named as either an irrevocable beneficiary or an irrevocable survivor in a domestic relations order shall be deemed to be a "person whom the member is legally obligated to support" for purposes of § 22-501 (Service-Connected Death and Health Care Benefits), § 22-502 (Ordinary Death Benefits), § 22-701 (Designation of Beneficiaries) and § 22-702 (Designation of Survivors).

(11) *Designation of survivor by domestic relations order; prohibition.*

Although the designation of a survivor pursuant to § 22-306 (Retirement and Survivorship Benefit Options) is irrevocable (unless made in accordance with § 22-702 (Designation of Survivors)), the Board may implement the provisions of a domestic relations order requiring a member to designate a former spouse or a child of the member as a survivor under Option 1, Option 2 or Option 3 of § 22-306 (Retirement and Survivorship Benefit Options). In no event shall the Board recognize the designation of any survivor not otherwise qualified as a survivor under Option 4 of § 22-306.

(12) *Amendment of approved domestic relations orders.*

(a) Deceased alternate payee. If the alternate payee predeceases the member and benefits are payable to the alternate payee, the divorce court may amend the approved domestic relations order to substitute a person for the deceased alternate payee to receive any benefits payable to the deceased alternate payee.

(b) Recertification of amended order. If a divorce court amends the approved domestic relations order for any reason, then the amended order must be submitted for reconsideration as an approved domestic relations order as set forth in this Title.

§ 22-1304. Prohibited Conduct; Penalties.

Any person who knowingly makes any false statement or falsifies or permits to be falsified any record or records of the Retirement System in any attempt to defraud the Retirement System as a result of such act, or knowingly engages in any other attempt to defraud the Retirement System, shall be subject to a fine not to exceed three hundred dollars (\$300). Such penalty shall be in addition to any penalties made and provided by the laws of the United States and the Commonwealth of Pennsylvania.

§ 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.