

# PHILADELPHIA BOARD OF PENSIONS AND RETIREMENT

## REGULATION NO. 3

### REFUND OF CONTRIBUTIONS

**WHEREAS**, The Board of Pensions and Retirement is empowered by Section 8-407 of the Home Rule Charter and Section 22-107 of the Public Employees Retirement Code (“Retirement Code”) to make all necessary regulations to carry into effect the provisions of the Code<sup>1</sup>; and

**WHEREAS**, The Retirement System is funded by employee contributions from active employees<sup>2</sup>, employer contributions from the City, and investment return on the assets of the System; and

**WHEREAS**, Section 22-902 of the Retirement Code provides that all eligible employees paid out of the Treasury of the City shall pay, by payroll deduction, contributions to the Retirement System; and

**WHEREAS**, Section 22-903 of the Retirement Code provides that members may, under certain conditions, be refunded their employee contributions; and

**WHEREAS**, The Board has determined it appropriate to adopt a regulation in order to memorialize the Board’s procedure and formalize the Board’s past and present interpretations of the provisions relating to the refund of contributions;

**NOW THEREFORE**, The Board of Pensions and Retirement hereby adopts this amended Regulation No. 3, relating to the refund of contributions under the Retirement Code.

**3.1 Entitlement to Refund.** Entitlement to a refund exists if the employee separates before becoming eligible to receive “death, disability or retirement” benefits. Accordingly, those phrases are interpreted to create three classes of members, as follows:

**3.1.1 Members not entitled to any benefit.** Members who separate and are not vested and not of retirement age under their plan may withdraw their contributions if they have not been awarded an Ordinary Disability retirement benefit.

**3.1.2. Vested Members.** Members who separate from employment and are vested but below Minimum Retirement Age (not including early retirement) under the applicable section of

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<sup>1</sup> Title 22 of the Philadelphia Code, the Public Employees Retirement Code, supersedes all prior statutes and Ordinances and incorporates the plans and provisions set forth therein. See Section 22-108, Statutes and Ordinances Superseded. Accordingly, this amended regulation refers only to the Public Employees Retirement Code.

<sup>2</sup> For the purposes of this regulation, “employees” refers to any active employee of the City of Philadelphia or of any quasi-governmental agency identified by Ordinance.

their plan relating to service retirement may withdraw their contributions if they have not been awarded an Ordinary Disability benefit, but will be advised that they would thereby lose their right to a separation service pension upon later reaching retirement age, and their rights upon any re-employment are not assured (see Paragraph 3.5 below).

**3.1.3 Members entitled to a benefit.** Members who separate on or after reaching the Minimum Retirement Age under their plan, employees who have applied for early retirement, or members who have been awarded an Ordinary Disability retirement benefit, may not withdraw their contributions.

**3.2 Option to leave contributions in the System.** Pursuant to Section 22-903 of the Retirement Code (“shall at the written request of the member be repaid”) and Section 22-203(b)(.3) (“Employees who, upon separation from employment with the City . . . did not withdraw their pension contributions”) the Board will refund the member’s contributions only if requested in writing by the member. Members who are not yet entitled to retire may choose to leave their contributions in the system upon separation, and thereby preserve their membership in the plan they are in upon separation

**3.2.1 Exception for Minimum Refunds.** The staff of the Board may, upon the separation of any nonvested employee with \$100 or less in accrued contributions, automatically refund the contributions without the necessity of contacting the employee for a decision on disposition of the funds.

**3.3 Effect of Refund of Contributions.** Upon a member’s receipt of a refund of his or her contributions, all rights in the Municipal Retirement System cease and he or she is no longer a member of the System. The former member will not be permitted to reverse his or her decision in any way, including by paying back the contributions, nor will he or she be entitled to apply for any other pension benefit . Similarly, the rights of any beneficiary or survivor based on that former member’s service cease. If the former member is later reinstated to City employment, he or she may be permitted to purchase service credit for the prior service under certain conditions, depending on the applicable pension legislation at the time of re-employment (see Paragraph 3.5 and 3.6 below).

**3.3.1 Rescinded.**

**3.4 Acknowledgements.** The Board’s staff shall design and put into use appropriate forms for members to sign upon withdrawing contributions, to acknowledge the effect of such refund .Such forms shall expressly advise members that withdrawal of contributions will cut off their ability to apply for Service Connected or Ordinary Disability benefits.

**3.5 Repurchase of Prior Service.** Except as provided in Paragraph 3.6below, the right of a rehired employee to purchase service credit for prior City service shall be governed by the applicable provisions of whatever ordinance governs at the time of re-hire, currently Retirement Code §22-803 Re-hired employees who had withdrawn their contributions may be subject to any intervening changes in legislation.

**3.6 Repurchase permitted by court order, Civil Service Commission order, arbitration award, collective bargaining agreement, settlement, or the like.** Upon receipt of any court order, Civil Service Commission Order, arbitration award, collective bargaining agreement, settlement, or the like that provides for reinstatement of a separated employee, the Board's staff shall review the document to determine the effect on the employee's pension rights. Where such a document either implicitly or explicitly provides for retroactive pension service credit for a period for which the employee either made no contributions or received a refund of the contributions but is silent on the terms of the employee repaying such contributions, the Board shall bill the employee, by letter sent by certified mail, for the respective contributions. The employee shall be allowed, and the letter shall so state, 90 days from the date of the letter to make full payment of any needed contributions for any past service, subject to the provisions of Section 22-806, Installment Payments. Any reinstated employee who does not make timely full payment in accordance with this Regulation shall be denied the credit for the associated service, and shall be treated as having a break in service for that period. Beyond the 90 day period, employees may purchase pension credit for such periods pursuant to Section 22-803 of the Retirement Code. Further, any employee who fails to repay necessary contributions within 90 days will become a member of the applicable plan in effect on the date of reinstatement, and any rights that the employee may have had in a previous plan shall cease. Notwithstanding any other language in this paragraph, where any order, award, or agreement provides for back pay to be paid by the City for a period for which the employee is to be "made whole" or accorded full pension rights, the employee will not be billed for the employee pension contributions for that period, if the contributions can be, and are, deducted from any back pay payments.

**3.7 Rescinded.**

**3.8 Issues not addressed.** This regulation explicitly does not address the tax consequences of the payment, refund or repayment of contributions, nor does it address attachments of contributions or offsets against contributions.

Approved by the Board January 15, 1998

Effective February 27, 1998

Amended by deleting references to predecessor Ordinances throughout, revising ¶¶ 3.1, 3.1.2, 3.1.3., 3.2, 3.3, 3.4, 3.5, 3.6, and rescinding ¶¶ 3.3.1 and 3.7 by vote of the Board December 5, 2013, effective April 21, 2014.