



## MEMORANDUM

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**DATE:** July 1, 2020

**TO:** Mayor Eveleth and the Owosso City Council

**FROM:** Amy K. Kirkland, City Clerk

**SUBJECT:** Retirement Board Ordinance Amendments

### RECOMMENDATION:

I recommend Council set a public hearing for August 3, 2020 to receive citizen comment on the proposed amendments to the Retirement Ordinance

### BACKGROUND:

Effective June 1, 2020 the assets of the City of Owosso Employees' Retirement System were transferred to MERS. Now the Retirement Ordinance must be amended to reflect that change as well as instill authority to administer the system with MERS. The attached changes leave intact the provisions governing benefits.

**RESOLUTION NO.**

**SETTING A PUBLIC HEARING TO  
AMEND CHAPTER 2, ADMINISTRATION,  
ARTICLE VII, MUNICIPAL EMPLOYEES' PENSIONS**

WHEREAS, the City of Owosso, Shiawassee County, Michigan has an independent pension system covering a portion of its employees; and

WHEREAS, the City has transferred custody and administration of the system to the Municipal Employees' Retirement System of Michigan; and

WHEREAS, the ordinance governing the pension system must be amended to reflect said changes; and

WHEREAS, a public hearing shall be scheduled to receive citizen comment regarding the amendments.

NOW THEREFORE BE IT RESOLVED, THAT THE CITY OF OWOSSO ORDAINS:

SECTION 1. AMENDMENT. That Chapter 2, Administration, Article VII, *Municipal Employees' Pensions*, Section 2-401, Name and establishment shall be amended as follows:

Sec. 2-401. - Name and establishment.

**(a)** The city employees' retirement system, hereinafter called the "retirement system," is hereby established for the purpose of providing retirement allowances and survivor benefits for the employees of the city and their eligible dependents. The retirement system shall be maintained for the exclusive benefit of members and is intended to comply with the requirements of section 457(a) of the Internal Revenue Code of 1986, as amended from time to time (the "code"), with the requirements of any regulations issued thereunder, and with the requirements of any other applicable law. The trustees of the trust established as part of this retirement system are defined in section 2-403.

In accordance with the terms of the retirement system, the trustees have the ability at any time, and from time to time, to amend the retirement system.

To be administered effective December 31, 2005, this retirement system is amended and restated in its entirety to comply with the requirements of the Internal Revenue Code of 1986, as amended by the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Uniformed Services Employment and Reemployment Rights Act of 1996, the Internal Revenue Service Restructuring and Reform Act of 1998, the Community Renewal Tax Relief Act of 2000, the Economic Growth and Tax Relief Reconciliation Act of 2001 and all applicable rulings and regulations issued thereunder.

~~(B)~~**(b)** As of June 1, 2020, or as soon thereafter as the transfer to the Michigan Employee Retirement System ("MERS") of all assets takes place, the Board of Trustees established by the aforesaid Chapter 2, Article VII, Section 2-403, as amended, and now existing pursuant thereto shall cease to exist. The previous authority to administer the retirement system established by this chapter for all active City employees and City retirees, both past and future, and all other active employees previously covered by this ordinance will be administrated and managed by MERS effective June 1, 2020. Any reference in this ordinance to the duties of the Board of Trustees shall be performed by MERS.

**(c)** The balance of the assets currently held by the Trustees belonging to the City of Owosso Retirement System established by the aforesaid Chapter 2, Article VII, as amended, shall be transferred to MERS on or before June 1, 2020, but remain the assets of the City of Owosso Retirement System and shall be administered by MERS as established under this

chapter. When transferred, MERS shall credit said assets to the various funds and accounts provided for in this chapter, according to the purpose for which such assets were held and credited in the retirement system created under the aforesaid Chapter 2, Article VII, as amended.

SECTION 2. ADDITION. That the definition for MERS shall be added to Chapter 2, Administration, Article VII, *Municipal Employees' Pensions*, Section 2-402, Definitions as follows:

**MERS means Municipal Employee Retirement System. The Municipal Employees' Retirement System of Michigan is an independent, professional retirement services company that administers the retirement plans for Michigan's local units of government on a not-for-profit basis.**

SECTION 3. REPEAL & REPLACE. That Chapter 2, Administration, Article VII, *Municipal Employees' Pensions*, Section 2-403, Board of Trustees, be repealed in its entirety and restated as follows:

Sec. 2-403. - Board of trustees.

- ~~(a) There is hereby created a board of trustees (the "board") in whom is vested the general administration, management, and responsibility for the proper operation of the retirement system and for making effective the provisions of this article. The board shall consist of seven (7) trustees as follows:~~
- ~~(1) The mayor or a councilman who is not eligible to participate in the retirement system as a member or retiree;~~
  - ~~(2) A second councilman who is not eligible to participate in the retirement system as a member or retiree;~~
  - ~~(3) A citizen who has the qualifications required by the Charter for holding an elective city office and who is not eligible to participate in the retirement system as a member or retiree, to be appointed by the council;~~
  - ~~(4) A police officer member to be chosen by the police officer members;~~
  - ~~(5) A firefighter member to be chosen by the firefighter members; and~~
  - ~~(6) Two (2) general city members: One (1) general city member to be chosen by non-unionized general city members and one (1) general city member to be chosen by the unionized general city members.~~
  - ~~(7) If there are no active members of the employee groups listed in subsections (4), (5) and (6) above able or willing to serve, a retired member of the group may be elected by active and retired members of such group.~~
- ~~(b) The choosing of the trustees provided for in paragraphs (4), (5), and (6), above, shall be held in the month of May in each year under such rules and regulations as the board shall, from time to time, adopt.~~

- (a) The City established, with the creation of the City Pension, a board of trustees (the "board") in whom was vested the general administration, management, and responsibility for the proper operation of the retirement.**
- 1) The MERS shall have the responsibility for the general administration and management of the system, and for making effective and construing the provisions of this chapter. It shall have the power to negotiate and execute legal documents provided that any such legal document be approved by the City.**
  - 2) The City Board Trustees shall cease to exist as of June 1, 2020, or as soon thereafter as all of the assets are transferred to MERS, as provided herein. Thereafter the aforementioned date or condition, any reference of the "board" hereinafter shall be construed to be MERS.**

SECTION 4. REPEAL. That Sections 2-404 through 2-408 of Chapter 2, Administration, Article VII, *Municipal Employees' Pensions*, be repealed in their entirety.

~~Sec. 2-404. - Trustees' terms of office-oath.~~

~~The regular term of office of the trustees provided for in subsections 2-403(a)(3), (4), (5), and (6) shall be for four (4) years. The term of office shall expire at the end of each four (4) year period subsequent to July 1, 1965, for the police officer member Trustee; July 1, 1966, for the first general city member trustee; July 1, 1967, for the fire fighter member trustee; and July 1, 1968 for the second general city member trustee. The citizen (non-employee) trustee shall serve at the pleasure of the council. Each trustee shall, within ten (10) days after trustee has been appointed or chosen, as the case may be, take the oath of office which shall be administered by the city clerk.~~

~~Sec. 2-405. — Vacancy on board — How filled.~~

~~If a vacancy occurs on the board, the vacancy shall be filled, within sixty (60) days from and after the date of the vacancy, in the same manner as required for making appointments or choices to position of trustee.~~

~~Sec. 2-406. — Board meetings.~~

~~The board shall hold meetings regularly, at least one (1) in each quarter in each year, and shall designate the time and place thereof, by rule. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. Such rules shall become effective when a copy thereof is filed with the city clerk. A copy of such rules shall also be placed in the Owosso Public Library. All meetings of the board shall be public. The trustees shall serve without compensation for their service as such.~~

~~Sec. 2-407. — Quorum — Each trustee entitled to vote.~~

~~Five (5) trustees shall constitute a quorum at any meeting of the board. Each trustee shall be entitled to one (1) vote on each question before the board, at least five (5) concurring votes shall be necessary for a decision by the trustees.~~

~~Sec. 2-408. — Retirement system officers.~~

- ~~(a) — The officers of the board shall be a chairman and a vice chairman, elected by the board from the current trustees.~~
- ~~(b) — The city clerk shall serve as secretary to the board, and the city clerk shall be the administrative officer of the retirement system.~~
- ~~(c) — The city treasurer shall be treasurer of the retirement system and the custodian of its assets. All payments from moneys of the retirement system shall be made by the city treasurer according to charter provisions and any ordinance relating thereto which is adopted by the council. No payment shall be made unless it shall have been previously authorized by a specific or continuing resolution of the board.~~
- ~~(d) — The board shall appoint an actuary who shall be the technical advisor to the board on matters regarding the operation of the retirement system, and the actuary chosen shall perform such other duties as are required of the actuary under this article.~~
- ~~(e) — The board shall appoint as medical director a physician who is not eligible to participate in the retirement system as a member or retirant. The medical director shall be responsible to and shall hold office at the pleasure of the board. The medical director shall arrange for and pass upon all medical examinations required under this article.~~

~~The medical director shall investigate all essential statements and certificates of a medical nature made by or on behalf of a member or retirant, and the medical director shall report in writing to the board the conclusions on medical matters referred to the medical director by the board.~~

~~(f) The board may employ such professional and other services as are required for the proper operation of the retirement system. The compensation for such services shall be fixed by the board subject to the approval of the council.~~

~~(g) The city attorney shall be the legal advisor to the board. A copy of all written opinions rendered by the city attorney to the board shall be filed with the city clerk.~~

SECTION 5. REPLACE. That references to the "board" be replaced with "MERS" in Sections 2-409, 2-414, and 2-432 through 2-435 as follows:

Sec. 2-409. - Records of retirement system—Annual report.

- (a) The city clerk shall keep, or cause to be kept, in convenient form, such data as shall be necessary for an actuarial valuation of the assets and liabilities of the retirement system. The ~~board~~ **MERS** shall render a report to the city manager and the council or their designee within ninety (90) days after the close of each fiscal year of the city showing the fiscal transactions of the retirement system for the year ending the preceding June 30, and the last balance sheet showing the financial condition of the retirement system by means of an actuarial valuation of the assets and liabilities of the retirement system.
- (b) The board shall from time to time adopt such mortality, service, and other tables of experience, and a rate or rates of regular interest, as are necessary to maintain the operation of the retirement system on an actuarial basis.

Sec. 2-414. - Eligible domestic relations orders.

An eligible domestic relations order ("EDRO") is a signed domestic relations order issued by a state court which creates, recognizes or assigns to an alternate payee(s) the right to receive all or part of a member's retirement system benefit that is or will become payable to the member. An alternate payee is a spouse, former spouse, child, or other dependent of a member who is treated as a beneficiary under the retirement system as a result of the EDRO. The board may establish EDRO procedures, but in the absence of such procedures, the board will determine if a domestic relations order is an EDRO in accordance with the following:

- (1) ~~Board of trustees'~~ **MERS** determination: Promptly upon receipt of a domestic relations order, the board will notify the participant and any alternate payee(s) named in the order of such receipt and will include a copy of this section. Within a reasonable time after receipt of the order, the board will make a determination as to whether or not the order is a EDRO as defined in MCL 38.1701 et seq. and will promptly notify the member and any alternate payee(s) in writing of the determination. If the order is determined to be an EDRO, the retirement system shall begin the payment of the benefit with the next monthly payment or upon retirement of the participant.
- (2) Specific requirements of an EDRO: In order for a domestic relations order to be an EDRO, it must specifically state all of the following:
  - a. The name, last known mailing address (if any) and the social security number of the member and each alternate payee(s) covered by the order;
  - b. The dollar amount or percentage of the benefit to be paid to each alternate payee, or the manner in which the amount or percentage is to be determined;
  - c. The number of payments or period to which such order applies; and
  - d. The name of the plan to which the order applies.

The domestic relations order will not be deemed an EDRO if it requires the retirement system to provide any type or form of benefit, or any option not already provided for in the retirement system, or increased benefits determined on the basis of the actuarial value, or benefits in

excess of the member's retirement system benefit, or payment of benefits to an alternate payee(s) required to be paid to another alternate payee under another EDRO.

- (3) Disputed orders: If there is a question as to whether or not a domestic relations order is a EDRO, there will be a delay in any payout to any payee(s) including the member, until the status is resolved. If the retirement system determines that the order is not an EDRO, the retirement system shall promptly notify the alternate payee(s) of this determination. The notification shall specify the reasons the order was not determined to be an EDRO. This determination does not prohibit the alternate payee(s) or the court from filing an amended order with the retirement system for redetermination.
- (4) Death of alternate payee(s): If an alternate payee(s) dies before receiving any payment of a benefit pursuant to an EDRO, that interest reverts to the member.

Sec. 2-432. - Expense fund.

The expense fund shall be the fund to which shall be credited all money provided by the city to pay the administration expense of the retirement system, and from which shall be paid all expenses necessary in connection with the administration of the retirement system. The ~~board~~-MERS shall, annually, certify to the council, according to budget procedure, the amount of appropriation necessary to administer the retirement system during the ensuing fiscal year. The council shall appropriate such amount to the credit of the expense fund.

Sec. 2-433. - Investment of assets.

- (a) The ~~board~~-MERS shall be the trustees of the assets of the retirement system, which shall be invested in a trust. The trustees shall have full power to invest and reinvest such assets subject to the provisions of Act No. 314 of the Public Acts of 1965, as amended, and as it might from time to time be amended or replaced by successor acts.
- (b) The ~~board~~-MERS shall have full power to hold, purchase, sell, assign, transfer, and dispose of any investments in which any of the moneys of the retirement system have been invested as well as the proceeds of such investments and any moneys belonging to the system. There shall be kept on deposit available cash not exceeding five (5) percent of the total assets of the retirement system. The trustees shall ensure that all investments, amounts, property and rights held under the trust fund are held for the exclusive benefit of members and their beneficiaries. The trust fund shall be held in trust pursuant to the trust agreement for the exclusive benefit of members and their beneficiaries and defraying reasonable expenses of the retirement system and of the trust fund. It shall be impossible, prior to the satisfaction of all liabilities with respect to members and their beneficiaries, for any part of the assets and income of the trust fund to be used for, or diverted to, purposes other than for the exclusive benefit of participants and their beneficiaries.
- (c) The description of the various funds of the retirement system shall be interpreted to refer to the accounting records of the retirement system and not to the segregation of assets in the funds of the retirement system.

Sec. 2-434. - Income fund; crediting of regular interest.

- (a) The income fund shall be the fund to which shall be credited all regular interest, dividends and other income derived from investments of the retirement system, all gifts and bequests received by the system, all unclaimed accumulated contributions as provided in this article, and all other moneys received by the retirement system the disposition of which is not specifically provided in this article. There shall be transferred from the income fund all amounts required to credit regular interest to the members savings fund, retirement reserve fund and pension reserve fund, as provided in this article. Whenever the board determines the balance in the income fund is more than sufficient to cover current charges to the fund such excess, or any part thereof, may be used to provide contingency reserves or to meet special requirements of the other funds of the retirement system. Whenever the

balance in the income fund is insufficient to meet the charges to the fund the amount of the insufficiency shall be transferred from the pension reserve fund to the income fund. A member's accumulated contributions transferred from the members savings fund to the income fund may be paid from the income fund upon claim for same approved by the board **MERS**.

- (b) The ~~board~~ **MERS** shall, at the end of each fiscal year, allow and credit regular interest on the members' individual balances in the members savings fund, computed on the individual balances at the beginning of the fiscal year; and on the mean balances during the fiscal year in the pension reserve fund and retirement reserve fund.

Sec. 2-435. - Assignments prohibited.

The right of a person to a pension, to the return of accumulated contributions, the pension itself, any option benefit, any other right accrued or accruing to any person under the provisions of this article, and any moneys belonging to the retirement system shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever, and shall be unassignable, except as is specifically provided in this article. If a member is covered by a group insurance or prepayment plan participated in by the city, and should member be permitted to, and elect to, continue such coverage as a retirant, member may authorize the ~~board~~ **MERS** to have deducted from member's pension the payments required of member to continue coverage under such group insurance or prepayment plan. The city shall have the right of set off for any claim arising from embezzlement by or fraud of a member, retirant or beneficiary.

SECTION 6. PUBLIC HEARING. A public hearing is set for Monday, August 3, 2020 at 7:30 p.m. for the purpose of hearing citizen comment regarding the proposed amendments to Chapter 2, Administration, of the Code of the City of Owosso.

SECTION 7. AVAILABILITY. This ordinance may be purchased or inspected in the city clerk's office, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m.

SECTION 8. EFFECTIVE DATE. This amendment shall become effective 20 days after approval.