

Chapter 2

ADMINISTRATION*

* **Charter References:** Municipal powers and liabilities, Ch. 3.

Cross References: Community development, Ch. 11; emergency preparedness, Ch. 12; administration of flood protection standards, § 14-26 et seq.; library, Ch. 15; offenses affecting government functions, § 19-26 et seq.; planning, Ch. 23; taxation, Ch. 32; utilities and services, Ch. 34; administration of sewer service, § 34-201 et seq.; administration and enforcement of zoning § 38-476 et seq.

State Law References: Standards of Conduct and ethics, MCL 15.341 et seq.; freedom of information act, MCL 15.231 et seq.

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ARTICLE I.
IN GENERAL

Secs. 2-1--2-15. Reserved.

ARTICLE II.
COUNCIL*

* **Charter References:** City council, Ch. 5; city legislation, Ch. 6; elections, Ch. 13.
State Law References: Standards of conduct and ethics, MCL 15.341 et seq.; open meetings act, MCL 15.261 et seq.

Secs. 2-16--2-50. Reserved.

ARTICLE III.
ADMINISTRATIVE PLAN OF THE CITY*

* **Editors Note:** Ord. 656, § 1, adopted April 1, 2004, amended the Code by repealing former art. III, §§ 2-51--2-53, 2-76--2-82, 2-101--2-106, 2-116--2-118, 2-136, 2-137, 2-151, 2-152, 2-166, 2-167, 2-196, and 2-197; and added a new art. III. Former art. III pertained to administrative service; and derived from the Code of 1977, §§ 1.31, 1.36, 1.40, 1.41, 1.43, 1.51--1.53, 1.61, 1.66, 1.67, 1.71, 1.91, and 1.101--1.107; and Ord. No. 529, adopted May 15, 1995.
Charter References: Officers, Ch. 4; the administrative service, Ch. 7; municipal employees pensions, Ch. 16.
State Law References: Standards of conduct and ethics, MCL 15.341 et seq.; freedom of information act, MCL 15.231 et seq.

DIVISION 1.
GENERALLY

Sec. 2-51. Division of the administrative service.

The administrative service of the city shall be under the supervision and direction of the city manager, except as provided by the City Charter, and shall be divided into the following offices and departments, each of which shall be the responsibility of and under the control of an administrative officer or department director as listed below opposite such office or department:

Department	Department Director
Department of public safety	Director of public safety
Department of utilities, engineering and public services	Director of utilities, engineering and public services
Department of economic development and neighborhood services	Director of economic development and neighborhood services

Department of financial and customer services	Director of financial and customer services
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Office	Officer/Director
Assessor's office	City assessor
Attorney's office	City attorney
Planning, building safety and code enforcement office	Director of planning, building safety and code enforcement
Clerk's office	City clerk
Human resources office	Director of human resources
Finance office	Finance director
Manager's office	City manager
Treasurer's office	City treasurer

(Ord. No. 656, § 1, 4-19-04; Ord. No. 695, § 1, 4-21-08)

Sec. 2-52. City officers.

The officers of the city shall be assessor, city manager, clerk, director of public safety, finance director, treasurer and the deputies of any of them.

((Ord. No. 656, § 1, 4-19-04; Ord. No. 695, § 1, 4-21-08)

Sec. 2-53. Vacancies in office.

(a) In cases of a vacancy in office, the absence from the city of an administrative officer or department director, or the inability on the part of an administrative officer or department director to perform the duties of the position due to illness, injury or other reasons, the city manager may designate an interim acting administrative officer or department head or perform personally the functions of the office.

(b) In the case of his or her own absence from the city, the city manager may designate an administrative officer or department director to perform the duties of the office of manager. In making such a designation, the city manager shall establish such limitations on the authority of the individual appointed to perform his or her duties as he or she deems appropriate.

(c) If the city manager is unable to perform the duties of his or her office due to illness, injury or other reasons, the city council may designate an individual to act as interim acting city manager or may assign the duties of the office to one (1) or more administrative officers or department directors.

((Ord. No. 656, § 1, 4-19-04; Ord. No. 695, § 1, 4-21-08)

Secs. 2-54--2-75. Reserved.

DIVISION 2.

ADMINISTRATIVE OFFICES AND DEPARTMENTS*

* **Editors Note:** Ord. No. 695, § 1, adopted April 21, 2008, repealed former art. III, §§ 2-76--2-88, and enacted a new art. III, §§ 2-76--2-86. Former art. III pertained to similar subject matter, and derived from Ord. No. 656, § 1, adopted April 19, 2004.

Sec. 2-76. Assessor's office.

The assessor's office shall be headed by the city assessor who shall have the duties and responsibilities detailed for such office in the City Charter, this Code and state statutes.
(Ord. No. 695, § 1, 4-21-08)

Sec. 2-77. Attorney's office.

The attorney's office shall be headed by the city attorney who may be either an employee of the city or whose services may be provided pursuant to contract. The duties and responsibilities of the city attorney shall be those detailed for such position in the City Charter, this Code, and state statutes. The city attorney shall be charged with overseeing the performance of all legal services of the city including those of legal adviser to the council and to all administrative officers and department directors of the city, and the prosecution of all cases arising out of the violation of the provisions of the city ordinances. The city attorney shall also represent, or provide for the representation of, the city in matters in which the city is interested coming before any court or tribunal and shall perform such other duties as may be required by the council. The city attorney shall be charged with the responsibility for calling to the attention of the council all matters of law affecting the city.
(Ord. No. 695, § 1, 4-21-08)

Sec. 2-78. Clerk's office.

The clerk's office shall be headed by the city clerk who shall have the duties and responsibilities detailed for such office in the City Charter, this Code and state statutes.
(Ord. No. 695, § 1, 4-21-08)

Sec. 2-79. Department of economic development and neighborhood services.

The department of economic development and neighborhood services shall be headed by the director of economic development and neighborhood services. He or she shall have the responsibility for city planning, including the development of master plans, housing plans, recreation plans and the like, and for overseeing activities related to economic development, housing development, downtown development, neighborhood development, grant management, city marketing, business services, and similar activities. In performing his or her duties, the director of economic development and neighborhood services shall coordinate his or her activities with those of other city departments that have responsibilities related to the planning and development activities with which he or she is engaged, and for such other responsibilities that shall be designated from time to time by the city manager to be performed by the department.
(Ord. No. 695, § 1, 4-21-08)

Sec 2-80. Department of financial and customer services.

The department of financial and customer services shall be headed by the director of financial and customer services. He or she shall have the responsibilities of customer service coordination for the city. The director shall also coordinate and manage city financial transactions, shall supervise the clerk's office, to the extent permitted by law, and for such other responsibilities that shall be designated from time to time by the city

manager to be performed by the department.
(Ord. No. 695, § 1, 4-21-08)

Sec. 2-81. Department of public safety.

(a) The department of public safety shall be headed by the director of public safety who shall have the duties and responsibilities detailed for the offices of police chief and fire chief in the City Charter, this Code and state statutes and such other duties and responsibilities associated with management of police, fire and emergency medical response services in the city, and for such other responsibilities that shall be designated from time to time by the city manager to be performed by the department.

(b) The department of public safety shall consist of a police division and a fire and emergency medical response division.

(c) The police division shall have the duties and responsibilities detailed for police departments in the City Charter, this Code and state statutes.

(1) The director of public safety shall promulgate rules for the government of police officers of the city, subject to approval by the city manager, which shall be entered in a book of police division rules and orders and may be amended or revoked by the public safety director upon written notice to and approval of the city manager. Such rules may establish one (1) or more bureaus within the police division. Any such bureau shall be supervised by an officer of the police division who shall be responsible for the particular functions of the police division assigned to the particular bureau by the director of public safety or his designee. It shall be the duty of all members of the police department to comply with such rules and orders while effective.

(d) The fire and emergency medical response division shall have the duties and responsibilities detailed for fire departments in the City Charter, this Code and state statutes. It shall have also the duties and responsibilities detailed in this Code and state statutes for emergency medical response and ambulance departments.

(1) The director of public safety shall promulgate rules and regulations for the government of the fire and emergency medical response division, subject to the approval of the city manager, which shall be entered in a book of fire and emergency medical response division rules and which may be amended or revoked by the public safety director upon written notice to and approval of the city manager. It shall be the duty of all members of the fire and emergency medical response division to comply with such rules and orders while effective.

(Ord. No. 695, § 1, 4-21-08)

Sec. 2-82. Department of utilities, engineering and public services.

(a) The department of utilities, engineering and public services shall be headed by the director of utilities, engineering and public services who shall have the responsibility for supervising city engineering services, water and wastewater public utilities, and public services as provided in the City Charter. The director of utilities, engineering and public services shall have the responsibility for the design and construction of public improvements in the city, except when that responsibility shall have been assigned by the city manager to

another city officer or department director, and he or she shall have the responsibility for assuring that the public facilities and improvements are maintained in a satisfactory condition, and for such other public services that shall be designated from time to time by the city manager to be performed by the department.

(b) The department of utilities, engineering and public services shall consist of a public utilities division and a public services division.

(c) The utilities division shall have the duties and responsibilities detailed for water and wastewater public utilities in the City Charter, this Code and state statutes. The director of utilities, engineering and public services shall promulgate rules for the government of the city's water and wastewater public utilities, subject to approval by the city manager, and may be amended or revoked by the director of utilities, engineering and public services director upon written notice to and approval of the city manager, or by the city manager.

(d) The public services division shall have the duties and responsibilities detailed in the City Charter, this Code and state statutes associated with the repair and maintenance of streets, parks and public buildings and grounds of the city. The director of utilities, engineering and public services shall promulgate rules subject to council approval for the government of the city's public services, subject to approval by the city manager, and may be amended or revoked by the director of utilities, engineering and public services director upon written notice to and approval of the city manager, or by the city manager.
(Ord. No. 695, § 1, 4-21-08)

Sec. 2-83. Finance department.

The finance department shall be headed by the finance director who shall have the duties and responsibilities detailed for such office in the City Charter, this Code and state statutes.
(Ord. No. 695, § 1, 4-21-08)

Sec. 2-84. Manager's office.

(a) The manager's office shall be headed by the city manager who shall have the duties and responsibilities detailed for such office in the City Charter, this Code and state statutes and such additional duties and responsibilities assigned to him or her from time to time by the city council.

(b) There is hereby established within the manager's office the human resources office. The human resources office shall be headed by the director of human resources. He or she shall have the responsibility for activities related to the personnel functions of the city including, but not limited to, administration of the civil service plan, development of personnel policies and work rules, negotiation of collective bargaining agreements, overseeing the process of recruiting, hiring, disciplining and terminating employees, and the development and implementation of employee training programs. In performing his or her duties, the human resources office shall coordinate his or her activities with those of the city officers and department directors and their subordinates who are charged with the supervision of personnel in their respective offices and departments, and for such other responsibilities that shall be designated from time to time by the city manager to be performed by the department.

(c) The city manager shall have the discretion to implement the administrative plan and these amendments based upon the needs of the city, the personnel available to the city and budgeting constraints.

(Ord. No. 695, § 1, 4-21-08)

Sec 2-85. Planning, building safety and code enforcement office.

The planning, building safety and code enforcement office shall be headed by the director of planning, building safety and code enforcement who shall have the duties and responsibilities detailed for such office in this Code and state statutes, including those duties and responsibilities that are included in such uniform codes adopted by reference by the city. The director of planning, building safety and code enforcement shall also have the responsibility for supervising the work of such other employees or contractors employed by the city for the purposes of providing site plan review, code enforcement, oversight of public building management, and building, plumbing, mechanical and electrical inspection services.

(Ord. No. 695, § 1, 4-21-08)

Sec. 2-86. Treasurer's office.

The treasurer's office shall be headed by the city treasurer who shall have the duties and responsibilities detailed for such office in the City Charter, this Code and state statutes.

(Ord. No. 695, § 1, 4-21-08)

Secs. 2-87--2-100. Reserved.

DIVISION 3.

ADMINISTRATIVE POLICY AND PROCEDURE

Sec. 2-101. Department heads.

All administrative officers and department directors are responsible to the city manager for the effective administration of their respective departments and offices and all activities assigned to them. The city manager shall employ or appoint all officers, directors and employees except as otherwise provided by the City Charter or this Code. The city manager may set aside any action taken by any administrative officer or department director and may supersede such officer or director in the functions of the office or department, but as to officers appointed by the council such action shall be subject to approval by the council.

(Ord. No. 656, § 1, 4-19-04)

Sec. 2-102. All departments.

All offices and departments of the city shall comply with the following:

- (1) All administrative officers and department directors shall keep informed as to the latest practices in their particular field and shall inaugurate, with the approval of the city manager, such new practices as appear to be of benefit to the service and to the public.
- (2) Reports of the activities of each office or department shall be made to the manager as the manager directs.

- (3) Each administrative officer or department director shall be held responsible for the preservation of all public records under the officer's or director's jurisdiction. No public records, reports, correspondence or other data relative to the business of any office or department shall be destroyed or removed permanently from the files except in accordance with record retention policies and procedures approved by the city council.
- (4) Each administrative officer or department director shall be held responsible for the buildings, facilities, equipment, vehicles, tools and other assets falling under his or her jurisdiction or control. He or she shall take such steps as are consistent with prudent management practice, subject to the approval of the city manager, to safeguard such assets and to provide for necessary maintenance, repair and replacement of such assets, within budget allowances therefore, so as to insure the capacity within his or her office or department to perform the duties and responsibilities for which such assets are designed to be used.

(Ord. No. 656, § 1, 4-19-04)

Sec. 2-103. Assigned duties; rules and regulations.

(a) In addition to the duties and responsibilities provided for in the Charter, this Code, or state statutes, administrative officers and department directors shall be responsible for such other duties and responsibilities that might be assigned to them from time to time by the city manager.

(b) Provisions of this article describing the duties and responsibilities of administrative officers and department directors provided for in the Charter, this Code or state statutes shall be interpreted to include such additional duties and responsibilities as are included in rules, regulations, policies and procedures promulgated pursuant to the provisions of the Charter, this Code or state statutes.

(Ord. No. 656, § 1, 4-19-04)

Sec. 2-104. Payment of moneys.

All moneys belonging to the city shall be paid out upon presentation of a valid invoice and purchase order approved and signed by the city manager by checks drawn by the city clerk or the clerk's deputy.

(Ord. No. 656, § 1, 4-19-04)

Sec. 2-105. Approval of legal documents.

The mayor shall sign, the city clerk shall attest to, the city manager shall approve as to substance, and the city attorney shall approve as to form, all contracts and agreements requiring the assent of the city, unless otherwise provided for by law, the Charter or the provisions of this Code.

(Ord. No. 656, § 1, 4-19-04)

Sec. 2-106. Bonds.

Surety bonds, conditioned as required by section 4.8 of the Charter, shall be filed by the following officers of the city in not less than the amounts indicated:

Officer	Amount
Treasurer	\$100,000.00

Deputy treasurer	50,000.00
Finance director	100,000.00
Manager	25,000.00
Clerk	25,000.00
Deputy clerk	25,000.00
All other officers of the city and employees (except the mayor and council members)	Blanket bond, \$5,000.00

(Ord. No. 656, § 1, 4-19-04)

Secs. 2-107--2-115. Reserved.

DIVISION 4.

MUNICIPAL ORDINANCE VIOLATIONS BUREAU

Sec. 2-116. Municipal ordinance violations bureau--Established.

The city hereby establishes a municipal ordinance violations bureau (referred to hereafter in this division as "bureau") as authorized by Act No. 236 of 1961, Section 8396, to accept admissions of responsibility for municipal civil infractions in response to municipal civil infraction violation notices issued and served by authorized city officials, and to collect and retain civil fines and costs as prescribed by this Code or any ordinance.

(Ord. No. 656, § 1, 4-19-04)

Sec. 2-117. Same--Location; supervision; employees, rules and regulations.

The bureau shall be located in the police division of the public safety department, and shall be under the supervision and control of the director of public safety. The director of public safety may adopt rules and regulations for the operation of the bureau, subject to the approval of the city council, and appoint any necessary qualified city employees to administer the bureau.

(Ord. No. 656, § 1, 4-19-04)

Sec. 2-118. Same--Procedures.

The bureau shall follow and apply those procedures specified in Act No. 236 of 1961.

(Ord. No. 656, § 1, 4-19-04)

Sec. 2-119. Authorized city officials.

All officers of the police division of the department of public safety shall be considered authorized city officials pursuant to Act No. 236 of 1961.

(Ord. No. 656, § 1, 4-19-04)

Sec. 2-120--2-215. Reserved.

ARTICLE IV.
BOARDS AND
COMMISSIONS*

* **Charter References:** City election commission, § 13.6.

Cross References: Civil service board, § 2-288; downtown development authority, § 11-31 et seq.; appeals board for flood protection, § 14-33; library board, § 15-16 et seq.; city planning commission, § 23-16 et seq.; zoning board of appeals, § 38-501 et seq.; planning commission, § 38-526 et seq.

State Law References: Standards of conduct and ethics, MCL 15.341 et seq.; open meetings act, MCL 15.261 et seq.

DIVISION 1.
GENERALLY

Secs. 2-216--2-225. Reserved.

DIVISION 2.
HISTORICAL COMMISSION*

* **State Law References:** Historical activities, MCL 399.171 et seq.; historic districts, MCL 399.201 et seq.

Sec. 2-226. Established.

The Owosso Historical Commission for the city is hereby established.
(Code 1977, § 1.351)

Sec. 2-227. Purpose.

The purpose of the historical commission shall be to recognize and preserve and bring public attention to the historical treasures of the city and to promote an historical interest in the arts. (Art shall include, but not restricted to, architecture, dance, drama, literature, music, painting and sculpture.)
(Code 1977, § 1.353)

Sec. 2-228. Members; appointment, terms, etc.

The members of the historical commission shall be appointed by the council. Membership shall consist of one (1) member from the council, one (1) member from the Shiawassee Arts Council appointed annually, one (1) member from the county historical society appointed annually, and six (6) members at large appointed for three-year terms. Qualifications for the six (6) members at large shall be the same as for the council. The terms of two (2) members at large shall expire as of December 31 of each year. No member at large shall be appointed to the historical commission for more than two (2) successive terms unless one (1) year has elapsed after his or her second term expires.
(Code 1977, § 1.352; Ord. No. 494, § 1, 8-3-92)

Sec. 2-229. Ex-officio members.

Upon recommendation of the historical commission, the council may appoint ex officio members to the commission who do not have the qualifications for membership as required above. The exofficio members so appointed shall not have a vote on the historical commission, but shall sit in on an advisory capacity.
(Code 1977, § 1.352)

Sec. 2-230. General duties.

The historical commission shall be responsible for the permanent perpetuation of the history of the city through such means as may be developed by the commission and approved by the council and to include, but not be limited to:

- (1) Receipt, cataloging and preservation and security of articles of historic interest as determined by the commission.
- (2) Displaying for the public of artifacts through cooperation with other organizations and the council.
- (3) Encourage the preservation and perpetuation of historic architecture in the city, and particularly in such historic districts in the city as may be established from time to time in accordance with the principles set forth by the National Trust for Historic Preservation.

(Code 1977, § 1.355)

Sec. 2-231. Curwood Castle.

The historical commission shall be responsible for the permanent perpetuation and use of Curwood Castle and its adjoining park by such maintenance and operational programs and rules and regulations as may be proposed by the commission and approved by the council.
(Code 1977, § 1.354)

Sec. 2-232. Donations.

The historical commission shall be empowered to receive gifts and donations in the name of the city for the purposes of the commission, and shall have the sole right of determination of the use of such gifts and donations. An annual audit of gifts, donations, and disposition at a regular meeting thereof.
(Code 1977, § 1.356)

Sec. 2-233. Program sponsorship.

The historical commission shall sponsor programs for public appreciation of the arts.
(Code 1977, § 1.357)

Sec. 2-234. Committees.

The historical commission shall be empowered to appoint such committees as may be found necessary to accomplish the purposes of this division. Qualifications of committee members shall be as by policy adopted by the commission and approved by the council.
(Code 1977, § 1.358)

Secs. 2-235--2-239. Reserved.

DIVISION 3.

PARKS AND RECREATION COMMISSION

Sec. 2-240. Established.

The city parks and recreation commission is hereby established.
(Ord. No. 691, § 1, 2-4-08)

Sec. 2-241. Purpose.

The purpose of the parks and recreation commission shall be to provide quality park and recreation opportunities based upon cost, efficiency and community need.
(Ord. No. 691, § 1, 2-4-08)

Sec. 2-242. Members; appointment, terms, voting, officers.

(a) The members of the parks and recreation commission shall consist of five (5) at-large members appointed by the mayor and approved by the council. Commission members shall be residents of the city. The mayor or the designee of the mayor, with council approval, shall be an ex officio member of the commission.

(b) The five (5) at-large members shall have terms of two (2) years. The first appointment of the five (5) at-large members shall be staggered so that two (2) members are appointed for a one-year term and three (3) members shall be appointed to two-year terms. Thereafter each appointment of an at large member shall be for a two-year term unless it is an appointment to fill a vacancy in office that occurs prior to completion of a term. The ex officio member of the commission shall serve for an indefinite term at the pleasure of the mayor.

(c) Each at large member shall be entitled to one (1) vote. The ex officio member shall not have a vote. Any action shall require a majority vote of the members present at a meeting constituting a quorum. A quorum shall consist of at least three (3) members.

(d) Officers of the commission shall be elected by majority vote at the first regular meeting following the biennial city council election.

(1) The officers of the commission shall be chairperson and vice chairperson. The mayor or the mayor's designee, as an ex officio member of the committee shall serve as secretary to the commission. Other officers may be appointed as necessary to carry out the work of the commission.

- (2) The officers shall serve for a term of two (2) years. The secretary shall serve an indefinite term.
- (3) The term of the office shall run from the meeting immediately following the election of city councilmembers and expire at the meeting of the commissioners two (2) years later.
- (4) The officers shall have the following duties:
 - a. Duties of chairperson: The chairperson shall preside at all meetings of the commission and will attend appropriate meetings of the city council. In his/her absence, the vice chairperson will attend and make appropriate reports to the commission at their next regular meeting.
 - b. Duties of the vice chairperson: In the absence or disqualification of the chairperson, the vice chairperson shall assume all duties and responsibilities of the chairperson.
 - c. Duties of secretary: The secretary shall keep or cause to keep a book of minutes of all meetings of the commission. The secretary shall prepare agendas and shall give notice of regular and special meetings of the commission.
 - d. As the city representative on the committee, the secretary shall be in charge of the workup and finalization of the annual report and action plan to be presented to city council. The commission must affirm the report by majority vote of those present before presentation to the council.
- (5) Members of the parks and recreation commission shall serve without compensation.
(Ord. No. 691, § 1, 2-4-08)

Sec. 2-243. Duties of commission.

The powers and duties of the parks and recreation commission shall have the following duties as determined by the city council:

- (1) Identifying recreation needs of residents and visitors, including suggestions of new sites and facilities;
- (2) Presentation to the City Council and city staff of suggestions for park and recreation area improvements;
- (3) Development of an annual park analysis and action plan at the end of each calendar year;
- (4) Recommendation of priorities for park and recreation facilities and programs for budget consideration as needed;
- (5) Encourage citizen involvement by recommending to the city council recreation and park use based on the needs and interest of the community to assure and stimulate public interest;

- (6) Solicit to the fullest extent the cooperation of schools, local youth, countywide and charitable organizations and the public at large to discuss such issues;
 - (7) Consult with other entities regarding the quality of the parks and recreation opportunities; and
 - (8) Other special park and recreation projects at the direction of the city council.
- (Ord. No. 691, § 1, 2-4-08)

Sec. 2-244. Expenditures, fund raising.

The parks and recreation commission shall have no authority to expend the funds of the city.

The parks and recreation commission, subject to approval of the city council, may, on its own or in partnership with other entities, raise funds for improvements of the parks and other activities. Funds raised for such purposes may only be expended with city council approval.

(Ord. No. 691, § 1, 2-4-08)

Sec. 2-245. Meetings.

Regular meetings of the parks and recreation commission shall be held at such dates and times as established by resolution of the commission at its first meeting in each calendar year.

Special meetings of the parks and recreation commission may be called by any member of the commission.

All meetings of the parks and recreation commission shall be held in compliance with the Michigan Open Meetings Act.

(Ord. No. 691, § 1, 2-4-08)

Sec. 2-246. By-laws.

The parks and recreation commission shall adopt by-laws which shall govern its operation. Such by-laws and any amendments thereto shall be subject to city council approval.

(Ord. No. 691, § 1, 2-4-08)

Sec. 2-247--2-250. Reserved.

ARTICLE V.

EMPLOYEE RELATIONS*

* **Editors Note:** Ord. No. 487, § 1, adopted Feb. 3, 1992, amended the Code to read as herein set out in §§ 2-251--2-257 and 2-271--2-281. Prior to inclusion of said ordinance, §§ 2-251--2-257 and 2-271--2-281 pertained to similar subject matter and derived from the Code of 1977, §§ 1.122--1.128, 1.131--1.136, 1.141--1.147, 1.151--1.157, 1.164--1.167, 1.171--1.179, 1.180--1.182.

DIVISION 1.

GENERALLY

Sec. 2-251. Policy statement.

It is hereby declared the policy of the city that:

- (1) Employment in the city government shall be based on merit and fitness, free of personal political considerations.
- (2) Just and equitable incentives and conditions of employment shall be established and maintained to promote efficiency and economy in the operation of the city government.
- (3) Positions having similar duties and responsibilities shall be classified and compensated on a uniform basis.
- (4) Appointments, promotions and other actions requiring the application of the merit principal shall be based on systematic tests and evaluations, whenever practicable.
- (5) A productive work environment shall be maintained by fair administration of the rights and interests of employees consistent with the best interests of the public and the city.
- (6) Tenure of employees covered by this article shall be subject to good behavior, the satisfactory performance of work, and the availability of funds.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-252. Political activity.

Employees shall be selected without regard to political considerations, may not be required to contribute to any political purpose, and may not engage in improper political activity. Rules shall define the scope of improper political activity.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

State Law References: Political activities by public employees, MCL 15.401 et seq.

Sec. 2-253. Unlawful discrimination.

The city shall not discriminate with regard to hiring, terms of employment, promotion, transfer, or other conditions of employment because of race, color, creed, national origin, sex, religious affiliation, age, height, weight, marital status, disabled status, or political affiliation.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

State Law References: Unlawful discrimination by employers, MCL 37.2201 et seq.

Sec. 2-254. Nepotism.

(a) No person shall become employed who is related to a member of the council within the third degree of consanguinity or affinity.

(b) No person shall become or remain employed if such employment would result in supervisory direction and responsibility by one (1) officer or employee over another who is related within the third degree of consanguinity or affinity. Supervisory direction and responsibility shall be interpreted to include circumstances in which an officer or employee is immediately subordinate to the superior officer or employee is within the direct line of authority of the superior officer or employee.

(c) The provisions of this section shall not apply to any such relationships between employees, supervisors and council members which are in existence on the effective date of this article.
(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-255. Administrative rules.

The director of human resources shall draft, in consultation with the city manager, such rules as may be necessary to carry out the provisions of this article. These rules shall be submitted for adoption by resolution of the council. The rules shall have the force and effect of law. Amendments to the rules shall be made by resolution of the council.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-256. Training, employee service, and employee recognition programs.

The director of human resources shall encourage the improvements of service by providing employees with opportunities for training, employee service, and employee recognition programs which need not be limited to training, service, and recognition for specific jobs but may include training, service, and recognition for advancement and for general fitness for public service.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-257. Administration.

(a) The human resources program established by this article shall be administered by the director of human resources. The director of human resources shall be the city manager or his or her designee. The director of human resources shall administer all the provisions of this article and of the personnel rules, and shall prepare and recommend revisions and amendments to the personnel rules.

(b) The council may contract with any qualified person or agency for the performance of such technical services as may be desired in the establishment and operation of the personnel program.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Secs. 2-258--2-270. Reserved.

DIVISION 2.

CIVIL SERVICE

Sec. 2-271. Divisions of city service.

All officers and personnel of the city are divided into the classified service and the exempt service.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-272. Application.

The provisions of this division shall apply only to the classified service of the city unless otherwise specifically provided.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-273. Exempt service.

The exempt service shall include the following:

- (1) Administrative officers of the city as defined in section 7.1 of the CityCharter.
- (2) All officials elected by the people.
- (3) Members of appointive boards and commissions.
- (4) Persons employed or retained in a professional capacity.
- (5) Persons whose conditions of employment are subject to collective bargaining agreements.
- (6) Persons whose positions are temporary, part-time or seasonal.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-274. Classified service.

The classified service shall include all other positions in the city service which are not specifically placed in the exempt service by this article.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-275. How status determined.

The class in which each employee shall have status shall be determined in the manner provided in section 2-276.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-276. Position classification plan.

(a) *Establishment; scope.* The director of human resources shall make an analysis of the duties and responsibilities of all positions in the classified service and shall recommend to the council a position classification plan. Each position in the classified service shall be assigned to a class on the basis of the kind and level of its duties and responsibilities, to the end that all positions in the same class shall be sufficiently alike to permit use of a single descriptive title, the same qualification requirements, the same test of competence, and the same pay scale. A position class may contain one (1) position or more than one (1) position.

(b) *Revision of plan.* The initial classification plan shall be revised from time to time as changing conditions require, upon recommendations of the director of human resources and with the approval of the council. Such revisions may consist of the addition, abolishment, consolidation, division or amendment of existing classes.
(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-277. Pay plan.

(a) *Preparation.* The director of human resources under the direction of the city manager and in consultation with the finance director, shall prepare a pay plan and rules for its administration. The rate or range for each class shall be such as to reflect fairly the differences in duties and responsibilities and shall be related to compensation for comparable positions in other places in public and private employment.

(b) *Approval.* The director of human resources shall submit the pay plan and the rules for its administration to the council for adoption. The council, after public hearing, may adopt the plan and the rules, with or without amendment. All amendments shall apply uniformly to all positions within the same class.

(c) *Assignments.* After the pay plan and the rules for its administration have been adopted by the council, the director of human resources shall assign each position class to one of the pay ranges provided in the pay plan.

(d) *Amendments.* The pay plan may be amended from time to time as circumstances require, either through adjustment of rates or by reassignment of position classes to different pay ranges.
(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-278. Employment procedures.

(a) *Appointments.* Vacancies are vacant positions in the classified service which the city desires to fill. The vacancy may be filled pursuant to section 2-279 by the recall, reemployment or promotion of an employee. If not so filled the vacancy will be filled by an original appointment. Original appointments to vacancies shall be equally based on merit as determined by competitive examinations and by an interview process.

(b) *Examinations.* Examinations shall be in such form as will fairly test the abilities and aptitudes of candidates for the duties to be performed and may not include any inquiry into characteristics or affiliations which, if used as the basis for determining eligibility for employment, would constitute unlawful discrimination.

(c) *Eligibility list.* Candidates who qualify for employment shall be placed on an eligibility list for the appropriate position class in the rank order of the grades they obtained on the examination and the score received in the interview process.

(d) *Veterans preference.* Preference in entrance examinations, but not in promotion, shall be granted to qualified persons who have been members of the armed forces of the United States in time of war, and who seek to enter the service of the city within five (5) years immediately following their honorable discharge from

military service. Such preference shall be in the form of points added to the final grades of such persons, provided that they first achieve a passing grade. The preference may be as much as five (5) points for non-disabled veterans, and as much as ten (10) points for persons currently receiving compensation from the U.S. Veteran's Administration for war-service-incurred disabilities. The rank order of such persons among other eligible persons shall be determined on the basis of their augmented rating.

(e) *Promotions.* Vacancies in positions above the entrance level shall be filled by promotion whenever in the judgment of the city manager it is in the best interest of the city to do so. Promotions shall give appropriate consideration to the applicant's qualifications and record of performance.

(f) *Promotion to exempt service.* Any person in the classified service of the city who is promoted or appointed to a position not under the protection of this division shall not, in the event of demotion or dismissal from such position, or in any case where such person is not reappointed at the end of a specified term, be privileged to return to the position which he or she held before such promotion or appointment, or to a position of equal or similar rank or classification, unless approved by the city manager.

(g) *Temporary assignments.* Pending the availability of an eligibility list determined by the director of human resources to be appropriate for a class, vacancies may be filled by temporary appointment by the city manager.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord No. 698, § 1, 6-16-08)

Sec. 2-279. Eligibility lists.

(a) *Priority of lists.* Eligibility lists shall be recall lists, promotional eligibility lists and original appointment eligibility lists.

- (1) Recall lists shall contain the names of regular employees laid off in good standing for lack of funds or work or the elimination of the position by the city.
- (2) Promotional eligibility lists and original appointment eligibility lists shall be created as provided in section 2-278.
- (3) An employee who has not completed an original orientation period and is laid off for lack of work or lack of funds or resigns and withdraws his or her resignation within one (1) year may, with the approval of the director of human resources, have his name restored to the eligibility list from which his or her appointment was originally made.

(b) *Appointment procedure.* When an appointment is to be made to a vacancy, the director of human resources shall submit to the individual or individuals making the appointment the names of the three (3) persons ranked highest on the appropriate list who have indicated willingness to accept appointment. When more than one (1) vacancy is to be filled the number of names submitted shall equal the number of vacancies plus two (2).

(c) *Rules for administering lists.* Policies and procedures for administering eligibility lists shall be provided in the personnel rules, covering the duration, cancellation, replacement, and consolidation of such lists, and the removal or suspension of names of eligible persons therefrom.

(Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-280. Orientation.

Any original or promotional appointment shall be considered to be provisional in nature pending satisfactory completion of an orientation or working test period. The director of human resources shall promulgate rules and procedures relative to administration of the orientation or working test period. (Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Sec. 2-281. Discipline, demotions and separations.

The director of human resources, under the direction of the city manager, shall promulgate rules and regulations with regard to discipline, demotions and separation of employees from city employment. (Ord. No. 487, § 1, 2-3-92; Ord. No. 696, § 1, 4-21-08; Ord. No. 698, § 1, 6-16-08)

Secs. 2-282--2-315. Reserved.

ARTICLE VI.

FINANCE*

* **Charter References:** General finance, ch. 8; taxation, ch. 9.

Cross References: Any ordinance promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness, or any contract or obligation assumed by the city saved from repeal, § 1-6(1); any ordinance making any appropriation saved from repeal, § 1-6(4); any ordinance levying or imposing annual taxes saved from repeal, § 1-6(5); taxation, ch. 32.

State Law References: Municipal finance act, MCL 131.1 et seq.; uniform budgeting and accounting act, MCL 141.421 et seq.

DIVISION 1.

GENERALLY

Sec. 2-316. Investment of idle funds.

(a) The council hereby authorizes its finance director to invest idle funds of the city in accordance with Act No. 20 of the Public Acts of Michigan of 1943 (MCL 129.91 et seq.), as amended, as follows:

- (1) In bonds and other direct obligations of the United States or an agency or instrumentality of the United States;
- (2) In certificates of deposit, savings accounts, deposit accounts, or depository receipts of a bank which is a member of the federal deposit insurance corporation or a savings and loan association which is a member of the federal savings and loan insurance corporation or a credit union which is insured by the national credit union administration;

- (3) In commercial paper rated at the time of purchase within the two (2) highest classifications established by not less than two (2) standard rating services and which matures not more than two hundred seventy (270) days after the date of purchase;
- (4) In United States government or federal agency obligation repurchase agreements;
- (5) In bankers' acceptances of United States banks;
- (6) In mutual funds registered under the investment company act of 1940, title 1 of chapter 686, 54 Stat. 789, 15 USC 80a-1 to 80a-3 and 80a-4 to 80a-64, with the authority to purchase only investment vehicles that are legal for direct investment by a public corporation. However, a mutual fund is not disqualified as a permissible investment solely by reason of either of the following:
 - a. The purchase of securities on a when-issued or delayed delivery basis.
 - b. The ability to lend portfolio securities as long as the mutual fund receives collateral all times equal to at least one hundred (100) percent of the securities loaned.
 - c. The limited ability to borrow and pledge a like portion of the portfolio's assets for temporary or emergency purposes.
- (7) Obligations of the state or any of its political subdivisions that at the time of purchase are rated as investment grade by not less than one (1) standard rating service.
- (8) Obligations described in 1-7 above if purchased through an interlocal agreement under the urban cooperation act of 1967, PA 7, MCL 124.501 to 124.512.
- (9) Investment pools organized under the surplus funds investment pool act, 1982, PA 367, MCL 129.111 to 129.118.
- (10) Investment pools organized under the local government investment pool act 1985, PA 121, MCL 129.141 to 129.150.

(b) Assets acceptable for pledging to secure deposits of public funds are limited to assets authorized for direct investment under 1-7 above.
(Ord. No. 574, § 1, 1-19-99)

Secs. 2-317--2-325. Reserved.

DIVISION 2.

RESERVED*

* **Editors Note:** Ord. No. 669, § 1, adopted June 20, 2005, amended the Code by repealing former div. 2, §§ 2-326--2-328, in its entirety. Former div. 2 pertained to the budget stabilization fund, and derived from Ord. No. 398, adopted October 4, 1982.

Secs. 2-326--2-340. Reserved.

DIVISION 3.

PURCHASES, CONTRACTS AND SALES*

* **Editors Note:** Ord. No. 491, § 1, adopted May 19, 1992, amended Div. 3 to read as herein set out in §§ 2-341--2-348. Prior to inclusion of said ordinance, Div. 3, §§ 2-341--2-347 pertained to similar subject matter and derived from the Code of 1977, §§ 1.261--1.266; Ord. No. 381, § 1, adopted Sept. 21, 1981; Ord. No. 479, § 1, adopted March 4, 1991.

Sec. 2-341. Purchasing agent.

The city manager shall act as purchasing agent of the city, unless he or she shall designate another officer or employee of the city to act as purchasing agent. Any such designation shall be in writing filed with the clerk. In the event of such designation every purchase order in excess of one thousand dollars (\$1,000.00) shall be approved by the manager before being issued.

(Ord. No. 491, § 1, 5-19-92; Ord. No. 569, § 1, 6-1-98)

Sec. 2-342. Rules.

The city manager shall adopt any necessary rules respecting requisitions and purchase orders.

(Ord. No. 491, § 1, 5-19-92; Ord. No. 569, § 1, 6-1-98)

Sec. 2-343. Purchases or contracts \$1,000.00 to \$5,000.00.

Purchases of services supplies, materials or equipment, the cost of which is equal to or greater than one thousand dollars (\$1,000.00) but not more than five thousand dollars (\$5,000.00) may be made in the open market but such purchases shall, where practicable, be based on at least three (3) competitive bids and shall be awarded to the lowest qualified bidder. The purchasing agent may solicit bids verbally, in writing, or through other means. Where bids are solicited by written communication, a request for such bids shall also be posted in the city hall. A record shall be kept of all open market orders and the bids submitted thereon, which records shall be available for public inspection. Any or all bids may be rejected. Purchases made pursuant to this section may be made without prior approval of the council.

(Ord. No. 491, § 1, 5-19-92; Ord. No. 569, § 1, 6-1-98)

Sec. 2-344. Purchases or contracts over \$5,000.00.

Any expenditure for services, supplies, materials or equipment obligating the city, where the amount of the city's obligation is in excess of five thousand dollars (\$5,000.00), shall be governed by the provisions of this section, except as provided in section 2-345.

- (1) Such expenditure shall be made the subject of a written contract. A purchase order shall be a sufficient written contract only in cases where the expenditure is in the usual and ordinary course of the city's affairs and in no case shall it be sufficient for the construction of public works or the

contracting for receipt of supplies or services over any period of time in excess of one (1) year or where the quality of the goods or materials or the scope of the services bargained for is not wholly standardized.

- (2) Notice inviting sealed competitive bids shall be published in a newspaper of general circulation in the city at least five (5) days before the final date for submitting bids thereon. Such notice shall give briefly the specifications of the services, supplies, materials or equipment or other matter to be contracted for, and shall state the amount of security to be given with the bid, and the amount of bond or other security to be given with the contract. The notice shall state the time limit, the place of filing and the time of opening bids and shall also state that the right is reserved to reject any or all bids. Any other conditions of award of the contract shall also be stated in general terms.
- (3) The purchasing agent shall also solicit bids from a reasonable number of such qualified prospective bidders as are known to him by sending each a copy of the notice requesting bids and notice thereof shall be posted in city hall.
- (4) Unless prescribed by the council, the purchasing agent shall prescribe the amount of any security to be deposited with any bid which deposit shall be in the form of cash, certified or cashier's check or bond written by a surety company authorized to do business in the state. The amount of such security shall be expressed in terms of percentage of the bid submitted. Unless fixed by the council, the purchasing agent shall fix the amount of the performance bond and in the case of construction contracts, the amount of the labor and material bond to be required of the successful bidders.
- (5) Bids shall be opened in public at the time and place designated in the notice requesting bids in the presence of the city clerk and at least one (1) other city official, preferably the head of the department most closely concerned with the subject of the contract. The bids shall thereupon be carefully examined and tabulated and reported to the council with the recommendation of the purchasing agent at the next council meeting. After tabulation, all bids may be inspected by the competing bidders. In lieu of the procedure for opening bids herein specified, the council may direct that bids be opened at a council meeting.
- (6) When such bids are submitted to the council, the contract to be executed, in a form approved by the city attorney, shall also be submitted and if the council shall find any of the bids to be satisfactory, it shall award the contract to the lowest qualified bidder and shall authorize the execution of the contract upon execution of the contract by the successful bidder and the filing of any bonds which may have been required, which bonds shall first be approved by the city attorney as to form. Such award may be by resolution or ordinance. The council shall have the right to reject any or all bids and to waive irregularities in bidding and to accept bids which do not conform in every respect to the bidding requirements.
- (7) At the time the contract is executed, the contractor shall file a bond executed by a surety company authorized to do business in the state, to the city, conditioned upon the performance of said contract, and further conditioned to pay all laborers, mechanics, subcontractors and material suppliers as well as all just debts, dues and demands incurred in the performance of such work.

The contractor shall also file evidence of public liability insurance in an amount satisfactory to the city attorney, and agree to save the city harmless from loss or damage caused to any person or property by reason of the contractor's negligence.

- (8) All bids and deposits of certified or cashier's checks may be retained until the contract is awarded and signed. If any successful bidder fails or refuses to enter into the contract awarded to him or her within five (5) days after the same has been awarded, or file any bond required within the same time, the deposit accompanying his or her bid shall be forfeited to the city, and the council may, in its discretion, award the contract to the next lower qualified bidder or the contract may be re-advertised.

(Ord. No. 491, § 1, 5-19-92; Ord. No. 569, § 1, 6-1-98)

Sec. 2-345. Exceptions to competitive bidding.

Subject to the approval of the council, competitive bidding shall not be required in the following cases:

- (1) Where the service, product or material contracted for is not competitive in nature, and the purchasing agent so certifies to the council in writing;
- (2) In the employment of professional services;
- (3) Where the council shall determine that the public interest will best be served by joint purchase with, or purchase from, another unit of government;
- (4) Where the council shall determine that, due to market conditions, price instability or other reasons, the best interest of the public will be served by using another method of bidding for the acquisition of any item or service. In such circumstances:
 - a. After complying with the notice requirements of section 2-344, a list of potential bidders may be established and pre-qualified by the council;
 - b. In conjunction with establishing the list of prequalified bidders, or at any other time, the council may direct the method to be used in obtaining bids; and
 - c. At the first regular council meeting after any purchase, the purchasing agent shall report to the council the method of obtaining the bids, the amounts bid, the quantity purchased and the price paid.
- (5) When an emergency requires an immediate purchase. At the first regular council meeting after any such purchase, the purchasing agent shall report to the council the nature of the emergency, the item and quantity purchased and the price paid.

(Ord. No. 491, § 1, 5-19-92; Ord. No. 569, § 1, 6-1-98)

Sec. 2-346. Inspection of materials.

The responsibility for the inspection and acceptance of all materials, supplies and equipment shall rest

with the ordering department.
(Ord. No. 491, § 1, 5-19-92; Ord. No. 569, § 1, 6-1-98)

Sec. 2-347. Sale of property.

Whenever any city personal property is no longer needed for corporate or public purposes, the same may be offered for sale. Personal property not exceeding one thousand dollars (\$1,000.00) in value may be sold for cash by the purchasing agent upon approval of the manager, if the manager is not acting as purchasing agent, after receiving quotations or competitive bids therefor for the best price obtainable. Personal property with a value in excess of one thousand dollars (\$1,000.00) may be sold after advertising and receiving competitive bids in the same manner as provided in section 2-344 and after approval of the sale has been given by the council.
(Ord. No. 491, § 1, 5-19-92; Ord. No. 569, § 1, 6-1-98)

Sec. 2-348. "Lowest qualified bidder" defined.

The term "lowest qualified bidder," as used in this division, shall mean the lowest bidder having qualifications to perform the work which are satisfactory to the council. The lowest bidder shall be determined based on an adjusted bid tabulation which shall be prepared in the following manner:

- (1) To the bid of any bidder which is neither a city-based business nor a county-based business shall be added an amount equal to six (6) percent of the bid or two thousand five hundred dollars (\$2,500.00), whichever is less.
- (2) To the bid of any bidder which is a county-based business shall be added an amount equal to three (3) percent of the bid or two thousand five hundred dollars (\$2,500.00), whichever is less; provided, however, that if no bid is received from a city-based business, no additional amount shall be added to the bid of a county-based business.
- (3) "Owosso-based business" shall be interpreted to mean a business registered with the county clerk or a corporation registered with the state having a business address within the city limits which pays real and/or personal property taxes levied by the city.

The term "county-based business" shall be interpreted to mean a business other than a city-based business registered with the county clerk or a corporation registered with the state having a business address within the county which pays real and/or personal property taxes levied by the county.

- (4) If twenty-five (25) percent or more of a contract for construction or other services is to be subcontracted by a city-based business bidder to a non-city-based business or businesses, or by a county-based business bidder to a non-county-based business or businesses, the adjusted bid shall be calculated by applying the provisions of this section separately to each portion of the contract based on the status of the contractor or subcontractor performing that portion of the contract as a city-based or county-based business.

This section shall be deemed to have been repealed as of June 30, 2010 unless re-enacted by the council.
(Ord. No. 491, § 1, 5-19-92; Ord. No. 532, § 1, 6-5-95; Ord. No. 569, § 1, 6-1-98; Ord. No. 616, § 1, 6-17-02;

ARTICLE VII.

MUNICIPAL EMPLOYEES' PENSIONS

Sec. 2-401. Name and establishment.

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. (Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-402. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

Accumulated contributions means the sum of all amounts deducted from the compensation of a member and credited to the member's individual account in the members savings fund, together with regular interest thereon.

Annual benefit means a retirement benefit under the retirement system that is payable annually in the form of a straight life annuity.

- (1) Actuarial adjustments to annual benefit: Except as otherwise provided in subparagraph b. below, a benefit payable in a form other than a straight life annuity must be adjusted to be the actuarial equivalent of a straight life annuity before applying the limitations of this article as follows:
 - a. For limitation years beginning before January 1, 1995, such actuarial equivalent shall be based on the mortality factors specified under the terms of the retirement system as in effect before such date and is equal to the greater of the annuity benefit computed using

an interest rate of seven (7) percent or the interest rate(s) specified for determining actuarial equivalence under the terms of the retirement system in effect before such date.

b. For limitation years beginning on or after January 1, 1995, such actuarial equivalent is equal to the greater of the annuity benefit computed using a seven (7) percent interest rate and the 1970 Group Annuity Mortality Table and the annual benefit computed using a seven (7) percent interest rate and 1970 Group Annuity Mortality Table. In determining such actuarial equivalent for a benefit form other than a non-decreasing annuity payment for a period of not less than the life of the participant (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse), or decreases during the life of the participant merely because of:

1. The death of the survivor annuitant (but only if the reduction is not below fifty (50) percent of the annual benefit payable before the death of the survivor annuitant); or
2. The cessation or reduction of Social Security supplements of qualified disability payments as defined in code §401(a)(11), "the applicable interest rate" will be substituted for "a seven (7) percent interest rate" in the preceding sentence.

(2) Circumstances in which no actuarial adjustment is required: No actuarial adjustment to the annual benefit is required for:

- a. The value of a qualified joint and survivor annuity;
- b. Benefits that are not directly related to retirement benefits (such as the qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits); and
- c. The value of post-retirement cost-of-living increases made in accordance with code § 415(d) and treasury regulation § 1.415-3(c)(2)(iii).

The annual benefit does not include any benefits attributable to employee contributions or rollovers, or the assets transferred from a qualified plan that was not maintained by the city.

Beneficiary means any person, except a retirant, who is in receipt of, or who is designated to receive, a pension or other benefit payable by the retirement system.

Board means the board of trustees of the retirement system as defined in section 2-403, which is responsible for the administration of the retirement system.

City means the city of Owosso.

City attorney means the person or persons appointed by the city to the position of city attorney.

City clerk means the person appointed by the city to the position of city clerk.

City manager means the person or persons appointed by the city to the position of city manager.

City treasurer means the person or persons appointed by the city to the position of city treasurer.

Code § 401(a)(17) limit means that notwithstanding any provisions of this section to the contrary, compensation for any calendar year will not exceed the code § 401(a)(17) annual compensation limit. If a determination period consists of fewer than twelve (12) months, the code § 401(a)(17) annual 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 twelve (12). If compensation for any prior determination period is taken into account in determining a participant's retirement system benefits for the current plan year, the compensation for such prior determination period is subject to the applicable code § 401(a)(17) annual compensation limit as in effect for that prior period. As used herein, the code § 401(a)(17) annual compensation limit means the following:

- (1) One hundred seventy thousand dollars (\$170,000.00) for twelve-month determination periods which began on or after January 1, 2000. The one hundred seventy thousand dollars (\$170,000.00) will be adjusted for increases in the cost of living under code § 401(a)(17) at the same time and in the same manner as under code § 415. A cost of living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year.
- (2) One hundred sixty thousand dollars (\$160,000.00) for twelve-month determination periods which began on or after January 1, 1997 and not later than December 31, 1999;
- (3) One hundred fifty thousand dollars (\$150,000.00) for twelve-month determination periods which began prior to January 1, 1997.

Compensation means all cash compensation for services to the city, including salary, wages, fees, commissions, bonuses and overtime pay, that is includible in a member's gross income for the calendar year, plus amounts that would be cash compensation for services to the city includible in the member's gross income for the calendar year but for a compensation reduction election under code § 125, 132(f), 401(k), 403(b) or 457(b). In case a member's compensation is not all paid in money, the board shall fix the value of the portion which is not paid in money.

Council means the person or persons elected to the city council.

Covered member means any member who is covered under the federal social security old-age, survivor's and disability insurance program on account of member's city employment.

Credited service means the number of years and months of service standing to a member's credit as provided in this article.

Disability pension means the disability pension as established in accordance with the provisions of section 2-422.

Disability retirement means the disability retirement of a member as established in accordance with the provisions of section 2-421.

Expense fund means the fund established in accordance with the provisions of section 2-432.

Final average compensation means the average of the highest annual compensation received by a member during a period of three (3) consecutive years of credited service contained within the member's ten (10) years of credited service immediately preceding the date the member's employment with the city last terminates. If member has less than three (3) years of credited service member's final average compensation shall be the average of member's annual compensation for member's total period of service.

Fiscal year means the city's accounting year beginning July 1 and ending the following June 30.

Gender and number means words used in the masculine gender will be construed as though they were also used in the feminine or neuter gender where applicable, and words used in the singular will be construed as though they were also used in the plural where applicable.

General city member means any member, except a police officer or fire fighter member.

Income fund means the fund established in accordance with the provisions of section 2-434.

Medical director means the person or persons appointed in accordance with the provisions of section 2-408(5).

Member means any person who is included in the membership of the retirement system.

Members savings fund means the fund established in accordance with the provisions of section 2-429.

Noncovered member means any member who is not covered under the federal social security old-age, survivors' and disability insurance program on account of member's employment with the city.

Normal retirement age means the provisions as defined in section 2-416.

Pension means an annual amount payable in equal monthly installments, by the retirement system, for the life of a person, or for a shorter period, as provided in this article.

Pension reserve means the present value of all payments to be made on account of any pension which shall be computed upon the basis of such mortality and other tables of experience with regular interest, as the board shall from time to time adopt.

Pension reserve fund means the fund established in accordance with the provisions of section 2-431.

Plan year means the retirement system's accounting year which is the calendar year.

Police officer or fire fighter member in the case of a police officer means any officer or employee in the police department of the city holding the rank of patrolman, including probationary patrolman, or higher rank; and in the case of a fire fighter, any officer or employee in the fire department of the city holding the rank of fire-fighter, including probationary fire-fighter, or higher rank: but shall not include:

- (1) Any civilian employee in the police or fire department; nor
- (2) Any person who is temporarily employed as a police officer or fire fighter for an emergency; nor
- (3) Any person who is privately employed as a police officer or fire fighter.

Regular interest means such rate or rates of interest per annum, compounded annually, as the board shall from time to time adopt.

Retirant means any member who retires with a pension payable by the retirement system.

Retirement means a member's severance from employment with the city with a pension payable by the retirement system.

Retirement reserve fund means the fund established in accordance with the provisions of section 2-430.

Service means personal service rendered to the city by an officer or employee of the city.

Spouse means the person to whom a member is legally married.

Trust fund means all amounts of assets attributed to the members savings fund, the retirement reserve fund, the pension reserve fund, the expense fund and the income fund of the retirement system, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights, whether or not held in trust in the custody of the trustee. The trust fund shall be held and invested in accordance with the provisions of section 2-433.

Trustees means the board of trustees of the retirement system as defined in section 2-403, duly appointed and currently serving under the trust agreement.

Voluntary retirement age means fifty-five (55) years of age for police officer and fire fighter members, and sixty (60) years of age for general city members.

Worker's compensation period means the period a person is in receipt of worker's compensation on account of a member's disability or death arising out of and in the course of member's city employment. If a member is paid a single sum in lieu of future weekly worker's compensation, member's worker's compensation period shall be the period, if any, member was in receipt of weekly worker's compensation plus the period arrived at by dividing the said single sum by member's weekly worker's compensation award.
(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

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;
- (2) A councilman who is not eligible to participate in the retirement system as a member or retirant;
- (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 retirant, to be appointed by the council;
- (4) A police officer member to be chosen by the police officer members;
- (5) A fire fighter member to be chosen by the fire fighter 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.

(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. (Ord. No. 638, § 1, 9-15-03; Ord. No. 663, § 1, 11-15-04; Ord. No. 671, § 1, 1-17-06)

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.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 663, § 1, 11-15-04)

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.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

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.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

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.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

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.
(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

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 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.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-410. Membership consists of.

(a) The members of the retirement system shall include all persons who are now and who hereafter become employed by the city. Such persons shall be eligible to participate in the retirement system immediately upon becoming members and shall commence participation as soon as administratively practicable. The members shall not include:

- (1) Any person whose services are compensated for on a contractual professional, or on a fee basis, unless considered to be a Member on July 1, 1964; nor
- (2) Any person, except an elected city official, who is employed in a position normally requiring less than one thousand six hundred sixty-four (1664) hours of work per annum; nor
- (3) The medical director; nor
- (4) Any person that becomes employed by the city after January 1, 2006, covered by a collectively bargained agreement with Owosso Local Number 1059, Council Number 25 of the American Federation of State, County and Municipal Employees, AFL-CIO; nor
- (5) Any person that becomes employed by the city after January 1, 2006, that is not covered by a collective bargaining agreement.

(b) In all cases of doubt, the board shall decide who is a member of the retirement system within the meaning of the provisions of this article.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06; Ord. No. 672, § 1, 2-21-06)

Sec. 2-411. Termination of membership.

(a) The accrued financial benefits of the retirement system shall be a contractual obligation of the city and shall not be diminished or impaired by the city. The terms of this article shall constitute the only basis upon which each such contractual obligation shall arise and accrue, and no benefits shall arise or accrue to any member or retirant except those specifically provided in this article and in accordance with the terms thereof. Any member who, in the performance of member's duties, commits a felony or uses member's official or employment status with the city as a means for the commission of a felony shall thereby bring about a forfeiture of member's right to any pension or benefits under authority of this article and shall be entitled only to a refund of member's accumulated contributions.

(b) Except as otherwise provided in this article, should any member have separated or become separated from the service of the city for any reason except member's retirement or death, member shall thereupon cease to be a member and member's credited service at that time shall be forfeited. Should member be re-employed by the city, the re-employed former member shall again become a member.

(c) If a former member's re-employment occurs within a period of three (3) years from and after the date the former member last separated from city service, the former member's forfeited credited service shall be restored to member's credit subject to section 2-429(4). Upon member's retirement or death member shall thereupon cease to be a member.

(d) If a former member:

(1) Is re-employed after January 1, 2007;

(2) Has at least thirty (30) months' previous credited service; and

(3) His or her re-employment with the city occurs after three (3) years but within a period of fifteen (15) years from and after the date the former member last separated from the city service, then

the former member's forfeited credited service may be restored to the member's credit, provided the member deposits his or her withdrawn contributions accumulated and interest pursuant to section 2-429(d) within five (5) years after the member becomes reemployed with the city. If a member deposits his or her withdrawn contributions and interest, the service credit for the first period of employment shall be calculated based upon the factor and final average compensation in effect on the date of first separation from employment with the city. Upon a member's retirement or death, the member shall thereupon cease to be a member.
(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06; Ord. No. 681, § 1, 10-16-06)

Sec. 2-412. Service credentials.

The service rendered by a member shall be credited to member by the board in accordance with such rules and regulations, consistent with the provisions of this article, as the board shall from time to time adopt, but in no case shall less than ten (10) days of service rendered by a member in any calendar month be credited member as a month of service, nor shall less than nine (9) months of service rendered in any calendar year be credited as a year of service, nor shall more than one (1) year of service be credited any member for all service rendered by member in any calendar year.
(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-413. Military service credit.

In accordance with code § 414(u), a member who, while employed by the city, has entered or enters any armed service of the United States, and has been or shall be on active duty in such armed service during any period of compulsory military service shall have such armed service actually required of member credited as city service; provided that:

(1) Member reentered or reenters the employ of the city within ninety (90) days from and after termination of such armed service actually required of member; and

- (2) Member returns to the members savings fund all amounts member withdrew therefrom at the time member entered or while member was in such armed service, together with regular interest thereon from the date of withdrawal to the date of repayment; and
- (3) In no case shall any member be credited with more than five (5) years of city service for all such armed service rendered by member.

In any case of doubt as to the period to be so credited, the board shall have final power to determine such period. During the period of such armed service, and until member's return to city service, member's contributions to the retirement system shall be suspended and member's balance, if any, in the members saving fund shall be accumulated at regular interest.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

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' 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.

(Ord. No. 671, § 1, 1-17-06)

Sec. 2-415. Voluntary retirement.

Any member, with ten (10) or more years of credited service, who has attained the member's applicable voluntary retirement age, may retire upon written application to the board setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, member desires to be retired. Upon retirement, a covered member shall receive a pension provided in section 2-417, and a noncovered member shall receive a pension provided in section 2-418.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-416. Normal retirement age.

(a) Any police officer or fire fighter member who has attained or attains age sixty (60) years, and any general city member, except an elected officer of the city or an officer appointed directly by the council, who has attained or attains age sixty-five (65) years.

(b) Any member, who continues in city service beyond the member's normal retirement age, as provided in subsection (1) of this section, shall continue to accrue benefits under this article.

(c) If, at the time of member's separation from city service, as provided in this section, a member has ten (10) or more years of credited service member shall be retired and member shall receive a pension provided in section 2-417 if member is a covered member, or as provided in section 2-418 if member is a noncovered member.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06))

Sec. 2-417. Pension--Covered member.

(a) Upon a covered member's retirement, as provided in this article, covered member shall receive a straight life pension equal to two and one-half (2.5) percent of covered member's final average compensation multiplied by the number of years, and fraction of a year, of covered member's credited service. Prior to the date of covered member's retirement, covered member may elect to receive covered member's pension under an

option provided in section 2-420 in lieu of a straight life pension.

(b) According to such rules and regulations as the board shall from time to time adopt, any covered member who retires under section 2-415 prior to attainment of age sixty-five (65) years may elect to have such covered member's straight life pension actuarially equated to provide an increased pension payable until covered member's attainment of age sixty-five (65) years and a reduced pension payable thereafter. Covered member's increased pension payable until such covered member's attainment of age sixty-five (65) years shall approximate the sum of covered member's reduced pension to be payable after covered member's attainment of age sixty-five (65) years and covered member's estimated social security primary insurance amount. This subsection shall not be applicable to a member who elects an option provided in section 2-420.

(c) In the event a covered member dies before the covered member has received in straight life pension payments an aggregate amount equal to the covered member's accumulated contributions standing to the covered member's credit in the members savings fund at the time of the covered member's retirement, the difference between the covered member's said accumulated contributions and the said aggregate amount of pension payments received by the covered member shall be paid from the retirement reserve fund to such person or persons as the covered member shall have nominated by written designation duly executed and filed with the board. If there be no such designated person surviving the covered member such difference, if any, shall be paid to the covered member's legal representative. No benefits shall be paid under this subsection on account of the death of a covered member if the covered member elected an option provided in section 2-420. (Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-418. Pension--Noncovered member.

(a) Upon a noncovered member's retirement, as provided in this article, noncovered member shall receive a straight life pension equal to the sum of two (2) percent of noncovered member's final average compensation multiplied by the number of years, and fraction of a year, of noncovered member's credited service, not to exceed twenty-five (25) years, plus one (1) percent of noncovered member's final average compensation multiplied by the number of years, and fraction of a year, of noncovered member's credited service in excess of twenty-five (25) years. Prior to the date of noncovered member's retirement, noncovered member may elect to receive noncovered member's pension under an option provided in section 2-420 in lieu of a straight life pension.

(b) In the event a noncovered member dies before the noncovered member has received in straight life pension payments an aggregate amount equal to the noncovered member's accumulated contributions standing to the noncovered member's credit in the members savings fund at the time of the noncovered member's retirement, the difference between the noncovered member's said accumulated contributions and the said aggregate amount of pension payments received by the noncovered member shall be paid from the retirement reserve fund to such person or persons as the noncovered member shall have nominated by written designation duly executed and filed with the board. If there be no such designated person surviving the noncovered member, such difference, if any, shall be paid to the noncovered member's legal representative. No benefit shall be paid under this subsection on account of the death of a noncovered member if the noncovered member elected an option provided in section 2-420. (Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-419. Deferred retirement.

Should any member who has ten (10) or more years of credited service leave the employ of the city prior to member's attainment of member's applicable voluntary retirement age for any reason except member's retirement or death, member shall be entitled to a pension provided in section 2-417 if member is a covered member, or as provided in section 2-418, if member is a noncovered member, as the applicable section was in effect at the time member left city service. If member withdraws member's accumulated contributions from the members savings fund, member shall thereupon forfeit such member's right to a deferred pension provided in this section. Member's said pension shall begin thirty (30) days after the date member's application for same is filed with the board on or after member's attainment of age sixty (60) years. During the period of member's absence from city service:

(1) Member shall not be given credited service for such period, unless otherwise provided in the chapter; and

(2) Member's balance in the members savings fund shall be accumulated at regular interest.
(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-420. Pension options.

(a) Prior to the date of member's retirement, but not thereafter, a member may elect to receive member's pension as a straight life pension payable throughout member's life, or member may elect to receive the actuarial equivalent, at that time, of member's straight life pension in a reduced pension payable throughout member's life, and nominate a beneficiary, in accordance with the provisions of option A, B, or C set forth below, subject to subsection (2) of this section. Any election made hereunder may be revoked at any time prior to the date of member's retirement.

(1) *Option A--Pension payable 10 years certain and life thereafter.* Under option A, a retirant shall receive a reduced pension payable throughout such retirant's life with the provision that if the retirant dies before retirant has received one hundred twenty (120) monthly pension payments the payment shall be continued for the remainder of the period of one hundred twenty (120) months to such beneficiary or beneficiaries, in equal shares, as the retirant shall have nominated by written designation duly executed and filed with the board. If no such designated beneficiary or beneficiaries survives the retirant such remaining monthly pension payments, if any, shall be paid to the retirant's estate.

(2) *Option B--One hundred (100) percent survivor pension.* Under option B, also called option II, upon the death of a retirant, such retirant's reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in retirant's life, retirant shall have nominated by written designation duly executed and filed with the board prior to the date of such retirant's retirement.

(3) *Option C--Fifty (50) percent survivor pension.* Under option C, also called option III, upon the death of a retirant one-half (1/2) of such retirant's reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in retirant's life, as retirant shall have nominated by written designation duly executed and filed with the board prior to the date of such retirant's retirement.

- (b) If any benefits become payable under section 2-425 on account of the death of a retirant:
 - (1) No pension shall be paid to retirant's designated beneficiary under option A, B or C above; and
 - (2) If retirant's death occurs before retirant has received in pension payments an aggregate amount equal to retirant's accumulated contributions standing to retirant's credit in the members savings fund at the time of retirant's retirement, the difference, if any, between retirant's said accumulated contributions and the said aggregate amount of pension payments received by retirant shall be paid to retirant's designated beneficiary, if living, otherwise to retirant's legal representative.
 - (3) In the event a retirant, who elected option B or C, provided in subsection (1) of this section, and retirant's beneficiary both die before they have received in pensions a total amount equal to the retirant's accumulated contributions standing to retirant's credit in the members savings fund at the time of retirant's retirement, the difference between retirant's said accumulated contributions and the said total amount of pension received by retirant and retirant's beneficiary shall be paid to such person or persons as the retirant shall have nominated by written designation duly executed and filed with the board. If no such designated person survives the retirant and retirant's beneficiary such difference, if any, shall be paid to the estate of the survivor of the retirant and retirant's beneficiary.
 - (4) In no event shall any pension payable under the retirement system begin later than the later of:
 - a. April 1 of the year following the calendar year in which member attains age seventy and one-half (70 1/2) or
 - b. April 1 of the year following the year in which member retires or otherwise has a severance from employment.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-421. Disability retirement.

- (a) Upon the application of a member, or member's department head, a member who:
 - (1) Is in the employ of the city; and
 - (2) Has ten (10) or more years of credited service; and
 - (3) Becomes totally and permanently disabled for duty in the employ of the city, by reason of a personal injury or disease;

may be retired by the board; provided that after a medical examination of the member, made by or under the direction of the medical director, the medical director certifies to the board:

- (1) That the member is mentally or physically totally disabled for duty in the employ of the city;

- (2) That member's disability will probably be permanent; and
- (3) That the member should be retired;

provided further, that the report of the medical director is concurred in by the board. Upon member's retirement the member shall receive a disability pension provided in section 2-422.

(b) The service requirement contained in subsection (a) of this section shall be waived in the case of a member whom the board finds to be totally and permanently disabled as the natural and proximate result of a personal injury or disease arising out of and in the course of member's actual performance of duty in the employ of the city, and is granted worker's compensation on account of member's total and permanent disability. (Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-422. Disability pension.

Upon a member's retirement on account of disability, as provided in section 2-421, a member shall receive a disability pension computed according to section 2-417, exclusive of subsection (b), if member is a covered member, or according to section 2-418 if member is a noncovered member. Member's disability pension, payable to member's attainment of age sixty-five (65) years:

- (1) Shall in no case be less than twenty (20) percent of member's final average compensation; and
- (2) Shall be subject to section 2-427.

Upon retirement a member may elect to receive member's pension under option A, B or C provided in section 2-420 in lieu of a straight life pension.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-423. Duty disability--Recomputation of pension.

If a disability retirant is granted worker's compensation on account of retirant's disability arising out of and in the course of retirant's employment with the city, upon termination of disability retirant's worker's compensation period, retirant shall be given credited service for such period, and disability retirant's pension shall be recomputed to include such additional credited service. In no case shall disability retirant's recomputed disability pension, payable to disability retirant's attainment of age sixty-five (65) years, be less than the amount disability retirant was receiving in weekly worker's compensation, if, any, converted to an annual basis.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-424. Member's non-duty death.

(a) Any member who continues in the employ of the city after the date member has ten (10) or more years of credited service, may, by written declaration duly executed and filed with the board, elect option B provided in section 2-420 and nominate a beneficiary whom the board finds to be dependent of the member, as defined by Code § 152. Prior to the date of member's retirement the member may revoke member's election of option B and nomination of beneficiary and member may again, prior to the date of member's retirement, elect the said option B and nominate a beneficiary as provided in this subsection. Upon the death of a member, who

has an option B election in force, member's beneficiary, if living, shall immediately receive a pension computed in the same manner in all respects as if the member had retired the day preceding the date of member's death, notwithstanding that member might not have attained the member's applicable voluntary retirement age. The said option B shall be applied to a pension computed according to section 2-417 for a beneficiary of a covered member, and according to section 2-418 for a beneficiary of a noncovered member. If a member has an option B election in force at the time of member's retirement, member's said option election and nomination of beneficiary shall thereafter continue in force, unless prior to the date of member's retirement member elects to receive member's pension as a straight life pension or according to another option provided in section 2-420. No pension shall be paid under this subsection on account of the death of a member if any benefits, except children's pensions, are paid or payable under section 2-425 on account of member's death.

(b) Any member who continues in the employ of the city after the date member has ten (10) or more years of credited service and does not have an option B election in force as provided in subsection (a) of this section, and:

- (1) Dies while in city employment; and
- (2) Leaves a spouse whom the board finds to be a dependent of the member as defined by Code § 152;

the spouse shall immediately receive a pension computed in the same manner in all respects as if the member had:

- (1) Retired the day preceding the date of member's death, notwithstanding that member might not have attained member's applicable voluntary retirement age;
- (2) Elected option B provided in section 2-420; and
- (3) Nominated member's spouse as beneficiary.

The said option B shall be applied to a pension computed according to section 2-417 for a beneficiary of a covered member, and according to section 2-418 for a beneficiary of a noncovered member. No pension shall be paid under this subsection on account of the death of a member if any benefits, except children's pensions, are paid or payable under section 2-425 on account of member's death.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-425. Member's duty death.

- (a) In the event:
- (1) A member dies as a result of a personal injury or disease arising solely and exclusively out of and in the course of member's employment with the city; or
 - (2) A disability retirant who, while in receipt of worker's compensation on account of member's city service, dies prior to member's applicable voluntary retirement age as the result of the same injury or disease for which member was retired;

and in either case (1) or (2) such death, injury or disease resulting in death, be found by the board to have been the result of member's actual performance of duty in the employ of the city, the applicable benefits provided in paragraphs (1), (2), (3), and (4) below shall be paid, subject to the condition that the beneficiary or beneficiaries eligible to receive a pension apply for and are granted worker's compensation on account of the death of the member or retirant.

- (1) In the case of the death of a member, the accumulated contributions standing to member's credit in the members savings fund at the time of member's death shall be paid according to section 2-428; provided, that no pension becomes payable under section 2-424 on account of member's death.
- (2) Spouse's pension. Member's spouse shall receive a pension equal to the spouse's weekly worker's compensation converted to an annual basis. The said pension shall begin upon termination of the spouse's worker's compensation period and shall terminate upon spouse's remarriage or death.
- (3) Children's pension. Member's unmarried child or children under age eighteen (18) years shall each receive a pension equal to such child's weekly worker's compensation converted to an annual basis. A child's pension shall begin upon termination of the child's worker's compensation period and shall terminate upon child's adoption, marriage, attainment of age eighteen (18) years, or death, whichever occurs first. If the spouse's pension is terminated, as provided in paragraph (2) of this subsection, each such child's pension shall be increased by an equal share of the spouse's pension.
- (4) Member's parents shall each receive a pension equal to such parent's weekly worker's compensation converted to an annual basis. A parent's pension shall begin upon termination of the parent's worker's compensation period and shall terminate upon such parent's remarriage or death.

(b) Should a claim be made for benefits to be paid under this section and section 2-420 or 2-424 on account of the death of a member or retirant the board shall have final power to decide under which section benefits are to be paid.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-426. Subrogation.

In the event an individual becomes entitled to a pension payable from funds of the retirement system as the result of an accident or injury caused by the act of a third party, the city shall be subrogated to the rights of the said individual against such third party to the extent of benefits the city pays or becomes liable to pay.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-427. Re-examination of disability retirants.

(a) At least once during the first five (5) years following the retirement of a member with a disability pension, and at least once in the five-year period thereafter, the board shall require any disability retirant, who has not attained the disability retirant's voluntary retirement age, to undergo a medical examination to be made

by or under the direction of the medical director. Should the disability retiree refuse to submit to such medical examination in any such period the board may suspend payment of disability retiree's pension until disability retiree's withdrawal of such refusal. If such refusal continues for one (1) year the board may terminate disability retiree's pension. If, upon such medical examination of the retiree, the medical director reports to the board that the retiree is physically able and capable of resuming employment with the city retiree shall be returned to the employ of the city, if a position is available, and retiree's disability pension shall terminate; provided, that the report of the medical director is concurred in by the board. In returning a retiree to city service reasonable latitude shall be allowed the city in placing retiree in a position commensurate to retiree's type of work and rate of compensation at the time of retiree's retirement.

(b) A disability retiree who has been or shall be returned to the employ of the city, as provided in this section, shall again become a member of the retirement system. A disability retiree's credited service in force at the time of such disability retiree's retirement shall be restored to such disability retiree's credit. A disability retiree shall be given credited service for the period disability retiree was receiving a disability pension if within such period disability retiree was in receipt of worker's compensation on account of disability retiree's total and permanent disability arising out of and in the course of disability retiree's city employment; otherwise disability retiree shall not be given credited service for such period.
(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-427A. Post-retirement benefit increase.

For a monthly benefit after December 31, 1976, beginning with January 1, which is at least twelve (12) full months after the effective date of the benefit, the amount of benefit shall be re-determined effective each January 1 and such re-determined benefit shall be payable for the ensuing year. Such re-determined amount shall be the amount of benefit otherwise payable multiplied by the following percent: One hundred (100) percent plus one and four-tenths (1.4) percent for each full year, to a maximum of ten (10) years, in the period from the effective date of the benefit to the current January 1.

The amount of benefit otherwise payable means the monthly amount of benefit which would be payable disregarding the provisions re-determining benefit amounts after retirement.
(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-428. Refund of member's accumulated contributions.

(a) Should any member, who has not satisfied the age and service requirements for retirement provided in section 2-415, cease to be employed by the city, for any reason except member's disability retirement, member shall be paid such member's accumulated contributions standing to member's credit in the members savings fund upon member's request in writing filed with the board.

(b) Upon the death of a member member's accumulated contributions standing to member's credit in the members savings fund at the time of member's death shall be paid to such person or persons as member shall have nominated by written designation duly executed and filed with the board; provided that no pension becomes payable by the retirement system on account of member's death, except as provided in section 2-425. If no such designated person survives the member, or if member made no such nomination of beneficiary, member's said accumulated contributions shall be paid to member's estate.

(c) A former member, who has not satisfied vesting requirements but has thirty (30) or more months of credited service, may leave member's accumulated contributions in member's credit for provisions of the Reciprocal Retirement Act to be effective until the timely election of option of payment. If by April 1 of the calendar year in which the former member attains the age of seventy and one-half (70 1/2) there has been no election of option of payment, any balance standing to member's credit in member's savings fund shall be transferred to the income fund.

(d) Payment of accumulated contributions, as provided in this section, may be made in a single sum or in installments as the board shall determine.

(e) Code §401(a)(31) direct rollovers. A member may elect to have all or any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the member in a direct rollover, which is a payment by the retirement system to the eligible retirement plan specified by the member.

(1) *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any portion of the refund of accumulated contributions paid to a member under this section, except that an eligible rollover distribution does not include:

- a. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the member or for the joint lives (or joint life expectancies) of the member and the member's beneficiary, or for a specified period of ten (10) years or more;
- b. Any distribution to the extent such distribution is required under code § 401(a)(9);
- c. The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation on city securities); and
- d. The portion of any distribution made on or after January 1, 2000 which is attributable to a hardship distribution described in code § 401(k)(2)(B)(i)(IV).

(2) *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described in code § 408(a), an individual retirement annuity described in code § 408(b), an annuity plan described in code § 403(a), or a qualified trust described in code § 401(a), that accepts the member'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.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-429. Members savings fund.

(a) The members savings fund, formerly called annuity savings fund, shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensation of members, and from which shall be made refunds and transfers of accumulated contributions, as provided in this article.

(b) The contributions of a member shall be five (5) percent of the compensation paid member by the

city prior to January 1, 1977 and six (6) percent of the compensation paid member by the city after December 31, 1976.

(c) The officer or officers responsible for preparing the payroll shall cause the contributions provided for in this section to be deducted from the compensation of each member on each and every payroll, for each and every payroll period, so long as member continues as a member of the retirement system. The members' contributions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be changed thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and payment of member's compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the member during the period covered by such payment, except as to benefits provided by this article. The officer or officers responsible for preparing the payroll shall certify to the city treasurer the amount of contribution to be deducted from the compensation of each member for each calendar quarter. Each of said amounts shall be deducted by the city treasurer and shall be paid to the retirement system and shall be credited to the member's individual account in the members savings fund.

(d) In addition to the contributions deducted from the compensation of a member, as hereinbefore provided, the officer shall deposit in the members savings fund, by a single contribution or by an increased rate of contribution as approved by the board the amount, if any, member withdrew from the members savings fund, together with regular interest from the date of withdrawal to the date of repayment. In no case shall any member be given credit for service rendered prior to the date member withdrew member's accumulated contributions until member repays to the members savings fund all amounts due withdrawn by the member.

(e) Upon the retirement of any member, the members accumulated contributions shall be transferred from the member's savings fund to the retirement reserve fund. At the expiration of a period of three (3) years from the date an employee who has fewer than thirty (30) months of credited service ceases to be a member any balance standing to member's credit in the members savings fund, unclaimed by the member or member's legal representative, shall be transferred to the income fund.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-430. Retirement reserve fund.

The retirement reserve fund shall be the fund from which shall be paid all pensions payable as provided in this article. Should a disability retirant return to the employ of the city, the pension reserve credited to the disability retirant, as of that time, shall be transferred from the retirement reserve fund to the members savings fund and pension reserve fund in the same proportion as disability retirant's pension reserve was originally transferred from the said funds to the retirement reserve fund. The amount transferred to the members savings fund shall be credited to disability retirant's individual account therein.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-431. Pension reserve fund.

(a) The pension reserve fund shall be the fund to which shall be credited contributions made by the city to the retirement system, and from which shall be made transfers as provided in this section. Upon the basis of such mortality and other experience tables, and regular interest, as the board shall from time to time adopt, the actuary shall annually compute the pension reserves:

- (1) For pensions being paid retirants and beneficiaries; and
- (2) Covering service rendered and to be rendered by members.

The said pension reserves shall be financed by annual appropriations, to be made by the council, determined according to paragraphs (a), (b) and (c) of this subsection.

- (1) The city's annual appropriation for members' current service shall be a percent of their annual compensation which will be an amount which, if paid annually by the city during their future service, will be sufficient to provide the pension reserves at the time of their retirements for the city-financed portions of the pensions to be paid them based upon their future service; and
- (2) The city's annual appropriation for members' accrued service shall be a percent of their annual compensations which will be an amount which, if paid annually by the city over a period of years to be determined by the board, will amortize at regular interest the unfunded pension reserves, if any, for the accrued service portions of the pensions to be paid them upon retirement; and
- (3) The city's annual appropriations for pensions being paid retirants and beneficiaries shall be a percent of the annual compensations of members which will be an amount which, if paid annually by the city over a period of years to be determined by the board, will amortize at regular interest the unfunded pension reserves, if any, for pensions being paid retirants and beneficiaries.

(b) Upon the retirement of a member, or at the time of member's death, the difference between the pension reserve for the pension payable and member's accumulated contributions shall be transferred from the pension reserve fund to the retirement reserve fund. The board may from time to time transfer from the pension reserve fund to the retirement reserve fund such additional amounts as it determines to be necessary for the proper maintenance of the retirement reserve fund.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

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 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.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-433. Investment of assets.

(a) The board 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 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.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

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.

(b) The board 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.

(Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

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 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. (Ord. No. 638, § 1, 9-15-03; Ord. No. 671, § 1, 1-17-06)

Sec. 2-436. Amendment, termination and merger.

(a) *Amendment of the retirement system.* The city will have the right to amend the retirement system at any time subject to the following provisions:

- (1) *General requirements.* Amendments (including a change in the actuarial basis for determining optional or early retirement benefits) must be in writing and cannot:
 - a. Increase the responsibilities of the city without written consent;
 - b. Deprive any member or beneficiary of retirement system benefits to which member is entitled;
 - c. Decrease the amount of any member's accrued benefit except as permitted under code § 412(c)(8);
 - d. Permit any part of the trust fund to be used for or diverted to purposes other than the exclusive benefit of the members or their beneficiaries except as required to pay taxes and administration expenses, or cause or permit any portion of the trust fund to revert to or become the property of the city; or
 - e. Eliminate or reduce a retirement-type subsidy, or an early retirement benefit, or an optional form of benefit with respect to benefits attributable to service before the amendment.

In the case of a retirement-type subsidy, this provision will apply only to a member who satisfies the pre-amendment conditions for the subsidy either before or after the amendment. In general, a retirement-type subsidy is a subsidy that continues after retirement, but does not include a qualified disability benefit, a medical benefit, a social security supplement, or a death benefit (including life insurance).

- (2) *Certain corrective amendments.* To satisfy the minimum coverage requirements of code § 410(b), the nondiscriminatory amount requirement of regulation § 1.401(a)(4)--1(b)(2), or the nondiscriminatory plan amendment requirement of regulation § 1.401(a)(4)--1(b)(4), a corrective amendment may retroactively increase accrued benefits for members who benefited under the retirement system during the plan year being corrected, or may grant accrued benefits to members who did not benefit under the retirement system during the plan year being corrected. To satisfy the nondiscriminatory current availability requirement of regulation § 1.401(a)(4)--4(b) for benefits, rights or features, a corrective amendment may make a benefit, right or feature available to members to whom it was previously not available. A corrective amendment will not be effective prior to the date of adoption unless it satisfies the applicable requirements of regulation § 1.401(a)(4)--11(g)(3)(ii) through (vii), including the requirement that, in order to be

effective for the preceding plan year, such amendment must be adopted by the fifteenth day of the tenth month after the close of the preceding plan year.

(b) *Termination of retirement system by city.* The city at any time can terminate the retirement system and trust fund in whole or in part in accordance with, and subject to, the following provisions:

- (1) *Termination of retirement system.* The city can terminate the retirement system and trust fund by filing written notice of any such termination with the city. If required by law, such written notice will be provided at least sixty (60) days (or any other period as may be required by law or regulation) prior to the date of termination.
- (2) *Vesting requirement.* Upon complete termination of the retirement system, all members will have a one hundred (100) percent vested interest in member's unpaid accrued benefit to the date of complete termination.
- (3) *Continued administration of retirement system pending distribution.* Upon complete termination of the retirement system the city will continue to administer the retirement system until distribution has been made to the members (which distribution must occur within a reasonable time after the termination of the retirement system) with full settlement of all such benefits made by lump sum payments of the actuarial equivalent of benefits and/or through the purchase of a group annuity contract or individual annuity contracts to the extent of trust fund assets.
- (4) *Allocation of trust fund assets to members, spouses and beneficiaries.* If the retirement system is terminated, the trust fund will be allocated on the basis of the costs of benefits due covered members and noncovered members as referenced in sections 2-417 and 2-418.

(c) *Retirement system merger or consolidation.* The retirement system and trust fund may not be merged or consolidated with, nor may any of its assets or liabilities be transferred to, any other plan, unless the benefits payable to each member if the retirement system was terminated immediately after such merger, consolidation or transfer would be equal to or greater than the benefits to which such member would have been entitled if this retirement system had been terminated immediately before such merger, consolidation or transfer.

(Ord. No. 671, § 1, 1-17-06)