

No. 22-0102

IN THE SUPREME COURT OF TEXAS

CITY OF DALLAS,

Petitioner,

v.

EMPLOYEES' RETIREMENT FUND OF THE CITY OF DALLAS,

Respondent.

On Petition for Review from the
Fifth Court of Appeals, Dallas, Texas
No. 05-20-00494-CV

PETITION FOR REVIEW AND APPENDIX

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STATEMENT OF THE CASE

Nature of the case. The Employees' Retirement Fund of the City of Dallas (the "Fund") sued the City of Dallas (the "City") for a declaratory judgment invalidating term limits for elected ERF board members in Dallas City Code section 8-1.5(a-1). The City counterclaimed for a declaration that section 8-1.5(a-1) is valid.

Proceedings in the trial court. The lawsuit was filed in the 44th District Court, Dallas County, the Honorable Bonnie Lee Goldstein presiding.

The judgment of the trial court. Judge Goldstein granted the City's motion for summary judgment and denied the Fund's motions for summary judgment (App. Tab 1) and signed a final judgment (App. Tab 2).

Proceedings in the court of appeals. The Fund appealed the judgment to the Fifth Court of Appeals. The Fund was the appellant, and the City was the appellee.

The opinion of the panel. The panel that decided the case was composed of Justices David J. Schenck, Bill Pedersen, III, and Dennise Garcia. The appellate court issued an opinion and judgment on October 29, 2021. (App. Tab 3.)

1. Justice Schenck authored the opinion for the panel.
2. The opinion of the court of appeals can be found at 636 S.W.3d 692.

The judgment of the court of appeals. The court reversed and rendered judgment in favor of the Fund and remanded the case on the issue of attorney fees. The court denied the City's motion for rehearing on January 6, 2022.

STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction over this appeal because the appeal presents a question of law that is important to the jurisprudence of the state. Tex. Gov't Code § 22.001(a)-(b). The issue is whether the governing body of a municipality can delegate its legislative authority to one of its boards by providing that a chapter of the municipality's code of ordinances cannot be amended without the approval of that board.

ISSUES PRESENTED

Issue 1: Did the court of appeals err in concluding that Dallas City Code section 8-1.5(a-1) is invalid for failure to follow the unconstitutional amendment process set out in Dallas City Code section 40A-35?

Issue 2: May the governing body of a municipality delegate legislative authority to one of its boards such that a chapter of its municipal code cannot be amended without the approval of a municipal board?

Issue 3: Is Dallas City Code section 8-1.5(a-1) an amendment to chapter 40A of the Dallas City Code?

IN THE SUPREME COURT OF TEXAS

CITY OF DALLAS,
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v.

EMPLOYEES' RETIREMENT FUND OF THE CITY OF DALLAS,
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PETITION FOR REVIEW

TO THE HONORABLE SUPREME COURT OF TEXAS:

The City of Dallas (the “City”) files this petition for review to show that the requirement in section 40A-35 of the Dallas City Code that any amendment to chapter 40A of the Dallas City Code must be approved by the Board of Trustees of the Employees’ Retirement Fund of the City of Dallas (“ERF Board”)¹ is an unconstitutional delegation of legislative authority to a City board. Therefore, the court of appeals erred in determining that section 8-1.5(a-1) of the Dallas City Code

¹ The term “ERF” is often used interchangeably to refer to three different but related entities: the fund itself, its board of trustees, and the City department that has responsibility for the day-to-day operations of the fund. To avoid confusion, the City will refer to these three entities respectively as the “Fund,” the “ERF Board,” and the “ERF Department” or “ERF staff.”

(the “Ordinance”) is invalid for failing to follow section 40A-35’s unconstitutional amendment process. This Court should grant review and reverse and render judgment in favor of the City.

STATEMENT OF FACTS

The Fund was created by ordinance passed by the Dallas City Council in 1943. (1CR:2040-44.) *See also* Dallas, Tex., Code ch. 40A (current version of ordinance). The Fund is the retirement fund for civilian employees of the City. *See id.* § 40A-1(18) (defining “employee” for purposes of the chapter). Police officers, firefighters, and fire alarm operators employed by the City are covered by a separate pension plan created by state statute. Tex. Rev. Civ. Stat. art. 6243a-1.

Nearly fifty years after the creation of the Fund, the ordinance was amended to add a provision that amendments to the ordinance be recommended by the ERF Board. (1CR:2234.) Thirteen years later, the language was amended again to state that amendments must be approved by the ERF Board. (1CR:2333.) The change was not mandated by the Texas Constitution, any state statute, or the Dallas City Charter.

The ERF Board is comprised of three members appointed by the City Council, three members elected by current employees of the City, and the city auditor, who sits *ex officio* on the board. Dallas, Tex., Code § 40A-2(c). Chapter 40A has minimal governance provisions, and the ERF Department and ERF Board look to

other portions of the Dallas City Code for governance. *All* City boards and commissions are regulated by chapter 8 of the Dallas City Code, including boards established by the Dallas City Charter. *See* Dallas, Tex., Code § 8-1 (defining “BOARD” as “a board or commission of the city that is established by ordinance or the Charter of the City of Dallas”). Chapter 8 imposes several governance regulations on all city boards including qualifications for members, rules for voting and procedure, and a code of conduct. *See id.* §§ 8-1.4, 8-17, 8-22. In 1994, three years *after* chapter 40A was amended to require amendments to be recommended by the ERF Board, the City implemented term limits on all appointed board members serving on City boards and commissions. (2CR:2770.) The Fund admits that the City has the authority to place term limits on appointed members of the ERF Board. (*See* 2CR:3057.)

In 2016, City staff from the ERF Department and the Dallas City Attorney’s Office, along with outside counsel, worked together to draft a proposed amendment to chapter 40A. (*See, e.g.*, 1CR:976-84.) At one point in the discussions, staff from the City Attorney’s Office suggested adding term limits for elected members of the ERF Board to the proposed amendment. (*See* 1CR:998.) ERF staff opposed the idea because they allegedly did not have adequate time to study term limits for elected board members. (2CR:2698.) The amendment was never fully drafted and was never presented for consideration to the ERF Board. (*See* 1CR:965, 998.)

The next year, the City worked with the state legislature to add term limits to the police and fire pension plan. Tex. Rev. Civ. Stat. art. 6243a-1, § 3.01(e). (*See* 1CR:1084.) The same year, the City was working on amendments to chapter 8. (*See, e.g.*, 1CR:1813, 1819-20.) Among the proposed changes was an amendment to limit the terms of elected ERF Board members like term limits on appointed board members, which are also set out in chapter 8, and term limits for the police and fire pension board. (*See* 2CR:2648-51.) The City Council unanimously passed Ordinance No. 30555, including the term limits provision applicable to elected members of the ERF Board. (1CR:823-33, 1046.) *See* Dallas, Tex., Code § 8-1.5(a-1).

When the City Secretary attempted to enforce the Ordinance, however, the ERF Department and the ERF Board initially chose simply to ignore the new provision. (*See* 1CR:218-19, 952.) After the City Attorney became involved in attempts to enforce the Ordinance (*see* 1CR:952-53, 950-51, 955), the ERF Board formalized its decision to ignore portions of the Dallas City Code in a resolution and then voted to authorize the executive director of the Fund to take legal action against the City. (2CR:3262-63; 1CR:961-62.) The Fund filed this lawsuit seeking, among other things, a declaration that the Ordinance was void (1CR:32), and the City filed a counterclaim seeking, among other things, a declaration that members of the ERF Board were subject to the term limits set out in the Ordinance (1CR:117).

Ultimately, both sides filed motions for summary judgment (1CR:799-868; 2CR:3030-3102), and after three separate hearings, the trial court issued an order on December 23, 2019, granting the City's motion and denying the Fund's motions (2CR:3286-87, App. Tab 1). The court signed a final judgment on February 7, 2020. (2CR:3341-42, App. Tab 2.)

The Fund appealed (2CR:3363), and the court of appeals reversed the trial court's judgment, rendered judgment in favor of the Fund, and remanded the case to the trial court to determine the appropriate amount of attorney's fees to be awarded to ERF, if any. *See Emps.' Ret. Fund v. City of Dallas*, 636 S.W.3d 692 (Tex. App.—Dallas 2021, pet. filed) (slip op. attached as App. Tab 3.)

SUMMARY OF ARGUMENT

The court of appeals erred in determining that the Ordinance is invalid for failing to follow the amendment process set out in section 40A-35 because that process provides for an unlawful delegation of legislative authority to a municipal board. The requirement that the ERF Board approve any amendment to chapter 40A of the Dallas City Code for it to be enacted is unique and in violation of the Texas Constitution and Dallas City Charter. Therefore, even if the Ordinance were an amendment to chapter 40A, the City cannot be required to follow an unconstitutional process in order to enact an ordinance. The Ordinance, however, was not an amendment to chapter 40A. The Fund had a high burden to overcome the

presumption that a municipal ordinance is valid, which it did not meet. The principles of both statutory construction and trust law lead to the conclusion that the Ordinance does not amend chapter 40A.

ARGUMENT

I. The court of appeals erred in requiring the City to follow an unconstitutional process to enact an ordinance.

A. Legislative authority cannot be delegated to the ERF Board.

The ERF Board is a quasi-judicial board. (*See* 1CR:544.) As such, it has no statutory power to legislate, and “any provision of a municipal ordinance that undertakes to confer legislative functions on such board would be invalid as constituting an unlawful delegation of legislative powers.” *See Swain v. Bd. of Adjustment*, 433 S.W.2d 727, 731 (Tex. App.—Dallas 1968, writ ref’d n.r.e.). Rather, the Dallas City Charter vests legislative authority for the City solely in the City Council. Dallas, Tex., Charter ch. III, § 1. “Where the City Charter prescribes a method for exercising a power, this method is exclusive and must be followed.” *City of Austin v. Thompson*, 219 S.W.2d 57, 59 (Tex. 1949).

The amendment process for chapter 40A set forth in section 40A-35 requires the ERF Board to *approve* all amendments to chapter 40A, giving it the same legislative authority as the City Council with respect to that chapter of the Dallas City Code. *See* Dallas, Tex., Code § 40A-35. That delegation of legislative authority to a City board, however, is unlawful, and therefore, section 40A-35 is invalid.

Because section 40A-35 itself is invalid, its requirements cannot be the basis for invalidating another provision of the Dallas City Code that was unanimously adopted by the City's legislative body.

In its decision, the court of appeals determined that the City was required to follow the amendment process set out in chapter 40A of the Dallas City Code to impose term limits on elected ERF Board members based on concepts of trust law. Trust law, however, is statutory law while the nondelegation doctrine derives from the separation of powers clause of the Texas Constitution. Tex. Const. art. II, § 1. Furthermore, the Trust Code is clear that an illegal provision in a trust does not control and may be modified by the courts. *See* Tex. Prop. Code §§ 111.0035(b)(1), 112.031, 112.054. While chapter 40A may be the trust document for the Fund, it is also an ordinance; and by focusing on the requirements of trust law rather than the constitutional strictures for legislation, the decision of the court of appeals elevates statutory trust law over the mandates of the Texas Constitution and, therefore, should be reversed.

B. The authority section 40A-35 delegates to the ERF Board is unique and not authorized by state law.

Although there are provisions of the Dallas City Code that authorize City boards to make recommendations to the City Council, those provisions were enacted in accordance with state statutory requirements and do not require the City Council to follow the recommendation of the City board. One of the most notable examples

is the City's zoning ordinances. For a home-rule municipality like the City to adopt zoning regulations, it must first establish a zoning commission. Tex. Loc. Gov't Code § 211.007(a). Before any zoning regulation may be adopted, amended, repealed, or otherwise changed, the zoning commission must make a recommendation to the governing body of the municipality. *Id.* §§ 211.002, 211.007(b). The governing body can provide by ordinance "that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied," *id.* § 211.006(f), but there is no provision requiring that the governing body of the municipality *must* follow the recommendation of the zoning commission or otherwise obtain the *approval* rather than simply the recommendation of the zoning commission prior to acting. The zoning commission certainly does not have the ability to veto the will of the unanimous City Council, a power ERF contends it is entitled to exercise pursuant to section 40A-35.

There is no similar provision in state law requiring the City to grant authority to the ERF Board with respect to decisions regarding the trust document for a municipal pension. Rather, state law prescribes much narrower authority for the board of trustees for a municipal retirement system. The board of trustees is meant only to do the following:

- (1) administer the system or program of benefits; (2) hold the assets of the system or program for the exclusive purposes of providing benefits

to participants and their beneficiaries and defraying reasonable expenses of administering the system or program; and (3) select legal counsel and an actuary and adopt sound actuarial assumptions to be used by the system or program.

Tex. Const. art. XVI, § 67(f). There is nothing in state constitutional or statutory law that supports much less requires that the ERF Board be given such an extraordinary amount of authority with respect to amendments to chapter 40A, and as discussed above, the City Charter also does not support the exercise of legislative authority on behalf of the City by any entity other than the City Council.

The uniqueness of the authority delegated to the ERF Board is further illustrated by the unusual position in which the City has been placed—arguing to this Court that a City ordinance is invalid and unconstitutional. Generally, the City Council as the sole legislative authority for the City would simply amend or repeal an unconstitutional ordinance, but the Fund’s position that section 40A-35 must be followed to enact any ordinance that the ERF Board considers to be an amendment of chapter 40A (*see, e.g.*, 1CR:961-62) means that any attempt to repeal the unconstitutional delegation of authority to the ERF Board in section 40A-35 would require either the ERF Board’s approval or litigation.

C. *Thornton and Burroughs* are not applicable here.

In holding that term limits for the elected ERF Board members must go through the process set out in section 40A-35, the court of appeals relied primarily on two cases, *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), and

Burroughs v. Lyles, 181 S.W.2d 570 (Tex. 1944). In both cases, however, the issue was whether constitutional requirements for an office could be altered by an inferior law. See *Thornton*, 514 U.S. at 783-84 (concerning an amendment to the Arkansas Constitution providing for term limits for positions created under article I of the U.S. Constitution); *Burroughs*, 181 S.W.2d at 711 (concerning a state statutory requirement adding qualifications for an office established under article III of the Texas Constitution). That is not the situation here.

In fact, as discussed above, the City’s governing document, the Dallas City Charter,² does not support the process that the Fund seeks to require to add term limits for elected ERF Board members, and neither does the Texas Constitution, which prohibits delegation of legislative power to a City board. Unlike in *Thornton* or *Burroughs*, the decision of the court of appeals does not prevent a law from being amended or changed by an inferior law, but instead endorses a process set out in an inferior law that violates superior laws. This Court should, therefore, grant this petition for review and reverse the court of appeals’ decision invalidating the Ordinance for failure to follow the unlawful process set out in section 40A-35.

² See *Tex. River Barges v. City of San Antonio*, 21 S.W.3d 347, 354 (Tex. App.—San Antonio 2000, pet. denied) (“A home-rule city’s charter is its organic act; it is the fundamental law of the municipality just as a constitution is the fundamental law of a state.”); *Willman v. City of Corsicana*, 213 S.W.2d 155, 157 (Tex. App.—Waco 1948) (“The charter of the city is its constitution and the city can exercise only such powers that are expressly granted by said charter.”), *aff’d*, 216 S.W.2d 175 (Tex. 1949).

II. The Ordinance is valid and does not amend chapter 40A.

“A city ordinance is presumed to be valid [T]he courts have no authority to interfere unless the ordinance is unreasonable and arbitrary—a clear abuse of municipal discretion.” *Hunt v. City of San Antonio*, 462 S.W.2d 536, 539 (Tex. 1971), *quoted in City of Brookside Vill. v. Comeau*, 633 S.W.2d 790, 792 (Tex. 1982). “The party attacking the ordinance bears an ‘extraordinary burden’ to show ‘that no conclusive or even controversial or issuable fact or condition existed’ which would authorize the municipality’s passage of the ordinance.” *Comeau*, 633 S.W.2d at 792-93 (quoting *Thompson v. City of Palestine*, 510 S.W.2d 579, 581 (Tex. 1974)).

The City enacted the Ordinance pursuant to its home rule powers to govern its boards and commissions. The court of appeals, however, determined that the Ordinance was an amendment to chapter 40A of the Dallas City Code because it added a “substantive qualification” for elected members of the ERF Board. *Emps.’ Ret. Fund*, 636 S.W.3d at 697. Under the principles of statutory construction, however, the decision that the Ordinance amends chapter 40A cannot be supported. The Fund had an extraordinary burden to overcome the presumption of validity, and it did not meet this burden. Rather, the City established that the Ordinance is valid and is not an amendment to chapter 40A.

A. Under the principles of statutory construction, the Ordinance is not an amendment to chapter 40A.

“Courts use the same rules that are used to construe statutes to construe municipal ordinances.” *Bd. of Adjustment v. Wende*, 92 S.W.3d 424, 430 (Tex. 2002). In construing a statute, a court follows a multistep process. First, the court looks to the plain meaning of the statute’s words; and, if they are unambiguous, the court follows the plain meaning. *Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm’n*, 518 S.W.3d 318, 325-26 (Tex. 2017). Second, the court construes the statute as a whole and seeks to harmonize it with other provisions. *Fort Worth Transp. Auth. v. Rodriguez*, 547 S.W.3d 830, 838-39 (Tex. 2018). Third, the court applies the construction that is reasonable and avoids absurd or unconstitutional results. *Worsdale v. City of Killeen*, 578 S.W.3d 57, 73 (Tex. 2019). The City’s construction prevails in every single step of this process.

1. The rules of construction require focus on the plain text.

Under the rules of construction, a court “look[s] to and rel[ies] on the plain meaning of a statute’s words as expressing legislative intent unless a different meaning is supplied, is apparent from the context, or the plain meaning of the words leads to absurd or nonsensical results.” *Cadena Comercial*, 518 S.W.3d at 325. The court should not deviate from the plain meaning of the text unless the statute is ambiguous or the plain meaning would lead to absurd consequences. *State v. Young*, 242 S.W.3d 926, 928 (Tex. App.—Dallas 2008, no pet.). “[T]hen *and only then*, out

of absolute necessity, is it constitutionally permissible for a court to consider, in arriving at a sensible interpretation, such *extra* textual factors as executive or administrative interpretations of the statute or legislative history.” *Id.* (citing *Wright v. State*, 201 S.W.3d 765, 768 (Tex. Crim. App. 2006)).

The plain text of Ordinance No. 30555 states that it amends chapter 8 of the Dallas City Code. (1CR:823.) No words in chapter 40A were changed as a result of the Ordinance. (1CR:823-33.) Quite simply, the Ordinance did not amend chapter 40A because the plain text shows it only amended chapter 8. (1CR:823.) No phrase, word, or punctuation mark within chapter 40A is read differently as a result of the Ordinance. (*See* 1CR:823-24.) The Ordinance clearly states and marks the portions of the City Code that are to be amended, and nothing in chapter 40A is changed. (*Id.*) Because there is no ambiguity in the plain text, the plain text should control. The plain meaning of the Ordinance clearly demonstrates it is not an amendment to chapter 40A, and therefore, inquiries into extra-textual factors are not appropriate. *Cail v. Serv. Motors, Inc.*, 660 S.W.2d 814, 815 (Tex. 1983) (“If the disputed statute is clear and unambiguous, extrinsic aids and rules of statutory construction are inappropriate.”).

2. The Ordinance can be harmonized with chapter 40A.

The rules of statutory construction require that courts read statutes as a whole and not assign a meaning to one provision that conflicts with other provisions if the

provisions can be reasonably harmonized. *City of Wilmer v. Laidlaw Waste Sys. (Dall.), Inc.*, 890 S.W.2d 459, 465 (Tex. App.—Dallas 1994), *aff'd*, 904 S.W.2d 656 (Tex. 1995). “[I]f there is no positive repugnance between the two [statutes], they will be harmonized so as to give effect to both.” *Brown v. Patterson*, 609 S.W.2d 287, 289 (Tex. App.—Dallas 1980, no writ) (citing *Standard v. Sadler*, 383 S.W.2d 391, 395 (Tex. 1964); *Gordon v. Lake*, 356 S.W.2d 138, 139 (Tex. 1962)).

The rules of statutory construction do not even require that the Court find that harmony be the best interpretation; they merely require that harmony be a reasonable interpretation. *See* Tex. Gov’t Code § 311.026(a) (“If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.”); *Laidlaw Waste*, 890 S.W.2d at 465 (“We do not give a statute meaning that conflicts with other provisions if we can reasonably harmonize the provisions.”). Here, the Ordinance can reasonably be harmonized with chapter 40A.

Chapter 40A does not exclude ERF from the requirements of the rest of the Code, and the Fund admits that it and the ERF Board are subject to the other provisions of the City Code. (2CR:2734-41.) Indeed, there are instances where the City Council has chosen to explicitly exclude a particular entity from the requirements of the City Code for boards and commissions. *See, e.g.*, Dallas, Tex., Code §§ 37-36(a)(1), 51A-5.209(d). In fact, the Fund has acknowledged that the

City can amend the qualifications for appointed ERF Board members in chapter 8. (*See, e.g.*, 1CR:2002; 2CR:3057.)

The language of chapter 8 is unmistakably clear that it applies to all boards and commissions of the City established by City ordinance or the City Charter, and there is no provision in the City Charter, chapter 40A, or elsewhere to suggest that chapter 8 does not apply to the ERF Board. *See* Dallas, Tex., Code § 8-1(1). In fact, the evidence presented to the trial court showed that ERF staff worked with the City Secretary's Office to implement changes to their procedures and to confirm what requirements applied to the ERF Board in response to other amendments to chapter 8 in the same Ordinance No. 30555. (*See* 2CR:2760-66.) The construction of the Dallas City Code that reasonably leads to harmony is that chapter 40A and chapter 8 be read together and that while chapter 40A provides specific provisions for the Fund's administration, the Fund is nonetheless also bound by the other provisions of the Dallas City Code.

3. The Fund's construction leads to absurd results.

As discussed in section I above, section 40A-35's requirement that the ERF Board approve any amendment to chapter 40A is an unconstitutional delegation of the Dallas City Council's legislative authority to one of its boards. Even more problematic, the court of appeals' decision encourages the Fund to continue to pick and choose what portions of the Dallas City Code that it will follow. The Fund's

argument in the court of appeals was that, because the ERF Board has the authority to interpret “any ambiguities, inconsistencies, or omissions that might be found” in chapter 40A, Dallas, Tex., Code § 40A-4(a)(18), it may ignore any ordinance not adopted using the process in section 40A-35 if it interprets the ordinance as an amendment to chapter 40A, an interpretation that it contends is not subject to judicial review. (*See* Appellant Br. 14-20; 1CR:961-62.)

This assertion leads to the absurd result, not only that the City unlawfully delegated its legislative powers to a board as discussed above, but that the ERF Board has the authority to essentially veto provisions of the Dallas City Code as applied to the Fund based on its own interpretation of chapter 40A. As discussed in section I.A above, Texas law does not permit delegation of legislative powers to the boards or commissions of a city. *Swain*, 433 S.W.2d at 732. The ERF Board cannot supplant the Dallas City Council as the legislative body of the City, even with respect to the Fund. The Fund’s interpretation violates this principle, and the Court should reject it.

B. The Ordinance is not an amendment to the trust.

The fact that the Fund is a trust does not change the analysis. Texas courts recognize principles of construction apply to trusts in a manner similar to the way they apply to statutes. *Paschall v. Bank of Am., N.A.*, 260 S.W.3d 707, 710 (Tex. App.—Dallas 2008, no pet.) (applying rules of construction to trust). In addition to

the principles of statutory construction, other principles of trust law further confirm that the Ordinance is not an amendment to chapter 40A.

Under trust law, as in contract law, when there are questions about the interpretation of a provision, the court should look to the parties' conduct under the contract to determine the meaning of a contested provision. *Harris v. Rowe*, 593 S.W.2d 303, 306 (Tex. 1979); *Johec v. Clayburne*, 863 S.W.2d 516, 520 (Tex. App.—Austin 1993, writ denied). When there is a question of interpretation of a trust instrument, a court “consider[s] the parties’ actions and conduct after the execution of the trust instrument, in order to determine the interpretation placed on the instrument by the parties themselves.” *Johec*, 863 S.W.2d at 520.

Here, the parties’ actions and conduct demonstrate that they did not intend for chapter 40A to preclude the City from passing governance provisions that impact the Fund or the ERF Board. The summary judgment record contains ample evidence that ERF followed other provisions of the City Code outside of chapter 40A and City-wide administrative directives impacting the Fund and the ERF Board. (*See* 2CR:2734-41, 2743-48, 2750-58, 2760-66.) Furthermore, the parties have a pattern of imposing requirements for the appointed and elected members of the ERF Board not specified in chapter 40A. For example, in 1994, the City added term limits for appointed members of the ERF Board in chapter 8 (2CR:2768-76), and the ERF Board has imposed additional requirements on candidates for the elected positions

by resolution (1CR:968-69 [preventing multiple candidates from any department running for same board position and limiting number of candidates to ten]). Thus, the summary judgment evidence showed that, until the Ordinance was enacted, neither party considered governance provisions or other requirements outside of chapter 40A that impact ERF Board members to be amendments to chapter 40A.

In addition, as discussed in section II.A.3 above, the Fund's position in this litigation allows the ERF Board to exceed its authority under chapter 40A and essentially exercise veto power over any legislation duly passed by the Dallas City Council to the extent it affects the Fund. Trustees may only exercise the authority given to them in the trust document. *Beaty v. Bales*, 677 S.W.2d 750, 754 (Tex. App.—San Antonio 1984, writ ref'd n.r.e.) (“[T]he trustee’s powers are conferred by the instrument, and neither the court nor the trustee can add or take away such power.”).

Chapter 40A does not give the ERF Board the authority to determine which ordinances passed outside chapter 40A it will follow. As with the principles of statutory construction, the principles of trust law similarly require that a court “avoid strictly construing an instrument’s language if it would lead to absurd results.” *Hemyari v. Stephens*, 355 S.W.3d 623, 626-27 (Tex. 2011). “The trust is entitled to that construction which the maker intended,” *Beaty*, 677 S.W.2d at 754, and the Court should follow the construction that is in keeping with the City’s intent.

Whether the Court relies on trust law or statutory construction, both bodies of law lead to the conclusion that the Ordinance is not an amendment to chapter 40A.

PRAYER

For the reasons stated above, the City asks the Supreme Court to grant this petition for review; request briefs from the parties; set this case for oral argument; and, after argument, reverse the judgment of the court of appeals and affirm the judgment of the trial court.

Respectfully submitted,

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ATTORNEYS FOR THE CITY OF DALLAS

CERTIFICATE OF COMPLIANCE

I certify that this document contains 4499 words, excluding the parts exempted by Texas Rule of Appellate Procedure 9.4(i)(1), and has been prepared in a proportionally spaced 14-point Times New Roman typeface using Microsoft Word for Microsoft 365 MSO.

/s/ Kathleen M. Fones
Attorney for the City of Dallas

Dated: March 24, 2022

CERTIFICATE OF SERVICE

I certify that on March 24, 2022, the Petition for Review and Appendix were served through an electronic filing manager upon each person listed below:

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IN THE SUPREME COURT OF TEXAS

CITY OF DALLAS,
Petitioner,

v.

EMPLOYEES' RETIREMENT FUND OF THE CITY OF DALLAS,
Respondent.

APPENDIX

Omnibus Order on Motions for Summary Judgment (2CR:3286-87).....	Tab 1
Final Judgment (2CR:3341-42)	Tab 2
Opinion and Judgment of the Court of Appeals	Tab 3
Ordinance No. 30555 (1CR:823-34)	Tab 4
Dallas, Tex., Code § 8-1.5 (1CR:942)	Tab 5
Dallas, Tex., Code ch. 40A (1CR:905-40)	Tab 6

THE EMPLOYEES' RETIREMENT	§	IN THE DISTRICT COURT
FUND OF THE CITY OF DALLAS,	§	
Plaintiff/Counter-Defendant	§	
	§	
vs.	§	DALLAS COUNTY, TEXAS
	§	
THE CITY OF DALLAS,	§	
Defendant/Counter-Plaintiff	§	44th JUDICIAL DISTRICT

OMNIBUS ORDER ON MOTIONS FOR SUMMARY JUDGMENT

On June 19, 2019, came to be heard the City of Dallas's Motion for Summary Judgment and, on August 2, 2019, came to be heard the Employees' Retirement Fund of the City of Dallas's ("the ERF") Cross Motion for Summary Judgment. On October 17, 2019, came on to be heard the ERF's Motion for Summary Judgment on the City's Breach of the Trust Agreement.

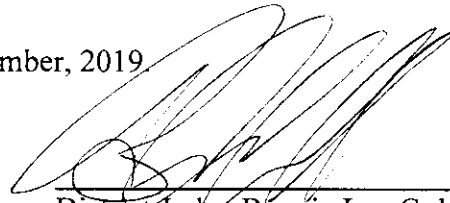
Based on the Motions for Summary Judgment, the responses and replies thereto, the pleadings, the arguments of counsel, and the evidence presented, the Court finds the City's Motion for Summary Judgment should be GRANTED, the Employees' Retirement Fund of the City of Dallas's Cross Motion for Summary Judgment be DENIED, and the ERF's Motion for Summary Judgment on the City's Breach of Trust Agreement Claim should be DENIED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT the City of Dallas' Motion for Summary Judgment is GRANTED:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the Employees' Retirement Fund of the City of Dallas' Cross Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the ERF's Motion for Summary Judgment on the City's Breach of Trust Agreement is DENIED.

SIGNED this 23rd day of December, 2019



District Judge Bonnie Lee Goldstein

CAUSE NO. DC-18-14682

THE EMPLOYEES' RETIREMENT	§	IN THE DISTRICT COURT
FUND OF THE CITY OF DALLAS,	§	
Plaintiff/Counter-Defendant	§	
	§	
vs.	§	DALLAS COUNTY, TEXAS
	§	
THE CITY OF DALLAS,	§	
Defendant/Counter-Plaintiff	§	44th JUDICIAL DISTRICT

FINAL JUDGMENT

On June 19, 2019, came to be heard the City of Dallas's Motion for Summary Judgment and, on August 2, 2019, came to be heard the Employees' Retirement Fund of the City of Dallas's ("the ERF") Cross Motion for Summary Judgment. On October 17, 2019, came on to be heard the ERF's Motion for Summary Judgment on the City's Breach of the Trust Agreement.

Based on the Motions for Summary Judgment, the responses and replies thereto, the pleadings, the arguments of counsel, and the evidence presented, the Court finds the City's Motion for Summary Judgment should be GRANTED, the Employees' Retirement Fund of the City of Dallas's Cross Motion for Summary Judgment be DENIED, and the ERF's Motion for Summary Judgment on the City's Breach of Trust Agreement Claim should be DENIED. An Omnibus Order on the Motions for Summary Judgment was entered on December 23, 2019 and was not final. On January 31, 2020, after Notice of Nonsuit, the Court entered an Order of Nonsuit of City of Dallas' remaining claim of Breach of Trust Agreement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT the City of Dallas' Motion for Summary Judgment is GRANTED:

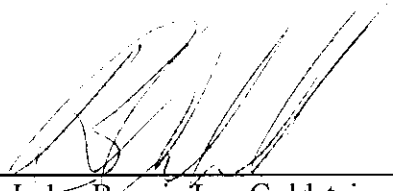
IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the Employees' Retirement Fund of the City of Dallas' Cross Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the ERF's Motion for Summary Judgment on the City's Breach of Trust Agreement is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT Defendant' City of Dallas' remaining counterclaim of Breach of Trust Agreement was dismissed.

This is the Court's Final Judgment reflecting prior orders, disposing of all parties and all issues and is appealable.

SIGNED this 7th day of February, 2020.



District Judge Bonnie Lee Goldstein

REVERSE and RENDER and REMAND Opinion Filed October 29, 2021



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00494-CV

**THE EMPLOYEES' RETIREMENT FUND OF THE CITY OF DALLAS,
Appellant**

V.

THE CITY OF DALLAS, Appellee

**On Appeal from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-14682**

OPINION

Before Justices Schenck, Pedersen, III, and Garcia
Opinion by Justice Schenck

This case concerns the validity of a City of Dallas (the "City") ordinance imposing term limits for The Employees' Retirement Fund of the City of Dallas's (the "Fund") elected board members. On cross-motions for summary judgment, the trial court granted the City's motion and denied the Fund's. The Fund appeals that judgment and urges in its first five issues that (1) the trial court erred in granting the City's motion for summary judgment and in denying its cross-motion, (2) the trial court lacked jurisdiction to grant summary judgment on the City's counterclaims, (3) the City purported to amend the Fund's governing document without obtaining

Tab 3

the necessary approvals, (4) the trial court erred in impliedly holding the ordinance at issue applies retroactively, and (5) the trial court erred in granting the City summary judgment on its request for injunctive relief. In its final issue, the Fund requests that, should this Court reverse the trial court’s judgment, we remand the case to the trial court to consider awarding the Fund reasonable and necessary attorney’s fees pursuant to the Declaratory Judgments Act. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.009. We reverse the trial court’s judgment in favor of the City, render judgment in favor of the Fund, declare section 8-1.5(a-1) of the Dallas City Code (the “City Code”) void and unenforceable, and remand the case to the trial court to consider the issue of attorney’s fees.

BACKGROUND

In 1943, the City established the Fund to provide retirement, disability, and survivor benefits to the City’s civilian employees and their beneficiaries. The Fund is a trust fund. DALLAS, TEX., CITY CODE § 40A-2(a).

The terms of the Fund’s governance are set forth in a trust document (the “Trust Document”). The Trust Document has been codified as Chapter 40A of the City Code.¹ Among other things, the Trust Document sets forth the method for

¹ For cities with a population of 290,000 or more, Article 6243d, section 1 of the civil statutes provides:

Before said pension plan as devised and formulated by the governing body of such city or town shall become effective, said entire pension plan shall be submitted in ordinance form by said governing body to the qualified electors of such city or town and be approved by said qualified electors at an election duly held.

TEX. REV. CIV. STAT. ANN. art. 6243d, § 1.

amending the Trust Document and establishes the composition, terms, and remuneration of the Fund’s board. *Id.* §§ 40A-2, 40A-3, 40A-35. The Trust Document, at all times relevant here, mandated a three-step process for amending the Trust Document. More particularly, the Trust Document “may not be amended except by a proposal initiated by either the board or the city council that results in an ordinance approved by the board, adopted by the city council, and approved by a majority of the voters voting at a general or special election.” *Id.* § 40A-35(a).

The Trust Document specifies that the Fund is to be administered by a seven-member board. *Id.* § 40A-2(c)(1). Three of the members are appointed by the Dallas City Council (“City Council”), three are elected by active members of the Fund, and the final member is the City Auditor, who sits *ex officio*. *Id.* § 40A-2(c)(1)(A)–(C). The Fund’s board is the only City board that splits decision-making authority between elected and appointed members. Qualifications for *appointed* members are primarily set forth in Chapter 8 of the City Code, entitled “Boards and Commissions.”² *See id.* § 8-1.4. Qualifications for *elected* members are set forth in Chapter 40A of the City Code, the Trust Document. *See id.* § 40A-2.

In 2016, the City and the Fund began discussing revisions to the Trust Document that primarily concerned restructuring benefits into a two-tiered system to better manage costs. These changes were adopted and approved under Ordinance

² The only specification within Chapter 40A concerning appointed board members is a permissive one that allows for the appointment of city council members. *Id.* § 40A-2(c)(1)(A).

No. 30162 in compliance with the Trust Document’s mandated three-step approval process. Before Ordinance No. 30162 was finalized, the City proposed amending section 40A-3 of the Trust Document, which sets forth the terms, remuneration, and method of selecting the Fund’s board members, to include a term limits provision for *elected* board members. The City removed the proposed term limits provision from the final draft of the ordinance because the Fund’s board members had not studied term limits and did not have an adequate time to do so before the ordinance was to be finalized.

Thereafter, the City adopted Ordinance No. 30555, which, among other things, contained the term limits provision the City had proposed be included in Ordinance No. 30162. This new ordinance was codified in Chapter 8 of the City Code (“Boards and Commissions”), with section 8-1.5(a-1) containing the term limits provision. *Id.* § 8-1.5(a-1). Section 8-1.5(a-1) specifically references the Fund’s board and provides:

A person who has served on the board of the employees’ retirement fund pursuant to section 40A-3(a)(1) of this code,³ as amended, for three consecutive terms, of whatever length of time, will not again be eligible to serve on that same board until at least one term has elapsed, whether service was as a member, chair, or other position on the board.

Id. The City enacted this term limits provision without the approval of the Fund’s board or the voters and, in doing so, specifically recommended that the term limits

³ Section 40A-3(a)(1) concerns the terms of the elected board members. *Id.* § 40A-3(a)(1).

provision be added to Chapter 8 of the City Code⁴ because there was resistance from the Fund's long-term board members when the City proposed adding it to the Trust Document (Chapter 40A) itself.

Two months later, the City Secretary informed the Fund's executive director that term limits had been enacted and that two of the elected members were not eligible to run for additional terms. The Fund disputed the validity of the new term limits and, after attempts to resolve the dispute with the City failed and the City threatened suit if the elected members did not withdraw from the Fund's board at the expiration of their terms, it filed suit seeking a declaration that the City's attempted amendment to impose term limits for elected board members is void and unenforceable because the City did not comply with the mandated three-step process set forth in section 40A-35 of the Trust Document. The City filed counterclaims seeking a declaration to the contrary and requesting that the Fund be enjoined from seating two of the elected members for additional terms and to prevent those members from holding over past the expiration of their current terms.

As stated previously, the trial court resolved this case on cross-motions for summary judgment. This appeal followed.

⁴ The City Council is authorized to amend Chapter 8 of the City Code with the approval of a majority of the City Council members.

DISCUSSION

In its first and third issues, the Fund asserts the trial court erred in granting the City's motion for summary judgment and in denying the Fund's motion because, in enacting section 8-1.5(a-1) of the City Code, the City effectively amended the Trust Document without complying with the Trust Document's amendment process.

I. Standard of Review

We review the granting of a motion for summary judgment de novo. *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013). Where, as here, the parties file cross-motions for summary judgment, and the trial court grants one and denies the other, we review the summary judgment evidence supporting the motions and determine all questions presented and preserved. *Kaufman Cty. v. Combs*, 393 S.W.3d 336, 341 (Tex. App.—Dallas 2012, pet. denied) (citing *Jones v. Strauss*, 745 S.W.2d 898, 900 (Tex. 1988)). Upon review of the summary judgment record, we may affirm the judgment, or reverse and render the judgment the trial court should have entered. *Gramercy Ins. Co. v. Auction Fin. Program, Inc.*, 52 S.W.3d 360, 363 (Tex. App.—Dallas 2001, pet. denied).

II. Nature of the Fund

The Texas Trust Code (Chapters 111 through 117 of the Texas Property Code) applies to pension trusts. TEX. PROP. CODE § 121.003. The Fund is a pension trust. DALLAS, TEX., CITY CODE § 40A-2. A trust may be amended only by following the amendment process set forth in the trust document itself. PROP. § 111.0035(b)

(providing, with certain exceptions not applicable here, that terms of trust prevail over any provisions of this subtitle). When the terms of a trust set out a specific method or manner in which the trust may be amended, the Texas Trust Code indicates that those terms are controlling and must be followed. *Runyan v. Mullins*, 864 S.W.2d 785, 789 (Tex. App.—Fort Worth 1993, writ denied) (citing predecessor to section 111.0035(b)). Any attempt to amend a term of a trust that does not comply with the specific procedure set forth in the trust instrument is ineffective. *See Jinkins v. Jinkins*, 522 S.W.3d 771, 782 (Tex. App.—Houston [1st Dist.] 2017, no pet.).

Here, the Trust Document specifies the procedure by which the trust may be amended. More particularly, section 40A-35(a) of the City Code, titled “Amendment to this Chapter,” states:

Except as provided in Subsection (b)⁵ of this section, this chapter may not be amended except by a proposal initiated by either the board or the city council that results in an ordinance approved by the board, adopted by the city council, and approved by a majority of the voters voting at a general or special election.

DALLAS, TEX., CITY CODE § 40A-35(a).

⁵ Subsection (b) provides:

A provision of this chapter, other than this section, that is determined by the board to require amendment in order to comply with federal law may be amended by ordinance of the city council, without voter approval, upon recommendation of the board. The board shall recommend the exact amending language to be included in the ordinance, which language may not be limited or added to by the city council. An amendment may be made under this subsection only to the extent necessary to comply with federal law.

DALLAS, TEX., CITY CODE § 40A-2(b). Subsection (b) is not implicated in this case.

III. Was the Enactment of Term Limits an Unauthorized Amendment to the Trust Document?

It is undisputed that the City did not go through the process specified in section 40A-35 of the City Code in enacting section 8-1.5(a-1). Thus, the issue presented is whether the City's enactment of section 8-1.5(a-1) was an attempt to amend the Trust Document without the required approvals. This issue presents a purely legal question of law that we review *de novo*.

As an initial matter, we note the Trust Document regulates elected board members and sets forth their qualifications for office. *Id.* §§ 40A-2, 40A-3, 40A-4. Elected board members must be employees from different departments of the City who are elected by members of the retirement fund and who are members of the retirement fund. *Id.* § 40A-2(c). The Trust Document specifies that the Fund's board, not the City Council, shall determine the time, method, and manner of election to the board. *Id.* § 40A-4(a)(11).

In resolving the issue presented here, we must determine whether the imposition of term limits impacts the eligibility or qualification requirements for the Fund's elected board members. The following persuasive authorities indicate that the amendment here operates as an eligibility requirement in conflict with the controlling Trust Document.

In *United States Term Limits, Inc. v. Thornton*, the United States Supreme Court held that an Arkansas law prohibiting otherwise eligible congressional

candidates from appearing on the general election ballot if they had already served two Senate terms or three House terms was an impermissible attempt to add *qualifications* to congressional office rather than a permissible exercise of the State's Elections Clause power to regulate the times, places and manner of holding elections for Senators and Representatives. 514 U.S. 779 (1995). The court determined that the *imposition of term limits* on candidates for the United States Congress was a *substantive qualification* rendering a class of potential candidates ineligible for ballot position. *Id.* at 835. Because qualifications for United States Senators and Representatives are set forth in the Constitution, any law purporting to impose term limits must satisfy the constitutional amendment process. *Id.* at 837. States cannot impose qualifications for the office beyond what is set forth in the United States Constitution. *Id.* The *imposition of term limits* would affect a fundamental change in the constitutional framework that *must pass through the amendment procedures* set forth in the Constitution itself. *Id.* The Court concluded that the imposition of term limits, under the rubric of state law, was simply an attempt to accomplish indirectly what the State of Arkansas could not accomplish directly. *Id.* at 829.

Similarly, with respect to candidate eligibility, the Texas Supreme Court in *Borroughs v. Lyles* held as void a statute making a person holding a public office ineligible to run for any other public office, the term of which would begin before the expiration of the term of the original office, without first resigning from the office to which he or she had been elected because that statute sought to impose an

additional test of *eligibility*, other than what is prescribed by the constitution. 181 S.W.2d 570, 574 (Tex. 1944); *see also State ex rel. Candler v. Court of Civil Appeals, Fourth Dist. of Tex.*, 75 S.W.2d 253, 257 (Tex. 1934) (Constitution having prescribed requisite qualifications for Governor and having fixed grounds of ineligibility, it is beyond the power of Legislature to add another ground for disqualification); *Dickson v. Strickland*, 265 S.W. 1012, 1015–16 (Tex. 1924) (noting where constitution declares qualifications for office, it is not within power of Legislature to change or add to them).

Here, the City’s amendment to Chapter 8 of its City Code unilaterally imposed a new qualification for elected Fund board members. The imposition of term limits for elected Fund board members added a substantive qualification for office that rendered a class of potential candidates ineligible and effected a fundamental change to the Trust Document, which must follow the amendment process set out in the Trust Document itself. The City did not follow the amendment process set out in section 40A-35 of the City Code. Rather, in enacting section 8-1.5(a-1), the City attempted to accomplish indirectly what it was prohibited from doing directly.

Accordingly, we sustain the Fund’s first and third issues. In light of our disposition of the Fund’s first and third issues, we pretermitt consideration of its second, fourth and fifth issues.⁶ TEX. R. APP. P. 47.1.

⁶ In its second issue, the Fund asserts the trial court’s judgment contravenes the Fund’s interpretation of Chapter 40A, which controls. In its fourth issue, the Fund asserts the trial court erred by impliedly

IV. Attorney's Fees

In its sixth issue, the Fund urges that, if this Court reverses the trial court's judgment in favor of the City and renders judgment for the Fund, it should remand the case to the trial court so that attorney's fees may be awarded pursuant to section 37.009 of the Texas Civil Practice and Remedies Code, governing costs and attorney's fees in declaratory judgment actions. TEX. CIV. PRAC. & REM. CODE ANN. § 37.009. The Declaratory Judgments Act allows a court to award costs and reasonable attorney's fees as are equitable and just in declaratory judgment actions. *Id.* Because we reverse the trial court's judgment and render judgment in favor of the Fund, we remand the issue of attorney's fees under the Declaratory Judgments Act to the trial court for its consideration in light of our opinion. *See N. Tex. Mun. Water Dist. v. Ball*, 466 S.W.3d 314, 323–24 (Tex. App.—Dallas 2015, no pet.).

We sustain the Fund's sixth issue.

CONCLUSION

We reverse the trial court's judgment granting the City's motion for summary judgment and denying the Fund's motion for summary judgment. Further, we render judgment in favor of the Fund and declare that the City's attempt to impose term limits on the elected members of the Fund's board by amending Chapter 8 of the City Code is invalid and that City Code section 8-1.5(a-1) is void and unenforceable.

holding the attempted amendment applies retroactively. In its fifth issue, the Fund asserts the trial court erred in granting the City's request for injunctive relief.

We remand the case to the trial court to determine the amount of attorney's fees, if any, to which the Fund is entitled.

/David J. Schenck/

DAVID J. SCHENCK
JUSTICE

200494F.P05



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

THE EMPLOYEES' RETIREMENT
FUND OF THE CITY OF DALLAS,
Appellant

No. 05-20-00494-CV V.

THE CITY OF DALLAS, Appellee

On Appeal from the 44th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-18-14682.

Opinion delivered by Justice
Schenck. Justices Pedersen, III and
Garcia participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and judgment is **RENDERED** in favor of The Employees' Retirement Fund of the City of Dallas. We declare that the City of Dallas' attempt to impose term limits on the elected members of the retirement fund's board by amending Chapter 8 of the Dallas City Code is invalid and that Dallas City Code section 8-1.5(a-1) is void and unenforceable. We **REMAND** the case to the trial court to determine the amount of attorney's fees, if any, to which the Fund is entitled.

It is **ORDERED** that appellant THE EMPLOYEES' RETIREMENT FUND OF THE CITY OF DALLAS recover costs of this appeal from appellee THE CITY OF DALLAS.

Judgment entered this 29th day of October 2021.

7/17/2017

ORDINANCE NO. 30555

An ordinance amending Chapter 8, "Boards and Commissions," of the Dallas City Code by amending Sections 8-1, 8-1.1, 8-1.2, 8-1.4, 8-1.5, 8-2, 8-4, 8-6, 8-8, 8-9, 8-20, 8-20.1, and 8-21; clarifying and adding definitions; providing that each board approve and provide its annual report to the city manager; clarifying and adding items to be included in a board's annual report; providing clarification on residency requirements; providing term limits for elected trustees of the employees' retirement fund; requiring department directors to inform the city secretary's office of the board's regular meeting schedule; providing that a board may call a special meeting if a quorum does not exist 30 minutes after the meeting was called; providing that absence from a special meeting does not affect a board member's attendance in regards to the attendance policy; providing that the minutes of meetings to be submitted to the city secretary must be signed by the presiding officer; providing that the mayor shall appoint the chair for each board subject to confirmation by a majority of the city council; providing that the term of appointment of chair or vice-chair will run concurrently with the term of appointment to the board; providing that the chair or vice-chair may be removed from the position of chair or vice-chair for any cause with a public hearing before city council on charges publicly made; providing for an exception to the special attendance requirements; providing that a member will be counted absent from a meeting if that member is absent for more than 50 percent of that meeting; making certain other structural, grammatical, and clarifying changes; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

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SECTION 1. That Section 8-1, "Definitions," of Article I, "In General," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"SEC. 8-1. DEFINITIONS.

In this chapter:

(1) **BOARD** means a board or commission of the city that is established by ordinance or the Charter of the City of Dallas.

(2) **CHAIR** means the presiding officer of a board whether appointed by the city council or elected by the other members of the board. In debate the chair shall be referred to by this official title and shall be addressed by prefixing Mr. or Madam, as the case may be, to that title.

(3) **CONFIDENTIAL INFORMATION** means any information that could not be obtained by the public under the Texas Open Records Act.

(4) **CRIMINAL RECORD** means a record of a person's criminal history, which may include, without limitation, arrests, convictions, dismissals, and acquittals.

(5) **FORFEIT or FORFEITURE** means automatic loss of membership on a board, without the need for council action.

(6) **MEMBER** means a duly appointed or elected member of a board."

SECTION 2. That Subsection (a) of Section 8-1.1, "Reports to the City Council," of Article I, "In General," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"SEC. 8-1.1. REPORTS TO THE CITY COUNCIL.

(a) By February 1 of each year, each board shall submit to the city manager for distribution to the city council an annual report that has been approved by the board of its activities containing the following:

(1) a cover letter transmitting the report, signed by the board chair, addressed to the mayor and city council;

(2) a table of contents;

(3) a mission statement [~~and~~] or the guiding principles of the reporting body;

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(4) ~~[a list of objectives, programs, and success indicators for period covered in the report;~~

(5) a summary of the year just completed including highlights of objectives and accomplishments;

(6) a ~~[work program]~~ list of objectives and programs for the coming year including revised goals ~~[and a revised matrix]~~;

(7) a summary of the board's recommendations, including a summary of the recommendations of the minority if there is a minority report;

(8) other information determined to be necessary by the board."

SECTION 3. That Subsection (c) of Section 8-1.1, "Reports to the City Council," of Article I, "In General," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"(c) The ~~[public information representative of the]~~ office of the city manager shall coordinate the preparation of the reports within the applicable city departments and generally give assistance in the development of the reports."

SECTION 4. That Subsection (d) of Section 8-1.1, "Reports to the City Council," of Article I, "In General," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"(d) The following formatting standards ~~[for format]~~ shall apply:

(1) The report should be 8-1/2 inches by 11 inches in size. Each larger sheet should be folded to this size.

~~(2) The text should be black and white with no color.~~

~~(3) The text should be typed and reproduced directly, without typesetting.~~

~~(4) Use of photographs should be kept at a minimum.]~~

(5) Covers should include ~~[be of color stock paper with black print and]~~ the city of Dallas logo.

~~(6) The report may be bound if over 200 pages in length.~~

(7) ~~The city print shop should do the printing.]~~

SECTION 5. That Subsection (a) of Section 8-1.2, "Notice of Appointment; Acceptance," of Article I, "In General," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"(a) After the city council appoints a person to serve as a member of a board, the city secretary shall notify the person in writing of the appointment. The notification shall contain [a ~~copy of~~] the city's code of ethics and a form of acceptance of appointment to be returned to the city secretary by the appointee. The form of acceptance shall contain a statement that the appointee has read the entire code of ethics and agrees to comply with it."

SECTION 6. That Section 8-1.4, "Qualification Considerations in Appointments to Board," of Article I, "In General," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"(a) In addition to the qualifications for service on a board that are mandated by the city charter or other ordinances, an appointee to a board must:

- (1) have been a resident of the city for at least six months prior to the date of appointment;
- (2) be a qualified voter in the city at the time of appointment;
- (3) have no criminal record that is considered by the city council to be so serious that it should serve as a disqualification;
- (4) not be an adversary party to pending litigation or a claim against the city or a city employee, except for eminent domain proceedings; disqualification of an appointee under this subparagraph may be waived by the city council after review of the specific circumstances unless the subject of the litigation or claim involves the board on which the appointee will serve or the department providing support services to that board;
- (5) not be an employee or a business associate of either an adversary party or a representative of an adversary party, nor have a pecuniary interest, in any pending litigation or claim, other than an eminent domain proceeding, against the city relating to the board on which the appointee will serve or the department providing support services to that board or against any individual officer or employee of the support department (unless unrelated to such individual's office or employment); disqualification of an appointee under this subparagraph may not be waived;
- (6) not be in arrears on any city taxes, water service charges, or other

obligations owed the city;

(7) have a creditable record of attendance pursuant to Section 8-20 ~~[and performance]~~ in any previous board service; and

(8) not have been finally convicted of two or more felony offenses for which the person has not been pardoned or otherwise released from the resulting disabilities.

(b) Notwithstanding Subsection (a), an appointee to a board is not required to live in the district for which he or she is appointed, unless district residency for a board is expressly required by this code.

(c) A person may serve on only one board at a time, except that this restriction does not apply to ex officio board positions. It is the city council's intent that a board member is not required to resign one board position before being appointed to another board, but must resign the first position before accepting appointment to the new board position.

(d[e]) Notwithstanding Subsection (c[b]), a person may serve on up to two boards of directors of reinvestment zones established under the Tax Increment Financing Act, as amended.

(e[d]) A person appointed to a board must meet, at the time of appointment and during the entire period of service on the board, all qualifications for appointment to that board that are required by this section and any other applicable provision of a city ordinance or the city charter. This subsection does not apply to a qualification waived by the city council pursuant to specific authority granted in a provision of a city ordinance or the city charter applicable to the board to which the person is appointed.

(f[e]) The city secretary shall inform the city council if any person nominated for appointment to a board has been convicted of a misdemeanor offense, other than a traffic violation, in the last five years or of any felony offense.

(g[e]) A person is not disqualified from board service under Subsection (a)(6) if the person has entered into an agreement (authorized by the city, state law, or court order) to pay the obligation on a scheduled payment plan and is current on payments under the plan and in compliance with all terms and conditions of the plan. Before the person is appointed or reappointed to any board, the city secretary shall inform the city council if the person is on such a payment plan. The city secretary shall monitor compliance with the payment plan and notify the city council and the city attorney whenever the person is not in compliance with the plan. ~~[The city secretary shall also send a notice of any noncompliance to the person, and, if the person is a current or holdover board member, the city secretary shall place an item on a council agenda to consider removal of the person from the board.]~~

(h) Except as provided in this subsection, if a person does not meet or continue to meet the qualifications set forth under this section, the city secretary shall send the following:

(1) a notice that the person forfeits their membership on the board for no longer

qualifying under Paragraph (1), (2), (5), (6), (7), or (8) of Subsection (a) of this section.

(2) a notice that the city secretary shall place an item on a council agenda to consider removal of the person from the board for no longer qualifying under Paragraph (3) or (4) of Subsection (a) of this section."

SECTION 7. That Section 8-1.5, "Limitation of Terms," of Article I, "In General," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"SEC. 8-1.5. LIMITATION OF TERMS.

(a) A person who has served as a member of a particular board for four consecutive two-year terms will not again be eligible to serve on that same board until at least one term has elapsed, regardless of whether service was as a member or chair. ~~[Disqualification of a board appointee under this subsection may be waived by the city council after a review of the specific circumstances.]~~

(a-1) A person who has served on the board of the employees' retirement fund pursuant to Section 40A-3(a)(1) of this code, as amended, for three consecutive terms, of whatever length of time, will not again be eligible to serve on that same board until at least one term has elapsed, whether service was as a member, chair, or other position on the board.

(b) Notwithstanding Subsection (a), a person may serve as a member of a particular board for the maximum number of terms that may be fixed for the particular board by the city charter or federal law and will not again be eligible to serve on that same board until at least one term has elapsed.

(c) In determining whether a full term has been served by a board member, the same definition of "term" that applies to a city council member, as set forth in Chapter III, Section 3A(c) of the city charter, will also apply to a board member."

SECTION 8. That Section 8-2, "Regular Meetings," of Article II, "Meetings," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"SEC. 8-2. REGULAR MEETINGS.

(a) Each board shall determine the time and place of its meetings. Regular meetings shall be scheduled weekly, monthly, semi-monthly, or quarterly, as the responsibilities of the board necessitate, at a location within a public building.

(b) Department directors will biennially inform the city secretary's office of the board's regular meeting schedule, or at any other such time as that schedule changes."

SECTION 9. That Section 8-4, "Quorum," of Article II, "Meetings," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"SEC. 8-4. QUORUM.

(a) At the beginning of each regular or special meeting, the chair shall determine whether or not a quorum exists in order to properly transact business of the board. Unless otherwise provided by another city ordinance, the city charter, or state law, a quorum exists when there are physically present a simple majority of the number of members officially appointed to the board, regardless of the total number of members actually provided for the board, except that no board required to be composed of 15 or more members may have a quorum of fewer than six members. If a quorum does not exist 30 minutes after the time for which the meeting was called, the chair shall adjourn the meeting and may [and either re-schedule the meeting at its next regular time or] call a special meeting in accordance with the Texas Open Meetings Act, as amended [; ~~depending on the circumstances].~~

(b) For purposes of calculating attendance, special meetings will not be counted."

SECTION 10. That Subsection (a) of Section 8-6, "Public Character of Meetings and Actions; Executive Sessions," of Article II, "Meetings," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"(a) All meetings of a board shall be open to the public unless pertaining to matters authorized under the Texas Open Meetings Act, as amended, to be discussed in executive session. All actions of the board shall be public and sufficient copies of the minutes shall be made available by the coordinating city [secretary to] staff member[s] to the[;] the news media[;] and other interested persons upon request."

SECTION 11. That Section 8-8, "Report of Minutes," of Article II, "Meetings," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"SEC. 8-8. REPORT OF MINUTES.

Each board shall submit to the city secretary [~~of the city~~], within five days following each regular and special meeting the following[;]

- (a) a list of members absent from the meeting; and
- (b) the approved [a copy of the] minutes of each [the] meeting, signed by the presiding officer."

SECTION 12. That Subsection (a) of Section 8-9, "Chair and Vice-Chair," of Article III, "Officers and Their Duties," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"(a) The chair shall ~~[-when present,]~~ preside at all meetings of the board. In the absence of the chair, the vice-chair shall exercise the powers of the chair. The seniority of the vice-chairs, if more than one, must be stipulated at the time of their selections. If no [the] chair or [ceases to preside during a meeting and no] vice-chair is available, ~~[the chair may, subject to the approval of]~~ the board may[-] appoint a temporary chair. The first adjournment puts an end to this appointment."

SECTION 13. That Subsection (e) of Section 8-9, "Chair and Vice-Chair," of Article III, "Officers and Their Duties," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"(e) Unless specifically provided otherwise in the ordinance or city charter provision creating a particular board:

(1) The mayor shall appoint the chair of each board from among the members appointed, subject to confirmation by the city council, and the vice-chair of every board of the city must be appointed by the full city council, unless otherwise provided in state law, city charter, or city code; [and]

(2) no city board may have more than one vice-chair appointed to serve on it at any given time, unless otherwise provided in state law, city charter, or city code;

(3) the term of appointment for a chair or vice-chair must run concurrently with his or her term of appointment to the board; and

(4) Notwithstanding paragraph (3) of this section, the chair or vice-chair may be removed from the position of chair or vice-chair for any cause the city council deems sufficient for removal in the interest of the public, but only after a public hearing before the city council on charges publicly made, if demanded by such member within 10 days. Removal of the position of chair or vice chair does not affect the member's term of appointment to the board."

SECTION 14. That Section 8-20, "Attendance," of Article IV, "Duties and Privileges of Members," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"SEC. 8-20. ATTENDANCE.

(a) No member shall be excused from attendance at a board meeting, unless for medical reasons certified to by a physician or unless excused by the board and the city council. More than~~[A member having]~~ three unexcused absences in succession shall result in a forfeiture ~~[membership on the board]~~.

(b) A member of the board that meets weekly or semi-monthly ~~[biweekly]~~, who is absent from more than 25 percent of the regular meetings in any six-month period, whether excused or not, shall result in a forfeiture ~~[membership on the board]~~.

(c) A member of a board that meets monthly, who is absent from more than 25 percent of the regular meetings during any 12-month period, whether excused or not, shall result in a forfeiture ~~[membership on the board]~~.

(d) An office that has been forfeited under the provisions of this section shall be filled for the remainder of the term by appointment of the city council.

(e) For purposes of this section, the record of a member's absences will begin with the first regular meeting after the 15th day from the date the member received notice of appointment."

SECTION 15. That Section 8-20.1, "Special Attendance Requirements," of Article IV, "Duties and Privileges of Members," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"SEC. 8-20.1. SPECIAL ATTENDANCE REQUIREMENTS.

If a board or commission, as part of its decision-making process, schedules an inspection trip to the location of a matter that is to be considered by the board or commission at that day's meeting, a member will be counted absent unless:

- (1) the member attends both the inspection trip and the meeting; ~~[or]~~
- (2) the member represents that a personal inspection has been made of each location visited by the inspection trip and attends the meeting; or~~[-]~~
- (3) the board or commission, by rule, provides otherwise."

SECTION 16. That Section 8-21, "Excusal During Meeting," of Article IV, "Duties and Privileges of Members," of Chapter 8, "Boards and Commissions," of the Dallas City Code is amended to read as follows:

"SEC. 8-21. EXCUSAL DURING MEETING.

(a) ~~[A member may not leave a board meeting in regular session without acknowledgment by the chair.]~~ A member who leaves a board meeting after the board has been duly called to order and is absent for the remainder of the meeting, without first obtaining the consent of the chair, shall be charged with an unexcused absence for that meeting. The consent of the chair may be given only in an emergency beyond the control of the member that requires the member to leave the meeting.

(b) If a member is absent from more than 50 percent of a regular meeting, the member will be deemed absent and the absence will count against the member, unless the board, by rule, provides otherwise."

SECTION 17. That Chapter 8 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 18. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.


SECTION 19. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

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SECTION 20. That this ordinance shall take effect immediately, and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

By 
Assistant City Attorney

Passed AUG 9 2017



PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL AUG ' 9 2017

ORDINANCE NUMBER 30555

DATE PUBLISHED AUG 12 2017

ATTESTED BY:

The Dallas City Code

SEC. 8-1.5. LIMITATION OF TERMS.

(a) A person who has served as a member of a particular board for four consecutive two-year terms will not again be eligible to serve on that same board until at least one term has elapsed, regardless of whether service was as a member or chair.

(a-1) A person who has served on the board of the employees' retirement fund pursuant to Section 40A-3(a)(1) of this code, as amended, for three consecutive terms, of whatever length of time, will not again be eligible to serve on that same board until at least one term has elapsed, whether service was as a member, chair, or other position on the board.

(b) Notwithstanding Subsection (a), a person may serve as a member of a particular board for the maximum number of terms that may be fixed for the particular board by the city charter or federal law and will not again be eligible to serve on that same board until at least one term has elapsed.

(c) In determining whether a full term has been served by a board member, the same definition of "term" that applies to a city council member, as set forth in Chapter III, Section 3A (c) of the city charter, will also apply to a board member. (Ord. Nos. 22259; 22570; 24141; 30555)

CHAPTER 40A RETIREMENT

- Sec. 40A-1. Definitions.
- Sec. 40A-2. Creation of the retirement fund and board of trustees; composition and officers of the board.
- Sec. 40A-3. Terms and remuneration of the board.
- Sec. 40A-4. Powers, duties, and immunities of the board.
 - Sec. 40A-4.1. Investment managers; fiduciary duties.
 - Sec. 40A-4.2. Investment custody account.
- Sec. 40A-5. Administrator of the retirement fund.
- Sec. 40A-6. Employee contributions.
- Sec. 40A-7. City contributions.
 - Sec. 40A-7.1. Modification of contribution rates.
- Sec. 40A-8. Effect of membership in the retirement fund.
- Sec. 40A-9. Actuarial assumptions.
- Sec. 40A-10. Credited service; computation of benefits.
 - Sec. 40A-10.1. Restricted prior service credit.
- Sec. 40A-11. Credited service for employment before a break in service.
- Sec. 40A-12. Credited service for military active duty.
- Sec. 40A-13. Credited service for leave of absence.
- Sec. 40A-14. Reduction in force.
- Sec. 40A-15. Retirement.
- Sec. 40A-16. Retirement pension.
- Sec. 40A-17. Disability retirement.
- Sec. 40A-18. Disability retirement pension.
- Sec. 40A-19. Termination of a disability retirement pension.

- Sec. 40A-20. Re-employment of a retiree.
- Sec. 40A-20.1. Selection of a designee.
- Sec. 40A-21. Death benefits before retirement.
- Sec. 40A-22. Selection of death benefits prior to retirement.
- Sec. 40A-23. Death benefits after retirement.
- Sec. 40A-24. Death benefits to minors.
- Sec. 40A-25. Benefits to incompetent retirees or beneficiaries.
- Sec. 40A-26. Direct rollover.
- Sec. 40A-27. Health benefit supplements.
- Sec. 40A-28. Cost-of-living adjustment to benefits.
- Sec. 40A-29. Termination of city employment prior to retirement; benefits.
- Sec. 40A-30. Refund or forfeiture of contributions.
- Sec. 40A-31. Leave of absence.
- Sec. 40A-32. Leave for military active duty.
- Sec. 40A-33. Compliance with federal tax laws.
- Sec. 40A-34. Nonalienation and nonreduction of benefits.
- Sec. 40A-35. Amendment to this chapter.

SEC. 40A-1. DEFINITIONS.

In this chapter, unless the context clearly indicates otherwise:

(1) **ACTUARIAL EQUIVALENT** means the equivalent in value on the basis of the actuarial factors recommended by the fund's actuary and adopted by the board.

(2) **ACTUARIAL VALUATION REPORT** means the report issued by the fund's actuary and adopted by the board for any relevant period. The board shall provide a copy of each actuarial valuation report to the city promptly after adoption.

(3) **ACTUARIALLY REQUIRED CONTRIBUTION RATE** means, for any fiscal year, a rate of contribution to the fund, expressed as a percentage of members' projected wages for such fiscal year, that is the sum of the following as determined in the actuarial valuation report for the preceding plan year:

(A) the actuarial present value of the pension plan benefits and expenses that are allocated to a valuation period by the actuarial cost method; and

(B) the contribution that will amortize the difference between the actuarial accrued liability of the fund and the actuarial value of the assets of the fund over the period of years required by generally accepted accounting principles.

(4) ACTUARY means a person with at least five years of experience as an actuary working with one or more public retirement systems; and is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(5) AVERAGE MONTHLY EARNINGS means wages paid by the city, divided by the number of months of credited service of a member or inactive member, computed for whichever of the following periods is most beneficial to the member or inactive member:

(A) For Tier A members or inactive members, the:

(i) three calendar years of credited service in which the member or inactive member was paid the highest wage;

(ii) last 6,240 hours of credited service; or

(iii) length of credited service if less than three years.

(B) For Tier B members or inactive members, the:

(i) five calendar years of credited service in which the member or inactive member was paid the highest wage;

(ii) last 10,400 hours of credited service; or

(iii) length of credited service if less than five years.

(6) BASE PENSION means the amount of retirement pension or death benefits as computed under this chapter at the time of retirement or death of a member, inactive member, or retiree.

(7) BENEFICIARY means a person who is entitled to payment of benefits under this chapter upon the death of a member, inactive member, or retiree.

(8) BOARD means the board of trustees of the employees' retirement fund of the city of Dallas.

(9) CHILD means an unmarried person whose parent is a member, inactive member, or retiree.

(10) CITY means the city of Dallas, Texas.

(11) CITY COUNCIL means the governing body of the city of Dallas, Texas.

(12) COMMUTED VALUE means the present value of a series of payments to be made in the future, the present value to be calculated using the actuarial interest assumption prescribed in Section 40A-9 as the only discounting factor.

(13) CREDITED SERVICE means any period that a person is paid as an employee of the city and contributes to the fund.

(14) CURRENT ADJUSTED TOTAL OBLIGATION RATE means, for any fiscal year, the rate recommended by the fund's actuary and adopted by the board as follows, using whichever formula is applicable:

(A) If the current total obligation rate minus the prior adjusted total obligation rate is greater than three, then the current adjusted total obligation rate for such fiscal year is equal to the lesser of:

(i) the prior adjusted total obligation rate plus one-half times the difference of the current total obligation rate minus the prior adjusted total obligation rate; or

(ii) 110 percent times the prior adjusted total obligation rate; or

(iii) 36 percent.

(B) If the difference between the current total obligation rate and the prior adjusted total obligation rate is less than three, then the current adjusted total obligation rate for such fiscal year is equal to the prior adjusted total obligation rate.

(C) If the prior adjusted total obligation rate minus the current total obligation rate is greater than three, then the current adjusted total obligation rate for such fiscal year is equal to the greater of:

(i) the prior adjusted total obligation rate minus one-half times the difference of the prior adjusted total obligation rate minus the current total obligation rate; or

(ii) 90 percent times the prior adjusted total obligation rate.

(15) CURRENT TOTAL OBLIGATION RATE means, for any fiscal year, the rate adopted by the board that is equal to the sum of the pension obligation bond credit rate for such fiscal year plus the actuarially required contribution rate for such fiscal year.

(16) DEPENDENT PARENT means a member, inactive member, or retiree's parent who is:

(A) totally and permanently disabled and who receives over half of the support for each calendar year from the member, inactive member, or retiree; or

(B) 65 years of age or older.

(17) DESIGNEE means an estate, a person, or an entity selected by:

(A) a member or inactive member to receive a refund of contributions under Section 40A-21(b);

(B) a member, inactive member, or retiree to receive a commuted value lump sum payment under Section 40A-16(e) or 40A-21(c); or

(C) a member, inactive member, or retiree to receive the earned but unpaid portion of the final month's pension due under Section 40A-23(e).

(18) EMPLOYEE:

(A) means a person employed by the city on a permanent basis who receives regular compensation from the city; and

(B) does not mean:

(i) an elective officer or nonsalaried appointive member of an administrative board or commission;

(ii) a person retained under contract for a definite period or for the performance of a particular service;

(iii) a person given a temporary designation for the purpose of employment by the city;

(iv) a leased employee; or

(v) a police officer, firefighter, or fire alarm operator as those categories are defined in the classifications of the personnel department of the city.

(19) FISCAL YEAR means the city's fiscal year, which is the 12-month period commencing October 1 and ending the following September 30.

(20) INACTIVE MEMBER means a person:

(A) who has terminated employment with the city but who has not retired; and

(B) whose contributions to the fund have not been forfeited or withdrawn.

(21) INJURY means an accident resulting in damage or harm to the physical structure of the body.

(22) INTERNAL REVENUE CODE means the Internal Revenue Code of 1986, or its successor, as amended.

(23) LEASED EMPLOYEE means an individual who is not a common law employee of the city but who provides services to the city, if:

(A) such services are performed pursuant to an agreement between the city and another person;

(B) the individual has performed such services for the city or for the city and a related person or persons on a substantially full-time basis for at least one year; and

(C) such services are performed under the primary direction or control of the city.

(24) LEAVE OF ABSENCE means:

(A) leave without pay granted by the city in accordance with a uniform and nondiscriminatory leave policy; or

(B) leave during which a member receives worker's compensation benefits or short-term disability benefits.

(25) MEMBER means an employee who is currently contributing to the retirement fund or who is on an approved leave of absence, but does not include a person establishing credited service under Section 40A-14 after termination of employment because of reduction in force.

(26) NONSERVICE DISABILITY means total and permanent disability caused by injury, sickness, or disease while not in the performance of official city duties.

(27) PARENT has the meaning ascribed to that term in Section 51.02 of the Texas Family Code, as amended.

(28) PART-TIME EMPLOYEE means an employee classified as part-time by the city under Section 34-8(c) of this code, as amended.

(29) PENSION means an amount payable monthly to a person eligible to receive death or retirement benefits under the retirement fund.

(30) PENSION OBLIGATION BOND CREDIT RATE means, for any fiscal year, the rate adopted by the board that is a percentage calculated by dividing the:

(A) debt service due during such fiscal year on any pension obligation bonds, the proceeds of which have been deposited in the fund, by

(B) total members' projected wages for such fiscal year, as reported in the relevant actuarial valuation report.

(31) PENSION OBLIGATION BONDS means bonds described in Chapter 107 of the Texas Local Government Code (or any successor law that supersedes such chapter) and issued by the city.

(32) PERCENTAGE MULTIPLIER means the percentage by which the average monthly earnings of a member or inactive member is multiplied in order to compute benefits.

(33) PERMANENT BASIS means employment of an individual for an unfixed continuing period.

(34) PERSON means an individual.

(35) PLAN YEAR means the calendar year or other plan year adopted by the board.

(36) PRICE INDEX means the national Consumer Price Index of Urban Wage Earners and Clerical Workers (CPI-W) published by the Bureau of Labor Statistics of the U. S. Department of Labor, or its successor in function.

(37) PRIOR ADJUSTED TOTAL OBLIGATION RATE means, for any fiscal year, the current adjusted total obligation rate that was effective for the prior fiscal year.

(38) QUALIFIED RECIPIENT means:

(A) the spouse of a deceased member or inactive member at the time of death of the member or inactive member;

(B) the spouse of a deceased retiree, if the spouse was married to the retiree at the time of retirement and at the time of the retiree's death;

(C) each child of a deceased member, inactive member, or retiree under the age of 18, if the child was alive or had been conceived at the time of death of the member, inactive member, or retiree;

(D) each totally and permanently disabled child of a deceased member, inactive member, or retiree if the child was totally and permanently disabled before the age of 18; and

(E) a parent of a deceased member, inactive member, or retiree who was a dependent parent at the time of death of the member, inactive member, or retiree.

(39) RESTRICTED PRIOR SERVICE CREDIT means service credit for work as a permanent, full-time, paid employee of a government entity, agency, authority, or political subdivision of the United States or its states or territories, performed before employment or re-employment by the city.

(40) RETIREE means a person who was once a member but who has retired from city employment and is receiving a pension from the fund other than a death benefit.

(41) RETIREMENT means terminating city employment for a reason other than death and fulfilling all requirements for a pension under this chapter.

(42) RETIREMENT FUND or FUND means the employees' retirement fund of the city of Dallas and the program of benefits established under this chapter and any rule or regulation established by the board.

(43) SERVICE DEATH means the death of a member resulting from an injury sustained while in the performance of official city duties. A death resulting from an injury sustained while in the performance of official city duties does not include:

(A) a death caused by an act of God unless the member in the performance of official city duties was subjected to a greater hazard from an act of God than that to which the general public was subjected;

(B) a death caused by an act of a third person who causes the death of the member because of reasons personal to the third person and not for reasons of the member's employment;

(C) a death caused while the member was attempting to injure or kill another person;

(D) a suicide;

(E) a death while on leave of absence, unless the leave was granted solely because of an injury sustained in the performance of official city duties and the injury was the primary cause of death;

(F) a death while on leave for military active duty; or

(G) a death resulting from an injury in which a contributing factor was the member's ingestion of an alcoholic beverage or illegal ingestion, inhalation, or injection of a controlled substance.

(44) SERVICE DISABILITY means total and permanent disability caused by injury while in the performance of official city duties. An injury while in the performance of official city duties does not include:

(A) an injury caused by an act of God unless the member in the performance of official city duties was subjected to a greater hazard from an act of God than that to which the general public was subjected;

(B) an injury caused by an act of a third person who injures the member because of reasons personal to the third person and not for reasons of the member's employment;

(C) an injury in which a contributing factor was the member's ingestion of an alcoholic beverage or illegal ingestion, inhalation, or injection of a controlled substance;

(D) an injury caused while the member was attempting to injure or kill another person; or

(E) an injury that was self-inflicted.

(45) SPOUSE means the person to whom the member, inactive member, or retiree is married, as evidenced by the last marriage certificate or declaration of informal marriage on file

with the retirement fund and verified by the administrator to be valid in the jurisdiction in which the marriage was celebrated.

(46) TIER A means:

(A) a person who was:

(i) employed by the city before January 1, 2017; or

(ii) re-employed or reinstated by the city on or after January 1, 2017, and whose credited service before January 1, 2017, has not been canceled by withdrawal or forfeiture; and

(B) a beneficiary or designee of that person.

(47) TIER B means:

(A) a person who was:

(i) employed by the city on or after January 1, 2017; or

(ii) re-employed or reinstated by the city on or after January 1, 2017, and whose prior credited service has been canceled by withdrawal or forfeiture; and

(B) a beneficiary or designee of that person.

(48) TOTAL AND PERMANENT DISABILITY means the continuing inability of a person to obtain and retain any type of employment for compensation as a result of a mental or physical impairment caused by an injury or illness. A person is not under a total or permanent disability if, with reasonable effort and safety to the person, the impairment can be diminished to the extent that the person will not be prevented by the impairment from obtaining and retaining any type of employment for compensation.

(49) TRANSITION YEAR means each of the following:

(A) the first fiscal year in which debt service payments related to pension obligation bonds are due from the city; and

(B) the first fiscal year in which no debt service payments related to pension obligation bonds are due from the city.

(50) VESTED means that a member or inactive member has accumulated sufficient credited service or age to have earned a nonforfeitable right to receive a pension benefit, payable in accordance with the terms of the plan.

(51) WAGE:

(A) means:

(i) wages of an employee as defined in Section 3401(a) of the Internal Revenue Code for income tax withholding, including salary continuation payments made to an employee with a job-related injury or illness;

(ii) compensation that by special rule is excluded from Section 3401(a) of the Internal Revenue Code because of the nature or location of the services performed;

(iii) elective contributions to a plan of deferred compensation, including a plan established under Section 125, 401(k), or 457 of the Internal Revenue Code, and elective reductions in compensation for qualified transportation fringe benefits that are excluded from an employee's gross income by reason of Section 132(f)(4) of the Internal Revenue Code; and

(iv) any lump sum payment made at termination of employment for accrued vacation leave or prorated service incentive pay; and

(B) does not mean:

(i) expense reimbursements, expense allowances, car allowances, or moving expenses;

(ii) cash or noncash fringe benefits;

(iii) welfare benefits, including, but not limited to, health benefits or life insurance benefits;

(iv) deferred compensation, unless made under a plan described in Paragraph (A)(iii) of this subsection;

(v) any lump sum payment made at retirement for accrued sick leave or attendance incentive leave;

(vi) workers compensation benefits, short-term disability benefits, or catastrophic leave benefits; or

(vii) any compensation in excess of the limits imposed by Section 401(a)(17)(A), as adjusted in accordance with Section 401(a)(17)(B), of the Internal Revenue Code. (Ord. Nos. 15414; 16886; 17713; 18181; 19470; 20960; 21582; 22345; 25695; 25818; 28739; 29644; 30162)

SEC. 40A-2. CREATION OF THE RETIREMENT FUND AND BOARD OF TRUSTEES; COMPOSITION AND OFFICERS OF THE BOARD.

(a) Creation. There is hereby created the employees' retirement fund of the city of Dallas, which is a trust fund, and the board of trustees of the employees' retirement fund of the city of Dallas.

(b) Public entity. The fund is a public entity established for the exclusive purpose of providing benefits to members and their beneficiaries. Except as permitted under this chapter or by state law, the employees' retirement fund of the city of Dallas is the name in which all of its business must be transacted, all of its funds invested, and all of its cash, securities, and property held.

(c) Composition of the board.

(1) The board shall be composed of seven members consisting of:

(A) three persons appointed by the city council who may be city council members;

(B) three employees from different departments of the city who are elected by members of the retirement fund and who are members of the retirement fund; and

(C) the city auditor.

(2) If only one eligible employee is nominated for an elected board position described in Subsection (c)(1)(B) of this section, that employee will be declared elected to that position by the board without requiring an election by the members of the retirement fund.

(d) Chair and vice chair.

(1) The board shall elect a chair and a vice-chair at the first regular meeting each calendar year. The chair shall call a meeting as frequently as necessary to conduct the business of the board, but not less than quarterly. In the absence of the chair, the vice-chair may call meetings or preside over meetings of the board.

(2) If the office of chair or vice-chair becomes vacant, the board will elect a replacement at its next meeting. (Ord. Nos. 15414; 20960; 21582; 25695; 30162)

SEC. 40A-3. TERMS AND REMUNERATION OF THE BOARD.

(a) Terms.

(1) Elected board members.

(A) On and after January 1, 2017, the three elected positions on the board will be designated Place 1, Place 2, and Place 3, respectively, as determined by the board.

(B) The elected members, including incumbents, of the board shall serve without remuneration and for terms as follows:

(i) A member elected to Place 1 will serve a three-year term, with the initial term running from January 1, 2017, through December 31, 2019.

(ii) A member elected to Place 2 will serve a three-year term, with the initial term running from January 1, 2019, through December 31, 2021.

(iii) A member elected to Place 3 will serve a three-year term, except that the initial term will be for two years and run from January 1, 2019, through December 31, 2020.

(2) Appointed board members. The appointed members of the board shall serve without remuneration and for terms of two years.

(b) Vacancy.

(1) A position on the board becomes vacant if the occupant:

(A) was elected as an employee member and is no longer an employee;

(B) was appointed while serving as a city council member and is no longer a city council member; or

(C) gives the chair written notice of resignation from the board.

(2) If a vacancy occurs on the board in a position held by:

(A) an elected employee member, the board shall hold an election within 90 days after the vacancy occurs to fill the unexpired term of the member; or

(B) a city council appointee, the city council shall appoint a new member to fill the unexpired term of the member. (Ord. Nos. 15414; 20960; 21582; 25695; 30162)

SEC. 40A-4. POWERS, DUTIES, AND IMMUNITIES OF THE BOARD.

(a) In addition to other powers and duties it may have under state or federal law, the board shall have the power and duty to:

(1) administer the retirement fund in accordance with this chapter for the exclusive purposes of providing benefits to members, inactive members, retirees, and their beneficiaries and defraying reasonable expenses of administering the fund;

(2) adopt rules and regulations not inconsistent with this chapter and the constitution and laws of this state;

(3) invest, reinvest, alter, and change the funds of the retirement fund with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;

(4) diversify the investments of the fund to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

(5) pay for professional services out of investments of the retirement fund when it is actuarially determined that the payments will not have an adverse effect on payment of benefits and when in the judgment of the board the services are necessary;

(6) appoint an administrator and authorize employees to carry out the business of the board;

(7) establish rates of compensation for employees of the retirement fund, subject to the approval of the city council and in accordance with civil service rules of the city;

(8) correct administrative errors and remedy any effects of those errors;

(9) make a final determination of the eligibility of a member, inactive member, retiree, or beneficiary for a normal, early, service, or disability pension or death benefits;

(10) issue subpoenas for the attendance of witnesses and the production of records, papers, or other objects, administer oaths to witnesses, and examine witnesses on any matter relating to the payment of benefits of the retirement fund;

(11) determine the time, method, and manner of election to the board;

(12) prepare and adopt a budget;

(13) pay for fiduciary insurance out of investments of the retirement fund when it is actuarially determined that the payments will not have an adverse effect on payment of benefits and when in the judgment of the board the services are necessary;

(14) pay for the costs of administration out of investments of the retirement fund when it is actuarially determined that the payments will not have an adverse effect on payment of benefits and when in the judgment of the board the costs are necessary;

- (15) sue and be sued in the name of the fund;
 - (16) appoint an actuary and adopt actuarial assumptions for the fund;
 - (17) appoint such other professionals as it deems appropriate and necessary;
 - (18) interpret this chapter as necessary to resolve any problems created by any ambiguities, inconsistencies, or omissions that might be found in this chapter;
 - (19) direct the fund's actuarial firm to perform an annual experience review of assumptions as part of its annual actuarial valuation;
 - (20) direct the fund's actuarial firm to perform a complete analysis of actuarial assumptions as frequently as the board deems necessary, but not less frequently than every five years; and
 - (21) engage a second actuarial firm to perform an actuarial peer review/audit as the board deems necessary.
- (b) The board may not cause the fund to engage in a transaction if the board knows or should know that the transaction directly or indirectly constitutes a prohibited transaction under Section 503(b) of the Internal Revenue Code.
 - (c) No expenditures may be made from the retirement fund without the approval of the board by resolution or by adoption of its budget.
 - (d) The board shall adopt the actuarially required contribution rate, the current adjusted total obligation rate, the current total obligation rate, and the pension obligation bond credit rate for each fiscal year no later than June 1 of the preceding fiscal year, and shall promptly notify the city manager of the adoption.
 - (e) At least every five plan years, or in accordance with state law, whichever is sooner, the board shall provide 60 days' notice to the city manager:
 - (1) that the board intends to engage a second actuarial firm to perform an actuarial peer review/audit; and
 - (2) the name of the actuarial firm the board intends to engage.
- If, within the 60 days, the city manager objects to the actuarial firm selected, the board shall seek another actuarial firm to perform the peer review/audit and re-notify the city manager. This process shall repeat until the city manager no longer objects to the actuarial firm the board intends to engage. The board shall then engage such actuarial firm for such purpose. If the process described in Section 40A-7.1 is used, the requirements of this subsection shall be satisfied for the plan year in which the process concludes.
- (f) The board shall meet at any time after posting timely notice as required by law. Four members of the board constitute a quorum. The approval of four members of the board is necessary for any motion of the board to carry.
 - (g) The board is not liable for its acts and conduct or any losses incurred in the administration of the retirement fund, the management of the assets of the fund, or the investment of the fund if the board has met the standards set forth in Subsections (a) and (b) of this section and in Sections 40A-4.1 and 40A-4.2.

(h) If the board, in good faith, is in doubt as to the construction or interpretation of any provision of this chapter, or has any other question that may arise during the administration of the retirement fund, the board may resolve all such doubts and questions without obtaining a judicial construction. All constructions and interpretations made by the board are binding and conclusive.

(i) The board may consult with an actuary, attorney, physician, or accountant, who may also be employed by the city. The board is not liable for any act or conduct that was performed in good faith reliance on the opinion of an actuary, attorney, physician, or accountant with respect to an actuarial, legal, medical, or accounting matter, respectively. (Ord. Nos. 15414; 17713; 18181; 19470; 20960; 21582; 22345; 25695; 30162)

SEC. 40A-4.1. INVESTMENT MANAGERS; FIDUCIARY DUTIES.

(a) The board may appoint investment managers for the fund by contracting for professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.

(b) To be eligible for appointment under this section, an investment manager must be:

(1) an organization registered under the Investment Advisors Act of 1940 (15 U.S.C. Section 80b-1 et seq.);

(2) a bank as defined by that Act; or

(3) an insurance company qualified to perform investment services under the laws of more than one state.

(c) In a contract made under this section, the board shall specify any policies, requirements, or restrictions, including criteria for determining the quality of investments and for the use of standard rating services, that the board may adopt for investment of the fund.

(d) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the board must act prudently and in the interest of the members, inactive members, retirees, and their beneficiaries.

(e) The board is not liable for the acts or omissions of an investment manager appointed under this section, nor is the board obligated to invest or otherwise manage any asset of the fund subject to management by the investment manager.

(f) An investment manager appointed under this section shall acknowledge in writing the manager's fiduciary responsibilities to the fund, which include the same duties assigned to the board in Section 40A-4(a)(1), (3), and (4).

(g) The investment standards provided by Section 40A-4(a) and (b) and the policies, requirements, and restrictions adopted under this section are the only standards, policies, requirements, and restrictions governing the investment of funds of the retirement fund by an investment manager or by the board during a 90-day interim between professional investment management services. Any other standard, policy, requirement, or restriction provided by law is suspended and not applicable during a time, and for 90 days after a time, in which an investment manager is responsible for investment of fund assets. If an investment manager has not begun

managing investments before the 91st day after the date of termination of the services of a previous investment manager, the standards, policies, requirements, and restrictions otherwise provided by law are applicable until the date professional investment management services are resumed. (Ord. Nos. 21582; 30162)

SEC. 40A-4.2. INVESTMENT CUSTODY ACCOUNT.

(a) If the board contracts for professional investment management services, it also shall enter into an investment custody account agreement designating one or more banks, depository trust companies, or brokerage firms meeting the requirements under Section 802.205(d) of the Texas Government Code, as amended, to serve as custodian for the assets allocated to or generated under the contract.

(b) Under an investment custody account agreement, the board shall require the designated custodian to perform the duties and assume the responsibilities for funds under the contract for which the agreement is established that are performed and assumed, in the absence of a contract, by the custodian of system funds. (Ord. Nos. 21582; 30162)

SEC. 40A-5. ADMINISTRATOR OF THE RETIREMENT FUND.

(a) The administrator of the retirement fund shall carry out the business of the board and keep a record of the proceedings of the board.

(b) The administrator, in accordance with civil service rules of the city, may appoint and hire deputies and other employees.

(c) The administrator shall serve at the will of the board.

(d) The administrator is the "plan administrator," as that term is defined in 26 U.S.C. 414(g).

(e) Whenever the term "executive director" is used in relation to the retirement fund in any plan documents, contracts, resolutions, or other documents generated by the board or the fund, or in any city

ordinances, resolutions, or contracts related to the fund, that term will mean "administrator." (Ord. Nos. 15414; 19470; 20960; 21582; 30162)

SEC. 40A-6. EMPLOYEE CONTRIBUTIONS.

(a) Members. Every employee must be a member of the fund except:

(1) a retiree re-employed by the city, who may elect not to contribute to the fund under Section 40A-20; or

(2) a leased employee who is not eligible to contribute to the fund.

(b) Contribution amount.

(1) For each pay period ending during a transition year, each member shall contribute to the retirement fund an amount equal to 37 percent times the current total obligation rate for that fiscal year times the member's wages for the pay period.

(2) For each pay period ending during a fiscal year other than a transition year, each member shall contribute to the retirement fund an amount equal to 37 percent times the current adjusted total obligation rate for that fiscal year times the member's wages for the pay period.

(c) Deductions. The contributions by each member receiving compensation from the city will normally be made by means of deduction on each payday.

(d) Discontinuing contributions.

(1) No member may discontinue contributions to the retirement fund unless the member is on:

(A) unpaid leave for military active duty; or

(B) a leave of absence.

(2) A member who discontinues contributions to the retirement fund under Subsection (d) (1)(B) will have any retirement or death benefits computed based on credited service established at the date of discontinuance. (Ord. Nos. 15414; 17713; 19470; 20960; 21582; 25695; 30162)

SEC. 40A-7. CITY CONTRIBUTIONS.

(a) Contribution amount.

(1) For each pay period ending during a transition year, the city shall contribute to the retirement fund an amount equal to:

(A) 63 percent times the current total obligation rate for that fiscal year times the members' wages for the pay period, minus

(B) the pension obligation bond credit rate for that fiscal year times the members' wages for the pay period.

(2) For each pay period ending during a fiscal year other than a transition year, the city shall contribute to the retirement fund an amount equal to:

(A) 63 percent times the current adjusted total obligation rate for that fiscal year times the members' wages for the pay period, minus

(B) the pension obligation bond credit rate for that fiscal year times the members' wages for the pay period.

(b) The city shall provide for costs of administration of the retirement fund, if the board determines that payment of the costs by the retirement fund will have an adverse effect on payment of benefits and that the costs are necessary. The city may modify any budget provision for administrative costs that it is being asked to fund under this subsection.

(c) The total contributions of the employees and the city must be forwarded by the city to the retirement fund not later than the end of each week for all contributions made as to the pay period ending in that week.

(d) The city may not contribute to the retirement fund for an employee on leave of absence or unpaid leave for military active duty.

(e) The city may not withdraw its contribution previously made to the retirement fund. Nothing in this subsection prohibits the administrative adjustment of future contributions for erroneously made prior contributions, if the adjustment is made within 60 days after the error is made or discovered, whichever occurs later.

(f) All payments and benefits provided for in this chapter must be made from the retirement fund. There is no obligation on the part of the city, the board, or the employees to provide for payment of benefits from any other source, nor is there any liability on the city or the employees to make any contribution other than those specified in this section and Section 40A-6. (Ord. Nos. 15414; 18181; 19470; 20960; 21582; 25695; 30162)

SEC. 40A-7.1. MODIFICATION OF CONTRIBUTION RATES.

(a) Notwithstanding the provisions of Sections 40A-4(d), 40A-6, and 40A-7, for any fiscal year in which the prior adjusted total obligation rate does not equal the current adjusted total obligation rate, the city may, within 45 days after receiving notice of the rates adopted by the board under Section 40A-4(d), retain at its complete discretion its own actuary who shall calculate member and city contributions to the fund based on the methods, assumptions, projections, and calculations determined by the actuary employed by the city; provided, however, that the actuarial assumptions must be consistent with the terms of this chapter. If the city's actuary agrees with the board's actuary, the determinations of the board's actuary shall be used to determine member and city contributions to the fund for the fiscal year.

(b) If there is a dispute between the actuary employed by the board and the actuary employed by the city with respect to the required member and/or city contributions to the fund for a fiscal year, the two actuaries shall attempt to resolve their differences. If the two actuaries resolve their differences, they shall sign a document setting forth the underlying actuarial methods, assumptions, projections, and calculations, and the resulting actuarially required contribution rate, current adjusted total contribution rate, current total obligation rate, and pension obligation bond credit rate, all of which shall be adopted by the board and used to determine member and city contributions to the fund for the fiscal year if the dispute is resolved prior to the commencement of the fiscal year; unless the board determines, in its discretion, that the conclusions agreed to by the two actuaries are not actuarially sound, in which case the board shall adopt sound actuarial assumptions and the resulting actuarially required contribution rate, current adjusted total obligation rate, current total obligation rate, and pension obligation bond credit rate.

(c) If the differences between the two actuaries cannot be resolved within 90 days after the appointment of the second actuary, the board shall retain a third actuary based upon the joint recommendation of the other two actuaries. The third actuary shall review and calculate member and city contributions to the fund based on the methods, assumptions, projections, and calculations determined by the third actuary; provided, however, that the actuarial assumptions must be consistent with the terms of this chapter. The board, the city, and their respective actuaries shall cooperate with the third actuary and promptly provide such information as the third actuary reasonably requests. The three actuaries shall confer regarding the actuarial dispute between the city's and the board's actuaries, and shall attempt to resolve their differences. If any two of the three actuaries agree regarding the underlying actuarial methods, assumptions, projections, and calculations, and the resulting actuarially required contribution rate, current adjusted total obligation rate, current total obligation rate, and pension obligation bond credit rate, such joint determinations shall be communicated in writing to the board and adopted by the

board and used in establishing the member and city contributions to the fund for the fiscal year if the dispute is resolved prior to the commencement of the fiscal year; unless the board determines, in its discretion, that the conclusions agreed upon are not actuarially sound, in which case the board shall adopt sound actuarial assumptions and the resulting actuarially required contribution rate, current adjusted total obligation rate, current total obligation rate, and pension obligation bond credit rate.

(d) If a dispute described in this Section 40A-7.1 is not resolved prior to the commencement of the fiscal year, the member and city contributions to the fund for such fiscal year (as a percentage of wages) shall be the same as the prior fiscal year.

(e) Notwithstanding Section 40A-1(37), for any fiscal year in which the process described in this Section 40A-7.1 results in a change in the current adjusted total obligation rate, then the prior adjusted total obligation rate for the succeeding fiscal year shall be deemed to be the current adjusted total obligation rate determined by the board through the process described in this section. (Ord. Nos. 25695; 30162)

SEC. 40A-8. EFFECT OF MEMBERSHIP IN THE RETIREMENT FUND.

A person, by becoming or remaining a member, inactive member, retiree, or beneficiary of the retirement fund, binds the person and the person's heirs, administrators, executors, legal representatives, beneficiaries, and survivors to all provisions of this chapter. (Ord. Nos. 15414; 19470; 20960; 21582; 30162)

SEC. 40A-9. ACTUARIAL ASSUMPTIONS.

(a) Except when specifically provided otherwise in this chapter, the board, upon recommendation of the fund's actuary, shall adopt and establish reasonable actuarial assumptions, interest rates, and mortality tables to be used under this chapter.

(b) When determining the commuted value of future benefits under the fund during a particular calendar year, the five-year average of the 10-year treasury bond (calculated as of the last business day of each of the last five years averaged together) is the interest assumption that must be used.

(c) When calculating the limits under Section 415 of the Internal Revenue Code, the applicable mortality table and applicable interest rate determined by the United States secretary of the treasury and in effect at the time of the calculation must be used. (Ord. Nos. 20960; 21582; 28739; 30162)

SEC. 40A-10. CREDITED SERVICE; COMPUTATION OF BENEFITS.

(a) A retiree or a beneficiary is entitled to benefits of the retirement fund on the basis of credited service established while a member.

(b) Credited service includes:

(1) the length of credited service performed by the member or inactive member before retirement for which contributions to the fund have not been withdrawn or forfeited;

(2) the length of credited service performed by the member or inactive member prior to withdrawal or forfeiture of contributions to the fund if the credited service has been reinstated under Section 40A-11;

(3) the length of credited service for military active duty under Section 40A-12;

(4) the amount of vacation leave for which the member or inactive member received lump sum payment at termination of employment;

(5) the amount of credited service that is established at the time of a reduction in force in accordance with Section 40A-14; and

(6) the amount of credited service established by a retiree who is re-employed by the city and elects to contribute to the fund in accordance with Section 40A-20.

(c) For purposes of determining eligibility to retire, but not for purposes of computing benefits, a part-time employee shall receive one year of credited service upon completion of 1,000 hours of service in any 12-consecutive-month period beginning on the employee's date of employment or employment anniversary date.

(d) For the purpose of computing benefits, a member is deemed to be on leave of absence during any portion of a work period for which the member does not receive wages from the city, including, but not limited to, any time for which the member does not receive wages as a result of part-time employment or pro rata compensation. A member receiving sick leave or salary continuation payments in an amount coordinated with workers compensation payments is deemed to be receiving wages for that portion of time covered by sick leave and salary continuation payments and to be on leave of absence for that portion of time covered by workers compensation payments.

(e) Benefits may not exceed 100 percent of the average monthly earnings of the member or inactive member.

(f) For a Tier A member or inactive member, benefits are computed at the rate of 2-3/4 percent of the average monthly earnings of the member or inactive member for the total amount of credited service by the member or inactive member. Benefits will be prorated for each partial year of credited service.

(g) For a Tier B member or inactive member, benefits are computed at the rate of 2-1/2 percent of the average monthly earnings of the member or inactive member for the total amount of credited service by the member or inactive member. Benefits will be prorated for each partial year of credited service.

(h) Benefits will be computed under this chapter without regard to gender. (Ord. Nos. 15414; 16886; 18181; 20443; 20960; 21582; 30162)

SEC. 40A-10.1. RESTRICTED PRIOR SERVICE CREDIT.

(a) A Tier B member may be eligible for restricted prior service credit to be used in determining a member's eligibility to vest or retire, but not toward calculating benefits under this chapter.

(b) To be eligible, a Tier B member must apply for restricted prior service credit not later than three years after the date of employment or re-employment by the city. The application must be on a form approved by the administrator and must be submitted to the administrator. Upon verification of prior restricted service, the administrator shall grant the credit. (Ord. 30162)

SEC. 40A-11. CREDITED SERVICE FOR EMPLOYMENT BEFORE A BREAK IN SERVICE.

(a) An eligible member whose credited service in the fund was canceled by withdrawal or forfeiture of contributions may reinstate the credited service.

(b) To be eligible to reinstate credited service under this section, a member must have:

(1) returned to employment with the city and resumed contributing to the fund within six years of the end of the period of service for which credit was canceled; and

(2) continuously contributed to the fund for 12 consecutive months after returning to city employment.

(c) A member may reinstate credited service only during the 24-month period beginning on the completion of 12 consecutive months of service following a cancellation of credited service.

(d) A member shall have only one period of time under this section in which to reinstate credited service canceled by any single withdrawal or forfeiture of contributions.

(e) An eligible member choosing to reinstate credited service must reinstate either all of the credited service canceled by a single withdrawal or forfeiture or the amount of credited service canceled by a single withdrawal or forfeiture that is needed to make the member eligible for pension benefits equal to 100 percent of the member's average monthly earnings on the date of reinstatement. Where reinstatement of a portion of credited service is authorized under this subsection, the member must reinstate credited service from the last earned to the first earned.

(f) An eligible member may reinstate credited service as follows:

(1) If credited service was canceled by withdrawal of contributions,

(A) a Tier A member must deposit in the fund a lump sum equal to the amount withdrawn, or portion of the amount withdrawn where full credited service is not to be reinstated, plus interest of 7-1/2 percent compounded annually from the date of withdrawal to the date of reinstatement; and

(B) a Tier B member must deposit in the fund a lump sum equal to the amount withdrawn, or portion of the amount withdrawn where full credited service is not to be reinstated, plus interest at a rate equal to the highest actuarial rate of return assumption used during the withdrawal period compounded annually from the date of withdrawal to the date of reinstatement.

(2) If credited service was canceled by forfeiture of contributions, the member must file an application for reinstatement on a form approved by the administrator and submit the application to the administrator.

(g) If an eligible member has more than one break in service during which credited service was canceled, the credited service must be reinstated from the last canceled to the first canceled. (Ord. Nos. 154141; 19470; 20960; 21582; 30162)

SEC. 40A-12. CREDITED SERVICE FOR MILITARY ACTIVE DUTY.

(a) A member with a break in service for military active duty is entitled to credited service for the period of military active duty not exceeding five years if the time is spent in the service of the armed forces of the United States, provided the member satisfactorily completes active service and returns to the service of the city after the member's discharge within the period described by law, if any.

(b) Benefits of a member allowed under Subsection (a) for the period of the break in service for military active duty is computed at the appropriate rate of the average monthly earnings of the member on the date the break in service for military active duty was granted for each year the member is on military active duty.

(c) Notwithstanding any other provision to the contrary, contributions, benefits, and service with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

(d) If a member dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code), the beneficiaries of the member are entitled to any additional benefits (other than benefits relating to the period of qualified military service) that would have been provided if the member had returned to service and then died. (Ord. Nos. 15414; 18181; 19470; 20960; 21582; 25818; 28739; 30162)

SEC. 40A-13. CREDITED SERVICE FOR LEAVE OF ABSENCE.

Except as provided in Section 40A-12, no credited service will be given for time spent on leave of absence. (Ord. Nos. 15414; 20960; 21582; 30162)

SEC. 40A-14. REDUCTION IN FORCE.

(a) The administrator must be notified in writing by the city manager, or by any department head not under the city manager, each time an employee who is a member is terminated as the result of a reduction in force. The determination of the city manager, or a department head not under the city manager, as to the date and the cause of termination is final and binding.

(b) A person is eligible to establish credited service under this section if the person:

- (1) had five or more years of credited service at the time of termination;
- (2) would have been eligible to retire within two years had employment not been terminated; and

(3) was designated by the city manager, or by a department head not under the city manager, as being terminated as a result of a reduction in force.

(c) A person eligible under Subsection (b) may establish any amount of credited service desired, up to a maximum of the amount of credited service needed to take the person to the earliest retirement date, by making a lump sum payment of the amount required by Subsection (d) within 90 days after the person's termination date.

(d) The amount of contributions required to be paid to establish credited service under Subsection (c) is equal to the employee contribution rate being paid under Section 40A-6 plus the city contribution rate being paid under Section 40A-7 multiplied by the average monthly wage earned by the person during the last 12 full months of service prior to termination multiplied by the number of months of credited service to be established.

(e) Credited service established under this section will be credited to the person purchasing the credited service on a month-by-month basis as if the person had remained a city employee and a member.

(f) If a person who paid to establish credited service under this section is reinstated as a member before establishing all of the service purchased, then any unused portion of the lump sum payment will be returned to the person without interest, and any uncredited service for which payment was made will be canceled.

(g) If a person who paid to establish credited service under this section dies before establishing all of the credited service purchased, then any unused portion of the lump sum payment will be paid to the beneficiary, or, if there is no beneficiary, to the decedent's estate without interest, and any uncredited service for which payment was made will be canceled. (Ord. Nos. 20960; 21582; 22345; 30162)

SEC. 40A-15. RETIREMENT.

(a) A Tier A inactive member with five or more years of credited service or a Tier A member is eligible for:

(1) a normal retirement pension at age 60;

(2) an unreduced service retirement pension at age 50, if the member or inactive member has 30 years of credited service; or

(3) a service retirement pension at any age below age 50, if the member or inactive member has 30 years of credited service, provided that benefits will be actuarially reduced from age 50 in accordance with Section 40A-16(c).

(b) A Tier A member is eligible for an unreduced service retirement pension at or after age 50 if the person's age and years and partial years of credited service, when added together, total at least 78.

(c) A Tier B inactive member with five or more years of credited service or a Tier B member with five or more years of credited service is eligible for:

(1) a normal retirement pension at age 65; or

(2) an unreduced service retirement pension if the member or inactive member has 40 years of credited service.

(d) A Tier B member with five or more years of credited service is eligible for a retirement pension if the person's age and years and partial years of credited service, when added together, total at least 80.

(1) Benefits for a member retiring under Subsection 40A-15(d) before the age of 65 will be actuarially reduced in accordance with Section 40A-16(d).

(2) A member who is eligible to retire under this subsection before the age of 65 may terminate city employment and elect to defer retirement and the receipt of benefits until age 65, at which age the benefits received will not be actuarially reduced under Section 40A-16(d). At any time before the age of 65, the person may revoke this election and choose to retire and receive benefits, which benefits will be actuarially reduced under Section 40A-16 based on the person's age on the date the revocation application is approved by the administrator. The application for an election to defer a retirement as described in Section 40A-15(d) of this chapter or to revoke that election must be on a form approved by the administrator and must be submitted to the administrator. The administrator must approve the application in accordance with rules and procedures adopted by the board. (Ord. Nos. 15414; 16886; 18181; 19470; 20960; 21582; 22345; 30162)

SEC. 40A-16. RETIREMENT PENSION.

(a) A member or inactive member eligible for a retirement pension is entitled to a pension for life computed on the amount of credited service of the member or inactive member.

(b) Except as provided in Section 40A-18(a), a member or inactive member eligible for a retirement pension is entitled to a pension beginning from the date of eligibility, but not before the member or inactive member's last paid day of employment with the city.

(c) A Tier A member or inactive member eligible for a service retirement pension who retires before the age of 50 is entitled to the following percentage of a benefit calculated under Section 40A-10(f):

<u>Age</u>	<u>Percentage</u>
49	93.3
48	87.2
47	81.5
46	76.3
45	71.5
44	67.0

(d) A Tier B member eligible for an early retirement pension under Section 40A-15(d) of this chapter who retires before the age of 65 is entitled to a benefit calculated under Section 40A-10 (g) and then reduced in accordance with actuarially equivalent factors adopted by the board and in effect at the time of the member's retirement. These actuarially equivalent factors may not be

given effect for at least six months after their adoption by the board. Copies of the actuarially equivalent factors must be maintained in the fund office and published on the fund's website.

(c) The following retirement options are payable from the fund:

(1) Life with a 10 year certain option. Under this option, a retiree will receive an unreduced pension for life. If the retiree dies before 120 monthly payments have been made, then an unreduced pension will be paid to the designated beneficiary or beneficiaries for the remainder of 10 years from the effective date of the retiree's retirement. Only qualified recipients of the retiree are eligible to be beneficiaries. If the retiree dies and if all designated beneficiaries die or cease to be eligible before 120 monthly payments have been made, then a final payment equal to the commuted value of the balance of the 120 monthly payments will be paid in the following order of priority:

- (A) to one or more designees; or
- (B) if no designee exists, to the retiree's estate.

(2) Joint and one-half survivor option. Under this option, a Tier A retiree will receive an unreduced pension for life and, after the retiree's death, one-half of the unreduced pension will be paid for the life of one beneficiary designated by the retiree before retirement. A Tier B retiree will receive an actuarially reduced pension for life and, after the retiree's death, one-half of the reduced pension will be paid for the life of one beneficiary designated by the retiree before retirement. Only a qualified recipient of the retiree other than one described in Section 40A-1 (38)(C) is eligible to be the beneficiary. If both the retiree and the designated beneficiary die before 120 monthly payments have been made, then a final payment equal to the commuted value of the balance of the 120 monthly payments will be made to one or more designees or, if no designee exists, to the estate of the last person entitled to monthly benefits.

(3) Joint and full survivor option. Under this option, a retiree will receive an actuarially-reduced pension for life and, after the retiree's death, the same pension will be paid for the life of one beneficiary designated by the retiree before retirement. Only a qualified recipient of the retiree other than one designated in Section 40A-1 (38)(C) is eligible to be the beneficiary. If both the retiree and the designated beneficiary die before 120 monthly payments have been made, then a final payment equal to the commuted value of the balance of the 120 monthly payments will be made to one or more designees or, if no designee exists, to the estate of the last person entitled to monthly benefits.

(f) Except as provided in Subsection (g), at the time of a normal, early, service, or disability retirement, a member or inactive member may select either a:

- (1) joint and one-half survivor option; or
- (2) life with a 10 year certain option.

(g) At the time of normal, early, service, or disability retirement, a member who is eligible by age and years of credited service for a normal, early, or service retirement pension or a member or inactive member who is retiring with 15 or more years of credited service may select:

- (1) a joint and one-half survivor option;
- (2) a life with a 10 year certain option; or
- (3) a joint and full survivor option.

(h) Each retiring member or inactive member who is married shall designate the spouse as beneficiary under the joint and full survivor option, if eligible to select that option, or under the joint and one-half survivor option, if not eligible to select the joint and full survivor option. Any other designation of a beneficiary or selection of a retirement option will be effective only if agreed to by the spouse in writing on a form filed with the administrator.

(i) Except as provided in Section 40A-20, a retirement option may not be changed after the effective date of retirement. (Ord. Nos. 15414; 18181; 19470; 20960; 21582; 22345; 25695; 30162)

SEC. 40A-17. DISABILITY RETIREMENT.

(a) Any member or inactive member who is totally and permanently disabled with a service disability is eligible for a disability retirement pension.

(b) Any member who is totally and permanently disabled with a nonservice disability and who has five or more years of credited service is eligible for a disability retirement pension.

(c) Any inactive member who is totally and permanently disabled with a nonservice disability and who has 10 or more years of credited service is eligible for a disability retirement pension.

(d) The board shall determine the disability of a member or inactive member. The determination of the board is final. (Ord. Nos. 15414; 20960; 21582; 30162)

SEC. 40A-18. DISABILITY RETIREMENT PENSION.

(a) A member or inactive member is not eligible for a disability retirement pension until 90 days after the member or inactive member's last working day before being disabled, or until application is made to the board, whichever occurs later.

(b) A member or inactive member eligible for a disability retirement pension is entitled to a disability retirement pension for life with benefits computed at the rates reflected in Section 40A-10, subject to the following minimums:

(1) The minimum disability retirement pension payable for a nonservice disability is equal to 10 times the percentage multiplier used in computing benefits of the member or inactive member on the date of retirement multiplied by the member or inactive member's average monthly earnings.

(2) The minimum disability retirement pension payable for a service disability is equal to the greater of:

(A) \$1,000 a month, regardless of the date of retirement; or

(B) 10 times the percentage multiplier used in computing benefits of the member or inactive member on the date of retirement multiplied by the member or inactive member's average monthly earnings. (Ord. Nos. 15414; 16886; 18181; 19470; 20443; 20960; 21582; 22345; 30162)

SEC. 40A-19. TERMINATION OF A DISABILITY RETIREMENT PENSION.

(a) A retiree entitled to a disability retirement pension may not receive a disability retirement pension if the retiree:

(1) does not submit, when requested by the administrator, a truthful sworn affidavit stating any earnings from any gainful activity;

(2) is re-employed by the city or capable of performing the duties of the position previously held with the city;

(3) refuses, when requested by the administrator, to submit to a medical examination by a doctor approved by the board;

(4) is found to be earning or be capable of earning compensation in an amount greater than \$250 per month, whether or not such a position is available; or

(5) is found to be involved in any gainful activity not commensurate with health limits imposed by the attending physician.

(b) The board shall discontinue a disability retirement pension if it determines that one of the conditions of Subsection (a) exists. The determination by the board is final.

(c) A person whose disability retirement pension is discontinued under this section is entitled to other benefits payable under the fund for all credited service previously accrued and not canceled by forfeiture or refund of contributions. Any refund of the person's contributions based on credited service previously accrued will be made without interest, less any previous retirement pension payments. (Ord. Nos. 15414; 18181; 20960; 21582; 30162)

SEC. 40A-20. RE-EMPLOYMENT OF A RETIREE.

(a) If a retiree is re-employed by the city in a position normally covered by the fund, the retiree:

(1) irrevocably waives all rights to payment of pension benefits for the period of re-employment; and

(2) may elect to become a member and contribute to the retirement fund during the period of re-employment.

(b) Upon termination of re-employment of a retiree who elects to contribute to the fund under Subsection (a), pension benefits will be calculated as follows:

(1) If the period of re-employment was for less than 12 months, pension benefits for the credited service from which the person had previously retired will be reinstated in the form and amount previously paid, modified by any intervening cost-of-living adjustments. Pension benefits for credited service for the period of re-employment will be calculated in accordance with the formulas and options available under the fund on the date of termination of re-employment.

(2) If the period of re-employment was for at least 12 months, the person may choose to have pension benefits paid in accordance with Paragraph (1) of this subsection or calculated on all credited service for all periods of employment in accordance with the formulas and options available under the fund on the date of termination of re-employment. If the new election changes or adds a retirement option or designated beneficiary for a period of credited service

from which the person had previously retired and the change would have a negative actuarial effect on the fund, the pension benefits will be reduced by an amount calculated by the fund's actuary as necessary to prevent the loss.

(c) A retiree re-employed by the city who does not contribute to the fund is, after termination of re-employment, entitled to those pension benefits payable on the date of re-employment, modified by any intervening cost-of-living adjustments. (Ord. Nos. 15414; 16886; 17713; 19470; 20960; 21582; 30162)

SEC. 40A-20.1. SELECTION OF A DESIGNEE.

(a) A member, inactive member, or retiree may at any time select a designee or designees or change a previous selection of a designee or designees.

(b) If a designee is a former spouse, the designation must have been signed by the member, inactive member, or retiree after the divorce, or the designation of the former spouse is void.

(c) A designee who is a person must be alive at the time payment is due, or the designation of that person is void. A designee that is an entity must be in existence at the time payment is due, or the designation of that entity is void.

(d) Any selection of a designee by a member or inactive member must be ratified at the time of retirement, or it becomes void. (Ord. Nos. 22345; 30162)

SEC. 40A-21. DEATH BENEFITS BEFORE RETIREMENT.

(a) Before retirement, a member or inactive member is eligible for the death benefits described in this section.

(b) Refund of contributions.

(1) If a member who is not eligible to retire by both age and years of credited service dies with less than two years of credited service, a refund of the member's contributions will be paid to one or more designees or, if no designee exists, to the member's estate.

(2) If an inactive member who terminated city employment without having at least five years of credited service dies before receiving a refund of contributions, a refund of the contributions will be paid to one or more designees or, if no designee exists, to the inactive member's estate, except that if more than three years have passed between the date of termination of city employment and the date of death, then the contributions are forfeited under Section 40A-30 and are not refundable.

(c) Death benefit options.

(1) 10 year certain option. Under this option, the designated beneficiary or beneficiaries will receive an unreduced pension for 120 months. Only qualified recipients of the member or inactive member are eligible to be beneficiaries. If all beneficiaries die or cease to be eligible before 120 monthly payments have been made, then a lump sum payment equal to the commuted value of the balance of the 120 monthly payments will be paid in the following order of priority:

(A) to one or more designees; or

(B) if no designee exists, to the estate of the member or inactive member.

(2) One-half survivor option. Under this option, one designated beneficiary will receive one-half of an unreduced pension for life. Only a qualified recipient of the member or inactive member other than one described in Section 40A-1 (38)(C) is eligible to be the beneficiary. If the designated beneficiary dies or ceases to be eligible before 120 monthly payments have been made, then a lump sum payment equal to the commuted value of the balance of the 120 monthly payments will be paid in the following order of priority:

(A) to one or more designees;

(B) if no designee exists and if an eligible beneficiary survived the member or inactive member, to the estate of the beneficiary; or

(C) if no designee exists and if no eligible beneficiary survived the member or inactive member, to the estate of the member or inactive member.

(3) Full survivor option. Under this option, one designated beneficiary will receive a reduced pension for life based upon the relative ages of the member or inactive member and the beneficiary on the day before the member or inactive member's death in an amount actuarially equivalent to an unreduced pension payable to the member or inactive member. Only a qualified recipient of the member or inactive member other than one described in Section 40A-1 (38)(C) is eligible to be the beneficiary. If the designated beneficiary dies or ceases to be eligible before 120 monthly payments have been made, then a lump sum payment equal to the commuted value of the balance of the 120 monthly payments will be paid in the following order of priority:

(A) to one or more designees;

(B) if no designee exists and if an eligible beneficiary survived the member or inactive member, to the estate of the beneficiary; or

(C) if no designee exists and if no eligible beneficiary survived the member or inactive member, to the estate of the member or inactive member.

(d) If an inactive member dies with at least five years, but less than 15 years, of credited service, a death benefit is payable in accordance with this subsection. The pension will not be reduced because of the age of the inactive member. The pension will be based upon the inactive member's actual credited service or 10 years credited service, whichever is greater, and the benefit formulas in effect at the time of termination of city employment. The death benefit will be paid as either:

(1) a 10 year certain option; or

(2) a one-half survivor option.

(e) If a member who is not described in Subsection (f) dies with at least two years, but less than 15 years, of credited service, a death benefit is payable in accordance with this subsection. The pension will not be reduced because of the age of the member. The pension will be based upon the member's actual credited service or 10 years credited service, whichever is greater. The death benefit will be paid as either:

(1) a 10 year certain option; or

(2) a one-half survivor option.

(f) If a member who is eligible to retire by both age and years of credited service or a member or inactive member who has at least 15 years of credited service dies, a death benefit is payable in accordance with this subsection. The pension will not be reduced because of the age of the member or inactive member. The pension will be based upon the member or inactive member's actual credited service or 10 years credited service, whichever is greater. The death benefit will be paid as either:

- (1) a 10 year certain option; or
- (2) a full survivor option.

(g) Death benefits for any service death will be determined as follows:

(1) The benefits will be computed using the greater of:

(A) the decedent's actual credited service; or

(B) 10 times the percentage multiplier used in computing benefits of the decedent on the date of death multiplied by the decedent's average monthly earnings.

(2) The benefits may never be less than \$1,000 per month, regardless of the date of death, or the amount computed under Paragraph (1) of this subsection, whichever is greater.

(h) If two or more beneficiaries are entitled to pension payments from the account of a deceased member or inactive member and one of the beneficiaries dies or becomes ineligible, then that beneficiary's share of the pension will be divided equally among any remaining beneficiaries. (Ord. Nos. 15414; 16886; 17713; 18181; 19470; 20443; 20960; 21582; 22345; 25695; 30162)

SEC. 40A-22. SELECTION OF DEATH BENEFITS PRIOR TO RETIREMENT.

(a) A member or inactive member described in Section 40A-21(d), (e), (f), or (g) is eligible to select a death benefit option for the payment of a pension as provided by those provisions. The selected option will become effective only if the member or inactive member dies while eligible to select the option.

(b) Designation of beneficiaries.

(1) Each member or inactive member who is married at the time a death benefit option is selected shall designate the spouse as beneficiary under the full survivor option or, if not eligible for the full survivor option, under the one-half survivor option. Any other designation of a beneficiary or selection of a death benefit option will become effective only if agreed to by the spouse in writing on a form filed with the administrator.

(2) A death benefit option that designates a spouse as beneficiary becomes void if the member or inactive member and the spouse become divorced.

(3) Upon the marriage of a member or inactive member, a death benefit option that does not designate the new spouse as beneficiary under either the full survivor option or the one-half survivor option becomes void.

(c) If a member or inactive member selects a one-half survivor option, and the member or inactive member is eligible to select a full survivor option at the time of death, then benefits under a full survivor option will be paid.

(d) If an eligible member or inactive member dies without having selected a death benefit option or if the selection cannot be made effective, the surviving spouse may select an option as if the member or inactive member had made the selection. If there is no surviving spouse, the personal representative of the estate of the member or inactive member may make the selection for the benefit of the qualified recipients. If there are no qualified recipients, then a lump sum payment equal to the commuted value of a 10 year certain option will be paid to the estate of the member or inactive member. (Ord. Nos. 15414; 16886; 18181; 19470; 20960; 21582; 30162)

SEC. 40A-23. DEATH BENEFITS AFTER RETIREMENT.

(a) A retiree who dies shall have death benefits determined and distributed in accordance with the provisions of the retirement option selected at retirement.

(b) If two or more beneficiaries are entitled to a pension upon a retiree's death and one of the beneficiaries subsequently dies or becomes ineligible, then that beneficiary's share of the pension will be divided equally among any remaining beneficiaries.

(c) If a retiree marries after retirement, the spouse of this marriage is not eligible for any retirement benefit from the fund other than as the retiree's heir, devisee, or designee.

(d) If the retiree is divorced, the former spouse has no right to benefits except as provided in Section 40A-34(b).

(e) When a retiree or beneficiary dies, the earned but unpaid portion of the final month's benefit will be paid as follows:

(1) To the beneficiary or beneficiaries entitled to future monthly benefits from the fund, to be divided in the same proportional shares as the future monthly benefits are to be divided.

(2) If there are no future monthly benefits payable, then to the decedent's surviving spouse, if any.

(3) If there are no future monthly benefits payable and if there is no surviving spouse, then to the executor or administrator of the decedent's estate, if any.

(4) If there are no future monthly benefits payable, if there is no surviving spouse, and if no executor or administrator has been named within 120 days of the decedent's death, then to the decedent's heirs as established by an affidavit of heirship filed with the administrator of the retirement fund. (Ord. Nos. 15414; 16886; 17713; 18181; 19470; 20443; 20960; 21582; 30162)

SEC. 40A-24. DEATH BENEFITS TO MINORS.

If a minor is entitled to benefits from the retirement fund, the board must pay the benefits to the minor's legal guardian or, until one is appointed, the minor's natural guardian, who shall be entitled to receive the benefits for the best interest of the child. (Ord. Nos. 15414; 20960; 21582; 30162)

SEC. 40A-25. BENEFITS TO INCOMPETENT RETIREES OR BENEFICIARIES.

If a court has appointed a personal representative of a retiree or qualified recipient entitled to benefits from the retirement fund, the board shall pay those benefits to the court-appointed representative. (Ord. Nos. 17713; 19470; 20960; 21582; 30162)

SEC. 40A-26. DIRECT ROLLOVER.

(a) Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions. In this section:

(1) ELIGIBLE ROLLOVER DISTRIBUTION means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(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 distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

(B) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; or

(C) any distribution that is made upon hardship of the employee.

(2) ELIGIBLE RETIREMENT PLAN means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an eligible deferred compensation plan that is maintained by an eligible employer described in Section 457(c)(1) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. An eligible retirement plan means only an individual retirement account or individual retirement annuity in the case of an eligible rollover distribution for a designated beneficiary that is not:

(A) the surviving spouse; or

(B) an alternate payee under a qualified domestic relations order who is a spouse or former spouse.

(3) DISTRIBUTEES means:

(A) an employee or former employee;

(B) the employee or former employee's surviving spouse;

(C) an alternate payee under a qualified domestic relations order who is the employee or former employee's spouse or former spouse, but only with regard to the interest of the spouse or former spouse under the qualified domestic relations order; or

(D) the employee or former employee's designated beneficiary.

(4) DIRECT ROLLOVER means a payment by the plan to the eligible retirement plan specified by the distributee.

(5) DESIGNATED BENEFICIARY means an individual who is designated to receive an eligible rollover distribution. (Ord. Nos. 21582; 25818; 28739; 30162)

SEC. 40A-27. HEALTH BENEFIT SUPPLEMENTS.

(a) A Tier A retiree or beneficiary is eligible for a health benefit supplement in addition to the amount otherwise payable under the fund. The health benefit supplement is equal to \$25 a month for each full year of credited service or \$125 a month, whichever is less. Payment of the health benefit supplement will be prorated for each partial year of credited service.

(b) If more than one beneficiary is receiving a pension from the account of a deceased member, inactive member, or retiree, the health benefit supplement will be divided among the beneficiaries in shares proportionate to their rights to the pension.

(c) A health benefit supplement is not includable when calculating lump sum death benefit payments.

(d) Health benefit supplements attributable to retirements and deaths that occurred before January 1, 2017 shall not be reduced by reason of Subsection (a).

(e) A Tier B retiree or beneficiary is not eligible for any health benefit supplement. (Ord. Nos. 20960; 21582; 22345; 30162)

SEC. 40A-28. COST-OF-LIVING ADJUSTMENT TO BENEFITS.

(a) On January 1 of each year, a cost-of-living adjustment will be made to the base pension payable to each retiree or beneficiary, if the person was entitled to a base pension on or before December 31 of the preceding year. If a base pension becomes payable during the 12 months preceding the cost-of-living adjustment, the adjustment will be prorated, with one-twelfth being paid for each whole or part month from the date the base pension became payable to the end of the year.

(1) A health benefit supplement under Section 40A-27 is not base pension and is not subject to any cost-of-living adjustment.

(2) The minimum amount payable as a disability retirement pension for a service disability under Section 40A-18(b)(2) or as death benefits for a service death under Section 40A-21(g)(2) will be considered the base pension for computing cost-of-living adjustments unless a greater base pension is payable under this chapter.

(b) The cost-of-living adjustment to the base pension will be made by using one of the following methods, whichever is the most beneficial to the retiree or beneficiary:

(1) the percentage of change in the price index for October of the current year over October of the previous year, up to:

(A) five percent for a Tier A retiree or beneficiary; or

(B) three percent for a Tier B retiree or beneficiary; or

(2) the percentage of the annual average change of the price index for the latest 12 months available, up to:

(A) five percent for a Tier A retiree or beneficiary; or

(B) three percent for a Tier B retiree or beneficiary.

(c) The cost-of-living adjustment may not reduce benefits of a retiree or beneficiary.

(d) In addition to the regular cost-of-living adjustment payable under Subsection (a) of this section, the board may from time to time grant an additional temporary or permanent adjustment if there exists investment income in excess of that needed to maintain the actuarial soundness of the fund. The adjustment is discretionary with the board in both its grant and application after the board has considered the funding of the increase and the relative needs of the retirees and beneficiaries. The adjustment may not increase or decrease the base pension of the retirees and beneficiaries. Any discretionary adjustment granted by the board under this subsection will not become effective unless approved by an ordinance or resolution of the city council. (Ord. Nos. 15414; 16886; 19470; 20960; 21582; 22345; 25695; 30162)

SEC. 40A-29. TERMINATION OF CITY EMPLOYMENT PRIOR TO RETIREMENT; BENEFITS.

(a) A member with five or more years of credited service who terminates employment before becoming eligible for a normal, early, or service retirement pension is entitled to:

(1) a refund of contributions to the retirement fund, without interest, any time after termination, less any previous retirement pension payments; or

(2) payment of a retirement pension and benefits at the time the member becomes eligible.

(b) An inactive member with more than 10 years of credited service who terminated employment before becoming eligible for a normal, early, or service retirement pension is eligible to apply for a disability retirement pension as provided in Section 40A-17.

(c) A member with less than five years of credited service at the time of termination of employment who does not retire or withdraw contributions to the fund and who is later re-employed:

(1) before contributions are forfeited under Section 40A-30(b), shall have any pension benefits payable for all periods of credited service based on the provisions of the fund in effect on the date of termination of re-employment;

(2) after contributions are forfeited under Section 40A-30(b), but who reinstates credited service by filing the application required under Section 40A-11, shall have pension benefits payable for all periods of credited service based on provisions of the fund in effect on the date of termination of re-employment; or

(3) after contributions are forfeited under Section 40A-30(b), but who is not eligible to reinstate credited service under Section 40A-11, shall be treated as a new employee by the fund and have no right to pension benefits based on the period of canceled credited service.

(d) A member with five or more years of credited service at the time of termination of employment who does not retire or withdraw contributions to the fund and who is later re-employed for:

(1) less than 12 full months of continuous service, shall have pension benefits payable on the period of credited service earned prior to the break in service based on provisions of the fund in effect at the time such service ended, while pension benefits for the period of credited service earned during re-employment will be based on provisions of the fund in effect on the date of termination of re-employment;

(2) at least 12 full months of continuous service, shall have pension benefits payable on all periods of credited service based on provisions of the fund in effect on the date of termination of re-employment. (Ord. Nos. 15414; 17713; 18181; 19470; 20960; 21582; 30162)

SEC. 40A-30. REFUND OR FORFEITURE OF CONTRIBUTIONS.

(a) A member who terminates city employment without either retiring or having sufficient credited service to retire at a future date is entitled to the amount of the member's contributions to the retirement fund, without interest, less any previous retirement pension payments, except as provided by federal law.

(b) A member who terminates employment without either retiring or having sufficient credited service to retire at a future date must make written application with the retirement fund for the refund of the member's contributions within three years of the date of termination or all of the member's rights to a refund of contributions will be forfeited, and the contribution will remain in the retirement fund.

(c) Actuarial gains and forfeitures of employee or city contributions must be applied to reduce the cost of the fund and may not be used to increase benefits otherwise payable under the fund. (Ord. Nos. 15414; 18181; 20960; 21582; 30162)

SEC. 40A-31. LEAVE OF ABSENCE.

(a) A member on leave of absence, who is eligible to retire because of disability or because of age and length of credited service, is entitled to:

(1) receive a pension for normal, early, or service retirement; or

(2) receive a pension for disability retirement or have death benefits paid to the beneficiaries if the leave of absence was granted for sickness or injury.

(b) The administrator of the retirement fund must be notified in writing by the city manager, or by any department head not under the city manager, of a member who has been granted a leave of absence and must be furnished with a copy of a written authorization for the leave of absence.

(c) A leave of absence will be regarded for retirement fund purposes as a break in service and not as a termination of employment. (Ord. Nos. 15414; 20960; 21582; 30162)

SEC. 40A-32. LEAVE FOR MILITARY ACTIVE DUTY.

The administrator of the retirement fund must be notified in writing by the city manager, or by any department head not under the city manager, of a member who has been granted a leave for military active duty and must be furnished with a copy of a written authorization for the leave. (Ord. Nos. 15414; 19470; 20960; 21582; 30162)

SEC. 40A-33. COMPLIANCE WITH FEDERAL TAX LAWS.

(a) A member or survivor of a member of the pension system may not accrue a retirement pension, or any other benefit under this chapter, in excess of the benefit limits applicable to the fund under Section 415 of the Internal Revenue Code. The board shall reduce the amount of any benefit that exceeds those limits by the amount of the excess. If total benefits under this fund and the benefits and contributions to which any member is entitled under any other qualified plans maintained by the city would otherwise exceed the applicable limits under Section 415 of the Internal Revenue Code, the benefits the member would otherwise receive from the fund shall be reduced to the extent necessary to enable the benefits to comply with Section 415. The limits shall be adjusted annually in accordance with Section 415(d) of the Internal Revenue Code. The annual adjustment shall apply to the benefits of both active and inactive members and shall apply without regard to whether retirement benefits are being received.

(b) The total salary taken into account for any purpose for any member of the pension system may not exceed the limit imposed pursuant to Section 401(a)(17) of the Internal Revenue Code for any year (\$360,000 for an eligible participant and \$245,000 for an ineligible participant for 2009). These dollar limits shall be adjusted from time to time in accordance with guidelines provided by the United States secretary of the treasury. For purposes of this subsection, an eligible participant is a person who first became an active member before 1996, and an ineligible participant is a member who is not an eligible participant.

(c) Amounts representing forfeited nonvested benefits of terminated members may not be used to increase benefits payable from the fund.

(d) Distribution of benefits must begin not later than April 1 of the year following the calendar year during which the member entitled to the benefits becomes 70-1/2 years of age or terminates employment with the city, whichever is later, and must otherwise conform to Section 401(a)(9) of the Internal Revenue Code.

(e) If the retirement fund is fully terminated or partially terminated, as determined by the Internal Revenue Service, or if all city contributions to the retirement fund are discontinued, the rights of each member affected by the termination or discontinuance that have accrued at the date of termination or discontinuance will be fully vested to the extent funded.

(f) It is intended that the provisions of this chapter be construed and administered in such a manner that the fund's program of benefits will be considered a qualified plan under Section 401(a) of the Internal Revenue Code. In determining qualification status under Section 401(a), the fund's program of benefits will be considered the primary retirement plan for members of the fund.

(g) The right of each member to such member's interest accrued under this chapter shall become 100 percent vested, if not already vested, upon the member's attainment of normal retirement age, and the member shall have a right to terminate employment and commence to receive a pension at that time. (Ord. Nos. 20354; 20960; 21582; 22345; 25818; 28739; 30162)

SEC. 40A-34. NONALIENATION AND NONREDUCTION OF BENEFITS.

(a) Title/ownership. Except with respect to fund assets subject to a securities lending agreement, the legal and equitable title and ownership of all assets at any time constituting a part of the fund will be and remain with the board, and neither the city nor any member or other person who may be entitled to benefits under the fund shall ever have any legal or equitable estate in the fund, except to receive distributions lawfully made in accordance with this chapter.

(b) Qualified domestic relations orders. The administrator shall determine whether a domestic relations order is a valid qualified domestic relations order, and the determination by the administrator may be appealed only to the board. In the event of receipt of a valid qualified domestic relations order, the interest in the fund of the member, inactive member, or retiree will be divided between the member, inactive member, or retiree and the spouse, former spouse, or child in accordance with the terms of the order as follows:

(1) A spouse or former spouse who is named as an alternate payee is entitled to receive a court-ordered lump sum distribution of accumulated employee contributions or monthly pension benefit in the form of payments for life. If the actuarial value of the pension is less than \$10,000, the board, at its option, may pay the actuarial present value to the alternate payee as a lump sum. A lump sum distribution of a portion of the member, or inactive member, or retiree's contributions, but not of annuity payments, may be made to an alternate payee who is a spouse or former spouse if such distribution is authorized by a qualified domestic relations order, even if the earliest retirement age has not been reached.

(2) A child who is named as an alternate payee is entitled to receive a part of the retiree's monthly pension benefit in an amount ordered by the court. Payments will terminate on the date designated by the court or upon the retiree's death, whichever occurs first. Payments may be made to a person legally authorized to receive them on behalf of the child.

(3) All rights and benefits provided to the member, inactive member, or retiree are subject to the rights afforded to any alternate payee under a valid qualified domestic relations order that meets the requirements of this section.

(4) For purposes of this section, alternate payee, domestic relations order, and qualified domestic relations order have the meanings given under Texas Government Code Chapter 804, as in effect on January 1, 2017.

(c) Exemptions. Contributions and benefits payable under the retirement fund are exempt from attachment, execution, garnishment, judgments, and all other suits or claims, with the exception of a "qualified domestic relations order," and are not assignable or transferable.

(d) Waiver of benefits.

(1) A person may, on a form prescribed by and filed with the administrator, waive all or a portion of any benefits from the retirement fund to which the person is entitled. A person may

revoke a waiver of benefits in the same manner as the original waiver was made, unless the original waiver by its terms was made irrevocable.

(2) A waiver or a revocation of a waiver applies only to benefits that become payable on or after the date the document is filed.

(3) Unless otherwise expressly provided for in this chapter, the board may not take action to reduce an individual pension. (Ord. Nos. 15414; 19470; 20960; 21582; 22345; 30162)

SEC. 40A-35. AMENDMENT TO THIS CHAPTER.

(a) Except as provided in Subsection (b) of this section, this chapter may not be amended except by a proposal initiated by either the board or the city council that results in an ordinance approved by the board, adopted by the city council, and approved by a majority of the voters voting at a general or special election.

(b) A provision of this chapter, other than this section, that is determined by the board to require amendment in order to comply with federal law may be amended by ordinance of the city council, without voter approval, upon recommendation of the board. The board shall recommend the exact amending language to be included in the ordinance, which language may not be limited or added to by the city council. An amendment may be made under this subsection only to the extent necessary to comply with federal law. (Ord. Nos. 15414; 20960; 21582; 25695; 30162)

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