



Legislation Text

File #: 060488, Version: 2

060488
SUBSTITUTE 2

THE CHAIR

A substitute charter ordinance relating to compliance with Internal Revenue Code provisions for service retirement allowance and benefit under the city employees' retirement system as a result of the Global Pension Settlement.

36-02-12-a am

36-05-1-j cr

36-05-7-b-3 am

36-05-7-e cr

This charter ordinance amends and creates certain provisions of chapter 36 for service retirement allowance and benefit under the city employees' retirement system to clarify compliance with sections 415 and 401(a)(9) of the Internal Revenue Code as, requested by the Internal Revenue Service in connection with a request for a Determination Letter with respect to the status of chapter 36 as a qualified retirement plan under section 401(a) of the Internal Revenue Code.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 36-02-12-a of the charter is amended to read:

36-02. Definitions.

12. EARNABLE COMPENSATION shall mean:

a. The annual regular base salary that would be payable to a member if he or she worked the full normal working time for his or her position, provided, however, that where service is credited during periods of absences as provided in s. 36-04-1-b, the employee shall be considered to have an earnable compensation during such periods of absence equivalent to his or her earnable compensation as of his or her last month of employment prior to the beginning of such absences. In cases where compensation includes maintenance, the board shall fix the value of that part of the compensation not payable in money. Policemen, excluding sergeant of police, detective lieutenant and ranks above same, retiring on a service retirement allowance on or after January 1, 1983, shall have longevity in rank pay, if any, payable at the close of the calendar year immediately preceding their retirement included as earnable compensation, except that policemen excluding sergeant of police, detective lieutenant and ranks above same, retiring on a service retirement allowance on or after January 1, 1998, who would have accrued 20 years of creditable service if they had remained in active service to the end of the calendar year in which they retire, shall have longevity in rank pay, if any, that would have been payable at the close of the calendar year of their retirement had they not retired included as earnable compensation, policemen of the rank of police sergeant and above (excluding the rank of commander and above) retiring on a service retirement allowance prior to January 1, 2000 shall have variable shift assignment pay, if any, to a maximum of \$1,410 per calendar year for police sergeant, administrative police sergeant, police sergeant (garage) and police

identification supervisor, and \$1,400 per calendar year for all others payable for the calendar year immediately preceding the calendar year in which they retire included as earnable compensation except that such other policemen who retire during calendar year 1985 shall have variable shift assignment pay, if any, payable for calendar year 1985 included as earnable compensation. Policemen of the rank of police sergeant and above (excluding policemen of the rank of police commander and above) retiring on a service retirement on or after January 1, 2000 shall have variable shift assignment pay, if any, to a maximum of \$1,060 per calendar year for the ranks of police sergeant, police sergeant (garage) and police identification supervisor and \$1,050 per calendar year for all others payable for the calendar year immediately preceding the calendar year in which they retire included as earnable compensation. Policemen of the rank of police sergeant or administrative police sergeant retiring on a service retirement on or after January 1, 2003 shall have variable shift assignment pay, if any, to maximum of \$1,360 per calendar year included in the calculation of final average salary for computing an employee's normal service retirement allowance. Policemen of the rank of police commander or above retiring on a service retirement allowance prior to January 1, 2001 shall have variable shift assignment pay, if any, to a maximum of \$1,400 per calendar year for the year immediately prior to the calendar year in which they retire included as earnable compensation and policemen of the rank of police commander or above retiring on a service retirement on or after January 1, 2001 shall have variable shift assignment pay, if any, to a maximum of \$1,500 per calendar year for the year immediately prior to the calendar year in which they retire included as earnable compensation. Firemen retiring on a service retirement allowance on or after January 1, 1992, shall have up to a maximum of \$550 in special emergency medical technician pay, if any, payable at the close of the calendar year immediately preceding their retirement included as earnable compensation. Firemen retiring on a service retirement allowance on or after January 1, 2000, shall have longevity pay, payable at the close of the calendar year immediately preceding their retirement included as earnable compensation. Firemen represented by Local 215 IAFF and retiring on a service retirement allowance in 2004 shall have training standards pay, if any, up to a maximum of \$400, that would have been payable at the close of calendar year 2004 had they not retired, included as earnable compensation. Firemen represented by Local 215 IAFF and retiring on a service retirement allowance on or after January 1, 2005 shall have training standards pay, if any, up to a maximum of \$400 received for the calendar year immediately preceding the calendar year of their retirement, included as earnable compensation. Firemen represented by Local 215 IAFF and retiring on a service retirement allowance on or after January 1, 2006 shall have EMT II premium pay, if any, up to a maximum of \$1000 received for the calendar year immediately preceding the calendar year of their retirement, included as earnable compensation. Members who are employees of the school board represented by Local 950, Operating Engineers International Union, who retire on or after March 4, 1990, shall have site differential pay if received on or after March 4, 1990, included as earnable compensation. Earnable compensation for any one year of creditable service shall not exceed \$150,000. If for any calendar year after 1994 the excess of \$150,000 increased by the cost of living adjustment prescribed by section 415(d), Internal Revenue Code, on a base period of the last quarter of calendar year 1993 exceeds \$150,000 by an amount in excess of \$10,000, the maximum for any subsequent calendar year shall be increased by the amount of the excess rounded to the next lowest multiple of \$10,000. >>Earnable compensation for any calendar year commencing on or after January 1, 2002 shall not exceed \$200,000, as adjusted for cost of living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code. Earnable compensation means compensation during the calendar year or such other consecutive 12-month period over which earnable compensation is otherwise determined by the retirement system (the determination period). The cost of living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year.<<

Part 2. Section 36-05-1-j of the charter is created to read:

36-05. Benefits.

1. SERVICE RETIREMENT ALLOWANCE.

j. In this paragraph:

j-1-a. "Annual pension benefit" means the benefit payable during the limitation year to a member on or after the member's 62nd birthday in the form of a straight life annuity with no ancillary benefits or in the form of a qualified joint and survivor annuity, as defined in sec. 417 of the Internal Revenue Code. The annual pension benefit is not adjusted for a member who retires after attaining age 65. For the purposes of applying limitations of this paragraph, if the benefit of the member is payable as other than an annual pension benefit, the benefit payable to the member shall be adjusted actuarially to an annual pension benefit using whichever produces the larger annual benefit, the interest rate and mortality table (or other tabular factors) specified in this chapter, or resolutions of the board and applicable to the time and form in which the member's benefit is to be paid; and, a 5 percent rate of interest and the applicable mortality table set forth in Internal Revenue Service Revenue Ruling 2001-62 or such other regulations as the Internal Revenue Service may issue ("applicable mortality table"). The annual pension benefit shall be determined without regard to any ancillary benefit that is not directly related to retirement income benefits (such as qualified disability benefits, pre-retirement death benefits, and post-retirement medical benefits) and does not include any benefits attributable to member contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the city. Furthermore, notwithstanding the foregoing, the annual pension benefit of a fireman or policeman or other full-time employe of the fire and police departments of the city who has been credited with at least 15 years of credible service, any pre-retirement death benefits and the annual pension benefit of a disabled member shall not be subject to the adjustment for benefits commencing prior to age 62.

j-1-b. "Dollar limitation" means the limitation set forth in sec. 415(b)(1) of the Internal Revenue Code, as adjusted for each limitation year in accordance with regulations prescribed by the Secretary of the Treasury to reflect changes in the cost of living.

j-1-c. "Limitation year" means the calendar year.

j-2. Notwithstanding any other provision in this chapter, any annual pension benefit that a member may be entitled to receive under this chapter shall not exceed or increase such that it exceeds the limitations contained in this paragraph. The annual pension benefit payable with respect to any member is limited to the following:

j-2-a. The annual pension benefit payable to a member shall not exceed the dollar limitation.

j-2-b. In the event payment of a member's annual pension benefit commences prior to the completion of 10 years of participation in the retirement system the dollar limitation set forth in this paragraph shall be adjusted by multiplying the amount of such limitation by a fraction, the numerator of which is the member's years of participation in the retirement system and the denominator of which is 10.

j-2-c. If the member has never participated in a defined contribution plan maintained by the city that meets the requirements of sec. 401(a) of the Internal Revenue Code, the annual pension benefit limit applicable to such member shall not be less than \$10,000. In the event payment of a member's annual pension benefit commences prior to the completion of 10 years of participation in the retirement system, the limitations set forth in this paragraph shall be adjusted by multiplying the amount of such limitation by a fraction, the numerator of which is the member's years of service with the city or a city agency and the denominator of which is 10.

j-2-d. In the event that the benefit payable to a member or beneficiary in any calendar year is limited by operation of this paragraph, the benefit payable in any subsequent calendar year shall be increased to the extent permitted by Internal Revenue Service regulations but in no event to an amount greater than that determined under the retirement system without regard to this paragraph.

j-2-e. For the purposes of this paragraph in the case of any member who receives a benefit under the retirement system and under any other defined benefit plan maintained by the city whether or not terminated, all such defined plans shall be treated as one defined benefit plan, and the annual pension benefit shall be deemed to include all such benefits. In the event such annual pension benefit exceeds the limitations of this paragraph, the member's retirement allowance under the retirement system shall be reduced, if necessary, to eliminate such excess.

j-2-f. The annual pension benefit payable to a member who has a freeze date specified in this paragraph shall not be less than the member's old law benefit. A member's old law benefit is the benefit the member was entitled to as of December 31, 1994 (the "freeze date") determined without regard to any changes in the terms and conditions of the retirement system after December 8, 1994.

j-2-g. In calculating a member's annual pension benefit, the following benefits shall not be considered: benefits attributable to a member's after-tax contributions or rollover contributions to the retirement system, and benefits attributable to the repayment by a member of amounts refunded to the member upon a forfeiture of service by the retirement system, a retirement system sponsored by the state of Wisconsin or by a unit of local government in the state of Wisconsin.

Part 3. Section 36-05-7-b-3 of the charter is amended to read:

7. OPTIONAL BENEFITS.

b-3. "OPTION 4." A reduced retirement allowance payable during the member's life, with some other benefit payable to a designated beneficiary or for the benefit of a designated beneficiary after the member's death, provided the succeeding benefits are payable over a period not extending beyond the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary, ~~[[provided the payment of the succeeding benefits are payable commencing no later than one year after the date of the member's death or in the case of a surviving spouse designated beneficiary, no later than one year after the date of the member's death or no later than the date upon which the spouse is 70-1/2 years of age, whichever shall come later, and provided the benefit shall be approved by the board]]~~ >>subject to the provisions of par. e<<.

Part 4. Section 36-05-7-e of the charter is created to read:

7. OPTIONAL BENEFITS.

e. The following provisions will apply to any distribution of a member's interest and will take precedence over any conflicting provisions of this chapter.

e-1. This paragraph is not intended to provide an optional form of distribution or commencement date not otherwise permitted under this chapter unless the timing or amount of payment to be made under applicable provisions of this chapter, without regard to this paragraph, would be later than the latest commencement date or less than the required minimum provided under this paragraph.

e-2. Distributions to a member shall commence no later than April 1 of the calendar year following the later of the calendar year the member retires or attains age 70-1/2.

e-3. All distributions required under this paragraph shall be determined and made in accordance with sec. 401(a)(9) of the Internal Revenue Code, as hereafter amended, and the regulations hereunder, including the minimum distribution incidental benefit requirements of 26 Code of Federal Regulations sec. 1.401(a)(9)-6, Q and A-2; provided, however, if a distribution option provided by this chapter on April 17, 2002 is inconsistent with the requirements of 26 Code of Federal Regulations sec. 1.401(a)(9)-6, but is consistent with a good faith interpretation of sec. 401(a)(9) of the Internal Revenue Code, without regard to such regulations, such distribution option will not cause this chapter to fail to satisfy the requirements of sec. 401(a)(9) of the Internal Revenue Code.

e-4. Distribution of benefits, if not made in a single sum, shall be made over one of the following periods, or a combination thereof:

e-4-a. The life of the member.

e-4-b. The lives of the member and a designated beneficiary.

e-4-c. A period not extending beyond the life expectancy of the member.

e-4-d. A period not extending beyond the life expectancy of the member and a designated beneficiary.

e-5. If the distribution of the member's interest has begun in accordance with subd. 4, and the member dies before his or her entire interest has been distributed to the member, the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution used as of the date of death of the member.

e-6. If the member dies before distribution commences, the member's entire interest will be distributed no later than December 31 of the calendar year containing the 5th anniversary of the death of the member except to the extent an election is made to receive the distributions in accordance with the following:

e-6-a. Payments of any portion of such interest to or for the life expectancy of a beneficiary may be made over the life or life expectancy of such beneficiary commencing no later than December 31 of the calendar year containing the first anniversary of the member's death.

e-6-b. Payments of any portion of such interest to the member's surviving spouse are not required to

begin earlier than December 31 of the calendar year in which the member would have attained age 70-1/2 or, if later, December 31 of the calendar year following the calendar year of the member's death. If the spouse dies before payments begin, subsequent distributions are required under this subdivision as if the spouse was the member.

e-6-c. Such election must be made by the member (or the member's beneficiary, if the member dies without having made such an election) on or before the earlier of the date by which distributions must commence absent an election and the date distributions must commence assuming such election has been made.

e-7. For the purposes of this paragraph, distribution of a member's interest is considered to begin on the date that distributions must commence to the member (or if subd. 6-b, applies, the date distribution is required to begin to the surviving spouse pursuant to subd. 6). If distribution in the form of an annuity irrevocably commences to the member before distributions must commence, distribution is considered to commence on the date it actually commences.

e-8. Any amount paid to a child of the member will be treated as if it had been paid to the surviving spouse when the child reaches the age of majority.

e-9. For the purposes of this paragraph any distribution under the incidental death benefit requirements of sec. 401(a) of the Internal Revenue Code shall be treated as a distribution required under sec. 401(a)(9) of the Internal Revenue Code.

Part 3. This is a charter ordinance and shall take effect 60 days after its passage and publication, unless within 60 days a referendum petition is filed as provided in s. 66.0101(5), Wis. Stats., in which event this ordinance shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon.

City Attorney
LRB06180-3
AEH
9/19/2006