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OFFICE OF THE CITY CLERK
OAKLAND

2014 DEC 23 PM 4:59 **AGENDA REPORT**

TO: HENRY L. GARDNER
Interim City Administrator

FROM: Katano Kasaine

SUBJECT: Annuitization and Termination
of the Oakland Municipal
Employees' Retirement System

DATE: December 15, 2014

City Administrator
Approval

Date

12/23/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt:

(1) AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM TO MEET ALL REQUIREMENTS OF THE INTERNAL REVENUE CODE APPLICABLE TO THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM AND (2) AN ORDINANCE TO TERMINATE THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM PURSUANT TO SECTION 2017 OF ARTICLE XX OF THE CHARTER OF THE CITY OF OAKLAND

EXECUTIVE SUMMARY

On November 4, 2014, City of Oakland voters passed Oakland Measure EE, granting the City of Oakland Council the authority to terminate the Oakland Municipal Employees' Retirement System ("OMERS") by purchasing a group annuity contract to guarantee pension payments to the remaining OMERS' retirees and beneficiaries. Based upon the successful approval of ballot Measure EE, the OMERS Board and City Administrator are seeking Council authority to move forward with a plan to purchase annuities and terminate the System. The purchase of an annuity would eliminate the need for a Board of Administration ("Board") and other administrative costs, as the annuity provider would assume these functions.

The OMERS Fund is governed by the City of Oakland Charter ("the Charter") and Ordinance No. 713 C.M.S. The attached proposed ordinances have been developed by the City's Attorney's office and outside council. The initial ordinance (*Attachment A*) amends OMERS Ordinance 713 in order to bring the System in compliance with the qualified plan rules under Section 401(a) of the Internal Revenue Code which applies to governmental plans such as

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OMERS. The second proposed Ordinance (*Attachment B*) terminates the OMERS Plan effective upon (1) the successful purchase of the annuities, (2) disbursements of all funds, (3) any other actions that are necessary and prudent to terminate OMERS and (4) reversion of the remaining assets to a City trust fund.

OUTCOME

Authorization of the Ordinances will result in the purchase of annuities and the eventual termination of the System. The initial ordinance (*Attachment A*) amends OMERS Ordinance 713 in order to bring the System in compliance with the qualified plan rules under Section 401(a) of the Internal Revenue Code. In addition the Ordinance modifies the System to prepare it for annuitization. The second proposed Ordinance (*Attachment B*) begins a process to wind-down the plan with an eventual outcome of purchasing annuities and terminating the System. The Surplus funds will be placed in a City Trust Fund designated for the exclusive use of OMERS' related expenditures not fulfilled by the annuity provider. For example, a small portion of the surplus funds will be used to administer the medical costs of the OMERS' members. The surplus funds will remain in trust until the last OMERS member and/or beneficiary passes away.

BACKGROUND/ LEGISLATIVE HISTORY

OMERS is a closed single-employer, defined benefit pension plan established pursuant to Article XX of the City of Oakland Charter. The System covers the City's non-uniformed employees hired prior to September 1970 who have not elected to transfer to CalPERS. The OMERS plan is governed by a seven-member Board. Article XX of the Charter and City Ordinance No. 713 C.M.S. together establish the rules and guidelines for the maintenance and operation of the OMERS fund.

The OMERS System currently provides pension benefits for twenty-one retirees and beneficiaries with an average age of ninety-one years old. As of the most recent actuarial valuation of the retirement system, which was as of July 1, 2014, OMERS plan assets were actuarially valued at \$4,774,000 resulting in a funded ratio of 169.0%.

For several years, the OMERS Board and City Administrator have been discussing the increasingly disproportionate annual administrative costs required to maintain operations of the OMERS plan relative to the actual cost of annual pension benefits. After considerable research and analysis done by the staff, legal counsel, plan actuary and consultants, the OMERS Board decided at its January 30, 2014 Board meeting to pursue the option of converting the OMERS pension fund into single premium group annuities. Given the circumstances of the small size of the plan and the few number of participants remaining, shifting the OMERS plan to an annuity structure was determined to be the most practical and cost-efficient approach for winding down the retirement system.

On May 22, 2014, the OMERS Board passed Resolution No. 4839 C.M.S. confirming support of an amendment of Article XX of the City Charter for the purpose of terminating the OMERS Board and authorizing the City to purchase a group annuity from a Board-approved insurance carrier for the payment of benefits. On July 15, 2014, the City of Oakland Council (Council)

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approved Resolution No. 85098 C.M.S., to place an OMERS Charter Amendment on the 2014 municipal ballot.

On November 4, 2014, City of Oakland voters passed Oakland Measure EE, which grants the City of Oakland Council the authority to terminate the OMERS Plan by purchasing a group annuity contract to guarantee pension payments to the remaining OMERS' retirees and beneficiaries.

Measure EE - City of Oakland Needs majority Yes votes to pass		
Total Precincts: 275	Precincts Reported: 275	Percent Reported: 100.00
Contest	# of Votes	% of Total
Yes	35,979	71.72
No	14,184	28.28

ANALYSIS

Why Annuity the OMERS Plan?

The OMERS Board and Staff have been discussing the disproportionate administrative costs required to maintain operations of the OMERS plan for several years. The OMERS System currently has twenty-one retirees and beneficiaries with an average age of ninety-one years old. Annual administrative expenses for OMERS have steadily increased and are approaching the annual benefit payment amount. For instance, based on the most recent actuarial report, the System is projected to pay approximately \$273,000 in pension benefit payments in Fiscal Year 2014/2015, yet the administrative budget is \$355,684 for the same Fiscal Year.

The costs to operate the OMERS fund include staff payroll and benefit costs, actuary, auditor, custodian, investment managers and investment consultant expenses. The purchase of individual annuities to pay the retiree benefits would lower costs by eliminating the level of staff payroll and all other operational costs associated with administering the plan. Upon successful purchase of an annuity, administrative functions would transfer to the annuity provider thus eliminating current annual operating expenses.

Additionally, the plan is overfunded; the participants are living longer than expected; and the volatility of the investment markets further justify the decision to annuitize. By annuitizing, the OMERS Board eliminates risk and cost associated with this plan for approximately 67% of the current actuarial valuation. The insurance companies' preliminary bids for OMERS retiree liability average \$1.9 Million in premiums.

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The chart below compares the average annuity premium and the current actuarial valuation of the liability.

OMERS Pension Plan Liability	Actuarial valuation as of 7/1/2014	Annuity Premium	Premium Cost as a Percentage of Pension Liability
Service Retirees	\$598,000	Included in cost	
Disability Retirees	112,000		
Beneficiaries	698,000		
Present Value of Future Expenses	1,417,000		
Total	\$2,825,000	\$1,898,000	67%
Estimated Market Value of Assets as of 7/1/2014			\$4,774,000

Note: Estimates may vary due to future changes in the interest rates underlying annuity quotes or changes in the investment markets.

How does an annuity work?

There are insurers in the market that specialize in annuitizing pension liabilities and underwrite non-participating single premium group annuity (“SPGA”) contracts. A non-participating SPGA is an insurance contract that is typically used to irrevocably transfer pension liabilities from the balance sheet of the sponsoring organization (City of Oakland) onto the balance sheet of an insurance company. Non-participating means that the contract holder (OMERS) is not affected by investment or mortality gains/losses. SPGAs are customized to cover the specific pension lives, benefit forms, benefit amounts, and other protected benefits, rights, and features available under the pension plan documents. A single premium is paid upfront to the selected insurer, who then assumes the pension liabilities and takes over administering benefit payments to the retirees and beneficiaries.

The transition to the annuity provider should be almost seamless for the members, as their benefits will not be impacted post-transition. The annuity provider would continue to provide the existing benefits of the current retirement system and duplicate OMERS’ benefit provisions including 3% cost-of-living adjustment, 50% pension continuance to surviving spouses and \$1,000 death benefit. In addition, cost savings will be realized in terms of administration as the annuity provider would continue providing services such as telephone assistance, withholding, deductions for health premiums from pension checks, and processing of qualified domestic relations orders.

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Protection Against Insurer Insolvency

The primary protection against insurer insolvency would be through the selection of a reputable and stable insurer. The Board would have a fiduciary duty to select a highly rated insurance carrier that could reliably administer all remaining benefits. The Board has worked with consultants to complete extensive due diligence on potential insurers.

Furthermore, the City would continue to be the ultimate guarantor of benefits payments in the unlikely event the selected insurer became insolvent. Under an SPGA contract, the System's liability would typically transfer to the annuity provider; however, this is not permissible under the City Charter. Pursuant to the Charter, the City is required to contribute such amount as may be necessary, when added to member contributions to provide the benefits payable under the retirement system. Since all members are retired and are no longer making contributions, the City is singularly responsible for funding the System. Therefore, if the insurance provider becomes insolvent, the City will have to assume the obligation of funding the System.

Consequently, post-annuitization the City has an ultimate obligation of fiduciary responsibility for the OMERS fund. If the insurer becomes insolvent, the City will still fulfill its duty of care to retirees and beneficiaries and assure prompt delivery of benefits and related services. As due diligence, all savings from annuitization will be placed into a trust fund for any unanticipated expenditures or shortfalls as long as there are any living retirees or beneficiaries.

Annuitization Process

On April 25, 2013, after a Request for Information ("RFI") process, the Board hired annuity specialists, Dietrich and Associates, to assist in the process of selecting an annuity provider and transitioning the retirement plan to the carrier. Dietrich and Associates has provided annuity education to the Board, provided detailed due diligence on possible insurance carriers, provided a risk analysis and provide preliminary annuity quotes.

The OMERS Board and the City Administrator will be responsible for administrating the purchase and transition to an annuity. Single Premium Group Annuity quotations are highly rate-sensitive, and as such, are valid for one day only. Dietrich will conduct an auction process on the final bid date. The OMERS Board will designate appointee(s) that will have the authority to review final pricing and accept an offer. Dietrich & Associates will conduct an initial round of bids, using the lowest bid as the "driver"; Dietrich will then negotiate more competitive numbers by allowing the carriers the opportunity to improve their pricing. The Board's designated appointee(s) will review the pricing and upon selecting the winning carrier, will provide verbal acceptance to Dietrich & Associates. Upon acceptance of a final bid, Dietrich & Associates will notify the chosen carrier that its offer has been accepted. The carrier will then issue a contract number, and acceptance forms (requiring an appointee's signature), as well as wire transfer instructions. It is imperative that this process be conducted timely so that the insurance company can lock in investments prior to bond market close on the final bid acceptance date.

Proposed Timeline

The table below provides a timeline of significant events necessary to wind down the OMERS Plan. New City of Oakland Charter Article XX, Section 2018 requires that retirees and beneficiaries receive at least 60 days' notice prior to the termination of the fund.

Election Day	November 04, 2014
Election results presented to Council	December 16, 2014
OMERS Board select the criteria for the annuity provider	December 18, 2014
Effective date of Measure if approved by Council	December 26, 2014
Staff report and proposed Ordinances to terminate the Plan presented to City Council	January 6, 2015
Notice to OMERS retirees and beneficiaries as required by Article XX, Section 2018	January 7, 2015
OMERS Board meeting to designate person who will have the authority to select the annuity provider and sign the selected carrier's acceptance paperwork. Designate "not to exceed" premium amount, if necessary.	January 29, 2015
Liquidate OMERS Fund	February 2, 2015
Purchase annuity: Final Bid/ Acceptance	February 6, 2015
Wire Transfer date	February 10, 2015
Terminate all OMERS contracts and confirm payments of all outstanding liabilities	February 9, 2015 – February 13, 2015
Reversion of remaining assets to City Trust Fund	March 6, 2015

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Plan closes: City of Oakland Charter Article XX, Section 2020 provides that once all assets of OMERS are disbursed (i.e., purchase of annuities, payment of liabilities and reversion to City), OMERS will terminate and the OMERS Board will be dissolved	March 9, 2015 (60 days from notice)
Annuity commencement date – First check paid out from annuity provider to retirees and beneficiaries.	April 1, 2015

PUBLIC OUTREACH/INTEREST

This item required significant outreach to retirees, councilmembers, stakeholders and Oakland voters to explain the intention of the measure and to assure stakeholders that this measure will not result in a change to pension benefits. An initial notice was sent to OMERS Retirees and Beneficiaries informing them that the Board had decided to pursue moving the System to a third party annuity provider. New Oakland Charter Article XX, Section 2018 requires that retirees and beneficiaries receive at least 60 days’ notice prior to the termination of the fund. That notice would be sent upon approval of the attached ordinances.

COORDINATION

This report was prepared in coordination with the City Clerk’s Office, Budget Office and Office of the City Attorney.

COST SUMMARY/IMPLICATIONS

There are no implications to the General Fund budget. All related transfer costs will be paid by the OMERS Fund.

SUSTAINABLE OPPORTUNITIES

Economic: The City of Oakland seeks to ensure that the OMERS Retirement System is administered in a cost efficient manner that will be beneficial to the City and to the System over the remaining life of the System without impacting the retirees and/or beneficiaries.

Environmental: There are no environmental opportunities associated with this report.


Social Equity: There is no social equity opportunities associated with this report.

CEQA

This report is not a project under CEQA.

For questions regarding this report, please contact Katano Kasaine, Plan Administrator, (510) 238-2989.

Respectfully submitted,



KATANO KASAINÉ
Plan Administrator
Oakland Municipal Employees' Retirement System

Prepared by:
Téir Jenkins, Investment Officer
Oakland Municipal Employees' Retirement System

Attachment:

- **ATTACHMENT A**
CITY COUNCIL ORDINANCE NO. _____ C.M.S. - AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM TO MEET ALL REQUIREMENTS OF THE INTERNAL REVENUE CODE APPLICABLE TO THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM
- **ATTACHMENT B**
CITY COUNCIL ORDINANCE NO. _____ C.M.S. - AN ORDINANCE TO TERMINATE THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM PURSUANT TO SECTION 2017 OF ARTICLE XX OF THE CHARTER OF THE CITY OF OAKLAND

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ATTACHMENT A

INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM TO MEET ALL REQUIREMENTS OF THE INTERNAL REVENUE CODE APPLICABLE TO THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM

WHEREAS, the City of Oakland ("City"), established the OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM (the "OMERS") for the benefit of certain employees, effective July 1, 1939, governed by Article XX of the Appendix to the Charter of the City of Oakland ("Article XX"); and

WHEREAS, the provisions of the OMERS are set forth in Ordinance No. 713 C.M.S., as amended, including by Ordinance No. 12283 C.M.S., Ordinance No. 12286 C.M.S., Ordinance No. 12380 C.M.S., and Ordinance No. 12625 C.M.S. ("Ordinance No. 713"); and

WHEREAS, the OMERS is a qualified pension plan under the requirements of the United States Internal Revenue Code; and

WHEREAS, the City Council of the City of Oakland desires to amend Ordinance No. 713 to ensure that OMERS is in compliance with various requirements set forth in the following federal tax laws:

(1) provisions of the Uruguay Round Agreements Act, P.L. 103-465 and the Small Business Job Protection Act of 1996;

(2) provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001;

(3) provisions of the Pension Protection Act of 2006;

(4) provisions of the Uniformed Services Employment and Reemployment Rights Act, as amended by the Heroes Earnings Assistance and Relief

Tax Act of 2008;

(5) direct rollover requirements under Internal Revenue Code Sections 401(a)(31)(A) and 402(f)(1);

(6) final and temporary regulations issued by the Internal Revenue Service under Section 401(a)(9) of the Internal Revenue Code;

(7) final regulations issued by the Internal Revenue Service under Section 415 of the Internal Revenue Code; and,

(8) Such other provisions as are necessary to maintain the tax qualification of the OMERS; and

WHEREAS, Section 2016 of Article XX provides that the City Council reserves the right to enact any and all ordinances necessary to ensure the proper operation of the OMERS; now, therefore,

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Ordinance No. 713 is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the sections in Ordinance No. 713 not cited or not shown in underscoring or strike-through type are not changed.

SECTION 3. The provisions contained in this Ordinance shall supersede the provisions set forth in Ordinance No. 713 to the extent those provisions are inconsistent with the provisions of this Ordinance.

SECTION 4. Ordinance No. 713 C.M.S. shall be amended as specified herein:

1. Section 2.11 of Ordinance No. 713 C.M.S. is hereby amended as follows:

“Compensation,” as distinguished from benefits under the Labor Code of the State of California, shall mean all remuneration, whether in cash or by other allowances made by the City for service qualifying for credit under the Retirement System; provided that when the compensation of a member is a factor in any computation to be made under this System, there shall be excluded from such computation any compensation based on overtime put in by a member. For the purpose of this System, overtime is the aggregate service performed by an employee as a member in all positions, in

excess of the hours of work considered normal for employees on a full-time basis and for which monetary compensation is paid.

Solely for purposes of determining the annual limitation under Section 415 of the Internal Revenue Code ("Code") the term "Compensation" shall mean, effective January 1, 2001, the annual compensation of each member taken into account in determining benefits accruals for any determination period beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual Compensation for the 12- month consecutive determination period that begins with or within such calendar year. For this purpose, annual compensation means Compensation during the calendar year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period).

2. Section 14.3 of Ordinance No. 713 C.M.S. is hereby amended to add the following subsections:

(k) Except as provided in subsection 14.3(i) and notwithstanding any other provision of this Section 14.3, commencing July 1, 2015, the cost of living increase provided herein for members shall be three percent (3%) each year, regardless of the actual change in the cost of living.

(i) Notwithstanding any other provision of this Section 14.3 or any other provision of this Ordinance, commencing April 1, 2015, a Supplemental COLA increase of 3.375% shall be provided each year to members who are former employees of the City of Oakland who transferred to the County of Alameda effective July 1, 1957. This COLA increase shall be the only such cost of living increase provided to such members and shall be paid regardless of the actual change in the cost of living.

3. Ordinance No. 713 C.M.S. is hereby amended to add a new heading titled "**Miscellaneous Provisions**" followed by a new Section 27, as follows:

Sec. 27. Section 415 Limitations on Benefits

(a) Annual Benefit.

(1) Annual Benefit. For purposes of this Section, the term "Annual Benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life

annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Section. For a member who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new annuity starting date has occurred shall be made without regard to Treasury Regulations Section 1.401(a)-20, Q&A 10(d), and with regard to Treasury Regulations Section 1.415(b)1(b)(1)(iii)(B) and (C).

The Annual Benefit otherwise payable to a member under the Retirement System at any time shall not exceed the maximum annual benefit described by paragraph (b) below. If the benefit the member would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the maximum annual benefit, then the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the maximum annual benefit described in paragraph (b) below.

(2) Grandfather provision. The application of the provisions of this Section shall not cause the maximum permissible benefit for any member to be less than the member's accrued benefit under Retirement System as of the end of the last Limitation Year beginning before July 1, 2007 under provisions adopted and in effect before April 5, 2007, provided such provisions satisfied the applicable requirements of statutory provisions, Treasury Regulations, and other published guidance relating to Code Section 415 in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in Treasury Regulation Section 1.415(a)-1(g)(4).

(b) Maximum Annual Benefit.

(1) Maximum Benefit. Effective for Limitation Years commencing on or after January 1, 2002, the maximum Annual Benefit payable to a member under the Retirement System in any Limitation Year shall not exceed \$160,000, as adjusted each year, under Code Section 415(d).

(2) Limitation Year. For purposes of applying the limitations of Code Section 415, the Limitation Year shall be the calendar year.

(3) EGTRRA Provisions. Effective for Limitation Years ending after December 31, 2001, benefit increases resulting from the increase in the limitations of Code Section 415(b) on account of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") will be provided to all members (with benefits limited by Code Section 415(b)) who have an accrued benefit under the Retirement System immediately prior to the effective date of this Section (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under Code Section 415(b)).

(4) Effective for the calendar years commencing on or after January 1, 2008, "annual additions" for purposes of Code Section 415 shall not include: (1) the direct transfer of a benefit or employee contributions from a qualified plan to the Retirement System; (2) rollover contributions (as described in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); and (3) the repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as employer restorations of benefits that are required pursuant to such repayments.

(5) Employer contributions are treated as credited for a particular limitation year only if the contributions are actually made no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable) with or within which the particular limitation year ends.

(c) Adjustments to Annual Benefit and Limitations.

(1) If the benefit of a member begins prior to age 62, the defined benefit dollar limitation applicable to the member at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the member at age 62 (adjusted under (a)(1) above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Retirement System and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the applicable mortality table as defined in the Retirement System. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph (c) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the member. If any benefits are forfeited upon death, the

full mortality decrement is taken into account.

(2) Adjustment for Late Payment (Limitation Years beginning on or after July 1, 2007). If the benefit of a member begins after the member attains age 65, the defined benefit dollar limitation applicable to the member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the member at age 65 (adjusted under (a)(1) above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Retirement System and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table as defined in the Retirement System. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

(3) Adjustment for Late Payment (Limitation Years beginning before July 1, 2007). If the Annual Benefit of a member begins after age 65, then for Limitation Years beginning before July 1, 2007, the defined benefit dollar limitation of paragraph (c)(1) applicable to the member at the earlier age is the actuarial equivalent of the dollar limitation under Code Section 415(b)(1)(A) (as adjusted under Code Section 415(d)), with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table or other tabular factor specified in the Retirement System for determining the Actuarial Equivalent for early retirement purposes, or (2) a five percent (5%) interest rate assumption and the "applicable mortality table."

(4) No Mortality Adjustment for Certain Payments. Except as provided in paragraph (c)(1), no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a member's death between the Annuity starting date and age 65, if benefits are not forfeited upon the death of the member prior to the Annuity starting date. To the extent benefits are forfeited upon death before the Annuity starting date, such an adjustment shall be made.

(5) Adjustment for Less Than 10 Years of Participation or Service. If the member has fewer than 10 years of participation in the Retirement System, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of

years (or part thereof) of participation in the Retirement System and (ii) the denominator of which is 10.

(6) Actuarial Equivalence. For purposes of adjusting the Annual Benefit to a straight life annuity, the equivalent Annual Benefit shall be (i) for Limitation Years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity commencing at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using a five percent (5%) interest rate assumption and the applicable mortality table used by the Retirement System ("Applicable Mortality Table"), and (ii) for Limitation Years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount: (1) the interest rate and mortality table or other tabular factor specified in the plan for adjusting benefits in the same form; and (2) a five percent (5%) interest rate assumption and the Applicable Mortality Table. If the Annual Benefit is paid in a form other than a nondecreasing life annuity payable for a period not less than the life of a member, the applicable interest rate used by the Retirement System ("Applicable Interest Rate") shall be substituted for five percent (5%) in the preceding sentence. With respect to Plan Years beginning after December 31, 2003 but not after December 31, 2005, for purposes of adjusting the Annual Benefit to a straight life annuity, if the Annual Benefit is paid in any form other than a nondecreasing life annuity payable for a period not less than the life of a member, then the equivalent Annual Benefit shall be the greater of (1) the equivalent Annual Benefit computed using the Retirement System interest rate and mortality table (or other tabular factor), or (2) the equivalent Annual Benefit computed using five and one-half percent (5.5%) and the Applicable Mortality Table. With respect to calendar years beginning after December 31, 2005, for purposes of adjusting the Annual Benefit to a straight life annuity, if the Annual Benefit is paid in any form other than a nondecreasing life annuity payable for a period not less than the life of a member, then the equivalent Annual Benefit shall be the greatest of (1) the equivalent Annual Benefit computed using the Retirement System interest rate and mortality table (or other tabular factor), or (2) the equivalent Annual Benefit computed using five and one-half percent (5.5%) and the Applicable Mortality Table, or (3) 100/105 of the equivalent Annual Benefit computed using the Applicable Interest Rate and the Applicable Mortality Table.

Any benefit increases resulting from the increase in the limitations of Code Section 415(b) will be provided to all members who have one hour of service on or after the first day of the first calendar year ending after December 31, 2001.

(d) Excess Annual Additions. If the "annual additions" are exceeded for any member, then the Retirement System may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2013-12, or any superseding guidance, including, but not limited to, the preamble of the final §415 Regulations.

4. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 28 under the new heading "Miscellaneous Provisions" as follows:

Sec. 28. Effective for distributions made on or after January 1, 1996 and prior to July 1, 2002, the following provisions shall apply for purposes of complying with the required minimum distribution requirements of Code Section 401(a)(9):

(a) Required Minimum Distributions. Effective for plan years beginning on or after January 1, 1996, a member's benefits shall be distributed to him or her no later than the "Required Beginning Date." The term "Required Beginning Date" shall mean April 1 of the calendar year following the later of: (i) the calendar year in which the member attains age seventy and one-half (70½) years; or (ii) the calendar year in which the member retires.

Notwithstanding any other provisions to the contrary, the distribution of a member's benefit shall meet the requirements of Code Section 401(a)(9) and the Regulations thereunder, including Regulation 1.401(a)(9)-2 and the incidental death benefit requirements under Code Section 401(a)(9)(G). These minimum distributions shall be calculated each year by the Board and shall be distributed in accordance with this section.

(1) The distribution of a member's benefit shall commence no later than the Required Beginning Date and shall be paid over the life expectancy of the member and any designated beneficiary, as prescribed in the Regulations.

(2) Unless otherwise elected by the member prior to his or her benefit commencement date, the life expectancy of the member and his or her spouse comprising the joint and last survivor expectancy shall not be recalculated. An election by the member or spouse to recalculate life expectancy shall be irrevocable and shall apply to all subsequent calendar years. The

life expectancy of a non-spouse beneficiary may not be recalculated.

Payments shall be calculated using the return multiples as specified in Tables V and VI of Section 1.72-9 of the Regulations. If a member so elects (or a spouse who is a designated beneficiary so elects after the member's death), life expectancy shall be the calculation using the attained age of the member (or designated beneficiary) as of the member's (or designated beneficiary's) birthday in the applicable calendar year reduced by one (1) for each calendar year which has elapsed since the date life expectancy was first calculated, or the joint and last survivor expectancy shall be the calculation using the attained ages of the member and the member's spouse as of the birthdays of both the member and his or her spouse in the first Distribution Calendar Year reduced by one (1) for each calendar year which has elapsed since the date the joint and last survivor expectancy was first calculated. Such election shall be irrevocable as to the member (or the spouse who is the designated beneficiary) and shall apply to all subsequent calendar years.

(3) Distribution Calendar Year. The "Distribution Calendar Year" shall mean the calendar year for which the minimum distribution is required. The first Distribution Calendar Year, for distributions beginning before the member's death, is the calendar year immediately preceding the calendar year which includes the member's Required Beginning Date. The first Distribution Calendar Year for distributions beginning after the member's death is the calendar year in which distributions are required to begin.

5. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 29 under the new heading "Miscellaneous Provisions" as follows:

Sec. 29. Effective for distributions made on or after July 1, 2002, the following provisions shall apply for purposes of complying with the required minimum distribution requirements of Internal Revenue Code Section 401(a)(9):

(a) Required Minimum Distributions.

(1) Time and Manner of Distribution.

a. Required Beginning Date. The member's benefit will commence to be distributed no later than the member's Required Beginning Date.

b. Death of member Before Distributions Begin. If the member dies before distributions begin, the member's benefits will be distributed, or begin to be distributed, no later than as follows:

1. If the member's surviving spouse is the member's sole Designated Beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age 70½, if later.

2. If the member's surviving spouse is not the member's sole Designated Beneficiary, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.

3. If there is no Designated Beneficiary as of September 30 of the year following the year of the member's death, the member's accounts will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

4. If the member's surviving spouse is the member's sole Designated Beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subparagraph b, other than subparagraph b.1. above, will apply as if the surviving spouse were the member.

For purposes of this paragraph (1) and paragraph (3) below, unless subparagraph b.4 above applies, distributions are considered to begin on the member's Required Beginning Date. If annuity payments irrevocably commence to the member before the member's Required Beginning Date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subparagraph b.1 of this paragraph (1), the date distributions are considered to begin is the date distributions actually commence.

c. Forms of Distribution. Distributions will be made in accordance with paragraphs (2), (3) and (4) unless the member's accounts are distributed in the form of an annuity purchased from an insurance company.

(2) Determination of Amount to be Distributed Each Year.

a. General Annuity Requirements. If the member's accounts are paid in the form of annuity distributions under the Retirement System, payments under the annuity will satisfy the following requirements:

1. the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

2. the distribution period will be over a life (or lives) or over a period certain not longer than the period described in paragraphs (3) and (4);

3. once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

4. payments will either be nonincreasing or increase only as follows:

i. by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

ii. to the extent of the reduction in the amount of the member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in paragraph (3) dies or is no longer the Designated Beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p);

iii. to provide cash refunds of employee contributions upon the member's death; or

iv. to pay increased benefits that result from a plan amendment.

b. Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the member's Required Beginning Date (or, if the member dies before distributions begin, the date distributions are required to begin under paragraph (1)b.1. or (ii) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received (e.g., bi-monthly, monthly,

semi-annually, or annually). All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's Required Beginning Date.

c. Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the member in a calendar year after the first Distribution Calendar Year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(3) Requirements for Annuity Distributions that Commence During member's Lifetime.

a. Joint Life Annuities Where the Beneficiary is Not the member's Spouse. If the member's accounts are being distributed in the form of a joint and survivor annuity for the joint lives of the member and a non-spouse Designated Beneficiary, annuity payments to be made on or after the member's Required Beginning Date to the Designated Beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the member using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury Regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a non-spouse Designated Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the Designated Beneficiary after the expiration of the period certain.

b. Period Certain Annuities. Unless the member's spouse is the sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches age 70, the applicable distribution period for the member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations plus the excess of 70 over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole Designated Beneficiary and the form

of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this paragraph, or the joint life and last survivor expectancy of the member and the member's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

(4) Requirements for Minimum Distributions Where member Dies Before Date Distributions Begin.

a. member Survived By Designated Beneficiary. If the member dies before the date distribution of his or her benefits begins and there is a Designated Beneficiary, the member's remaining benefits will be distributed, beginning no later than the time described in paragraph (1)b.1. or over the life of the Designated Beneficiary or over a period certain not exceeding:

1. unless the annuity starting date is before the first Distribution Calendar Year, the Life Expectancy of the Designated Beneficiary determined using the Designated Beneficiary's age as of the Designated Beneficiary's birthday in the calendar year immediately following the calendar year of the member's death; or

2. if the annuity starting date is before the first Distribution Calendar Year, the Life Expectancy of the Designated Beneficiary determined using the Designated Beneficiary's age as of the Designated Beneficiary birthday in the calendar year that contains the annuity starting date.

b. No Designated Beneficiary. If the member dies before the date distribution begins and there is no Designated Beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's benefit will be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

c. Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the member dies before the date distribution of his or her accounts begins, the member's surviving spouse is the member's sole Designated Beneficiary, and the

surviving spouse dies before distributions to the surviving spouse begin, this paragraph (4)c. will apply as if the surviving spouse were the member, except that the time by which distributions must begin will be determined without regard to paragraph (1)b.1.

(e) Definitions.

(1) Designated Beneficiary. The person or persons entitled to receive the retirement allowance of a deceased member under the Retirement System and considered the Designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

(2) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the member's Required Beginning Date. For distributions beginning after the member's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under paragraph (1)b.

(3) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.

6. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 30 under the new heading "Miscellaneous Provisions" as follows:

Sec. 30. Effective for distributions made on or after January 1, 2002, the following provisions shall apply for purposes of complying with Code Sections 401(a)(31)(A) and 402(f)(1):

(a) Direct Rollovers. A member may elect upon written application to the Board for an optional settlement in lieu of a retirement allowance, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee. The Distributee must provide the Board with sufficient information to identify the Eligible Retirement Plan as well as the trustee or custodian of the funds to whom the transfer is to be made.

For purposes of this Section, the following definitions shall apply:

(1) Distributee. A "Distributee" shall mean a member, or the surviving spouse of a deceased member. In addition, the member's spouse or former spouse who is the alternate payee under a domestic relations order shall be a Distributee with regard

to the interest of the spouse or former spouse.

(2) Eligible Retirement Plan. "Eligible Retirement Plan" shall mean any of the following types of retirement plans which accepts the Distributee's Eligible Rollover Distribution and agrees to separately account for amounts transferred from the Retirement System: (i) an individual retirement account described in Code Section 408(a), (ii) an individual retirement annuity described in Code Section 408(b); (iii) an annuity plan described in Code Section 403(a); (iv) an annuity contract described in Code Section 403(b); (v) a qualified trust described in Code Section 401(a); or an eligible governmental deferred compensation plan under Code Section 457(b).

"Eligible Retirement Plan" shall also mean a Roth IRA described in Code Section 408A(b) provided such distribution is made by a direct trustee-to-trustee transfer and the receiving plan agrees to separately account for the amounts transferred.

(3) Eligible Rollover Distribution. An "Eligible Rollover Distribution" shall mean any distribution of all or any portion of the balance to the credit of the Distributee, except that it shall 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 ten (10) years or more; or

b. any distribution required under Code Section 401(a)(9); or

c. any amount that is distributed on account of hardship; or

d. the portion of any distribution that is not includable in gross income of the Distributee; or

e. any other distribution that is reasonably expected to total less than \$200 during a year.

Notwithstanding the foregoing, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may only be transferred in a direct trustee-to-trustee

transfer to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a), or to an annuity contract described in Code Section 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(b) Rollovers to Roth IRA. A Distributee may also elect to have any portion of an Eligible Rollover Distribution paid directly to a Roth IRA described in Code Section 408A. Any distribution made in accordance with this provision shall be considered a "qualified rollover contribution" and includable in the Distributee's gross income for the year in which payment is made under Code Section 408A(c)(3)(A). A Distributee shall not be eligible to elect a qualified rollover contribution under this provision if the Distributee's adjusted gross income for the tax year exceeds the adjusted gross income limitation prescribed under Code Section 408A(c)(3) (the limit for unmarried individuals is \$100,000 for tax years beginning before January 1, 2010) and, if married, is filing a separate individual tax return.

(c) Notification of Direct Rollover Option. Upon application for a retirement allowance or upon becoming eligible to receive benefits from the Retirement System, a member or Distributee shall be furnished a notice not less than thirty (30) days, nor more than one hundred eighty (180) days (the "distribution election period"), prior to the commencement of benefits. Such notice shall contain an explanation of the following:

(1) The option to elect a direct rollover to an Eligible Retirement Plan.

(2) The mandatory income tax withholding provisions applicable if the distribution is not transferred to an Eligible Retirement Plan.

(3) The provisions under which a lump sum distribution will not be subject to tax if transferred to an Eligible Retirement Plan within sixty (60) days after the date on which the Distributee received the distribution.

(4) The applicable rules on rollover and taxation of a lump sum distribution under Code Section 402(d) and (e).

7. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 31

under the new heading "Miscellaneous Provisions" as follows:

Sec. 31. Effective for distributions made on or after January 1, 2010, the following provisions shall apply for purposes of complying with the Pension Protection Act of 2006 ("PPA"):

(a) Non-spouse beneficiary rollover right. For distributions after December 31, 2009, a non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(e) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Code Section 401(a)(31). If the member's named beneficiary is a trust, the trustee of such trust may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E). Notwithstanding, a non-spouse beneficiary may not roll over an amount that is a required minimum distribution under Internal Revenue Code Section 401(a)(9).

8. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 32 under the new heading "Miscellaneous Provisions" as follows:

Sec. 32. Effective for distributions on or after January 1, 2007, the following provisions shall apply for purposes of complying with the PPA:

(a) Member Notification Prior to Commencement of Benefits. For any distribution notice issued on or after January 1, 2007, the maximum notice period requirement reflected in the rollover notice required under Code Section 402(f) shall be 180 days.

9. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 33 under the new heading "Miscellaneous Provisions" as follows:

Sec. 33. The following provisions shall apply effective January 18, 2006 for purposes of complying with the Uniformed Services Employment and Reemployment Rights Act ("USERRA"):

(a) Special Rule for members in Military Service. Contributions, benefits and service credit with respect to qualified military service will be provided members in accordance with Code Section 414(u).

10. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 34 under the new heading "Miscellaneous Provisions" as follows:

Sec. 34. The following provisions shall apply effective January 1, 2007 for purposes of complying with the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"):

(a) Continued Benefit Accruals for members in Military Service. If a member dies or becomes permanently disabled while performing qualified military service (as defined in Code Section 414(u)), on or after January 12, 2007, such member's survivors shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Retirement System as if the member had re-entered City-service on the day preceding death or disability and then ceased employment on account of such death or disability on the actual date thereof.

The Retirement System will determine the amount of employee contributions upon a member's "re-entry" under this provision for purposes of applying Code Section 414(u)(8)(C) on the basis of the member's average actual employee contributions for the lesser of: (i) the 12-month period of City-service immediately prior to qualified military service; or (ii) the actual length of continuous City-service if the period is less than 12 months.

(b) Differential Wage Payments. Effective January 1, 2009, (i) an individual receiving any differential wage payments from the City, as that term is defined in Code Section 3401(h)(2), shall be treated as an Employee of the City, (ii) the differential wage payment shall be treated as Compensation, and (iii) the Retirement System shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

11. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 35 under the new heading "Miscellaneous Provisions" as follows:

Sec. 35. Effective for plan years beginning on or after January 1, 1998, the definition of "Compensation" is amended to add the following for purposes of complying with provisions of the Uruguay Round Agreements Act, P.L. 103-465 ("GATT") and the Small Business Job Protection Act of 1996 ("SBJPA"):

(a) For Plan Years beginning after December 31, 1997, for the purposes of applying the limitations under Code Section 415, "Compensation" shall include amounts contributed or deferred under Code Section 125 or Code Section 457.

12. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 36 under the new heading "Miscellaneous Provisions" as follows:

Sec. 36. Effective for plan years beginning on or after January 1, 1995, the following benefit limitation rules shall apply for purposes of complying with provisions of GATT and SBJPA:

(a) Defined Benefit Dollar Limitation. "Defined Benefit Dollar Limitation" shall mean Ninety Thousand Dollars (\$90,000), or such other amount, as adjusted by the Secretary of the Treasury for cost of living in accordance with Code Section 415(d). Any such adjustment determined with respect to any calendar year is based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for applicable base period, in accordance with Code Section 415(d). Notwithstanding the foregoing, any increase in the Ninety Thousand Dollar (\$90,000) amount which is not a multiple of Five Thousand Dollars (\$5,000) shall be rounded to the next lowest multiple of Five Thousand Dollars (\$5,000). For the purposes of this provisions, the "applicable base period" is the calendar quarter beginning October 1, 1986.

13. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 37 under the new heading "Miscellaneous Provisions" as follows:

Sec. 37. Effective for plan years beginning on or after January 1, 1995, the maximum annual benefit under the Retirement System shall be defined as follows for purposes of complying with provisions of GATT and SBJPA:

(a) With respect to the determination of the maximum annual benefit of a member, the amount shall be adjusted each year based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for the base period, in accordance with Code Section 415(d). For members who separated from City-service after December 31, 1994, the base period taken into account for purposes of this provision is the calendar quarter beginning July 1 of the calendar year preceding the calendar year in which such separation occurs. For members who separated from City-service before January 1, 1995, the base period taken into account for purposes of this Section is the calendar quarter beginning October 1, of the calendar year preceding the calendar year in which such separation occurs.

14. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 38 under the new heading "Miscellaneous Provisions" as follows:

Sec. 38. The following provision is added for purposes of complying with the exclusive benefit rule of Internal Revenue Code Section 401(a)(2):

(a) Exclusive Benefit. Subject to Section 2019 of Article XX of the Appendix to the Charter of the City of Oakland, no portion of the funds held by the Retirement System shall be paid to or revert to the City or be used for a purpose other than for the exclusive benefit of the members and their Designated Beneficiaries, except to defray reasonable expenses of the administration of the Retirement System.

15. Ordinance No. 713 C.M.S. is hereby amended to add a new Section 39 under the new heading "Miscellaneous Provisions" as follows:

Section 39.

(a) Plan termination. The City shall have the right to terminate the Retirement System upon the adoption of an ordinance. Upon any termination, all amounts shall be allocated in accordance with the provisions hereof and the accrued benefit, to the extent funded as of such date, of each member shall become fully vested and shall not thereafter be subject to forfeiture. However, members who were not fully vested at the time they received a complete distribution of their accrued benefits prior to the date of termination, shall not become entitled to any additional accrued benefits on account of the termination of the Retirement System. Upon full termination of the Retirement System, the Board shall direct the distribution of the assets to the remaining members and retired members in cash payments or through the purchase of irrevocable deferred commitments from an insurer, subject to provision for expenses of administration or liquidation. Such distributions shall be allocated in the following order to the extent of the sufficiency of such assets, basing such allocation on the accrued benefit for each such member at the date of termination of the Retirement System:

(1) to provide pensions to retired members, or their beneficiaries, who have retired under the Retirement System prior to its termination without reference to the order of retirement;

(2) to provide a retirement allowance to members who have satisfied the age and service requirements to receive a retirement allowance but have not retired on the date of plan termination, without reference to the order in which they shall have satisfied the age and service requirement for a retirement

allowance;

(3) to provide an allowance to members who have not yet satisfied the age and service requirements to receive a retirement allowance on the date of plan termination, without reference to the order in which they will satisfy the age and service requirements for an allowance. Such benefits will be based upon accrued benefits as of the date of the termination of the Retirement System.

The balance, if any, of the assets due to erroneous actuarial computation held by the trust fund for the Retirement System after such allocation shall be returned to the City, but only after the satisfaction of all liabilities with respect to members and pensions under the Retirement System.

SECTION 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 6. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, CAMPBELL WASHINGTON, GUILLEN, AND REID.

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST


ORDINANCE AMENDING THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM TO MEET ALL REQUIREMENTS OF THE INTERNAL REVENUE CODE APPLICABLE TO THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM

This Ordinance will amend the Oakland Municipal Employees Retirement System, governed by Oakland Charter Article XX, to comply with the following federal tax laws:

- (1) the Uruguay Round Agreements Act, P.L. 103-465 and the Small Business Job Protection Act of 1996;
- (2) the Economic Growth and Tax Relief Reconciliation Act of 2001;
- (3) the Pension Protection Act of 2006;
- (4) the Uniformed Services Employment and Reemployment Rights Act, as amended by the Heroes Earnings Assistance and Relief Tax Act of 2008;
- (5) direct rollover requirements under Internal Revenue Code Sections 401(a)(31)(A) and 402(f)(1);
- (6) final and temporary regulations issued by the Internal Revenue Service under Section 401(a)(9) of the Internal Revenue Code;
- (7) final regulations issued by the Internal Revenue Service under Section 415 of the Internal Revenue Code; and,
- (8) Such other provisions as are necessary to maintain the tax qualification of the OMERS.

ATTACHMENT B

2014 DEC 23 PM 4: 53
INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

**ORDINANCE TO TERMINATE THE OAKLAND
MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM
PURSUANT TO SECTION 2017 OF ARTICLE XX OF THE
CHARTER OF THE CITY OF OAKLAND**

WHEREAS, the Oakland Municipal Employees' Retirement System ("OMERS") was established in 1939 with the adoption of Article XX of the City of Oakland Charter ("Article XX") to provide defined retirement benefits to non-sworn City employees and their beneficiaries; and

WHEREAS, OMERS was closed to new members in 1970; and

WHEREAS, the City contracted with the California Public Employees' Retirement System ("CalPERS") to provide retirement benefits for all non-sworn employees hired after OMERS was closed to new members and to OMERS members that elected to transfer to CalPERS; and

WHEREAS, OMERS continues to provide retirement benefits to retired members that did not elect to transfer to CalPERS, and their beneficiaries; and

WHEREAS, as of June 2014, OMERS was providing benefits to 22 retirees and beneficiaries with an average age of 91 years; and

WHEREAS, a Board of Administration ("Board") oversees the OMERS retirement fund and the payment of retirement benefits to the remaining retirees and beneficiaries; and

WHEREAS, the annual administrative costs of maintaining OMERS OMERS under the direction of the Board has now exceeded the annual benefits paid to OMERS retirees and beneficiaries and it is expected that the operational costs relative to benefiwill continue to increase while the retiree and beneficiary population continues to decline; and

WHEREAS, converting the benefits owed to OMERS retirees and beneficiaries to an annuity would eliminate the need for the Board, and would also eliminate the costs associated with staff salaries and benefits, actuarial services, audit services, trust fund custodians, investment managers, and investment consultants; and

WHEREAS, OMERS holds funds sufficient to purchase an annuity contract which will guarantee the payment of all current accrued benefits; and

WHEREAS, on November 4, 2014, the City's voters approved Measure EE which amended Article XX to authorize the City Council to adopt an ordinance by four-fifths vote to terminate OMERS and, therefore, eliminate the costs of administering OMERS through the following actions: (1) the purchase of annuities which provide payments to retirees and beneficiaries that are equal to the benefits due to them under OMERS; (2) payment of any other outstanding liabilities; and (3) any other actions which are necessary and prudent to terminate OMERS; and

WHEREAS, section 2018 of Article XX specifies that the City must provide notice of its intention to terminate OMERS to each retiree and beneficiary at least 60 days prior to the effective date of the ordinance terminating OMERS; and

WHEREAS, section 2019 of Article XX provides that all assets held by OMERS remaining after satisfaction of all liabilities, including the benefits owed by OMERS to retirees and beneficiaries, shall revert to the City provided that such surplus is held in a reserve account with the necessary restrictions to ensure that such assets are not used by the City, other than to satisfy any liabilities of OMERS which are not fulfilled by the selected annuity provider, until such time as the last retiree or beneficiary has died; and

WHEREAS, section 2020 of Article XX provides that once the assets of OMERS have been disbursed as authorized, OMERS shall terminate and the Board shall dissolve without further action by the City Council or Board; and

WHEREAS, the City Council has adopted Ordinance No. _____ to amend OMERS to ensure that the provisions therein are in compliance with the qualified plan rules under Section 401(a) of the Internal Revenue Code as are applicable to OMERS.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Pursuant to the authority conferred on the City Council by Section 2017 of Article XX, the Oakland Municipal Employees' Retirement System ("OMERS") shall be terminated effective as of the date the following actions, in the order specified, have been completed or 60 days after the notice required by Section 2018 of Article XX is given, whichever is later:

a. The OMERS Board of Administration ("Board") shall purchase life annuities for retired members, former members or other persons currently receiving benefits under OMERS through a reputable and stable annuity provider

provided that such annuities provide payments that are equal to the benefits due to retired members, former members or other persons under OMERS; and

b. The Board shall provide for payment of any other outstanding liabilities of OMERS; and

c. Any remaining assets remaining after provisions under a. and b. above have been made shall revert to the City, provided that such remaining assets shall be held in a reserve account with the necessary restrictions to ensure that such remaining assets are not be used by the City, other than to satisfy any liabilities of OMERS which are not fulfilled by the annuity provider selected by the Board, until such time as the last retired member, former member or beneficiary thereof dies.

SECTION 2. Consistent with Section 2018 of Article XX, OMERS staff is hereby directed to provide notice to the following persons which provides the effective date of the termination of OMERS, specifies that the winding up process has begun, explains the manner in which benefits will continue to be provided, and is given at least 60 days before the effective date of the termination of OMERS:

a. Each retired member and former member; or

b. If a retired member or former member has died, the surviving spouse, designated beneficiary or personal representative of the estate of the retired member or former member as ascertainable by the City.

SECTION 3. OMERS staff shall be authorized to take any other actions that are necessary and prudent to terminate OMERS, including but not limited to the submission of a voluntary correction program application to the Internal Revenue Service to obtain a ruling that OMERS is in compliance the qualified plan rules under Section 401(a) of the Internal Revenue Code which are applicable to OMERS.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 5. Effective Date. This Ordinance shall only become effective immediately on final adoption if it receives seven or more affirmative votes; however, the effective date of the termination of OMERS shall be as specified in Section 1 above.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, CAMPBELL WASHINGTON, GUILLEN, AND REID.

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

**ORDINANCE TO TERMINATE THE OAKLAND MUNICIPAL
EMPLOYEES' RETIREMENT SYSTEM PURSUANT TO SECTION 2017
OF ARTICLE XX OF THE CHARTER OF THE CITY OF OAKLAND**

**FILED
OFFICE OF THE CITY CLERK
OAKLAND**

2014 DEC 23 PM 4:53