


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

INTRODUCED BY CITY ATTORNEY BARBARA J. PARKER,
CITY ADMINISTRATOR EDWARD D. RESIKIN,
COUNCIL PRESIDENT NIKKI FORTUNATO BAS, AND
COUNCILMEMBERS NOEL GALLO, DAN KALB, AND TREVA REID

**RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING
TO THE VOTERS FOR THE NOVEMBER 8, 2022, GENERAL
MUNICIPAL ELECTION A MEASURE THAT, PURSUANT TO COUNCIL
RESOLUTION NO. 88320 C.M.S., WOULD AMEND THE CITY CHARTER
IN ITS ENTIRETY TO:**

- (1) REPLACE GENDER-SPECIFIC LANGUAGE WITH GENDER-
INCLUSIVE LANGUAGE, IN RECOGNITION THAT WOMEN AND
NON-BINARY PERSONS AS WELL AS MEN, HOLD POSITIONS AS
CITY OFFICERS AND CITY STAFF; AND**
- (2) DELETE ARTICLES XIV AND XV PERTAINING TO OBSOLETE
RETIREMENT SYSTEMS FOR POLICE OFFICERS AND
FIREFIGHTERS, RESPECTIVELY; AND**

**DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION
OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION,
AND TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO
PREPARE FOR AND CONDUCT THE NOVEMBER 8, 2022, GENERAL
MUNICIPAL ELECTION**

WHEREAS, in 1968, the People adopted the Charter of the City of Oakland ("City Charter"), establishing the fundamental law of the City, including but not limited to, the City's form of government and the role of City Council, the Mayor, the City Manager, and other City officers, and

WHEREAS, gendered language, means language and other terminology, including pronouns, that are gender specific, such as referring to firefighters as firemen or referring to city officers or persons who hold other positions as "him," "her;" "he," or "she;" and

WHEREAS, although the City Charter has been amended since its adoption in 1968, the Charter still contains certain language that is outdated and gendered, such as references to City

Officers like the City Administrator and City employees using masculine pronouns “he,” “him,” and “his;” and

WHEREAS, the City Charter also contains outdated gendered terminology such as referring to surviving spouses as “widows,” referring to workers as “workmen,” and referring to firefighters as “firemen”; and

WHEREAS, the singular use of male pronouns and other gendered terminology is both an inaccurate reflection of the diverse makeup of City staff, and also fails to account for the broader spectrum of human gender identities, including people who are transgender, nonbinary, intersex, and others who may not strictly identify as either “male” or “female”; and

WHEREAS, the use of male pronouns, even when an explanatory note states that the male pronouns include male and females, sends a message that such persons are male and/or that only males are qualified or suitable to serve in those positions perpetuating longstanding stereotypes and discrimination; and

WHEREAS, the City of Oakland, consistent with its commitment to advancing equity and prohibiting discrimination and sexual stereotyping, has adopted a policy of having its Charter, as well as other laws and writings, contain language that is inclusive and supportive of people of all genders and eliminating sexual stereotyping in terms; and

WHEREAS, in 2018, the California Legislature passed a resolution (ACR-260) calling for the use of gender-neutral pronouns and gender-inclusive language in the drafting of all legislation, and for state agencies to engage in similar efforts to use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other guidance; and

WHEREAS, In October 2020, the City Council adopted Resolution 88320 C.M.S. which established a City policy requiring that City affairs be conducted in a manner that uses gender-inclusive language, including non-gendered language and gender-neutral pronouns where appropriate, and expressing its intent to submit a Charter amendment to the voters in 2022 to amend the City Charter in its entirety to use gender-inclusive language, including non-gendered language and gender-neutral pronouns; and

WHEREAS, use of the pronouns “he” or “she” for individuals is not inclusive of all persons, including nonbinary and transgender people who may not ascribe to a particular fixed gender, or people who otherwise use different pronouns; and

WHEREAS, the use of “they” as a singular pronoun is inclusive of transgender and nonbinary persons in addition to persons of the male and female genders; and

WHEREAS, the City of Oakland is estimated to have the highest percentage of transgender and nonbinary persons of all metropolitan areas in the United States; and

WHEREAS, the City of Oakland is committed to using language that is inclusive and representative of all its residents; and

WHEREAS, Article XIV (Police Relief and Pension Fund) and Article XV (Firemen’s Relief and Pension Fund) of the City Charter were combined into one system, in Article XXVI (Police and Fire Retirement System) and are obsolete; now, therefore, be it

RESOLVED: That the City Council finds and determines the foregoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED: That City Council hereby submits to the voters at the November 8, 2022 election a measure that would (1) amend the City Charter in its entirety to use gender-inclusive language, including non-gendered language and gender-neutral pronouns where appropriate and (2) delete Article XIV (Police Relief and Pension Fund) and Article XV (Firemen’s Relief and Pension Fund) which were combined into one system in Article XXVI (Police and Fire Retirement System) and are obsolete; and be it

FURTHER RESOLVED: That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

PROPOSED CHARTER AMENDMENT

MEASURE ____

Charter Amendment Replacing Gender Specific Language with Gender Neutral Language

Measure ____. Shall the City Charter be amended to replace gender-specific language with gender neutral language, such as replacing words like “firemen” with “firefighters” and using gender-neutral pronouns in referring to City officers and staff, recognizing that women and non-binary persons as well as men are qualified for and hold such positions, and to avoid gender stereotyping and discrimination, and promote inclusivity?	Yes	
	No	

; and be it

FURTHER RESOLVED: That the City Council hereby authorizes and directs the Clerk of the City of Oakland (“City Clerk”), at least 88 days prior to the November 8, 2022, general municipal election, to file certified copies of this resolution with the Alameda County Board of Supervisors and the Registrar of Voters; and be it

FURTHER RESOLVED: That the City Charter hereby is amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in **bold type**; additions

are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed); and be it

FURTHER RESOLVED: That the proposed Charter Amendment text shall be as follows:

SECTION 200

Section 200. Composition of the Council. The Council shall consist of eight Councilmembers, nominated and elected as hereinafter provided. The Mayor shall not be a member of the Council, but ~~he~~ they shall have a vote on the Council if the councilmembers are evenly divided.

SECTION 201

Section 201. Qualifications. No person shall be eligible for or continue to hold the office of Councilmember, either by election or appointment, unless ~~he is~~ they are a citizen of the United States, a qualified elector, a resident for at least thirty days of the City or of a territory lawfully annexed or consolidated, and a resident of the district from which ~~he~~ they may be a candidate for at least thirty days immediately next preceding ~~his~~ their nomination or appointment.

SECTION 203

Section 203. Nomination and Election of Councilmembers. Seven Councilmembers shall be nominated from districts and one shall be nominated at large. The Councilmember-at-large shall be nominated and elected by the qualified electors of the City at large. The District Councilmembers shall be nominated and elected by the qualified electors of their respective districts. The districts shall be as they exist upon the taking effect of this section, until revised by ordinance. The Independent Redistricting Commission shall establish district boundaries in accordance with the provisions of this Article and applicable federal and state constitutional and statutory requirements. No change in the boundary of a district shall operate to exclude an incumbent from office before the expiration of the term for which ~~he or she was~~ they were elected or appointed.

SECTION 205

Section 205. Vacancy, Filling of. All vacancies occurring in the office of Councilmember shall be filled by special election within 120 days of a vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next Municipal Election or Statewide Election. If the special election is to take place before the first use of ranked choice voting in a Municipal Election, the Council shall have the authority to provide for a ranked choice voting election by ordinance. Otherwise, the candidate who receives the highest number of votes at the special election shall be declared the winner and thereafter sworn into office as soon as legally possible. Special elections for the office of Councilmember that take place during or after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect Councilmembers in General Municipal Elections. Whenever the period of vacancy in a Councilmember's term of office equals or exceeds 120 days the vacancy may be temporarily filled by appointment through the majority vote of the

remaining Councilmembers, provided the appointee is not a candidate for the office which created the vacancy and provided the appointment does not exceed 128 days or go beyond the date the new incumbent is sworn in, whichever is shortest. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, electronic voting and extended voting period. Notwithstanding any other provision of this section 205 or this Charter, an election shall not be required to fill a vacancy in the office of Councilmember that occurs when the Vice Mayor fills a mayoral vacancy pursuant to Sections 303 and 304 of this Charter, and the Vice Mayor shall be entitled to return to ~~his/her~~ the Vice Mayor's seat.

SECTION 206

Section 206. Vacancy, What Constitutes. An office of Councilmember shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after ~~his~~ their term is to begin, dies, resigns, ceases to be a resident of the City or of the district from which ~~he was~~ they were nominated, ~~absents himself~~ is absent continuously from the City for a period of more than thirty days without permission from the Council, ~~absents himself~~ is absent from any ten consecutive regular meetings except on account of ~~his~~ the Councilmember's illness or when absent from City by permission of the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently disabled as to be unable to perform the duties of ~~his~~ the office, forfeits ~~his~~ the office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the Councilmember.

SECTION 216

Section 216. Effective Date of Ordinance. An ordinance receiving upon final adoption the affirmative vote of at least six members of the Council shall be effective immediately, unless a later date is specified therein. All other ordinances, unless a different date is required by this Charter, shall be effective upon the seventh day after final adoption; provided, that within three days after said date of final adoption, the Mayor may file in the Office of the City Clerk written notice to the Council that ~~he has~~ the Mayor has suspended the taking effect of the ordinance, stating in said notice the reason or reasons for ~~his~~ the action, which notice the City Clerk shall forthwith deliver to the members of the Council. Such notification shall automatically cause the reconsideration of the ordinance by the Council at its regular meeting next following the sixth day after the aforesaid final adoption of the ordinance. If, upon reconsideration, the ordinance is approved by the affirmative vote of at least five members of the Council, it shall take effect immediately; and if not so approved, it shall be ineffective.

SECTION 218

Section 218. Non-Interference in Administrative Affairs. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or ~~his~~ their removal from office by the City Administrator or any of ~~his~~ the City Administrator's subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member.

SECTION 220 (J)(2)

Section 220(J)(2). No later than January 1, 2020, and in each year ending in the number zero (0) thereafter, the City Administrator or ~~his or her~~ the City Administrator's designee shall recruit and select members for the selection panel based on criteria approved by the City Council as required by subdivision (J)(1).

SECTION 220 (J)(3)

Section 220(J)(3). The City Administrator or ~~his or her~~ the City Administrator's designee shall do all of the following:

- (a) No later than January 1, 2020, and in each year ending in the number zero (0) thereafter, initiate and widely publicize an application process, open to all residents of Oakland who meet the requirements of subdivision (D)(1), in a manner that promotes a Qualified Commissioner applicant pool that is large and reflective of the geographic, racial, ethnic and economic diversity of the City of Oakland. This process shall remain open until April 1, 2020 and in each year ending in the number zero (0) thereafter.
- (b) Create a reader-friendly application available electronically and in hard copies for prospective commissioners, and seek assistance from a broad range of community-based organizations in its outreach efforts. Applicants shall attest on the application, under penalty of perjury, that the information provided is true.
- (c) Ensure that the pool has at least three Qualified applicants from each existing City Council district.
- (d) Take all reasonable and necessary steps to ensure that the pool has the requisite numbers, diversity, and Qualifications.

SECTION 220 (J)(5)

Section 220(J)(5). Based on review of the applications, the City Administrator or ~~his or her~~ the City Administrator's designee shall remove from the Commissioner applicant pool any of the following:

- (a) A person with a conflict of interest, as defined in the Political Reform Act, commencing at Section 81000 of the Government Code.
- (b) A person who is, on the date of application, a paid employee of City of Oakland or serving on a City of Oakland commission.
- (c) A person who has been, within the five years immediately preceding the date of application a paid employee of any redistricting contractor or consultants.
- (d) A person who, or whose spouse, parent, child, or registered domestic partner, has been, within ten years immediately preceding the date of application, any of the following:
 - (i) Elected to, or a candidate for, local office.
 - (ii) An employee, or paid consultant or contractor to a campaign for local office.
 - (iii) Registered or required to be registered as a local lobbyist.
 - (iv) A paid employee of, a consultant to, or under contract with any elected City of Oakland Official.
 - (v) A principal officer of an active campaign committee domiciled in Alameda County that has made expenditure on local Oakland candidate elections.
- (e) A person who has contributed 50% or more of the allowable amount to candidates for City of Oakland elective office in the last city election.

SECTION 220 (J)(8)

Section 220(J)(8). The City Clerk, or ~~his or her~~ the City Clerk's designee, shall randomly draw at a public meeting six names from the remaining pool of applicants. These six individuals shall serve on the Commission.

SECTION 220 (J)(10)

Section 220(J)(10). The City Attorney and the City Administrator, or ~~his or her~~ their designees, shall train the Commissioners prior to beginning their work. The training shall cover the open meeting requirements of the Ralph M. Brown Act.

SECTION 301

Section 301. Qualifications. No person shall be eligible for or continue to hold the Office of Mayor, either by election or appointment, unless ~~he is~~ they are a citizen of the United States, a qualified elector and resident for at least thirty days of the City or a territory lawfully annexed or consolidated.

SECTION 302

Section 302. Term of Office, the Mayor. The Mayor shall be elected to a term of four years beginning at 11:00 a.m. on the first Monday of January following ~~his~~ the Mayor's election. The Mayor elected to Office to serve a term beginning in 1985 shall serve in Office until 11:00 a.m. on the Monday following January 1 in 1991. In 1990 municipal elections will be held to select City Officers for four year terms, including the Office of Mayor. No person shall be elected to the office of Mayor for more than two consecutive terms, and no person who has held the office of Mayor, or acted as Mayor, for more than two years of a term for which some other person was elected Mayor may be elected to more than one more consecutive term as Mayor.

SECTION 303

Section 303. Vacancy, Filling of. Upon the declaration of vacancy in the office of the Mayor, the office of the Mayor shall be filled by the Vice-Mayor of the Council. Except as otherwise provided in this Section, when the Vice-Mayor of the Council assumes the office of Mayor upon declaration of a vacancy, ~~she/he~~ the Vice Mayor shall serve for the unexpired term if such term is less than one year; otherwise ~~she/he~~ the Vice Mayor shall serve until the vacancy is filled as provided herein. Whenever the period of vacancy in a Mayor's term of office is less than one year and the Vice Mayor notifies the Council in writing that ~~she/he does~~ the Vice Mayor does not wish to serve as Mayor for the unexpired term, the vacancy shall be filled by appointment through a majority vote of the remaining Councilmembers; provided the appointee shall be ineligible to be a candidate for the next full term of the Office of Mayor. If at the time of a vacancy declaration the unexpired term is one year or more, the vacancy occurring in the office of Mayor shall be filled by special election within 120 days of such vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next Municipal Election or Statewide Election. If the special election is to take place before the first use of ranked choice voting in a Municipal Election, the Council shall have the authority to provide for a ranked choice voting election by ordinance. Otherwise, the following procedures shall be used: if no candidate receives the majority of the votes cast in the special election, then a run-off election shall be held for the two candidates who received the highest number of votes no later than 60 days after the date of the special election; provided that all persons receiving a number of votes equal to the highest number of votes received by any candidate shall also be candidates at such run-off election. The candidate receiving the highest number of votes cast for all candidates for the office at the run-off election shall be declared elected. Special elections for the office of Mayor that take place during or after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect the Mayor in General Municipal Election. The candidate elected to fill the vacancy shall hold office for the balance of the unexpired term. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, electronic voting, and extended voting period.

SECTION 304

Section 304. Vacancy: What Constitutes. The office of Mayor shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after ~~his~~ the Mayor's term is to begin, dies, resigns, ceases to be a resident of the City or is absent

~~absents himself/herself~~ continuously from the City for a period of more than thirty days without permission from the Council, is convicted of a felony, is judicially determined to be ~~an~~ incompetent, is permanently so disabled as to be unable to perform the duties of ~~his~~ the Mayor's office, forfeits ~~his~~ the office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the Mayor.

SECTION 305

Section 305. Functions, Powers and Duties. The Mayor shall be the chief elective officer of the City, responsible for providing leadership and taking issues to the people and marshalling public interest in and support for municipal activity. The Mayor shall have the following powers, duties, and responsibilities:

- (a) The Mayor shall be responsible for the submission of an annual budget to the Council which shall be prepared by the City Administrator under the direction of the Mayor and Council. The Mayor shall, at the time of the submission of the budget, submit a general statement of the conditions of the affairs of the City, the goals of the administration, and recommendations of such measures as ~~he~~ the Mayor may deem expedient and proper to accomplish such goals.
- (b) Recommend to the Council such measures and legislation as ~~he~~ the Mayor deems necessary and to make such other recommendations to the Council concerning the affairs of the City as ~~he finds~~ the Mayor finds desirable.
- (c) Encourage programs for the physical, economic, social and cultural development of the City.
- (d) Actively promote economic development to broaden and strengthen the commercial and employment base of the City.
- (e) Appoint the City Administrator, subject to confirmation by the City Council, remove the City Administrator and give direction to the City Administrator. The Mayor shall advise the Council before removing the City Administrator.
- (f) Serve as ceremonial head of the City.
- (g) Represent the City in inter-governmental relations as directed by the Council.
- (h) Provide community leadership.

The Mayor shall, at the first meeting of the City Council in October, appear before the Council to deliver a general address on the State of the City, and recommend the adoption of such measures as ~~he/she~~ the Mayor may deem expedient and proper. The Mayor and such staff as ~~he/she~~ the Mayor may designate shall also conduct four additional public meetings during the year to solicit and respond to comments, concerns, or questions from the public. These meetings shall be noticed to the public not less than two weeks in advance, and shall be scheduled approximately three months apart.

The Mayor shall devote ~~his~~ their full time and attention to the duties of the Office of the Mayor and shall not engage in outside employment while in office. However, nothing shall prevent the Mayor from the receipt of income earned from business(s) or investment(s) in which ~~he is~~ the

Mayor is not actively engaged and which are not in conflict with the performance of ~~his~~ the Mayor's duties and responsibilities.

SECTION 401(2)

Section 401(2). Qualifications, the City Attorney. No person shall be eligible for or continue to hold the Office of City Attorney, either by election or appointment, unless ~~he or she is~~ they are a citizen of the United States, a qualified elector and resident for at least 30 days of the City or a territory lawfully annexed or consolidated, licensed to practice law in all courts of the State of California and so licensed for at least ten years preceding ~~his or her~~ their election.

SECTION 401(3)

Section 401(3). Term of Office, the City Attorney. The City Attorney shall be elected to a term of four years beginning at 11:00 a.m. on the Monday following January 1 following ~~his or her~~ the City Attorney's election.

SECTION 401(5)

Section 401(5). Vacancy, What Constitutes. The Office of City Attorney shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after ~~his or her~~ their term is to begin, dies, resigns, ceases to be a resident of the City or is absent ~~absents himself or herself~~ continuously from the City for a period of more than thirty days without permission from the Council, is absent ~~absents himself or herself~~ from any ten consecutive regular meetings except on account of own illness or when absent from the City by permission of the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of ~~his or her~~ the office, forfeits ~~his or her~~ the office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the City Attorney.

SECTION 401(6)

Section 401(6). Powers of the City Attorney. The City Attorney shall serve as counsel to the Mayor, City Council, and each and every department of the City, except departments specifically enumerated by this Charter as an independent department of the City, in their official capacities pursuant to state law and the Charter, and as counsel, shall assert and maintain the attorney-client privilege pursuant to state law. ~~He or she~~ The City Attorney shall advise all officers, boards, commissions, and other agencies of the City on legal matters referred to ~~him or her~~ the City Attorney and shall render written legal opinions when the same are requested in writing by the Mayor or a member of the Council or the City Administrator or any other officer, board or commission of the City. ~~He or she~~ The City Attorney shall draft such ordinances, resolutions, contracts and other legal documents as directed by the Council or requested by the Mayor or City Administrator or any official board or commission of the City. ~~He or she~~ The City Attorney shall act as Counsel in behalf of the City or any of its officers, boards, commissions, or other agencies in litigation involving any of them in their official capacity. ~~He or she~~ The City Attorney may, whenever a cause of action exists in favor of the City, commence legal proceedings, subject to

ratification by the City Council, when such action is within the knowledge of the City Attorney, or, ~~he or she~~ the City Attorney shall commence legal proceedings when directed by the City Council. ~~He or she~~ The City Attorney shall pass on the form and legality of all contracts of the City before the same are executed. ~~He or she~~ The City Attorney shall not settle or dismiss any litigation brought for the City nor settle any litigation brought against the City which may be under ~~his~~ the City Attorney's control unless upon ~~his~~ the City Attorney's written recommendation ~~he or she~~ is the City Attorney is authorized to do so by the Council. ~~He or she~~ The City Attorney shall administer the office of City Attorney, and shall have the power to appoint, discipline and remove all officers and employees of ~~his or her~~ the office subject to the provisions of Article IX of the Charter. The Council may empower the City Attorney, at ~~his or her~~ the City Attorney's request and without regard to the provisions of Article IX, to employ special legal counsel, and ~~he or she~~ the City Attorney shall have the power to appoint appraisers, engineers and other technical and expert services necessary for the handling of any pending or proposed litigation, proceeding or other legal matter. Upon the City Attorneys recommendation and the approval of the Council, when ~~he or she~~ the City Attorney ~~has~~ has a conflict of interest in litigation involving another office of the City in ~~his~~ the City Attorney's official capacity, such other officer may retain special legal counsel at City expense.

SECTION 402

Section 402. City Clerk. The City Clerk shall be appointed or discharged by the City Administrator subject to confirmation by the Council. ~~He~~ The City Clerk shall be the Clerk of the Council and keep an accurate public record of all ordinances, resolutions and motions, shall have custody of the official seal and all official records committed to ~~his~~ the City Clerk's care, make affidavits and administer oaths without charge in matters affecting the business of the City, conduct elections, and perform the other duties of a City Clerk under general law where not inconsistent with this Charter or the ordinances of the City.

SECTION 403

Section 403. City Auditor. The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible to the office a person must be a qualified elector of the State of California, and shall be a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing, and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor. The salary of the office shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Auditors of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion. The City Auditor shall have the power and it shall be ~~his or her~~ the City Auditor's duty to audit the books, accounts, money and securities of all departments and agencies of the City and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City. The City Auditor shall report to the Council

instances of noncompliance with accepted accounting principles where recommendations for compliance have not been implemented by the City Administrator after reasonable time and opportunity. The City Auditor shall conduct surveys, reviews, and audits as the Auditor deems to be in the best public interest or as required by the Council or Mayor. For these purposes the public interest shall include, but not be limited to:

- (1) Reviewing and appraising the soundness, adequacy and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the organization.
- (2) Evaluating the city's internal controls to ensure that the City's assets and resources are reasonably safeguarded from fraud, waste, and mismanagement.
- (3) Ascertaining compliance with Council's resolutions and policies and the Mayor's Administrative Instructions and Directives, as well as applicable State and Federal laws and regulations.
- (4) Providing assistance to City Departments to enhance the effectiveness, efficiency and economy of their operations.
- (5) Preparing an impartial financial analysis of all ballot measures, pursuant to the provisions of the Municipal Code.
- (6) Preparing impartial financial analyses of proposed major expenditures prior to the approval of such expenditures. These analyses will be for informational purposes only and will include, but not be limited to, proposals, contracts, ventures, programs and construction projects. The proposed major expenditures selected for these financial analyses will be based on requests from Mayor/Council and/or deemed to be prudently advisable in the objective and professional judgment of the City Auditor.
- (7) Responding to requests for audit and reviews.
- (8) Submitting, at a public meeting of the full City Council, a quarterly report to the Council and public on the extent of implementation of recommendations for corrective actions made in the City Auditor's report.
- (9) The City Auditor shall conduct performance audits of each department as specified in the City budget.

The City Auditor shall be represented in all legal matters by the City Attorney except as provided otherwise in Section 401.

SECTION 500

Section 500. Appointment. The Mayor shall appoint a City Administrator, subject to the confirmation by the City Council, who shall be the chief administrative officer of the City. ~~He~~ The City Administrator shall be a person of demonstrated administrative ability with experience in a responsible, important executive capacity and shall be chosen by the Mayor solely on the basis of ~~his~~ the City Administrator's executive and administrative qualifications. No member of the Council shall, during the term for which ~~he is~~ they are elected or appointed, or for one year thereafter, be chosen as City Administrator.

SECTION 501

Section 501. Compensation and Tenure. The City Administrator shall receive the salary fixed by the Council. ~~He~~ The City Administrator shall be appointed for an indefinite term and shall serve at the pleasure of the Mayor.

SECTION 502

Section 502. Acting City Administrator. The City Administrator shall designate two or more of ~~his~~ the City Administrator's assistants or department heads, in the sequence in which they are to serve, as Acting City Administrator to serve as City Administrator in the temporary absence or disability of the City Administrator.

SECTION 503

Section 503. Powers of Appointment and Removal. The City Administrator shall be responsible to the Council for the proper and efficient administration of all affairs of the City under ~~his~~ the City Administrator's jurisdiction, and shall, subject to the provisions of Article IX of this Charter and except as otherwise provided in this Charter, have the power to appoint, assign, reassign, discipline and remove all directors or heads of departments and all employees under ~~his~~ the City Administrator's jurisdiction. ~~He~~ The City Administrator may delegate to directors or other department heads responsible to ~~him/her~~ the City Administrator the authority to appoint, discipline and remove subordinate employees, subject to the provisions of Article IX of this Charter.

SECTION 504

Section 504. Duties. The City Administrator shall have the power and it shall be ~~his~~ the City Administrator's duty:

- (a) To execute and enforce all laws and ordinances and policies of the Council and to administer the affairs of the City.
- (b) To attend all meetings of the Council, and its committees, unless excused, and such meetings of boards and commissions as the City Administrator ~~he~~ chooses or is directed to attend by the Council, and to participate in discussions at such meetings.
- (c) To recommend to the Council such measures and ordinances as ~~he~~ the City Administrator may deem necessary or expedient and to make such other recommendations to the Council concerning the affairs of the City as ~~he finds~~ the City Administrator finds desirable.
- (d) To investigate affairs of the City under ~~his~~ the City Administrator's supervision, or any franchise or contract for the proper performance of any obligation running to the City within ~~his~~ the City Administrator's jurisdiction.
- (e) To control and administer the financial affairs of the City. ~~He~~ The City Administrator may appoint a Director of Finance to act under ~~his~~ the City Administrator's direction.
- (f) To prepare an annual budget under the direction of the Mayor and Council for the Mayor's submission to the Council.

- (g) To prepare or cause to be prepared the plans, specifications, and contracts for work which the Council may order.
- (h) To supervise the purchasing of materials and supplies and to make recommendations to the Council in connection with the awarding of public contracts and to see that all City contracts under ~~his~~ the City Administrator's direction or that of the Council are faithfully performed.
- (i) To prepare and submit to the Council such reports as it may require.
- (j) To keep the Council at all times fully advised as to the financial condition and needs of the City.
- (k) To prescribe such general rules and regulations as ~~he~~ the City Administrator may deem necessary or expedient to the general conduct of the administrative departments under ~~his~~ the City Administrator's jurisdiction.
- (l) When directed by the Council, to represent the City in its intergovernmental relations and to negotiate contracts for joint governmental actions, subject to Council approval.
- (m) To devote ~~his~~ the City Administrator's entire time to the duties and interest of the City.
- (n) To perform such other duties as may be prescribed by this Charter or by ordinance or resolution.

SECTION 600

Section 600. Administrative Organization Authorized. The Council shall by ordinance provide the form of organization through which the functions of the City under the jurisdiction of the City Administrator are to be administered. Any combination of authorized duties, powers and functions which in the judgment of the Council will provide the most efficient and economical service possible, consistent with the public interest and in keeping with accepted principles of municipal administration, may be authorized by such ordinance. All departments or other administrative agencies so created shall be administered by the City Administrator or by a department head or other officer appointed by and responsible to ~~him/her~~ the City Administrator.

SECTION 603 (d)(3)

Section 603(d)(3). Terms of office. All categories of member shall be appointed to staggered terms. Members of the Commission shall be appointed to overlapping terms, to commence upon date of appointment, except that an appointment to fill a vacancy shall be for the unexpired term only. Members of the Commission shall serve for a term of three years. No member may serve more than two consecutive full three-year terms. If a member is appointed to fill an unexpired term which term is for more than 1.5 years, ~~he/she~~ such member may serve only one additional consecutive three-year term. If a member is appointed to fill an unexpired term which term is for less than 1.5 years, ~~he/she~~ such member may serve two consecutive full three-year terms.

SECTION 603 (d)(5)

Section 603(d)(5). Vacancy. A vacancy on the Commission will exist whenever a member dies, resigns, ceases to be a resident of the City or is absent ~~absents himself/herself~~ continuously from the City for a period of more than 30 days without permission from the Commission, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of a member, or is removed. A finding of disability shall require the affirmative vote of at least four members of the Commission after considering competent medical evidence bearing on the physical or mental capability of the member.

Vacancies not filled by the Mayor, City Attorney, or City Auditor within 90 days of the occurrence of such vacancy may be filled by the City Council in the same manner as provided by Charter, Section 601.

SECTION 604 (a)3

Section 604(a)(3). Nothing herein shall prohibit the Chief of Police or a commanding officer from investigating the conduct of a Department sworn employee under ~~his or her~~ the Police Chief's command, nor shall anything herein prohibit the Chief of Police from taking disciplinary or corrective action with respect to complaints investigated solely by the Department.

SECTION 604 (b)3

Section 604(b)(3). Consistent with state law and in accordance with Section 1207 of the City Charter, entitled "Oaths and Subpoenas," issue subpoenas to compel the production of books, papers and documents and take testimony on any matter pending before it except that the Commission shall not have any authority to issue subpoenas for the purpose of investigating any City employee, including an Agency employee, who is not a police officer. If any person subpoenaed fails or refuses to appear or to produce required documents or to testify, the majority of the members of the Commission may find ~~him~~ such person in contempt, and shall have power to take proceedings in that behalf provided by the general law of the State.

SECTION 604 (b)4

Section 604(b)(4). Propose changes at its discretion or upon direction, by adoption of a resolution, of the City Council, including modifications to the Department's proposed changes, to any policy, procedure, custom, or General Order of the Department which governs use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect. All such proposed changes and modifications shall be submitted by the Commission Chair or ~~her or his~~ the Commission Chair's designee to the City Council for review. The City Council shall consider the Commission's proposed changes or modifications within one hundred and twenty (120) days of the Commission's vote on the proposed changes, and may approve, modify and approve, or reject the changes. If the Council does not approve, modify and approve, or reject the Commission's proposed changes or modifications, the changes or modifications will become final.

SECTION 604 (b)5

Section 604(b)(5). Approve or reject the Department's proposed changes to all policies, procedures, customs, and General Orders of the Department which govern use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect. If the Commission does not approve or reject the Department's proposed changes within one hundred and twenty (120) days of the Department's submission of the proposed changes to the Commission, the Department's proposed changes will become final. If the Commission rejects the Department's proposed changes, notice of the Commission's rejection, together with the Department's proposed changes, shall be submitted by the Commission Chair or ~~her or his~~ the Commission Chair's designee to the City Council for review. The City Council shall consider the Commission's decision within one hundred and twenty (120) days of the Commission's vote on the Department's proposed changes, and may approve or reject the decision. If the Council does not approve or reject the Commission's decision, the Commission's decision will become final.

SECTION 604 (b)8

Section 603(b)(8). Require the Chief of Police or ~~his or her~~ the Police Chief's designee to attend Commission meetings and require the Chief of Police to submit an annual report to the Commission regarding such matters as the Commission shall require, including but not limited to a description of Department expenditures on community priorities as identified by the Commission. The Chief of Police or ~~her or his~~ the Police Chief's designee shall also respond to requests made by the Commission, through the Chairperson, by a majority vote of those present. The Chief of Police or ~~her or his~~ their designee shall provide to the Commission Chair an estimate of the time required to respond to the Commission's requests.

SECTION 604 (c)3(d)

Section 603(c)(3)(d). Each year the Mayor and each Councilmember may replace ~~her or his~~ their assigned person on the Selection Panel. Selection Panel members may serve up to five (5) years. Upon a vacancy on the Selection Panel, the Councilmember who appointed the Selection Panel member (hereinafter referred to as the Appointing Authority) shall appoint a replacement. If the Appointing Authority does not appoint the replacement within one hundred and twenty (120) days of the date of resignation, removal or expiration of the Selection Panel member's term, the Selection Panel, by a two-thirds vote of those present but by a vote of no fewer than five (5) Selection Panel members, shall choose a replacement for the vacancy. All such replacements must be confirmed by the City Council.

SECTION 604 (f)2

Section 604(f)(2). Subject to applicable law and provisions of this Charter Section 604, the Commission, OIG, and Agency shall have the same access to all Department files and records, including the Department's Internal Affairs Division (hereinafter, IAD) files and records, related to sworn employees of the Department, in addition to all files and records of other City departments

and agencies related to sworn employees of the Department, as IAD, including but not limited to the same access to electronic data bases as IAD as permitted by law. Requests for access to such files and records shall be made by a majority vote of the Commission, by the Agency Director, or by the Inspector General. By majority vote, the Commission shall have the authority to request information from the Department, and the Chief of Police or ~~her or his~~ the Police Chief's designee shall respond to such requests, as permitted by law. Commission requests for personnel records shall have, and the Commission's vote shall articulate, a reasonable nexus to one or more of the Commission's powers and duties enumerated in subsection (b) of this Charter Section 604. All those who have access to confidential information shall maintain confidentiality as required by law. The Department and other City departments and agencies shall make every reasonable effort to respond to the Commission's, OIG's, or Agency's requests for files and records within ten (10) days, including but not limited to: (1) records relevant to Police Department policies or practices, and (2) personnel and disciplinary records of Police Department sworn employees, as permitted by law.

SECTION 604 (f)3

Section 604(f)(3). The Agency shall make every reasonable effort to complete its investigations within one hundred and eighty (180) days of the filing of the complaint with the Agency. The Agency shall complete its investigations within two hundred and fifty (250) days of the filing of the complaint with the Agency unless the Agency Director, in ~~his or her~~ the Agency Director's discretion, makes a written finding that exceptional circumstances exist in a particular case that are beyond the Agency's control. Within thirty (30) days of completion of the investigation, the Agency Director shall issue written findings and proposed discipline regarding the allegations stated in the complaint to the Chair of the Commission and the Chief of Police. The Agency Director shall issue written findings and proposed discipline within forty-eight (48) hours of completion of any investigation of Level 1 use of force (as defined by Department policy), sexual misconduct or untruthfulness. The City Administrator shall not have the authority to reject or modify the Agency's findings and proposed discipline.

SECTION 604 (f)6

Section 604(f)6. Upon the occurrence of a Serious Incident, as defined by Ordinance, the Chief of Police or ~~her or his~~ the Police Chief's designee shall immediately notify the Agency Director.

SECTION 604 (g)1

Section 604(g)(1). If the Chief of Police agrees with the Agency's findings and proposed discipline, ~~he or she~~ the Police Chief shall notify the Agency Director who shall notify the Chair of the Commission of the agreed-upon findings and proposed discipline. The Chief shall send to the subject officer notification of the agreed-upon findings and intent to impose discipline. The Chief of Police may send such notification to the subject officer before IAD has begun or completed its investigation.

SECTION 604 (g)2

Section 604(g)(2). If the Chief of Police disagrees with the Agency's findings and/or proposed discipline, the Chief of Police shall notify the Agency Director of ~~his or her~~ the Police Chief's own findings and/or proposed discipline. The Agency Director shall submit the Chiefs findings and proposed discipline in addition to the Agency's findings and proposed discipline to the Chair of the Commission. The Chair of the Commission shall appoint a Discipline Committee comprised of three Commissioners. The City Administrator shall not have authority to reject or modify the Chief of Police's findings and proposed discipline. After reviewing the Agency's submission and after consulting with the Agency Director about the time available under applicable statutory deadlines, the Discipline Committee may require the Agency to further investigate the complaint by notifying the Agency Director, in writing, of the specific issues that need further investigation. After reviewing both submissions, the Discipline Committee shall resolve any dispute between the Agency and the Chief of Police. Based solely on the record presented by the Agency and the Chief of Police, the Discipline Committee shall submit its final decision regarding the appropriate findings and proposed discipline to the Chief of Police who shall notify the subject officer. The City Administrator shall not have the authority to reject or modify the Discipline Committee's final decision regarding the appropriate findings and level of discipline. The Discipline Committee shall not have the authority to conduct its own investigation.

SECTION 604 (g)3

Section 604(g)(3). If the Chief of Police prepares ~~his or her~~ their own findings and proposed discipline and provides it to the Agency before the Agency's investigation is initiated or completed, the Agency may close its investigation or may choose not to conduct its own investigation in order to allow final discipline to proceed as proposed by the Chief, except that in investigations of Level 1 uses of force, sexual misconduct or untruthfulness, the Commission must approve the Agency's decision by a majority vote. If the Agency chooses not to close its investigation, imposition of final discipline shall be delayed until the Agency's investigation is completed and the Agency makes its findings and recommendations for discipline. The Agency shall notify the Chief of its final decision regarding how and whether it will proceed within seven (7) days of the Chiefs notice of completion of ~~his or her~~ the Chief's investigation.

SECTION 604 (i)3

Section 604(i)(3). In accord with their role, Commission Attorneys shall not disclose the confidences of the Commission on any legal matter to any other officer of the City unless:

- (a) The Commission, either as a body or through its Chair, or the Vice Chair if the Chair is unavailable and the matter is time sensitive, gives Commission Attorney informed consent in writing;
- (b) The Commission, either as a body or through its Chair, or Vice Chair if the Chair is unavailable and the matter is time sensitive, refers the same legal matter to the City Attorney pursuant to section 401(6) of this Charter;
- (c) The Commission Attorney, in ~~her/his~~ their professional discretion, determines it is in the best interests of the Commission to consult with the City Attorney;

- (d) The Commission Attorney, in ~~her/his~~ their professional discretion, determines that the Rules of Professional Conduct require referral of the matter to one of the following City officers: City Administrator, Mayor, City Attorney, Council president, Vice Mayor; or
- (e) The legal matter becomes, in whole or in part, the subject of litigation involving the City or any City officer, board, commission, including the Police Commission, or other agency in their official capacity.

SECTION 701

Section 701. Board of Port Commissioners. The exclusive control and management of the Port Department is hereby vested in the Board of Port Commissioners, which shall be composed of seven (7) members who shall be appointed by the Council, upon nomination by the Mayor.

No person shall be appointed as, or continue to hold office as, a member of the Board who is not at the time of ~~his~~ their appointment, and has not been continuously for thirty (30) days immediately preceding ~~his~~ their appointment, and who shall not continue to be during ~~his~~ their term, a bona fide resident of the City of Oakland.

The members of the Board shall serve without salary or compensation.

SECTION 706 (20)

Section 706(20). To appoint a Port Attorney, whose duty it shall be to pass upon the form and legality of all contracts within the jurisdiction of the Board, give legal advice to the Board on official matters, defend and (subject to direction from the Board) prosecute or compromise all actions at law or in equity and special proceedings for or against the City or any officers thereof in ~~his~~ the Port Attorney's official capacity, pertaining to matters within the jurisdiction of the Board. The Board shall fix and provide for ~~his~~ the Port Attorney's compensation.

SECTION 708

Section 708. Building Permits. No person or persons shall construct, extend, alter, improve, erect, remodel or repair any pier, slip, basin, wharf, dock or other harbor structure, or any building or structure within the "Port Area" without first applying for and securing from the Board a permit so to do, in accordance with the rules and regulations adopted by it. In approving or denying the right to said permit, the Board shall consider the application therefor, the character, nature and size and location of the proposed improvement, and exercise a reasonable and sound discretion in the premises.

Provided, however, that applications for building permits pertaining to privately owned property within the "Port Area" shall be made to the Executive Director who shall consider and act upon them in the same manner as applications for such permits made to the Board. Any person excepting to any denial, suspension or revocation of a permit applied for or held by ~~him~~ them pursuant to the provisions of this section, or any person excepting to the granting of, or to the refusal to suspend or revoke a permit applied for or held under the provisions of this section, may

appeal to the Board by filing with the Secretary a written notice of such appeal setting forth the specific grounds thereof. Such notice must be filed within fourteen (14) days after notice of such denial, suspension, revocation or granting, or refusal to suspend, revoke or grant, such permit, constituting the basis of such appeal, but in no event later than thirty (30) days after the date of the denial, suspension, revocation or granting of the permit. The Secretary shall forthwith set said matter for hearing before the Board and cause notice thereof to be given (1) to the appellant, and (2) to the adverse party or parties, or to the attorney, ~~spokesman~~ spokesperson or representative thereof, not less than five (5) days prior to such hearing. At such hearing the appellant shall show cause, on the grounds specified in the notice of appeal, why the action excepted to should not be approved. The Board may continue such hearing from time to time, and its findings and conclusions on the appeal shall be final and conclusive in the matter.

Such permit issued by the Board or the Executive Director shall be in addition to any permit which may be required by law from the Building Inspector of the City.

SECTION 714

Section 714. Personnel System. All permanent places of employment in and under the Board shall be included within the personnel system of the City established pursuant to and subject to the provisions of Article IX of this Charter, except the Executive Director and ~~his~~ the Executive Director's two principal assistants, the Secretary of the Board, the Port Attorney and Legal Assistants, chief wharfinger, field and traffic representatives, and all persons employed in the physical or mechanical handling, moving or checking of cargo and freight. The exemption of such personnel from the operation of civil service rules shall not in any way affect such pre-existing civil service rights as such employee may hold.

SECTION 716

Section 716. Tax Levy Funds. In the event that said Port budget, as provided for in the foregoing section, shall request or provide for the allocation or appropriation to the Port by the Council of any funds raised or to be raised by tax levy or in any manner to be obtained from general revenues of the City, or shall request the incurring or payment of any financial obligation by the City for the Port's use and benefit, or shall not provide for Board servicing of existing or future general obligation bonds of the City issued for Port purposes, the Council shall have the authority to reject said budget and to require it to be revised to meet with Council approval, subject, however, to the Board's covenants with the holders of all of the then outstanding revenue bonds issued by the Board.

The Treasurer shall keep all Port funds separate from other funds in ~~his~~ the Treasurer's possession, and the Board shall have the exclusive management and disbursement of the same.

SECTION 728 (2)

Section 728(2). Exemptions from Coverage. In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

- (A) An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.
- (B) An Employee who spends less than 25 percent of ~~his~~ their work time on Port-related employment.
- (C) A person who employs not more than 20 employees per pay period.

SECTION 728 (4)

Section 728(4). Notifying Employees of their Potential Right to the Federal Earned Income Credit. Each PAB shall inform each Employee who makes less than twelve dollars (\$12.00) per hour of ~~his or her~~ the Employee's possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. § 32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

SECTION 728 (7)

Section 728(7). Retaliation and Discrimination Barred; No Waiver of Rights.

- (A) A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce ~~his or her~~ such person's rights, or otherwise asserting ~~his or her~~ such person's rights under this Section.
- (B) Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive ~~his or her~~ the individual's rights under this Section shall constitute a violation of this Section.

SECTION 728 (8)(A)

Section 728(8)(A). Each PAB shall maintain for each person in Port-related employment a record of ~~his or her~~ the person's name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the Employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter in which case the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars (\$500.00) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

SECTION 728 (8)(C)

Section 728(8)(C). Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of ~~his or her~~ their rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

SECTION 728 (9)(B)

Section 728(9)(B). Any employee proving a violation of this Section shall recover from the PAB treble ~~his or her~~ their lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.

SECTION 806

Section 806. Receipts and Expenditures. All monies received by the City shall be deposited in the City Treasury, and no monies shall be disbursed from the treasury without the approval of the City Administrator or of another officer duly authorized by ~~him/her~~ the City Administrator. No expenditure of City funds shall be made except for the purposes and in the manner specified by an appropriation of the Council; nor shall any disbursement be made unless obligations are properly supported by accounting evidence, sufficient money is available in the City Treasury and there is an adequate unencumbered appropriation balance in the proper account classification. The City Administrator or other officer authorized by ~~him/her~~ the City Administrator to make disbursements shall be represented by the City Attorney in all legal matters in connection therewith, except as provided otherwise in Section 401.

SECTION 807

Section 807. Goods and Services. The City Administrator or an officer authorized by ~~him/her~~ the City Administrator shall purchase or contract for equipment, materials, supplies and public works required by the City in the manner prescribed by ordinance, except as otherwise provided herein.

SECTION 808

Section 808. Bids and Awards.

- (a) The Council shall establish by ordinance the conditions and procedures for any purchase or contract, including advertising and bidding requirements, and may provide that all bids may be rejected. The ordinance may provide that under specified conditions, which the Council must find and determine exist in each applicable instance, advertising and bidding may be dispensed with.
- (b) Every two years, the City shall conduct a race and gender disparity evaluation to determine if the City has been an active or passive participant in actual, identifiable discrimination within its relevant market place. If such disparity evaluation evidences such discrimination, the City Council, in order to

remedy the discrimination, shall establish a narrowly tailored race and/or gender business participation program, as substantiated by the disparity evaluation, for the bidding and awarding of purchases and contracts. Any such program shall continue only until the discrimination has been remedied. The City Administrator or an officer authorized by ~~him or her~~ the City Administrator shall require all awardees and bidders to comply with the established program.

SECTION 809

Section 809. Annual Audit. The Council shall engage during the first month of each fiscal year an independent certified public accountant who shall examine and report to the Council on the annual financial statement of the City. ~~He~~ The accountant shall have free access to the books, records, inventories and reports of all officers and employees who receive, handle, or disburse public funds, and of such other officers, employees, or departments as the Council may direct. ~~He~~ The accountant shall submit ~~his~~ the audit as soon as practicable after the closing of the books for the fiscal year for which ~~he is~~ the accountant is engaged. Copies of such audit reports shall be filed with the Council, and shall be available for public inspection and review.

SECTION 810

Section 810. Deposit and Investment. The City Administrator shall arrange for the deposit in the City Treasury or in designated banks of all funds collected by any department or agency of the City, according to a schedule prescribed by ~~him/her~~ the City Administrator. After taking into account the amounts required to meet the current and pending requirements of the City, the City Administrator may arrange for the term deposit or investment in securities authorized by law of any balances available for such purpose and the yield therefrom shall be credited as revenue to the general fund unless otherwise provided by law or directed by the Council.

SECTION 907

Section 907. Nepotism. The Mayor or City Council shall not appoint as an employee or officer, to receive any compensation from the City, any person who is a relative by blood or marriage within the third degree of the Mayor or anyone or more of the members of the Council, nor shall the City Administrator or any other appointing authority appoint to any such position any relative of ~~his~~ theirs or of the Mayor or any member of the Council within such degree of kinship.

SECTION 1200

Section 1200. Conflict of Interest. No officer of the City may participate on behalf of the City in any transaction or activity in which ~~he has~~ they have a conflict of interest, as such conflict is defined by State Law. The penalty for violation of this section shall be as provided by State Law.

SECTION 1201

Section 1201. Incompatible Employment. Each officer and employee shall, during ~~his~~ their hours of active duty, devote ~~his~~ their whole time, attention and efforts to ~~his~~ their office or employment, and ~~he~~ they may not be required to perform any service except for the benefit of the City. No officer or employee of the City may engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible or in conflict with ~~his~~ their duties or with the duties, functions and responsibilities of the department or other agency in which ~~he is~~ they are employed.

The City Administrator or the City Attorney, or the Auditor, as to personnel under their respective jurisdictions, shall declare the activities which will be considered inconsistent, incompatible or in conflict with, or inimical to, the duties of such personnel as City employees. In making this determination, consideration shall be given to employment, activity or enterprise which: (a) involves the use for private gain or advantage of City time, facilities, equipment and supplies, or the badge, uniform, prestige or influence of one's City office or employment; or (b) involves receipt by the officer or employee of any money or other consideration for the performance of any act required of ~~him/her~~ them as a City officer or employee; or (c) involves the performance of an act in other than ~~his~~ their capacity as City officer or employee which act may later be subject directly or indirectly, to control, inspection, review, audit or enforcement by ~~him/her~~ them or by the agency in which ~~he is~~ they are employed.

SECTION 1202

Section 1202. Conflict in Office. The Mayor and members of the Council shall not hold any other municipal office or any other office or employment to receive compensation from the City; or be appointed or elected to any office created by the Council while ~~he is~~ they are a member thereof, until at least one year shall have expired after the expiration of the term for which ~~he was~~ they were elected.

SECTION 1206

Section 1206. Oath of Office. Every officer of the City, before entering upon ~~his~~ their duties, shall take the following oath and file the same with the City Clerk: "I solemnly swear or affirm that I will support the constitution of the United States, the constitution of the State of California, and the Charter of the City of Oakland, and will truly and to the best of my abilities perform the duties of the office of _____."

SECTION 1207

Section 1207. Oaths and Subpoenas. Every officer and every member of any Board provided for in this Charter shall, in all matters relevant to ~~his~~ their office, have the power to administer oaths and affirmations and to issue subpoenas to compel the production of books, papers and documents and to take testimony on any matter pending before him. If any person subpoenaed fails or refuses to appear or to produce required documents or to testify, said officer or the majority of the members of the board or commission may find ~~him~~ them in contempt, and shall have power to take the proceedings in that behalf provided by the general law of the State.

SECTION 1212

Section 1212. Gender References. All gender references in this Charter shall be considered neutral in form and context. “Surviving spouse” includes positions formerly designated as “widow” or “widower” in the Charter. “Firefighter” includes positions formerly designated as “fireman” or “firemen” in the Charter. “Officer” and “member” of the Police Department includes positions formerly designated as “matron,” “substitute matron,” and “police woman” in the Charter. Gender specific pronouns such as “he,” “him,” “his,” “she,” and “her,” have been replaced with gender-neutral pronouns such as “they,” “them,” and “their.” These gender neutral pronouns are used as both singular and plural pronouns, e.g., “the police chief completed their work expeditiously.”

Note: Gender specific references were not replaced with gender-neutral terminology where gender is used to determine calculations of benefits based on mortality tables, or when the Charter references the title of an obsolete Article that contains gender specific language.

SECTION 1305

Planning & Oversight Committee

Section 1305. The Children's Fund Planning and Oversight Committee ("Planning and Oversight Committee") established pursuant to Measure K which was approved by the voters of Oakland in 1996 shall continue to operate. Each City Councilmember shall appoint two Oakland residents, one of whom shall be a resident not older than 21 years, to serve as members of the Planning & Oversight Committee. The appointees shall demonstrate a strong interest in children and youth issues; and possess sound knowledge of, and expertise in. children and youth policy development and program implementation. Effective July 1, 2009, the Mayor shall only be permitted to appoint one (1) Oakland resident and shall therefore remove two of ~~his~~ the Mayor's previous appointments no later than June 30, 2009.

The Planning & Oversight Committee shall be responsible for:

1. preparing Three-Year Strategic Investment Plans;
2. soliciting funding applications from private non-profit and public agencies through an open and fair application process;
3. submitting to the Oakland City Council for its adoption Three-Year Strategic Investment Plans and funding recommendations;
4. submitting to the Oakland City Council for its adoption annual independent evaluation reports;
5. receiving City Auditor annual reports on the Fund's Financial Statement and the Base Spending Requirement.

ARTICLE XIV – RESERVED*

* This Article is deleted because the Police Relief and Pension Fund is obsolete and has been combined with Article XV (Firemen's Relief and Pension Fund) in Article XXVI (Police and Fire Retirement Fund).

~~ARTICLE XIV POLICE RELIEF AND PENSION FUND~~

~~**Section 1400.** In order to continue in force, and make effectual pensions already existing in favor of the Police Force, the fund heretofore created, known and designated as the Police Relief and Pension Fund shall be continued in effect. The Mayor, the Health Officer, and the President of the Civil Service Board shall hereafter constitute the Board of Trustees of such fund, and the City Treasurer shall be the custodian of said fund.~~

~~(Amended by: Stats. 1931.)~~

~~**Section 1401.** Any member of the Department who resigns or is discharged from the service previous to retirement, shall have all such sums as have been deducted from his pay and contributed to the Police Relief and Pension Fund pursuant to the provisions of Section 91a* refunded to him plus simple interest at the rate fixed by the Board of Trustees.~~

~~(Added by: Stats. 1943.)~~

~~* This reference is to the Section or Article so designated in the former Charter.~~

~~**Section 1402.** The said Board of Trustees may retire and relieve from service any aged, infirm, or disabled member of the Department who has arrived at the age of fifty five years, and who, upon examination by two regularly licensed and practicing physicians appointed by the Board of Trustees for that purpose, may be ascertained to be, by reason of such age, infirmity, or other disability unfit for the performance of his duty. Said Board of Trustees, at the request of any member of the Department who has arrived at the age of fifty five years, and who shall have served twenty years in the aggregate in the Department, retire and relieve such member making such application. Said Board of Trustees shall, upon the request of any member of the Police Department who has served twenty five years in the aggregate as a member of said Police Department, retire and relieve said member making such application. Such retired member shall receive from the Police Relief and Pension Fund a pension equal to one half of the salary attached to the rank held by him one year prior to the date of said retirement, which pension shall be paid in equal monthly installments and shall cease at the death of such member.~~

~~(Amended by: Stats. 1937.)~~

~~Compulsory Retirement At Age Seventy~~

~~**Section 1403.** Notwithstanding any provision contained in this Article, retirement under Section 1402 shall be compulsory upon such member reaching the age of seventy years.~~

~~(Added by: Stats. 1941.)~~

~~Absence By Reason Of War Or Other National Emergency~~

~~**Section 1404.** Absence of a member of the Police Department by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent or in any other National emergency and for six months thereafter and who is not~~

~~dishonorably discharged or released therefrom, shall be credited to such member as service for the City for retirement purposes. No contributions to the Police Relief and Pension Fund, for such period of compensation from the City, shall be required of such member.~~

~~This section shall be retroactively applied to extend its benefits to such members of the Police Department whose absence commenced prior to its effective date.~~

~~(Added by: Stats. 1947.)~~

~~**Section 1405.** Any member of the Department who shall become physically disabled by reason of any bodily injury received in the performance of his duty, upon his filing with the Board of Trustees a verified petition, setting forth the facts constituting such disability, and the cause thereof, accompanied by a certificate signed by the Chief of Police, the Captain of the Division to which he belongs, and by two regularly licensed physicians of the City, recommending his retirement upon a pension, on account of such disability, may be retired from the Department upon an annual pension, equal to one half of the amount of salary attached to the rank which he held one year prior to the date of such retirement, to be paid to him during his life, and to cease at his death. In case his disability shall cease, his pension shall cease, and he shall be restored to the service in the rank he occupied at the time of his retirement.~~

~~**Retirement By Action Of Board Of Trustees After Disability In Performance Of Duty**~~

~~**Section 1406.** Notwithstanding any provisions set forth in Section 1405, the Board of Trustees may on its own motion retire any member, and any matron and substitute matron, under the provisions of Section 1405, who is physically disabled by reason of any bodily injury received in the performance of his or her duty, who upon examination by two regularly licensed and practicing physicians appointed by the trustees for that purpose may be ascertained to be by reason of such disability unfit for the performance of duty, provided, further that such disability shall have continued for one year.~~

~~(Added by: Stats. 1941.)~~

~~**Benefit To Dependents Of Deceased Member Retired For Disability Incurred In Performance Of Duty**~~

~~**Section 1407.** Notwithstanding any provision set forth in Section 1405, if a retired member, or retired matron or substitute matron, of the Department shall die at any time by reason of bodily injury for which he or she was pensioned, such pension shall not cease but shall continue and shall be paid to his widow or widower to whom he or she was married at the time of such injury, or to his or her orphan child or children, or to his or her parent or parents, in the manner and subject to the provisions of Section 1408(a), (b) and (c), provided, however, a surviving husband shall be entitled to the rights of a widow only if in the opinion of the Board of Trustees he is unable to support himself by reason of physical or mental infirmity and has no other means of support.~~

~~(Added by: Stats. 1941.)~~

~~Pension To Dependents When Member Dies Of Injury Or Disability Incurred In Performance Of Duty~~

~~Section 1408.~~ The Board of Trustees shall, out of the Police Relief and Pension Fund, provide for the family of a member of the Department who may die as a result of an injury or disability incurred while in the performance of his duty as follows:

- ~~(a) Should the decedent be married, his widow shall, as long as she shall remain unmarried, be paid a pension equal to one half of the salary attached to the rank held by the decedent at the time of his death.~~
- ~~(b) Should the decedent leave no widow, but leave an orphan child or children under the age of eighteen years, or should the decedent leave a widow and child or children under the age of eighteen years, and the widow die without remarrying while such child or children are yet under the age of eighteen years, such child, or children collectively, shall receive a pension equal to one half of the salary attached to the rank held by the decedent at the time of his death until the youngest child attains the age of eighteen years, provided that no child shall receive any such pension after attaining the age of eighteen years, nor shall any child receive any such pension should he or she marry before reaching the age of eighteen years.~~
- ~~(c) Should the decedent leave no widow, or no orphan child or children but leave a parent or parents dependent solely upon him for support, such parent or parents so depending shall collectively receive a pension equal to one half the salary attached to the rank held by the decedent at the time of his death during such time as the Board of Trustees may determine its necessity.~~

~~(Amended by: Stats. 1941.)~~

~~Pension To Dependents When Retired Member Dies From Non-Service Connected Causes~~

~~Section 1409.~~

- ~~(a) Upon the death of a member of the Department who had been retired under this Article and such death shall occur after the effective date of this section and shall result from causes other than injuries received in or illness caused by or arising out of the performance of duty, two thirds of such member's pension at the time of death shall be continued regardless of the age of the surviving widow, to dependents of the member in the order of succession and upon the conditions provided in Section 2612.~~
- ~~(b) There shall be deducted from each monthly installment of pension due to such retired member under the provisions of this article a sum equal to 1 1/2% of such monthly installment which sum shall be retained by the Treasurer of the City and forthwith paid by him into the Police and Fire Retirement Fund.~~
- ~~(c) The provisions of subdivisions (a) and (b) of this section shall not be applicable to any retired member of the Department who has not within 90 days after the ratification of this section by the State Legislature filed with the Secretary of~~

~~the Police and Fire Retirement Board said member's written election to be subject to the provisions of said subdivisions.~~

(Added by: Stats. 1955.)

~~**Section 1410.** The widow of a member of the Department who was retired for years of service under the provisions of Section 1402 and who died prior to the effective date of Section 1409 from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty, provided such widow was married to the decedent at least one (1) year prior to his retirement and has remained unmarried since the date of his death, shall receive two-thirds of the decedent's pension. The widow of a member of the Department who died from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty and whose death occurred prior to eligibility for membership in the retirement system created by Article XXVI, and who was not receiving a pension under this Article, but who was eligible for retirement for years of service under Section 1402 shall receive two-thirds of the pension which would have been provided for him by said Section 1402 if he had been retired for years of service at the time of death, provided she has remained unmarried since the date of his death. The pension(s) herein provided for shall commence on the first of the month next following the effective date of this section and shall be paid in equal monthly installments as long as such respective widow(s) shall live and remain unmarried.~~

~~This section shall not be construed to provide any payment to such widow for any period of time prior to the first day of the month next following the effective date hereof, except that benefits under this section shall be in addition to any benefits heretofore received by the widow under Section 1411.~~

(Added by: Stats. 1957.)

~~**Section 1411.** When a member of the Department shall die from causes other than those specified in Section 1408 after ten years of service, then his widow, and if there be no widow, then his children, and if there be no widow or children, then his mother, if dependent upon him for support, shall be entitled to the sum of One Thousand (\$1,000) Dollars; provided, further, when a member of the Department shall die from causes other than those specified in Section 1408 before retirement or eligibility for retirement, regardless of length of service, then his widow, and if there be no widow, then his children, and if there be no widow or children, then his parents or parent, and if there be none of these, then his estate, shall have and receive a refund of all such sums as have been deducted from his pay and contributed to the Police Relief and Pension Fund, plus simple interest at a rate fixed by the Board of Trustees. When a member of the Department dies at such time as to qualify under both provisions of this Section, the person or representative entitled to receive the payment or refund herein provided shall elect whether the One Thousand (\$1,000) Dollar payment or the refund of salary deductions shall be received, but in no event shall both be paid on account of the same death.~~

(Amended by: Stats. 1943.)

~~**Section 1412.** Any person receiving a pension from the Police Relief and Pension Fund, who shall become convicted of a felony, or after notice and an opportunity to be heard shall be~~

found by the Board of Trustees to have become dissipated or an habitual drunkard, or shall become a non-resident of this State except on leave by the Board of Trustees, shall forfeit all right to said pension.

~~(Amended by: Stats. 1941.)~~

~~**Section 1413.** The Board of Trustees may, on notice from the Chief of Police, reward any member of the Department for conduct which is heroic and meritorious. The form or amount of such reward shall be discretionary with the Board of Trustees, but it shall not exceed in any one instance one month's salary, and may be paid only out of funds provided by the Council; and the Council may, on application of the Board of Trustees, provide money for such purposes.~~

~~**Section 1414.** The Board of Trustees shall hold quarterly meetings in April, July, October and January of each year, and special meetings upon the call of its President; it shall issue warrants, signed by its President and Secretary, to persons entitled thereto for the amount of money ordered paid to such persons from the Police Relief and Pension Fund. Each warrant shall state for what purpose the payment is made.~~

~~**Section 1415.** The Board of Trustees shall keep a public record of its proceedings. It shall at each quarterly meeting send to the Treasurer and to the Auditor a written or printed list of all persons entitled to payments from the Police Relief and Pension Fund, stating the amount of such payment and for what granted; such lists shall be certified and signed by the President and Secretary of the Board. The Auditor shall thereupon enter a copy of such list upon a book to be kept for that purpose, which shall be known as the Police Relief and Pension Fund Book. All warrants signed by the President and Secretary of the Board shall be presented to the Auditor and ordered paid by him out of said fund.~~

~~**Section 1416.** The Board of Trustees shall possess the power to make rules and regulations for its guidance. No compensation shall be paid to any member of the Board of Trustees for any duty required or performed as a member of said Board of Trustees.~~

~~**Section 1417.** The Board of Trustees shall make an annual estimate necessary to carry into effect the foregoing provisions, and transmit the same to the City Administrator, who shall cause the same to be included in his annual estimate of the probable expenditures of the City.~~

~~(Amended by: Stats. 1931 and March 2004.)~~

~~**Section 1418.** In case of death of a matron or substitute matron the pension herein provided for shall be paid to her surviving husband only if in the opinion of the Board of Trustees he is unable to support himself by reason of physical or mental infirmity and has no other means of support. (Repealed by: Stats. 1919; Added by: Stats. 1941.)~~

~~Payment of Pension, Etc. As Credit On Compensation, Etc. Award~~

~~**Section 1419.** If any member of the Department, or the widow, child or children, parent or parents, of a deceased member of the Department, or if any matron or substitute matron, or the husband or child or children, or parent or parents, of a deceased matron or substitute matron shall~~

~~receive any payment under the provisions of Division IV of the Labor Code, or any other act or acts of Legislature, or Constitution, of the State of California, providing for an award, compensation, death or disability payment because of the disability, sickness, injury or death arising out of the performance of duty of such member, matron or substitute matron, any payment on account thereof shall be applied as a credit and set-off against any payment on account of salary, pension or other benefit payable under this Article.~~

~~(Added by: Stats. 1941.)~~

~~No Benefits Based On Award Of Industrial Accident Commission~~

~~Section 1420. No pension shall be paid under this Article on the basis of an award by the Industrial Accident Commission of the State of California.~~

~~(Added by: Stats. 1951.)~~

~~Section 1421. There shall be employed in the Department of Public Health and Safety such number of matrons and substitute matrons of the City Prison as the Council shall from time to time prescribe by ordinance; providing, that such number of matrons shall be not less than three and that such number of substitute matrons shall not be less than one. All appointments of matrons and substitute matrons shall be made by the City Administrator from the eligible list of the Civil Service Board. The compensation of said matrons shall not be less than \$2,676.00 per annum each. Such compensation shall be paid in equal monthly installments. The compensation of said substitute matrons shall be at the rate of not less than \$2,676.00 per annum each, to be paid only for the time during which said substitute matrons shall actually perform the services of matrons. There shall be deducted from each monthly installment of salary due pursuant to the provisions of this Article, a sum equal to five per cent of such monthly installment, which sum so deducted shall be retained by the Treasurer of the City and forthwith paid by him/her into the Police Relief and Pension Fund. Such matrons and substitute matrons shall be entitled as if officers or members of the Police Department to all of the rights, privileges and benefits conferred by Sections 92, 1423, 1400, 1401, 1402, 1405, and 1408-1418 inc. of the Charter upon officers or members of the Police Department.~~

~~(Added by: Stats. 1919; Amended by: Stats. 1923, 1925, 1931, 1933, 1943, 1946 and 2004.)~~

~~* This reference is to the Section or Article so designated in the former Charter.~~

~~Policewomen~~

~~Section 1422. Notwithstanding any other provisions of this Charter to the contrary, the position of Matron and Substitute Matron provided for in this Charter shall be, from and after the approval of this amendment by the State Legislature, designated as Policewomen in the Police Department, and the Council shall have the power to fix the compensation thereof. All persons employed in the position of Matron and Substitute Matron upon said effective date of this amendment shall thereafter hold the rank of Policewoman without examination and without loss of any of their civil service and retirement rights. The provisions of this section are for the purpose of eliminating the positions heretofore designated as Matron and Substitute Matron, and creating~~

~~said positions in the Police Department under the designation Policewomen with all rights thereunder.~~

~~(Added by: Stats. 1953.)~~

~~Allowance For Injury~~

~~Section 1423. Any officer or member of the Police Department sustaining an injury while in the performance of his duty shall be entitled to receive in addition to the benefits otherwise provided in Article XIV of this Charter* such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may be required during the continuance of his disability, the same to be provided by the City; and the Council shall allow such officer or member so injured full pay during the continuance of his disability, or until such time as he may be retired on a pension.~~

~~(Added by: Stats. 1917; Amended by: Stats. 1919.)~~

~~* This reference is to the Section or Article so designated in the former Charter.~~

~~ARTICLE XV – RESERVED*~~

~~* This Article is deleted because the Firemen's Relief and Pension Fund is obsolete and has been combined with Article XIV (Police Relief and Pension Fund) in Article XXVI (Police and Fire Retirement Fund).~~

~~ARTICLE XV – FIREMEN'S RELIEF AND PENSION FUND~~

~~Section 1500. The fund heretofore created, known and designated as the Firemen's Relief and Pension Fund shall continue in effect. The Mayor, Health Officer, and the President of the Civil Service Board shall hereafter constitute the Board of Trustees of such fund, and the City Treasurer shall be the custodian of said fund.~~

~~(Amended by: Stats. 1919, 1931.)~~

~~Section 1501. Any member of the Department who resigns or is discharged from the service previous to retirement, shall have all such sums as have been deducted from his pay and contributed to the Firemen's Relief and Pension Fund pursuant to the provisions of Section 97b*, refunded to him plus simple interest at the rate fixed by the Board of Trustees.~~

~~(Added by: Stats. 1943.)~~

~~* This reference is to the Section or Article so designated in the former Charter.~~

~~Section 1502. The said Board of Trustees may retire and relieve from service any aged, infirm, or disabled member of the Department who has arrived at the age of fifty five years, and who, upon examination by two regularly licensed and practicing physicians, appointed by the Trustees for that purpose may be ascertained to be, by reason of such age, infirmity, or other disability, unfit for the performance of his duty said Board of Trustees shall, at the request of any~~

~~member of the Department who has arrived at the age of fifty five years, and who shall have served twenty years in the aggregate in this Department, retire, and relieve such member making such application. And the said Board of Trustees shall, upon the request of any member of the Fire Department who has served twenty five years in the aggregate as a member of said Fire Department, retire and relieve said member making such application. Such retired member shall receive from the Firemen's Relief and Pension Fund a pension equal to one half of the salary attached to the rank held by him one year prior to the date of said retirement, which pensions shall be paid in equal monthly installments and shall cease at the death of such member.~~

~~(Amended by: Stats. 1919.)~~

~~Compulsory Retirement At Age Seventy~~

~~Section 1503. Notwithstanding any provision contained in this Article, retirement under Section 1502 shall be compulsory upon such member reaching the age of seventy years.~~

~~(Added by: Stats. 1941.)~~

~~Absence By Reason Of War Or Other National Emergency~~

~~Section 1504. Absence of a member of the Fire Department by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent or in any other National emergency and for six months thereafter and who is not dishonorably discharged or released therefrom, shall be credited to such member as service for the City for retirement purposes. No contributions to the Firemen's Relief and Pension Fund for such period of absence without compensation from the City shall be required of such member.~~

~~This section shall be retroactively applied to extend its benefits to such members of the Fire Department whose absence commenced prior to its effective date.~~

~~(Added by: Stats. 1947.)~~

~~Pension For Member Disabled In Performance Of Duty~~

~~Section 1505. Any member of the Department who shall become physically disabled by reason of any bodily injury received in the performance of his duty upon his filing with the Board of Trustees a verified petition, setting forth the facts constituting such disability, and the cause thereof, accompanied by a certificate signed by the Chief of the Fire Department, the Chief of the Battalion to which he belongs and by two regularly licensed physicians of the City recommending his retirement upon a pension, on account of such disability, may be retired from the Department upon an annual pension, equal to one half the amount of salary attached to the rank which he held one year prior to the date of such retirement, to be paid to him in equal monthly installments during the balance of his lifetime and to cease at his death. In case his disability shall cease, his pension shall cease, and he shall be restored to the service in rank he occupied at the time of his retirement; provided that the said Board of Trustees may of its own motion retire any member who shall become physically disabled by reason of any bodily injury received in the performance of his duty, who upon examination by two regularly licensed and practicing physicians appointed by the~~

Trustees for that purpose, may be ascertained to be by reason of such disability unfit for the performance of his duty, provided further that such disability shall have continued for one year.

(Amended by: Stats. 1919, 1941.)

~~Benefit To Dependents Of Deceased Member Retired For Disability Incurred In Performance Of Duty~~

~~Section 1506.~~ Notwithstanding any other provision set forth in Section 1505, if a retired member of the Department shall die at any time by reason of the bodily injury for which he was pensioned, his pension shall not cease but shall continue and shall be paid to his widow to whom he was married at the time of such injury, or to his orphan child or children, or to his parent or parents, in the manner and subject to the provisions of Section 1507 (a), (b) and (c).

(Added by: Stats. 1941.)

~~Pension To Dependents When Member Dies Of Injury Or Disability Incurred In Performance of Duty~~

~~Section 1507.~~ The Board of Trustees shall, out of the Firemen's Relief and Pension Fund, provide for the family of a member of the Department who may die as a result of an injury or disability incurred while in the performance of his duty as follows:

- (a) ~~Should the decedent be married, his widow, as long as she shall remain unmarried, shall be paid a pension equal to one half of the salary attached to the rank held by the decedent at the time of death.~~
- (b) ~~Should the decedent leave no widow, but leave an orphan child or children, under the age of eighteen years, or should the decedent leave a widow and child or children under the age of eighteen years, and the widow die without remarrying, while such child or children are yet under the age of eighteen years, such child, or children collectively, shall receive a pension equal to one half of the salary attached to the rank held by the decedent at the time of his death until the youngest child attains the age of eighteen years, provided that no child shall receive any such pension after attaining the age of eighteen years, nor shall any child receive any such pension should he or she marry before reaching the age of eighteen years.~~
- (c) ~~Should the decedent leave no widow, or no orphan child or children but leave a parent or parents, dependent solely upon him for support, such parent or parents so depending shall collectively receive a pension equal to one half the salary attached to the rank held by the decedent at the time of his death during such time as the Board of Trustees may determine its necessity.~~

(Amended by: Stats. 1919, 1941.)

~~Section 1508.~~

- ~~(a) Upon the death of a member of the Department who had been retired under this article, and such death shall occur after the effective date of this section and shall result from causes other than injuries received in or illness caused by or arising out of the performance of duty, two thirds of such member's pension at the time of death shall be continued regardless of the age of the surviving widow, the dependents of the member in this order of succession and upon the conditions provided in Section 2612.~~
- ~~(b) There shall be deducted from each monthly installment of pension due to such retired member under the provisions of this article a sum equal to 1 ½% of such monthly installment which sum shall be retained by the Treasurer of the City and forthwith paid by him into the Police and Fire Retirement Fund.~~
- ~~(c) The provisions of subdivisions (a) and (b) of this section shall not be applicable to any retired member of the Department who has not within 90 days after the ratification of this section by the State Legislature filed with the Secretary of the Police and Fire Retirement Board said member's written election to be subject to the provisions of said subdivisions.~~

(Added by: Stats. 1955.)

~~**Section 1509.** The widow of a member of the Department who was retired for years of service under the provisions of Section 1502 and who died prior to the effective date of Section 1508 from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty, provided such widow was married to the decedent at least one (1) year prior to his retirement and has remained unmarried since the date of his death, shall receive two thirds of the decedent's pension. The widow of a member of the Department who died from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty and whose death occurred prior to eligibility for membership in the retirement system created by Article XXVI, and who was not receiving a pension under this Article, but who was eligible for retirement for years of service under Section 1502, shall receive two thirds of the pension which would have been provided for him by said Section 1502 if he had been retired for years of service at the time of death, provided she has remained unmarried since the date of his death. The pension(s) herein provided for shall commence on the first of the month next following the effective date of this section and shall be paid in equal monthly installments as long as such respective widow(s) shall live and remain unmarried.~~

~~This section shall not be construed to provide any payment to such widow for any period of time prior to the first day of the month next following the effective date hereof, except that benefits under this section shall be in addition to any benefits heretofore received by the widow under Section 1510.~~

(Added by: Stats. 1957.)

~~**Section 1510.** When a member of the Department shall die from causes other than those specified in Section 1507 after ten years of service, then his widow and if there be no widow, then his children, and if there be no widow or children, then his mother, if dependent upon him for~~

support, shall be entitled to the sum of One Thousand (1,000) Dollars; provided, further, when a member of the Department shall die from causes other than those specified in Section 1507 before retirement or eligibility for retirement, regardless of length of service, then his widow, and if there be no widow, then his children, and if there be no widow or children, then his parents or parent, and if there be none of these, then his estate, shall have and receive a refund of all such sums as have been deducted from his pay and contributed to the Firemen's Relief and Pension Fund, plus simple interest at a rate fixed by the Board of Trustees. When a member of the Department dies at such time as to qualify under both provisions of this Section, the person or representatives entitled to receive the payment or refund herein provided shall elect whether the One Thousand (1,000) Dollar payment or the refund of salary deductions shall be received, but in no event shall both be paid on account of the same death.

(Amended by: Stats. 1943.)

Section 1511. Any person receiving a pension from the Firemen's Relief and Pension Fund, who shall become convicted of a felony, or after notice and an opportunity to be heard shall be found by the Board of Trustees to have become dissipated or an habitual drunkard, or shall become a non-resident of this State except on leave by the Board of Trustees, shall forfeit all right to said pension.

(Amended by: Stats. 1941.)

Section 1512. The Board of Trustees may, on notice from the Chief of the Fire Department, reward any member of the Department for conduct which is heroic and meritorious. The form or amount of such reward shall be discretionary with the Board of Trustees, but it shall not exceed in any one instance one month's salary, and may be paid only out of funds provided by the Council; and the Council may, on application of the Board of Trustees, provide money for such purposes.

Section 1513. The Board of Trustees shall hold quarterly meetings in April, July, October and January of each year and special meetings upon the call of its President, it shall issue warrants, signed by its President and Secretary, to persons entitled thereto for the amount of money ordered paid to such persons from the Firemen's Relief and Pension Fund. Each warrant shall state for what purpose the payment is made.

Section 1514. The Board of Trustees shall keep a public record of its proceedings. It shall at each quarterly meeting send to the Treasurer and to the Auditor a written or printed list of all persons entitled to payments from the Firemen's Relief and Pension Fund, stating the amount of such payment and for what granted; such lists shall be certified and signed by the President and Secretary of the Board. The Auditor shall thereupon enter a copy of such list upon a book to be kept for that purpose which shall be known as the Firemen's Relief and Pension Fund Book. All warrants signed by the President and Secretary of the Board shall be presented to the Auditor and ordered paid by him out of said fund.

Section 1515. The Board of Trustees shall possess the power to make rules and regulations for its guidance. No compensation shall be paid to any member of the Board of Trustees for any duty required or performed as a member of said Board of Trustees.

~~**Section 1516.** The Board of Trustees shall make an annual estimate necessary to carry into effect the foregoing provisions and transmit the same to the City Administrator who shall cause the same to be included in his annual estimate of the probable expenditures of the City, and the Council shall, on application of the said Board of Trustees, provide the necessary money for the demands of this pension fund.~~

~~(Amended by: Stats. 1919, 1931 and 2004.)~~

Payment Of Pension, Etc., As Credit On Compensation, Etc., Award

~~**Section 1517.** If any member of the Department, or the widow, child or children, parent or parents, of a deceased member of the Department, shall receive any payment under the provisions of Division IV of the Labor Code, or any other act or acts of the Legislature, or Constitution, of the State of California, providing for an award, compensation, death or disability payment, because of the disability, sickness, injury, or death arising out of the performance of duty of such member, any payment on account thereof shall be applied as a credit and set off against any payment on account of salary, pension or other benefit payable under this Article.~~

~~(Added by: Stats. 1941.)~~

No Benefits Based On Awards Of Industrial Accident Commission

~~**Section 1518.** No pension shall be paid under this Article on the basis of an award by the Industrial Accident Commission of the State of California.~~

~~(Added by: Stats. 1951.)~~

Allowance For Injury

~~**Section 1519.** Any member of the Fire Department sustaining an injury while in the performance of his duty shall be entitled to receive, in addition to the sick leave provided for, such medical, surgical and hospital treatment including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may be required during the continuance of his disability, the same to be provided for by the City; and the Council shall allow the member so injured full pay during the continuance of his disability or until such time as he may be retired on a pension.~~

~~(Added by: Stats. 1917; Amended by: Stats. 1919.)~~

SECTION 1602 (a)

Section 1602(a). Establishment. A position that serves as accountability officer for the Children's Initiative is hereby established at a classification and at a salary scale commensurate with the duties of the position, as determined by the City Administrator. The City Administrator or his/her the City Administrator's designee shall hire for the position, in consultation with the Superintendent of the Oakland Unified School District and shall oversee the work of the accountability officer for the Children's Initiative. The City Administrator may appoint an interim

Children's Initiative accountability officer to carry out the duties set forth in subdivision (b) until such time as a permanent appointment is made or if the position is vacant.

SECTION 2001

Section 2001. The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meaning:

"Retirement allowance," or "allowance," shall mean equal monthly payments, beginning to accrue upon the date of retirement, and continuing for life unless a different term of payment is definitely provided by the context.

"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.

"Compensation earnable" shall mean the monthly compensation as determined by the Board of Administration which would have been earned by the member had ~~he~~they worked, throughout the period under consideration, the average time ordinarily worked by persons in the same grade or class of positions as the positions held by ~~him~~them during such period and at the rate of pay attached to such positions. The computation for any absence of a member shall be based on the compensation earnable by ~~him~~them at the beginning of the absence, and that for time prior to entering the employ of the City, shall be based on the compensation earnable by ~~him~~them in the position first held by ~~him~~them in such employ.

"Benefit" shall include "allowance," "retirement allowance," and "death benefit."

"Accumulated normal contributions" shall mean the sum of all contributions plus interest.

"Accumulated additional contributions" shall mean the sum of all additional contributions plus interest.

"Accumulated contributions" shall mean accumulated normal contributions plus accumulated additional contributions.

"Final compensation" means the highest average compensation earnable by a member during any period of three consecutive years of service; compensation earnable to be computed as described in the definition of "compensation earnable." For the purpose of this paragraph, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for such breaks. If a break in service did not exceed six months in duration, time included in the break and compensation earnable during such time shall be included in the computation of final compensation. If a break

in service exceeded six months in duration, the first six months thereof and the compensation earnable during those six months shall be included in the computation of final compensation, but time included in the break which is in excess of six months and the compensation earnable during such excess time shall be excluded in the computation of final compensation.

"Member" means any officer or employee who is included in the membership of this Retirement System.

"Retirement System" or "System" shall mean Oakland Municipal Employees' Retirement System as heretofore created under authority granted in this Section, said Retirement System being hereby continued in effect.

"Board" or "Retirement Board" shall mean board of administration as created in this Section.

Words used in the masculine gender shall include the feminine and neuter genders, and singular numbers shall include the plural and the plural the singular.

"Interest" shall mean interest at the rate adopted by the Retirement Board.

"Service" shall mean any service rendered prior to July 1, 1939, as an employee of the City of Oakland which for the purpose of this System is designated as "prior service"; and any service rendered after June 30, 1939, in a status requisite for membership in the Retirement System, but only prior service and service rendered as a member of the Retirement System shall be credited under the System.

This Section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State.

SECTION 2002

Section 2002. A Board of Administration of said retirement system is hereby created consisting of the City Treasurer, the Auditor, three (3) members elected from the active, retired and deferred membership of the retirement system, a resident representative of a life insurance company and the officer of a local bank. Notwithstanding the foregoing, in the event that less than three Board members are elected from the active, retired and deferred membership of the retirement system, such membership may elect ~~widows, widowers~~ surviving spouses and beneficiaries of retirement system members to the vacant seats designated for active, retired and deferred members of the retirement system.

The Council, shall, upon the recommendation by the Mayor, appoint the resident representative of a life insurance company and the officer of a local bank hereinbefore referred to. Persons holding membership on said Board upon the adoption of this amendment shall continue to serve the terms to which they were elected or appointed.

The City Treasurer and Auditor shall be members of the Board ex-officio.

All members shall serve without compensation.

SECTION 2003

Section 2003. Any member who completes at least twenty years of service in the aggregate with which ~~he is~~ they are entitled to be credited under the System, and attains the age of fifty-two years, or completes at least 10 years of such service and attains the age of sixty years, may retire for service at ~~his~~ their option. Members shall be retired for service on the first day of the month next following the attainment by them of the age of seventy years, regardless of length of service. Upon retirement for service after the effective date hereof, a member shall receive a service retirement allowance equal to the fraction of one-sixtieth of ~~his~~ their final compensation, set forth opposite ~~his~~ their age at retirement, taken and applied by interpolation of said fractions to the preceding completed quarter year of age, in the following table in the column applicable to ~~his~~ their sex, multiplied by the number of years of service with which ~~he is~~ they are entitled to be credited:

Age at Retirement	Fraction Men	Fraction Women
52	.6120636	.6352571
53	.6477249	.6692856
54	.6862515	.7059143
55	.7279876	.7454909
56	.7732616	.7882855
57	.8225384	.8346370
58	.8764127	.8850589
59	.9354005	.9399551
60	1.0000000	1.0000000
61	1.0564648	1.0569430
62	1.1156446	1.1169496
63	1.1782066	1.1807488
64	1.2444586	1.2487750
65 & over	1.3147929	1.3216755

The fractions herein set forth at ages other than age 60 are based on the interest rate and mortality tables used under the Retirement System on the effective date hereof and shall be adjusted by the Board in accordance with such interest and mortality tables as the Board may adopt thereafter. The Board shall declare from time to time the rate of interest at which interest shall be credited on contributions of members and the City, and the rate of interest which shall be used in determining actuarial equivalents, which rate shall not exceed a rate one-fourth of a percentage point below the net rate currently earned on the assets of the Retirement Fund.

The Retirement System also shall provide for death benefits for members of the System. The City Council also shall provide that a member retiring may elect, before the first payment of the retirement allowance is made, to receive the actuarial equivalent of ~~his~~ their allowance in a lesser allowance to be received by ~~him~~ them throughout ~~his~~ their life and in other benefits payable after ~~his~~ their death to another person, including an allowance throughout the life of such person.

For the purpose of this Section, the qualifying ten-year periods of service shall be accumulated during any continuous periods of not more than twelve years, provided any absence from or return to actual service during such twelve-year periods is approved by the Civil Service

Board in the case of persons in the classified civil service or by the City Council in the case of other persons within the Retirement System.

This section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State.

SECTION 2004

Section 2004. Notwithstanding the provisions of Section 2003 to the contrary, the provisions of this Section shall apply to the Retirement System. The City Council also shall provide that a member retiring may elect before the first payment of ~~his~~ their retirement allowance is made, and that a member may elect at any time before retirement, but only after qualification for service retirement, as provided in Section 2010 to receive the actuarial equivalent of the portion or all of ~~his~~ their allowance, as the case may be, which would not be continued automatically regardless of dependents then living, in a lesser allowance to be received by ~~him~~ them throughout ~~his~~ their life and in other benefits payable after ~~his~~ their death to another person, including an allowance throughout the life of such person. The amounts payable under options two (2) or three (3) as stated in Ordinance No. 713 C.M.S., which were elected prior to the effective date of Section 2007 by a person who is living on that date, shall be adjusted to amounts calculated as if the provisions of that Section had been in effect at the date of ~~his~~ their retirement, but no adjustment shall be made because of payments made prior to such effective date.

This Section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State.

SECTION 2004.5

Section 2004.5. The Retirement System also shall provide for retirement for disability after five years of service credited under the System, and before age 60, subject to the following conditions:

It is the intention of this section that allowances granted to or on account of members of the System for injury, illness or death incurred in the performance of duty shall not be cumulative with benefits under the Labor Code of California awarded as the result of the same injury, illness or death. If any member of the System or dependent receives compensation under the Labor Code for disability or death arising out of and in the course of the performance of duty, any payment on account thereof shall be applied as a credit and set-off against any payment on account of salary granted to such member under Section 8.04 of the Laws and Rules of the Civil Service Board; or retirement allowances or other benefit granted to or on account of such member under the provisions of this article as follows:

- (a) If the amount is paid in one sum or in installments equal to or greater than such salary, retirement allowance, or other benefit, such member or dependent shall not receive any salary, retirement allowance or other benefit until the total amount of the salary, retirement allowance, or other benefit which would otherwise be payable equals the total amount received under the Labor Code.

- (b) If the amount is paid in installments less than such salary, retirement allowance or other benefit, the salary, retirement allowance or other benefit shall be reduced so that the total of salary, retirement allowance or other benefit plus the amounts received under the Labor Code will equal the salary, retirement allowance, or other benefit which would otherwise be due.
- (c) In either case, any award specifically granted for medical, surgical or hospital expenses shall not reduce the salary, retirement allowance or other benefit.

No disability retirement benefits shall be paid under this section on the basis of an award by the ~~Workmen's~~ Workers' Compensation Appeals Board of the State of California.

This section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State.

SECTION 2005 (a)

- (a) The normal rate of contribution of each member as determined by the actuary and approved by the Board and to be effective on the effective date hereof shall be based on ~~his~~ their nearest age at the effective date of ~~his~~ their membership in the Retirement System, and if effective from the effective date of ~~his~~ their membership, shall be such as, on the average for such member, will provide, assuming service without interruption from said effective date until retirement, one-half of the portion of the service retirement allowance which is based on such service, and to which ~~he~~ they would be entitled if retired at age 60, but not including automatic continuance to dependents. The actual amount of annuity including such continuance, however, provided for a member upon retirement, shall be the actuarial equivalent of ~~his~~ their accumulated contributions. The normal rate established for age 59 shall be the rate for any member who has attained a greater age before entrance into the System, and that established for age twenty shall be the rate for any member who enters the System at a lesser age. Members' normal rates of contributions shall be changed by the Board on the basis of periodical actuarial valuation and investigation provided by the Charter. No adjustment shall be included in members' normal rates because of time during which they have contributed at different rates.

This amendment shall become effective on July 1, 1959, or the first day of the month next following approval by the Legislature, whichever is later.

SECTION 2005 (b)

- (b) There shall be deducted from each payment of compensation made to a member, a sum determined by applying the members normal rate of contribution to such compensation. The sum so deducted shall be paid forthwith to the Retirement System, and shall be credited to the individual account of the member from whose compensation it was deducted, and the total of said contributions, together with interest credited thereon, shall be applied to provide part of the retirement allowance granted to said members; or said total of said contributions, together with interest credited thereon shall be paid to said member upon termination of ~~his~~ their employment by the City prior to retirement, or to ~~his~~ their estate or beneficiary upon ~~his~~ their death, in the manner provided by the City Council. The City

Council, however, shall provide for election by members who are entitled to be credited with at least 5 years of service and whose employment is terminated by cause other than death or retirement, to allow their accumulated contributions to remain in the Retirement fund, to continue as members of the System and to be subject to the same age and disability requirements as apply to other members for service or disability retirement, but they shall not be subject to a minimum service requirement, and the minimum retirement allowances shall not apply to them, unless they meet such minimum service requirement. Subject to rules prescribed by the Board, any member may elect to make contributions in excess of ~~his~~ their contributions herein required, for the purpose of providing additional benefits, and benefits provided hereunder for such member shall be exclusive of such additional benefits. The exercise of this privilege by a member shall not require the City to make any contributions. Additional contributions shall be administered in the same manner as normal contributions.

This section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State.

SECTION 2006

Section 2006. Absence of a member of the Retirement System by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent or in any other National emergency and for six months thereafter and who is not dishonorably discharged or released therefrom, shall be credited to such member as service for the City for retirement purposes.

While so absent without compensation from the City, the City shall contribute, for and on behalf of each member absent by reason of such service, amounts equal to the contributions which would have been made by such member and the City to the Retirement System if ~~he~~ they had not been so absent. Any such member who contributed to the Retirement System under the provisions of Section 33 (4-½)* of this Charter entitled "Contributions by Members in Military Service" before its repeal, shall have such contributions refunded or, at ~~his~~ their election credited to ~~his~~ their account as additional contributions, but such additional contributions when credited to ~~his~~ their account shall not place on the City any additional financial obligation.

The contributions made by the City pursuant to the provisions of this Section shall be made available only for the purpose of retirement, and if employment by the City of any such member be discontinued before retirement, ~~he~~ they shall be entitled to withdraw only that portion of ~~his~~ their accumulated contributions actually made by him, or should ~~he~~ they die before retirement, any death benefit payable by reason of ~~his~~ their death shall include only that portion of ~~his~~ their accumulated contributions actually made by ~~him~~ them.

This Section shall be retroactively applied to extend its benefits to such members of the Retirement System whose absence commenced prior to its effective date.

* This reference is to the Section or Article so designated in the former Charter.

SECTION 2007

Section 2007. Upon the death of a person after ~~his~~ their retirement, including persons receiving allowances on the effective date of this Section, one-half of ~~his~~ their retirement allowance as it was at death, before modification under an option shall be continued throughout life or until the remarriage of the surviving spouse if the remarriage occurs prior to January 1, 1985. If there be no surviving spouse entitled to an allowance hereunder, or if the surviving spouse so entitled dies before every child of such deceased member attains the age of eighteen years, then the allowance which the surviving spouse would have received, or which the surviving spouse would have received had ~~she~~ they lived shall be paid to a child or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any allowance after marrying or attaining the age of eighteen years. Should said member leave no surviving spouse and no children under the age of eighteen years, but leave a parent or parents dependent upon ~~him~~ them for support, the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving spouse otherwise would have received, during such dependency. No allowance, however, shall be paid under this section to a surviving spouse, unless ~~he or she was~~ they were married to the member at least one year prior to retirement. Contributions necessary for the payment of the continuance of one-half of allowances of persons who are receiving allowances on the effective date of this Section, shall be provided from the reserves held by the Retirement System on account of active members, the necessary amount being transferred upon said effective date from said reserves to the reserves held by the Retirement System to meet obligations on account of benefits that have been granted.

This Section shall become effective on the first day of the month next following approval by the Legislature.

SECTION 2008

Section 2008. Upon the death before retirement of a member who is qualified for service retirement under Section 2003 by attainment of the age of at least fifty-two (52) years with credit for twenty (20) or more years of service, or at least sixty (60) years with credit for ten (10) or more years of service, and on account of whose death the benefit provided for in accordance with such Section, is otherwise payable, a monthly allowance equal to one-half of the monthly retirement allowance prior to modification under options provided for in accordance with such Section which the member would have been entitled to receive if ~~he~~ they had retired from service on the date of ~~his~~ their death, shall be payable:

- (a) To the member's surviving spouse ~~widow, or to the member's widower~~ who was receiving at least one-half of ~~her/his~~ their support from the member at the time of the member's death, ~~and with respect to both widow and widower,~~ who was married to such member prior to the occurrence of the injury or onset of the illness which resulted in death; or
- (b) If there is no qualifying spouse, or if such spouse dies or remarries, to unmarried children, including stepchildren, of the member, who are under 18 years of age.

The allowance payable under this Section shall be in lieu of the death benefit provided for in accordance with Section 2003 except for the accumulated additional contributions included herein, but a person qualifying for the allowance or such person's guardian may elect, before the first payment on account of it, to receive such death benefit in lieu of the allowance. The member's accumulated additional contributions shall be paid to the person qualifying for the allowance, and the remainder of the accumulated contributions of the member shall be applied toward providing the allowance, and the balance not so provided shall be payable from contributions of the City.

The allowance shall begin to accrue on the day next following the date of death of the member, and payments to the surviving spouse shall continue only until death or remarriage if remarriage occurs prior to January 1, 1985, and to or on account of children with respect to each child, until the attainment of age 18, death or prior marriage. If payment of the allowance provided by this Section is stopped because of remarriage of the surviving spouse prior to January 1, 1985, or the attainment of the age of 18 years by, or the death or marriage of, a child, before the sum of the monthly payments made equals the death benefit provided for in accordance with Section 2003, exclusive of accumulated additional contributions, a lump sum equal to the difference shall be paid to the remarried spouse who remarried prior to January 1, 1985, or if there is no such spouse, to the surviving children of the member, share and share alike.

This Section shall become effective on the first day of the month next following approval of the Legislature.

SECTION 2009

Section 2009. Should any member discontinue to be an employee of the City, except by death or retirement, ~~he~~ they shall be paid, under such rules as may be established by ordinance of the Council, all of ~~his~~ their accumulated contributions, together with interest thereon at rates to be set by the Council upon the recommendation of the Board of Administration.

The Council may also, by ordinance, define the rights of former employees or of former members of the retirement system upon their re-entry into the City service.

SECTION 2010

Section 2010. Any member who has qualified for service retirement under Section 2003 by attainment of the age of at least fifty-two (52) years, with credit for twenty (20) or more years of City service, or at least sixty (60) years, with credit for ten (10) or more years of City service, may elect as provided in Section 2004 and without right or revocation or change after approval of the election by the Retirement Board, to receive the actuarial equivalent as of the date of ~~his~~ their retirement of the retirement allowance payable to ~~him~~ them when and if ~~he retires~~ they retire for service or disability, in a reduced retirement allowance according to the provisions of either Option 2 or Option 3, as stated in Ordinance No. 713 C.M.S. If such a member at the time of making the election has a living spouse who would qualify for an allowance under Section 2008, the election under this Section shall be invalid and of no effect unless and until the consent of such spouse to it is filed at the office of the Retirement System.

Upon such member's death at least thirty (30) days after the date upon which the election is received in the office of the Retirement System, and prior to the effective date of ~~his~~ their retirement, the person who was nominated by ~~him~~ them under the option ~~he~~ they elected and who survives ~~him~~ them, shall receive an allowance calculated under such option, upon the assumption that such member retired for service on the date of ~~his~~ their death and died immediately thereafter. The payment of such allowance to such person shall be in lieu of both the death benefit provided for in accordance with Section 2004, and the allowance provided by Section 2008, and no such death benefit or such allowance shall be paid on account of such death to any person or beneficiary, regardless of whether the person nominated under the option elected survives the member.

If such member subsequently retires for service or disability, ~~he~~ they shall receive, regardless of whether the person nominated by ~~him~~ them under the option elected is then living, a reduced allowance according to the provisions of Section 2003 and the option elected. The amount of the allowance prior to optional modification shall be calculated on the basis of the member's age at death before retirement, or at retirement as the case may be, but the reduction of such allowance under the option elected shall be based on the ages of such member and the person nominated by ~~him~~ them under such option at the effective date of such election.

This Section shall become effective on July 1, 1959, or the first day of the month next following approval by the Legislature, whichever is later.

SECTION 2011

Section 2011. Every retirement allowance payable by the Oakland Municipal Employees' Retirement System, for time commencing on the effective date of this section, hereby designated as the first day of July, 1953, or the first day of the month next following its approval by the Legislature, whichever is later, to or on account of any person who was retired prior to February 1, 1950, as a member of said system, is hereby increased by the amount of \$25.00 per month, provided such member was entitled to be credited under the Retirement System with at least twenty years of service upon which the retirement allowance was determined at retirement. If the member was entitled to be credited with less than twenty years of such service, said monthly increase shall be an amount which shall bear the same ratio to \$25.00 that the service with which the member was entitled to be credited at the effective date of retirement bears to twenty years. This section does not give any member retired prior to the effective date hereof, or ~~his~~ their successors in interest, any claim against the City for any increase in any retirement allowance paid or payable for time prior to said effective date. If a member elected at retirement to have ~~his~~ their retirement allowance modified under Options 2 or 3, provided by Ordinance 713 C.M.S. and if ~~his~~ their beneficiary is living on said effective date, the increase in ~~his~~ their allowance shall be modified under the option elected at retirement, and on the basis of current ages, mortality tables and interest rate. If the beneficiary of such a person who elected at retirement to have ~~his~~ their allowance modified under one of said options is not living on said effective date and the beneficiary is receiving the modified retirement allowance, then the allowance shall be increased as provided herein for persons who did not elect an option.

The increase in the retirement allowance shall be apportioned between service rendered prior to the entry of the member into the Retirement System and service rendered as a member, in the same proportion that such prior and current service, respectively, bears to the total service

credited at retirement. Contributions to the Retirement System necessary for the payment of the portion of the increases in the retirement allowances provided in this Section, which are based on service as members, shall be provided from reserves held by the Retirement System to meet the obligations on account of benefits that have been granted and on account of prior service of members. If, however, the City's contributions on account of service rendered as members has been changed from an amount equal to members' contributions to an amount derived by applying a percentage to earned compensation of members, contributions to the Retirement System necessary for the payment of the increases in the retirement allowances provided in this section, shall be provided, with respect to the portion of the increase based on service rendered as members, from the reserves held by the Retirement System on account of miscellaneous members, the necessary amount being transferred upon said effective date, from said reserves to the reserves held by the Retirement System to meet the obligations on account of benefits that have been granted and on account of prior service of members. The contribution then being required of the city, as a percentage of salaries of persons who are members of the system, shall be increased by such increase in the percentage as is determined by the actuary as necessary to replace the reserves to be transferred. Contributions to the Retirement System necessary for the payment of the portion of said increases based on service rendered prior to membership in the Retirement System, shall be paid to the System by the City in annual appropriations, provided that such appropriation for any year shall not be less than the amount disbursed during that year on account of said portion of the increases.

SECTION 2013

Section 2013. It shall be the duty of the first Board of Administration created under this Section to recommend a retirement system to the Council and to secure from a competent actuary a report of the cost of establishing the same.

The mortality, service, experience, or other tables calculated by the said actuary and the valuations determined by ~~him~~ the actuary and approved by the Board shall be conclusive and final. Any system adopted by the Council shall be based thereon, and no changes shall be made in the system by the Council until the cost of such changes has been estimated by a competent actuary and the changes themselves have been approved by the Board of Administration.

The Board of Administration shall cause the tables on which the system is based to be reviewed at least every three (3) years by a competent Actuary and shall recommend to the Council any changes in the system that the Board may deem necessary as the result of such actuarial review.

SECTION 2015

Section 2015. The Board of Administration shall elect one of their number President and shall appoint a Secretary. They may also employ such additional actuarial, clerical, or other assistance as the Council may provide. All regular and permanent employees of the Board, with the exception of the actuaries, shall be appointed under the provisions of Article XIII of this Charter.

The Board shall make all necessary rules and regulations, not inconsistent with this Charter and the ordinances establishing the Retirement System, and it shall be the sole judge, under such general ordinances as may be adopted by the Council, as to the conditions under which persons may be admitted to benefits of any sort under the system.

The Board shall also have exclusive control of the administration and investment of such funds as may be established under the system; provided, that the Auditor shall refuse to allow any warrant drawn for the payment of a benefit if in ~~his~~ the Auditor's opinion such benefit has been granted in contravention of this Section or of any ordinance passed under the authority granted herein; and provided further, that the City Treasurer shall be custodian of the funds under the direction of the Board of Administration as aforesaid.

SECTION 2016

Section 2016. The Council shall enact any and all ordinances necessary, in addition to the ordinance authorized in Section 2000, for the proper operations of the aforementioned Retirement System. The Board of Administration shall make an annual estimate of the cost of administering the Retirement System and shall transmit the same to the City Administrator at such time as ~~he~~ the City Administrator may direct. The amount necessary for the administration of the aforementioned Retirement System shall be paid out of the Oakland Municipal Employees' Retirement Fund.

SECTION 2600

Section 2600. There is hereby added to the Charter of the City of Oakland a new Article to be known as Article XXVI for the purpose of combining into one system, hereby created and to be known as THE POLICE AND FIRE RETIREMENT SYSTEM, and the separate system heretofore created by the provisions of Article XIV and XV of this Charter. All persons who become members of the Police or Fire Departments as defined in former Article XIV* and XV* of this Charter, ~~including all persons hereafter employed to perform the duties now performed by matrons and substitute matrons of the City Prison,~~ on or after the effective date of this Article, hereby defined as July 1, 1951, or the first of the month next following approval by the Legislature, whichever is the later, shall be members of the Retirement System established by this Article and shall be subject to the provisions hereof. All members of the Police or Fire Departments who are subject to the Relief and Pension Systems under the provisions of Article XIV and XV of this Charter, and not permanently retired, ~~including matrons and substitute matrons of the City Prison,~~ shall have the option of being members of this Retirement System under the provisions of this Article, said option to be exercised in writing on a form furnished by the Retirement Board as hereinafter defined, to be filed with the Secretary of the Board not later than 90 days after the effective date of this Article. Upon filing said written option, such persons shall be subject to the provisions of this Article as of its effective date, notwithstanding any other provisions of this Charter; provided that any of such persons who are absent by reason of service in the armed forces of the United States, and any persons on disability retirement under Article XIV or XV on the effective date of this Article, shall have the right to exercise said option within 90 days after return of such persons to service in said departments. Members of the Relief and Pension Systems under Articles XIV and XV of this Charter, who do not exercise the option in this section, shall remain members under the provisions of said articles and under the provisions of Section 2619 and benefits being paid, on the effective date hereof, to or on account of persons who are or have been

members under said articles, shall be continued at their existing rates and in accordance with the provisions of said articles, but shall be paid from the fund created under this article.

- (a) Notwithstanding any other provision of this Article XXVI, active members of PFRS shall be permitted to terminate their membership in PFRS and become members of the California Public Employees' Retirement Systems ("PERS") (hereinafter referred to as "~~transfer~~ transfer to PERS"); provided that active members may transfer to PERS only if the following occur:
 - (1) the City Council authorizes the transfer to PERS; and
 - (2) the PFRS Board authorizes transfer of PFRS retirement funds representing the employer and employee contributions to PFRS for each PFRS member who exercises the option to transfer to PERS.

The decision to authorize the transfer to PERS shall be based on the City Council's sole judgment and discretion. The City shall have absolutely no obligation to authorize such transfer and the City Council's decision shall be final and binding and without recourse to a court or law, section 910 of the City Charter, which provides for binding interest arbitration, or any other administrative, contractual or legal avenue or remedy.

The decision of the PFRS Board to authorize transfer of PFRS retirement funds to PERS as described above, shall be based upon the board's sole judgment and discretion exercised in accordance with board members' fiduciary obligations, the prudent person standard, the provision of Article XXVI of the City Charter, the California Constitution and other applicable law.

* This reference is to Articles XIV and XV so designated in the ~~former~~ Charter as it was adopted in 1968. These Articles have been deleted because the Police Relief and Pension Fund (Article XIV) and Firemen's Relief and Pension Fund (Article XV) are obsolete and have been combined in Article XXVI (Police and Fire Retirement Fund).

SECTION 2601

Police and Fire Retirement Board

Section 2601. In order to continue in force and make effectual pensions and retirements already existing or that may be granted in the future in favor of members of the Police or Fire Departments, the systems heretofore existing under the provisions of Articles XIV and XV of this Charter are hereby combined into one system to be known as the Police and Fire Retirement System and the funds heretofore created, ~~existing and known as the Police Relief and Pension Fund and the Firemen's Relief and Pension Fund,~~ are hereby combined in a common fund to be known and designated as the Police and Fire Retirement Fund. This System and fund shall be managed and administered by a Board hereby created to be known and designated as the Police and Fire Retirement Board, which shall be the successor of and shall have the powers and duties heretofore possessed and exercised by the Board of Trustees of the obsolete Police Relief and Pension Fund and Board of Trustees of the obsolete Firemen's Relief and Pension Fund. This Retirement Board shall consist of seven (7) members as follows: the Mayor of the City; one active member of the Police Department, or a retired member elected by the active and retired members of the Police Department if no active member of the Police Department is elected to serve on the

Board; one active member of the Fire Department, or a retired member elected by the active and retired members of the Fire Department if no active member of the Fire Department is elected to serve on the Board; a life insurance executive of a local office, a senior officer of a local bank; a community representative; and a Police-Fire retired member who shall be elected from the retired members of the Fire Department for a first three (3) year term commencing the first day of the month next following ~~his or her~~ their election, and from the retired members of the Police Department for the next successive three (3) year term, and thereafter alternately from the retirement rolls of each of said departments for successive three (3) year terms. The election of the first such Police-Fire retired member by the vote of the retired members of the Fire Department shall be held within ninety (90) days following the effective date of this amendment in the manner heretofore established by and under the supervision of the Retirement Board. In the event an active or retired Police-Fire member does not serve out ~~his or her~~ their three (3) year term, ~~his or her~~ their successor shall be elected from the department which has most recently elected ~~him/her or her~~ them for the remainder of said unexpired three (3) year term. All members elected from the Police and Fire Departments or from the police-fire retirement rolls shall be elected by vote of the active or retired Police and Fire Retirement System members of the respective departments as the case may be, and the Retirement Board may from time to time revise the manner of conducting such elections. The representative of a life insurance company, the representative of a bank, and the community representative shall be appointed by the City Council upon the recommendation of the Mayor. The Mayor, with the approval of the City Council, may designate a City officer or official to serve in ~~his or her~~ the Mayor's place and stead as a member of the Retirement Board for the term of ~~his or her~~ the Mayor's office. The terms of the incumbent board members who are serving terms immediately prior to the effective date of this amendment shall not be affected by this amendment, and those members shall be entitled to serve the balances of their respective terms on the Retirement Board; the terms of office of the future elected member of the Fire Department, of the future elected member of the Police Department and of the future insurance and bank representatives shall be five (5) years and shall follow successively the end of the term of the respective incumbent member of the Fire Department, member of the Police Department, and insurance and bank representative members; the first term of office of the community representative shall be two (2) years commencing the first day of the month next following the effective date of this amendment, and thereafter such member shall be appointed for successive five (5) year terms. The Mayor or ~~his or her~~ the Mayor's designated alternate shall serve the term of the Mayor. In the event of a vacancy, a successor shall be elected or appointed as the case may be for the unexpired portion of the term vacated. Election or appointment of successors as hereinabove provided shall be held or made not more than ninety (90) days prior to the expiration of the term of office of the member to be succeeded, or in the event of a vacancy in an office prior to the termination thereof not more than ninety (90) days immediately following the occurrence of such vacancy. The members of the Board shall serve without compensation.

- (a) The City Attorney shall attend all meetings of the Board in person or by authorized representative.
- (b) The Board shall hold regular meetings monthly and special meetings at any time upon the call of its President. A majority of the members of the Board shall constitute a quorum for the transaction of business. The powers conferred by this Article upon the Board shall be exercised by order or resolution adopted by the affirmative votes of at least four (4) members of the Board. At the regular meeting in September of each year, the Board shall

select one of its members to act as President for the ensuing year. The Board shall keep a written record of its proceedings which shall be public.

- (c) The Board shall appoint a Secretary who shall hold office at its pleasure and who shall have the power to administer oaths and affirmations and issue subpoenas in all matters pertaining to the administration and operation of the System. The Board shall also appoint an actuary who shall hold office at its pleasure, and medical examiners in connection with disability retirement, and such additional clerical and other assistants as the City Council may authorize. All regular and permanent employees of the Board shall, with the exception, of the Secretary, Actuary and Medical Examiners, be appointed under the provisions of Article XIII of this Charter.
- (d) The Board shall make an annual estimate of the cost of administering the Retirement System and shall transmit the same to the City Administrator at such time as ~~he~~ the City Administrator may direct. The amount necessary for the administration of the System shall be paid out of the Police and Fire Retirement Fund.
- (e) The Board shall possess power to make all necessary rules and regulations for its guidance and shall have exclusive control of the administration and investment of the fund established for the maintenance and operation of the system, subject to the terms, conditions, limitations and restrictions hereinafter set forth. All funds received by the Board not required for current disbursements shall be invested in, but not limited to:
 - (1) Those investments of a character legal for banks in the State of California.
 - (2) Interest bearing obligations of the United States Government, any agency of the United States Government, any bank which is a member of the Federal Deposit Insurance Corporation, or any corporation whose bonds are eligible for investment by banks in the State of California.
 - (3) Common stocks provided that:
 - a. The Board shall make investment decisions regarding such investments in accordance with the prudent person standard as defined by applicable court decisions and as required by the California Constitution.
 - b. Such stock is registered on a national securities exchange, as provided in the "Securities Exchange Act of 1934" as amended. Such registration shall not be required with respect to the following stocks:
 - 1. The common stock of a bank which is a member of the Federal Deposit Insurance Corporations and has capital funds, represented by capital, surplus, and undivided profits of at least fifty million dollars (\$50,000,000);
 - 2. The common stock of an insurance company which has capital funds, represented by capital, special surplus funds, and

- unassigned surplus of at least fifty million dollars (\$50,000,000).
- c. Not more than 2% of the book value of the invested funds of the retirement system may be invested in common stock of a single corporation.
 - d. The total number of shares held in any single corporation single corporation shall not exceed 5% of the issued and outstanding common shares of such corporation.
- (4) Shares of diversified management investment companies (Mutual Funds) provided that:
- a. The Board shall make investment decisions regarding such investments in accordance with the prudent person standard as defined by applicable court decisions and as required by the California Constitution.
 - b. Such diversified management investment companies shall be registered under the "Investment Company Act of 1940" and shall each have total assets of at least \$50,000,000.
- (5) Preferred stocks and securities convertible into common stocks, provided:
- a. That of the funds invested in such stocks or convertibles not more than 2% of the book value of the invested funds of the Retirement System may be invested in such stocks or convertibles of a single corporation; and
 - b. That the total number of such shares or convertibles held in any single corporation shall not exceed 5% of the issued and outstanding preferred stock or convertibles of such corporation; and
 - c. That the corporations in whose preferred stock or convertible securities the funds of the Retirement System are invested shall be only those whose common stock would qualify for investment of funds of the Retirement System under subsection 3 above; and
 - d. That such investments authorized by this subsection 5 does not exceed ten percent of the book value of the invested funds of the Retirement System.
- (6) F.H.A. mortgages, certificates and shares of state or federal chartered savings and loan associations if insured as defined in Title IV of the National Housing Act, provided that such investments shall not exceed fifteen percent of the book value of the invested funds of the Retirement System.
- (7) Equity or mortgage debt investments in existing real property or in property to be constructed, except that no mortgage investments may be funded until the improvements on the property are substantially complete. Such investments shall not exceed twenty percent of the book value of the invested funds of the Retirement Systems. The Board shall

obtain the opinion of competent real estate advisors that such investment is prudent and that it meets the current investment guidelines of the Board, before committing to make such investment, and provided:

- a. The Board is owner in fee title and/or a lease-hold in the real property and/or real property and improvements in and upon which such investment is to be made, with the exceptions of convertible and take-out loans and mortgage pool investments.
- b. Before making such an investment the Board shall appoint a qualified real property appraiser acceptable to the City Administrator who shall examine the property of the plans and specifications of any improvement proposed to be constructed and who shall determine and report to the Board whether the project in his the appraiser's opinion will have a fair rental value sufficient to return the investment together with interest over a period of time not to exceed 30 years.

In order to make the provisions of this section relating to the investment of retirement funds completely effective, the Board is authorized for investment purposes only to purchase, sell or lease real property or to enter into options therefor and when necessary for investment purposes to enter into contracts for the construction of buildings and may repair and maintain such property and do any and all things necessary to protect the investment including, but not limited to, purchasing insurance against the loss of the property or the loss of use and occupancy of the property. It may also take any other action necessary to carry out the investment provisions of this section. In the construction of buildings, the Board shall follow, substantially and insofar as applicable, the procedure and limitations prescribed by law for the construction of buildings by the City of Oakland.

The Board may secure from competent investment counsel, not a member of the Board, such counsel and advice as to investing the funds of the Retirement System as it deems necessary. Discretionary powers granted such investment counsel will be at the option of the Board. The Board shall pay for such counsel and advice such compensation as it deems reasonable, payable from Retirement System funds.

The City Treasurer shall be the custodian of the Retirement Fund, subject to the exclusive control of the Board as to the administration and investment of said fund. All payments from the said fund shall be made by the Finance Director as authorized by the Board. All demands against said fund shall be presented, audited and paid as provided in the Charter of the City. Interest on any cash and on any investments constituting a part of the said fund shall be paid into said fund as received. Except as herein provided, no member and no employee of the Board, shall have any interest, direct or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of said Board, directly or indirectly, for ~~himself/herself~~ themselves or as an agent or partner of others, shall borrow any of its funds or deposits or

in any manner use the same except to make such current and necessary payments as are authorized by said Board; nor shall any member or employee of said Board become an endorser or surety or become in any manner an obliger for moneys invested by the Board.

- (f) Board shall have such additional power and authority as is conferred by Section 20* of this Charter.
- (g) If any section, word, clause or provision of this Article shall be held unconstitutional, the remaining sections, clauses, words or provisions thereof shall not be affected thereby. All the provisions of this Article are to be liberally construed.

* This reference is to the Section or Article so designated in the former Charter.

SECTION 2602 (d)

Section 2602(d). The morality, service, and other tables and the City's members' rates of contribution with respect to persons who become members of the Police or Fire Department after the effective date of this Article, as recommended by the actuary and the valuations determined by ~~him~~ the actuary and approved by the Retirement Board shall be conclusive and final, and the Retirement System shall be based thereon.

SECTION 2603

Section 2603. The Board may and in disputed matters shall hold public hearings in all proceedings pertaining to retirement and to the granting of retirement allowances, pensions, and death benefits. Notice of the time and place of such hearing shall be given in writing to the member or dependents affected thereby either by personal service of a copy of said notice or by depositing a copy thereof in the United States Mail postage prepaid addressed to the member or dependents affected thereby at ~~his~~ the member's or their dependents' last known address at least five (5) days prior to said hearing. Proof of said service must be made at said hearing. The member or dependents affected thereby shall be entitled to appear personally at said hearing and to have counsel.

SECTION 2604

Section 2604. A rehearing in any matter may be applied for by filing a written petition for rehearing with the Secretary of the Board within ninety (90) days after mailing of notice by registered mail to the interested party or ~~his~~ their attorney, of the rendition of any order or decision of the Board. The Board shall grant or deny such petition within forty (40) days from the filing thereof, provided that the time so limited may be extended by the Board for not to exceed forty (40) additional days. If a hearing is granted, the same shall be heard within forty (40) days after the rendition of the order granting the same. At such rehearing additional evidence not produced at the original hearing may be introduced. The petition must designate the grounds upon which it is based.

SECTION 2607

Section 2607. The following words and phrases, as used in this Article, unless a different meaning is plainly required by the context, shall have the following meaning:

"Retirement allowance," "Death allowance," or "allowance" shall mean equal monthly payments, beginning to accrue upon the date of retirement, or upon the day following the date of death, as the case may be, and continuing for life, unless a different term of payment. is definitely provided by the context.

"Compensation" as distinguished from benefits under the Labor Code of the State of California, shall mean the monthly remuneration payable in cash, by the City, without deduction, for time during which the individual receiving such remuneration is a member of the Police or Fire Department, but excluding remuneration paid for overtime and for special details or assignments as provided in Sections 91 and 97* of the Charter.

"Benefit" shall include "retirement allowance," "death allowance," "allowance," and "death benefit."

"Compensation attached to the average rank held" shall mean the compensation attached to the lowest rank held during the three years immediately preceding retirement plus one thirty-sixth (1/36) of the difference between it and the compensation attached to any higher rank held during that period of each month, and fraction thereof, the higher rank was held.

For the purposes of the Retirement System established by this Article, the terms "member of the Police or Fire Departments," "member of the Department," "member of the System," or "member" shall mean any regularly appointed member of the Police or Fire Department of the City of Oakland who became members of the Retirement System established by this Article, prior to July 1, 1976, ~~including matrons or substitute matrons of the City Prison and emergency patrolmen and horsemen.~~

"Retirement System" or "System" shall mean the Police and Fire Retirement System established by this Article.

"Charter" shall mean the Charter of the City of Oakland.

"Interest" shall mean interest at the rate adopted by the Retirement Board.

"Retirement Board," or "Board" shall mean the Police and Fire Retirement Board created by this Article.

"Children" shall include, with respect to service retirement, children adopted at least five (5) years prior to retirement, and with respect to disability retirement and death before retirement, children adopted at any time prior to such retirement or death.

Words used in the masculine gender shall include the feminine and neuter genders; singular numbers shall include the plural, and the plural the singular, and wife shall include husband, and widow shall include widower.

"Accumulated contributions" shall mean contributions made by the member since May 3, 1943, plus credited interest.

* This reference is to the Section or Article so designated in the former Charter.

SECTION 2608

Section 2608.

- (a) Any member of the Police or Fire Department who completes at least ten (10) years of service in the aggregate (said service to be computed under Section 2609) may retire at ~~his~~ their option on or after the twenty-fifth (25th) anniversary of ~~his~~ their date of employment. Said member shall receive a retirement allowance equal to twenty percent (20%) of the compensation attached to the average rank held during the three (3) years immediately preceding such retirement, plus an additional allowance at the rate of two percent (2%) for each additional year of service beyond ten (10) years, not to exceed a period of an additional ten (10) years.
- (b) Any member of the Police or Fire Department who completes at least twenty (20) years of service in the aggregate (said service to be computed under Section 2609), regardless of age, may retire at ~~his~~ their option. Said member shall receive a retirement allowance equal to forty percent (40%) of the compensation attached to the average rank held during the three (3) years immediately preceding such retirement, plus an additional allowance at the rate of two percent (2%) for each additional year of service beyond twenty (20) years, not to exceed a period of an additional five (5) years.
- (c) Any member of the Police or Fire Department who completes at least twenty-five (25) years of service in the aggregate (said service to be computed under Section 2609), regardless of age, or any member who completes at least twenty (20) years of service in the aggregate at or after attaining the age of fifty-five (55) years, may retire for service at ~~his~~ their option.
- (d) Members shall be retired on the first day of the month next following the attainment by them of the age of sixty-five (65) years. Any such member who attains the age set forth in the preceding sentence as the compulsory age of retirement during any twelve (12) months, prior to the beginning of the twelve (12) months, shall be retired on the first day of the twelve (12) months.
- (e) A member retired after meeting the requirements of paragraphs (c) or (d) next preceding, shall receive a retirement allowance equal to fifty percent (50%) of the compensation attached to the average rank held during the three (3) years immediately preceding such retirement, plus an additional allowance at the rate of one and two-thirds percent (1- $\frac{2}{3}$ %) of said compensation for each year of service rendered after July 1, 1951, and after qualifying for service retirement, not to exceed ten (10) years. A member required to retire under

paragraph (d) next preceding before completing twenty (20) years of service in the aggregate computed under Section 2609, shall receive a retirement allowance which bears the same ratio to the retirement allowance which said member would receive if ~~he~~ they were entitled to be credited with twenty (20) years of service, as the service with which ~~he is~~ they were entitled to be credited, bears to twenty (20) years.

- (f) Upon the death of member after qualification for service retirement, or after retirement for service or because of disability, and if death shall result from other cause than injury received in or illness caused by the performance of duty, two-thirds ($\frac{2}{3}$) of the retirement allowance to which the member would have been entitled if ~~he~~ they had retired for service at the time of death, or two-thirds ($\frac{2}{3}$) of the retirement allowance as it was at death, as the case may be, shall be continued, regardless of the age of the surviving spouse ~~widow~~, to the dependents of the member in the order of succession as defined in Section 2612, provided that if retirement was for injury received in or illness caused by the performance of duty and if death occurs prior to the date upon which the member would have qualified for service retirement, the allowance continued shall be reduced upon said date in the same manner as it would have been reduced had the member not died.
- (g) After having qualified for service retirement under the provisions of paragraph (a) of this section, a member shall be entitled to retire at any time thereafter and nothing shall deprive said member of said right.
- (h) The age of a member which was accepted for appointment to the Police or Fire Department shall be admissible in evidence as prima facie proof of ~~his~~ their age for retirement purposes.
- (i) If, at the date of retirement for service or disability, said member has no ~~wife~~ surviving spouse, children or dependent parents, who would qualify for the continuance of the allowance after the death of said member, or with respect to the portion of the allowance which would not be continued, regardless of dependents, a member retired under this Article may elect, before the first payment of the retirement allowance is made, to receive the actuarial equivalent of ~~his~~ their allowance or the portion which would not be continued, regardless of dependents, as the case may be, partly in a lesser amount to be received by ~~him~~ them throughout ~~his~~ their life, and partly in other benefits payable after ~~his~~ their death to another person or persons, provided that such election shall be subject to all of the conditions prescribed by the Council to govern similar election by members of the Oakland Municipal Employees' Retirement System.
- (j) The retirement allowances payable pursuant to this section are subject to the limitations provided by Section 2620. This subsection shall be null and void and without further effect should the United States Internal Revenue Code Section 415 be amended to exempt municipal pension plans from the stated benefit limitations.

SECTION 2609

Section 2609. The following time and service shall be included in the computation of the service to be credited to a member for the purpose of qualification for retirement and death benefits and for calculation of retirement benefits:

- (1) Time during and for which said member received compensation as a member of the Police or Fire Department prior or subsequent to the effective date of this Article, including all such time said member was unable to perform ~~his~~ their duties by reason of injury or sickness from any cause.
- (2) Time during which said member was absent by reason of service with the armed forces of the United States either during a war involving the United States as a belligerent, or in any other National Emergency and for six (6) months thereafter and who is not dishonorably discharged or released therefrom.
- (3) Any police or fire service outside the limits of the City of Oakland performed by a member of the Police or Fire Department and under orders of a superior officer of such member, shall be considered as city service and any disability or death resulting therefrom shall be considered as received in and arising out of the performance of duty.

SECTION 2610 (b)

Section 2610(b). Any member of the Police or Fire Department who is incapacitated for the performance of duty for any cause not included in the provisions of the preceding paragraph (a) and who shall have completed at least five (5) years of service in the aggregate, shall be retired upon a retirement allowance calculated under Section 2608, if ~~he has~~ they have attained the age of fifty-five (55) years, otherwise upon a retirement allowance equal to one and one-half percent (1-½%) of the compensation attached to the average rank held by such member during the three (3) years next preceding such retirement for each year of service, provided that said retirement allowance shall not be less than thirty-three and one-third percent (33-⅓%) of said compensation. The question of retiring a member under this section may be brought before the Board on the Board's own motion, by recommendation of the City Administrator or by petition of said member or ~~his~~ their guardian.

SECTION 2611

Section 2611. If a member of the System shall die before or after retirement by reason of an injury received in, or illness caused by or arising out of the performance of duty, an allowance shall be paid to the dependents of such member in the order of succession established by Section 2612, in the following amount:

- (1) If the member at the time of death was qualified for service retirement but had not retired, the allowance shall be equal to the retirement allowance which the member would have received if ~~he~~ they had retired for service on the date of death, but such allowance shall not be less than one-half (½) of the compensation attached to the rank held by such member at the time of ~~his~~ their death.

- (2) If death occurs prior to qualification for service retirement, the allowance shall be equal to one-half (½) of the compensation attached to the rank held by such member at the time of death.
- (3) If death occurs after retirement, the allowance shall be equal to the retirement allowance of the member, except that if retirement was for disability due to performance of duty, and if death occurred prior to the date upon which the member would have qualified for service retirement, the allowance shall be reduced upon said date in the same manner as it would have been reduced had the member not died. If retirement was for disability not due to performance of duty, the allowance shall not be less than one-half (½) of the compensation attached to the average rank held by the member during the one (1) year immediately preceding retirement.
- (4) The allowance provided for in paragraphs (1) and (2) immediately preceding, if payable to the ~~widow~~ surviving spouse of such member, shall be increased while there are children of such member as provided in Section 2612.
- (5) The ~~widow~~ surviving spouse of such member shall be eligible to receive the allowance provided for in this section without regard to the time of ~~her~~ their marriage to such member; provided that in the event the death of such member shall occur after retirement, such marriage shall have occurred at least one year prior to retirement.

SECTION 2612

Section 2612.

- (1) In cases in which a benefit is payable to the dependent of a deceased member under the provisions of this Article, such benefit shall be payable to the family of such member in the following order of succession:
 - (a) To the surviving spouse of such member as long as ~~he or she~~ they shall not remarry prior to January 1, 1985, provided that, if death occurred after retirement, the surviving spouse shall have been married to the decedent at least one (1) year prior to the member's retirement; and provided further that in the event such decedent leaves a surviving child or children and if death occurred prior to retirement, an additional amount shall be paid to such surviving spouse during the lifetime of each child until said child shall have married or attained the age of eighteen (18) years as follows: For one child, twenty-five percent (25%) of the allowance provided for in this Article; for two children, forty percent (40%) of such allowance, and for three or more children fifty percent (50%) of such allowance, provided that the aggregate payments to the surviving spouse under this section shall not exceed seventy-five (75%) percent of the compensation attached to the rank held by the decedent at the time of ~~his or her~~ their death. Upon a remarried spouse's death, the member's retirement allowance shall cease unless there are eligible children.

- (b) In the event the decedent shall not leave surviving an eligible spouse to receive said allowance, but shall leave a child or children under the age of eighteen (18) years, or should the decedent leave an eligible spouse and a child or children under the age of eighteen (18) years and the spouse dies while said child or children are yet under the age of eighteen (18) years, then the retirement allowance is payable to such child or children collectively until the youngest child attains the age of eighteen (18) years, provided that no child shall receive any such allowance after attaining the age of eighteen (18) years or marrying.
 - (c) In the event the decedent shall leave ~~surviving him~~ no eligible ~~widow~~ surviving spouse, child or children but shall leave a parent or parents dependent on said member for their support, then to such parent or parents collectively in an amount or amounts to be determined by the Board in the proportion that the degree of support furnished by decedent bears to the allowance which would have been payable to an eligible ~~widow~~ surviving spouse of such decedent.
- (2) In the event a deceased member leaves no dependents qualified to receive an allowance, there shall be payable a death benefit as follows:
- (a) If death occurs before retirement, a sum equal to the member's accumulated contributions in the Fund plus an amount equal to one-twelfth (1/12th) of the annual compensation attached to the rank held by such member at the time of death for each completed year of service as a member at the time of death for each completed year of service as a member of the Police or Fire Department, not to exceed six (6), to ~~his~~ their designated beneficiary, and if none, then to the estate of such member.
 - (b) If death occurs after retirement, then the sum of One Thousand Dollars (\$1,000.00) to the beneficiary designated by such member, or if none, then to the estate of such decedent.

SECTION 2615

Section 2615.

- (1) No member of the System who is retired for service or disability under this Article shall hold an elective or appointive position in the service of the City of Oakland, including membership on Boards or Commissions, except that retired members of the Police and Fire Departments may serve on the Police and Fire Retirement Board as provided in Section 2601, nor shall any such person receive any payment for service rendered to the City, provided that service such as an election officer or juror shall not be affected by this section.

Notwithstanding any other provision of this section 2615 or this City Charter, retired members of the System may hold employment with the City pursuant to a Deferred Retirement Option Plan ("DROP") authorized by the City. DROP shall mean a program

under which, after the effective date of a System member's retirement, (1) ~~he/she continues~~ they continue to work for the City (a) for a period of time prescribed by the City and (b) in the position and assignment determined by the City in its sole judgment and discretion; (2) neither the City nor the System member makes retirement contributions; (3) the System member receives no service credit for the period of time ~~he/she is~~ they are employed by the City; and (4) the System member's monthly retirement allowances are paid into a fund established by PFRS until the member terminates ~~his/her~~ their City employment. DROP is intended to encompass all types of DROP programs.

- (2) Retired members of the System or dependents of such members under the provisions of this Article shall not be subject to residence requirements.

SECTION 2617 (b)

Section 2617(b). Where the member does not qualify under the provisions of paragraph (a) next preceding, one-twelfth (1/12th) of the annual compensation attached to the rank held by the member at the time of ~~his~~ their death, for each completed year of service in the Police or Fire Department, not to exceed six (6), plus the accumulated contributions of such member in the Fund, said aggregate sum to be payable to the dependents of such member pursuant to the order of succession established by Section 2612.

SECTION 2618

Section 2618.

- (a) Should a member of the System cease to be a member of the Police or Fire Department through any cause other than death or retirement prior to completing ten (10) years of service, the member's contributions, plus interest thereon credited in accordance with Section 2602(a), shall be refunded to such member.
- (b) Should a member of the System cease to be a member of the Police or Fire Departments after completing at least ten (10) years of service, said member may withdraw ~~his~~ their contributions, plus interest thereon credited in accordance with Section 2602(a) from the fund at any time provided such person is not then an active member of the Police or Fire Department, but such person will not be entitled to a retirement allowance unless ~~he is~~ they are a member who has redeposited in the Fund in accordance with subsection (c) below and who has complied with the requirements of Section 2608.
- (c) If any person who has been refunded ~~his~~ their contributions under paragraph (a) preceding, or who has withdrawn ~~his~~ their contributions under paragraph (b) preceding shall subsequently become a member of the Police or Fire Department, ~~he~~ they shall redeposit in the Fund in a manner to be determined by the Board, the amount so refunded or withdrawn plus interest from the date of the refund or withdrawal to the date of the redeposit, in which event said member shall be entitled to credit for all service rendered prior to withdrawal as such member.

SECTION 2619

Section 2619. All payments provided for or on account of persons who are members under this Article and for or on account of persons who remain as members or who have been members of the Funds under Articles XIV and XV, shall be made from funds derived from the following sources, plus interest earned on said funds.

- (1) The normal rate of contribution of each member who exercised the option in Section 2600 shall be five and one-half percent (5-1/2%). The normal rate of contribution of each person who became a member of the Police or Fire Department after the effective date of this Article and prior to July 1, 1976, shall be based on ~~his~~ their age taken to the next lower completed quarter year, at the date ~~he becomes~~ they become a member of the Police or Fire Department, and shall be such as, on the average for each such member, will provide, assuming service without interruption, one-fourth (1/4) of that portion of the service retirement allowance to which ~~he~~ they would be entitled, without continuance to dependents, upon first qualifying for retirement under Section 2608, and assuming the contribution to be made from the date of ~~his~~ their entrance into the Police or Fire Department. Provided that said members' contribution rates shall never decrease below the table of members' contribution rates in effect as of January 1, 1971, and provided further that no member's contribution rate shall exceed thirteen percent (13%) so long as no improvements in the members' benefits occur after July 1, 1976.
- (2) The dependent rate of contribution of each person who becomes a member of the Police or Fire Department after the effective date of this Article, shall be such as, on the average for such member, will provide, assuming service without interruption, and upon ~~his~~ their first qualifying for service retirement under Section 2608, one-fourth (1/4) of the portion of ~~his~~ their allowance which is to be continued under Section 2608, after ~~his~~ their death and throughout the life of a surviving wife whose age at said death is three years less than the age of said member, or, as the case may be, a surviving husband whose age at said death is three years more than the age of said member. The dependent rate of contribution of each member who exercises the option in Section 2600, shall be one and one-half percent (1-1/2%). If at the date of retirement for service or retirement for disability, said member has no ~~wife~~ surviving spouse who would qualify for the continuance of the allowance ~~to her~~ after the death of said member, the dependent contributions with accumulated interest thereon, shall be paid to ~~him~~ said member forthwith.
- (3) The normal rate of contribution of persons who remain members under Article XIV and XV shall be five percent (5%). Such rate shall be applied to compensation, on and after the effective date of this Article, as described in paragraph 4 of this section. Such persons shall not have dependent contribution rates.
- (4) There shall be deducted from each payment of compensation made to a member throughout ~~his~~ their membership, a sum determined by applying the member's normal and dependent rates of contribution to such compensation payment. Except for persons who remain members under Article XIV and

XV, the sum so deducted shall be accumulated with interest as set from time to time as provided in Section 2602(a). Such accumulated contribution shall be used to provide benefits for said members, or shall be paid to said member or ~~his~~ their estate or beneficiary as provided in this Article.

- (5) Members' contributions deducted from compensation earned prior to the effective date of this Article, and after May 3, 1943, shall not be considered in the determination of allowances, and shall be paid to the Retirement System, with interest, by the City when said accumulated contributions otherwise are payable to or on account of members by the Retirement System.
- (6) The City shall contribute to the Retirement System such amounts as may be necessary, when added to the contributions referred to in the preceding paragraphs of this Section, to provide the benefits payable under this Article and Articles XIV and XV. The City contributions made periodically during the year shall be such as when added to member contributions will actuarial fund all liabilities for all members prior to July 1, 1976, by July 1, 2026. Any fund established pursuant to the 1971 amendment to this subsection and implemented by Retirement Board Resolution No. 3968 which provided for payment of improved or additional benefits shall continue only for the purposes stated herein. Any monies held in such fund as of July 1, 1976, and any interest credited thereon pursuant to Section 2602(a) shall continue to be payable to members of this system as follows:
 - (a) For all individuals who received retirement allowances as of December 31, 1972, said allowance commencing January 1, 1973, shall be increased as follows:
 - (1) A computation of an additional one percent (1%) of the gross allowance due in December, 1972, shall be made for each said individual. Any additional monies added to the basic retirement allowance because of minor children under Charter Section 2612(a) shall not be included in the computation of said one percent (1%).
 - (2) The amount of each said December, 1972, one percent (1%) computation shall become a fixed, non-fluctuating amount which shall be added each month, commencing in January, 1973, to the retirement allowance of each said individual and to any continuation (and in the appropriate percentage to any partial continuation) of each said retirement allowance.
 - (b) For members of the System retiring after December 31, 1972, at the date of retirement, a computation of an additional five percent (5%) of the compensation attached to the average rank held by such member during the three (3) years next preceding said retirement shall be made for each individual retiring with at least twenty-five (25) years of service.

The amount of each said five percent (5%) computation shall become a fixed, non-fluctuating benefit amount which shall be added in monthly installments to the retirement

allowance of each said individual retiring or who is considered as retiring with at least twenty-five (25) years of service and to any continuation (and in the appropriate percentage to any partial continuation) of each said retirement allowance.

No additional monies from any source whatsoever shall be paid into said fund, and said fund shall cease to exist when the monies held payable for the aforementioned purposes are expended.

- (7) During the absence of a member by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent, or in any other National Emergency and for six (6) months thereafter, and who is not dishonorably discharged or released therefrom, the City shall contribute for and on behalf of such member, amounts equal to the contributions which would have been made by such member and by the City to the Police and Fire Retirement Fund if ~~he~~ they had not been so absent. The contributions made by the City pursuant to the provisions of this paragraph in lieu of contributions which the member otherwise would have made, shall be made available only for the purpose of retirement and death after the completion of ten (10) years of service in the aggregate, and in the event of the resignation or dismissal of said member from service as a member of the Police or Fire Department prior to qualifying for service retirement, or in the event of the death of such member from causes not arising out of the performance of duty prior to the completion of ten (10) years of such service, any withdrawal of accumulated contributions by such member or any death benefit payable by reason of such death shall include only that portion of the accumulated contributions actually made by such member. For the purposes of this Article, a war involving the United States as a belligerent exists: (a) whenever Congress has declared war, and peace has not been formally restored; (b) whenever the United States is engaged in active military operations against any foreign power, whether or not war has been formally declared; or (c) whenever the United States is assisting the United Nations, in actions involving the use of armed force, to maintain or restore international peace and security.

* Articles XIV (Police Relief and Pension Fund) and XV (Firemen's Relief and Pension Fund) are deleted because these retirement systems were combined in Article XXVI (Police and Fire Retirement Fund) and are obsolete. The provisions of Articles XIV and XV are available for reference in the Charter as it was adopted in 1968.

; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter amendment, and said date shall be posted by Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed Charter amendment in the manner provided for by law; and be it

FURTHER RESOLVED: That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the next municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the next municipal election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California