

ORDINANCE #67963
Board Bill No. 521

An Ordinance pertaining to the Employees Retirement System of the City of St. Louis (the "Retirement System") repealing the following: Subsection 6 of Section Six; Section Eight; Paragraph B of Subsection 1 of Section Nine; Subsection 6 of Section Nine; Paragraph A of Subsection 7 of Section Nine; and Subsection 6 of Section Ten of Ordinance No. 66511 and enacting new provisions related to the same subject matter; amending Section Seven, Section Nine, and Section Sixteen of Ordinance No. 66511 enacting new provisions related to the same subject matter; repealing Subsection 10 of Section Fourteen of Ordinance 66511; authorizing and directing the Board of Trustees of the Retirement System to seek a "Qualified Status" determination letter from the Internal Revenue Service and to adopt regulations related thereto; and containing a severability clause.

WHEREAS, the City of St. Louis, Missouri (the "City") established the Retirement System by City ordinance effective April 1, 1960 pursuant to that state statute currently codified as Section 95.540 of Missouri Revised Statutes 2000, as amended, in order to provide for the pensioning of certain City employees and the employees of certain other governmental entities providing services to the inhabitants of the City;

WHEREAS, the Internal Revenue Service, an agency of the federal government, has determined that the Retirement System meets the applicable requirements of a "Qualified Plan" as defined by the Internal Revenue Code of 1986, as amended, (the "IRC") and is in compliance with the applicable provisions and requirements of IRC Section 401(a) in order for the Retirement System to maintain its income tax exempt status and for certain of its beneficiaries to obtain favorable income tax treatment for certain "Qualified Distributions," as defined by the IRC, from the Retirement System pursuant to the Deferred Retirement Option Plan ("DROP") provided by Section Twelve of Ordinance No. 66511 and any return of Accumulated Contributions pursuant to Section Ten of Ordinance No. 66511;

WHEREAS, the City is required to make certain changes to the City ordinances governing the Retirement System in order to maintain the Retirement System's status as a Qualified Plan;

WHEREAS, the City and the Retirement System have determined that it is in the best interest of the City and the Retirement System to maintain the Retirement System's status as a Qualified Plan; and

WHEREAS, the Board of Trustees of the Retirement System with the concurrence of the City Counselor has established and funded a position for an in house legal counsel to the Retirement System.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS, MISSOURI AS FOLLOWS:

SECTION ONE. Subsection 6 of Section Six of Ordinance No. 66511 of the City of St. Louis, Missouri (the "City") is hereby repealed and enacted in lieu thereof is the following:

6. Military Service.

Effective December 12, 1994, absence from employment with an "Employer" (as defined in Subsection 12 of Section Four of Ordinance 66511) because of "Qualified Military Service" (as defined in Subsection 21 of Section Four of Ordinance 66511) shall be considered a leave of absence granted by the Employer, provided the Employee returns to active employment with his or her Employer within the period of time during which he or she has reemployment rights under any applicable federal law or within 90 days from and after discharge from such military service if no federal law is applicable and such service shall be included in "Creditable Service" (as defined in Subsection 8 of Section Four of Ordinance 66511). Notwithstanding any provision of this Ordinance to the contrary, contributions, benefits and Creditable Service with respect to Qualified Military Service will be provided in accordance with Section 414(u) of the Internal Revenue Code of 1986, as amended (the "IRC") and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

SECTION TWO. Section Sixteen of Ordinance No. 66511 is hereby amended, the following is enacted as a new subsection thereof:

9. Forfeitures.

As provided in IRC Section 401(a)(8), forfeitures of benefits arising from a severance of employment, death, or

for any other reason, must not be applied to increase the benefits any "Member" (as defined in Subsection 16 of Section Four of Ordinance 66511) would otherwise receive from Employees Retirement System of the City of St. Louis (the "Retirement System"). However forfeitures may be used to reduce administrative expenses and fund currently existing benefits.

SECTION THREE. Section Nine of Ordinance 66511 is hereby amended; the following is enacted as a new subsection thereof:

8. Automatic Rollovers.

If on or after March 28, 2005, the Retirement System provides for mandatory distribution of Eligible Rollover Distributions, as defined in Subparagraph (i) of Paragraph B of Section Eight of this Ordinance, with a present value greater than \$1,000, and if a Member does not elect to have such distribution paid directly to an eligible retirement plan specified by Member in a direct rollover or to receive the distribution directly, then the Retirement System will pay the distribution in a direct rollover to an individual retirement plan designated by the Board of Trustees of the Retirement System (the "Board of Trustees") in accordance with IRC Section 401(a)(31)(B) and IRS Notice 2005-5.

SECTION FOUR. Subsection 6 of Section Nine of Ordinance No. 66511 is hereby repealed and enacted in lieu thereof is the following:

6. Commencement of Benefits and Minimum Required Distributions. Effective on and after January 1, 2003, the Retirement System will pay all benefits in accordance with the requirements of IRC Section 401(a)(9), including the incidental death benefit requirement in IRC Section 401(a)(9)(G), the regulations under that section, and the good faith compliance standard for governmental plans under the Pension Protection Act of 2006 with regard to IRC Section 401(a)(9). For this purpose, and notwithstanding any other provisions of this Ordinance or Ordinance 66511, the Member's "required beginning date" is the later of (i) April 1 of the calendar year following the calendar year in which the Member reaches 70-1/2 years of age, or (ii) April 1 of the calendar year following the calendar year in which the Member terminates employment. If a Member fails to apply for retirement benefits by the "required beginning date," the Retirement System will notify the Member, and if necessary, utilize a federal forwarding program to notify any Member the Retirement System is unable to locate of the required minimum distribution.

SECTION FIVE. Section Seven of Ordinance No. 66511 is hereby amended, the following is enacted as a new subsection thereof:

5. The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated "Beneficiary" (as defined in Subsection 3 of Section Four of Ordinance 66511) or over another period under an option offered in Subsection 4 of Section Six of this Ordinance (in accordance with federal regulations).

SECTION SIX. Section Eight of Ordinance No. 66511 is hereby repealed and enacted in lieu thereof is the following:

DEATH BENEFITS.

1. In Service Death of Member Eligible for Early Service Retirement Pension.

If the death of a Member occurs after his or her Early Service Retirement Date but prior to his or her actual retirement, his or her Spouse shall receive a pension as if he or she had retired on the day of his or her death and elected benefits under the option in Subsection 4(A) of this Section Eight. Such benefit must be distributed (in accordance with federal regulations) over the life of the Surviving Spouse, with the distributions beginning by December 31 of the calendar year following the calendar year of the Member's death.

2. In Service Death of Member before Early Service Retirement Date.

If the death of a Member occurs after completion of five (5) years of Creditable Service but prior to his or her Early Service Retirement Date, his or her Spouse shall receive a pension on the date the deceased Member would have reached his or her Early Service Retirement Date. Such pension shall be determined as if the Member had

reached his or her Early Service Retirement Date and elected benefits under the option in Subsection 4(A) of this Section Eight. Such benefit must be distributed (in accordance with federal regulations) over the life of the Surviving Spouse with the distribution beginning on the date the Member would have attained his or her Early Service Retirement Date.

3. Pre-retirement Death Benefit Coverage for Spouse and Beneficiary of Terminating Member.

Within six (6) months of termination of employment, a Terminated Member, who has completed at least five (5) years of Creditable Service, may elect a joint and survivor annuity death benefit for his or her Surviving Spouse or ten (10) year certain and life annuity death coverage as described in Subsection 4 of this Section Eight. Such election shall remain in full force and effect until the date of the Terminated Member's death, reemployment by an Employer, or revocation of such election. The retirement and survivor benefits of a Terminated Member who elects survivor coverage under this Subsection (Subsection 3 of Section Eight) shall be reduced by a survivor reduction percentage per year or portion thereof in which the Surviving Spouse or ten (10) year certain Beneficiary death benefit coverage was in effect prior to the Terminated Member's date of death. If a Terminated Member fails to elect survivor coverage pursuant to this Subsection, no survivor benefits shall be paid. For purposes of this Subsection, "Surviving Spouse" shall be the Spouse who was legally married to the Terminated Member on such Terminated Member's date of death and who survived such Terminated Member's death. Survivor benefits under this Subsection shall be paid as follows:

- A. If the death of such Terminated Member occurs after he or she would otherwise be entitled to retire under the Retirement System, such Member's Surviving Spouse, or ten (10) year certain designated Beneficiary, shall receive a pension as if the Terminated Member had retired on the day of his or her death and elected benefits under the Surviving Spouse or ten (10) year certain option in Subsection 4 of this Section Eight, subject to the survivor reduction percentage provided in this Subsection. Such benefit will begin (in accordance with federal regulations) by December 31 of the calendar year following the calendar year of the Member's death.
- B. If the death of a Terminated Member occurs prior to his or her Early Service Retirement Date, but the Terminated Member has a current election for survivor coverage under this Subsection designating his or her Surviving Spouse, the Surviving Spouse shall receive a pension commencing (in accordance with federal regulations) on the date the deceased Member would have reached his or her Early Service Retirement Date. Such pension shall be determined as if the Member had reached his or her Early Service Retirement Date and elected benefits under the option in Subsection 4 of this Section Eight, subject to the survivor reduction provided in this Subsection.
- C. If the death of a Terminated Member occurs prior to his or her Early Service Retirement Date, but the Terminated Member has a current election for survivor coverage under this Subsection designating a ten (10) year certain Beneficiary other than his or her Surviving Spouse, his or her designated Beneficiary shall receive a reduced pension commencing (in accordance with federal regulations) no later than December 31 of the calendar year following the calendar year of the Member's death. Such pension shall be determined as if the Member had reached his or her Early Service Retirement Date and elected benefits under the option in Subsection 4 of this Section Eight, subject to the survivor reduction provided in this Subsection. Such pension shall be subject to additional reductions necessary for actuarial equivalency, determined using an interest rate of seven and seventy-five hundredths percent (7.75%).

4. Post Retirement Death Benefit.

Upon application for service or disability retirement, a Member or former Member may elect, prior to his or her Service Retirement Date or disability retirement date, to receive a reduced pension payable in one of the benefit payment forms as specified herein. Monthly payment of the retirement pension shall commence on the Member's applicable retirement date and shall continue as provided below:

- A. "Joint and survivor annuity" shall mean an actuarially reduced pension payable for the life of the Member and continuing on and after the Member's death to his or her Spouse, for such Spouse's life. The amount of the monthly pension payable to the Surviving Spouse shall be an amount equal to one

hundred percent (100%) of the monthly pension payable to the Member; or

- B. "Ten (10) year certain and life annuity" shall mean a monthly pension for the life of the Member, but in no case less than one hundred and twenty (120) monthly payments. If the Member dies before one hundred and twenty (120) monthly payments have been paid to him or her, payment of such monthly payments will continue to be paid to the Member's ten (10) year certain Beneficiary until a total of one hundred and twenty (120) payments have been made to the Member and his or her ten (10) year certain Beneficiary.
- C. If a Member elects one of the above optional benefit payment forms (in accordance with federal regulations), the amount of the retirement pension under such other form shall be the Actuarial Equivalent determined on the date such pension is to commence. If the Member fails to make an election, no optional form of benefits will be paid. If a Member dies after the required distribution of benefits has begun, the remaining portion of the Member's interest must be distributed at least as rapidly as under the method of distribution before the Member's death.

SECTION SEVEN. Subsection 6 of Section Ten of Ordinance No. 66511 is hereby repealed and enacted in lieu thereof is the following:

- 6. Purchase of Additional Pension Income in Lieu of Benefits.

A Member or Surviving Spouse having regular Accumulated Contributions and interest thereon due at time of retirement may elect to use this sum to purchase additional pension income based on the interest rate, mortality, and other actuarial tables adopted by the Board of Trustees, which are considered to be a part of the Retirement System plan document. The life expectancy of a Member or the Member's Spouse (as defined in Subsection 25 of Section Four of Ordinance No. 66511) or Beneficiary will not be recalculated after the benefits commence for purposes of determining benefits.

SECTION EIGHT. Paragraph B of Subsection 1 of Section Nine of Ordinance No. 66511 is hereby repealed and enacted in lieu thereof is the following:

- B. For purposes of this section the following terms mean:

- (i) Eligible Rollover Distribution: An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the "Distributee" (as defined below), except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under IRC Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in IRC Section 408(a) or (b) or to a Qualified Defined Contribution Plan described in IRC Section 401(a), or to a Qualified Plan described in IRC Section 401(a) or to a Qualified Plan described in IRC Section 403(a), or on or after January 1, 2007, to a Qualified Defined Benefit Plan described in IRC Section 401(a) or to an annuity contract described in IRC Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.
- (ii) Eligible Retirement Plan: An "Eligible Retirement Plan" is:
 - (a) effective January 1, 2002, a plan eligible under IRC Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan from the Retirement System,

- (b) an individual retirement account described in IRC Section 408(a),
 - (c) an individual retirement annuity described in IRC Section 408(b),
 - (d) an annuity plan described in IRC Section 403(a),
 - (e) effective January 1, 2002, an annuity contract described in IRC Section 403(b),
 - (f) A qualified trust described in IRC Section 401(a), that accepts the Distributee's Eligible Rollover Distribution, or
 - (g) Effective January 1, 2008, a Roth IRA described in IRC Section 408A.
- (iii) Effective January 1, 2002, the definition of Eligible Rollover Distribution also includes a distribution to a Surviving Spouse.
 - (iv) Distributee: A "Distributee" includes an employee or former employee. It also includes the employee's or former employee's Surviving Spouse. Effective January 1, 2007, it further includes a nonspouse Beneficiary who is a designated beneficiary as defined by IRC Section 401(a)(9)(E). However, a nonspouse Beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
 - (v) Direct rollover: A "Direct Rollover" is a payment by the Retirement System to the Eligible Retirement Plan specified by the Distributees.

SECTION NINE. Paragraph A of Subsection 7 of Section Nine of Ordinance No. 66511 is hereby repealed and enacted in lieu thereof is the following:

- A. In no event shall a Member's annual benefit paid under the Retirement System exceed the amount specified in IRC Section 415(b) as adjusted for any applicable increases in the cost-of-living, as in effect on the last day of the Plan Year, and prior to January 1, 2003, including any increases after the Member's termination of employment.

SECTION TEN. Subsection 7 of Section Nine of Ordinance No. 66511 is hereby amended, the following is enacted as a new paragraph thereof:

- D. Effective on and after January 1, 2003, for purposes of applying the limits under IRC Section 415(b) (the "Limit"), the following will apply:
 - (i) a Member's applicable Limit will be applied to the Member's annual benefit in the Member's first limitation year without regard to any automatic cost of living adjustments under Subsection 2 of Section Nine of Ordinance No. 66511;
 - (ii) thereafter, in any subsequent limitation year, a Member's annual benefit, including any automatic cost of living increases under Section 2 of Section Nine of Ordinance No. 66511, shall be tested under the then applicable benefit Limit including any adjustment to the IRC Section 415(b)(1)(A) dollar limit under IRC Section 415(d), and the regulations thereunder; but
 - (iii) in no event shall a Member's benefit payable under the Retirement System in any limitation year be greater than the Limit applicable at the annuity starting date, as increased in subsequent years pursuant to IRC Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity, then the preceding provisions are applied by reducing the IRC Section 415(b) limit applicable at the annuity starting date to an actuarially equivalent amount [determined using the assumptions
 - (iv) specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional

benefits under the form of benefit.

SECTION ELEVEN. Subsection 10 of Section Fourteen of Ordinance 66511 is hereby repealed.

SECTION TWELVE. IRS FILING. The Board of Trustees is hereby authorized and directed to seek a favorable determination letter from the Internal Revenue Service (“IRS”) that the Retirement System continues to be a Qualified Plan. The filing required for this determination shall be made during the period beginning February 1, 2008, and ending January 31, 2009. The Board of Trustees is authorized to adopt rules or regulations and to take the actions to meet the requirements imposed by the IRS a part of this process.

SECTION THIRTEEN. SEVERABILITY. Each provision of this ordinance shall be severable. In the event any provision of this ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this ordinance are valid, unless the court finds the valid provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, the void provision(s) that it cannot be presumed that the Board of Aldermen would have enacted the valid provisions without the void one(s); or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Approved: March 17, 2008