

7/19/12

ORDINANCE NO. 28739

An ordinance amending Sections 40A-1, 40A-9, 40A-12, 40A-26, and 40A-33 of CHAPTER 40A, "RETIREMENT," of the Dallas City Code, as amended; revising the city of Dallas employees' retirement fund plan to comply with federal law, including changes relating to leased employees, actuarial assumptions, credited service for military active duty, direct rollovers, benefit limit adjustments, and vesting; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, on July 25, 2012, the board of trustees of the employees' retirement fund of the city of Dallas determined that the amendments to Chapter 40A, "Retirement," of the Dallas City Code contained in this ordinance are necessary to comply with federal law and recommended that the city council adopt such amendments, without voter approval, in accordance with and as authorized by Section 40A-35 of the Dallas City Code; Now, therefore,

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

SECTION 1. That Paragraph (21) of Section 40A-1, "Definitions," of CHAPTER 40A, "RETIREMENT," of the Dallas City Code, as amended, is amended to read as follows:

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

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

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

(C) such services are performed under the primary direction or control of the city [a person considered a leased employee under Section 414(n) or 414(e) of the Internal Revenue Code]."

SECTION 2. That Section 40A-9, "Actuarial Assumptions," of CHAPTER 40A, "RETIREMENT," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 40A-9. ACTUARIAL ASSUMPTIONS.**

When an actuarial assumption is required under this chapter, the following will apply:

(1) When determining the commuted value of future benefits under the fund, a 10 percent interest assumption must be used.

(2) When calculating service retirement pension benefits for a person who retires before age 50, a five percent interest assumption must be used.

(3) When calculating the cost of benefits under the fund, the following mortality tables must be used:

(A) 1965 Railroad Disabled Life Mortality Table, for disability retirement pension benefits; and

(B) 1984 Unisex Mortality Table, set back four years [~~for a female~~], for all benefits under the fund except disability retirement pension benefits.

(4) When calculating the limits under Section 415 of the Internal Revenue Code, the applicable mortality table and applicable interest rate determined by the United States secretary of the treasury and in effect at the time of the calculation must be used."

SECTION 3. That Section 40A-12, "Credited Service for Military Active Duty," of CHAPTER 40A, "RETIREMENT," of the Dallas City Code, as amended, is amended to read as follows:

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

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

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

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

(d) If a member dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code), the beneficiaries of the member are entitled to any additional benefits (other than benefits relating to the period of qualified military service) that would have been provided if the member had returned to service and then died."

SECTION 4. That Section 40A-26, "Direct Rollover," of CHAPTER 40A, "RETIREMENT," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 40A-26. DIRECT ROLLOVER.**

(a) This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions. In this section:

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

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

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

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

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

(A) ~~[tø]~~ the surviving spouse; or

(B) an alternate payee under a qualified domestic relations order who is a spouse or former spouse ~~[, an eligible retirement plan means an individual retirement account or individual retirement annuity]~~.

(3) DISTRIBUTE means:

(A) an employee or former employee;

(B) ~~[, —In addition,]~~ the employee or former employee's surviving spouse;

(C) an ~~[and the employee or former employee's spouse or former spouse who is the]~~ alternate payee under a qualified domestic relations order who is the employee or former employee's spouse or former spouse, but only ~~[, as defined in Section 414(p) of the Internal Revenue Code, are distributees]~~ with regard to the interest of the spouse or former spouse under the qualified domestic relations order; or

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

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

(5) DESIGNATED BENEFICIARY means an individual who is designated to receive an eligible rollover distribution."

SECTION 5. That Section 40A-33, "Compliance with Federal Tax Laws," of CHAPTER 40A, "RETIREMENT," of the Dallas City Code, as amended, is amended to read as follows:

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

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

(b) The total salary taken into account for any purpose for any member of the pension system may not exceed the limit imposed pursuant to Section 401(a)(17) of the Internal Revenue Code [~~\$200,000~~] for any year (\$360,000 for an eligible participant and \$245,000 [~~, or \$150,000 a year (\$200,000 for years beginning after 2001)~~] for an ineligible participant for 2009). These dollar limits shall be adjusted from time to time in accordance with guidelines provided by the United States secretary of the treasury. For purposes of this subsection, an eligible participant is a person who first became an active member before 1996, and an ineligible participant is a member who is not an eligible participant.

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

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

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

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

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

SECTION 6. That CHAPTER 40A of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 7. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

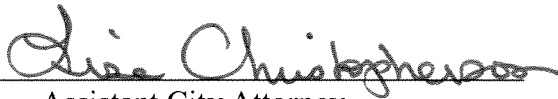
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SECTION 8. That this ordinance will take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By   
Assistant City Attorney

Passed AUG 08 2012

LC/DCC/00526A