

BILL NO. 23-2013

AN ORDINANCE

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF READING, BERKS COUNTY, PENNSYLVANIA, CHAPTER 1 ADMINISTRATION AND GOVERNMENT, PART 6 PENSIONS, B. FIREMEN'S PENSION FUND, SECTIONS 1-621 ET SEQ.

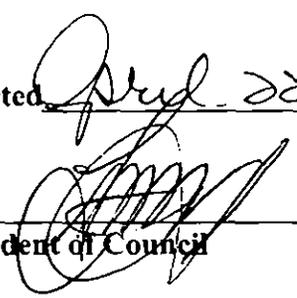
THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Code of Ordinances of the City of Reading, Berks County, Pennsylvania, Chapter 1 Administration and Government, Part 6 Pensions, B. Firemen's Pension Fund, Sections 1-621 et seq shall be and are hereby amended and shall hereafter be set forth as shown in Exhibit A attached hereto and made a part hereof.

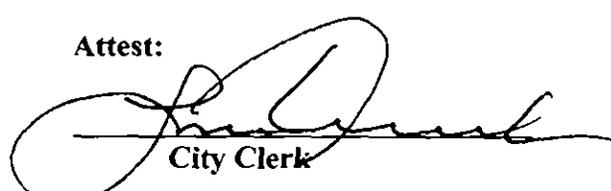
SECTION 2. All other items, parts, sections, etc. of the Code of Ordinances of the City of Reading, Berks County, Pennsylvania, Chapter 1 which are contrary to the amended sections attached as Exhibit A are hereby repealed; otherwise all other parts, sections, etc. of said Code and Chapter shall remain in effect unchanged and likewise are ratified.

SECTION 3. This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

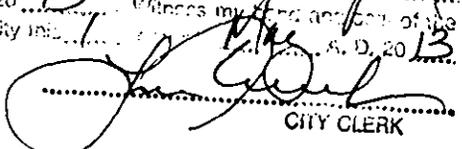
Enacted April 28, 2013

  
\_\_\_\_\_  
President of Council

Attest:

  
\_\_\_\_\_  
City Clerk

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify that the foregoing is a true and correct copy of the ordinance passed by the Council of the City of Reading, on the 28 day of April, A. D. 2013. Witness my hand and seal of the said City this 1 day of May, A. D. 2013.

  
\_\_\_\_\_  
CITY CLERK

Submitted to Mayor: [Signature]

Date: 4/23/13

Received by the Mayor's Office: [Signature]

Date: 4/23/13

Approved by Mayor: [Signature]

Date: 4/30/13

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

**City of Reading  
Firemen's Pension Fund**

**Effective January 1, 2012**

*Prepared by Hay Group  
100 Penn Square East  
Philadelphia, PA 19017*

PART 6  
PENSIONS

B. Firemen's Pension Fund.

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- §1-623. Board of Managers; Members, Term and Vacancy
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- §1-644. Deferred Retirement Option Program (DROP)
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- §1-649. Effective Date
- §1-650. Direct Rollovers
- §1-650.1. Maximum Permissible Benefits and Contributions – Code Section 415
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- §1.650.3. Miscellaneous

**PART 6  
PENSIONS**

**B. Firemen's Pension Fund.**

**§1-621. Definitions.**

As used in this Part 6B, the following words and phrases, unless a different meaning is plainly required by the context, shall have the following respective meanings:

**BOARD** - the Board of Managers of the Firemen's Pension Fund.

**BOARD ADMINISTRATOR** - the position designated by the board to act on behalf of the board in matters of day-to-day administration of the plan.

**CITY** - the City of Reading, Pennsylvania.

**CITY COUNCIL** - The City Council of the City of Reading, Pennsylvania.

**CODE** - the United States Internal Revenue Code, as amended, including reference, where applicable, to regulations and other guidance issued by the United States Department of Treasury and the Commissioner of the Internal Revenue Service.

**DEPARTMENT OF FIRE AND RESCUE** - the Department of Fire and Rescue of the City of Reading.

**DROP** - Deferred Retirement Option Plan.

**DROP ACCOUNT** - separate account created to accept DROP member's monthly pension check while an employee is a DROP member.

**EMPLOYEE** - a regularly salaried paid uniformed employee of the Department of Fire and Rescue.

**FUND** - Firemen's Pension Fund, established pursuant to Section 1-628.

**MEMBER** - a current or past employee eligible to participate in the plan.

**PAY, SALARY, WAGES or COMPENSATION** - means pickup contributions plus remuneration received as a City employee excluding refunds for expenses, contingency and accountable expense allowances and excluding severance payments or payments for unused vacation or unused sick leave or comp time that is paid upon termination. Pay, salary, wages or compensation includes amounts excluded from income pursuant to a member's election under a cash or deferred compensation arrangement described in sections 401(k) of the code, an eligible deferred compensation plan described in section 457(b) of the code, a cafeteria plan described in section 125 of the code, and, effective January 1, 1998, a qualified transportation fringe benefit plan under section 132(f) of the code. Notwithstanding the preceding the annual pay, salary, wages or compensation of a member shall be limited as set forth in section 401(a)(17) of the code (as adjusted annually pursuant to section 401(a)(17)(B) of the code and announcement by the Internal

Revenue Service; for 2011, \$245,000). Pay, salary, wages or compensation for any prior year shall be subject to the limitations set forth in Appendix A, A-1. If pay, salary, wages or compensation for any prior determination period is taken into account in determining a member's benefits for the current year, the pay, salary, wages or compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

**PLAN** - the Firemen's Pension Plan.

**QUALIFIED MILITARY SERVICE** - any service in the uniformed services (as defined in chapter 3 of title 38, United States Code), by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

**SPOUSE** - the spouse of a member, as determined under law of the Commonwealth of Pennsylvania. Effective for designations made after December 31, 2006, a member may designate his/her spouse to be the beneficiary of the member's pension, regardless of the date of the marriage.

*(Ord. 5-2000, 4/27/2000, §1; as amended by Ord. 91A-2006, 1/9/2006, §1)*

**§1-622. Board of Managers Created.**

The board shall be responsible for the distribution of pensions and service increments from the plan to appropriate members and beneficiaries.

*(Ord. 5-2000, 4/27/2000, §2)*

**§1-623. Board of Managers; Members, Term and Vacancy.**

The board shall consist of: the Mayor, Director of Finance, Director of Public Safety, City Auditor and Chief of the department of fire and rescue, ex officio, whose term on the Board shall be concurrent with their tenure of office; and two active members of the department of fire and rescue to be chosen by the members of the department of fire and rescue. Of the first managers to be chosen by the members of the department of fire and rescue, one shall be chosen for a term of 2 years and one for a term of 4 years. Biennially thereafter, one manager shall be chosen for a term of 4 years to take the place of one whose term expires. In case of vacancy among the managers chosen by the department of fire and rescue, a successor shall be chosen for the unexpired term. In the event that the office of any of the said selectees shall become vacant by reason of death, resignation, or otherwise, such manager's office shall be filled for its unexpired term by members of the department of fire and rescue by special election.

*(Ord. 5-2000, 4/27/2000, §3)*

**§1-624. Board Officers.**

The Mayor shall be the President; the City Auditor, the Secretary; and the Director of Finance, the Treasurer of said board.

*(Ord. 5-2000, 4/27/2000, §4)*

**§1-625. Surety Bond of Treasurer.**

The Treasurer shall give to the City, and maintain a surety bond for the benefit of the Plan, in an amount equivalent to the probable amount of money and securities that shall come into his hands for the faithful performance of his duties, the premium on which bond, however, shall be paid from the fund.

*(Ord. 5-2000, 4/27/2000, §5)*

**§1-626. Board Expenses.**

All direct and incidental expenditures (such as stationery, postage, miscellaneous supplies, etc.) necessary to the transaction of the business of the board shall be provided for from the fund.

*(Ord. 5-2000, 4/27/2000, §6)*

**§1-627. Board Compensation.**

Board members shall receive no compensation for their services with respect to the plan and fund.

*(Ord. 5-2000, 4/27/2000, §7)*

**§1-628. Fund Created; Receipt of Contributions; Payment from and Investment of Fund.**

1. There shall be created by said board a fund to be known as the Firemen's Pension Fund. *(Ord. 5-2000, 4/27/2000, §8)*
2. It shall be the exclusive duty of the board to serve as fund trustees and to receive, disburse, retain, invest and reinvest the fund created by virtue of this Part 6B and to pay over by warrant or check the amount due under this plan to members or their widows or widowers or their estates or children. The board, with the approval of the Director of Finance of the City, may enter into agreements with reputable institutions to perform any of the aforesaid duties, including, but not limited to advising the board with respect to any and all of its duties, but in the event the board does so, any such agreement shall require the institutions involved to provide the board with written reports concerning its activities at least once every 6 months. The compensation of such institutions shall be paid by the fund or such source of pay as is designated by applicable law. The fund shall be used for the exclusive purpose of funding and paying benefits provided hereunder, and a reversion of fund assets or a return of City contributions is prohibited except as otherwise provided by applicable law or IRS Revenue Ruling 91-4.

**§1-629. Fund Sources.**

1. In addition to paying into the fund City contributions and applicable employee contributions, there shall be paid into the fund all bequests, legacies, gifts or donations made to the fund, and all sums subscribed by the public, as well as all net incomes resulting from all games, sports, entertainment, or any and all other sources of income conducted by or under the supervision of the department of fire and rescue.
2. The fund shall also hold in trust contributions made by the City in its sole discretion, and by members as required herein.

(Ord. 5-2000, 4/27/2000, §9)

**§1-630. Gifts and Grants.**

Any gifts, grants, devises or bequests of any monies, real estate, personal property or other valuable things from whatever source, received by the board shall be contributed to the fund.

(Ord. 5-2000, 4/27/2000, §10)

**§1-631. Reward Proceeds.**

There shall also be turned over and paid to the fund ½ of all rewards that may be paid or given for or on account of extraordinary service by said department of fire and rescue or by any fireman who is covered by the provisions of this Part 6B.

(Ord. 5-2000, 4/27/2000, §11)

**§1-632. DiLauro Interest Arbitration**

1. Section 1-633, entitled "Members Contributions," §1-640, entitled "Entitlement to Benefits," §1-641, entitled "Members Rights to and Amount of Benefits," §1-643, entitled "Disability Benefits," and §1-645, entitled "Application," are hereby amended to conform precisely with paragraph 7, page 7, of the DiLauro Interest Arbitration award of December 28, 1982, entitled Proposed Pension Changes for Members Employees hired (SIC) after January 1, 1982, quoted verbatim as follows:

- A. Twenty-five years of service and attained age 50 for normal retirement.
- B. Monthly pension shall be 50% of pay.
- C. Service increment based on 25 years completed before the age 65.
- D. Average pay shall be highest of any 5 years employment or pay at date of retirement.
- E. Pay shall be construed to be base salary plus longevity.
- F. Employee contribution of 5% shall apply only to pay as defined in Subsection (a)(5), hereof."

(Ord. 5-2000, 4/27/2000, §26; as amended by Ord. 45-2004, 10/25/2004, §1; and by Ord. 91A2006, 1/9/2006, §4)

**§1-633. Member Contributions; Increase.**

1. Each employee shall contribute to the fund 4% of his pay, which amount shall be withheld from the employee's paycheck, as prescribed by City policy. In the event the City Council shall deem it necessary, in order to provide sufficient funds for payment to widows of members retired on pension, or killed, or who die in service it shall, upon resolution, increase the aforesaid deduction to a maximum of 5%.

2. There shall be paid into the fund the amount of 5% to be deducted by the City from the salary of each fireman or employee of the department of fire and rescue, until such time that the fireman or employee shall be retired under the provisions of the Firemen's Pension Fund.

*(Ord. 5-2000, 4/27/2000, §12)*

**§1-634. City Contributions.**

The City shall annually appropriate to the fund, such amount as the City Council may consider proper within the limitation fixed by law.

*(Ord. 5-2000, 4/27/2000, §13)*

**§1-635. Board Rewards, Rules and Meetings.**

The board shall keep full and accurate accounts of all transactions. It shall have full power to make rules for the transaction of its business, the application and investment of its fund, its time and place of meeting, but shall meet at least four times in each and every year (special meetings upon call of the board president).

*(Ord. 5-2000, 4/27/2000, §14)*

**§1-636. Board to Request Budget Funds from Council.**

It shall be the duty of the board, each year at the time of making up the Budget Ordinance, to prepare a full and detailed statement of the assets of the fund and the amount which the City is required to contribute to the fund as an annual contribution, and to present the same to the City Council together with a statement of the amount of money required to enable the board to pay pensions and service increments in full, together with refunds, under the plan.

*(Ord. 5-2000, 4/27/2000, §15)*

**§1-637. Board Voting and Decisions.**

No resolution shall be passed or order made for payment of money, unless by affirmative vote of a majority of the members of the board. In all questions coming before the board, the board's decision on all questions with respect to the plan and any member's rights to benefits under the plan shall be conclusive and binding on both the member, the plan, and the City.

*(Ord. 5-2000, 4/27/2000, §16)*

**§1-638. Board to Issue Payment Certificates.**

The board shall issue certificates signed by its president and secretary to the member entitled to retirement and pension, and also service increment under this Part 6B, for the amount of money ordered paid to such member out of the fund, which certificate shall state for what purpose said payment is to be made.

*(Ord. 5-2000, 4/27/2000, §17)*

**§1-639. Employment Termination Prior to Pension Entitlement.**

If, for any cause, any person contributing to the fund shall cease to be in the service of the department of fire and rescue before he shall become eligible to receive any pension benefits, the total amount of the contributions paid into the fund by him shall be refunded in full without interest. Provided, however, if any such person shall have had returned to him the amount contributed as aforesaid, and shall afterward re-enter the service of the department of fire and rescue, he shall not be entitled to the pension benefits designated unless he shall return to the fund the entire amount withdrawn, in which event, the required period of service under this Part 6B shall be computed from the time he first entered the service of the department of fire and rescue, excluding any period of time during which the member was not employed by the department of fire and rescue. Absent repayment of contributions by the re-entering member, the date of his service shall commence upon re-entry to the department of fire and rescue.

(Ord. 5-2000, 4/27/2000, §18)

**§1-640. Entitlement to Benefits.**

1. Every fireman or employee of the department of fire and rescue who shall have served a continuous period of 20 years shall be entitled to be retired and eligible to pension, and may make application to the said board for retirement, provided he has attained 50 years of age.
2. The term "continuous period of 20 years" shall be interpreted in such a way as to encompass the provisions of the Act of Assembly of June 23, 1931, P.L. 932, Art. XLIII, as amended thereafter, also known as 53 P.S. §39321.
3. Should a member of the plan cease to be employed as a full-time fireman for any reason prior to completing the minimum age and minimum period of continuous service requirements, but after having completed 12 years of full-time service, then such member shall be entitled to vest in a reduced pension benefit as provided for in §1-641(3) of this Part 6B, subject to the following conditions, and as provided for elsewhere herein:
  - A. The member must file with the board written notice of his or her intent to vest.
  - B. The member must include in the notice the date the member intends to terminate his or her service as a full-time fireman.
  - C. The termination date shall be at least 30 days later than the date the member submits the notice to the board.
  - D. The member must be in good standing with the department of fire and rescue on the date of the notice to vest.
  - E. The Board shall indicate on the notice to vest the rate of the monthly pay of the member as of the date of the notice to vest or the highest average annual salary which the member received during any 5 years of service preceding the date, whichever shall be higher.

**4. Military Service.**

- A. All members of the plan who are contributors and who called to military service subsequent to September 1, 1940, and who were not members of the plan prior to such military service, shall be entitled to have full credit for each year or fraction thereof, not to exceed 5 years of such service upon their payment to the fund of an amount equal to that which they would have paid had they been members during the period for which they desire credit, and their payment to such fund of an additional amount as the equivalent of the contributions of the City plus any interest the City would have been required to pay on the contributions on account of such military service.
- B. **USERRA and HEART Requirements.** Effective December 12, 1994, any member who is absent on account of qualified military service and returns to City service within the period of time during which his reemployment rights are protected by federal law shall receive service credit, contributions, benefits and other rights provided under this Subsection in lieu of the service credit, contributions, benefits or other rights to which the member would otherwise be entitled under this Section, except to the extent the member would be entitled to more advantageous service credit, contributions, or benefits or more valuable rights under other provisions of this Section. A member described in this Subsection shall be credited with years of service for the full period of qualified military service, provided such member pays into the fund an amount equal to the contributions such member would have been required to make but for his absence on account of qualified military service, within the five-year period of time beginning on his reemployment date (or the lesser period of time beginning on such reemployment date that is three times the length of his qualified military service), and the City shall make all contributions that would have been due on account of such member contributions, and the member shall be entitled to all other rights and benefits accruing on account of such contributions and service. For purposes of this Subsection, a member shall be treated as having received compensation during his qualified military service based on the rate of compensation the member would have received but for his qualified military service compensation, or if such amount is not reasonably certain, his average compensation during the 12-month period immediately preceding his qualified military service (or, if shorter, the period of time immediately preceding his qualified military service). This Subsection shall be applied in a manner consistent with section 414(u) of the code.
- (1) Effective January 1, 2007, in the case of a member who dies while performing qualified military service, the member's surviving beneficiary shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided herein as though the member had resumed employment with the City on the day before death and then terminated employment on account of death in accordance with section 401(a)(37) of the code.
- (2) Effective with respect to years beginning after December 31, 2008, for purposes of applying the limits on annual benefits and contributions and for purposes of applying other applicable provisions of the code, but not for purposes of determining benefits and contributions, "compensation" shall also include differential wage payments, as defined in section 3401(h) of the code, paid by the City to an employee on account of qualified military service.

(Ord. 5-2000, 4/27/2000, §19)

**§1-641. Member Right to and Amount of Benefits; Service Increment Contributions.**

1. A. Payments of pension shall not be a charge on any fund in the Treasury of the City nor any account under its control save the Firemen's Pension Fund herein provided for.
  - B. Except as to service increments provided for in Subsection (2) of this Section, the annual pension of a vested eligible member, whether for disability or by reason of age or service, shall be 50 percent of the greater of (1) twelve times the monthly salary (including base salary, overtime, holiday and longevity) of the member at the date of vesting under §1-640 or retirement, or (2) the highest average annual salary (including base salary, overtime, holiday and longevity), which the member received during any 5 years of service preceding retirement.
  - C. In the case of the payment of a pension to a member for permanent injury incurred in service, and to the family of a member killed or who dies in service, the account and commencement of the payment of the pension shall be fixed by regulations of the Board. Such regulations shall not take into consideration the amount and duration of the workers' compensation allowed by law.
  - D. Payments to widows of members retired on pension or killed in the service on or after January 1, 1968, shall be the amount payable to the member which would have been payable had he been retired at the time of his death. If a member dies leaving no widow but leaving to survive him a dependent child or children under the age of 18, such child or children shall be entitled to the same benefits as a widow, as herein before set forth, until such child or children reach the age of 18, marry, or die.
2. In addition to the pension which is authorized to be paid from the fund by this Part 6B, and notwithstanding the limitations therein placed upon such pensions and upon contributions, every member who shall become entitled to a pension shall also be entitled to the payment of a "service increment" in accordance with and subject to the conditions hereinafter set forth.
    - A. Service increment of a member shall be the sum obtained by computing the number of whole years after having served the minimum required by this Part 6B during which a member has been employed by the City and multiplying the said number of years so computed by an amount equal to  $1/40^{\text{th}}$  of the retirement allowance which has become payable to such member in accordance with the provisions of this Part 6B. In computing the service increment, no employment after the member has reached the age of 65 years shall be included, and no service increment shall be paid in excess of \$500 per month. (*Ord. 45-2004*)
    - B. Each member, shall pay into the fund a monthly sum in addition to his pension contribution, which shall not exceed the sum of \$5 per month and, provided that such service increment contribution shall not be paid after a member has reached the age of 65 years. (*Ord. 45-2004*)
    - C. Any person who is a member of the department on July 20, 1968, who has already reached the age of 65, shall have his service increment computed on the year of employment prior to the date of reaching his sixty-fifth birthday.
    - D. Service increment contributions shall be paid at the same time and in the same manner as pensions, and may be withdrawn in full without interest by persons who leave the employment

of such City, subject to the same conditions by which retirement contributions may be withdrawn, or by persons who retire before becoming entitled to any service increment.

- E. All members of the department of fire and rescue who are now contributors to the fund and all those employed by the City after July 20, 1968, if required to become contributors to the pension fund, shall be subject to the provisions of this Part 6B.
3. In the event that a member of the fund shall be eligible for a reduced retirement benefit based upon the 12 year vesting detailed in §1-641(3) and provided that such member shall have complied with all the conditions of §1-641(3) and all other applicable conditions and requirements of this Part 6B, then in such event the reduced benefit of the member shall be calculated as detailed in this Subsection. Upon reaching the date which would have been the member's retirement date had the member continued his or her full time employment with the department of fire and rescue, the member shall notify the Board, in writing, that the member desires to collect his or her pension. The amount of retirement benefits the member is entitled to receive under this Section shall be computed as follows:
- A. The initial determination of the member's base retirement benefits shall be computed based upon the salary indicated on the notice to vest.
- B. The portion of the base retirement benefit due the member shall be determined by applying to the base amount the percentage of his or her years of service actually rendered bears to the years of service which would have been rendered had the member continued to be employed by the department of fire and rescue until his or her minimum retirement date.

(*Ord. 5-2000, 4/27/2000, §10; as amended by Ord. 45-2004, 10/25/2004, §1*)

**§1-642. Benefits to be Uniform; Widows and Children of Members.**

The fund shall be applied under such regulations as the Board of Managers shall prescribe for the benefit of such members of the department of fire and rescue as shall receive honorable discharge therefrom by reason of the service of age or disability, widows of retired members and families of such as may be killed or who die in the service. All such pensions as shall be allowed to those who are retired by reason of the disabilities or of the service or age shall be in conformity with a uniform scale, together with service increments as hereafter provided. Benefits allowed from such fund to families of such as are killed or who die in service shall take into consideration the member's widow and his minor children under 18 years of age, if any survive.

(*Ord. 5-2000, 4/27/2000, §21*)

**§1-643. Disability Benefits.**

1. The board, upon receipt of a member's application, shall pay a full pension to a member who is physically or mentally incapacitated from performing his duty in the department of fire and rescue. Said pension shall be monthly payments for the life of the member of not less than ½ (50%) of the employee's monthly salary as of the date of disability.
2. The board shall, upon application received, retire on pension any paid fireman or employce if he is physically or mentally incapacitated, through injury or disease incurred off the job from performing

his duty in the department of fire and rescue, provided the disabled fireman or employec has completed a minimum of 5 years in the department. The monthly pension that an employee shall receive hereunder shall be an amount equal to 1/40 of his monthly salary as of the date of disability for each year of service. In computing years of service, a fraction of year shall be counted as such, a fraction of years.

(Ord. 5-2000, 4/27/2000, §22)

**§1-644. Deferred Retirement Option Program (DROP)**

1. **Eligibility.** Effective January 1, 2006, members of the department of fire and rescue, that have not retired prior to the implementation of the DROP program, may enter into the DROP on the first day of any month following completion of 20 years of credited service.
2. **Written Election.** Any member of the department of fire and rescue electing to participate in the DROP must complete and execute a "drop option form" prepared by the City of Reading, Department of Human Resources, which shall evidence the member's participation in the DROP. The form must be signed by the member and notarized and submitted to the City of Reading, Department of Human Resources, prior to the date on which the member wishes the DROP option to be effective. The DROP option notice shall include an irrevocable notice to the City, by the member, that the member shall resign from employment with the department of fire and rescue effective on a specific date not more than 60 months from the effective date of the DROP option. In addition, all retirement documents required by the Firemen's Pension Fund must be filed and presented to the Pension Board for approval of retirement and payment of pension. Once a retirement application has been approved by the board it is irrevocable.
3. **Limitation on Pension Accrual.** After the effective date of the DROP option, the member shall not longer earn or accrue additional years of continuous service for pension purposes.
4. **Benefit Calculation.** For all retirement fund purposes, continuous service of a member participating in the DROP shall remain as it existed on the effective date of commencement of participation in the DROP. Service thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Reading Firemen's Pension Fund. The average monthly pay of the member for pension calculation purposes shall remain as it existed on the effective date of commencement of participating in the DROP. Earnings or increases in earnings thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the pension fund. The pension benefit payable to the members shall increase only as a result of the cost of living adjustments in effect on the effective date of the member's participation in the DROP, or applicable cost of living adjustments granted thereafter.
5. **Payments to DROP Account.** The monthly retirement benefits that would have been payable had the member elected to cease employment and receive a normal retirement benefit shall, upon the member commencing participation in the DROP, be paid into the separate DROP account established to receive the member's monthly pension payments. The fund shall maintain the account. Such DROP account shall be credited with interest in a manner prescribed by the board.
6. **Payout.** Upon the termination date set forth in the member's drop option notice or, such date as the member withdraws or is terminated from the DROP program, the retirement benefits payable to the member or the member's beneficiary, if applicable, shall be paid to the member or beneficiary and

shall no longer be paid to the member's deferred retirement option account. Within 30 days following termination of a member's employment pursuant to their participating in the DROP program, the balances in the member's DROP account shall be paid to the member in the single lump sum payment or, at the member's option, in any fashion permitted by law.

7. **Disability During DROP.** If a member becomes temporarily disabled during his participation in DROP, his participation freezes and the time period while on disability does not count towards the 5-year participation limit. Upon return to duty, membership in DROP shall resume, continuing with the remaining time left in the 5-year membership period. The member shall receive disability pay in the same amount as disabled firefighters that are not participating in DROP. In no event shall a member on temporary disability have the ability to draw from his DROP account. However, notwithstanding any other provision in this Subsection, if a firefighter is disabled and has not returned to work as of the date of his required resignation, then such resignation shall take precedence over all other provisions herein and said firefighter shall be required to resign.
8. **Death.** If a DROP member dies before the DROP account balance is paid in full, the member member's legal beneficiary shall have the same rights as the member to withdraw the account balance.
9. **Individual DROP Investment Account.** The Firemen's Pension Board may, at its discretion, select a third party to provide a mutual fund or other investment option(s), record keeping and reporting to the members and the Board. All investment and administrative costs shall be charged against the individual DROP investment account of the member.
10. **Limitation of Eligible Members.** There shall be a limit of ten bargaining unit members eligible to opt into the DROP on an annual basis. In the event that more than ten bargaining unit members opt to participate in the program in any given year, eligibility for the ten available slots shall be determined exclusively by seniority.
11. The DROP shall not be available to an elected official, except for an official first elected prior to September 18, 2009.
12. **Amendment.** Any amendments to the DROP ordinance shall be consistent with the provisions covering deferred retirement option plans set forth in the applicable collective bargaining agreement and shall be binding upon all future DROP members and upon all DROP members who have balances in their deferred retirement option accounts.

*(Ord. 5-2000, 4/27/2000; as added by Ord. 91A-2006, 1/9/2006, §2)*

**§1-645. Application.**

This Part 6B shall apply to all regular salaried paid firemen and employees of the Department of Fire and Rescue.

*(Ord. 5-2000, 4/27/2000, §23; as amended by Ord. 91A-2006, 1/9/2006, §4)*

**§1-646. Contributions Payment to Estate.**

In the event of the death of a pensioner, before he shall have received as much as he contributed to said fund, the balance thereof remaining, without interest, shall be paid to his estate.

(*Ord. 5-2000, 4/27/2000, §24; as amended by Ord. 91A-2006, 1/9/2006, §4*)

**§1-647. Pension Investment Account.**

1. The board may create a Firemen's Pension Investment Account.
2. The board is hereby authorized to invest for the credit of said account the surplus money accumulated in said fund in excess of such sum as may be fixed by said board together with such amounts as may be required for the payment of pensions and service increments as directed by this Part 6B during the year.
3. The interest received from such investments shall be paid into the fund upon receipt of same, and if at any time sufficient funds are not available (inclusive of the monies appropriated by the City up to the amount it may be permitted to pay under the law), for the payment of all pensions and service increments in full, then said board may dispose of and sell such securities as it may hold in its investment account and use the proceeds thereof to supply such deficiency.
4. All monies invested for the credit of said account shall be invested in such investments as are permissible under the Fiduciaries Investment Act of 1949, being the Act of May 26, 1949, P.L. 1828.
5. All securities are to be deposited with the Treasurer of said board for the credit of its investment account.

(*Ord. 5-2000, 4/27/2000, §25; by Ord. 14-2001, 5/29/2001; and by Ord. 91A-2006, 1/9/2006, §4*)

**§1-648. Exemption from Attachment or Execution; Nonassignability.**

All pensions and service increments granted under this Part 6B and every portion thereof shall be exempt from attachment of garnishment processes and shall not be seized, taken or subject to detainer or levied upon by virtue of an execution of any processes or proceedings whatsoever, issued out of or by any court in this Commonwealth for the payment and satisfaction in whole or in part of any claim, damage, demand or judgment against any pensioner. No pensioner shall have the right to transfer or assign his or her pension or any part thereof, either by way of mortgage or otherwise.

(*Ord. 5-2000, 4/27/2000, §27; as amended by Ord. 91A-2006, 1/9/2006, §4*)

**§1-649 - Effective Date.**

1. The provisions of this Part pertaining to service increments, as provided for by Act No. 204 of the 1968 Pennsylvania Legislature, shall become effective retroactive to July 20, 1968, 53 P.S. §39320 et seq.
2. Except as otherwise provided in Subsection (1) hereof, all provisions of this Part shall become effective January 31, 1972.

3. The provision of this Part 6B pertaining to service increments, as provided for by Act No. 204 of the 1968 Pennsylvania Legislature, shall become effective retroactive to July 20, 1968.

(Ord. 5-2000, 4/27/2000, §29; as amended by Ord. 91A-2006, 1/9/2006, §4)

### § 1-650. Direct Rollovers

1. Direct Rollovers. Notwithstanding any provision herein to the contrary that would otherwise limit a distributee's election under this Subsection, on and after January 1, 1993 a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
2. For purposes of this Section, the following definitions shall apply:
  - A. **Eligible rollover distribution:** An eligible rollover distribution is 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: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under code section 401(a)(9); the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any distribution that is made upon hardship of a member. Notwithstanding anything in this paragraph to the contrary, for distributions made after December 31, 2001, a portion of a distribution shall 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 paid only to an individual retirement account or annuity, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the code, or a governmental 457 plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not.
  - B. **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in code section 408(a), an individual retirement annuity described in code section 408(b), a Roth IRA as pursuant to code section 408A(e), for distributions made after December 31, 2001 an annuity plan described in code section 403(a) or an annuity contract described in code section 403(b), a qualified trust described in code section 401(a), or for distributions made after December 31, 2001 an eligible plan under code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a domestic relation order, as defined in code section 414(p). Effective in the case of an eligible rollover distribution to a surviving spouse before 2002 or to a beneficiary other than a surviving spouse after 2009, an eligible retirement plan is an individual retirement account or individual retirement annuity.

C. **Distributee:** A distributee includes any member. In addition, a member's surviving spouse and the member's spouse or former spouse who is the alternate payee under a domestic relations order, as defined in section 414(p) of the code, are distributees with regard to the interest of the spouse or former spouse. Effective with respect to distributions after 2009, a distributee also means a beneficiary of a member other than a surviving spouse.

D. **Direct rollover:** A direct rollover is a payment by the system to the eligible retirement plan specified by the distributee.

#### § 1-650.1. Maximum Permissible Benefits and Contributions – Code Section 415

1. In General. Notwithstanding anything herein to the contrary, effective for limitation years beginning on or after January 1, 1995, the annual benefit (attributable to City contributions and pickup contributions treated as City contributions with respect to a member payable under the plan and all other defined benefit plans of the City, when expressed in the form of a straight life annuity, shall not exceed the "maximum permissible benefit." Effective for limitation years beginning on or after January 1, 2008, in no case shall any amount accrue in a limitation year, with respect to a member under the plan or all other deferred benefits plans of the City, that would exceed the maximum permissible benefit. For purposes of this Section, the member's maximum permissible benefit shall equal the dollar limit prescribed in section 415(b)(1)(A) of the code (\$195,000 in 2011) or such other amount as may be prescribed under regulations issued by the U.S. Secretary of the Treasury under section 415(d) of the code, adjusted in accordance with paragraphs (2), (3) and (4), below. In addition, the "annual additions," as defined in section 415(c)(2) of the code, made by or on behalf of any member attributable to member contributions to the plan other than pickup contributions treated as City contributions, together with any annual additions, to any code section 401(a)-qualified defined contribution plan maintained by the City shall not exceed the maximum amount determined under section 415(c)(1) of the code for any limitation year as adjusted under section 415(d) of the code and applicable guidance. Solely for purposes of determining the maximum annual addition prescribed in section 415(c) of the code, compensation means a member's wages as defined in section 3401(a) of the code and all other payments of compensation to the member from the City for which the City is required to furnish the member a written statement under sections 6041(d) and 6051(a)(3) of the code. Compensation shall be determined without regard to any rules that limit the compensation included in wages based on the nature or location of the employment or the services performed. Compensation shall include any amount which would otherwise be deemed compensation under this definition but for the fact that it is subject to a salary reduction agreement under any plan described in section 457(b), 132(f), or 125 of the code. Solely for this purpose, compensation also includes regular compensation received after such member's severance from employment (as defined in Treas. Reg. § 1.415(a)-1(f)(5) (but not severance payments)); provided that payment of such compensation is made by the later of 2-1/2 months after the member's severance from employment or the end of the calendar year that includes the member's severance from employment; and provided further, that in order for these post-severance payments to be considered compensation for this purpose, these amounts may only consist of the following (which would otherwise constitute compensation): (i) regular compensation for services during the member's regular working hours, or compensation for service outside the member's regular work hours (such as overtime or shift differential), commission, bonuses, or similar payments, if such payment would have been paid to the member prior to severance from employment if the member had continued in employment with the City; (ii) payment for unused, accrued, bona fide sick, vacation or other leave (but only if the member would have been able to use the leave if employment had continued); and (iii) for plan years beginning on or after January 1, 2009, payments to members who do not currently perform services for the City by reason of qualified military service (as

that term is defined in section 414(u)(1) of the code) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the City rather than entering qualified military service. Other types of payments paid to the member after severance from employment shall not be considered compensation for this purpose, even if paid within the time frame described above. In no event, however, shall compensation for this purpose include any amounts not permitted to be included under section 415 of the code.

2. Adjustment to the maximum permissible benefit. Adjustments shall be made to the maximum permissible benefit in accordance with paragraphs (A), (B) or (C) below:

A. If a member's benefit is payable in any form other than a straight life annuity, the determination as to whether the limitation of this Section has been satisfied shall be made by adjusting such benefit to the form of a straight life annuity beginning when the payment of benefits begins. The adjustment described in the preceding sentence shall be made in the manner prescribed by the U.S. Secretary of the Treasury, such that the equivalent annual benefit would be the greater of (1) the equivalent annual benefit computed using seven percent interest rate and GAM83 mortality table, and (2) the equivalent annual benefit computed using an interest assumption of five percent (for distributions made during plan years beginning in 2004 or 2005, 5.5 percent) and the mortality table prescribed by the U.S. Secretary of the Treasury under section 415(b)(2)(E)(v) of the code. Notwithstanding the preceding sentence, effective for plan years beginning after 2005, for purposes of determining whether any benefit payable as a lump sum satisfies the limitation of this Section, the adjustment described in the preceding sentence shall be made in the manner prescribed by the U.S. Secretary of the Treasury, such that the equivalent annual benefit would be the greatest of: (x) the equivalent annual benefit computed using the interest rate and mortality table specified in the plan for actuarial equivalence for the particular form of benefit payable; (y) the equivalent annual benefit computed using an interest rate assumption of 5.5 percent and the mortality table prescribed by the U.S. Secretary of the Treasury under section 415(b)(2)(E)(v) of the code; and (z) the equivalent annual benefit computed using the interest rate specified in section 417(c)(3) of the code and the mortality table prescribed by the U.S. Secretary of the Treasury under section 415(b)(2)(E)(v) of the code divided by 1.05. However, for the purposes of such adjustment, any ancillary benefit that is not directly related to retirement income benefits and that portion of any joint and survivor annuity that is actuarially equivalent to the default form of payment benefit payable to a married member shall not be taken into account.

B. If the benefit of a member who is not a "qualified participant," as defined in section 415(b)(2)(H) of the code, begins before he or she reaches age sixty-two (other than on account of becoming disabled by reason of personal injuries or sickness or death), the maximum permissible benefit shall be adjusted in accordance with section 415(b) of the code, to an amount (beginning when the payment of benefits begins) that is actuarially equivalent to an annual benefit equal to the maximum permissible benefit determined under Subsection (1) (adjusted through the limitation year when payment of benefits begins for increases in the cost of living in accordance with section 415(d) of the code) beginning at age sixty-two. (1) For limitation years beginning before July 1, 2007, the defined benefit dollar limitation applicable at an age prior to age sixty-two is determined as the lesser of (a) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a five percent interest rate and the Unisex UP-84 Mortality Table and (b) the actuarial equivalent (at such age) of the maximum permissible benefit computed using a five percent interest rate and the applicable mortality table prescribed by the U.S. Secretary of the Treasury under section 415(b)(2)(E)(v)

of the code. (2) For limitation years beginning on or after July 1, 2007, the defined benefit dollar limitation applicable at an age prior to age sixty-two is determined as the lesser of (a) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a five percent interest rate and the applicable mortality table within the meaning of section 417(e)(3)(B) of the code (and expressing the member's age based on completed calendar months as of the annuity starting date) and (b) the defined benefit dollar limitation multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age sixty-two, both determined without applying the limitations of section 415 of the code. (3) For limitation years beginning prior to 2002, the reduction shall not reduce the maximum permissible benefit below \$75,000 if the benefit begins at or after age fifty-five, or, if the benefit begins before age fifty-five, the equivalent of the \$75,000 limit for age fifty-five. Any decrease in the maximum permissible benefit made in accordance with this paragraph shall not reflect a mortality decrement.

C. If the benefit of a member begins after he or she reaches age sixty-five, the maximum permissible benefit of Subsection (1) shall be increased in accordance with section 415(b) of the code and the regulations there under to an amount (beginning when the payment of benefits begins) that is actuarially equivalent to an annual benefit equal to the maximum permissible benefit of Subsection (1) (adjusted through the limitation year when payment of benefits begins for increases in the cost of living in accordance with section 415(d) of the code) beginning at age sixty-five. (1) For limitation years beginning before July 1, 2007, the actuarial equivalent of the maximum permissible benefit applicable at an age after age sixty-five is the lesser of (a) the actuarial equivalent (at such age) of the maximum permissible benefit computed using a five percent interest rate and the unisex UP-84 mortality table and (b) the actuarial equivalent (at such age) of the maximum permissible benefit computed using a five percent interest rate assumption and the applicable mortality table prescribed by the U.S. Secretary of the Treasury under section 415(b)(2)(E)(v) of the code. (2) For limitation years beginning on or after July 1, 2007, the actuarial equivalent of the maximum permissible benefit applicable at an age after age sixty-five is the lesser of: (a) the actuarial equivalent (at such age) of the maximum permissible benefit using a five percent interest rate and the applicable mortality table within the meaning of section 417(e)(3)(B) of the code (and expressing the member's age based on completed calendar months as of the annuity starting date) and (b) the maximum permissible benefit multiplied by the ratio of the annual amount of the immediately commencing straight life annuity payable to the member, computed disregarding the member's accruals after age sixty-five, but including any actuarial adjustments even if those adjustments are applied to offset accruals, to the annual amount of the straight life annuity that would be payable under the plan to a hypothetical member who is sixty-five years old and has the same accrued benefit (with no actuarial increases for commencement after age sixty-five) as the member receiving the distribution (determined disregarding the member's accruals after age sixty-five and without applying the rules of section 415 of the code). For purposes of both (1) and (2) above, mortality between age sixty-five and the annuity starting date shall be ignored.

3. Lowest limitation of maximum permissible benefit. Except as provided in Subsection (4) hereof, the maximum permissible benefit shall never be deemed to be an amount which is less than \$10,000, provided the member is not, and has never been, a member in any code section 401(a)-qualified defined contribution plan of the employer.

4. Maximum permissible benefit applicable to certain members who have less than ten years of participation service with the City. The maximum permissible benefit applicable to any member, other than a retiree receiving disability benefits by reasons of personal injuries or sickness or beneficiaries, survivors, or the estate of a member, who has less than ten years of participation service with the City shall be equal to the lesser of the maximum permissible benefit or \$10,000 multiplied by a fraction, the numerator of which is the number of the member's years (or part thereof) of participation service in the plan as of and including the current limitation year, and the denominator of which is ten.
5. Limitation of accrued benefit if annual benefit exceeds maximum permissible benefit. If the member's annual benefit exceeds the maximum permissible benefit after the application of the appropriate factors, such member's accrued benefit shall be limited to an amount which produces an annual benefit equal to the maximum permissible benefit, adjusted, where applicable, as set forth in this Section.
6. For purposes of this Section, "participation service" means an accrual computation period for which the following conditions are met: (A) the member is credited with at least the period of service for benefit accrual purposes, required hereunder in order to accrue a benefit for the accrual computation period, and (B) the member is included in the plan for at least one day of the accrual computation period. If these two conditions are met, participation service credited to the member hereunder shall equal the amount of benefit accrual service credited to the member for such accrual computation period.

**§ 1.650.2. Required Minimum Distributions – Code Section 401(a)(9).**

Notwithstanding any other provision herein, beginning after 1986, any and all benefit distributions made under the plan on or after shall be made in accordance with a reasonable and good faith interpretation of section 401(a)(9) of the code, including the incidental death benefit requirements of section 401(a)(9). In accordance with this requirement, the following rules shall apply:

1. Distributions that begin during the member's lifetime shall begin no later than April 1 following the calendar year in which the member retires or the calendar year in which the member attains age seventy and one-half and be distributed over the life of the member or the joint lives of the member and his beneficiary (or over a period not extending beyond the life expectancy of the member or the joint life expectancy of the member and his beneficiary).
2. If a member dies before his entire interest has been distributed, the remaining portion shall be distributed at least as rapidly as under the method of distribution being used as of the date of the member's death.
3. If the member dies before receiving any distributions from the plan and (A) the death benefit is payable to his surviving spouse, such death benefit shall be distributed over a period not exceeding such spouse's life (or life expectancy) beginning no later than: (1) December 31 of the calendar year immediately following the calendar year in which the member died, or (2) December 31 of the calendar year in which the member would have attained age seventy and one-half; (B) the death benefit is payable to a designated beneficiary other than the member's surviving spouse, such death benefit shall be distributed to such beneficiary over a period not exceeding the beneficiary's life (or life expectancy) beginning no later than December 31 of the calendar year following the member's death; and (C) if the death benefit is not payable to the member's surviving spouse or designated

beneficiary, the member's entire interest will be paid no later than December 31 of the calendar year which includes the fifth anniversary of the member's date of death.

**§ 1.650.3. Miscellaneous.**

1. Construction. The masculine gender includes the feminine and the singular includes the plural, unless the context clearly indicates otherwise.
2. Governing Law. The plan and fund are governed by the Third Class City Code of Pennsylvania. The plan is a governmental plan as defined in section 414(d) of the code and section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, and as such is exempt from the requirements of ERISA and those requirements of the code from which a governmental plan is specifically exempt.
3. Pre-ERISA Vesting Requirement. In the event of the plan's termination or the City's permanent cessation of contributions, each member shall be vested to the extent the plan is funded.
3. Reemployment Rights of Veterans. Notwithstanding anything in this plan to the contrary, benefits contributions, and service credit with respect to qualified military service (as defined in section 414(u)(5) of the code) will be provided in accordance with section 414(u) of the code.
4. Amendments. The City Council shall have the authority to amend, freeze, or terminate the plan in its sole discretion, subject to any limitations imposed by applicable law.

**For the City of Reading, Pennsylvania  
By its City Council**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name and Title**

\_\_\_\_\_  
**Date**

## Appendix A

### Corrective Retroactive Amendments

#### A-1. Definition of "Compensation" is limited as follows:

- A. For Plan Years Beginning on or after January 1, 1989 and before January 1, 1994. Effective as of the first day of the first plan year beginning after 1988 and ending before 1994, the annual compensation of each member taken into account for any purpose under the system shall not exceed \$200,000 (as adjusted under section 401(a)(17) of the code).
- B. For Plan Years Beginning on or after January 1, 1994 and before January 1, 2002. Effective for plan years beginning on or after January 1, 1994 and before January 1, 1997, the annual compensation of each member taken into account for any purpose under the system shall not exceed \$150,000 (as adjusted under section 401(a)(17) of the code). For plan years beginning on or after January 1, 1997 and before January 1, 2002, any reference herein to the limitation under section 401(a)(17) of the code shall mean the limit described herein; specifically, \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001. The adjustment to the compensation limit under section 401(a)(17) of the code in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined ("determination period") beginning in such calendar year. If a determination period consists of fewer than 12 months, the limit described herein will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. If compensation for any prior determination period is taken into account in determining a member's benefit in the current plan year, the compensation for that prior determination period is subject to the limit described herein as in effect for that prior determination period.
- C. Plan Years Beginning on or after January 1, 2002. The annual compensation of each member taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed \$200,000. Annual compensation means compensation during the plan year or the determination period. The \$200,000 limit on annual compensation shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit described herein will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

#### A-2. Section 415 Limits on Accrued Benefits

- A. In General. Notwithstanding anything in the retirement system to the contrary, the limitations on benefits and contributions contained in section 415 of the code are generally applicable to benefits payable under the system effective for plan years after December 31, 1975; except, however, a person who was an active member before October 3, 1973 whose annual benefit (within the meaning of section 415(b)(2) of the Internal Revenue Code of 1954 (the 1954 code)) does not exceed 100 percent of his annual rate of compensation on the earlier of (i)

October 2, 1973 or (ii) the date on which he separated from City service, and such annual benefit is not greater than the annual benefit which would have been payable to the such member on retirement if (i) all the terms and conditions of the system in existence on such date had remained in existence until such retirement and (ii) his compensation taken into account for any period after October 2, 1973 had not exceeded his annual rate of compensation on such date, and in the case of a member who separated from City service prior to October 2, 1973, such annual benefit is no greater than his vested accrued benefit as of the date he separated from service, then such annual benefit shall be treated as not exceeding the limitations of subsection 415(b) of the 1954 code.

B. Combined Limit. Without negating the generality of A-2(a), for limitation years beginning after December 31, 1975 and before January 1, 2000, if a member participates in one or more defined benefit plans and makes member contributions other than contributions treated as pickup contributions or participates in one or more code section 401(a)-qualified defined contribution plans, or a welfare benefit fund as defined in section 419(c) of the code, under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees, as defined in section 419A(d)(3) of the code, or an individual medical account, as defined in section 415(l)(2) of the code, which is part of a pension or annuity plan, the member's accrued benefit under the system shall be adjusted to the extent required, if at all, so that the sum of the defined benefit fraction and the defined contribution fraction for any limitation year shall not exceed 1.4 (effective January 1, 1982, 1.0).

(1) Defined Benefit Fraction. The defined benefit fraction for any limitation year is a fraction (a) the numerator of which is the member's projected annual benefit (determined as of the close of the limitation year) under all such defined benefit plans (whether or not terminated), and (b) the denominator of which is (i) the sum of the maximum amount of annual additions to such account which could have been made for each year and for each prior year, and (ii) effective January 1, 1982, the lesser of (A) \$90,000, or the applicable dollar limit under section 415(b) of the code for such limitation year multiplied by 1.25, or (B) for limitation years ending before 1995, the member's average annual compensation for the three consecutive calendar years of active participation, that produce the highest average, multiplied by 1.4.

(2) Defined Contribution Fraction. The defined contribution fraction for any limitation year is a fraction (i) the numerator of which is the total of the amount treated as annual additions, under section 415(c) of the code, to the member's accounts as of the close of the limitation year under all defined contribution plans (whether or not terminated), and (ii) the denominator of which is the lesser of the following amounts determined for the limitation year and for each prior limitation year for which the member was an employee (regardless of whether any plan was in existence during such year):

(a) \$30,000, or the applicable dollar limit for each such limitation year, multiplied by 1.25,  
or

(b) 35% of the member's compensation, for each such limitation year.