

ORDINANCE NO. \_\_\_\_\_

And ordinance to amend the Code of the City of Flint by amending Chapter 35, Personnel; Article II, Retirement Center, by amending Section 35-46.4, Commencement and Payment of Pensions.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF FLINT:

Sec. 1. That the Code of the City of Flint shall be amended by amending Chapter 35, Personnel; Article II, Retirement Center, by amending Section 35-46.4, Commencement and Payment of Pensions, which shall read in its entirety as follows:

**§ 35-46.4 COMMENCEMENT AND PAYMENT OF PENSIONS.**

**(A) GENERAL RULES.**

~~(1) **EFFECTIVE DATE.** The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.~~

~~(2) **PRECEDENCE.** The requirements of this section will take precedence over any inconsistent provisions of this ordinance.~~

~~(3) **REQUIREMENTS OF TREASURY REGULATIONS INCORPORATED.** All distributions required under this section will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.~~

~~(4) **TEFRA SECTION 242(b)(2) ELECTIONS.** Notwithstanding the other provisions of this section, other than paragraph D, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA), the provisions of the ordinance that relate to Section 242(b)(2) OF TEFRA.~~

**(B) TIME AND MANNER OF DISTRIBUTION.**

~~(1) **REQUIRED BEGINNING DATE.** The member's entire interest will be distributed or begin to be distributed, to the member no later than the member's required beginning date. The required beginning date for retirement allowances and other distributions shall not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70½ or April 1 of the calendar year following the calendar year in which the member retires, whichever is later.~~

~~(2) **DEATH OF MEMBER BEFORE DISTRIBUTIONS BEGIN.** If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed, no later than as follows:~~

~~(a) If the member's surviving spouse is the member's sole designated beneficiary, then, distributions to the surviving spouse will be by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age of 70½, if later.~~

~~(b) If the member's surviving spouse is not the member's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.~~

~~(c) If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.~~

~~(d) If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (B) (2), other than~~

~~subsection (B)(2)(a), will apply as if the surviving spouse were the member.~~

~~For purposes of this subsection (B)(2) and subsection (E), distributions are considered to begin on the member's required beginning date (or, if subsection (B)(2)(d) applies, the date distributions are required to begin to the surviving spouse under subsection (B)(2)(a). If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (B)(2)(a), the date distributions are considered to begin is the date distributions actually commence.~~

~~(3) **FORM OF DISTRIBUTION.** Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subsections (C), (D) and (E) of this section. If the member's interest is distributed in the form of an annuity adoption purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the member's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.~~

~~**(C) DETERMINATION OF AMOUNT TO BE DISTRIBUTED EACH YEAR.**~~

~~(1) **GENERAL ANNUITY REQUIREMENTS.** If the member's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:~~

~~(a) The annuity distributions will be paid in periodic payments made at intervals no longer than one year;~~

~~(b) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsection (D) or (E);~~

~~(c) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;~~

~~(d) Payments will either be non-increasing or increase only as follows:~~

~~(1) By an annual percentage increase that does not exceed annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;~~

~~(2) To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection (D) dies or is no longer the member's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p);~~

~~(3) To provide cash refunds of employee contributions upon member's death; or~~

~~(4) To pay increased benefits that result from a plan amendment.~~

~~(2) **AMOUNT REQUIRED TO BE DISTRIBUTED BY REQUIRED BEGINNING DATE.** The amount that must be distributed on or before the member's required beginning date or, if the member dies before distributions begin, the date distributions are required to begin under subsection (B)(2)(a) or (b) is the payment that is required for one payment interval. The second payment need not~~

be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

**~~(3) ADDITIONAL ACCRUALS AFTER FIRST DISTRIBUTION CALENDAR YEAR.~~**

Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year which such amount accrues.

**~~(D) REQUIREMENTS FOR ANNUITY DISTRIBUTIONS THAT COMMENCE DURING MEMBER'S LIFETIME.~~**

**~~(1) JOINT LIFE ANNUITIES WHERE THE BENEFICIARY IS NOT THE MEMBER'S SPOUSE.~~**

If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a non-spouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the member using the table set forth in Q&A 2 of Section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a non-spouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

**~~(2) PERIOD CERTAIN ANNUITIES.~~**  
Unless the member's spouse is the sole

designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period of the member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches age 70, the applicable distribution period for the member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this subsection (D)(2), or the joint life and last survivor expectancy of the member and the member's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

**~~(E) REQUIREMENTS FOR MINIMUM DISTRIBUTIONS WHERE MEMBER DIES BEFORE DISTRIBUTIONS BEGIN.~~**

**~~(1) MEMBER SURVIVED BY DESIGNATED BENEFICIARY.~~**

If the member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the member's entire interest will be distributed, beginning no later than the time described in Section (B)(2)(a) or (b), over the life of the designated beneficiary or over a period certain not exceeding:

(a) Unless the annuity starting date is before the first distribution calendar year, the

~~life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death; or~~

~~(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.~~

~~(2) NO DESIGNATED BENEFICIARY.~~ If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

~~(3) DEATH OF SURVIVING SPOUSE BEFORE DISTRIBUTIONS TO SURVIVING SPOUSE BEGIN.~~ If the member dies before the date distribution of his or her interest begins, the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection (E) will apply as if the surviving spouse were the member, except that the time by which distributions must begin will be determined without regard to subsection (B)(2)(d).

#### ~~(F) DEFINITIONS.~~

~~(1) DESIGNATED BENEFICIARY.~~ The individual who is designated as the beneficiary under section 35-26 of the ordinance and is the designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A 4, of the Treasury regulations.

~~(2) DISTRIBUTION CALENDAR YEAR.~~ A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first

~~distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection (B)(2).~~

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

(1) DISTRIBUTIONS FROM THE RETIREMENT SYSTEM SHALL COMPLY WITH THE REQUIREMENTS OF IRC § 401(A)(9) AND THE REGULATIONS THEREUNDER. A MEMBER'S INTEREST IN THE TRUST MUST BEGIN TO BE DISTRIBUTED BY THE MEMBER'S REQUIRED BEGINNING DATE, BEING THE LATER OF (I) APRIL 1 OF THE CALENDAR YEAR FOLLOWING THE CALENDAR YEAR THAT THE EMPLOYEE ATTAINS THE AGE OF 70½, OR (II) APRIL 1 OF THE CALENDAR YEAR IN WHICH THE MEMBER RETIRES. WITH RESPECT TO DISTRIBUTIONS UNDER THE RETIREMENT SYSTEM MADE FOR CALENDAR YEARS BEGINNING ON OR AFTER JANUARY 1, 2001, THE RETIREMENT SYSTEM WILL APPLY THE MINIMUM DISTRIBUTION REQUIREMENTS OF IRC § 401(A)(9) IN ACCORDANCE WITH THE REGULATIONS UNDER IRC § 401(A)(9) THAT WERE PROPOSED IN JANUARY 2001, NOTWITHSTANDING ANY PROVISION IN THE RETIREMENT ORDINANCE TO THE CONTRARY. THIS AMENDMENT SHALL CONTINUE IN EFFECT UNTIL THE END OF THE LAST CALENDAR YEAR BEGINNING BEFORE THE EFFECTIVE DATE OF FINAL REGULATIONS UNDER IRC § 401(A)(9) OR SUCH OTHER DATE AS MAY BE SPECIFIED IN GUIDANCE PUBLISHED BY THE INTERNAL REVENUE SERVICE.

(2) IN THE CASE OF A DISTRIBUTION IN THE FORM OF A JOINT AND SURVIVOR ANNUITY, IF THE SURVIVOR BENEFICIARY IS NOT THE MEMBER'S SPOUSE, THE METHOD OF PAYMENT SELECTED MUST ASSURE THAT THE PERIODIC ANNUITY PAYABLE TO THE SURVIVOR ANNUITANT MUST NOT AT ANY TIME ON OR AFTER THE MEMBER'S REQUIRED BEGINNING DATE, AS DEFINED ABOVE AND IN APPLICABLE TREASURY REGULATIONS, EXCEED THE APPLICABLE PERCENTAGE OF THE ANNUITY PAYMENT PAYABLE TO THE MEMBER USING THE TABLE PRESCRIBED IN THE APPLICABLE PROVISIONS OF THE TREASURY REGULATION § 1.401(A)(9)-6.

(3) EFFECTIVE ON SEPTEMBER 8, 2009, THE U.S. DEPARTMENT OF TREASURY ISSUED FINAL REGULATIONS UNDER IRC § 401(A)(9) TO PERMIT A GOVERNMENTAL PLAN TO COMPLY WITH THE REQUIRED MINIMUM DISTRIBUTIONS RULES OF IRC § 401(A)(9) BY USING A REASONABLE AND GOOD FAITH INTERPRETATION OF THE STATUTE. THE RETIREMENT SYSTEM SHALL BE ADMINISTERED ACCORDINGLY.

**(B) FORFEITURES.**

(1) UPON A MEMBER'S TERMINATION DATE, THE VALUE OF ANY FORFEITABLE ACCRUED BENEFIT SHALL BE FORFEITED BY THE MEMBER AS OF THE TERMINATION DATE. THE VALUE OF SUCH FORFEITURES SHALL BE USED TO REDUCE THE EMPLOYER'S FUTURE CONTRIBUTIONS UNDER THE PLAN IN ACCORDANCE WITH IRC § 401(A)(8). NO FORFEITURES UNDER THE PLAN SHALL BE APPLIED TO INCREASE THE BENEFITS THAT ANY MEMBER OR BENEFICIARY WOULD OTHERWISE

RECEIVE AT ANY TIME PRIOR TO THE TIME WHEN THE PLAN MAY BE TERMINATED. IF A MEMBER WHOSE EMPLOYMENT HAS TERMINATED DOES NOT RETAIN A VESTED BENEFIT UNDER THE PLAN, HE/SHE SHALL NO LONGER BE A MEMBER OR RETAIN OR EARN CREDITED SERVICE UNDER THE PLAN UNLESS AND UNTIL HE/SHE AGAIN BECOMES AN EMPLOYEE.

**(C) FORFEITABILITY OF ACCRUED BENEFITS.**

(1) AN EMPLOYEE'S RIGHT TO HIS/HER NORMAL RETIREMENT BENEFIT IS NONFORFEITABLE ON THE ATTAINMENT OF HIS/HER NORMAL RETIREMENT AGE AS DEFINED IN IRC § 411(A)(8) AND IN ACCORDANCE WITH REV. RUL. 66-11 AND IRC § 411(E)(2). THE ACCRUED FINANCIAL BENEFITS OF EACH MEMBER AND/OR BENEFICIARY OF THE RETIREMENT SYSTEM SHALL BE A CONTRACTUAL OBLIGATION THEREOF, AND SHALL NOT BE DIMINISHED OR IMPAIRED AS PROTECTED BY ARTICLE IX, SECTION 24 OF THE STATE OF MICHIGAN CONSTITUTION. IN THE EVENT OF TERMINATION OR PARTIAL TERMINATION OF THE PLAN, A MEMBER'S INTEREST IS NONFORFEITABLE TO THE EXTENT FUNDED IN CONFORMITY WITH APPLICABLE SECTIONS OF THE CODE AND TREASURY REGULATIONS.

**(D) PROHIBITION AGAINST REVERSION.**

(1) THE RETIREMENT SYSTEM AND TRUST HAVE BEEN CREATED FOR THE EXCLUSIVE BENEFIT OF THE MEMBERS AND BENEFICIARIES SET FORTH HEREIN. THE FUNDS THEREOF HAVE BEEN ESTABLISHED FOR THE BENEFIT OF THE MEMBERS AND FOR THE OPERATION OF THE RETIREMENT

SYSTEM. NO PART OF THE PRINCIPLE AND INCOME OF ANY OF THE FUNDS OF THE SYSTEM AND TRUST SHALL REVERT TO OR BE RETURNED TO THE CITY PRIOR TO THE SATISFACTION OF ALL LIABILITIES HEREUNDER TO ALL MEMBERS, BENEFICIARIES AND ANYONE CLAIMING BY OR THROUGH THEM.

(E) VESTING.

(1) A MEMBER SHALL BE VESTED IN HIS/HER ACCRUED BENEFIT IN ACCORDANCE WITH IRC § 411(E) AS IN EFFECT IN 1974.

(F) ACTUARIAL REPORTS.

(1) ANNUALLY, OR MORE FREQUENTLY, THE BOARD OF TRUSTEES SHALL OBTAIN ACTUARIAL COMPUTATIONS FROM AN ENROLLED ACTUARY AS TO THE CONTRIBUTIONS NECESSARY TO FUND THE BENEFITS PROVIDED BY THE PLAN ON A REASONABLE BASIS IN ACCORDANCE WITH ANY APPLICABLE REGULATIONS, AND SUCH ACTUARY SHALL CERTIFY SUCH AMOUNTS TO THE EMPLOYER. CONTRIBUTIONS ACCUMULATED UNDER THE PLAN, ALONG WITH THE EARNINGS THEREON, WILL BE DISTRIBUTED IN ACCORDANCE WITH THE TERMS OF THE PLAN.

(G) ASSIGNMENT OF BENEFITS.

(1) NONE OF THE BENEFITS, PAYMENTS, PROCEEDS, CLAIMS, OR RIGHTS OF ANY PARTICIPANT OR THEIR BENEFICIARY HEREUNDER SHALL BE SUBJECT TO EXECUTION, GARNISHMENT, ATTACHMENT, THE OPERATION OF BANKRUPTCY OR INSOLVENCY LAW, OR OTHER PROCESS OF LAW, NOR SHALL ANY PARTICIPANT OR BENEFICIARY HAVE

ANY RIGHT TO TRANSFER, ASSIGN, ENCUMBER, OR OTHERWISE ALIENATE ANY OF THE BENEFITS OR PROCEEDS WHICH THE PARTICIPANT MAY EXPECT TO RECEIVE, CONTINGENTLY OR OTHERWISE UNDER THE PLAN, EXCEPT AS PROVIDED UNDER A DOMESTIC RELATIONS ORDER AND IN ACCORDANCE WITH PUBLIC ACT 100 OF 2002, AS AMENDED, BEING MCL § 38.1681 ET SEQ., AND PUBLIC ACT 350 OF 1994, AS AMENDED, BEING MCL § 38.2701 ET SEQ.

(H) PLAN YEAR.

(1) THE PLAN YEAR SHALL BE THE 12 CONSECUTIVE MONTH PERIOD COMMENCING ON JULY 1 AND EACH ANNIVERSARY THEREAFTER.

Sec. 2. This ordinance shall become effective immediately upon publication.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2012,

A.D.

  
Dayne Walling, Mayor

  
Inez M. Brown, City Clerk

DIRECTED TO:

Enact ☒ Refer \_\_\_\_\_ Fail \_\_\_\_\_

  
Michael K. Brown, Emergency Manager

APPROVED AS TO FORM:

  
Peter M. Bade, Chief Legal Officer

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ADOPTED: 2-16-12