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12/16/2014

Ord. #5573

ORDINANCE TO AMEND CHAPTER 25 OF THE CITY OF MEMPHIS CODE OF ORDINANCES GOVERNING THE CITY PENSION SYSTEM TO PROVIDE A 2016 CASH BALANCE PLAN AND A 2016 DEFINED CONTRIBUTION PLAN

WHEREAS, the City of Memphis, Tennessee (the "Employer") has adopted a defined benefit retirement plan known as City of Memphis Retirement System for General Employees, including police officers and firefighters, as subsequently amended and restated from time to time, and consisting of a 1948 plan (that part of the plan benefiting employees participating under the provisions of sections 25-60 through 25-99) and a 1978 plan (that part of the plan benefiting employees participating under the provisions of sections 25-160 through 25-199), as amended in 2012, currently codified and established under City Ordinance Chapter 25, Articles I through VII, Division 1 and Division 2 (collectively, "the Pension System"); and

WHEREAS, in order to protect and enhance the Pension System's actuarial soundness and ensure the long-term financial viability of the Pension System it is necessary that the Pension System be further amended as set forth herein; and

NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that the Pension System shall be amended as follows:

I. The following Sections 25-1(1)(17), 25-1(42), 25-1(43), 25-1(44), 25-160(a) and 25-160(c) shall be amended and restated as follows:

1. Sec. 25-1(17) *Employee* shall be restated and amended in its entirety to read as follows:

> (17) *Employee*: Any person hired on or before June 30, 2016, but who as of June 30, 2016 has seven and one-half (7.5) or more years of service with the City and who was on June 30, 2016 a participant in the City of Memphis Retirement System for General Employees, including police officers and firefighters, under City Ordinance Chapter 25, Articles I through VII in the regular, full-time employ of the City to the extent that the City contributes to the salary of such employee in a job classification or title that the City administration shall designate as eligible for participation in the Plan, including any person who is elected to his/her office by the people, but not including the light, gas and water division of the City, temporary employees as classified by the City, part-time employees, or any employee mandated by law to contribute to the federal Social Security system and not eligible to be a participant by his/her job classification.

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2. Section 25-1(42) *Trust fund* shall be renumbered as Section 25-1(43).

3. Section 25-1(43) *Year of service* shall be renumbered as Section 25-1(44).

4. There shall be added as Section 25-1(42) the following Section 25-1(42) *Transferred Participant*:

   (42) *Transferred Participant*: Each participant who is actively employed as of June 30, 2016 but who as of June 30, 2016 has less than seven and one-half (7.5) years of service with the City and who was on June 30, 2016 a participant in City of Memphis Retirement System for General Employees, including police officers and firefighters, under City Ordinance Chapter 25, Articles I through VII, Division 1 or Division 2.

5. Sec. 25-160(a) *Participation* shall be restated and amended in its entirety to read as follows:

   (a) General rule. Subject to section 25-160(b) and (c), and section 25-163(b), each person who shall become an employee on or after July 1, 1978 and prior to July 1, 2016, shall be or become a participant in this 1978 plan as of his/her employment creditable service date without any further action on his/her part and shall remain a participant until s/he terminates employment with the City, provided, however, if such person on June 30, 2016 has less than seven and one-half (7.5) years of service with the City such person shall be a Transferred Participant.

6. Section 25-160(c) *Elected employee rule* shall be restated and amended in its entirety to read as follows:

   Elected employee rule. Any Eligible Employee who is elected to his/her position prior to July 1, 2016, including the Mayor or any member of the City Council, may elect to participate in this Plan as of the date he/she begins his/her elected duties, provided:

   1. Such elected employee makes a written election to the Board within ninety (90) days of such date; and

   2. If such elected Eligible Employee elects to begin participation after the date he/she begins his elected duties, he/she

a. Enters this Plan before the expiration of his/her then current term of office; and

b. Upon such entry, pays into the Trust Fund the Employee Contributions payable for the period since such date he/she began his/her elected duties, with compounded interest at the rate established by the Board.

II. There shall be added as Part 6 *Benefit for Transferred Participants* the following:

Part 6. Benefit for Transferred Participants

Sec. 25-201. Cessation of Accruals for Transferred Participants.

Notwithstanding any other contrary provision of this Pension System, in calculating the accrued benefit (including the right to any optional benefit provided under the Pension System) of any Transferred Participant, such Transferred Participant shall accrue no additional benefit under the Pension System, Division 1 or Division 2 on or after June 30, 2016.

Sec. 25-202 through 25-209. Reserved.

III. There shall be added to the Pension System the following Division 3. 2016 Cash Balance Plan/Defined Contribution Plan, providing for the following:

DIVISION 3. 2016 CASH BALANCE PLAN/DEFINED CONTRIBUTION PLAN

Part 1. Definitions

Sec. 25-210. Definitions.

(1) *Accrued benefit*: A monthly benefit accrued as of the annuity commencement date for a participant, payable semimonthly, equal to the actuarial equivalence of the sum of (i) the participant's cash balance account, (ii) the participant's defined contribution plan account, and (iii) any Rollover Account of the participant under Sec. 25-260 hereof.

(2) *Actuarial equivalence*: Equality in value of the aggregate amounts expected to be received under different forms of annuity payment based upon interest at five (5%) per annum compounded annually and the applicable mortality table as prescribed by the Secretary of Treasury pursuant to Section 417(e)(3)(B) of the Internal Revenue Code of the Plan Year including the annuity commencement date of the participant.

(3) *Cash Balance Account:* A hypothetical participant account which shall be credited with the participant's employee cash balance plan contributions under Sec. 25-220, the city cash balance plan allocations under Sec. 25-221, and the interest credits under Sec. 25-223.

(4) Defined Contribution Plan Account: A participant account as set forth in Sec. 25-234.

(5) Normal Form of Benefit: The normal form of benefit for a non-married participant is a level single life annuity. The normal form of benefit of a married participant is a level 75% joint and survivor benefit.

(6) 2016 Plan: The Cash Balance Plan and Defined Contribution Plan established hereunder.

Part 2. Participation

Sec. 25-211. Participation in 2016 Cash Balance Plan/Defined Contribution Plan.

a. General rule. Each person (1) who is hired on or after July 1, 2016, or (2) who is a Transferred Participant as defined in Sec. 25-1(42), in each case who is in the regular, full-time employment of the City to the extent that the City contributes to the salary of such employee in a job classification or title that the City administration shall designate as eligible for participation in the Plan, including any person who is elected to his/her office by the people, but not including the light, gas and water division of the City, temporary employees as classified by the City, part-time employees, or any employee mandated by law to contribute to the federal Social Security system and not eligible to be a Participant by his/her job classification, shall become a participant in this 2016 Plan as of his or her employment creditable service date without any further action on his or her part.

b. Grandfather rule for 1948 and 1978 plans. Any employee whose reemployment commencement date occurs on or after July 1, 2016, and who terminated employment as a member in the city retirement system under the 1948 plan or 1978 plan and properly elected a deferred pension under Sec. 25-83 or Sec. 25-183 or who retired as a participant in such 1948 plan under section 25-78, 25-81 or 25-82, or who retired as a participant in such 1978 plan under section 25-178, 25-181 or 25-182, shall be a member in such 1948 plan or 1978 plan upon his/her reemployment commencement date and shall not participate in this 2016 Plan.

c. Elected employee rule. Any employee who is elected to his or her position from and after July 1, 2016, including the mayor or any member of the council, may elect to participate in this 2016 Plan as of the date s/he begins his/her elected duties, provided:

(1) S/he makes such written election to the board within ninety (90) days of such date; and

(2) If in her/his timely election s/he elects to begin participation in the 2016 Plan after the date s/he begins her/his elected duties;

(3) S/he enters the 2016 Plan before the expiration (other than because of ordinary disability) of her/his then current term of office; and

(4) Upon such entry, s/he pays into the trust fund the employee contributions payable for the period since such date s/he began her/his elected duties, with compounded interest at the rate established by the Board.

d. Part-time employee rule. Part-time assistant city attorneys and other part-time employees who may hereafter be specifically included by amendment to this 2016 Plan shall be participants in this 2016 Plan unless within ninety (90) days of employment they request in writing to be excluded and the request is approved by the mayor.

Sec. 25-212. Reemployed participants.

Except as provided in section 25-211(b), any former participant under this 2016 Plan or the 1978 plan, as amended in 2012, or the 1948 plan of this chapter who is reemployed as an employee shall enter this 2016 Plan as a participant upon his/her reemployment commencement date. His/her years of service shall be determined as provided under section 25-1(44).

Sec. 25-213. Transferring participants to the plan.

RESERVED

Sec. 25-214. Transferring participants from the plan.

RESERVED

Sec. 25-215. Participant information.

The head of each city department shall give immediate notice in writing to the Board of any new employee, and of the change in status of any employee in his/her department resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal

or death. The head of each department shall furnish such other information, concerning any participant, as the Board may require.

Sec. 25-216 to 25-219 Reserved.

Part 3. Cash Balance Plan Contributions

Sec. 25-220. Participant employee cash balance plan contributions.

(a) Effective July 1, 2016, each 2016 Plan participant who is not a police officer or a firefighter shall make a mandatory cash balance plan contribution to the trust fund in an amount equal to two percent (2%) of his/her compensation. Such contribution shall be paid by the participant while an employee until his/her retirement or termination as an employee. Such contribution shall be in addition to any defined contribution plan contribution of the employee.

(b) Effective July 1, 2016, each 2016 Plan participant who is a police officer or a firefighter shall make a mandatory cash balance plan contribution to the trust fund in an amount equal to two percent (2%) of his/her compensation. Such contribution shall be paid by the participant while an employee until his/her retirement or termination as an employee. Such contribution shall be in addition to any defined contribution plan contribution of the employee.

(c) The contributions made by each participant to the trust fund shall be designated as city contributions pursuant to Code Section 414(h). Such designation is contingent upon the contributions being excluded from the participant's gross income for federal income tax purposes.

(d) Subject to the provisions of this 2016 Plan, the board shall adopt rules and regulations governing the making of employee contributions by payroll deduction. The head of each city department shall apply the rate of contribution to the compensation of each participant, and shall certify to the comptroller on each payroll the amount to be contributed, and shall promptly furnish to the board a copy of each payroll; and such amounts shall be deducted by the comptroller and shall be paid into the trust fund and credited by the board as employee cash balance plan contributions of the participants for whom the contributions were made. Every participant shall be deemed to have consented and agreed to the employee cash balance contributions provided and made hereunder. Payment of salary, less such cash balance plan contributions and any defined contribution plan contributions provided herein, shall be a full and complete discharge of all

claims and demands whatsoever for the service rendered by such person to the city during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this 2016 Plan.

(e) At the end of each pay period, the comptroller shall determine the aggregate amount of the participant employee cash balance plan contributions of the participants who are employees of the general city government for such period, including police officers and firefighters, and shall be supplied with the aggregate amount of the participant employee cash balance plan contributions of the participants of the various other city agencies, in the proper amount, and shall then contribute to the trust fund an amount equal to the aggregate employee cash balance contributions for all participants for such pay period; provided, however, the first determination and transfer of funds as provided for above after the original effective date of this 2016 Plan shall be made at the end of the July 15, 2016 pay period.

Sec. 25-221. City cash balance plan allocations.

(a) As of the end of each plan year, the comptroller shall determine the aggregate amount of the compensation of each 2016 Plan participant who is not a police officer or a firefighter on which the employee cash balance plan contributions for such period are calculated. The city shall allocate to the cash balance accounts of such participants the following:

i. For those participants with less than five (5) years of service at the date of such contribution three percent (3%) of such compensation.

ii. For those participants with five (5) or more years of service but less than ten (10) years of service at the date of such contribution five percent (5%) of such compensation.

iii. For those participants with ten (10) or more years of service but less than fifteen (15) years of service at the date of such contribution seven percent (7%) of such compensation.

iv. For those participants with fifteen (15) or more years of service but less than twenty (20) years of service at the date of such contribution ten percent (10%) of such compensation.

v. For those participants with twenty (20) or more years of service at the date of such contribution thirteen percent (13%) of such compensation.

(b) As of the end of each plan year, the comptroller shall determine the aggregate amount of the compensation of each 2016 Plan participant who is a police officer or a

firefighter on which the employee cash balance plan contributions for such period are calculated. The city shall allocate to the participant cash balance accounts of such participants the following:

i. For those participants with less than five (5) years of service at the date of such contribution six percent (6%) of such compensation.

ii. For those participants with five (5) or more years of service but less than ten (10) years of service at the date of such contribution eight percent (8%) of such compensation.

iii. For those participants with ten (10) or more years of service but less than fifteen (15) years of service at the date of such contribution ten percent (10%) of such compensation.

iv. For those participants with fifteen (15) or more years of service but less than twenty (20) years of service at the date of such contribution thirteen percent (13%) of such compensation.

v. For those participants with twenty (20) or more years of service at the date of such contribution sixteen percent (16%) of such compensation.

Sec. 25-222. Reserved.

Sec. 25-223. Interest credits on participant cash balance accounts.

For each 2016 Plan participant the "interest crediting rate" applied to the participant's cash balance account shall be based on the Plan's return on assets for the applicable plan year less one percent (1%). For periods of less than twelve (12) months the interest crediting rate applied to the participant's cash balance account shall be based on the year to date (YTD) return on assets for the applicable plan year through the second month preceding the month in which the annuity commencement date occurs less one percent (1%). Such interest credit shall be allocated in the following manner:

(i) Effective as of the last of each plan year, the dollar amount credited to each participant's cash balance account is calculated as the sum (a) and (b) below:

a. The interest crediting rate multiplied by the cash balance account on the last day of the prior plan year.

b. The interest crediting rate multiplied by the sum of participant cash balance plan contributions and city cash balance plan allocations for the current plan year times one-half (1/2).

For any Plan participant who ends employment in accordance with section 25-240, section 25-241, section 25-242, section 25-250, or section 25-251, the cash balance account at the annuity commencement date shall not be less than the accumulated participant cash balance contributions and city cash balance plan allocations. For any plan participant who ends employment in accordance with section 25-243, the cash balance account shall at no point be less than the accumulated participant cash balance contributions. This provision may be referred to as the "preservation of principal".

Sec. 25-224. Forfeitures.

All forfeitures arising under this 2016 Plan will be applied to reduce the contributions of the city to the plan and shall not be used to increase the 2016 Plan benefits of any participant at any time prior to the termination of the 2016 Plan.

Sec. 25-225. Prohibition against interest.

The city shall not have any right, claim or interest in the trust fund or in any contributions made to the trust fund, and this 2016 Plan may not be amended to use the trust fund for any purpose other than the exclusive benefit of the participants and, where applicable, their spouses or children; provided the comptroller shall return any portion of a contribution which was made under a mistake of fact, provided such return is made within one year after such contribution is made.

Sec. 25-226 through 25-229. Reserved.

Part 4. Defined Contribution Contributions.

Sec. 25-230. Participant defined contribution plan contributions.

(a) Effective July 1, 2016, each 2016 Plan participant who is not a police officer or a firefighter shall make a mandatory defined contribution plan contribution to the trust fund in an amount equal to six percent (6%) of his/her compensation. Such contribution shall be paid by the participant while an employee until his/her retirement or termination as an employee. Such contribution shall be in addition to any cash balance plan contribution of the employee.

(b) Effective July 1, 2016, each 2016 Plan participant who is a police officer or a firefighter shall make a mandatory defined contribution plan contribution to the trust fund in an amount equal to six percent (6%) of his/her compensation. Such contribution shall be paid by the participant while an employee until his/her retirement or termination as an employee. Such contribution shall be in addition to any cash balance plan contribution of the employee.

(c) The defined contribution plan contributions made by each participant to the trust fund shall be designated as city contributions pursuant to Code Section 414(h). Such designation is contingent upon the contributions being excluded from the participant's gross income for federal income tax purposes.

(d) Subject to the provisions of this 2016 Plan, the Board shall adopt rules and regulations governing the making of employee contributions by payroll deduction. The head of each city department shall apply the rate of contribution to the compensation of each participant, and shall certify to the comptroller on each payroll the amount to be contributed, and shall promptly furnish to the Board a copy of each payroll; and such amounts shall be deducted by the comptroller and shall be paid into the trust fund and credited by the board as employee defined contribution plan contributions of the participants for whom the contributions were made. Every participant shall be deemed to have consented and agreed to the employee defined contribution plan contributions provided and made hereunder. Payment of salary, less such defined contribution plan contributions and any cash balance plan contributions provided herein, shall be a full and complete discharge of all claims and demands whatsoever for the service rendered by such person to the city during the period covered by such payment, except his or her claim to the benefits to which he or she may be entitled under the provisions of this 2016 Plan.

(e) At the end of each pay period, the comptroller shall determine the aggregate amount of the participant employee defined contribution plan contributions of the participants who are employees of the general city government for such period, including police officers and firefighters, and shall be supplied with the aggregate amount of the participant employee defined contribution plan contributions of the participants of the various other city agencies, in the proper amount, and shall then allocate to the trust fund an amount equal to the aggregate employee defined contribution plan contributions for all participants for such pay period; provided, however, the first determination and transfer of funds as provided for above after the original effective date of this 2016 Plan shall be made at the end of the July 15, 2016 pay period.

Sec. 25-231. City defined contribution plan contribution.

(a) No later than the end of each month, the comptroller shall determine the aggregate amount of the compensation of each 2016 Plan participant employed as of the end of such plan year who is not a police officer or a firefighter on which the employee defined contribution plan contributions for such month are calculated. The city shall pay into the trust fund as its defined contribution plan contribution one and one-half

percent (1.5%) of such compensation.

(b) No later than the end of each month, the comptroller shall determine the aggregate amount of the compensation of each 2016 Plan participant who is a police officer or a firefighter on which the employee defined contribution plan contributions for such month are calculated. The city shall pay into the trust fund as its defined contribution plan contribution one and one-half percent (1.5%) of such compensation.

(c) The payments of the city into the trust fund under this section are made obligations of the city. The council shall appropriate annually such amounts as are necessary to make such payments.

Sec. 25-232. Forfeitures.

All forfeitures arising under this 2016 Plan will be applied to reduce the contributions of the city to the plan and shall not be used to increase the 2016 Plan benefits of any participant at any time prior to the termination of the 2016 Plan.

Sec. 25-233. Prohibition against interest.

The city shall not have any right, claim or interest in the trust fund or in any contributions made to the trust fund, and this 2016 Plan may not be amended to use the trust fund for any purpose other than the exclusive benefit of the participants and, where applicable, their spouses or children; provided the comptroller shall return any portion of a contribution which was made under a mistake of fact, provided such return is made within one year after such contribution is made.

Sec. 25-234 Allocation of defined contribution plan contributions.

(1) Separate accounting: The Board shall establish and maintain an account in the name of each participant to which the Board shall credit all defined contribution amounts allocated to each such participant as set forth herein.

(2) Allocation of contributions: The city shall provide the Board with all information required by the Board to make a proper allocation of the city's defined contribution plan contribution for each plan year. Within a reasonable period of time after the date of receipt by the Board of such information, the Board shall allocate any city defined contribution plan contributions proportionately among the Participants of the Plan as provided herein.

(3) Participant accounts and participant directed investments:

i. *Participant accounts*: The Board shall create and maintain adequate records to disclose the interest of each participant, former participant, and beneficiary in such participant's separate defined contribution plan account. Such records

shall be in the form of individual accounts to which shall be credited the participant's employee defined contribution plan contributions, the city defined contribution plan contributions allocable to the Participant as provided herein, and the aggregate of all earnings and losses on such account.

ii. *Participant directed investments:* Each Participant may designate, in accordance with the procedures established from time to time by the Board, the manner in which the amounts allocated to each of his or her account shall be invested from among the investment funds made available from time to time by the Board. That portion of the interest of any participant so directing will thereupon be considered a participant's directed account. If a participant fails to make a designation, then his or her account shall be invested in the investment fund or funds designated by the Board from time to time in a uniform manner. A Participant may change his or her investment designation for future contributions to be allocated to his or her account. Any such change shall be made in accordance with procedures established by the Board and the frequency of such change may be limited by such procedures. A participant may elect to convert his or her investment designation with respect to the amounts already allocated to his or her account. Any such conversion shall be made in accordance with the procedures established by the Board, and the frequency of such conversions may be limited by such procedures.

All participant directed accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values in accordance with procedures established from time to time by the Board and the Board deems necessary or appropriate to ensure proper administration of the defined contribution plan, and may interpret the same accordingly.

Sec. 235 through 25-239. Reserved.

Part 5. Retirement Benefits

Sec. 25-240. Normal retirement.

(a) A 2016 Plan participant who elects to retire on or after his/her normal retirement date, by a written election designating the date s/he will retire and delivered to the Board not less than thirty (30) days before such designated date, shall be entitled to receive a monthly retirement benefit equal to his/her accrued benefit.

(b) The Board may compel the retirement of a participant on or after his normal retirement date, upon the recommendation of a qualified physician and the director of the city division in which the participant is employed that such retirement is in the

best interest and efficiency of the division and department. Any such participant shall be entitled to receive a monthly retirement benefit equal to his/her accrued benefit.

Sec. 25-241. Disability retirement.

(a) *Line-of-duty disability.*

(i) Upon application by or on behalf of the participant or by the director of the city division for which the participant works, any participant who is not a police officer or firefighter determined to have incurred an in-line-of-duty disability shall receive during the period such participant suffers from such disability a retirement benefit equal to the greater of sixty percent (60%) of of his/her average monthly compensation or his/her accrued benefit as of the date of such disability based on the disability mortality table.

(ii) Upon application by or on behalf of the participant or by the director of the city division for which the participant works, any participant who is a police officer or firefighter determined to have incurred an in-line-of-duty disability shall receive during the period such participant suffers from such disability a retirement benefit equal to the greater of sixty percent (60%) of his/her average monthly compensation or his/her accrued benefit as of the date of such disability based on the disability mortality table.

(b) *Ordinary disability*:

(i) Upon application by or on behalf of the participant or by the director of the city division for which the participant works, any participant who is not a police officer or firefighter determined to have incurred an ordinary disability shall receive during the period such participant suffers from such disability a retirement benefit equal to his/her accrued benefit as of the date of such disability based on the disability mortality table; provided, however, that the board shall deny any such benefit payments and, instead, refund the participant's employee contributions in accordance with section 25-243, if the board has proof that such disability is a result of the participant's gross and willful misconduct.

(ii) Upon application by or on behalf of the participant or by the director of the city division for which the participant works, any participant who is a police officer or firefighter determined to have incurred an ordinary disability shall receive during the period such participant suffers from such disability a retirement benefit equal to his/her accrued benefit as of the date of such disability based on the disability mortality table; provided, however, that the board shall deny any such benefit payments and, instead, refund the participant's employee contributions in accordance with section 25-243, if the board has proof that such disability is a result of the participant's gross and willful misconduct.

(c) *Re-examination of disability.* At the discretion of the board, a participant receiving benefits under this section 25-241 may be required to undergo a medical examination by a qualified physician to determine whether the participant continues to suffer from the disability.

(d) *Cancellation of disability retirement*:

(1) If a participant refuses to undergo medical examination under section 25-241(c), his/her benefits shall be discontinued until s/he withdraws his/her refusal.

(2) If a participant is determined under section 25-241(c) to have recovered from his/her disability, his/her disability benefits shall be cancelled and s/he shall be reinstated to city employment. Upon returning to city employment, s/he shall have full credit for all employee contributions and years of service credits to him/her as of the original date of his/her disability.

(3) If a participant's disability benefits under this section 25-241 are cancelled for any reason other than returning to city employment, s/he shall receive a refund of her/his employee cash balance plan contributions and employee defined contribution plan contributions, in accordance with section 25-243, reduced by the amount of any benefit payments previously made to the participant.

(4) If a participant suffering from a disability and receiving benefits under this section 25-241 nevertheless engages in a gainful occupation not with the city or returns to employment with the city and re-enters the 2016 Plan as a participant, his/her disability benefit payments and his/her compensation from such occupation or city employment shall not exceed his/her average monthly compensation as of the original date of his/her disability.

Sec. 25-242. Deferred retirement.

(a) Any participant meeting the requirements of section 25-242(c) shall receive a deferred retirement benefit under this 2016 plan equal to his/her accrued benefit and payable in the normal form of benefit.

(b) The annuity commencement date of any participant who is to receive his benefit pursuant to section 25-242 shall be the date s/he reaches age sixty (60).

(c) To be eligible for electing a deferred retirement benefit under this section 25-242 a participant:

(1) Must be credited with ten (10) or more years of service as of his/her severance date.

(2) Must not be entitled to any benefits under any other section of this Division 3; and

(3) Must not have engaged in an act determined harmful to the city by the board and resulting in the participant's conviction of a felony, illegal manipulation of the books and records of the city, theft, or embezzlement of assets.

Sec. 25-243. Refund of employee contributions.

(a) Any participant whose employment with the city terminates, for any reason other than death, who is not entitled to any benefits under any other section of this Plan shall receive an amount equal to his/her total participant employee cash balance plan contributions plus the interest crediting rate on such contributions as provided herein and defined contribution account balance attributable to the participant's contributions paid within two (2) months of the date the termination of his/her employment occurs or is deemed to have occurred under section 25-243(b) unless s/he earlier withdraws the participant employee contributions or becomes entitled to receive benefits under any other section of this Plan.

(b) A participant during a leave of absence period shall be deemed to have terminated employment with the city if during such period s/he:

(1) Retires under this 2016 Plan;

(2) Withdraws his/her employee contributions; or

(3) Actually terminates employment with the city, or does not return to active employment with the city as of the earlier of the date two (2) years from the beginning of such leave of absence period or the end of such period.

Sec. 25-244. Benefits upon reemployment.

If a participant receiving benefits pursuant to this 2016 Plan is reemployed after his/her annuity commencement date, no further benefit payments shall be made to that participant during his/her period of reemployment. Subsequent benefits and an appropriate annuity commencement date for that participant shall be determined based upon the participant's accrued benefit at that time; provided, however, subsequent benefits shall be reduced by the actuarial equivalent of any amounts distributed between his/her first annuity commencement date and his/her most recent reemployment commencement date, but not to an amount less than the annual plan benefit he/she was receiving immediately before his most recent reemployment commencement date.

Sec. 25-245 through 25-249. Reserved.

Part 6.

Death

Sec. 25-250. Line-of-duty death.

(a) The beneficiaries described in section 25-251(b) of a participant who is not a police officer or firefighter who dies as the direct and proximate result of an accident sustained by him as a participant, while in the actual performance of duties for the city without willful negligence on his/her part, before or after s/he received a line-of-duty disability benefit under section 25-241, shall receive a death benefit equal to the greater of sixty percent (60%) of his/her average monthly compensation or his/her accrued benefit as of the date of such death.

(b) The beneficiaries described in section 25-251(b) of a participant who is a police officer or firefighter who dies as the direct and proximate result of an accident sustained by him as a participant, while in the actual performance of duties for the city without willful negligence on his/her part, before or after s/he received a line-of-duty disability benefit under section 25-241, shall receive a death equal to the greater of sixty percent (60%) of his/her average monthly compensation or his/her accrued benefit as of the date of such death.

Sec. 25-251. Other death benefit.

(a) The beneficiaries described in section 25-251(b) of a participant who is not a police officer or firefighter who dies other than as described in section 25-250(a) and who has not elected deferred retirement under section 25-242 shall receive a death benefit equal to shall receive a death benefit equal to seventy five percent (75%) of:

i. The retirement benefit, if any, the participant was receiving as of his/her date of death; or

ii. If the participant died before his/her annuity commencement date, but after the participant was credited with five (5) or more years of service, or suffered an ordinary disability, the retirement benefit to which the participant was entitled under section 25-240, 25-241,or 25-242.

(b) The only beneficiaries of the benefit under section 25-251(a) shall be the participant's spouse, if married to the participant at the time of his/her death, or, if no such spouse, the participant's surviving child and handicapped child, as those terms are defined in Sec. 25-1(6).

Sec. 25-252 through 25-259. Reserved.

Part 7. Rollovers

Sec. 25-260. City's 457(b) Plan

(1) *Rollover of participant accounts from the city's 457(b) plan.* To the extent permitted by the Internal Revenue Code, a participant of the 2016 Plan who also participates in the city's 457(b) plan may, upon such participant's termination of employment with the city but prior to the participant's annuity commencement date, transfer the participant's 457(b) account by direct rollover to this 2016 Plan, provided such transfer will not jeopardize the tax exempt status of this plan. The transferred amount shall be set up in a separate account to be known as a "Rollover Account." Such Rollover Account shall be fully vested at all times and shall not be subject to forfeiture. Such Rollover Account shall be held pursuant to the provisions of this 2016 plan and shall not be withdrawn by or distributed to the participant except as provided in this 2016 Plan.

(2) *Distribution of Rollover Account as Part of Accrued Benefit.* At the participant's normal retirement date, or such other date when the participant shall be entitled to receive benefits, the value of the Rollover Account shall be combined with the participant's cash balance account and defined contribution account of the participant to provide additional monthly benefits to the participant as provided herein.

Sec. 25-261 through 25-269. Reserved.

Part 8. General Provisions.

Sec. 25-270. Amendments.

Pursuant to Tenn. Code Ann. §9-3-506, as amended from time to time, the city reserves the right to freeze, suspend or modify benefits, employee contributions, plan terms and design on a prospective basis provided that any accrued benefits earned prior to any adjustment shall remain an enforceable right unless the participant is subject to forfeiture of benefits upon termination of service as provided in this plan.

Sec. 25-271. No Duplication of Benefits.

Notwithstanding any provision of this plan which may be construed to the contrary, a participant shall not be entitled to two separate benefits under the plan which are attributable to the same period of employment. Accordingly, if a separate benefit under the plan is payable to or in respect of the same participant based upon the same period of employment as the benefits previous paid, the benefit currently payable shall be reduced to reflect the actuarial equivalence of the benefits previously paid.

Sec. 25-272. Payments solely from plan assets.

Payments of benefits as provided in this 2016 Plan shall be made solely from plan assets held under the trust agreement and in no event will the comptroller, the board, the city, the council, or any employee of the city be liable in their individual capacities to any person for the payment of benefits hereunder.

Sec. 25-273. Prohibition on Assignment.

No benefit payable under this plan shall be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, attachment, garnishment, execution, or levy of any kind or any other process of law, voluntary or involuntary. Any attempt to so dispose of any rights to benefits payable hereunder shall be void. Neither the plan nor trust shall be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

Sec. 25-274. Severability.

If any provisions of this plan are for any reason declared invalid or not enforceable under either federal or Tennessee law, such provisions will not affect the remaining terms and conditions, but the plan will be construed and enforced thereafter as if such provision had not been inserted.

THE FOREGOING ORDINANCE
#5573 PASSED
1st Reading 11-4-14
2nd Reading 11-18-14
3rd Reading 12-16-14
Approved Myron Lowery
Chairman of Council
Date Signed: 1-6-2015

Approved:
Mayor, City of Memphis
Date Signed: 1/13/15

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.
Valerie C. Snyder
Comptroller

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