

An Ordinance to Amend Chapter 25—Pension and Retirement System of the City of Memphis, Code of Ordinance to Modify the Disability Provisions Under the Ordinance

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, and a 2016 plan (that part of the plan benefiting employees participating under the provisions of sections through 25-210 through 25-274), currently codified and established under City Ordinance Chapter 25, Articles I through VII, Division 1 and Division 2 and Division 3 (collectively, “the Pension System”); and

WHEREAS, the Employer desires to amend the Pension System as provided herein,

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MEMPHIS that the Pension and Retirement System of the City of Memphis be amended as follows:

1. **Sec. 25-1(27) *Line-of-duty disability*** shall be deleted in its entirety and the following **Sec. 25-1(27)** substituted therefor

Line-of-duty disability: A physical or mental condition arising as the direct and proximate result of an accident sustained by a participant who is a commissioned police officer or firefighter after s/he became a participant and while in the actual performance of duties for the city at some definite time and place without willful negligence on said participant’s part which totally and permanently prevents the participant from engaging in the duties for which the participant was employed by the city. Notwithstanding a participant’s inability to perform the duties for which the participant was engaged by the city immediately prior to the disability, if the city reassigns or offers reassignment to the participant to other duties that the participant remains able to perform after the disability, the participant shall not be deemed disabled for purposes of benefits under this plan except to the extent the monthly compensation for such other duties is not comparable to the average monthly compensation the participant received for the duties the participant performed for the city immediately prior to the disability, in which event the participant shall be entitled to the disability benefit provided in Sec. 25-182(a)(i) hereof. Subject to Sec. 25-182(d)(4) hereof, for a participant to be entitled to the disability retirement benefit provided in Sec. 25-182(a)(ii) hereof the participant

must have a physical or mental condition arising as the direct and proximate result of an accident sustained by the participant after s/he became a participant and while in the actual performance of duties for the city at some definite time and place without willful negligence on said participant's part which totally and permanently prevents the participant from engaging in any duties with the city. The determination of the line-of-duty disability of a participant shall be made on medical evidence by at least two (2) qualified physicians.

2. **Sec. 25-1(31)** *Ordinary disability* shall be deleted in its entirety and the following **Sec. 25-1(31)** substituted therefor:

(31) Ordinary disability: A physical or mental condition, other than a line-of-duty disability, arising after the participant commences employment with the city and is credited with five (5) or more years of service which totally and permanently prevents the participant from engaging in the duties for which the participant was employed by the city. Notwithstanding a participant's inability to perform the duties for which the participant was engaged by the city immediately prior to the disability, if the city reassigns or offers reassignment to the participant to other duties that the participant remains able to perform after the disability, the participant shall not be deemed disabled for purposes of benefits under this plan except to the extent the monthly compensation for such other duties is not comparable to the average monthly compensation the participant received for the duties the participant performed for the city immediately prior to the disability, in which event the participant shall be entitled to the disability benefit provided in Sec. 25-182(b)(i) hereof. Subject to Sec. 25-182(d)(4) hereof, for a participant to be entitled to the disability retirement benefit provided in Sec. 25-182(b)(ii) hereof the participant must have a physical or mental condition arising after the participant commences employment with the city and is credited with five (5) or more years of service which totally and permanently prevents the participant from engaging in any duties for the city. The determination of the ordinary disability of a participant shall be made on medical evidence by at least two (2) qualified physicians. Notwithstanding the foregoing no such disability shall be a result of the participant's chronic alcoholism, self-addiction to narcotics, participation in a felonious, or otherwise criminal act or enterprise, or, except for anyone hired before September 15, 1976, service in the armed forces of the United States which entitles the participant to a federal veteran's disability pension.

3. **Sec. 25-48** shall be added as follows:

Sed. 25-48. Disqualified Participants. Any participant who is convicted in any state or federal court of a felony arising out of the participant's employment or official capacity with the city constituting malfeasance in office shall forfeit the participant's retirement pension benefits hereunder. Such participant's rights shall be governed by Sec. 8-36-918 of the Tennessee Code Annotated, as amended, and any successor statute thereto.

4. **Sec. 25- 182(a)** *Line-of-Duty Disability* shall be deleted in its entirety and the following **Sec. 25- 182(a)** substituted therefor:

(a) *Line-of-duty disability.* Upon application by or on behalf of the participant or by the director of the city division for which the participant works, subject to Sec. 25-182(d)(4) hereof any participant who is a commissioned police officer or firefighter determined to have incurred a line-of-duty disability shall receive from the effective date such application for line-of-duty disability benefits has been approved until the date the participant attains normal retirement age the following:

- i. For any such participant who has been reassigned or offered reassignment to other duties for the city that the participant remains able to perform after the disability, an amount equal to the difference between the monthly compensation the participant receives in the reassigned duties and the average monthly compensation the participant received for the duties the participant performed for the city immediately prior to the disability.
- ii. Subject to Sec. 25-182(d)(4) hereof, for any such participant who, due to the participant's disability, cannot perform any reassigned duties for the city, or whom the city does not reassign or offer reassignment, a retirement benefit equal to the greater of sixty (60) percent of his/her average monthly compensation or his/her accrued benefit as of the date of such disability based on the disability mortality table.

In any event, upon such participant's attainment of his/her normal retirement age the participant shall receive his/her accrued benefit as of the date of the participant's disability.

5. **Sec. 25-182(b)** *Ordinary disability* shall be deleted in its entirety and the following **Sec. 25-182(b)** substituted therefor:

(b) *Ordinary disability.* Upon application by or on behalf of the participant or by the director of the city division for which the participant works, subject to Sec. 25-241(d)(4) hereof any participant determined to have incurred an ordinary disability shall receive from the effective date such application for ordinary disability benefits has been approved until the date the participant attains normal retirement age the following:

- i. For any such participant who has been reassigned or offered reassignment to other duties for the city that the participant remains able to perform after the disability, an amount equal to the difference between the monthly compensation the participant receives in the reassigned duties and the average monthly compensation the participant received for the duties the participant performed for the city

immediately prior to the disability provided, however, the board shall deny any such benefit payments if the board has proof that such disability is a result of the participant's gross and willful misconduct and if the participant does not accept such reassignment shall, instead, refund the participant's employee contributions in accordance with Sec. 25-184.

- ii. Subject to Sec. 25-182(d)(4) hereof, for any such participant who, due to the participant's disability, cannot perform any reassigned duties for the city, or whom the city does not reassign, a retirement benefit equal to the participant's accrued benefit as of the date of such disability based on the disability mortality table; provided, however, the board shall deny any such benefit payments and, instead, refund the participant's employee contributions in accordance with Sec. 25-184, if the board has proof that such disability is a result of the participant's gross and willful misconduct.

In any event, upon such participant's attainment of his/her normal retirement age the participant shall receive his/her accrued benefit as of the date of the participant's disability.

6. **Sec. 25-182(d)(4)** shall be deleted in its entirety and the following **Sec. 25-182(d)(4)** substituted therefor:

(4) If a participant suffering from a line-of-duty disability or an ordinary disability and receiving benefits under this Sec. 25-182 nevertheless engages in a gainful occupation not with the city or returns to employment with the city and reenters the 1978 plan as a participant, his/her disability benefits shall be reduced so that the sum of his/her disability benefit payments and his/her compensation from such occupation or city employment shall not exceed his average monthly compensation as of the original date of his disability. The Board of Administration shall have the right to suspend payments if it believes the participant has become engaged in a gainful occupation until the participant produces proof acceptable to the Board that the participant is not and has not been gainfully employed, or if gainfully employed produces evidence acceptable to the Board upon which the Board can calculate the reduction as provided above.

7. **Sec. 25-241(a) Line-of-Duty Disability** shall be deleted in its entirety and the following **Sec. 25-241(a)** substituted therefor:

Upon application by or on behalf of the participant or by the director of the city division for which the participant works, subject to Sec. 25-241(d)(4) hereof any participant who is a commissioned police officer or firefighter determined to have incurred a line-of-duty disability shall receive from the effective date such application for line-of-duty disability benefits has been approved until the date the participant attains normal retirement age the following:

- i. For any such participant who has been reassigned or offered reassignment to other duties for the city that the participant remains able to perform after the disability, an amount equal to the difference between the monthly compensation the participant receive or offered in the reassigned duties and the average monthly compensation the participant received for the duties the participant performed for the city immediately prior to the disability.
- ii. Subject to Sec. 25-241(d)(4) hereof, for any such participant who, due to the participant's disability, cannot perform any reassigned duties for the city, or whom the city does not reassign or offer reassignment, a retirement benefit equal to the greater of sixty (60) percent of his/her average monthly compensation or his/her accrued benefit as of the date of such disability based on the disability mortality table.

In any event, upon such participant's attainment of his/her normal retirement age the participant shall receive his/her accrued benefit as of the date of the participant's disability.

8. **Sec. 25-241(b)** *Ordinary disability* shall be deleted in its entirety and the following **Sec. 25-241(b)** substituted therefor:

Upon application by or on behalf of the participant or by the director of the city division for which the participant works, subject to Sec. 25-182(d)(4) hereof any participant determined to have incurred an ordinary disability shall receive from the effective date such application for ordinary disability benefits has been approved until the date the participant attains normal retirement age the following:

- i. For any such participant who has been reassigned or offered reassignment to other duties for the city that the participant remains able to perform after the disability, an amount equal to the difference between the monthly compensation the participant receives or is offered in the reassigned duties and the average monthly compensation the participant received for the duties the participant performed for the city immediately prior to the disability provided, however, the board shall deny any such benefit payments if the board has proof that such disability is a result of the participant's gross and willful misconduct and if the participant does not accept such reassignment shall, instead, refund the participant's employee contributions in accordance with Sec. 25-184.
- ii. Subject to Sec. 25-182(d)(4) hereof, for any such participant who, due to the participant's disability, cannot perform any reassigned duties for the city, or whom the city does not reassign, a retirement benefit equal to the participant's accrued benefit as of the date of

such disability based on the disability mortality table; provided, however, the board shall deny any such benefit payments and, instead, refund the participant's employee contributions in accordance with Sec. 25-184, if the board has proof that such disability is a result of the participant's gross and willful misconduct.

In any event, upon such participant's attainment of his/her normal retirement age the participant shall receive his/her accrued benefit as of the date of the participant's disability.

9. **Sec. 25-241(d)(4)** shall be deleted in its entirety and the following **Sec. 25-241(d)(4)** substituted therefor

If a participant suffering from a line-of-duty disability or an ordinary disability and receiving benefits under this Sec. 25-241 nevertheless engages in a gainful occupation not with the city or returns to employment with the city and reenters the 2016 plan as a participant, his/her disability benefits shall be reduced so that the sum of his/her disability benefit payments and his/her compensation from such occupation or city employment shall not exceed his average monthly compensation as of the original date of his disability. The Board of Administration shall have the right to suspend payments if it believes the participant has become engaged in a gainful occupation until the participant produces proof acceptable to the Board that the participant is not and has not been gainfully employed, or if gainfully employed produces evidence acceptable to the Board upon which the Board can calculate the reduction as provided above.

The above amendments shall become effective upon their adoption by the City Council of the City of Memphis, Tennessee.