

Ord. 5873

**An Ordinance to Amend Chapter 25—Pension and Retirement System
of the City of Memphis, Tennessee**

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 4-25-60 through 4-25-99) and a 1978 plan (that part of the plan benefiting employees participating under the provisions of sections 4-25-160 through 4-25-199), as amended in 2012, and a 2016 plan (that part of the plan benefiting employees participating under the provisions of sections through 4-25-210 through 4-25-274), 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. 4-25-1(11) *Compensation*** shall be amended by addition of the following subparagraph as subparagraph (e) and subparagraph (f) thereto:

(e) *Back pay*. For purposes of determining average monthly compensation under section 4-25-1(1), and section 4-25-1(4) pay awarded by an administrative agency or court or pursuant to a bona fide agreement by the city to compensate a participant for lost wages shall be credited as pay to each individual year to which the award or agreement for back pay pertains, rather than to the year in which the award, agreement or payment is made.

(f). *Overtime pay*. For purposes of determining average monthly compensation under section 4-25-1(1) and section 4-25-1(4) “overtime pay” constitutes pay in excess of forty (40) hours a week regardless of the rate for which such hours are paid.

2. **Sec. 4-25-1(17) References, construction and definitions - *Employee*** as presently written shall be amended and restated in its entirety and the following provision shall be substituted in lieu thereof:

17. *Employee* means, except for any such employee who is eligible to make and has duly made the election provided in sections 4-25-160(E) and 4-25-160(F) hereof, 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.

The term “*employee*” shall also not include any person who is a leased employee within the meaning of code section 414(n). Leased employee means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person (“leasing organization”) has performed services for the recipient (or for the recipient and related persons determined in accordance with code section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. A leased employee shall not be considered an employee (unless otherwise specifically covered by the pension system) of the recipient if: (i) such employee is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate of at least ten percent of compensation, as defined in code section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludible from the employee's gross income under code section 125, code section 1320, code section 401(k), code section 402(h) or code section 403(b), (2) immediate participation, and (3) full and immediate vesting; and (ii) leased employees do not constitute more than 20 percent of the recipient's non-highly compensated workforce.

3. **Sec. 4-25-1(30) Normal retirement date** shall be amended by addition thereto as subsection (d) the following subsection (d) to read as follows:

d. *2016 Plan*. “Normal retirement date” for participants of the 2016 Cash Balance Plan/Defined Contribution Plan means:

- i. General employees: the first day of the month coincident with or next following earliest date on which the participant, other than a police officer or firefighter:

Attains:

(A) Age 65 and completes five years of service; or

(B) Twenty-five (25) years of service and submits a written election designating the date he or she will retire not less than 30 days before such designated date.

- ii. Police officers and firefighters: the first day of the month coincident with or next following earliest date on which the participant:

Attains:

(A) Age 55 and ten years of service; or

(B) Twenty-five (25) years of service and submits a written election designating the date he or she will retire not less than 30 days before such designated date.

- 4. **Sec. 4-25-2 Board of Administration created; composition; election and term of members**, as presently written shall be repealed in its entirety and the following provision shall be substituted in lieu thereof and designated as Section Sec. 4-25-2:

Sec. 4-25-2 – Board of Administration created; composition; election and terms of members.

There is created and established a board of administration which, under the provisions of this title and the direction of the mayor, shall administer the plan and the trust fund created by this title. The board shall consist of the mayor or the mayor's designee, the officer in charge of the division of personnel or that officer's designee, the comptroller, four employees of the city with at least ten years of service, one employee of the city who is a participant in the 2016 plan with at least four years of service, a citizen member of the city, a retiree of the plan, and a member of the city council. The member of city council shall be an ex officio member without a vote. The officer in charge of the division of personnel or that officer's designee shall be an ex officio member without a vote. The employee, citizen and retiree members of the board shall be appointed on the first Tuesday in December in odd-numbered years by the council on the recommendation of the mayor, for two year appointments which shall begin on the January 1 next following the appointments. The council member of the board shall be the chair of the city council or the chair's designee, who will be appointed each December, to serve for one year beginning on the January 1 next following the appointments. Each of the employee, citizen, retiree member, and city council member of the board shall serve until his or her successor is duly appointed. Vacancies during the term of any employee, citizen, retiree and/or city council member shall be filled by appointment in the same manner as provided for the original appointment except that such appointment shall be made as soon as reasonably feasible after such vacancy occurs (regardless of the year or when in the year such vacancy occurs). The term of such member shall begin effective immediately upon such

appointment, and such member so appointed shall serve for the unexpired term of the original member or until a successor to such member is duly appointed. Until a vacancy is filled as provided herein the action of a quorum of the members as provided in section 4-25-7 shall be and constitute a valid and binding action of the board notwithstanding that a position is vacant.

5. **Sec. 4-25-48** shall be added as follows:

Sec. 4-25-48. 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.

6. **Sec. 4-25-160 Participation** shall be amended by addition thereto as subsection (F) the following subsection (F) to read as follows:

F. Commissioned Police Officer, Firefighter, Police Dispatcher, Fire Dispatcher, Fire Alarm Operators, and Paramedics.

1. *Hire dates on or after July 1, 2023.* Each employee who is hired on or after July 1, 2023 as a commissioned police officer, firefighter, police dispatcher, fire dispatcher, fire alarm operator, or paramedic (for purposes of this subsection and Section 4-25-242 referred to as an "eligible public safety employee") may make a one-time irrevocable election upon the eligible public safety employee's date of hire in the form and manner and within the time prescribed by the Board to opt out of participation in the 2016 Plan and elect in lieu thereof to participate in the 1978 Plan provided that the rate of employee contributions required of the eligible public safety employee is identical in each Plan regardless of participation in the 1978 Plan or 2016 Plan.
2. *Hire dates on or after July 1, 2016 and on or before June 30, 2023.* Provided that the rate of employee contributions required of the eligible public safety employee is identical in each Plan regardless of participation in the 1978 Plan or 2016 Plan, each employee who is hired as a commissioned police officer, firefighter, police dispatcher, fire dispatcher, fire alarm operator, or paramedic on or after July 1, 2016 and on or before June 30, 2023 who meets each and all of the following listed criteria may make a one-time irrevocable election in the form and manner and within the time prescribed by the Board to have his or her entire 2016 Plan cash balance account plus his or her entire 2016 defined contribution plan account balance transferred to the 1978 Plan, whereupon his or her participation in the 2016 Plan and any and all rights and benefits thereunder shall cease and such participant shall participate in the 1978 Plan, the same as if he or she had never participated in the 2016 Plan. To make such election, such participant must meet each and all of the following criteria:

- a. Since such employee's date of hire such employee has continuously been employed by the city in full-time employment as a commissioned police officer, firefighter, police dispatcher, fire dispatcher, fire alarm operator, or paramedic;
 - b. Such employee has not experienced a severance date as such term is defined in section 4-25-1(39);
 - c. Such employee has not withdrawn any amount of his or her cash balance account or separate defined contribution plan account from the 2016 Plan; and
 - d. Has not otherwise made an election under Section 4-25-160(E)
- 3. As required by T.C.A. §9-3-506(a)(3) and the Comptroller of the State of Tennessee, the pension benefits of the eligible public safety employees making the irrevocable election provided in this subsection (F) shall be funded by and only to the extent of the city contribution to the cost of the pension benefits that would otherwise have accrued for such employees in the 2016 Plan plus the available funds allocated for the cost of pension benefits of these employees in the Special Revenue Fund created pursuant to the referendum passed October 3, 2019 increasing the sales and use tax in the City of Memphis by 0.5% from 2.25% to 2.75% to restore pension benefits of public safety employees from and after the date of such referendum. In the event the cost of the pension benefits for the eligible employees making the irrevocable election provided in this subsection (F) in the 1978 Plan in any Plan Year (based on the city's funding policy in effect for such Plan Year adopted pursuant to T.C.A. §9-3-504, as amended) exceeds: (i) the cost of the pension benefits for these employees had they participated in the 2016 Plan (based on the city's funding policy in effect for such plan year adopted pursuant to T.C.A. §9-3-504, as amended) rather than the 1978 Plan, plus (ii) the city's required 1.5% of compensation defined contribution plan contribution otherwise allocable to 2016 plan defined contribution accounts of these employees (as provided in section 4- 25-231) had they participated in the 2016 Plan rather than the 1978 Plan, plus (iii) the amount allocated in the Special Revenue Fund for the cost of the pension benefits for public safety employees in the 1978 Plan, then the following steps shall automatically apply in determining the pension benefit of such eligible public safety employees for such Plan Year:
 - a. The retirement allowance formula for the pension benefit of these employees for such Plan Year will be reduced from 2.25% or 2.50%, as applicable, in ten basis point increments, to such lesser amount (but not below zero) as is necessary so that the costs of benefits for these employees does not exceed does not exceed the sum of (i), (ii), and (iii) immediately above;

- b. The adjustment provided above shall be effective as of July 1 next following the determination of the cost of benefits, and shall not reduce the accrued pension benefit of any such eligible public safety employee earned immediately prior to the effective date of the adjustment.
- 4. The elections provided in this subsection (F) once made shall be irrevocable and may not be subsequently modified or rescinded by the employee. If an employee eligible to make an election hereunder makes such an election as provided herein, all rights and benefits upon subsequent retirement or other termination of employment of such employee shall be governed solely and exclusively by the terms and provisions of the plan to which the employee elected and such employee shall have no rights under any other plan of the pension system.
- 7. **Sec. 4-25-192 Refund upon death** subsection "B" shall be deleted in its entirety and the following Section 4-25-192 subsection "B" substituted therefor as subsection "B":
 - B. The beneficiaries of the refund under subsection A of this section shall be the person so designated by the participant in writing, or, if no such designation, his or her estate. Notwithstanding the foregoing, however, a final divorce decree shall terminate an ex-spouse's status as beneficiary, unless the participant has on file in the Retirement Office a beneficiary designation that redesignates the ex-spouse as beneficiary dated subsequent to the issuance of the divorce decree.
- 8. **Sec. 4-25-194 Residual benefits and refund of employee contributions** subsection "b" shall be deleted in its entirety and the following Section 4-25-194 subsection "b" substituted therefor as subsection "b":

b. For a participant whose employment terminates due to death, whose beneficiaries are not entitled to any benefit under any other section of this plan, such participant's beneficiaries, in the order specified below, shall be entitled to receive a refund of the participant's contributions, less the aggregate of any amount of such contributions paid to the participant, the participant's spouse, children or any other designated beneficiary, prior to the participant's death. The beneficiaries of the benefit under this section (or in the case of residual benefits the beneficiaries of any residual benefits under section 4-25-194(a) hereof) shall be:

(i) the beneficiary or beneficiaries designated by the participant (in accordance with procedures established by the Board). Notwithstanding the foregoing to the contrary, if the participant is married at the time of such designation, if the beneficiary or beneficiaries designated by the participant is not the participant's spouse, the participant's spouse's written consent to such specific beneficiary or beneficiaries shall be required for such designation to be effective, and such consent shall be witnessed by a notary public or by the Benefits Manager of the City, the Total Rewards Officer of the

city, or such other person representing the Board as duly designated by the Board. A participant's spouse may give a general consent acknowledging the spouse's right to consent to any beneficiary or beneficiaries and relinquishing such right, in which event any future revocation and/or redesignation of beneficiary(ies) by the participant shall not require further spousal consent. The consent of the spouse must acknowledge the effect of such election and, once given, cannot be revoked by such spouse. Any spousal consent shall only be applicable to the spouse granting such consent, or

(ii) the participant's spouse, if married to the participant at the time of his/her death, or

(iii) if no such spouse, the participant's surviving child and handicapped child, as those terms are defined in section 4-25-1(6), or

(iv) if no such surviving child and/or handicapped child, to the participant's surviving child as the term "child" is defined in section 4-25-1(6) but without regard to the child's age or status in an educational institution, or

(v) if no such surviving child to the alternative beneficiary or beneficiaries designated by the participant (in accordance with procedures established by the Board) or

(vi) if the participant failed to designate an alternate beneficiary or beneficiaries as provided above, to the participant's estate.

If there is more than one eligible beneficiary the benefit shall be divided equally among the eligible beneficiaries unless the beneficiaries are designated beneficiaries by the participant as provided above whereupon the benefit will be divided in accordance with the designation by the participant, or if no such designation then equally. For purposes of this section, the terms "spouse" and "child" shall mean any person who the Board determines in good faith under the plan is the legally recognized spouse or child of the participant. Notwithstanding the foregoing, a final divorce decree shall terminate an ex-spouse's status as beneficiary, unless the participant has on file in the Retirement Office a beneficiary designation that redesignates the ex-spouse as beneficiary dated subsequent to the issuance of the divorce decree. Each beneficiary, or his/her duly appointed representative, shall be responsible for making application, in accordance with uniform procedures established by the Board, for any benefit due him/her under this section. A beneficiary shall have no claim against the Board, or the pension system, or the city by reason of the failure of such beneficiary to apply properly or timely for benefits under the pension system.

9. **Sec. 4-25-212** shall be amended and restated in its entirety and the following Section 4-25-212 substituted therefor:

Except as provided in section 4-25-211(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 4-25-1(45).

Notwithstanding the foregoing, an eligible public safety employee who was a participant in the 1978 Plan who terminated employment prior to July 1, 2016 and received a lump sum withdrawal or refund of employee contributions pursuant section 4-25-185 of the 1978 Plan, who is reemployed as an eligible public safety employee on or after July 1, 2016 but elected in accordance with Section 4-25-160 to participate in the 1978 Plan shall have the right to be a participant in the 1978 Plan upon such reemployment provided such eligible public safety employee (i) elects in writing in the manner, method, within the time limit, and on such forms as prescribed by the board to repay the trust as provided below; and (ii) such participant repays in full to the trust pursuant to such election in a single lump sum an amount equal to the withdrawal or refunded amount with compounded interest, from the date of withdrawal or refund to the date of repayment, at the rate established by the board. Upon fulfillment of all conditions above (i) such participant shall be an Employee for purposes of Section 1-25-1(17), (ii) such participant shall be 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, Division 2, as applicable, and shall not participate in the 2016 plan, and (iii) the years of service of such participant in the 1978 Plan prior to the participant's termination of employment that would otherwise be disregarded because of his/her prior termination of employment shall be restored. Absent fulfillment of the conditions above such police officer or firefighter upon his/her reemployment shall enter this 2016 Plan.

10. Subsection (D) of Sec. 4-25-242 shall be deleted in its entirety and the following Sec. 4-25-242(D) substituted therefor:

D. To be eligible for electing a deferred retirement benefit under this section,:

1. General employees

- a. Must be credited with five (5) or more years of service as of his/her severance date;
- b. Must not be entitled to any benefits under any other section of this chapter; and
- c. 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.
- d. 2. Police officers and firefighters: Must be credited with ten (10) or more years of service as of his/her severance date;
- e. Must not be entitled to any benefits under any other section of this chapter; and

- f. 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.

11. **Sec. 4-25-253** *Residual benefits* shall be deleted in its entirety and the following Section 4-25-253 substituted therefor:

Notwithstanding any other sections of this 2016 plan, a participant's beneficiaries, in the order of priority as set forth in section 4-25-254 hereof, shall be paid any excess of the participant's total accumulated employee contributions, minus the aggregate total retirement and death benefit payments under this 2016 plan made to the participant, the participant's spouse, children, or any other designated beneficiary, following the death of all such individuals. Notwithstanding the foregoing, however, a final divorce decree shall terminate an ex-spouse's status as beneficiary, unless the participant has on file in the Retirement Office a beneficiary designation that redesignates the ex-spouse as beneficiary dated subsequent to the issuance of the divorce decree.

12. **Sec. 4-25-254** *Employee contributions refund upon death* subsection "B" shall be deleted in its entirety and the following Section 4-25-254:

For a participant whose employment terminates due to death, whose beneficiaries are not entitled to any benefit under any other section of this plan, such participant's beneficiaries, in the order specified below, shall be entitled to receive a refund of the participant's contributions, less the aggregate of any amount of such contributions paid to the participant, the participant's spouse, children or any other designated beneficiary, prior to the participant's death. The beneficiaries of the benefit under this section (or in the case of residual benefits the beneficiaries of any residual benefits under section 4-28-20(A) hereof) shall be:

(i) the beneficiary or beneficiaries designated by the participant (in accordance with procedures established by the board). Notwithstanding the foregoing to the contrary, if the participant is married at the time of such designation, if the beneficiary or beneficiaries designated by the participant is not the participant's spouse, the participant's spouse's written consent to such specific beneficiary or beneficiaries shall be required for such designation to be effective, and such consent shall be witnessed by a notary public or by the benefits manager of the city, the total rewards officer of the city, or such other person representing the board as duly designated by the board. A participant's spouse may give a general consent acknowledging the spouse's right to consent to any beneficiary or beneficiaries and relinquishing such right, in which event any future revocation and/or redesignation of beneficiary(ies) by the participant shall not require further spousal consent. The consent of the spouse must acknowledge the effect of such election and, once given, cannot be revoked by such spouse. Any spousal consent shall only be applicable to the spouse granting such consent, or

(ii) the participant's spouse, if married to the participant at the time of his/her death, or

(iii) if no such spouse, the participant's surviving child and handicapped child, as those terms are defined in section 4-25-1(6), or

(iv) if no such surviving child and/or handicapped child, to the participant's surviving child as the term "child" is defined in section 4-25-1(6) but without regard to the child's age or status in an educational institution, or

(v) if no such surviving child to the alternative beneficiary or beneficiaries designated by the participant (in accordance with procedures established by the Board) or

(vi) if the participant failed to designate an alternate beneficiary or beneficiaries as provided above, to the participant's estate.

If there is more than one eligible beneficiary the benefit shall be divided equally among the eligible beneficiaries unless the beneficiaries are designated beneficiaries by the participant as provided above whereupon the benefit will be divided in accordance with the designation by the participant, or if no such designation then equally. For purposes of this section, the terms "spouse" and "child" shall mean any person who the Board determines in good faith under the plan is the legally recognized spouse or child of the participant. Notwithstanding the foregoing, a final divorce decree shall terminate an ex-spouse's status as beneficiary, unless the participant has on file in the Retirement Office a beneficiary designation that redesignates the ex-spouse as beneficiary dated subsequent to the issuance of the divorce decree. Each beneficiary, or his/her duly appointed

representative, shall be responsible for making application, in accordance with uniform procedures established by the Board, for any benefit due him/her under this section. A beneficiary shall have no claim against the Board, or the pension system, or the city by reason of the failure of such beneficiary to apply properly or timely for benefits under the pension system.

BE IT FURTHER ORDAINED, that adoption of this Amendment shall take effect on July 1, 2023, after having been passed by City Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

SPONSOR

ADMINISTRATION

CHAIRMAN

MARTAVIUS JONES

THE FOREGOING ORDINANCE

5873 PASSED

1st Reading 5/16/23

2nd Reading 6/13/23

3rd Reading 7/11/23

Approved: Martavius Jones
Chairman of Council

Date Signed: 11-Jul-23

APPROVED: [Signature]
Mayor, City of Memphis

Date Signed: 7/25/23

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. Snipes
Comptroller