

AN ORDINANCE AMENDING ORDINANCE NO. 4788, THE MUNICIPAL CODE OF THE CITY OF RICHMOND HEIGHTS, MISSOURI, CHAPTER 200, POLICE DEPARTMENT AND FIRE DEPARTMENT; BY AMENDING SECTIONS 200.140; 200.280; 200.320 and 200.470; AND ADDING A NEW SECTION 200.500 OF ARTICLE III OF POLICEMEN'S AND FIREMEN'S RETIREMENT FUND TO COMPLY WITH CHANGES IN FEDERAL LAW.

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WHEREAS, Ordinance No. 2100, adopted by the City of Richmond Heights, November 4, 1952, established the retirement fund for police and fire department employees of the City of Richmond Heights, Missouri; and

WHEREAS, the provisions regulating such Fund are codified in Article III of the Municipal Code (hereinafter referred to as the "Plan"); and

WHEREAS, the City Council did in Ordinance No. 5005 adopted October 16, 2006, amend and restate the Plan; and

WHEREAS, the City Council amended the Plan in Ordinance 5096 to reflect the adoption of the Final Code §415 Regulations by the U.S. Treasury, and in Ordinance 5162 to increase the death benefit provided in Section 200.410; and

WHEREAS, the Board of Trustees of the Plan recommends to the City Council revisions to said Plan in order to comply with federal law including the Pension Protection Act of 2006 and the Heroes Earnings Assistance Relief Tax Act of 2008; and

WHEREAS, the recommended amendments do not constitute a substantial proposed change under Section 105.660 of the Missouri Revised Statutes for funding purposes and will not result in an increase in the annual funding cost to the Plan; and

WHEREAS, the City Council concludes that adoption of the recommended amendments contained herein are in the public interest to enhance financial security of long-term, loyal employees of the city, to attract and retain quality employees to serve the community, and to thereby better serve and protect the citizens of Richmond Heights.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Richmond Heights, Missouri, as follows:

SECTION 1: Effective as provided herein, the Plan, as set forth in Ordinance No. 2100, as amended, is hereby amended as follows:

1. Section 200.140 – DEFINITIONS is amended by deleting the entire definition of retirement base pay and replacing it with the following:

RETIREMENT BASE PAY: The average base pay of the employee from the City for the three (3) years prior to the date of such employee's death or retirement, whichever occurs first. In cases of disability or death prior to three (3) years' service, the retirement base pay shall be the average base pay of the employee for the period of employment by the City. The retirement base pay for pension benefits of retirees or survivors shall be increased annually beginning July 1, 1987, by the percentage of average per-member increase in base pay for the entire Police or Fire Department during the previous fiscal year of the City. Such increase shall not occur once the member reaches the age when said member qualifies for one hundred percent (100%) of his/her Social Security retirement benefits.

Notwithstanding the foregoing, the retirement base pay taken into account in determining benefit accruals in any plan year shall not exceed the amount set forth in Code Section 401(a)(17), as adjusted for cost of living increases by the Secretary of the Treasury. (For 2010, \$245,000; and for 2011, \$245,000). "Annual retirement base pay" means retirement base pay during the plan year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the this Article III (hereinafter defined as the "determination period"). The cost of living adjustment in effect on January first (1st) of any calendar year shall apply to any determination period beginning in such calendar year. For this purpose, the term "determination period" as used herein is any period not exceeding twelve (12) months over which compensation is determined. If a determination period consists of fewer than twelve (12) months, the Section 401(a)(17) limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12).

Compensation for purposes of determining retirement base pay for periods of Qualified Military Service, as defined for purposes of the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") after December 12, 1994, shall be at the rate of compensation the employee received at the time he entered Qualified Military Service, increased for compensation adjustments which are universally applied to all employees who are in the same employment classification as the employee during his period of absence on account of Qualified Military Service.

2. Section 200.280 – EMPLOYEE COVERAGE is amended by adding the following subsection E:

E. Each period of Qualified Military Service as defined for purposes of the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), served by an employee, shall upon reemployment with the City within the time required under USERRA, be deemed service with the City for purposes of determining the employee's years of service. If an employee of the Police or Fire Department returns to service of the Police or Fire Department from Qualified Military Service, as defined for purposes of USERRA, within the time required by USERRA, such employee shall be permitted to make up missed

mandatory contributions (without credited interest) required to earn a benefit accrual for the military service period (provided that the makeup contributions are paid within the time period specified by USERRA); and if such make up contributions are not so made, benefits shall be actuarially adjusted.

3. Section 200.320 is amended by deleting the current provision and replacing it with the following:

**SECTION 200.320: MANDATORY COMMENCEMENT OF DISTRIBUTIONS REQUIRED BY INTERNAL REVENUE CODE**

Subject to Section 200.310(B)(3), an employee's retirement benefits shall be distributed commencing not later than April first (1st) of the calendar year following the calendar year in which the employee attains age seventy and one-half (70½) or April first (1st) of the calendar year following the calendar year in which the employee retires, whichever is later, and shall otherwise comply with Internal Revenue Code Section 401(a)(9) applicable to governmental plans. All distributions required under this Article will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code and the good faith compliance standard for governmental plans under the Pension Protection Act of 2006 with regard to Code Section 401(a)(9).

4. Section 200.470 – DIRECT ROLLOVER is amended by adding the following subsections after subsection 4:

5 For distributions beginning January 1, 2010, a non-spouse beneficiary who is a designated beneficiary under Code Section 401(a)(9)(E) and regulations thereunder, by a direct rollover, may roll over all or any portion of his or her distribution to an individual retirement account described in Code Section 408, that the beneficiary establishes for purposes of receiving the distribution. In order to roll over the distribution, the distribution otherwise must satisfy the definition of eligible rollover distribution under Code Section 401(a)(31). A non-spouse beneficiary may not roll over an amount that is a required minimum distribution under Code Section 401(a)(9).

6 Nothing in this Section shall have the effect of creating any lump sum distribution rights not otherwise provided for in the Plan.

5. Section 200.500 is hereby added as follows:

**200.500. HEROES EARNINGS ASSISTANCE RELIEF TAX ACT OF 2008.**

A. **Death Benefits.** In the case of a death or disability occurring on or after January 1, 2007, if a plan participant dies while performing Qualified Military Service as defined in the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the participant's beneficiary, as provided by the plan, is entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under the

plan as if the participant had resumed and then terminated employment on account of death. Moreover, the plan will credit the participant's Qualified Military Service for vesting purposes, as though the participant had resumed employment under USERRA immediately prior to the participant's death.

**B. Differential Wage Payments.** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Internal Revenue Code Section 3401(h)(2), shall be treated as an employee of the employer making the payment, (ii) the differential wage payment shall be treated as compensation for purposes of Code Section 415(c)(3) and Treas. Reg. Section 1.415(c)-2, and (iii) the plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment. Differential wage payments (as described herein) will also be considered compensation for all plan purposes. Subsection (iii) applies only if all employees of the City performing service in the uniformed services described in Code Section 3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code Section 3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the City, to make contributions or receive benefits based on the payments on reasonably equivalent terms (taking into account Code Sections 410(b)(3), (4), and (5)).

SECTION 2: All ordinances, parts of ordinances or resolutions in conflict with this Ordinance are hereby repealed.

SECTION 3: The sections of this Ordinance shall be severable. If any section of this Ordinance is found by court of competent jurisdiction to be invalid, the remaining sections shall remain valid, unless the court finds that: (a) the valid sections are so essential to and inseparably connected with and dependent upon the void section that it cannot be presumed that the City Council has or would have enacted the valid sections without the void ones; and (b) the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION 4. This Ordinance shall take effect and be in full force on the thirty-first day following its passage and being signed as provided by law.

PASSED AND SIGNED this 20<sup>th</sup> day of June, 2011.

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JAMES J. BECK  
MAYOR

ATTEST:

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PATRICIA S. VILLMER  
DEPUTY CITY CLERK

APPROVED AS TO FORM:

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KENNETH J. HEINZ  
CITY ATTORNEY

First reading:        June 6, 2011  
Second reading:     June 20, 2011