

CHAPTER 18.5

LIMITED TERM RETIREMENT PLAN

(Chapter Added by Ord. No. 182,196, Eff. 8-8-12.)

Section

4.1850 Limited Term Retirement Plan.

Sec. 4.1850. Limited Term Retirement Plan.

There is hereby created, established, and adopted a fund to be known as the "**Limited Term Retirement Fund**" for payment of administration expenses and benefits of the Plan. The Fund shall consist of all money paid into said Fund in accordance with the provisions of this Plan, and earnings from investments held in the Fund. The Fund shall be a trust fund, and its assets shall be held for the exclusive purposes of providing benefits to Participants and their Beneficiaries, and defraying reasonable expenses of administering the Plan, to the extent not reimbursed by the City.

The purpose of this Plan is to provide a portable retirement benefit for elected officials of the City of Los Angeles (the "City") whose terms are limited by the Charter of the City of Los Angeles (the "**Charter**"). Contributions made by the City to the Plan will be comparable to those made for members of the Los Angeles City Employees Retirements System ("**LACERS**"). It is intended that this Plan shall be a qualified plan under Section 401(a) of the Internal Revenue Code. This Plan is effective as of July 1, 1997.

(a) **Definitions.** For the purpose of this ordinance, the following words and phrases shall have the meaning ascribed to them in this ordinance unless a different meaning is clearly indicated by the context:

"**Annual Addition**" shall mean the annual addition as defined in Code Section 415(c), which in general, is the sum of the City contributions, Participant contributions and forfeitures credited to a Participant's account for the Limitation Year under this Plan and any other qualified defined contribution plan maintained by the City.

"**Average Member Cost**" shall mean a percentage, in effect for such Plan Year, equal to the sum of:

(a) The percentage of City contributions needed to fund Tier 1 or Tier 2 of the LACERS, as applicable, for all benefits provided by that tier; and

(b) Any ancillary costs incurred by the City in support of benefits provided by Tier 1 or Tier 2 of the LACERS, as applicable, expressed as a percentage of covered payroll.

"**Beneficiary**" shall mean any person or legal entity designated in accordance with Subsection (h) hereof.

"**Board**" or "**Board of Administration**" shall mean the Board of Administration as defined in Section 1104(a) of Article XI of the Charter of the City of Los Angeles.

"**City**" shall mean the City of Los Angeles.

"Code" shall mean the Internal Revenue Code of 1986 as amended.

"Compensation" shall be determined in the same manner as "Compensation Earnable" is determined for members of LACERS. The annual compensation of each Participant taken into account for determining all benefits provided under this Plan for any Plan Year shall not exceed \$200,000 determined in accordance with Section 401(a)(17) of the Code and the regulations thereunder and as adjusted for increases in the cost-of-living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to the Plan Year beginning in such calendar year. If a Participant is an active member for less than a Plan Year then the compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of full months in which the Participant was an active member and the denominator of which is 12.

"Effective Date" shall mean July 1, 1997.

"Fund" shall mean the Limited Term Retirement Fund.

"LAAC" shall mean the Los Angeles Administrative Code.

"LACERS" shall mean the Los Angeles City Employees Retirement System as defined under Section 1150 of Article XI, Part I of the Charter of the City of Los Angeles.

"Participant" shall mean those employees eligible for participation in this Plan. Those employees eligible to participate in this Plan are those employees who are elected officials of the City and who are eligible to, and effectively, elect to opt out of Tier 1 of the LACERS under Section 4.1002(b)(9) of the LAAC or elect to opt out of Tier 2 of the LACERS under Section 4.1052(b)(9) of the LAAC, as applicable. Except that any retired member of LACERS who is elected as an officer of the City shall become a Participant without being required to opt out of membership because Section 4.1002(b)(9) for Tier 1, or Section 4.1052(b)(9), for Tier 2, of the LAAC, as applicable, prohibits him or her from re-entering membership in the tier of LACERS from which he or she is retired. An employee shall cease to be a Participant as to additional contributions upon termination of employment with the City or entrance into a different retirement plan provided by the City. As used here, the term "employee" shall mean a person in the employ or service of the City as reflected on the payroll records of the City.

"Plan" shall mean the Limited Term Retirement Plan set forth herein, as amended from time to time.

"Plan Year" shall mean a 12 month consecutive period commencing with January 1 of each year and ending with December 31. The Plan Year shall be the "limitation year" for purposes of Section 415 of the Code.

"Valuation Date" shall mean the last day of each Plan Year. In addition, the Board may fix, in a uniform and nondiscriminatory manner, one or more interim or recurring Valuation Dates.

(b) **Administration.** The Plan shall be under the exclusive management and control of the Board of Administration. The Board shall have and is hereby granted full power and authority to adopt and enforce all such rules and regulations as it may deem necessary for the carrying out of the provisions of this ordinance, and shall discharge its duties in accordance with Article XVI, Section 17 of the Constitution of the State of California. The Board of Administration shall have the right to construe the Plan, to interpret any provision thereof, to make rules and regulations relating to the Plan, and to determine any factual questions arising in connection with the Plan's operation after such investigation or hearing as the Board may deem appropriate. Any decision made by the Board under the provisions of this ordinance shall be conclusive and binding on all parties concerned. For each fiscal year, the Board

shall prepare and submit to the City Council a budget for the cost of administration of the Plan for that year. In the event that the City Council fails to pay such costs, such costs shall be paid from the Fund and allocated to Participants accounts as an expense.

The Board shall manage and administer the Fund and shall invest the assets of said Fund. Each Participant shall direct the investments allocated to his or her account according to investment options and procedures determined by the Board.

(c) **Participant Contributions.** Each Participant shall contribute to the Fund by salary deduction at the same percentage of his or her Compensation that he or she would be required to contribute to the Retirement Fund, as provided in Chapter 10 of Division 4 of the LAAC, had he or she had not opted out of membership in either Tier 1 pursuant to Section 4.1002(b)(9) or Tier 2 pursuant to Section 4.1052(b)(9), as applicable. Except that a Participant who is a retired member of LACERS shall contribute to the Fund by salary deduction at the same percentage of his or her Compensation that he or she would have been required to contribute to the Retirement Fund, as provided in Chapter 10 of Division 4 of the LAAC, had he or she not retired. Such contributions shall be treated as employer contributions for purposes of taxation in accordance with Section 414(h)(2) of the Code and shall be paid from the same source of funds as is used in paying Compensation. For all other purposes, such contributions shall be treated as employee after-tax contributions. The wages of Participants shall be reduced by the amount of Participant contributions. Nothing herein shall be construed to permit or extend an option to Participants to directly receive Participant contributions instead of having them contributed to the Fund.

It shall be impossible for any part of the contributions or earnings made under this Plan and held in the Fund to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries. Notwithstanding the foregoing, the City shall be entitled to recover contributions made to the Plan by mistake of fact within one year after payment.

(d) **Matching Contributions by the City.** For each Plan Year, the City shall contribute for each Participant the Average Member Cost of the Participant's Compensation to the Fund. The Average Member Cost for each Participant shall be determined based upon the tier from which the Participant opted out of membership or from which the Participant is retired, as applicable.

City contributions shall be paid into the Fund and credited to the Participant's individual account at intervals and in accordance with procedures to be determined by the Board. Notwithstanding the foregoing, the balance of any contribution owed for a Plan Year shall be paid within two and one-half months after the end of such Plan Year and credited to Participants' accounts as of the last day of such Plan Year.

(e) **Accounts.** The Board shall maintain an individual account of the contributions made by or for each Participant. Investment gains or losses, and expenses, shall be allocated to each respective account as of each Valuation Date.

Except as otherwise provided in the Plan, no right or benefit under the Plan shall be subject to anticipation, alienation, sale, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, sell, assign, pledge, encumber or charge such right or benefit shall be void. No such right or benefit shall in any manner be liable for or subject to the debts, liabilities or torts of a Participant. In addition, no right of a Participant under the Plan is transferable by inter vivos gift or testamentary disposition.

(f) **Vesting.** Each Participant's interest in his or her account shall be 100% vested and nonforfeitable. Notwithstanding the foregoing, if the Board, acting upon information available to it, cannot locate a person entitled to receive a benefit under the Plan within a reasonable period of time as determined by the Board in its sole discretion after the benefit becomes payable and such person has not contacted the Board concerning the distribution by the end of such period, the amount of the benefit shall be treated as

a forfeiture and shall be applied first to the payment of costs of administering the Plan, and second as a source of the matching contributions hereunder. If, prior to the date final distributions are made following termination of the Plan, a person who was entitled to a benefit which has been forfeited pursuant to this section makes a claim to the Board for such benefit, such person shall be entitled to receive the amount of such benefit as soon as administratively feasible after such claim is received. The amount of the previously forfeited benefit shall be reinstated by the City.

(g) **Benefit Payments.** Each former Participant is entitled to receive a lump sum payment upon proper application following termination of employment with the City or upon eligibility for such payments following entrance into a different retirement plan provided by the City.

(1) If entitlement occurs because the former Participant has terminated employment, then the payment shall be based upon the account balance as of the immediately preceding Valuation Date.

(2) If Subsection (g)(1) does not apply and entitlement occurs because the former Participant has entered into a different retirement plan provided by the City, no additional contributions shall be placed into the account and the former Participant shall continue to accrue earnings or losses based on his or her investment decisions, then:

(A) payment shall be based upon contributions made to the Plan at least 24 months prior to the date of application and any investment gains, losses, and expenses allocated to such contributions as of the immediately preceding Valuation Date; or

(B) if the former Participant has participated in the Plan for at least 60 months, the payment shall be based upon the account balance as of the immediately preceding Valuation Date; or

(C) if a former Participant enters employment covered by another City retirement plan, funds may be transferred to another City retirement plan, as permitted under federal tax law, if such City retirement plan allows for City trustee-to-trustee transfers, and the former Participant requests such a transfer of the funds.

(3) The Board may require a former Participant to receive a mandatory lump sum distribution within six (6) months of entitlement under Subsection (g) without the Participant's consent or application, provided one of the following conditions applies:

(A) the mandatory distribution does not exceed \$1,000;

(B) in the event of a mandatory distribution greater than \$1,000, if the former Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the former Participant in a direct rollover or to receive the distribution directly, then the Board shall pay the distribution in a direct rollover to an individual retirement plan designated by the Board; or

(C) the former Participant has attained the age of 62.

(4) In no event shall a benefit be paid both from this Plan and from LACERS, with respect to the same period of service by a Participant.

(5) A distributee may elect, at the time and in the manner prescribed by the Board of Administration, to have any portion of an eligible rollover distribution that is equal to at least \$200 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of Subsection (g):

(A) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified plan described in Section 401(a) of the Code, that accepts the distributee's rollover distribution; effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code; effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system; and, effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code; However, prior to January 1, 2002, in the case of a distributee's rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity;

(6) "Distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under an order described in Subsection (i) herein, are distributees with regard to the interest of the spouse or former spouse. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity; and

(7) A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(8) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code or to an annuity contract described in section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code.

(h) **Provision for Death Benefit.** A Participant may designate a Beneficiary to receive a distribution of the Participant's account balance in the event of the death of the Participant prior to receipt by the Participant of the refund of his or her account balance. The Beneficiary may be either a person or a legal

entity. If the designated Beneficiary is a minor, the account balance may be paid to the parent of the minor on behalf of the minor or, if no parent, to the designated payee of such minor as approved by the Board. Said designation may be made by filing a written designation duly executed and filed with the Board. If there is no Beneficiary, the disbursement will be in the same order as the disbursement procedure detailed in Section 4.1062 of the Los Angeles Administrative Code.

(i) **Provision for Distribution Upon Dissolution of Marriage.** Upon proper service with a court order, the Plan will comply with community property division requirements and distribute to the non-Participant spouse in a lump sum the required amounts regardless of whether the Participant is still an active member of the Plan.

(j) **Compliance with Internal Revenue Code.** It is the intention that this Plan be a qualified plan within the meaning of Section 401(a) of the Code and a profit sharing plan within the meaning of Section 401(a)(27) of the Code, and may at any time be amended to comply with the Code requirements to maintain such qualification and status. Contributions shall not be dependent on the existence of profits.

(1) Code Section 401(a)(9). Notwithstanding any provisions herein to the contrary to the requirements of Section 401(a)(9) of the Code and the regulations promulgated thereunder, all distributions under the Plan shall be made in accordance with the requirements of Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G) and the final regulations promulgated under Section 401(a)(9) of the Code, including Treasury Regulations Sections 1.401(a)(9)-2 through -9, as applicable.

(2) Code Section 415(c).

(i) Notwithstanding any provision herein to the contrary, effective for Limitation Years beginning after December 31, 2001, in no event shall the Annual Addition allocated to a Participant's Account under the Plan for any Limitation Year (as defined herein), exceed the lesser of:

(A) Forty Thousand Dollars (\$40,000), as adjusted under Section 415(d) of the Code, or

(B) One-hundred percent (100%) of the Participant's Compensation for the Limitation Year.

(ii) The Annual Addition with respect to any Participant who at any time has participated in any other qualified defined contribution plan (as defined in Section 414(i) of the Code) maintained by the City shall apply as if the total contributions allocated under all such defined contribution plans in which the Participant has participated were allocated under one plan.

(iii) For purposes of Subsection (j)(2), "Compensation" means compensation as defined in Code Section 415(c)(3). In general, Code Section 415(c)(3) defines compensation as all of a Participant's wages as defined in Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)); provided, however, compensation shall also include the amount of any elective deferrals, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the employer at election of the employee and which is not includible in the gross income of the employee by reason of Code Section 125, 132(f)(4), or 457.

Payments made within the later of two and one half months after termination, or the end of the Limitation Year that includes the Termination date will be taken into account in determining Compensation for allocation if they are payments that, absent a termination, would have been paid to the Participant while the Participant continued in employment with the City and are:

(A) Regular Compensation for services during the Participant's regular working hours, or Compensation for services outside the Participant's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and the Compensation would have been paid to the Participant prior to Termination if the Participant had continued employment with the City;

(B) Payments for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued; or

(C) Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Participant at the same time if the Participant had continued employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

Any payments not described above are not considered Compensation if paid after Termination, even if they are paid within two and one half months following Termination, except for payments to the individual who does not currently perform services for the City by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the City rather than entering qualified military service.

(k) **Plan Termination and Amendment.** This Plan may be terminated or amended at any time by the Council. Upon termination, account balances shall be distributed to Participants in accordance with Subsection (g) herein, unless the Board in its discretion or as directed by applicable law transfers the assets and benefit liabilities of this Plan to another qualified plan maintained for employees of the City. The Plan may be amended at any time to reduce or eliminate the City contribution on behalf of current and future Participants. However, no amendment shall reduce the vested interest of a Participant who has an account balance as of the date such amendment becomes effective.

(l) **Compliance with USERRA and the HEART Act.**

(1) Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service while an employee will be provided in accordance with Section 414(u) of the Code.

(2) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United State Code), to the extent required by section 401(a)(37) of the Internal Revenue Code, survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(3) Beginning January 1, 2009, to the extent required by Code Sections 3401(h) and 414(u)(2), an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in chapter 43 of title 38, United State Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as

earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

SECTION HISTORY

Added by Ord. No. 171,488, Eff. 1-24-97.

Amended by: Second Para. and Subsecs. (a), (g) and (h), Ord. No. 173,272, Eff. 6-25-00, Oper. 7-1-00; Subsec. (g), Ord. No. 174,249, Eff. 10-11-01; Subsec. (j)2. amended, Subsecs. (j)4. and (m) added, Ord. No. 175,767, Eff. 2-9-04; In Entirety, Ord. No. 181,600, Eff. 3-4-11; First Sentence of Subsec. (c), Ord. No. 181,892, Eff. 10-11-11; Transferred from Ch. 18 and Subsecs. (a), (c) and (g) amended, Ord. No. 182,196, Eff. 8-8-12; Subsecs. (a), (c) and (d), Ord. No. 182,629, Eff. 7-25-13.