

ORDINANCE NO. 7902-23

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 31, PENSIONS AND RETIREMENT, OF THE CODE OF THE CITY NEWPORT NEWS, VIRGINIA, ARTICLE II. EMPLOYEES' RETIREMENT FUND, DIVISION 5. ELIGIBILITY FOR, RECEIPT AND AMOUNTS OF, RETIREMENT BENEFITS, SECTION 31-64, ELIGIBLE ROLLOVER DISTRIBUTIONS, SECTION 31-64.1, LIMITATIONS ON BENEFITS; DIVISION 7. ADMINISTRATION, SECTION 31-73, CHANGES OR ERRORS IN RECORDS RESULTING IN ERRONEOUS CALCULATIONS OR PAYMENTS.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

That Chapter 31, Pensions and Retirement, of the Code of the City of Newport News, Virginia, Article II. Employees' Retirement Fund, Division 5. Eligibility For, Receipt and Amounts of, Retirement Benefits, Section 31-64, Eligible rollover distributions, Section 31-64.1, Limitations on benefits; Division 7. Administration, Section 31-73, Changes or errors in records resulting in erroneous calculations or payments, be, and the same hereby is amended as follows:

CHAPTER 31

PENSIONS AND RETIREMENT

ARTICLE II. EMPLOYEES' RETIREMENT FUND

**DIVISION 5. ELIGIBILITY FOR, RECEIPT AND AMOUNTS OF,
RETIREMENT BENEFITS**

Sec. 31-64. Eligible rollover distributions.

(a) This section 31-64 applies to distributions after December 31, 1992. A distributee of a lump sum payment under sections 31-60(e), 31-61(b), 31-62(a)(1), 31-62(b)(1), 31-68(e), 31-68(f), and 31-68(g) may elect to have any portion of an eligible rollover distribution that is equal to at least two hundred dollars (\$200.00) paid directly to an eligible retirement plan specified by the distributee in a direct rollover. If an eligible rollover distribution is less than two hundred dollars (\$200.00), a distributee may not make the election described in the preceding sentence to rollover a portion of the eligible rollover distribution.

(b) An eligible rollover distribution is any distribution of all or any portion of the member's benefit payable to the distributee, except that an eligible rollover distribution does not include: (i) any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or 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 (10) years or more; (ii) any distribution to the extent such distribution is required under IRC section 401(a)(9); (iii) any distribution that is made upon the hardship of the member; and (iv) the portion of any distribution that is not includible in gross income.

(c) Pursuant to IRC section 402(c)(12), when a recipient receives an inadvertent benefit overpayment from the fund, the portion of such overpayment for which recoupment is not sought shall be treated as having been paid in an eligible rollover distribution if the payment would have been an eligible rollover distribution but for being an overpayment. The portion of such overpayment with respect to which recoupment is sought shall be permitted to be returned to the fund and shall be treated as an eligible rollover distribution transferred to the fund by the recipient who received the overpayment.

(d) An eligible retirement plan is an individual retirement account described in IRC section 408(a), an individual retirement annuity described in IRC section 408(b), an annuity plan described in IRC section 403(a), or a qualified trust described in IRC section 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a beneficiary of a death benefit who is not treated by the federal Internal Revenue Code as a surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

Eligible retirement plan also means, effective for distributions on and after January 1, 2002, an individual retirement account described in IRC section 408(a), an individual retirement annuity described in IRC section 408(b), an annuity plan described in IRC section 403(a) or a qualified plan that accepts the individual's eligible rollover distribution. Eligible retirement plan shall also mean an annuity contract described in IRC section 403(b) and an eligible plan under IRC section 457 which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the fund.

For distributions made after December 31, 2007, an eligible retirement plan also means a Roth individual retirement account defined in IRC section 408A provided that, for distributions made in plan years prior to 2010, the distributee's modified adjusted gross income does not exceed the limitations in IRC section 408A(d)(3)(A).

(e) A 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 a domestic relations order, as defined in IRC section 414(p), are distributees with regard to the interest of the spouse or former spouse. Effective on and after July 1, 2008, a distributee shall include a member's non-spouse beneficiary, as described in section 31-64(g).

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

(g) Each distributee who is entitled to make an eligible rollover distribution, including a non-spouse beneficiary with regard to an inherited IRA described in section 31-64(g), shall be provided a notice that satisfies IRC section 402(f) and that describes the fund's default

distribution procedure in the event the member fails to make a rollover election. The notice shall be provided at least thirty (30) days but not more than one hundred eighty (180) days (ninety (90) days for plan years commencing before July 1, 2007), before the annuity commencement date.

(h) Effective for distributions made in plan years beginning on or after July 1, 2008, a non-spouse beneficiary who is entitled to receive a lump sum distribution of the deceased member's benefit may elect to make a trustee-to-trustee transfer of all or a portion of such distribution to an individual retirement plan described in IRC section 408(a) or (b) that is established and titled in a manner that identifies it as an inherited IRA with respect to the deceased member and identifies the deceased member and the non-spouse beneficiary, pursuant to the provisions of IRC section 402(c)(11). Notwithstanding the prior sentence, prior to January 1, 2010, a distribution under this section 31-64(g) shall not be subject to the direct rollover requirements of IRC section 401(a)(31), the notice requirements of IRC section 402(f), or mandatory withholding requirements of IRC section 3405(c).

Sec. 31-64.1. Limitations on benefits.

(a) *Defined benefit limitations.*

- (1) Notwithstanding any other provisions in this article, the maximum annual benefit to which a member is entitled from the fund shall not exceed the application limitations of IRC section 415(b). The limitations of IRC section 415(b) and the final Treasury Regulations promulgated thereunder, as published on April 5, 2007, are hereby incorporated by reference. The limitations shall be applied on a uniform basis with respect to all similarly situated members in a limitation year.

The maximum benefits provided under the fund shall not exceed the maximum amounts permitted by IRC section 415(b). The amount payable to a member in any limitation year shall not exceed the IRC section 415(b) limit applicable at the annuity commencement date, without regard to the cost-of-living adjustments described in paragraph (3) below. If there is any discrepancy between the provisions of this subsection 31-64.1 and the provisions of IRC section 415, such discrepancy shall be resolved in such a way as to give full effect to the provisions of IRC section 415.

The recoupment of overpayments shall be made when such recoupment is necessary to ensure compliance with the benefit limitations imposed by this section and by any other applicable sections of the IRC, including but not limited to, IRC section 401(a)(17).

- (2) If the maximum annual benefit under this article (but for this section) would exceed the limitations of IRC section 415(b), the maximum annual benefit under any other defined benefit plan required to be aggregated with the fund shall be reduced under the other defined benefit plan prior to the reduction of the maximum annual benefit from the fund, in accordance with final Treasury Regulation section 1.415(a)-1(d)(3)(iii).

- (3) In the event that the annual pension otherwise payable to a member who has retired or terminated employment has been limited by IRC section 415(b) as it existed at the member's retirement or termination date, the member's annual pension shall be adjusted for increases in the cost-of-living, as permitted by final Treasury Regulation section 1.415(d)-1, pursuant to Treasury Regulation section 1.415(a)-1(d)(3)(v), which is incorporated by reference.
 - (4) For purposes of determining a member's maximum benefit, remuneration paid or made available to the member during the limitation year shall include amounts described in IRC section 415(c)(3) and final Treasury Regulation section 1.415(c)-2(a). In addition, post-severance remuneration shall mean post-severance remuneration as defined in final Treasury Regulation section 1.415(c)-2(e)(3)(ii), and any payment that is for accrued bona fide sick, vacation or other leave, but only if the member would have been able to use the leave if employment had continued; payment to an individual who does not currently perform services for the participating employer by reason of qualified military service, to the extent these payments do not exceed the amounts the individual would have received had the individual continued to perform services for the participating employer rather than entering qualified military service; and any payment that is made to a member who is totally and permanently disabled as determined by the Virginia Workers' Compensation Commission, provided salary continuation applies to all members who are permanently and totally disabled for a fixed or determinable period. Further, for limitation years beginning on and after July 1, 2009, (i) an individual who is in qualified military service and receiving a differential wage payment, as defined by IRC section 3401(h)(2), from the city shall be treated as an employee of the city, and (ii) in accordance with IRC section 414(u)(7), the differential wage payment shall be treated as remuneration.
- (b) *Required minimum distributions.*
- (1) Notwithstanding anything herein to the contrary, the benefit of each member shall commence no later than April 1 of the calendar year following the later of (i)(A) in the case of a member who attains age seventy-two (72) after December 31, 2022, and attains age seventy-three (73) before January 1, 2033, the calendar year in which the member attains age seventy-three (73), and (B) in the case of a member who attains age seventy-four (74) after December 31, 2032, the calendar year in which the member attains age seventy-five (75), or (ii) the calendar year in which the member retires. This period shall be known as the member's required beginning date. The fund is intended and believed to be in compliance with a reasonable and good faith interpretation of IRC section 401(a)(9). IRC section 401(a)(9) is incorporated by reference herein, including any regulations, guidance, clarification, or other interpretations issued thereunder. The requirements of this section shall apply to any distribution of a member's retirement allowance and override any distribution option in the fund that is otherwise inconsistent with IRC section 401(a)(9) and take precedence over any inconsistent provisions of the fund.
 - (2) Retirement distributions may only be made over a period not to exceed the life of the member or the joint lives of the member and the member's beneficiary. For

this purpose, the form of distribution shall include the death benefits payable under section 31-62.

- (3) If the distribution of a member's benefit has commenced and the member dies before the member's entire benefit has been distributed to the member, the remaining portion of such benefit shall be distributed at least as rapidly as under the form of distribution in effect at the member's date of death. For this purpose, the form of distribution shall include the death benefits payable under section 31-62.
- (4) If a member dies before distributions begin, the member's benefit will be distributed in accordance with the following:
 - a. If a benefit is paid to a spouse or dependent child pursuant to section 31-60 (other than subsection (e) thereof), section 31-61 (other than subsection (b) thereof), or section 31-63 (other than subsection (a) thereof), such benefit shall commence no later than December 31 of the calendar year immediately following the calendar year in which the member died. The benefit to such spouse or dependent child shall be paid over the period specified in sections 31-60, 31-61, or 31-63, as applicable, which period shall not exceed the life of the spouse or dependent child.
 - b. If the benefit is paid other than as described in subsection a., above, any distribution payable under the terms of this article shall be completed no later than December 31 of the calendar year immediately following the calendar year in which the member died.

The benefits payable under the provisions of this article may not be paid in any form which would violate the required distribution requirements of this subsection.

DIVISION 7. ADMINISTRATION

Sec. 31-73. Changes or errors in records resulting in erroneous calculations or payments.

(a) If any change or error in calculations or records results in any recipient receiving payments either more or less than they would have been entitled to receive from the fund had the calculations or records been correct, the board shall correct the error and adjust subsequent payments.

(b) If the board determines that a recipient has been erroneously underpaid by the fund, the fund shall pay the recipient an amount equal to the difference between what was paid and what should have been paid.

(c) If the board determines that a recipient has been erroneously overpaid, such recipient shall repay the erroneous overpayment to the fund.

(d) Notwithstanding subsection (c), if a recipient has received an inadvertent benefit overpayment through no fault of his and could not reasonably have been expected to detect the error, the board may recommend waiver of any or all repayment, and if waiver is recommended by the board, the city manager may disapprove the recommendation, or waive all or part of any repayment. However, the portion of such inadvertent benefit overpayment with respect to which recoupment is not sought on behalf of the plan, shall be treated as having been paid in an eligible rollover distribution if the payment would have been an eligible rollover distribution but for being an overpayment, as is required in section 31-64(c).

(e) If an erroneous calculation or estimate provided by a participating employer results in a recipient of early retirement benefits not meeting the credited service requirements of section 31-53, through no fault of his own and the recipient could not reasonably have been expected to detect the error, the board may authorize the participating employer or the recipient to purchase up to three (3) months service credit necessary for the recipient to qualify for early retirement.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON MAY 23, 2023

Mabel Washington Jenkins, MMC
City Clerk

Phillip D. Jones
Mayor

A true copy, teste:

City Clerk