

AN ORDINANCE AMENDING ORDINANCE NO. 4788, THE MUNICIPAL CODE OF THE CITY OF RICHMOND HEIGHTS, MISSOURI, CHAPTER 200, POLICE AND FIREMEN; BY AMENDING SECTIONS 200.140 AND 200.460 OF ARTICLE III, POLICEMEN'S AND FIREMEN'S RETIREMENT FUND, REFLECTING ADOPTION OF FINAL IRS CODE SECTION 415 REGULATIONS.

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 Board of Trustees of the retirement plan for police and fire department employees of the City of Richmond Heights recommends revisions to said Plan in order to reflect the recent adoption of Final Code §415 Regulations by the U.S. Treasury; and

WHEREAS, this amendment does not result in additional 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 March 20, 2009 or as otherwise provided herein, the Plan, as set forth in Ordinance No. 4788, is hereby amended and restated as follows:

- 1. The definition of RETIREMENT BASE PAY contained in Section 200.140 of the Plan is deleted and the following is substituted therein, effective for limitation years (as defined herein) beginning on or after July 1, 2007:**

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 2008, \$230,000; and for 2009, \$245,000.) Annual Retirement Base Pay means Retirement Base Pay during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under this Article III (the determination period). The cost of living adjustment in effect on January 1 of any calendar year shall apply to any determination period beginning in such calendar year. For this purpose, the “determination period” 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).

2. Section 200.460 is deleted and the following is substituted therein:

SECTION 200.460 MAXIMUM RETIREMENT BENEFIT.

A. Annual Benefit.

- (1) **Effective date.** The limitations of this Section 200.460 apply in “Limitation Years” beginning on or after July 1, 2007, except as otherwise provided herein.
- (2) **“Annual Benefit.”** The “Annual Benefit” otherwise payable to a Participant under this Article III at any time shall not exceed the “Maximum Permissible Benefit.”
- (3) **Other rules applicable.** The limitations of this Section 200.460 shall be determined and applied taking into account the rules in subsection C.

B. Definitions. For purposes of this Section 200.460, the following definitions apply.

- (1) **Annual Benefit.** “Annual Benefit” means a benefit that is payable annually in the form of a “Straight Life Annuity.” Except as provided below, where a benefit is payable in a form other than a “Straight Life Annuity,” the benefit shall be adjusted to an actuarially equivalent “Straight Life Annuity” that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Section 200.460. For a Participant who has or will have distributions commencing at more than one Annuity Starting Date, the “Annual Benefit” shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this Section 200.460 as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new Annuity Starting Date has occurred shall be made without regard to U.S. Treasury Regulations Section 1.401(a)-20, Q&A 10(d), and with regard to U.S. Treasury Regulations Section 1.415(b)1(b) (1)(iii)(B) and (C).

No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant’s benefit were paid in another form; (b) benefits

that are not directly related to retirement benefits (such as a qualified disability benefit, pre-retirement incidental death benefits, and postretirement medical benefits); or (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code Section 417(e)(3) and would otherwise satisfy the limitations of this Section 200.460, and this Article III provides that the amount payable under the form of benefit in any “Limitation Year” shall not exceed the limits of this Section 200.460 applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the “Annual Benefit” shall take into account Social Security supplements described in Code Section 411(a)(9).

Effective for distributions in plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a “Straight Life Annuity” shall be made in accordance with the following: The “Straight Life Annuity” that is actuarially equivalent to the Participant’s form of benefit shall be determined hereunder if the form of the Participant’s benefit is either (a) a non-decreasing annuity (other than a “Straight Life Annuity”) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (b) an annuity that decreases during the life of the Participant merely because of (1) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (2) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

- (i) **“Limitation Years” beginning before July 1, 2007.** For “Limitation Years” beginning before July 1, 2007, the actuarially equivalent “Straight Life Annuity” is equal to the annual amount of the “Straight Life Annuity” commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant’s form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table (or other tabular factor) used by this Article III for adjusting benefits in the same form; and (II) 5% interest rate assumption and the applicable mortality table as established by the Secretary of the Treasury for that Annuity Starting Date.
- (ii) **“Limitation Years” beginning on or after July 1, 2007.** For “Limitation Years” beginning on or after July 1, 2007, the actuarially equivalent “Straight Life Annuity” is equal to the greater of (I) the annual amount of the “Straight Life Annuity” (if any) payable to the Participant under this Article III commencing at the same Annuity Starting Date as the Participant’s form of benefit; and (II) the annual amount of the “Straight Life Annuity” commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant’s form of benefit, computed using a 5%

interest rate assumption and the applicable mortality table as established by the Secretary of the Treasury for that Annuity Starting Date.

(2) **"Compensation" or "415 Compensation"** for purposes of this Section 200.460, shall mean those items specified in U.S. Treasury Regulation Section 1.415(c)-2(b)(1) and (d)(2), which is the Participant's earned income, wages, salaries, fees for professional services and other amounts received for personal services actually rendered in the course of employment with the City (including, but not limited to, commissions, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses and amounts contributed under Code Sections 125, 402(g), 132(f) or 457(b). Compensation for purposes of this Section 200.460 is also subject to the following adjustments, for Limitation Years beginning on and after July 1, 2007:

(i) **415 Compensation paid after "Severance from Employment."** 415 Compensation shall be adjusted, as set forth herein for the following types of compensation paid after a employee's "Severance from Employment" with the City. However, amounts described in subsections (a), (b) and (c) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after "Severance from Employment" or by the end of the "Limitation Year" that includes the date of such "Severance from Employment." Any other payment of compensation paid after "Severance from Employment" that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code Section 415(c)(3), even if payment is made within the time period specified above.

(a) **Regular pay.** 415 Compensation shall include regular pay after "Severance from Employment" if:

- (1) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
- (2) The payment would have been paid to the Participant prior to a "Severance from Employment" if the Participant had continued in employment with the City.

(b) **Leave cashouts.** Leave cashouts shall be included in 415 Compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's "Severance from Employment," and the amounts are payment 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.

- (c) **Deferred Compensation.** 415 Compensation will include deferred compensation if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the Participant's "Severance from Employment," and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the City and only to the extent that the payment is includible in the Participant's gross income.
 - (d) **Salary continuation payments for military service Participants.** 415 Compensation does not include payments to an individual who does not currently perform services for the City by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those 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.
 - (e) **Salary continuation payments for disabled Participants.** 415 Compensation does not include compensation paid to a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)).
- (ii) **Administrative delay ("the first few weeks") rule.** 415 Compensation for a "Limitation Year" shall include amounts earned but not paid during the "Limitation Year" solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next "Limitation Year," the amounts are included on a uniform and consistent basis with respect to all similarly situated Participants, and no compensation is included in more than one "Limitation Year."
 - (iii) **Back Pay.** Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by the City to compensate an employee for lost wages are 415 Compensation for the "Limitation Year" to which the back pay relates, but only to the extent such payments represent wages and compensation that would otherwise be included in 415 Compensation under this Amendment.
- (3) **Defined Benefit Dollar Limitation.** "Defined Benefit Dollar Limitation" means, effective for "Limitation Years" ending after December 31, 2001, \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a "Straight Life Annuity." The new limitation shall apply to "Limitation Years" ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.
 - (4) **Limitation Year.** "Limitation Year" means the calendar year or such other period specified in this Article III that is used to apply the Code Section 415 limitations. The "Limitation Year" may only be changed by an amendment to this Article III.

Furthermore, if the retirement benefit program provided under this Article III is terminated effective as of a date other than the last day of its "Limitation Year," then this Article III is treated as if it had been amended to change its "Limitation Year."

(5) **Maximum Permissible Benefit.** "Maximum Permissible Benefit" means the "Defined Benefit Dollar Limitation" (adjusted where required, as provided below).

(i) **Adjustment for Less Than 10 Years of Participation or Service:** If the Participant has less than 10 Years of Participation in the retirement benefit program under this Article III, the "Defined Benefit Dollar Limitation" shall be multiplied by a fraction – (i) the numerator of which is the number of "Years of Participation" in the retirement benefit program provided under this Article III (or part thereof, but not less than one year), and (ii) the denominator of which is 10.

(ii) **Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement Before Age 62 or after Age 65:** Effective for benefits commencing in "Limitation Years" ending after December 31, 2001, the "Defined Benefit Dollar Limitation" shall be adjusted if the Annuity Starting Date of the Participant's benefit is before age 62 or after age 65. If the Annuity Starting Date is before age 62, the "Defined Benefit Dollar Limitation" shall be adjusted under Section 200.460.B(5)(ii)(x), as modified by Section 200.460.B.(5)(ii)(z). If the Annuity Starting Date is after age 65, the "Defined Benefit Dollar Limitation" shall be adjusted under Section 200.460B.(5)(ii)(y), as modified by Section 200.460.B(5)(ii)(z).

(x) **Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement Before Age 62:**

(I) *"Limitation Years" Beginning Before July 1, 2007.* If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a "Limitation Year" beginning before July 1, 2007, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a "Straight Life Annuity" commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Section 200.460B.(5)(i) for Years of Participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) used by this Article III; or (2) a 5% interest rate assumption and the applicable mortality table as established by the Secretary of the Treasury.

(II) *"Limitation Years" Beginning on or After July 1, 2007.*

(A) If Benefits Are Not Payable as an Immediately Commencing "Straight Life Annuity" Payable at both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the

Participant's benefit is prior to age 62 and occurs in a "Limitation Year" beginning on or after July 1, 2007, and this Article III does not provide an immediately commencing "Straight Life Annuity" payable at both age 62 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a "Straight Life Annuity" commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Section 200.460B.(5)(i) for Years of Participation less than 10, if required) with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table as established by the Secretary of the Treasury for the Annuity Starting Date (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

(B) If Benefits Are Payable as an Immediately Commencing "Straight Life Annuity" Payable at both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a "Limitation Year" beginning on or after July 1, 2007, and this Article III provides an immediately commencing "Straight Life Annuity" payable at both age 62 and the age of benefit commencement, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the lesser of the limitation determined under Section 200.460B.(5)(ii)(x)(II)(A) and the "Defined Benefit Dollar Limitation" (adjusted under Section 200.460B.(5)(i) for Years of Participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing "Straight Life Annuity" under this Article III at the Participant's Annuity Starting Date to the annual amount of the immediately commencing "Straight Life Annuity" under this Article III at age 62, both determined without applying the limitations of this Section 200.460.

(y) Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement After Age 65:

(I) *"Limitation Years" Beginning Before July 1, 2007.* If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the "Defined Benefit Dollar Limitation" for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a "Straight Life Annuity" commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the "Defined Benefit Dollar Limitation" (adjusted under Section 200.460B.(5)(i) for Years of Participation less

than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table (or other tabular factor) used by this Article III; or (2) 5% interest rate assumption and the applicable mortality table as established by the Secretary of the Treasury.

(II) *“Limitation Years” Beginning on or After July 1, 2007.*

- (A) Benefits Are Not Payable as an Immediately Commencing “Straight Life Annuity” Payable at both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant’s benefit is after age 65 and occurs in a “Limitation Year” beginning on or after July 1, 2007, and this Article III does not provide an immediately commencing “Straight Life Annuity” payable at both age 65 and the age of benefit commencement, the “Defined Benefit Dollar Limitation” at the Participant’s Annuity Starting Date is the annual amount of a benefit payable in the form of a “Straight Life Annuity” commencing at the Participant’s Annuity Starting Date that is the actuarial equivalent of the “Defined Benefit Dollar Limitation” (adjusted under Section 200.460B.(5)(i) for Years of Participation less than 10, if required), with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table as established by the Treasury for that Annuity Starting Date (and expressing the Participant’s age based on completed calendar months as of the Annuity Starting Date).
- (B) If Benefits Are Payable as an Immediately Commencing “Straight Life Annuity” Payable at both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant’s benefit is after age 65 and occurs in a “Limitation Year” beginning on or after July 1, 2007, and this Article III provides an immediately commencing “Straight Life Annuity” payable at both age 65 and the age of benefit commencement, the “Defined Benefit Dollar Limitation” at the Participant’s Annuity Starting Date is the lesser of the limitation determined under Section 200.460B.(5)(ii)(y)(II)(A) and the “Defined Benefit Dollar Limitation” (adjusted under Section 200.460B.(5)(i) for Years of Participation less than ten 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing “Straight Life Annuity” under this Article III at the Participant’s Annuity Starting Date to the annual amount of the adjusted immediately commencing “Straight Life Annuity” under this Article III at age 65, both determined without applying the limitations of this Section 200.460. For this purpose, the adjusted immediately commencing “Straight Life Annuity” under this

Article III at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing "Straight Life Annuity" under this Article III at age 65 is the annual amount of such annuity that would be payable under this Article III to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

- (z) Notwithstanding the other requirements of this Section 200.460B.(5), no adjustment shall be made to the "Defined Benefit Dollar Limitation" to reflect the probability of a Participant's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if this Article III does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Participant's death.
- (iii) Minimum benefit permitted: Notwithstanding anything else in this Section 200.460 to the contrary, the benefit otherwise payable to a Participant under this Article III shall be deemed not to exceed the "Maximum Permissible Benefit" if:
 - (i) the retirement benefits payable for a "Limitation Year" under any form of benefit with respect to such Participant under this Article III and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the City do not exceed \$10,000 multiplied by a fraction – (I) the numerator of which is the Participant's number of Years (or part thereof, but not less than one year) of Service (not to exceed 10) with the City, and (II) the denominator of which is 10; AND the City has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Code Section 401(h), and accounts for post-retirement medical benefits established under Code Section 419A(d)(1) are not considered a separate defined contribution plan).
 - (ii) For plan years beginning after December 31, 1996, the adjustments in the Code Section 415 limits shall not apply in the case of a qualified participant as defined in Code Section 415(b)(2)(H).
 - (iii) For an employee who commenced participation in the retirement benefit program provided under this Article III before January 1, 1990, the maximum

defined benefit limitations shall not be less than the accrued benefit of the employee under this Article III determined without regard to any amendment of this Article III made after October 14, 1987.

- (iv) The foregoing adjustments will not apply to benefits received as a result of the recipient retiring before age 62 or having less than 10 years of participation as a result of becoming Disabled because of personal injuries or sickness. Nor will the adjustments apply to amounts received under this Article III by the beneficiaries, survivors, or the estate of such an employee as a result of the death of the employee.

(6) **Severance from Employment.** “Severance from Employment” means, with respect to any individual, cessation from being an employee. An employee does not have a “Severance from Employment” if, in connection with a change of employment, the employee’s new employer maintains the retirement benefit program provided under this Article III with respect to the employee.

(7) **Straight Life Annuity.** “Straight Life Annuity” means an annuity payable in equal installments for the life of a Participant that terminates upon the Participant’s death.

(8) **Year of Participation.** “Year of Participation” means, with respect to a Participant, each annual accrual computation period (computed to fractional parts of a year) for which an individual’s employment by the City as an employee, continues chronologically without interruption. Permissible interruptions for service in the Armed Forces of the United States, or under the sick leave or vacation plan of the City, or by leave of the City, or as otherwise permitted by this Article III, shall not be deemed to interrupt or break a Year of Participation.

C. Other rules.

(1) **Special rules.** The limitations of this Section 200.460 shall be determined and applied taking into account the aggregation rules including those in U.S. Treasury Regulations Section 1.415(f)-1(d), (e) and (h). To the extent required, the defined contribution limitations of Code Section 415 and the regulations thereunder apply to this Article III.

(2) **Construction of Section.** Section 200.460 shall be construed in a manner which satisfies the requirements imposed by Internal Revenue Code Section 415, but shall not impose limitations which are more stringent than those required by Code Section 415.

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

SECTION 3: This Ordinance shall be in full force and effect on the 31st day following passage and signature as provided by law.

PASSED AND SIGNED this 17th day of February, 2009.

JAMES J. BECK
MAYOR

ATTEST:

PATRICIA S. VILLMER
DEPUTY CITY CLERK

APPROVED AS TO FORM:

KENNETH J. HEINZ
CITY ATTORNEY

First reading: February 2, 2009
Second reading: February 17, 2009