

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** City Manager

**AGENDA DATE:** August 23, 2011

**CONTACT PERSON/PHONE:** William F. Studer, Jr., Deputy City Manager, 915-541-4252  
Robert Ash, Pension Administrator, 915-541-4765

**DISTRICT(S) AFFECTED:** All Districts

**SUBJECT:** An Ordinance amending Chapter 2.64 (City Employees' Pension Fund) of the El Paso City Code, by amending various sections of the Chapter to create a second tier in the pension fund that will provide different benefits for persons who become fund participants on and after September 1, 2011; to clarify provisions concerning participation in the system and the payment of benefits; to revise the provisions relating to investments to conform with state law; to change the vesting periods for retirement, disability and death benefits; and to increase the rate of participant and employer contributions to the fund.

**BACKGROUND / DISCUSSION:** The City Employees' Pension Fund currently exceeds the GASB and State Pension Review Board time limits required to amortize the fund's unfunded actuarial accrued liability. The years necessary to amortize the unfunded liability has increased due to investment losses sustained in the market downturn in 2008 and 2009 and due to longer retiree life expectancies. The proposed ordinance amendment is intended to bring the fund back into compliance with the amortization period suggested by GASB and the State Pension Review Board and will improve the sustainability of the fund. The ordinance amendment creates a second tier of benefits for new participants, increases contributions, changes vesting requirements, deletes obsolete language and provides revised language to facilitate the administration of the pension fund.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

All operating funds and employee contributions

**BOARD / COMMISSION ACTION:**

Recommended by the Board of Trustees - City Employees Pension Fund

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

(Example: if RCA is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 2.64 (CITY EMPLOYEES' PENSION FUND) OF THE EL PASO CITY CODE, BY AMENDING VARIOUS SECTIONS OF THE CHAPTER TO CREATE A SECOND TIER IN THE PENSION FUND THAT WILL PROVIDE DIFFERENT BENEFITS FOR PERSONS WHO BECOME FUND PARTICIPANTS ON AND AFTER SEPTEMBER 1, 2011; TO CLARIFY PROVISIONS CONCERNING PARTICIPATION IN THE SYSTEM AND THE PAYMENT OF BENEFITS; TO REVISE THE PROVISIONS RELATING TO INVESTMENTS TO CONFORM WITH STATE LAW; TO CHANGE THE VESTING PERIODS FOR RETIREMENT, DISABILITY AND DEATH BENEFITS; AND TO INCREASE THE RATE OF PARTICIPANT AND EMPLOYER CONTRIBUTIONS TO THE FUND.**

**WHEREAS**, Section 2.64.080 of Chapter 2.64 entrusts the Board of Trustees of the City Employees' Pension Fund with the charge of administering the City Employee's Pension Fund and directing the investment thereof; and,

**WHEREAS**, the City of El Paso is the plan sponsor of the City Employees' Pension Fund; and,

**WHEREAS**, the Board of Trustees and the City of El Paso believe that the sustainability of the Fund is best served by increased contributions and the creation of a 2<sup>nd</sup> tier of pension benefits for those participants hired on or after September 1, 2011; and,

**WHEREAS**, the City of El Paso finds that certain sections of Chapter 2.64 are no longer applicable or correctly stated and should be deleted or amended; and,

**WHEREAS**, pursuant to Section 2.64.200 C, the city council has adopted by resolution new actuarial tables recommended by the Fund's actuary for the new retirement options described herein.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

Section 1. That Section 2.64.010 of the El Paso City Code, be amended to read as follows:

**2.64.010 Created.**

There shall be established by the city a pension fund for city employees and all employees of any other entity that with the city's consent, adopts the pension fund and, thereby, becomes an adopting employer of the fund (hereafter, "other approved employer"). This fund does not include participants who are firefighters or police officers. Such fund shall be known as the City Employees' Pension Fund. Further, all references in this chapter to "fund", "plan", "city employee's pension fund", "city employee's pension plan", "pension fund" or "pension plan" shall mean the City Employees' Pension Fund. All references in this chapter to participant or fund participant shall mean those persons who participate in the fund, and may also be referred to as members of the fund. Additionally, all references in this chapter to "city" shall mean the City of El Paso, Texas.

Section 2. That Section 2.64.120 of the El Paso City Code, be amended to read as follows:

### **2.64.120 Participation in pension system—Civil service employees**

All classified civil service employees shall be ~~members of the fund participants~~ as of the date of their appointment, subject to the conditions specified in the subsections which follows:

A. Persons eligible to membership in the Firemen and Policemen Pension Fund ~~firefighter's and police officer's pension system~~ set up by state law shall not be eligible for membership in the city employees' pension fund.

B. Seasonal or temporary employees shall not be eligible. Permanent part-time employees may at their option become members of the city employees' pension fund by making the irrevocable election to participate in the fund as provided by and in accordance with application to the board of trustees, upon the terms set forth in Section 2.64.140.

C. Employees of the city-county health district shall be members of the pension fund as provided in Section 2.64.130. Classified employees who are otherwise eligible to become members of the city employees' pension fund under this section, but whose salaries are paid partially or entirely from county, state or federal grant funds, must become members of the city employees' pension fund on the applicable terms and conditions specified in this section and on the following additional terms and conditions:

1. If the employer's contribution is an allowable expense under the terms of the relevant grant, the employer's contribution must be paid from the relevant grant budget and the employee must be a member of the pension fund.

2. If the employer's contribution is not an allowable expense under the terms of the relevant grant, the employee may at his option become a member of the pension fund, provided that in such case the employee shall make the employer's contribution from the employee's personal funds.

3. In no case shall the employer's contribution be paid from general city revenue not allocated to the relevant grant budget.

4. The terms and conditions of this subsection C shall be effective only until December 31, 2007.

D. Any person who at the effective date of Ordinance No. 750 was employed under a temporary or provisional appointment, or who had not completed his probationary period under an appointment, and who had been contributing to the pension fund, may have elected to continue to contribute or may have withdrawn his contributions, without interest. If he elected to continue to contribute, he shall be entitled to the same rights as if Ordinance No. 750 had not been passed. If he elected to withdraw his contributions, he shall lose all rights to participation in the fund, unless he afterwards qualifies under this chapter. If he fails to make his election within thirty days after the effective date of Ordinance No. 750, he shall be deemed to have elected to withdraw his contributions, and no further pension deductions shall be made from his paycheck unless he afterwards qualifies.

E. Persons who have signed pension waivers before the effective date of Ordinance No. 750, but from whom contributions to the fund have been accepted, shall have the same right of election as if such waiver had not been signed.

F. After the effective date of Ordinance No. 750, no pension fund deductions shall be made from the paychecks of any person thereafter appointed, unless and until he has been properly certified and appointed; nor shall such deductions be made from the paycheck of any person not eligible for membership in the pension system as herein provided.

G. Some persons given provisional or temporary appointments after April 30, 1952, and afterwards given permanent appointments, lost considerable pension time under subsection F of this section because they were, without their fault, not appointed as promptly as they should have been. To prevent injustice to such persons, the following options are now extended to every person who comes within all three of the following classes: (i) such person was provisionally or temporarily appointed after April 30, 1952; (ii) such person was not retired before February 11, 1971; and (iii) such person received a permanent appointment while serving in this provisional or temporary status.

1. If such employee person retires because of reaching compulsory retirement age, he/she may, for pension purposes, get credit for such provisional or temporary time by paying into the fund. The interest rate will be seven and one-half percent per annum compounded annually for back contribution payments. The city will make contributions without interest in accordance with the formula in effect at such previous time. If the employee person wishes to take advantage of the option to get credit for such provisional or temporary time, he shall pay the required amount before he/she submits his/~~her~~ application for retirement to the board.

2. [Intentionally omitted].

3. If such employee person dies, the pension office shall as soon as possible, notify all persons known to have the right to death benefits. Notice to minors shall be given to the person entitled to receive payments for their benefit. Any person entitled to receive death benefits of the employee person shall have thirty days after the date of death to make up the back contributions, with like consequence as in the previous case.

H. Any person who has retired from city service under the provisions of this chapter and who is not otherwise excluded or disqualified from the fund, and who is reemployed by the city under circumstances which would permit membership in the fund were it not for the previous retirement, shall be eligible for readmission to the fund under the following conditions:

1. Pension payments from the fund for retirement from city service pursuant to this chapter shall cease immediately upon reemployment.

2. As of the date of reemployment, contributions to the fund shall resume pursuant to this chapter, and service credit shall commence to accumulate for calculation of benefits.

3. A person who first was a fund participant before September 1, 2011, subsequently retires and is reemployed by the city ~~entitled to benefits under this section who is reemployed~~ shall receive a monthly pension from the pension fund computed according to the formula set forth in Section 2.64.200 B where the total complete years and months, and fractional parts of months, of service used as a single multiplier to compute his/her monthly pension and shall include such service rendered before the date of his/her initial retirement and such service rendered after the date of his/her reemployment until the date of his/her second and final retirement; provided, that such person, within thirty days of the date of his rehire, reimburses the pension fund for all pension benefits received during such period of separation from city service in one lump sum payment, together with the interest on such total lump sum payment, computed according to the pension fund's actuarial reimbursement analysis on the date of reimbursement; provided further, that any such person meets the requisites in subsections (1) and (2).

4. If a person is reemployed and fails to reimburse the pension fund, ~~he/she~~ shall receive a monthly pension from the pension fund in the amount of his/her original monthly pension based on his prior service credit period at the time of his original retirement, subject to any limitations set forth in Sections 2.64.120 H and 2.64.140 G, and as may also be appropriate under this chapter. augmented by the additional complete years and months and fractional parts of months of service on reemployment to be used as a separate multiplier to compute his/her total monthly pension according to the formula set forth in Section 2.64.200 With respect to such person's service after reemployment that begins on or after September 1, 2011, the person shall become a participant of the fund as applicable to persons first hired on or after September 1, 2011 and be subject to all applicable provisions under this chapter regarding the vesting and paying of such a separate pension; provided further, that any such person meets the requisites in subsections 1 and 2. Nothing in this subsection, however, shall be construed to allow the time period of reemployment to be added to the time period of service rendered before the date of his/her first retirement, and thereby be used as a single multiplier to compute the monthly pension receivable upon his/her second and final retirement.

5. A person who first becomes a fund participant on or after September 1, 2011, subsequently retires and is reemployed by the city shall receive a monthly pension from the pension fund in the amount of his original monthly pension from the prior service credit period, subject to any limitations set forth in Sections 2.64.120 H and 2.64.140 G, augmented by the additional complete years and months and fractional parts of months of service on reemployment to be used as a separate multiplier to compute his total monthly pension according to the formula set forth in Section 2.64.200 B 3 in the event that the person vests such second pension. The prior service credit period and any new service credit period(s) for such participant shall each be administered separately and not combined,

and such pensions shall be subject to applicable rules contained in Sections 2.64.120, 2.64.140 and 2.64.260 C.

~~5. 6.~~ A person entitled to benefits under either this subsection 3 or 4 of this section who retired immediately prior to being appointed or elected to a position in the unclassified services which is not eligible for membership in the pension fund, who immediately upon leaving that position, is reemployed in the classified services or in a position in the unclassified services which is eligible for membership in the pension fund, shall receive a monthly pension from the pension fund computed according to the formula set forth in Section 2.64.200 where the total complete years and months, and fractional parts of months of service used as a single multiplier to compute his/~~her~~ monthly pension shall include such service rendered before the date of his/~~her~~ retirement and such service rendered after the date of his/~~her~~ reemployment in the classified service until the date of his/~~her~~ second and final retirement.

I. Notwithstanding anything contained in this section to the contrary, the city shall not pick-up or pre-tax, pursuant to Section 2.64.401, buy-back contribution payments set forth in this section.

J. Certain emergency medical service personnel who became participants in the City of El Paso Firemen and Policemen Pension Fund shall be considered, for purposes of this plan, as separated from service from their original employment with the City as of the first day of their participation in the City of El Paso Firemen and Policemen Pension Fund.

Section 3. That Section 2.64.140 of the El Paso City Code, be amended to read as follows:

**2.64.140 Participation in pension system—Certain employees not in the classified service.**

Full-time employees who become employed by the city after June 3, 1997, the effective date of this section, and who are not in the classified civil service, including ~~such~~ employees employed by the El Paso water utilities or the mass transit department board (except police officers, firefighters and officials elected by vote of the people) shall become ~~members of the city employees' pension fund participants~~. Full-time employees who are already employed by the city on the effective date of this section, and who are not in the classified civil service, including such employees employed by the El Paso water utilities or the mass transit department board (except police officers, firefighters and officials elected by vote of the people) may, at their option, become members of the city employees' pension fund Permanent part time employees and eligible contract employees who elect to participate in the fund, and all employees of any other entity that with the city's consent, adopts the pension fund ("other approved employer") may become members of the fund participants by making an irrevocable election to participate or not participate which shall be made at the time that the person completes the paperwork required at the time of hire by the Human Resources Department, or in the case of an employee of another approved employer, by submitting an application to the board of trustees. The following provisions shall additionally apply: ~~upon the following terms:~~

A. Any full-time employee who was eligible to apply for membership in the fund at the time of his/~~her~~ original appointment, but who did not submit his/~~her~~ application within the ninety-day period after original appointment, and any employee appointed after May 24, 1984, may submit an application to the board of trustees at any time after original appointment. Applicants who are not grant-funded employees shall pay into the fund, in one lump sum at any time prior to submitting an application for retirement, the amount of contributions which they would have paid had they been members of the fund from the date of their original appointments, or any late date, but not to include any time during breaks in service, plus interest at the rate of seven and one-half percent per annum, compounded annually, on the total amount for the period from the date when the first contribution would have been made to the date when the total is actually paid. Any buy-back shall be made in one lump sum. In the case of nongrant-funded employees, the city will make corresponding contributions without interest, in accordance with the formula in effect at such previous time, provided, however, that such employees must pay interest at the current actuarial rate assumption approved by the board on the employer contributions for the portion of buy-back periods which are longer than five years, as well as the interest on employee participant contributions; provided, further, however, that this provision relating to paying interest on employer contributions shall not apply to employees in the unclassified service who are eligible for membership in the pension fund at the time Ordinance No. 11593 is adopted. Periods of buy-back on which interest on the employer portion of the contribution is payable shall cover continuous or intermittent service most immediately contiguous to the period of buy-back without payment of interest on the employer portion.

If such option is exercised, all rights or benefits under the fund which depend upon the length of service shall be determined as if the employee participant had been a member from the date of his/~~her~~ original appointment, or such other period for which this option is exercised, excluding any time during a break in service, to which date his/~~her~~ contributions have been made good. ~~An employee~~ A participant may not make more than one election to buy-back service credit towards eligibility and benefits under this section.

B. The employee's election to become a participant ~~member of the fund~~ shall be irrevocable, and his rights and obligations as a participant ~~member of the fund~~ shall terminate only in accordance with the provisions of this chapter applicable to employees in the classified service as set forth in Section 2.64.120.

C. If the applicant is already ~~an employee~~ a participant on July 25, 1968, the effective date of this section, his service with the city shall for all pension purposes be deemed to begin at the date of his application, unless he exercises the further option set forth in subsection D of this section; provided, ~~an employee~~ a participant who at a previous time was in the city's classified service and made contributions to the fund shall have the benefit of such previous time when allowable under subsections B and C of Section 2.64.260.

D. Persons who are already employed by the city on July 25, 1968, the effective date of this section, and are qualified to become ~~members of the pension fund~~ participants hereunder shall have the further option of paying into the fund the amount of contributions which they would have paid had they been participants ~~members~~ from the date of their appointment. The interest will be seven and one-half percent per annum compounded annually. The city will make

corresponding contributions without interest in accordance with the formula in effect at such previous time. Such option must be exercised before receiving any death, disability or pension benefits. If such option is exercised, all rights or benefits under the fund which depend upon length of service shall be determined as if the participant employee had been a participant member from the date of his/her appointment, to which date his contributions have been made good.

E. Employees who are otherwise eligible to become ~~members of the city employees' pension fund~~ participants under this section, but whose salaries are paid partially or entirely from county, state or federal grant funds, may at their option become ~~members of the city employees' pension fund~~ participants by making application to the board of trustees, only upon the applicable terms and conditions specified in this section and on the following additional terms and conditions:

1. The employer's contribution must be paid from the relevant grant budget, if such an expenditure is allowable under the terms of said grant. If such expenditure is not allowable from the relevant grant budget in effect when the employee exercises this option, the ~~employee~~ participant shall have the option of making the corresponding employer's contribution without interest from the ~~employee's~~ participant's personal funds. In no case shall the employer's contribution be paid from general city revenue not allocated to the relevant grant budget.

2. Full-time grant funded employees not in the classified services who become ~~members of the fund~~ participants, shall have the further option, at any time prior to submitting an application for retirement, of paying into the fund the amount of contributions which they would have paid had they been members from the date of their original appointments, but not to include any time during a break in service, plus interest at the rate of seven and one-half percent per annum, compounded annually, on the total amount for the period from the date when the first contribution would have been made to the date when the total is actually paid, on the following conditions: the employer's corresponding contributions, which shall be made without interest and in accordance with the formula in effect during the ~~employee's~~ participant's time of previous service, must be made as an allowable expense in the relevant grant budget in effect when the employee exercises this option; provided, however, such ~~employees~~ participants must pay interest at the current actuarial rate assumption approved by the board on the employer contributions for the period of buy-back which is in excess of five years, as well as the interest on ~~employee~~ participant contributions; further provided, however, that this provision relating to paying interest on employer contributions shall not apply to such grant-funded employees who are eligible for membership in the pension fund on October 12, 1993, at the time the ordinance codified in this subsection is adopted. Any buy-back shall be made in one lump sum. Periods of buy-back on which interest on the employer portion of contribution is payable shall cover continuous or intermittent service most immediately contiguous to the period of buy-back without payment of interest on the employer portion.

F. Notwithstanding anything contained in this section to the contrary, the city shall not pick-up or pre-tax buy-back contribution payments made pursuant to this section.

G. Any eligible contract employee who participates in the fund shall irrevocably elect to become a fund participant, and his rights and obligations as a fund participant shall terminate only in

accordance with the provisions of this chapter applicable to employees in the classified civil service as outlined in Section 2.64.120.

H. A person who becomes a fund participant pursuant to Section 2.64.140, shall be subject to Section 2.64.120 H in its entirety.

I. For purposes of the plan, an eligible contract employee means a contract employee whose contract with the City permits the employee to become a fund participant.

Section 4. That Section 2.64.180 of the El Paso City Code, be amended to read as follows:

### **2.64.180 Investments.**

All moneys, securities and other property of the ~~pension~~ fund shall be kept separate from other funds of the city. All moneys necessary for payment of monthly pension benefits and expenses of administering the fund shall be deposited with the city depository, ~~but the bank need not keep such deposits separate on its own books from other city deposits. After the money has not keep been deposited into the depository t~~The board of trustees may use another third party custodian for purposes of maintaining pension assets.

The board of trustees may invest all or any part of the fund which is in excess of normal requirements for pensions, benefits, expenses and repayment of contributions. In making investments the board shall discharge its duties solely in the interest of the fund's participants and beneficiaries and shall exercise its judgment in accordance with the "prudent person" standard of fiduciary responsibilities set forth in Section 802.203 of Title 8 of the Texas Government Code of the state, adhere to the provisions of the "prudent investor rule" of Chapter 117 of the Texas Trust Code, and shall otherwise comply with all applicable state and federal laws. All investments shall be made in the name of the board of trustees of the ~~city employees' pension~~ fund, or an equivalent designation showing that the investment belongs to the fund.

Provided, however, in the event that the statutory provisions or standards set forth above cease to exist under state law, then the following provisions shall apply to the investments made pursuant to this section, and tThe following are types of investments specifically authorized by the city council, as pension plan sponsor. This list is not intended to be a limitation of the types of investments which are prudent or available to the board. The board of trustees, may include additional types of investments so long as the additional investments are prudent and do not conflict with any restrictions or limitations on the specific investments approved by the city council listed below:

- A. Bank or third party administered trusteed funds;
- B. Insurance deposit administration or similar plans, provided the insurance company with which the funds are deposited shall have had admitted assets in excess of one billion dollars for the year immediately preceding the year in which the contract is entered into;
- C. Mutual investment funds, provided the amount so invested shall not exceed one percent of the total assets of the mutual investment fund in which such investment is made;

D. Bonds, treasury bills, or other obligations of the United States of America or agencies thereof, or bonds of the state;

E. First lien real estate mortgage securities guaranteed by the Federal Housing Administration or Veterans Administration, or their successors, provided such real estate securities at any given time shall not exceed the proportionate part of the fund which resulted from contributions to the fund by the city;

F. Corporate bonds, common stock or preferred stock; provided, that not more than ten percent of the equity portion of the portfolio of the fund's assets, at cost, as determined at the time of purchase, or fifteen percent, at current market values, shall be invested in the securities of any one company; nor shall more than five percent of the outstanding shares of any one company be owned. At least twenty percent of the total assets of the fund shall at all times be invested in fixed-income securities. Not less than eighty percent of the equity assets shall consist of the issues of high quality, well known, reliable companies incorporated in the United States, exclusive of bank, utility and insurance companies, whose stock is listed on an exchange registered with the Securities and Exchange Commission or its successors. Up to twenty percent of the equity assets, exclusive of stock in bank, utility and insurance companies, may consist of the unlisted stock of companies incorporated in the United States, having (1) annual gross revenues greater than one hundred million dollars; (2) annual net income greater than five million dollars; (3) positive operating earnings in six out of the last seven years; and (4) anticipated positive net operating income for the next four quarters at least equal to its average for the last five years, or fifty percent above the worst four consecutive quarters, whichever is lower. Not more than twenty-five percent of the equity portion of the fund shall be held in any one group or industry. The foregoing limitations in this subsection do not apply to investments in securities of the United States, the state, or city authorized in preceding subsections.

G. The fund may invest in foreign securities so long as such investments shall not exceed more than twenty percent of the fund's assets. For purposes of calculating the twenty percent limitation, American equities which derive a portion of their business from foreign operations or sales shall not be included in the calculation. Foreign equities shall only consist of high quality securities in developed markets to the exclusion of any developing markets. Foreign fixed income investments, may include the purchasing of bonds of foreign countries but shall only be authorized when the countries credit rating is at least BBB as determined by Standard Poors or Baa2 as determined by Moody's. Should any country be rated by both Standard and Poors and Moody's then, both ratings must meet the minimum standards of Standards and Poors BBB and Moody's Baa2.

The board of trustees, to carry out the provisions of this section, shall have authority to retain investment counsel to perform any service that may be mutually agreed to by the board of trustees and the investment counselor, and to contract for custodial services for the fund's investments and securities.

H. The fund may invest in alternative investments, defined as emerging market equity, real estate investment trust, private real estate or high yield debt instruments. Such alternative investments are subject to the following limitations. Emerging market equity managers are expected to invest in equity securities domiciled in countries generally recognized as an emerging country by the international finance community as well as countries included in the MSCI Emerging Market

Free Index. Equities may be common or preferred corporate stocks, debentures or preferred shares, which are convertible into corporate stock; and investment trust shares. Emerging market equity managers are also allowed to transact in instruments such as forward contracts, futures contracts and other derivative instruments for hedging purposes including currency hedging. Any allocation to emerging market equities is independent of the requirements set forth in subsection G of this section, which describes permissible equity investments in developed international markets. Real estate investment trusts are to be invested in real estate investment trusts or related securities, such as real estate operating companies, whose primary objective(s) is equity investment in income-producing real property located within the United States or district of Columbia or pooled funds, which invest similar securities. The portfolio will be diversified by either property type and/or by the various geographic regions of the country. The real estate investment trust must have the objective of establishing a high quality, income producing real estate. Ownership should be primarily through equity interest. The following securities may not be purchased: investment in undeveloped, non-income producing property; funds where leverage is intended to exceed thirty percent of the market value of the fund; and investment in non-U.S. real estate. Private real estate may include private real estate equity, equity-oriented debt, mortgages, construction loans, mezzanine debt on real estate, and private investment vehicles if such instruments are designed for tax-exempt investors. High yield fixed income is authorized to invest in below investment grade fixed income securities. The fund may invest in all domestic fixed-income securities (including without limitation, convertible securities, preferred stock and Rule 144A securities) rated at least CCC by Standard and Poor's or Caa by Moody's as determined at the time of purchase. The following securities may not be purchased: all foreign issues, including without limitation, emerging market debt, Eurobonds and Yankee bonds. The total amount of the fund that is permitted to be allocated to the above described investment is limited to not more than twenty-five percent of the total fund assets and the fund may not invest more than ten percent of the fund's total assets in either emerging market equity, real estate investments or high yield debt instruments.

Section 5. That Section 2.64.190 of the El Paso City Code, be amended to read as follows:

#### **2.64.190 Contributions.**

A. ~~Beginning on the first full pay period after May 1, 2007, e~~Every person employee who is a fund participant in the fund shall contribute thereto, on a pre-tax basis, 7.75 ~~seven and three-fourths~~ percent of his salary or wages. The city ~~and all its departments and divisions of a proprietary nature,~~ and all other employers whose employees are permitted to participate in the fund, shall contribute an amount equal to 11.65 percent of the salary or wages of their respective employees who contribute to the fund, subject to subsection ~~(A)(1)~~ of this section. Provided however, for each of the four consecutive city fiscal years beginning with Fiscal Year 2012 starting on September 1, 2011, participant contributions of their salaries or wages shall increase annually by .30%, and the contributions of the city and of other permitted employers shall

increase annually by .60%. Such increases shall begin with the first full pay period after September 1st of each applicable year, and thereafter, shall remain at the level reached in September 2014.

1. In any case in which the periodic salary or wage of a participant, because of the employee's accident with pay status, is insufficient to allow for deduction from salary or wages of the required ~~employee~~ participant contribution, or when salary or wages are not subject to deductions, the ~~employee~~ participant shall be responsible for making payment of the required contribution directly to the city comptroller, not later than one week after the applicable bi-weekly pay day. Failure to make the required contributions will result in loss of pension service credit for the period for which contributions have not been made. Contributions paid later than one week after the applicable pay day will be subject to the addition of interest at the rate of seven and one-half percent per annum compounded annually until such contributions are paid.

B. Contributions to the pension fund shall be based on total salary or wages including any worker's compensation periodic payments received by ~~an employee~~ a participant on leave of absence with pay.

C. Notwithstanding anything contained in this section to the contrary, the city shall not pick-up or pre-tax buy-back contribution payments made pursuant to this section.

Section 6. That Section 2.64.200 of the El Paso City Code, be amended to read as follows:

#### **2.64.200 Retirement pensions.**

A. Eligibility. Participants in the Fund shall be eligible under either subsection 1 or subsection 2, as applicable:

1. Whenever a person first becomes a fund participant before September 1, 2011 shall have completed (a) ten years of service credit and attained the age of fifty-five years, or (b) seven years of service credit and attained the age of sixty years, or (c) shall have completed thirty years of service credit regardless of age, such ~~employee~~ participant shall be entitled to be retired from such service in accordance with the applicable terms and conditions established in this chapter upon application. An application for pension benefits shall be filed no later than thirty days after the effective termination date of such person. Upon a finding of good cause by the board of trustees, the board may extend the deadline for filing such application. The term good cause shall mean that the failure of the applicant to timely file such application was the result of circumstances beyond the applicant's control, rather than intentional, or the result of conscious indifference. The burden of establishing good cause shall always be upon the employee, and good cause must be shown in the record.

~~±~~ 2. Whenever a person first becomes a fund participant on or after September 1, 2011 shall have completed seven years of service credit and attained the age of sixty years, or shall have completed thirty-five years of service credit regardless of age, such employee shall be

entitled to be retired from such service in accordance with the applicable terms and conditions established in this chapter upon application. An application for pension benefits shall be filed no later than thirty days after the effective termination date of such person. Upon a finding of good cause by the board of trustees, the board may extend the deadline for filing such application. The term good cause shall mean that the failure of the applicant to timely file such application was the result of circumstances beyond the applicant's control, rather than intentional, or the result of conscious indifference. The burden of establishing good cause shall always be upon the employee, and good cause must be shown in the record.

B. Benefits. Participants in the Fund, shall, depending upon the applicable facts and circumstances, receive benefits under either subsection 1 or subsection 2, or both, as provided by the applicable provisions of this chapter, and as further provided in subsections 3 and 4:

1. Effective September 1, 1984, any person so retired, who was first a fund participant before September 1, 2011, shall be entitled to receive a monthly pension from the fund in an amount equal to: (1) two and one-half percent of the monthly average of the gross earnings received by the employee participant during the three years immediately preceding retirement, (2) two and one-half percent of the monthly average of the base salary ~~and longevity pay~~ received by the employee participant during the year immediately preceding retirement, or (3) two and one-half percent of the monthly base salary ~~and longevity pay~~ the employee participant is entitled to receive for the month immediately preceding retirement, whichever is greater, multiplied by the number of completed years of service, plus 0.2083 of one percent of such average or entitled monthly pay for each complete or fractional part of a month of service which is not part of a complete year, ~~or ; provided, however, that in computing the monthly base salary and longevity pay under option (3), base salary and longevity increases granted after July 1, 2005 shall be disregarded to the extent that such increases exceed ten percent of the prior year's base salary; provided further, however, that if a person has not made pension contributions to the fund for the immediately preceding twelve months prior to submitting an application for retirement, increases in base salary and longevity granted after July 1, 2005 shall be disregarded in computing the monthly base salary and longevity pay under option (3) to the extent such increases exceed ten percent of that person's lowest base salary and longevity pay the employee is entitled to receive during the immediately preceding twelve months.~~

2. Any person so retired who was first a fund participant on or after September 1, 2011 shall be entitled to receive a monthly pension from the fund in an amount equal to two and one-fourth percent of the monthly average of the gross earnings received by the participant during the last three years immediately preceding retirement multiplied by the number of completed years of service credit, plus .1875 of one percent of such average monthly pay for each complete or fractional part of a month which is not part of a complete year; provided, however, that under no circumstance shall said monthly pension exceed ninety percent of the participant's average monthly gross pay, and

~~1- 3.~~ Unless otherwise approved by the board of trustees, the monthly pension will be computed on the basis of the monthly base salary the employee participant is entitled to receive for the month immediately prior to retirement.

~~2. 4. Earnings received by an employee a participant that exceed the amount he or she is entitled to be paid in the permanent position to which he or she has been regularly appointed, shall be excluded from the computation of monthly pension benefits.~~

~~3. Any person so retired who was employed or reemployed on or after September 1, 2011 shall be entitled to receive a monthly pension from the Fund in an amount equal to two and one fourth percent of the monthly average of the gross earnings received by the employee during the last three years immediately preceding retirement multiplied by the number of completed years of service, plus .1875 of one percent of such average monthly pay for each complete or fractional part of a month which is not part of a complete year; provided, however, that under no circumstance shall said monthly pension exceed ninety percent of the employee's average monthly gross pay.~~

C. The city council may from time to time adopt by resolution early and deferred retirement tables for employees participants, providing schedules deemed by the council to be actuarially sound under which an employee a participant who has attained the age as set forth in said tables may retire, and either receive a retirement pension immediately or at a later date, based on a percentage of his pay as provided in subsection B of this section, according to the length of his service at that time. If such schedules are adopted, any employee participant whose age and length of service are included in the tables shall be allowed to retire and to receive, either immediately or at a later date, a retirement pension in accordance therewith, in lieu of repayment of his contributions. The provisions for minimum payments under Section 2.64.250 shall have no application to benefits paid under early or deferred retirement tables. Upon the death of an employee a participant retired for early retirement and receiving an allowance a retirement pension, any death benefits to which his survivors are entitled under this chapter, shall be computed on the basis of the appropriate percentage of retirement benefit which he was receiving. Upon the death of an employee a participant on deferred retirement and not yet receiving an allowance a retirement pension, the following choices shall be available to the survivors:

1. The death allowance may begin immediately and the death benefits shall be computed on the basis of the appropriate percentage of retirement benefit he would have been entitled to receive if he had retired and received an allowance as of the date of his death.
2. The death allowance may begin at a later date (not later than the date the employee participant would have attained at age fifty-five years for the persons who first were fund participants before September 1, 2011, or age sixty years for the persons who first were fund participants on or after September 1, 2011, and the death benefit shall be computed on the basis of the appropriate percentage of retirement benefit he would have been entitled to receive if he had retired and received an allowance as of the above later date.
3. The survivors may choose, subject to the agreement of the pension board, to receive a refund of the employee's participant's contributions. If at the time of death of an employee a participant on deferred retirement, there are no survivors entitled to a death allowance, his contributions shall be refunded to his estate.
4. If the survivors are unmarried children under nineteen years of age, the choice of one of the three preceding options shall be made by their legally appointed guardian, or if no

guardian has been appointed, the person having custody of the unmarried child or children under nineteen and subject to the approval of the pension board.

5. ~~An employee~~ A participant may elect to receive early or deferred pension benefits and shall be entitled to select an optional retirement settlement as provided in Section 2.64.240. Such an election and selection shall be made at the time the ~~employee~~ participant applies for a pension, and neither the election nor selection of optional retirement settlement may be changed after an application for a pension has been approved by the board.

D. At the time the salary ceiling on which contributions and benefits were computed was raised from two hundred dollars a month to four hundred dollars a month, certain ~~employees~~ participants elected to remain under the two hundred dollar ceiling, thus contributing to and receiving from the fund at a rate of one-half the rate applicable to employees generally. In the case of those ~~employees~~ participants who so elected, the contributions to the fund (both by the city and by the ~~employee~~ participant) and the benefits payable shall be computed as if the ~~employee's~~ participant's salary or wages were one-half the actual amount.

E. A ~~person~~ participant who is otherwise entitled to retire from service and who is terminated for cause may, if such termination is appealed within the time period allowed for such an appeal and in accordance with applicable procedures for such appeals, submit an application for retirement during the period allowed for submitting such appeals. Such application for retirement shall be held in abeyance subject to the outcome of the appeal. In the absence of such an appeal, and upon a showing of good cause as provided in subsection A of this section, such ~~employee~~ participant shall file an application for pension benefits no later than thirty days after the effective date of termination. Any ~~person~~ participant who has been terminated for cause during the two-year period prior to February 11, 1997, the adoption of this revised subsection, and at a time when such ~~person~~ participant was otherwise entitled to pension benefits and who did not appeal such termination, may submit an application for pension benefits. Such application shall be filed no later than thirty days from the effective date of this revised subsection.

F. Retirement pension of permanent part-time employees who elect to participate in the fund will be calculated as follows:

1. For purposes of calculating benefits earned from permanent part-time service, service credit shall be accrued as follows: for each year worked, or part thereof, the number of hours actually worked will be aggregated and expressed as a ratio of hours worked to a base of full-time equivalent hours over the same period. Service credit so earned shall then be multiplied by two and one-half percent for the employees persons who first became fund participants hired before September 1, 2011, or two and one-fourth for those employees persons who first became fund participants hired on or after September 1, 2011, of a full-time equivalent yearly final base salary plus longevity to arrive at the benefit due.

2. Pension service credit time towards eligibility will accrue on a calendar basis, provided the part-time employee has worked a minimum of one thousand hours per year. Part-time service credit towards eligibility will accrue on a pro-rata basis for employees working less than one thousand hours per year.

3. For purposes of benefit calculations for part-time employees, "final pay" shall mean the full-time equivalent base pay for part-time employment, but shall otherwise be defined as currently provided in this chapter.

4. For calculating minimum pensions due in cases of accidental death or job-related disability, the minimum pension will be defined as a pro-rata share of the full-time hours worked in the twelve months preceding death or injury. However, any ~~employee~~ participant in full-time status at the time of the death or injury shall be entitled to full-time minimum pension, past service history notwithstanding.

5. Minimum regular pension benefits shall be construed as a pro-rata share of the full-time minimum pension wherein the proration will represent the estimated proportion of full-time hours worked over the service life of the retiree.

6. ~~Employees~~ Persons who elect to participate in the pension fund shall have the further option of paying into the fund, in one lump sum, at any time prior to submitting an application for retirement, the amount of contributions which they would have paid, had they been members of the fund from the date of their original appointments, or any late date, but not to include any time during breaks in service, plus interest at the rate of seven and one-half percent per annum, compounded annually, on the total amount for the period from the date when the first contribution would have been made to the date when the total is actually paid. Any buy-back shall be made in one lump sum. In the case of nongrant-funded employees, the city will make corresponding contributions, without interest, in accordance with the formula in effect at such previous time; provided, however, that such ~~employees~~ participants must pay interest at the current actuarial rate assumption approved by the board on the employer contributions for the portion of buy-back periods which are longer than five years, as well as the interest on ~~employee~~ participant contributions; further provided, however, that this provision relating to paying interest on employer contributions shall not apply to persons ~~employees in the service~~ who are eligible for membership on October 12, 1993, at the time the ordinance codified in this section is adopted. Periods of buy-back without interest on the employer portion of contribution shall cover the first continuous or intermittent service most immediately contiguous to the date of the buy-back. Periods of buy-back on which interest on the employer portion of contribution is payable shall cover continuous or intermittent service most immediately contiguous to the period of buy-back without payment of interest on the employer portion. Notwithstanding anything contained in this subsection to the contrary, the city shall not pick-up or pre-tax, pursuant to Section 2.64.500, buy-back contribution payments made pursuant to this subsection.

7. A retiree of the pension fund who is rehired as a permanent part-time employee by the city and elects to participate in the pension fund, shall have his/~~her~~ final pension benefit calculated in two distinct parts representing the two distinct periods of service, and as further provided in section 2.64.120 H 3 and 4 of this code, as may be applicable.

Section 7. That Section 2.64.205 of the El Paso City Code, be amended to read as follows:

**2.64.205 Proportionate retirement benefits.**

When ~~an employee~~ a person who is a member of the city employees' pension fund joins another city-sponsored pension fund which has elected to participate in a proportionate retirement program pursuant to Chapter 803 of the Texas Government Code (Chapter 803), the applicable benefit payable from the city employees' pension fund will be based upon the service credit earned while the ~~employee~~ participant contributed to the city employees' pension fund. The benefits available to those employees who no longer participate by contributing to the city employees' pension fund are generally the same as those provided to employees who do not participate in more than one pension fund participating in a proportionate retirement program. The proportionate retirement benefits available to such employees shall be the same as those retirement benefits available to employees who do not stop making pension contributions to the city employees' pension fund.

A. The following rules shall apply for the purpose of calculating proportionate retirement benefits under Chapter 803 for those city employees who transfer to another city-sponsored pension fund which has adopted Chapter 803:

1. A person who becomes ineligible for membership in the city employees' pension fund due to a transfer to a job while in the city employment and who desires to maintain membership in the city employees' pension fund will be allowed to continue membership in the city employees' pension fund for the limited purpose of deferring benefits under the city employees' pension fund.

2. The amount of sick leave which may be used for the purpose of calculating credited service shall be the accumulated amount on the day that the employee stops making pension contributions to the city employees' pension fund.

3. The final pay for purposes of retirement calculations will be calculated under either subsection a or b, as applicable:

a. For participants who first became fund participants before September 1, 2011, the final pay for purposes of retirement calculations will be the monthly average of the gross earnings received by the employee for the last three years prior to the date that the ~~employee~~ participant stops making pension contributions to the city employees' pension fund, or the monthly average of the base salary and longevity pay received by the ~~employee~~ participant for the year immediately prior to the date that the ~~employee~~ participant stops making pension contributions to the city employees' pension fund, or the monthly base salary and longevity pay the ~~employee~~ participant is entitled to receive for the month immediately prior to the date that the ~~employee~~ participant stops making pension contributions to the city employees' pension fund, whichever is greater, or

b. For participants who first became fund participants on or after September 1, 2011, the final pay for purposes of retirement calculations shall be the monthly average of the gross earnings received by the participant during the last three years immediately preceding retirement; provided, however, that under no circumstance shall said final pay exceed ninety percent of the participant's average monthly gross pay.

4. For the sole purpose of allowing refunds any ~~employee~~ participant who begins participation in another city sponsored pension fund may make a one time election to receive a refund from the city employees' pension fund for contributions made to the city employees' pension fund if such election is made within thirty days after contributions to the

city employees' pension fund have stopped. Such election is irrevocable. An employee person who receives a refund of pension contributions ceases to be a ~~member of participant~~ in the city employees' pension fund upon receipt of such refund, and forfeits all rights to a proportionate retirement pension from the city employees' pension fund under Chapter 803.

5. No employee participant who transfers to another city sponsored pension fund which participates in a proportionate retirement program shall be allowed to increase his length of service in the city employees' pension fund by paying back into the fund any amount unless the buy back is made by the time the ~~employee's participant's~~ contributions to the city employees' pension fund stop.

6. Any employee participant who participates in a proportionate share retirement program must make an application for any type of disability retirement before contributions to the city employees' pension fund stop.

B. Should the city employees' pension fund not elect to participate in a proportionate share retirement program as defined in Chapter 803 of the Texas Government Code by August 31, 2000 then this section shall automatically be repealed as of September 1, 2000.

Section 8. That Section 2.64.210 of the El Paso City Code, be amended to read as follows:

#### **2.64.210 Disability pensions.**

A. Whenever a participant ~~an employee of the city~~ (as limited by Section 2.64.120) ~~who is a participant in the fund~~ shall become so totally and permanently disabled, through no fault of his own, as the result of a job-related injury or cause, as to incapacitate him in the performance of his job with the city or any other job, whether with the city or not, for which one is qualified by training and experience and which does not result in a significant reduction in pay and benefits, and shall make written application therefor, while ~~an employee~~ a participant, approved by the board, he shall, although under the retirement age, be entitled to be retired from his employment ~~the city service~~ and to receive a pension in the same amount as specified in Section 2.64.200, the amount of which shall be determined by and based on whether the person was first a fund participant before September 1, 2011 or first a fund participant on or after September 1, 2011.

This subsection shall apply only to original applications filed on or after February 4, 1992.

B. Whenever a participant ~~an employee of the city~~ (as limited by Section 2.64.120) shall have completed seven ~~ten~~ years of pension credited service with the city or other approved employer and shall become so totally and permanently disabled, through no fault of his own, from any cause not related to his job with the city or other approved employer, as to incapacitate him in the performance of his job with the city or any other job, whether with the city or not, for which he is qualified by training and experience and which does not result in a significant reduction in pay and benefits, and shall make written application therefor, while an employee, approved by the board of trustees, he shall, although under the retirement age, be entitled to be retired from his employment ~~the city service~~ and to receive a pension in the same amount as specified in Section 2.64.200. If such disability occurs before completion of seven ~~ten~~ years of pension

credited service, the ~~employee participant~~ so disabled shall be entitled to receive a refund of the amount he paid into the fund, in accordance with Section 2.64.200, the amount of which shall be determined by and based on whether the person was first a fund participant before September 1, 2011 or first a fund participant on or after September 1, 2011. This subsection shall apply only to original applications filed on or after February 4, 1992.

C. No ~~employee participant~~ shall become entitled to receive a disability pension benefit under this section if the disability is a result of:

1. Excessive and habitual use by the participant of drugs, intoxicants or narcotics;
2. Injury or disease sustained by the participant while wilfully and illegally participating in fights, riots, civil insurrections or while committing a felony;
3. Injury or disease sustained by the participant while serving in any armed forces;
4. Injury or disease sustained by the participant diagnosed or discovered subsequent to the date his employment has terminated;
5. Injury or disease sustained by the participant as a result of an act of war, whether or not such act arises from a formally declared state of war or other armed conflict; or
6. Any attempt at suicide while sane or insane, or by injuries intentionally self-inflicted.

D. The ~~employee participant~~ must provide medical evidence, to include a physician's opinion, to support the application. The board may require additional medical examination and opinion by a physician selected by the board. Physicians conducting examinations or submitting opinions in connection with a disability pension application must be licensed to practice medicine in the United States. The board's determination of fact as to disability shall be final and conclusive on all parties.

E. Disability pension benefits approved pursuant to this section shall continue for as long as the individual concerned remains disabled as defined in this section, subject to subsection F of this section. At the board's discretion, a disabled individual may be required to provide evidence as often as once a year, that he ~~or she~~ is still disabled as defined in this section.

F. If a disabled individual who is receiving a disability pension benefit pursuant to this section is gainfully employed while receiving such disability benefit, his ~~or her~~ disability pension benefit may be reduced or terminated as follows: If the salary or wage from employment plus the disability pension benefit exceed the salary he ~~or she~~ was receiving as a city employee or employee of another approved employer, the disability pension benefit shall be reduced to such a level that the total income from employment plus the disability pension benefit does not exceed the salary he ~~or she~~ was receiving as a city employee or employee of another approved employer. If the salary from employment exceeds the salary he ~~or she~~ was receiving as a city employee or employee of another approved employer, the disability pension benefit will be discontinued. A disabled individual receiving a pension benefit under this section may be required to provide documentation of additional earned income as deemed necessary by the board. Failure to provide such documentation when requested by the board shall be cause for discontinuing the disability pension benefit. In the event that an individual's disability pension benefit is discontinued due to gainful employment, as provided herein, he ~~or she~~ will receive the excess, if any, of his ~~or her~~ contributions over the benefit payments he ~~or she~~ has received and he ~~or she~~ shall not be entitled to future benefits under the plan. All decisions of the board regarding reduction or termination of benefit payments shall be final and binding on the parties.

~~G. The board may consider as an application of the employee a report submitted by his or her department head and concurred in by the director of personnel concerning an employee who appears to be disabled within the meaning of this section, but who is unable or unwilling to file such application. The board shall not take action on such report without giving the employee reasonable notice and opportunity to be heard, after which the board may, in an appropriate case, make the award, with or without the employee's consent.~~

Section 9. That Section 2.64.220 of the El Paso City Code, be amended to read as follows:

**2.64.220 Repayment of contributions.**

- A. ~~Employee Participant~~ Permanently Separated After February 28, 1955. Any ~~employee participant~~ who is permanently separated from the city service after February 28, 1955, without becoming entitled to benefits under the pension system shall be entitled to repayment of all contributions made by him to the pension fund.
- B. Sections 2.64.230E and 2.64.26C Not Repealed. Nothing herein shall repeal or affect the provisions of Section 2.64.230E, relating to repayment of contributions in case of death, or Section 2.64.260C, relating to repayment of the fund of withdrawn contributions after a service break.
- C. Separation Before March 1, 1955 and Reemployment. ~~An employee~~ A participant who was separated from the city service before March 1, 1955, thereby losing the contributions made by him to the fund, and who was later reemployed by the city and again separated from the service when contributions were refundable, shall not be entitled to refund of those contributions which he made to the fund prior to March 1, 1955, unless the interval between his periods of employment was less than two years.
- D. Refund by Secretary of Board. When ~~an employee~~ a person is entitled to refund of contributions under this section, the secretary of the board of trustees may authorize such refund without referring the matter to the board if the ~~employee's~~ person's right to the refund is certified by the Human Resources personnel director and the comptroller. The secretary may, however, if in doubt as to the ~~employee's~~ person's rights, order the application for refund referred to the board.
- E. Other Refunds by Board. All other applications for refund shall be referred to the board.
- F. Employee Who Dies Without Leaving Widow or Child Under Nineteen. When ~~an employee~~ a participant dies after the effective date of this amendment and before becoming entitled to benefits under the pension system, and does not leave a widow or any child under nineteen years of age, the executor or administrator of his estate shall be entitled, upon application therefor, to repayment of all contributions made by the ~~employee participant~~ to the pension fund. Provided, if such ~~employee participant~~ leaves a child or children under nineteen years of age, entitled to benefits under Section 2.64.230, such benefits shall be paid to the child or children, and the total amount thereof deducted from the total of his contributions, and the balance then paid to his executor or administrator. Payments made to an executor or administrator under this subsection

G shall be subject to all the limitations and other provisions applicable to refund of contributions of employees permanently separated from the city service, as set forth in the other subsections of this section.

To facilitate the repayment of contributions and avoid the expense of administration on the employee's estate, ~~an employee a participant~~ may file with the director of personnel a written authorization designating a person to whom his contributions shall be repaid (when repayment is authorized under this chapter) if the ~~employee participant~~ dies without leaving a widow or a child under nineteen and if within thirty days after his death no application has been filed for probate of a will or appointment of an administrator. The person so designated must be over twenty-one years of age. The ~~employee participant~~ may, by written direction filed with the Human Resources director ~~of personnel~~, withdraw or change such designation without the consent of the person designated.

If ~~an employee a participant~~ who could have filed such designation has not done so, or if the person designated cannot be found or has become non sui juris, and there is no widow or child under nineteen, surviving and no application has been made within thirty days after the ~~employee's participant's~~ death for probate of a will or appointment of an administrator, the board of trustees in its discretion and upon its finding that administration on the estate would be unduly expensive in comparison with the amount to be repaid, may authorize the repayment of such contributions, or an appropriate part thereof, to any person or persons who show they have a valid claim against the estate for funeral expenses or expenses of the ~~employee's participant's~~ last illness, and who agree to indemnify the fund against any claims which may be made to such refund by orders.

G. Interest on Participant Contributions Refunded. No interest will be paid on contributions refunded if the ~~employee participant~~ has not completed either five years of service credit for a person who was first a fund participant before September 1, 2011, or seven years of service credit for a participant who was first a fund participant on or after September 1, 2011 of service with the city or with another approved employer. If the ~~employee participant~~ who has completed the requisite number of five years of service credit as set forth immediately above dies or is permanently separated from the service, under circumstances entitling him, his widow or children, or his estate to refund of his contributions, the refund will be increased by the applicable amount of five and one-half percent interest compounded annually on all his contributions for the period that such contributions have remained in the fund: either five and one-half percent for persons who first became fund participants before September 1, 2011, or three percent for persons who first became fund participants or after September 1, 2011.

H. As used in this section, the term "contributions" shall exclude any interest paid by ~~an~~ ~~employee a participant~~ on any buy-back contribution payments made under the provisions of this code, and under no circumstances shall ~~an employee a participant~~ be entitled to a refund of such interest nor be entitled to receive any portion of the employer's contributions.

Section 10. That Section 2.64.230 of the El Paso City Code, be amended to read as follows:

### **2.64.230 Death benefits of widows and children.**

In case of the death of any ~~employee participant who was a contributor to the pension fund,~~ whether death occurs before or after retirement of such ~~employee participant,~~ his widow and children shall be entitled to receive monthly death benefits from such fund, the amount of which shall be determined by and based on whether the person was first a fund participant before September 1, 2011 or was first a fund participant on or after September 1, 2011, in accordance with the following schedules:

A. If the ~~employee participant~~ leaves a widow but no children, the widow shall receive two-thirds of the amount such ~~employee participant,~~ if retired, was receiving at the time of his death; or, if such ~~employee participant~~ was not retired at the time of his death, either (1) two-thirds of the amount he would have been entitled to receive if he had been retired as of the date of his death, or (2) the amount he would have been entitled to receive at the time of his death if he had selected optional retirement settlement 2 prior to death, whichever of the later two amounts is the greater.

B. If such ~~employee participant~~ leaves a child or children under nineteen years of age, but leaves no widow, such child or children under nineteen years of age shall receive an amount equal to that hereinabove provided for a widow with no children, such amount to be equally divided among such children under nineteen years of age, if there be more than one. Such payments shall continue in the same total amount until all such children die, marry or attain the age of nineteen years, whichever shall happen first, but only those who are still under nineteen years of age and married shall participate therein, except:

1. If such children or child is incapacitated because of mental or physical disability, payments shall continue in the same total amount until such children or child dies, marries or recovers, whichever happens first.
2. An incapacitated child or children who are over nineteen years of age at the time of death of the employee shall receive an amount equal to that hereinabove provided for a child or children under nineteen years of age with no widow until such children or child dies, marries or recovers, whichever happens first.
3. The incapacitation shall be determined by the board, and payments may be discontinued at any time by the board on proof that the child or children are not incapacitated. The board's determination as to incapacitation shall be final and conclusive on all parties.

C. If such ~~employee participant~~ leaves a widow and a child or children under nineteen years of age, the widow shall receive for the joint benefit of herself and such child or children an amount equal to the full pension received by such ~~employee participant,~~ if retired, or, if he was not retired, the amount he would have been entitled to receive at the date of his death. Such payments shall continue until all of such children die, marry or attain the age of nineteen years, whichever shall happen first; and thereafter the widow shall receive the amount hereinabove provided for a widow with no children. If the widow dies the child or children under nineteen years of age and unmarried shall, thereafter, receive the amount hereinabove provided for a child or children with no widow.

1. If such children or child is incapacitated because of mental or physical disability, payments shall continue in the same total amount until such children or child dies, marries or recovers, whichever happens first.
2. An incapacitated child or children who are over nineteen years of age at the time of death of the widow shall receive an amount equal to that hereinabove provided for a child or children under nineteen years of age with no widow until such children or child dies, marries or recovers, whichever happens first.
3. The incapacitation shall be determined by the board, and payments may be discontinued at any time by the board on proof that the child or children are not incapacitated. The board's determination as to incapacitation shall be final and conclusive on all parties.

D. If the ~~employee participant~~ leaves a widow and a child or children under nineteen years of age who are not the child or children of such widow, the board of trustees may in its discretion order the death benefits for widow and children to be paid to the widow for the benefit of herself and such child or children; or the board may order one-half of such amount to be paid to the widow for her own benefit and one-half to be paid to such child or children.

E. ~~If an active employee who has contributed to the pension fund shall die~~ a participant who is working at the time that he dies, leaving a widow, and a child or children under nineteen years of age, or either thereof, and such deceased employee, regardless of age at the time of death, shall have completed ten years of pension credited service with the city or other approved employer at the time of death, his widow and child or children under nineteen years of age, or either of them, shall be entitled to receive monthly pension benefits from the pension fund as provided in this section. The widow, and/or child or children under nineteen years of age, of such deceased ~~employee participant~~, who elect to receive a refund of such deceased ~~employee's participant's~~ contributions, shall have two years from the date of receipt of said refunds, to repay the refund with interest at the rate of seven and one-half percent per annum and elect to receive survivor benefits. A widow, and/or child or children under nineteen years of age, of such deceased ~~employee participant~~, who elect to repay such refund shall, upon payment if such refund, be entitled to survivor benefits as provided in this section as of the date of such ~~employee's participant's~~ death.

1. ~~If an employee a participant~~ who has contributed to the ~~pension~~ fund shall die leaving a widow, and a child or children under nineteen years of age, or either thereof, and such deceased ~~employee participant~~ has not completed seven ~~ten~~ years of ~~credited~~ service credit with the city at the time of death, the amount which such deceased ~~employee participant~~ has himself contributed to such fund shall be paid to such survivors. Payments shall be divided between the survivors or paid to the widow or some other persons for the benefit of the children, in like manner as the case of death benefits.

F. The word "widow" as used in this chapter includes "widower" and means an participant's surviving spouse.

G. A stepchild of ~~an employee a participant~~ shall be entitled to the same benefits as a child, if at the time such rights accrued the stepchild was a member of the ~~employee's participant's~~ family and supported by him.

H. No person shall be deemed a "widow" within the meaning of this chapter if the marriage of such person with the employee participant was contracted after the employee's participant's retirement.

I. The right of a widow to benefit under this chapter shall terminate upon her death or remarriage. The right of any child shall terminate upon death, marriage or attainment of the age of nineteen years, whichever shall happen first, except the right of any child who is incapacitated because of mental or physical disability shall terminate upon death, marriage or recovery, whichever happens first. Dissolution of the marriage of a child shall not restore such child's right to participate.

J. Whenever payments are made hereunder to a widow for the sole benefit of a child or children, if the board of trustees finds that such payments are not being used for the sole benefit of such child or children, it may order such payments to be made to the child or children instead of to the widow. Whenever payments are made hereunder to a widow for the joint benefit of herself and a child or children, if the board of trustees finds that such payments are not being reasonably used for such joint purposes, it may order one-half of such payment to be made to the widow and one-half to the child or children.

K. Whenever any payment is made under this chapter to a child or children, otherwise than to a widow for their benefit, it shall be made to the legally appointed guardian of the child or children, if there be one; and if there be no legally appointed guardian such payment may be made to any person standing in loco parentis to such child or children, as found from time to time by the board of trustees.

L. In any case in which the employee participant dies as a result of an accident which occurs in the course of his employment with the city, the benefits payable under this section to the surviving spouse or children or both, shall be the greater of five hundred fifty dollars per month or the amount which they would have been entitled to receive if the employee participant had been in the city service or the service of another approved employer, thirty years and had reached the age of seventy which amount shall be determined by and based on whether the person was first a fund participant before September 1, 2011 or first a fund participant on or after September 1, 2011.

Section 11. That Section 2.64.260 of the El Paso City Code, be amended to read as follows:

**2.64.260 Computation of length of service.**

A. Credit for Employment Prior to Establishment of Fund. When the right to receive any payment from the pension fund, or the amount of such payment, depends upon the employee's participant's length of service with the city, the employee participant shall have credit, in computing such length of service, for the full period of time that he has been employed by the city prior to the establishment of such fund in any position which would have entitled him to participate in the fund had it been then in effect.

B. Leave of Absence Without Pay. Any employee participant on leave of absence without pay may, at his option, continue to make contributions to the pension fund at the rate he would have paid if he had continued receiving from the city the same salary as he received at the time his leave began, plus the equivalent of the city's contribution thereon. In such case, the employee participant shall have the same pension rights as if he were not on a leave of absence. The board of trustees shall provide for the time and manner in which such option may be exercised and such contribution made. The employee participant may get credit for his leave of absence or any part thereof by paying into the pension fund for the period of his leave of absence prior to the submission of his application for retirement. The payment shall be the amount he and the city or other approved employer would have both contributed if he had continued receiving from the city the same salary as he received at the time his leave began. The interest rate will be seven and one-half percent per annum compounded annually for back contribution payments made after January 1, 1981. The time for which he does not contribute shall not be counted for pension purposes as time of employment with the city or other approved employer.

C. Service Breaks.

1. If such employment with the city has not been continuous, length of service periods shall be computed by adding the actual time of all periods of employment in any position covered by the pension plan; provided, that:

a. 1. If there be any interval during which the employee participant was not employed by the city or other approved employer, his time of employment prior to such interval shall be counted if the employee participant has not withdrawn contributions under Section 2.64.220.

b. 2. If there be a continuous interval of less than two years during which the employee participant was not employed by the city or other approved employer, his time of employment prior to such two-year interval shall not be counted if the employee participant has withdrawn contributions under Section 2.64.220. The employee participant shall receive credit for the length of previous service for which he repays contributions. The interest rate will be seven and one-half percent per annum compounded annually for back contribution payments made after January 1, 1981. Such option must be exercised before receiving retirement, disability or death benefits. If such option is exercised, all rights or benefits under the fund which depend upon length of service shall recognize the time of previous employment for which contributions have been made good.

c. 3. If there be a continuous interval of more than two years during which the employee participant was not employed by the city or other approved employer, his time of employment prior to such interval shall not be counted if the employee participant has withdrawn contributions under Section 2.64.220. The employee participant shall receive credit for the length of previous service for which he repays contributions to the fund plus interest thereon at seven and one-half percent per annum compounded annually. Such option must be exercised before receiving retirement, disability or death benefits. If such option is exercised, all rights or benefits under the fund which depend upon length of service shall recognize the time of employment for which contributions have been made good.

2. Subject to subsection D of this section, if a participant's employment with the city or other approved employer has not been continuous for any reason, each service credit period and related pension shall, when required under this chapter, be treated and administered as a separate period or account and the length of service credit for such periods shall be computed separately for each service credit period and not combined.

D. Notwithstanding anything to the contrary in this section, ~~employees~~ participants who are on leave of absence without pay due to military active duty orders shall not be required to pay interest on back contributions for periods of time while on active duty, nor shall they be required to pay the equivalent of the ~~city's employer's~~ contribution; provided, however, that the ~~city's employer's~~ contribution shall be paid only when the ~~employee's~~ participant's back contributions have been made.

~~An employee~~ A participant who dies while on active duty during a period of leave of absence from the city or other approved employer shall receive service credit for pension purposes the same as if the ~~employee~~ participant had not been on military active duty; provided, however, that pension contributions have been made by the ~~employee~~ participant while on active duty or back contributions are made by persons entitled to survivor benefits under this chapter, in the same manner that the ~~employee~~ participant would have been entitled to make.

Injury occurring while ~~an employee~~ a participant is on active or inactive duty shall not be considered as a job-related injury or cause within the meaning of Section 2.64.210 A of this chapter. The provisions of Section 2.64.210 B shall, however, apply in the case of injury occurring on active or inactive duty.

E. For any type of purchase of pension service credit authorized and enumerated in this section, and notwithstanding anything contained in this section to the contrary, the city shall not pick-up or pre-tax contribution payments made pursuant to this section.

Section 12. That Section 2.64.280 of the El Paso City Code, be amended to read as follows:

### **2.64.280 Exemptions from debts.**

A. No interest in, claims against or payment from such pension fund shall be liable for the payment of any debt or obligation of the person entitled thereto, and the same shall not be subjected to execution, attachment, garnishment, injunction or other legal process for the collection of any debt or obligation. No interest in or claim against such fund shall be transferred or assigned, or put up as security, and any attempt to transfer or assign the same or to put the same up as security shall be void.

~~B. An employee may, however, assign to the El Paso Employees' Federal Credit Union, as security for a loan, all or part of any right he may have in money thereafter owing to him as refund of his contributions to the pension fund. Such assignment shall be valid only as to refund to be made to the employee himself upon separation from the city service when he is not entitled to a pension; and shall not be valid as to a refund made to his survivors upon his death, or to any pension payments to be made the employee or his survivors.~~

~~C. Such assignment shall be on a form approved by the city council, and a signed copy of each assignment shall be filed with the board of trustees.~~

~~B. D. Nothing herein shall impair the right of the city council to amend the pension ordinance in any respect, or to change the provisions for repayment of contributions. The rights acquired by the credit union shall be only such rights, if any, as the employee himself may, at the time of his separation from the service, have in the refund of his contributions.~~

Section 12. This ordinance shall take effect September 1, 2011.

Section 13. Except as amended herein, Chapter 2.64 of the El Paso City Code shall remain in full force and effect.

ADOPTED this 30<sup>th</sup> day of August 2011.

CITY OF EL PASO

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John F. Cook, Mayor

ATTEST:

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Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

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Elaine S. Hengen  
Senior Assistant City Attorney