

City of Middletown, CT  
Friday, March 20, 2015

## Chapter 74. Personnel

### Article IV. Retirement System

[Amended 8-2-1982]

#### § 74-32. Definitions and word usage.

[Amended 1-3-2000]

- A. The following words and phrases as used in this article, unless a different meaning shall be plainly required by the context, shall have the following meanings:

**FISCAL YEAR**

The 12 months from July 1 to June 30 in any year, both dates inclusive.

**FULL-TIME EMPLOYEE**

The same meaning as defined in the collective bargaining agreements or personnel rules of the City of Middletown.

**PAY**

The salary or wages of any employee for the employee's services with the City, including all grants and allowances for the maintenance at such figures as may be determined by the Retirement Board, but excluding any general temporary increase of salary or wages and disregarding any general temporary reduction thereof, provided that compensation for overtime shall be excluded in determining the pay of policemen for the purposes of this article but included in the case of all other employees; however, effective July 1, 1996, compensation for plan purposes for any employee who first became a member of this plan after December 31, 1995, may not exceed \$150,000, as indexed by Section 401(a)(17) of the Internal Revenue Code and regulations thereunder, or as amended.

**PENSION**

A payment made to an employee or the employee's dependent according to the provisions of this article, other than a return of contributions.

**REGULAR INTEREST**

Interest at the rate determined from time to time by the Retirement Board, and shall be substantially that which is earned on the Retirement Fund, compounded annually on the last day of the fiscal year.

**RETIREMENT BOARD and THE BOARD**

The board herein created for the administration of the retirement system.

**RETIREMENT FUND**

The fund derived from contributions made as herein provided for the payment of pensions to City employees retired under this article.

#### **RETIREMENT SYSTEM**

The plan for retirement of City employees as established by this article.

- B. Words used in the masculine include the feminine. Where appropriate, the singular refers to the plural (with the reverse also being true).

### **§ 74-33. Retirement Board.**

[Amended 2-2-2004 by Ord. No. 01-04]

There shall be a retirement system for the City of Middletown, the management of which shall be vested in a Retirement Board consisting of eight members, not more than five of whom shall belong to any one political party, as follows: two members of the City Council (a representative from each political party); the City Director of Finance; three citizens of the City of Middletown, one of whom shall be a member of the retirement system elected by the members thereof; one board member shall be James M. Reynolds and, upon his separation with the Board, the member seat shall revert to a citizen of the City of Middletown; and the Mayor, ex officio. All members, except the Director of Finance, the Mayor, and the member of the retirement system, shall be appointed by the Mayor with the advice and consent of the City Council.

- A. The members representing the City Council shall be appointed for a term of two years; the three citizen members and James M. Reynolds shall be appointed for five-year terms.
- B. In the event of a vacancy on the Board, such vacancy shall be filled in the same manner as the original membership. In no event shall any person remain a member of the Board except during the time he continues to be a member of the board or body from which he was appointed or elected.
- C. The members of the Retirement Board shall serve without compensation.
- D. The Board shall make bylaws and regulations not inconsistent with law, federal or state, as amended, or the City Charter and Code of Ordinances; shall employ such actuarial, medical, clerical and other services as may be necessary for the proper operation of the retirement system; and shall do all things necessary and proper toward carrying out the purposes for which the retirement system is created.
- E. The Board shall submit annually to the Common Council a schedule of its estimated expenses necessary for the administration of this article, and all such expenses of administration approved by the Common Council shall be paid by the City. The Board shall be the trustee of the fund herein created and shall have full control and management thereof, with power to invest and reinvest the same in securities legal for investment by trustees under the laws of this state.
- F. The Board shall also be the trustee of the Retiree Benefits Trust Agreement for certain post-employment benefits provided for in collective bargaining agreements with the City's employee unions, including retiree medical benefits (collectively "OPEB benefits").

[Added 3-7-2011 by Ord. No. 4-11]

### **§ 74-34. Participation in system.**

[Amended 6-3-1991; 1-3-2000]

- A. The terms of this article shall apply to all full-time employees and all full-time officials of the City of Middletown, provided said terms shall not apply to members of the Police Department who

contribute to the police pension fund as established by Number 216 of the Special Acts of 1943, nor to members of the State Teachers' Retirement System, nor to teachers who were at any time eligible for membership therein.

- B. Employees of the Russell Library shall be considered to be City employees for the purposes of this article.
- C. Each eligible employee who shall enter the service of the City shall, at the end of the first three months of employment, be required to participate in the retirement system, and such participation shall be a condition of the employee's continued employment, provided that an eligible official shall not be required to participate in the retirement system if, within three months following the effective date of the official's election or appointment, the official shall notify the Retirement Board in writing of the official's intention not to participate.

## § 74-35. Contributions by City.

[Amended 1-3-2000]

- A. The City of Middletown shall be liable to the Retirement Board for such an amount as shall be determined by the Board on sound actuarial principles representing the net unfunded liability as of June 30, 1970, for pensions and other benefits accruing from the service of members rendered up to and including said date. In lieu of full payment initially of such an amount, the City shall pay periodically such amounts as the Board shall determine as necessary to discharge such liability over a definite period of not more than 30 years, provided that in no fiscal year shall the payment made on this account be less than regular interest on the amount of such liability still outstanding.
- B. The City shall also pay annually to the Retirement Board such amount determined by the Board on sound actuarial principles as necessary, in addition to contributions of the employees, to provide future pensions and other benefits on account of service rendered by employees subsequent to the date upon which each shall begin participation in the retirement system.
- C. No part of the trust's assets may be used for or diverted to anyone other than employees or their beneficiaries before the satisfaction of all trust liabilities or for another reason if its primary purpose is to benefit employees.

## § 74-36. Contributions by employees.

[Amended 1-3-2000]

- A. The rate of contribution to be made by an employee participating in the retirement system shall be 6% of pay, which will be collectible from the employee as deductions from pay and transmitted immediately to the Retirement Board.
- B. In the event of the discontinuance of a member's employment with the City prior to the completion of 20 years of continuous service and before becoming eligible for retirement under the provisions of this article, or in the event of the member's death prior to the effective date of the member's retirement, except in the case of a member whose death has occurred under such circumstances as to qualify for a death benefit under § 74-39 or 74-40 of this article, the Retirement Board shall pay to the member or to the member's legal representatives an amount equal to the member's contributions under this section plus regular interest thereon compounded annually, or, at the death of an employee subsequent to the effective date of the member's retirement, except in the case of a member whose death has occurred under such circumstances as to qualify for a death benefit under § 74-39 or 74-40 of this article, the amount of any excess of

the member's accumulated contributions as of such effective date of retirement over pension payments made to the member, or, in the event of the discontinuance of the retirement system, an amount equal to the member's contributions and accumulated interest thereon.

- C. Anything contained herein to the contrary notwithstanding, the excess, if any, of the member's accumulated contributions as of the date of the member's death or as of the effective date of the member's retirement, whichever shall first occur, over the total amount of pension payments made to the member, member's spouse and child or children shall be paid to the member's designated beneficiary or other legal representative.

## § 74-37. Qualifications for retirement.

[Amended 1-3-2000]

- A. Any member of the retirement system who has completed 25 years of service as an employee of the City of Middletown, or who has been employed by the City of Middletown for at least 15 years and has attained the age of 65 years, shall be eligible for retirement for superannuation under the provisions of this article. Any member so eligible may retire from service by filing with the Retirement Board a written statement duly attested setting forth at what time subsequent to the date of filing thereof, but not later than 60 days subsequent to such date, the member desires to be retired.
- B. Any member of the retirement system who, after 10 years of continuous service as an employee of the City, shall be totally and permanently disabled, except as a result of the member's own willful misconduct, from earning compensation at any substantially gainful employment may be retired for disability according to the provisions of this article, provided proof of total disability shall be submitted to the Retirement Board, which shall cause examinations to be made by at least two impartial medical examiners, and provided such total disability, if shown to the satisfaction of the Board to have been sustained during the performance of essential duties pertaining to the member's employment by the City, shall entitle any member to retirement for disability irrespective of the duration of the member's employment.
- (1) "Continuous service" for the purpose of this section shall mean uninterrupted employment, but absence from employment for any reason, followed by reinstatement within one year thereafter, shall not be considered as breaking the continuity of service.
- (2) In the case of absence from employment for more than one year, the Retirement Board shall establish a policy pursuant to which the employee may return without breaking the continuity of the employee's service. Reinstatement of an employee in the retirement system shall be conditioned upon such medical examination as the Board may prescribe and upon payment to the Retirement Fund of contributions previously withdrawn together with such an amount as will establish the proper actuarial reserve for that portion of the pension reinstated, which was represented by the contributions previously withdrawn.
- C. In computing years of service to determine eligibility of a member for retirement, no year shall be included in which the employee has not been in actual service for at least nine months. Time spent in the Armed Forces of the United States by any member of the retirement system who, while in the employ of the City of Middletown, is drafted or recalled to active service shall be included in computing the length of time of service rendered the City, provided such person shall apply for and qualify for re-employment by the City of Middletown in accordance with the terms of the National Service Act or an amendment thereto.
- (1) In computing the length of time of service, the time spent by a supernumerary policeman or a nightman in the Fire Department on active regular duty prior to the member's appointment

as a regular member of the Police Department or Fire Department, up to a maximum of five years, shall be included; provided, however, after January 1, 1970, that a minimum of 300 hours of actual service as a supernumerary policeman or nightman shall be required for each year of service credit.

- (2) If any member of the retirement system after 20 or more years of continuous service and before becoming eligible for retirement under the provisions of this article is separated from the service of the City of Middletown on or after February 28, 1955, the member may elect to have paid to the member an amount equal to the member's contributions, plus regular interest thereon compounded annually, as provided in § 74-36 hereof, or to leave the member's contributions in the Retirement Fund, in which event the member shall be entitled to a deferred retirement allowance to commence on the earliest date on which the member would have been eligible to retire under this § 74-37 had the member remained in the service of the City, computed as provided in § 74-38, except that the member's service to the date of such separation and the member's average annual rate of pay for the five consecutive highest paid years of service shall be used in determining the amount of such allowance.

## § 74-38. Retirement benefits and payment thereof.

[Amended 1-3-2000]

- A. The Retirement Board shall pay to each member who has been retired for superannuation under this article subsequent to June 30, 1968, a pension for life in an amount determined as 2% of the average annual pay received during the five consecutive highest paid years of service preceding the member's retirement multiplied by the number of completed years of service.
- B. The Retirement Board shall pay to each member who has been retired for disability according to the provisions of this article a pension during the continuance of such disability in an amount determined as 2% of the member's average annual pay received during the five consecutive highest paid years of service preceding the member's retirement, multiplied by the number of completed years of service, provided the Board may, from time to time, call for medical evidence that the employee continues totally disabled. In the event that the Board shall, upon medical evidence, conclude that the disability for which the employee is receiving a pension no longer exists, or if it is established that such employee is engaged in a substantially gainful occupation, the Board shall thereupon order a discontinuance of the pension payable to such employee.
- C. All pension payments shall represent completed months of retirement and shall be paid once each month by mailing a check on the 26th day or by automatic direct deposit on the 26th day, provided the initial pension payment to a retired member, or the final payment, shall be computed as the proportion of the amount of the member's regular monthly pension corresponding to the fraction of the month elapsed since the effective date of the member's retirement or, in the case of final payments, that portion of the month prior to the member's death.
- D. No pension payable hereunder, including workers' compensation payments, if any, shall exceed 70% of the annual pay received during the five consecutive highest paid years of service preceding retirement, and the City guarantees that no such pension shall be less in amount than \$100 per month, provided this guarantee shall not apply to retirements for superannuation when the member shall not have completed at least 20 years of service as an employee of the City of Middletown at the time of the member's retirement, and provided no pension payable to a member on account of total and permanent disability sustained during the performance of essential duties pertaining to employment by the City shall be less than 1/2 the annual rate of pay received by the disabled employee at the time of disability.

## § 74-39. Survivorship benefits.

- A. In the event of the death of any male or female member of the retirement system subsequent to the effective date of his or her retirement in accordance with the provisions of this article, and provided such member shall have completed at least 10 years of service as an employee of the City of Middletown, the Retirement Board shall pay to the current spouse of such member until death or remarriage, whichever shall first occur, a pension equal to  $\frac{1}{2}$  of the pension which the deceased member was receiving at the time of his or her death. To receive such pension benefits, the spouse must have been married to the deceased member for at least three years before his or her death. If the deceased member leaves no spouse, or if the spouse dies or remarries, the Retirement Board shall pay a benefit totaling  $\frac{1}{2}$  of the deceased member's pension to the then living children of the deceased member, if any, share and share alike, provided no payment shall be made to any child after the attainment of his 18th birthday.  
[Amended 2-4-2013 by Ord. No. 03-13]
- B. In the event of the death of any male or female member of the retirement system while still in the employ of the City prior to the effective date of his or her retirement, and provided such member shall have completed at least 10 years of service as an employee of the City of Middletown, the Retirement Board shall pay to the current spouse of such member until death or remarriage, whichever shall first occur, an annual pension equal to 25% of the average annual pay of the deceased member received during the five consecutive highest paid years of his or her service, provided that, in case of the death of such member on or after July 1, 1971, such annual pension shall be computed as 1% of such average annual pay multiplied by the number of years of his or her service, but in no event less than 25% of such average annual pay. To receive such pension benefits, the spouse must have been married to the deceased member for at least three years before his or her death. If the deceased member leaves no spouse, or if the spouse dies or remarries, the Retirement Board shall pay such annual pension to the then living children of the deceased member, if any, share and share alike, provided no payment shall be made to any child after the attainment of his 18th birthday.  
[Amended 2-4-2013 by Ord. No. 03-13]
- C. All survivors' benefit payments shall become due and payable to the person or persons entitled thereto commencing on the last day of the calendar month immediately following the member's death. The survivors' benefits payable under the provisions of this section shall apply only to the spouse and children of active and retired male members of the retirement system who die subsequent to October 1, 1961, having completed at least 15 years of service, or subsequent to June 30, 1968, having completed at least 10 years of service, and only to the spouses and children of female members who die subsequent to June 30, 1971, having completed at least 10 years of service.

## § 74-40. Special survivorship benefits for death in line of duty.

If it shall be shown to the satisfaction of the Retirement Board that a male or female member was killed while in the actual performance of duties pertaining to employment by the City of Middletown, or died from the proximate effects of any injury received while in the actual performance of such duties, the Board shall pay to the spouse to whom such member was married as of the date of such injury, until death or remarriage, whichever shall first occur, an annual pension equal to 50% of such member's annual rate of basic pay as of the date of such injury. If the deceased member leaves no spouse, or if the spouse dies or remarries, the right to receive payments shall vest in the then living children of the deceased member, if any, share and share alike, provided no payment shall be made to any child after

the attainment of his 18th birthday. Payment under this section shall be in lieu of any benefit to which the spouse or children of a deceased member would otherwise have been entitled under this article. This section shall apply only to the spouses and children of male members who die subsequent to June 30, 1968, and to the spouses and children of female members who die subsequent to June 30, 1971.

### **§ 74-41. Effect of payments under Workers' Compensation Act.**

[Amended 1-3-2000; 8-5-2013 by Ord. No. 20-13]

All monies received by any member or dependent as an award payable by the City and/or its workers' compensation insurer under the State of Connecticut Workers' Compensation Act shall be deducted from any concurrent payments provided under this article.

### **§ 74-42. Limitations of action.**

No action for amounts due under the provisions of this article shall be brought but within six years after the right of action shall accrue. Persons legally incapable of bringing an action when the right accrues may sue at any time within the three years next after becoming legally capable of instituting suit. All amounts not claimed within said period shall remain absolutely a part of the Retirement Fund.

### **§ 74-43. Exemption from taxation or other process.**

[Amended 1-3-2000]

- A. The right of any person to a pension, to the return of contributions, any benefit or right accrued or accruing to any person under the provisions of this article, and the case and securities held under this article shall be exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall not be subject to any assignment or alienation.
- B. The limitations on the alienability of benefits described in Subsection A of this section shall not apply with respect to qualified domestic relations orders (QUADROs) as that term is defined in Section 414(p) of the Internal Revenue Code, as amended.

### **§ 74-44. Annual report.**

The Retirement Board shall, on or before December 1 of each year, file with the Common Council an annual report showing the financial condition of the retirement system as of the end of the last completed fiscal year, including an actuarial valuation of assets and liabilities, and setting forth such other facts, recommendations and data as may be of value to the members of the retirement system and the City of Middletown.

### **§ 74-45. Repealer.**

Number 243 of the Special Acts of 1935 is repealed. The provisions of Number 216 of the Special Acts of 1943 shall apply only to regular policemen who were contributors to the Police Pension Fund on or before July 1, 1945, and to their dependents, anything in said act to the contrary notwithstanding.

## § 74-46. Effective date; special act amended.

This article shall take effect July 1, 1968, and constitutes an amendment of Number 221 of the Special Acts of 1945, as amended, in accordance with Number 568 of the Public Acts of 1967.

## § 74-47. Cost-of-living adjustments.

[Amended 1-3-2000; 1-4-2010 by Ord. No. 01-10]

- A. As of July 1, 1970, and as of July 1 of each year thereafter, the Board shall adjust the pension of each retired member of the Police Department, and the spouse or children of deceased police members entitled to pension benefits hereunder, in accordance with increases in the Consumer Price Index (U.S. all items index) compiled by the United States Department of Labor, Bureau of Labor Statistics, determined and limited as follows. Such index for March in the current year shall be divided by the corresponding index for March in the preceding year, and the percentage of increase shall be determined. No adjustment shall be made for changes in such index of less than 1%, and adjustments for changes in excess of 3% shall be limited to three 3%. In the case of any member who has been retired for less than one full year on any such July 1, a fractional adjustment shall be made corresponding to the period elapsed since the effective date of his retirement. As of July 1, 1999, the annual pension adjustment shall be computed in accordance with increases in the Consumer Price Index — U (CPI-U).
- B. As of July 1, 1972, and as of July 1 of each year thereafter, the Board shall adjust the pension of each retired member of the Fire Department, and the spouse or children of deceased fire members entitled to pension benefits hereunder, in accordance with increases in the Consumer Price Index (US all items index) compiled by the United States Department of Labor, Bureau of Labor Statistics, determined and limited as follows. Such index for March in the current year shall be divided by the corresponding index for March in the preceding year, and the percentage of increase shall be determined. No adjustment shall be made for changes in such index of less than 1%, and adjustments for changes in excess of 3% shall be limited to 3%. In the case of any member who has been retired for less than one full year on any such July 1, a fractional adjustment shall be made corresponding to the period elapsed since the effective date of the member's retirement. As of July 1, 1999, the annual pension adjustment shall be computed in accordance with increases in the Consumer Price Index - U (CPI-U).
- C. In regard to retired employees of the City of Middletown who were not members of the Police Department as set forth in Subsection **A** above or members of the Fire Department as set forth in Subsection **B** above, as of July 1, 1973, and as of July 1 of each year thereafter, the Board shall adjust the pension of each such retired employee of the City of Middletown and the spouse or children of each such deceased employee entitled to pension benefits hereunder, in accordance with increases in the Consumer Price Index (US all items index) compiled by the United States Department of Labor, Bureau of Labor Statistics, determined and limited as follows. Such index for March in the current year shall be divided by the corresponding index for March in the preceding year, and the percentage of increase shall be determined. No adjustment shall be made for changes in such index of less than 1%, and adjustments for changes in excess of 3% shall be limited to 3%. As of July 1, 1999, the annual pension adjustment shall be computed in accordance with increases in the Consumer Price Index - U (CPU-U). In the case of any member who has been retired for less than one full year on any such July 1, a fractional adjustment shall be made corresponding to the period elapsed since the effective date of his or her retirement.

## § 74-48. Cost-of-living adjustments for pensions under Special Act No. 216 of 1943.

The pension of any person who on or after July 1, 1967, was receiving an annual pension under No. 216 of the Special Acts of 1943, titled "An Act Concerning a Police Pension Fund in the Town and City of Middletown," as amended, is further amended as follows: As of July 1, 1970, and as of July 1 of each year thereafter, the Board shall adjust the pension of each retired member of the Police Department, and the spouse or children of deceased police members entitled to pension benefits hereunder, in accordance with increases or decreases in the Consumer Price Index (US all items index) compiled by the United States Department of Labor, Bureau of Labor Statistics, determined and limited as follows. Such index for March in the current year shall be divided by the corresponding index for March in the preceding year, and the percentage of increase or decrease shall be determined. No adjustment shall be made for changes in such index of less than 1%, and adjustments for changes in excess of 3% shall be limited to 3%. No downward adjustment shall decrease any pension to a lesser amount than such retired member or beneficiary was receiving on July 1, 1969, or, in the case of members who retire subsequent to July 1, 1969, the original amount of the retirement benefit. In the case of any member who has been retired for less than one full year on any such July 1, a fractional adjustment shall be made corresponding to the period elapsed since the effective date of his retirement.

## § 74-49. Certain special acts and ordinances null and void.

- A. Special Act No. 183, titled "An Act Concerning Pensions for Employees of Middletown," pertaining to employees covered under No. 221 of the Special Acts of 1945, passed and adopted by the General Assembly and effective July 1, 1967, is declared null and void;
- B. The ordinance passed and adopted on October 2, 1967, by the Common Council of the City of Middletown pertaining to annual pensions of employees covered under No. 216 of the Special Acts of 1943, titled "An Act Concerning a Police Pension Fund in the Town and City of Middletown," is declared null and void; and
- C. The ordinance passed and adopted on May 5, 1969, by the Common Council of the City of Middletown pertaining to annual pensions under No. 216 of the Special Acts of 1943, titled "An Act Concerning a Police Pension Fund in the Town and City of Middletown," as amended, and No. 221 of the Special Acts of 1945, titled "An Act Concerning Municipal Pension Systems," as amended, is declared null and void.

## § 74-50. Maximum benefit limitations.

[Added 1-3-2000]

- A. Maximum annual retirement benefit. In accordance with Section 415 of the Internal Revenue Service Code (hereinafter "IRS Code"), as amended, the maximum annual retirement benefit attributable to City contributions may not exceed the lesser of:
  - (1) Ninety thousand dollars (the "dollar limitation"); or
  - (2) One hundred percent of the member's compensation (the "compensation limitation"), averaged over the three consecutive calendar years when he had the highest compensation from the City.
- B.

Definitions for maximum benefit calculations. The following definitions shall apply for the purposes of this § 74-50 only:

**ANNUAL RETIREMENT BENEFIT**

A benefit payable annually in the form of either a straight life annuity (with no ancillary benefits) or qualified joint and survivor annuity (as defined in Section 417 of the Internal Revenue Code, as amended) under a plan to which employees do not contribute and under which no rollover contributions are made.

- (1) To recognize that the members contribute to the plan, the determination as to whether the maximum limitation benefit has been satisfied shall be made, in accordance with the regulations prescribed by the Secretary of the Treasury, by adjusting such benefit so that it is the actuarial equivalent of the annual retirement benefit. For purposes of this Subsection (1), any ancillary benefit which is not directly related to retirement income benefits shall not affect the calculation of the annual retirement benefit.
- (2) In the event that a member's annual retirement benefit commences prior to age 62, the foregoing limitations will apply to such benefit, provided the dollar limitation shall be reduced for the member's age such that it is the actuarial equivalent of an annual retirement pension of \$90,000 commencing at age 62, but in no event shall the dollar limitation for a pension commencing at age 55 or older be reduced to less than \$75,000, and in no event shall a pension commencing prior to age 55 be less than the actuarial equivalent of a pension of \$75,000 commencing at age 55. Furthermore, for any member with at least 15 years of service as a police officer or fire fighter, the above reductions shall not decrease the dollar limitation below \$50,000. The reduction of the dollar limitation to an actuarially equivalent amount of the age of the member when retirement benefits commence shall be made in accordance with Treasury regulations.
- (3) For purposes of adjusting any benefit or limitation, no adjustment for cost-of-living increases shall be taken into account before the year for which such adjustment first takes place.
- (4) In the event that a member's annual retirement pension commences after age 65, the dollar limitation shall be increased for the member's age such that it is the actuarial equivalent of an annual retirement pension of \$90,000 commencing at age 65.
- (5) In the event that a member has been a member in the plan less than 10 years, the dollar limitation shall be multiplied by a fraction, the numerator of which is his years of participation in the plan (or part thereof) and the denominator of which is 10. In the event that a member has less than 10 years of vesting service with the City, the compensation limitation, and the benefit of \$10,000 above, shall be reduced by multiplication by a fraction, the numerator of which is his years of service (or part thereof) and the denominator of which is 10. Effective July 1, 1995, the above fractions shall not be applied to benefits which are a result of personal injury or sickness and are being paid according to the plan's disability provisions. In addition, effective July 1, 1995, the above fractions shall not be applied to any benefits which are a result of a participant's death and are being paid according to the plan's death benefit provision.
- (6) The dollar limitation of \$50,000 and \$90,000 shall be automatically increased and 100% of the average compensation limitation shall be adjusted for a member who has separated from service at such times as permitted by regulations issued by the Secretary of Treasury to reflect cost-of-living adjustments. As a result of any such adjustment, an annual retirement benefit which had been limited by the foregoing provisions of this definition in a previous limitation year may be increased with respect to future payments to the lesser of the adjusted dollar limitation or compensation limitation amount or the

amount of annual retirement benefit which would have been payable under the plan without regard to the foregoing provisions of this definition.

- (7) In no event shall a member be entitled to receive an annual retirement benefit hereunder in an amount which would cause the sum of the defined benefit plan fraction and the defined contribution plan fraction to exceed 1.0 for any calendar year. If the sum of the defined benefit plan fraction in the City's defined benefit plan and the defined contribution plan fraction in the City's defined contribution plan shall exceed 1.0 for any member in any year, the Pension Board shall, if the defined contribution plan is not sufficiently reduced under the defined contribution plan, adjust or freeze the rate of benefit accrual under this plan so that the sum of both fractions shall not exceed 1.0 for such member for such year.
- (8) For purposes of this definition:
- (a) The defined benefit plan fraction for any limitation year is a fraction, the numerator of which is the member's projected annual retirement benefit under the plan (determined at the close of the limitation year) and the denominator of which is the lesser of 1.25 multiplied by the dollar limitation set forth in Subsection (1) hereof in effect for such year or 1.4 multiplied by the compensation limitation.
- (b) The term "individual medical account" means any separate account which is established for the member in a defined benefit plan maintained by the City and from which benefits described in Section 401(h) of the IRS Code are payable to such member, the member's spouse or dependents.
- (c) The defined contribution plan fraction for any limitation year is a fraction, the numerator of which is the sum of the annual additions made to the member's accounts in such limitation year and for all prior limitation years under a defined contribution plan maintained by the City, and the denominator of which is the sum of the applicable amount of annual additions which could have been made under Section 415(c) of the IRS Code for such limitation year and for all prior years of such member's employment. The applicable maximum amount for any limitation year shall be equal to the lesser of 1.25 multiplied by the dollar limitation in effect for such calendar year under Section 415(c)(1)(A) of the IRS Code or 1.4 multiplied by 25% of the member's annual compensation for such limitation year. For this purpose "annual addition" means the total of:
- [1] The City's contribution and forfeitures allocated to the employee under any defined contribution plan maintained by the City;
- [2] The employee's contributions; and
- [3] Contributions to the member's individual medical account, if any.
- (9) For purposes of applying the foregoing limitations of this definition, all defined benefit plans of the City, whether or not terminated, are to be treated as one defined benefit plan, and all defined contribution plans of the City, whether or not terminated, are to be treated as one defined contribution plan. For purposes of this definition, the term "City" shall include all departments and agencies of the City of Middletown.
- (10) Actuarial equivalent benefits are determined by using an interest rate of 5.0% and the 1983 Group Annuity Mortality Table with mortality rates derived from melding the male and female rates as currently prescribed in Internal Revenue Service Rev. Ruling 95-6.

## COMPENSATION

- (1) Includes:
  - (a) The member's wages, salaries, and other amounts received for personal services actually rendered in the course of employment with the City.
  - (b) Amounts described in IRS Code Sections 104(a)(3), 105(a) and 105(h), as amended, but only to the extent that these amounts are includable in the gross income of the employee.
  - (c) Amounts described in IRS Code Section 105(d), as amended, whether or not these amounts are excludable from the gross income of the member under that section.
  - (d) Amounts paid or reimbursed by the City for moving expenses incurred by a member, but only to the extent that these amounts are not deductible by the member under IRS Code Section 217.
  - (e) The amount includable in the gross income of a member upon making the election described in IRS Code Section 83(b).
- (2) The term "compensation" does not include items such as:
  - (a) Contributions made by the City to a plan of deferred compensation to the extent that, before the application of IRS Code Section 415 limitations to that plan, the contributions are not includable in the gross income of the member for the taxable year in which contributed. Additionally, any distributions from a plan of deferred compensation are not considered as "compensation" for IRS Code Section 415 purposes, regardless of whether such amounts are includable in the gross income of the member when distributed. However, any amounts received by a member pursuant to an unfunded nonqualified plan may be considered as "compensation" for Section 415 purposes in the year such amounts are includable in the gross income of the member.
  - (b) Other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includable in the gross income of the member), or contributions made by an employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Section 403(b) (whether or not the contributions are excludable from the gross income of the member).

## § 74-51. Plan termination.

[Added 1-3-2000]

- A. If the plan is terminated or contributions are completely discontinued, each participant will be entitled to have paid to him or her an amount equal to his or her contributions, plus regular interest thereon compounded annually, as provided in § 74-36 hereof, or to leave his or her contributions in the Retirement Fund, in which event the member shall be entitled to a retirement allowance to commence on the earliest date on which the member would have been eligible to retire under § 74-37, except that the member's service and compensation to the date of separation will be used in determining the amount of such allowance.
- B. The City may elect to purchase an annuity from an insurance company which will provide for these retirement allowances. The amount of retirement allowances purchased will not exceed the assets of the trust. Any assets in excess of what is needed to pay benefits for those already eligible or

under § 74-37 may be allocated in any manner not discriminating in favor of officers, shareholders, supervisors, or highly compensated employees.

- C. If assets remain after the discharge of all plan liabilities (including retirement allowances provided only as a result of the termination of the plan or discontinuance of contributions), the remaining assets may revert to the City of Middletown.

