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ORDINANCE NO. 48-344

AN ORDINANCE AMENDING SECTIONS 2.28.070, 2.28.121, 2.28.400, 2.28.410, AND 2.28.430 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ADMINISTRATION OF THE WICHITA EMPLOYEES' RETIREMENT SYSTEM, AND REPEALING THE ORIGINALS OF SAID SECTIONS AND SECTION 2.28.420 OF THE CODE OF THE CITY OF WICHITA.

WHEREAS, the City's Pension Office is in the process of seeking updated determination letters from the Internal Revenue Service on the tax qualification of the benefit plans comprising the Wichita Employees' Retirement System; and,

WHEREAS, the Internal Revenue Service, as a condition of granting favorable determination letters, now requires that the plan provisions be amended to set forth in greater detail the current distribution requirements, current provisions relating to persons performing qualified military service, the current rollover rules and the Internal Revenue Code Section 415 limits, all of which changes have been approved and recommended by the Board of Trustees of the Wichita Employees' Retirement System;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 2.28.070 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.070 Composition; expenditures.

- (a) The fund shall consist of all moneys received from contributions made by employees, refunds made by employees on re-employment, investments, earnings and moneys paid into such fund by the city.
- (b) All benefits paid from the retirement plan shall be distributed in

accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. This is being adopted in accordance with Section 823 of the Pension Protection Act of 2006. In order to meet these requirements, the retirement plan shall be administered in accordance with the following provisions:

- (1) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1st following the calendar year in which a participant attains age 70 1/2 or the April 1st of the year following the calendar year in which the member retires. If a member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit as required by this rule in the form provided in Sections 2.28.120 or 2.28.210;
- (2) The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. The life expectancy of a member or the member's spouse may not be recalculated after the benefits commence;
- (3) The retirement system, pursuant to a qualified domestic relations order, may establish separate benefits for a member and

nonmember;

- (4) If a member dies before the required distribution of the member's benefits has begun, the member's entire interest must be either:
 - (A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31st of the calendar year immediately following the calendar year in which the member died; or
 - (B) distributed within five years of the member's death;
- (5) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death;
- (6) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2;
- (7) The death and disability benefits provided by the retirement system are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable

may not exceed 25% of the cost of all of the members' benefits received from the retirement system; and

(8) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

(c) The board is authorized to expend funds for the following purposes: clerical and secretarial work, stationery, supplies and printing; and professional services of actuaries, accountants, physicians and attorneys, the foregoing list not being intended to limit or exclude expenditures for other proper purposes.

(d) The board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

(e) Effective as of July 1, 1989, the Board will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board by rule; such benefits will not be subject to employer discretion. The Board rules adopted for this purpose are incorporated into this section as part of the plan document.

SECTION 2. Section 2.28.121 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.121 Military Service.

(a) Notwithstanding any provision of this plan to the contrary, contributions,

benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

- (b) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.
- (c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, a member receiving differential wage payments (while the member is performing qualified military service (as defined in chapter 43 of title 38, United States Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

SECTION 3. Section 2.28.400 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.400 Compliance with Code Section 415 Limitations on Contributions and Benefits.

- (a) Notwithstanding any other provisions of the retirement system to the

contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.

(b) *Participation in Other Qualified Plans: Aggregation of Limits.*

(1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contributions plans in which the member has been a member were payable from one (1) plan.

(c) *Basic 415(b) Limitation.*

(1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified

in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

- (2) For purposes of Section 415(b) of the Internal Revenue Code, the “annual benefit” means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The “benefit attributable” shall be determined in accordance with Treasury Regulations.

(d) *Adjustments to Basic 415(b) Limitation for Form of Benefit.*

If the benefit under the plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

- (1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either

reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

- (2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the “lesser of” when adjusted in accordance with the following assumptions):
 - (A) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or
 - (B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent

Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting which is the “least of” when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2009, using the rate in effect for the month prior to retirement, and on and after January 1, 2009, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) *Benefits Not Taken into Account for 415(b) Limitation.*

For purposes of this section, the following benefits shall not be taken into account in applying these limits:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- (3) Any other benefit not required under Section 415(b)(2) of the

Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) *Other Adjustments in 415(b) Limitation.*

(1) In the event that the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided in (1) above shall not apply.

(3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) *Less than Ten (10) Years of Service Adjustment for 415(b) Limitations.*

The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under subsection (c) multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator

of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(h) *Ten Thousand Dollar (\$10,000) Limit.*

Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

(i) *Effect of COLA without a Lump Sum Component on 415(b) Testing.*

Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code ("the Limit") to a member with no lump sum benefit, the following will apply:

- (1) a member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under 2.28.160;
- (2) to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated

increases are less than the Limit; and

- (3) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under 2.28.160, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(j) *Effect of Cola with a Lump Sum Component on 415(b) Testing.*

On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(k) *Section 415(c) Limitations on Contributions and Other Additions.*

After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the member's compensation.

- (1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions

that are paid to a defined benefit plan.

- (2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.
- (3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).
 - (A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an

election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

- (I) the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or
- (II) the payment is for unused accrued bona fide sick, vacation or other leave that the member would have

been able to use if employment had continued; or

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

Any payments not described in paragraph (B) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the member who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the member would have received if the member had continued to perform services for the employer rather than entering qualified military service.

A member who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the member would have received during such period if the member were not in qualified military service, determined based on the rate of pay the member would have received from the employer but for the absence

during the period of qualified military service, or (ii) if the compensation the member would have received during such period was not reasonably certain, the member's average compensation from the employer during the twelve-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(C) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

(l) *Service Purchases under Section 415(n).*

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

(1) the requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section

415(b) of the Internal Revenue Code, or

- (2) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.
- (3) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subparagraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.
- (4) For purposes of this section the term “permissive service credit” means service credit-
 - (A) recognized by the system for purposes of calculating a member’s benefit under the system,
 - (B) which such member has not received under the system, and
 - (C) which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause

(B), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(5) The system will fail to meet the requirements of this section if-

(A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the system.

(6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term “nonqualified service credit” means permissive service credit other than that allowed with respect to-

(A) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code),

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code

which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed.

- (C) service as an employee of an association of employees who are described in clause (A), or
- (D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.

In the case of service described in clause (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

- (7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer)-
 - (A) the limitations of paragraph (5) will not apply in determining whether the transfer is for the purchase of permissive service credit, and
 - (B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits

attributable to such amounts.

- (8) For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the system before January 1, 1998.

(m) *Modification of Contributions for 415(c) and 415(n) Purposes.*

Notwithstanding any other provision of law to the contrary, the system may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

- (1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.
- (2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(n) *Repayments of Cashouts.*

Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the retirement system shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(o) *Reduction of Benefits Priority.*

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

SECTION 4. Section 2.28.410 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.410 Direct Rollovers of Defined Contribution Plan Distributions.

- (a) Except as otherwise indicated herein, this section shall apply to rollovers made after December 31, 2001.
- (b) For purposes of compliance with Section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
 - (1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of the distribution will not fail to be an eligible

rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

- (2) “Eligible retirement plan” means any of the following that accepts the distributee’s eligible rollover distribution:
 - (A) an individual retirement account described in Section 408(a) of the Internal Revenue Code,

- (B) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code,
 - (C) an annuity plan described in Section 403(a) of the Internal Revenue Code,
 - (D) a qualified trust described in Section 401(a) of the Internal Revenue Code,
 - (E) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code,
 - (F) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or
 - (G) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.
- (3) “Distributee” means an employee or former employee. It also includes the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined

by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an “inherited” individual retirement account or annuity.

- (4) “Direct Rollover” means a payment by the plan to the eligible retirement plan specified by the distributee.
- (c) Rollover contributions and/or direct rollovers of distributions made after December 31, 2001, will be accepted for the purchase of prior or future service credit or for vested Plan 3 participant accounts from the types of plans specified.
- (d) The plan will accept a direct rollover of an eligible rollover distribution from:
 - (1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code, including after-tax employee contributions.
 - (2) An annuity contract described in Section 403(b) of the Internal Revenue Code, excluding after-tax employee contributions.
 - (3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

- (e) The plan will accept a participant contribution of an eligible rollover distribution from:
 - (1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.
 - (2) An annuity contract described in Section 403(b) of the Internal Revenue Code.
 - (3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
- (f) The plan will accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income.

SECTION 5. Section 2.28.420 of the Code of the City of Wichita, Kansas is hereby repealed.

SECTION 6. Section 2.28.430 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.430 Direct Rollovers of Defined Benefit Plan Distributions.

- (a) Except as otherwise indicated herein, this section shall apply to rollovers made after December 31, 2001.
- (b) For purposes of compliance with Section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision

or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the

Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

- (2) “Eligible retirement plan” means any of the following that accepts the distributee’s eligible rollover distribution:
- (A) an individual retirement account described in Section 408(a) of the Internal Revenue Code,
 - (B) an individual retirement annuity described in Section 408(b) of Internal Revenue Code,
 - (C) an annuity plan described in Section 403(a) of the Internal Revenue Code,

- (D) a qualified trust described in Section 401(a) of the Internal Revenue Code,
 - (E) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code,
 - (F) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or
 - (G) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.
- (3) “Distributee” means an employee or former employee. It also includes the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the

account or annuity will be treated as an “inherited” individual retirement account or annuity.

- (4) “Direct Rollover” means a payment by the plan to the eligible retirement plan specified by the distributee.
- (c) Rollover contributions and/or direct rollovers of distributions made after December 31, 2001, will be accepted for the purchase of prior or future service credit only from the types of plans specified.
- (d) The plan will accept a direct rollover of an eligible rollover distribution from:
 - (1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.
 - (2) An annuity contract described in Section 403(b) of the Internal Revenue Code.
 - (3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state.
- (e) The plan will accept a participant contribution of an eligible rollover distribution from:
 - (1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.
 - (2) An annuity contract described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state; or an agency or instrumentality of a state or political subdivision of a state.

(f) The plan will accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408 (b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income.

SECTION 7. Section 2.28.070, 2.28.121, 2.28.400, 2.28.410 and 2.28.430 of the Code of the City of Wichita, Kansas are hereby repealed.

SECTION 8. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 16th day of June, 2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law