

**ORDINANCE NO. 6630-09**

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 31, PENSIONS AND RETIREMENT, OF THE CODE OF THE CITY OF NEWPORT NEWS, VIRGINIA, ARTICLE II., EMPLOYEES' RETIREMENT FUND, DIVISION 5., ELIGIBILITY FOR, RECEIPT AND AMOUNTS OF, RETIREMENT BENEFITS, SECTION 31-54, RETIREMENT ALLOWANCES; AND SECTION 31-56, OCCUPATIONAL DISABILITY RETIREMENT FOR A TOTAL AND PERMANENT DISABILITY; AND SECTION 31-58, OCCUPATIONAL AND NONOCCUPATIONAL PARTIAL DISABILITY BENEFITS.

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

1. That Chapter 31, Pensions and Retirement, of the Code of the City of Newport News, Virginia, Article II., Employees' Retirement Fund, Division 5., Eligibility for, receipt and amounts of, retirement benefits, Section 31-54, Retirement allowances, and Section 31-56, Occupational disability retirement for a total and permanent disability, and Section 31-58, Occupational and nonoccupational partial disability benefits be, and the same hereby are amended and reordained as follows:

**CHAPTER 31****PENSIONS AND RETIREMENT****ARTICLE II. EMPLOYEES' RETIREMENT FUND****DIVISION 5. ELIGIBILITY FOR, RECEIPT AND AMOUNTS OF, RETIREMENT BENEFITS****Sec. 31-54. Retirement allowances.**

(a) A vested member retiring under the provisions of section 31-52 or section 31-53 shall receive an annual retirement allowance payable for the lifetime of the member determined in accordance with this section. In no event, shall a member's annual retirement allowance payable from the fund be greater than seventy-five (75) percent of the member's average final compensation or less than three hundred thirty dollars (\$330.00).

- (1) Members who are not VRS participants accrue a benefit equal to two (2) percent of the member's average final compensation multiplied by their credited service as a non-VRS participant.

- (2) Members who are VRS participants accrue a benefit equal to the supplement factor, multiplied by the member's average final compensation, which is then multiplied by their credited service as a VRS participant.
  - (3) The annual retirement allowance payable to a member who has earned credited service with a participating employer as both a VRS participant and a non-VRS participant shall be a benefit equal to the total of the allowances determined under this article for each type of service. In determining the average final compensation of VRS participants and non-VRS participants for periods of credited service as such, average final compensation for each such period of service shall be determined as of the date their status changes from a VRS participant to a non-VRS participant, and vice versa, based on their average final compensation as of the last credited service date as a VRS participant or non-VRS participant.
- (b) (1) For each member retiring pursuant to the early retirement provisions of section 31-53, the annual retirement allowance shall be reduced by an amount equal to the lesser of the following:
- a. One-half (0.5) of one (1) percent per month for each month that the early retirement precedes the current minimum retirement age; or
  - b. One-half (0.5) of one (1) percent per month for each month that early retirement precedes the normal thirty-year minimum service requirement.
- (2) For all such members who have at least five (5) years of credited service as a public safety employee, the reduction shall apply only to credited service time served in positions other than as a public safety employee.

(c) The retirement allowance from the city provided for by this section shall be reduced by the amount of any payments made to the retired employee by the participating employer pursuant to the Virginia Workers' Compensation Act, Sections 65.2-500, 65.2-501, 65.2-502, 65.2-503, and 65.2-512 of the Code of Virginia. There shall be no reduction in the retirement allowance for payment of medical benefits pursuant to Section 65.2-603, or payment of burial expenses pursuant to Section 65.2-512B of the Code of Virginia. If the member's payments under the Virginia Workers' Compensation Act are adjusted or terminated for refusal to work or to comply with the requirements of Section 65.2-603 of the Code of Virginia, the retirement allowance shall be computed as if the member were receiving the compensation to which the member would otherwise be entitled. In addition, the retirement allowance from the city shall also be reduced by the amount of any lump sum settlement of a workers' compensation claim, except such portion of the settlement as is designated for the payment of medical expenses.

(d) Defined Benefit Limitations:

- (1) Notwithstanding any other provisions in this article, the maximum annual benefit to which a member is entitled from the fund shall not exceed the applicable limitations of IRC section 415(b), which are hereby incorporated by reference.
- (2) If the maximum annual benefit under this article (but for this section) would exceed the limitations of IRC section 415(b), the maximum annual benefit under any other defined benefit plan required to be aggregated with the fund shall be reduced prior to the reduction of the maximum annual benefit from the fund.
- (3) In the event that the annual pension otherwise payable to a member who has retired or terminated employment has been limited by IRC section 415(b) as it existed at the member's retirement or termination date, the member's annual pension shall be increased from time to time thereafter to the extent it does not exceed the revised limit based on cost-of-living increases as specified by the Secretary of the Treasury under IRC section 415(b).
- (4) The Uruguay Round Agreement Act of 1994 ("GATT"), which made changes to IRC section 415, shall not be applicable for benefits accrued prior to January 1, 2000. The participating employer elects Method Three of Q&A-14 of Rev. Ruling 98-1 to comply with the requirements of IRC section 415.

(e) Required minimum distributions: Notwithstanding anything contained herein to the contrary, the benefit of each member shall begin to be distributed no later than April 1 of the calendar year following the later of (i) the calendar year in which the member attains age seventy and one half (70½), or (ii) the calendar year in which the member retires. Distributions must conform to the incidental benefit requirement of IRC section 401 and section 1.401 of the corresponding regulations. On and after January 1, 2002, the incidental benefit requirements shall be determined pursuant to Q&A-2 of section 1.401 of the regulations. Notwithstanding any other provision of the fund to the contrary, distributions from the fund will be made in accordance with IRC section 401(a)(9) (which is hereby incorporated by reference) and the regulations thereunder. Distributions from the fund on or after January 1, 2003 shall be made in accordance with the IRC section 401(a)(9) regulations published on April 17, 2002. The provision reflecting IRC section 401 shall override any distribution option in this article that is inconsistent with IRC section 401(a)(9). Distributions may only be made over the life of the member or the joint lives of the member and the member's designated beneficiary.

- (1) If the distribution of a member's benefit has commenced and the member

dies before the member's entire benefit has been distributed to the member, the remaining portion of such benefit shall be distributed at least as rapidly as under the form of distribution in effect at the member's date of death.

- (2) If a member dies before distributions begin, the member's benefit will be distributed, or begin to be distributed, no later than the following:
  - a. If the sole designated beneficiary is the spouse of the member, the member's spouse may elect to commence the benefit in accordance with the terms of this article within a reasonable period of time after the member's death, but in no event may such election be made later than December 31 of the calendar year immediately following the calendar year in which the member died or December 31 of the calendar year in which the member would have attained age seventy and one-half (70½). The benefit shall be paid over the life expectancy of the designated beneficiary.
  - b. If the benefit is paid to a designated beneficiary, other than the member's spouse, any distribution payable under the terms of this article shall commence no later than December 31 of the calendar year immediately following the calendar year in which the member died. The benefit shall be paid over the life of the designated beneficiary.
  - c. If there is no designated beneficiary as of September 30 of the year following the member's death, any distribution payable under the terms of this article shall be completed by December 31 of the calendar year containing the fifth (5th) anniversary of the member's death.
  - d. If the member's spouse is the member's sole designated beneficiary and the spouse dies after the member but before distributions to the spouse begin, then this section other than subsection (e)(1) above shall be applicable as if the spouse were the member.

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

**Sec. 31-56. Occupational disability retirement for a total and permanent disability.**

(a) VRS participants are ineligible for the benefits provided by this section. All other members shall be referred to as "eligible members" in this section.

(b) Subject to subsection (a) of this section, on and after October 1, 2007, an eligible member in active service who has been determined to be totally and permanently disabled by the Virginia Workers' Compensation Commission from a cause arising out of and in the course of their employment with a participating employer may, upon written application to the board, be retired for occupational disability retirement when, as a result of a medical examination or by means of other satisfactory evidence, the board finds that the member is permanently functionally incapacitated from performing any gainful activity and that such condition appears to be permanent. Benefits hereunder shall continue only so long as such incapacity continues based on evidence acceptable to the board.

(c) In the event of the retirement of an eligible member for occupational disability on or after January 1, 1983, such eligible member shall receive a disability retirement allowance payable for the lifetime of the eligible member so long as the eligible member remains totally disabled. The amount of the annual allowance shall be two-thirds ( $\frac{2}{3}$ ) of the eligible member's annual salary at the time the disability began less:

- (1) The amount of any payments made to the eligible member by the participating employer pursuant to the Virginia Workers' Compensation Act, Sections 65.2-500, 65.2-501, 65.2-502, 65.2-503, and 65.2-512 of the Code of Virginia. There shall be no reduction in the retirement allowance for payment of medical benefits pursuant to Section 65.2-603 or payment of burial expenses pursuant to Section 65.2-512B of the Code of Virginia. If the eligible member's payments under the Virginia Workers' Compensation Act are adjusted or terminated for refusal to work or to comply with the requirements of Section 65.2-603 of the Code of Virginia, the retirement allowance shall be computed as if the eligible member were receiving the compensation to which the eligible member would otherwise be entitled. In addition, the retirement allowance from the city shall also be reduced by the amount of any lump sum settlement of a workers' compensation claim, except such portion of the settlement as is designated for the payment of medical expenses.
- (2) One-half ( $\frac{1}{2}$ ) of the disability benefit received by the eligible member from the United States Social Security Administration or successor.
- (3) Compensation received by the eligible member from the city under any applicable rule or order, settlement, contract or other agreement.

(d) Should an eligible member die while on occupational disability retirement, benefits shall be computed in accordance with section 31-62.

(e) An eligible member applying for disability retirement or retired on disability under

this section shall be governed by the rules and regulations promulgated by the board in accordance with section 31-22 and section 31-59.

**Sec. 31-58. Occupational and nonoccupational partial disability benefits.**

(a) VRS participants are ineligible for the benefits provided by this section. All other members shall be referred to as "eligible members" in this section.

(b) As a result of medical examination or otherwise, if the board determines that an eligible member who has applied for disability retirement under section 31-56 or section 31-57 is not totally and permanently disabled within the meaning of those sections, but determines that the such eligible member is partially disabled to the extent that the eligible member is functionally incapacitated from performing the essential functions of the eligible member's position with the participating employer, and as a result of such partial disability, terminates employment with the participating employer or transfers to a position with the participating employer at a lower salary, the eligible member may be awarded a partial disability benefit. Such benefit shall not be deemed to be a retirement allowance. Benefits hereunder shall continue only so long as such incapacity continues based on evidence acceptable to the board.

(c) Based on available medical and other relevant evidence, the board shall determine on a uniform and non-discriminatory basis with respect to similarly situated eligible members the extent of the partial disability. The partial disability benefit shall be a percentage of the allowance that would have been payable had the eligible member qualified for disability retirement under section 31-56 or section 31-57, after deducting from the allowance workers' compensation benefits awarded to the eligible member in the same amount and in the same manner as required by subsection 31-56(c)(1), such percentage being the percentage by which the eligible member is deemed partially disabled. Except as otherwise provided in this section, once the initial disability percentage has been established, it shall not be increased.

(d) Additional benefits shall be granted by the board by increasing the initial disability percentage at the rate of two (2) percent per full year of credited service. The total percentage awarded pursuant to this section shall not exceed the lesser of two (2) times the initial disability percentage recommendation or eighty (80) percent.

(e) Except as provided in subsection (f) or (g) of this section, disability benefit payments shall begin accruing on the effective date of disability and shall be payable monthly on the last working day of each month so long as the eligible member's partial disability continues, as determined by the board on evidence acceptable to it.

(f) In the case of a vested eligible member receiving a partial disability benefit who is not employed by the participating employer, the partial disability benefit will terminate when the eligible member attains the minimum age of retirement and the eligible member's benefit will

convert to a service retirement.

(g) In the case of an eligible member who is not vested and is receiving a partial occupational disability benefit, the partial occupational disability benefit will terminate when the eligible member attains the minimum age of retirement.

(h) Notwithstanding receipt of benefits pursuant to this section, partially disabled eligible members who work for a participating employer during their period of disability shall accrue benefits under this chapter.

(i) An eligible member applying for or receiving benefits under this section shall be governed by the rules and regulations promulgated by the board in accordance with section 31-22 and section 31-59.

2. That this ordinance shall be in effect on and after the date of its adoption, September 22, 2009.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON SEPTEMBER 22, 2009

Mabel Washington Jenkins, CMC  
City Clerk

Joe S. Frank  
Mayor

A true copy, teste:

City Clerk