

CITY OF DOVER ORDINANCE #2017-03

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That the Dover Code of Ordinances be amended by creating a new Chapter 80 - Personnel.

BE IT FURTHER ORDAINED:

That Chapter 2 - Administration, Article IV - Officers and Employees, Division 7 - General Employee Pension Plan of the Dover Code be moved to Chapter 80 - Personnel, Division 3. – General Employee Pension Plan.

BE IT FURTHER ORDAINED:

That Chapter 2 - Administration, Article IV - Officers and Employees, Division 8 - Deferred Compensation Plan of the Dover Code be moved to Chapter 80 - Personnel, Division 2. - Deferred Compensation Plan (IRC 457 (b)).

BE IT FURTHER ORDAINED:

That Chapter 2 - Administration, Article VI - Other Post-Employment Benefits Fund of the Dover Code be moved to Chapter 80 - Personnel, Division 5. – Other Post-Employment Benefits Fund.

BE IT FURTHER ORDAINED:

That Chapter 80 - Personnel of the Dover Code be amended to read as follows:

Chapter 80 – PERSONNEL

ARTICLE I. - IN GENERAL

Sec. 80-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or the plan documents contradict:

Accumulated contributions means the aggregate contributions made by a member under the plan.

Compensation means a participant's base pay, plus scheduled overtime, payment for being on-call, except those hours reported for being called out, and any retroactive pay corrections which involve any one of the mentioned payments.

Continuous service means regularly employed without interruption, except for allowable interruptions aggregating not over five years. Allowable interruptions shall include:

- (1) Leaves of absence granted to employees for illness, research, travel, training or study;
- (2) Employment in an office to which the employee had been elected by popular vote at a regular city election;
- (3) Involuntary severance which shall include a required leave of absence on account of maternity, and the employee returns to active employment at the end of that leave of absence.
- (4) To the extent required by federal law, if an employee leaves the employ of the city to enter the military service of the United States and, upon their discharge from service, is reemployed by the city at a time when their reemployment rights are protected by federal law, the employee shall be considered to have been employed by the city during their period of military service and shall be credited with continuous service which they would have been credited with as an employee of the city but for their military service. The period for which disability pension benefits shall have been paid shall be considered as an allowable interruption which is permitted in addition to the allowable interruptions aggregating not over five years in determining subsequent eligibility for retirement benefits under the terms of this chapter.

Deferred Compensation Plan (IRC 457 (b)) means the deferred contribution plan.

Eligible employee means any person employed in rendering service to the city on a full-time, regular basis, who is participating in a retirement plan to which the city contributes for them, and whose compensation is paid directly by the city. An employee will be considered a full-time employee if they regularly work 40 hours each week.

General employee pension plan board means the general employee pension Trust board.

General employee pension plan and plan mean the city's general employee defined benefit pension plan.

Group annuity contract means the group annuity contract entered into between an insurance company and the general employee pension plan board.

Money Purchase Plan (IRC 401(a)) means the defined contribution plan.

OPEB board means the board of trustees of the other post-employment benefits trust as established in Section 80-701. – OPEB Board; established; duties.

OPEB fund means the other post-employment benefits Trust established in Section 80-700. – OPEB Fund; established.

Participant means any eligible employee of the city who has met all of the requirements for participation in a City retirement benefit plan.

Plan year means the period of one year, commencing on any July 1 and ending immediately prior to the following July 1.

Retired participant means a participant of the plan who has terminated service and is eligible to receive retirement income under this chapter.

(Code 1968, § 2-87; Ord. of 1-12-1970; Code 1981, § 2-176; Ord. of 7-11-1983; Ord. of 7-26-1993, § 1; Ord. of 4-25-1994; Ord. of 5-22-2000; Ord. No. 2010-13, 6-28-2010)

ARTICLE II. – RESERVED

ARTICLE III. – RESERVED

ARTICLE IV. – PENSION PLANS AND RETIREMENT BENEFITS (EXCEPT POLICE) ^[5]

Footnotes:

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Charter reference— Authority of city to establish pension plans, subpart A.

DIVISION 1. – GENERALLY

Sec. 80-400. – Applicable to all pension plans.

(a) Correction of payment errors.

Should any change or error in the records result in any member or beneficiary receiving from the plan more or less than he would have been entitled to receive had the records been correct, the human resources director, with the concurrence of the controller/treasurer, shall have the power to correct the error, and as far as practicable and just, to adjust the payments in a manner that the equivalent of the benefit to which the member or beneficiary was correctly entitled shall be paid.

(Code 1968, § 2-113; Ord. of 1-12-1970; Code 1981, § 2-195)

(b) Limitation on benefits.

To the extent necessary, the participant's benefit under this plan and all plans of the city shall be limited in accordance with section 415 of the Internal Revenue Code (26 USC 415) and the regulations thereunder, and such code section and regulations shall hereby be incorporated herein.

(Code 1981, § 2-198; Ord. of 7-26-1993, § 7)

(c) Distributions.

All distributions from this plan shall be made in accordance with section 401(a)(9) of the Internal Revenue Code (26 USC 401(a)(9)) and the regulations thereunder, and such code section and regulations shall hereby be incorporated herein.

(Code 1981, § 2-199; Ord. of 7-26-1993, § 8)

(d) Maximum compensation.

The maximum earnings utilized for purposes of determining benefits shall be limited in accordance with section 401(a)(17) of the Internal Revenue Code (26 USC 401(a)(17)) and the regulations thereunder, and such code section and regulations shall hereby be incorporated herein.

(Code 1981, § 2-200; Ord. of 7-26-1993, § 9)

DIVISION 2. - DEFERRED COMPENSATION PLAN (IRC 457 (b))

Sec. 80-450. - Established; purpose.

There is hereby established the city employee deferred compensation plan (IRC 457 (b)). The purpose of the plan is to establish the basic terms and conditions under which employees shall participate in this plan. Further details, terms and conditions under which retirement, termination, and survivor benefits shall be provided to eligible employees are defined in the deferred compensation plan.

(Code 1981, § 2-212; Ord. of 4-25-1994; Ord. of 5-22-2000; Ord. of 6-12-2000; Ord. of 7-10-2000; Ord. of 9-11-2000)

Sec. 80-451. - Eligibility of participants.

Each eligible employee not drawing any retirement benefits from the city as of May 1, 1994, who makes a decision to join the deferred compensation plan, shall, upon compliance with the provisions of this division, become a deferred compensation plan participant on May 1, 1994. Thereafter, each eligible employee who selects the deferred compensation plan upon employment shall become a participant in accordance with the plan. Refer to 457 Plan Document for plan provisions, including age 50 catch-up and special catch-up contributions.

(Code 1981, § 2-213; Ord. of 4-25-1994; Ord. of 5-22-2000; Ord. of 7-10-2000; Ord. No. [2016-10](#), 6-13-2016)

Sec. 80-452. - Contributions.

- (a) *Employee contributions.* Employees participating in a city pension plan are eligible to participate in the deferred compensation plan (IRC 457 (b)), in addition to the general employee pension plan, upon submission of the signed elective deferral documentation. Contributions shall be made by voluntary payroll deduction.
- (b) *Treatment.* Treatment of contributions shall be handled in accordance with federal and state laws and the applicable provisions of IRC 457(a)(1)(A).

Sec. 80-453. – Interpretation.

As originally enacted, the deferred compensation plan was a part of the general employee pension plan. The two plans have now been legislatively separated. In the event that it is determined that the separation of the two plans has caused any ambiguity, then reference is made to the applicable provisions of the general employee pension plan in defining, implementing, interpreting, and administering the deferred compensation plan.

(Code 1981, § 2-214; Ord. of 4-25-1994; Ord. of 5-22-2000; Ord. of 6-12-2000; Ord. of 7-10-2000; Ord. of 9-11-2000; Ord. No. [2016-10](#), 6-13-2016)

Secs. 80-454-80-499. - Reserved.

DIVISION 3. – GENERAL EMPLOYEE PENSION PLAN

Sec. 8-500. – General employee pension plan established; purpose.

- (a) *Generally.* There is hereby established the city general employee pension plan. The purpose of the plan is to establish the terms and conditions under which retirement and disability benefits shall be provided to eligible employees of the city. The benefits under the plan shall be in addition to amounts received as social security benefits or from any other pension plan.
- (b) *For employee exclusively.* This plan is created for the exclusive benefit of the employees of the city and shall be interpreted in a manner consistent with it being an employee's trust, as defined in section 401(a) of the Internal Revenue Code (26 USC 401(a)). Therefore, under no circumstances shall any funds contributed to this plan or any assets of the plan or trust ever revert to or be used or enjoyed by the city, nor shall any such funds or assets ever be used other than for the benefits of the employees of the city and their beneficiaries, prior to the satisfaction of all liabilities under this plan to the employees.

(Code 1968, § 2-88; Ord. of 1-12-1970; Code 1981, § 2-177; Ord. of 7-26-1993, § 2)

Sec. 80-501. - Eligibility of participant.

Each eligible employee not drawing any retirement benefits from the mayor and city council as of January 1, 1967, shall, upon compliance with the provisions of this division, become a general employee pension plan participant under this division, commencing on July 1, 1967, or at any subsequent time immediately upon his employment. Effective September 28, 2009 the general employee pension plan is closed to new participants.

(Code 1968, § 2-97; Ord. of 1-12-1970; Code 1981, § 2-178; Ord. of 6-8-1987; Ord. No. 2010-13, 6-28-2010)

Sec. 80-502. - Participation mandatory; exceptions.

The pension plan shall not be construed to give any employee the right to be retained in the employ of the city. All new employees hired after July 1, 1991, shall be required, as a condition of employment, to join the general employee pension plan or the deferred compensation plan. All new employees hired after September 29, 2009 are required to join the Money Purchase Plan (IRC 401(a)), as defined in Division 4. All participants of the general employee pension plan as of September 28, 2009 will remain members of either plan thereafter unless they shall leave the employment of the city, retire, pass away, or elect to terminate their participation in the general employee pension plan and become a member of the Money Purchase Plan (IRC 401(a)), as defined in Division 4.

(Code 1968, § 2-97; Ord. of 1-12-1970; Code 1981, § 2-179; Ord. of 5-28-1991; Ord. of 5-22-2000; Ord. No. 2010-13, 6-28-2010)

Sec. 80-503. - Defraudment.

It shall be unlawful for any person to knowingly make any false statement or falsify, or permit to be falsified, any record of the pension plan in an attempt to defraud the plan.

(Code 1968, § 2-98; Ord. of 1-12-1970; Code 1981, § 2-180)

Sec. 80-504. - Normal retirement.

The normal retirement date for each participant shall be the first day of the month following the attainment of the age of 65 years, provided that he has completed ten years of continuous service.

(Code 1968, § 2-99; Ord. of 1-12-1970; Code 1981, § 2-181; Ord. of 6-24-1996)

Sec. 80-505. - Early retirement.

- (a) *Reduced benefits.* A participant who has completed ten years of continuous service and who has attained the age of 55 years may retire at any time within the ten years preceding his normal retirement date; provided, however, that his retirement benefits shall be computed at a reduced rate of one-half percent for each month computed from the date of early retirement to age 65 years.

(b) *Unreduced benefits.*

- (1) *Hired May 1, 1994, or later.* For eligible employees hired on or after May 1, 1994, a participant who has attained the age of 55 years, and whose attained age plus years of continuous service is equal to or greater than 80, may retire at any time prior to his normal retirement date with no reduction in retirement benefits.
- (2) *Hired before May 1, 1994.* For eligible employees hired before May 1, 1994, a participant who has completed 25 years of continuous service, or has attained the age of 50 years and completed 20 years of continuous service may retire at any time prior to his normal retirement date with no reduction in retirement benefits.

(Code 1968, § 2-100; Ord. of 1-12-1970; Code 1981, § 2-182; Ord. of 10-12-1982, § 1; Ord. of 4-25-1994)

Sec. 80-506. - Later retirement.

If a participant works beyond his normal retirement date, the payment of the participant's retirement benefits shall be deferred until his actual retirement.

(Code 1968, § 2-101; Ord. of 1-12-1970; Code 1981, § 2-183; Ord. of 7-26-1993, § 3; Ord. No. 2010-13, 6-28-2010)

Sec. 80-507. - Forced retirement with pension.

The general employee pension plan board, upon recommendation of the city council or the city manager, may require retirement in any case where deemed necessary due to the lack of work or inability of the employee to perform with a satisfactory degree of efficiency, provided that the employee qualifies for either normal retirement pursuant to section 80-504, or early retirement pursuant to section 80-505. The employee shall then be entitled to receive, commencing on the first day of the month coinciding with or next following his date of retirement, pension benefits equal to the benefits computed in accordance with the provisions of section 80-508 on the basis of the employee's service completed prior to actual retirement.

(Code 1968, § 2-102; Ord. of 1-12-1970; Code 1981, § 2-184)

Sec. 80-508. - Amount of retirement benefits.

Retirement January 1, 1995, or later. The amount of retirement benefits payable to a participant who retires on or after January 1, 1995 shall be computed on the basis of one-fiftieth of his average actual monthly earnings multiplied by the total number of years of continuous service. Average actual monthly earnings shall be a participant's base pay plus scheduled overtime, payment for being on call, except those hours reported for being called out, and any retroactive pay corrections which involve any one of the mentioned payments during any period of 36 consecutive months in his final ten years of continuous service which results in the highest average monthly earnings.

If an employee's approved absence is the result of a workers compensation injury, the base wages that the employee would have earned had he not been on workers compensation leave will be included when determining the highest 36 consecutive months within his final ten years of continuous service.

The value of lost base salary as a result of mandatory furlough shall be added to an employee's final average compensation and considered in the calculation of the amount of retirement benefits, if the time period in which the mandatory furlough was required is within the highest 36 consecutive months or earnings within the final ten years of continuous service.

(Code 1968, § 2-103; Ord. of 1-12-1970; Code 1981, § 2-185; Ord. of 10-12-1982, § 2; Ord. of 7-26-1993, § 4; Ord. of 4-25-1994; Ord. of 5-22-2000; Ord. of 7-10-2000; Ord. No. 2010-13, 6-28-2010)

Sec. 80-509. - Form of benefits.

- (a) *Normal form.* A monthly benefit shall be payable on the first day of the second month preceding the date on which application for such benefit is filed. Payment will be retroactive to the retirement date. Payments of benefits shall be payable monthly thereafter during his lifetime, and terminating with the last payment on the first day of the month of the death of the participant.
- (b) *Death of participant, etc.* Upon the death of a participant who has retired, or who is eligible to be retired under any of the provisions of this division, payment shall be made to their eligible survivors in the amount of 50 percent of the monthly payments to which the participant was or would have been entitled. Upon the death of a participant who has completed a minimum of 20 years of service but is not yet eligible to retire because of age, payment shall be made to their eligible survivors in the amount of 50 percent of the monthly payment that would have resulted by using the participant's service time; however, the benefit is to be computed at a reduced rate of one-half percent for each month the participant was under the correct age for normal retirement. In no instance shall actual monthly payments be less than \$200.00, to be effective July 1, 2000. Upon the death of both the participant and eligible survivor, if the benefit payments received in aggregate are less than the member's contributions, the balance of the member's contributions, plus 5 percent interest, will be paid to the surviving beneficiary designated or his estate if no designation has been made and submitted to the general employee pension plan board. The amount of benefit payments received and the amount of the member's contributions shall be determined from the record of the pension board.
- (c) *Eligible survivor.* An eligible survivor shall be one of the following in the order of preference listed:
 - (1) *Spouse.* The participant's spouse who was married to the participant for at least one year. Surviving spouse shall be required to provide supporting documents of marriage.
 - (2) *Children, unmarried.*
 - a. The surviving children, biological or legally adopted, of the participant, who have not attained their 18th birthday.

- b. If said child is attending school on a full-time basis and provides proof of attendance each year of eligibility, with the payment due for the month in which he ceases to attend school on a full-time basis or with the payment due for the month in which his 22nd birthday shall occur, whichever shall occur first.
- (d) *Commencement of payment.* Benefits payable to eligible survivors shall commence on the first day of the month following the date of the participant's death.
- (e) *Benefits payable.* Benefits payable to eligible survivors shall cease:
 - (1) *Spouse.* With respect to an eligible survivor who is a spouse, with the payment due for the month in which their remarriage or death shall occur, whichever occurs first.
 - (2) *Children.* With respect to an eligible survivor who is a child(ren), with the payment due for the month in which his 18th birthday or death shall occur, whichever shall occur first. Payments shall be made in accordance with subsections (2)a. and b.
- (f) *Eligibility for benefits.* The eligibility of any person or persons to receive payment of benefits as an eligible survivor shall be determined conclusively by the general employee pension plan board based on application of such person or persons and any other information which the pension board deems to be appropriate.

(Code 1968, § 2-104; Ord. of 1-12-1970; Code 1981, § 2-186; Ord. of 6-8-1987; Ord. of 7-26-1993, § 5; Ord. of 4-25-1994; Ord. of 12-11-1995; Ord. of 4-14-1997; Ord. of 5-22-2000; Ord. of 7-10-2000; Ord. of 3-12-2001; Ord. of 5-12-2003; Ord. No. 2010-13, 6-28-2010; Ord. No. 2011-28, 12-12-2011; [Ord. No. 2013-10, 7-22-2013](#))

Sec. 80-510. - Early retirement due to permanent disability.

Any employee who, after completing at least ten years of continuous service, shall be injured or whose health shall become permanently impaired to such an extent as to render him totally and permanently disabled, shall be retired upon application and approval of the general employee pension plan board. The pension amount will be based upon section 80-508. There shall be no reduction in benefit.

(Code 1968, § 2-105; Ord. of 1-12-1970; Code 1981, § 2-187; Ord. No. 2010-13, 6-28-2010)

Sec. 80-511. - Total and permanent disability.

- (a) *Definition.* As used in this division, a participant shall be deemed to be "totally and permanently disabled" when the general employee pension plan board, on the basis of a medical examination by a physician or physicians selected by the pension board, finds the employee:
 - (1) *Work generally.* To be totally and permanently prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily or mental injury or disease, whether occupational or nonoccupational in cause; or

- (2) *Employment.* To be totally and permanently prevented from continuing in their capacity as an employee as a result of bodily or mental injury or disease, whether occupational or nonoccupational in cause.
- (b) *Exclusions.* Total and permanent disability, within the terms of this division, shall exclude disability resulting from or consisting of chronic alcoholism, addiction to narcotics, engaging in a felonious criminal act for which they are found guilty, or a willful effort on their part to bring about the injury or illness to themselves or any other person or service in the armed forces of any foreign country.

(Code 1968, § 2-107; Ord. of 1-12-1970; Code 1981, § 2-188; Ord. of 5-22-2000)

Sec. 80-512. - Commencement of disability benefits.

- (a) *Removed from payroll.* A participant who files for a disability pension shall not work and be kept on the active payroll and receive credited service from the inception of the disability to the end of the first full calendar month following the date of application.
- (b) *Change in compensation; leave.* During the application period above, the participant's compensation shall not be increased.
- (c) *Commencement of benefits.* The eligibility for payment of disability benefits under this division shall commence, if approved, on the first day of the month following the application period set forth in subsection (a).

(Code 1968, § 2-107; Ord. of 1-12-1970; Code 1981, § 2-189; Ord. of 8-10-1987; Ord. No. 2010-13, 6-28-2010)

Sec. 80-513. - Termination of employment.

- (a) *Forfeiture of participation.* Any participant whose employment is terminated prior to the date he becomes eligible for retirement benefits shall forfeit his status as a participant in the pension plan and all accumulated credit for continuous service.
- (b) *Ten years' service.* Any participant with a minimum of ten years of continuous service and whose employment is terminated prior to the date he becomes eligible for retirement benefits under section 80-504 - Normal retirement, 80-505 - Early retirement, 80-506 - Later retirement or 80-510 - Early retirement due to permanent disability, upon attaining the age of 65 years, shall be eligible for pension benefits under the provisions of section 80-508 - Amount of retirement benefits, upon application to the pension board of trustees. The form of the benefit will be based on the formula which was in effect at the time of termination.
- (c) *Layoffs.* Upon recall, any participant whose employment is terminated due to a layoff and is recalled within five years of layoff, may apply to the pension board to have their previous service credits restored immediately. If they have withdrawn their contributions, they must repay them as calculated by the city's actuary. A returning employee must make an election to return previously refunded amounts, plus calculated interest, within 30 days of approval of the general employee pension plan board. Contributions will be reimbursed based on the gross amount received. Participants who are laid off and not recalled within five years shall forfeit their

status as a participant in the pension plan and all accumulated credit for continuous service.

- (d) *Request for refund.* When an employee leaves the employment of the city and is entitled to withdraw his contributions with interest thereon at the rate of five percent per annum, compounded annually from the last day of the plan year in which such contribution was made to the earlier of the date of commencement of retirement income or the date on which contributions are payable pursuant to the provisions of the plan, then he shall submit a written notarized request for a refund of these contributions before payment shall be made. Refunds will be issued 90 days from the date when the notarized request is received. Contributions will automatically be refunded five years from date of separation.

(Code 1968, § 2-108; Ord. of 1-12-1970; Code 1981, § 2-190; Ord. of 10-12-1982, § 3; Ord. of 11-28-1988; Ord. of 7-26-1993, § 6; Ord. of 4-25-1994; Ord. of 4-14-1997; Ord. of 7-10-2000; Ord. of 5-12-2003; Ord. of 10-8-2007(3); Ord. No. 2010-13, 6-28-2010)

Sec. 80-514. - Cessation of disability pension benefits.

- (a) A participant shall cease to qualify for disability pension benefits:
- (1) *Recovered.* At the time that the general employee pension plan board determines, on the basis of a medical examination by a physician or physicians selected by the pension plan board, that a participant is no longer totally and permanently disabled or has sufficiently recovered, but refuses to resume their regular occupation as an employee or to be reemployed by the city in some other position for which they are suited or which is appropriate to their training and experience;
 - (2) *Refuses examination.* When the participant refuses to undergo a medical examination requested by the general employee pension plan board; or
 - (3) *Age 65 years.* On the first day of the month following the participant's 65th birthday.
- (b) Upon the occurrence of the earliest of the above events, disability pension benefits shall cease, except that, if the event of subsection (a)(3) of this section occurs, payment of the normal retirement benefits shall commence on that date, in the same amount as the disability pension benefits.

(Code 1968, § 2-109; Ord. of 1-12-1970; Code 1981, § 2-191)

Sec. 80-515. - Effect of state workers' compensation on disability benefits.

Any disability pension benefits received by a participant under the terms of this division as the result of an injury or illness compensable under the workers' compensation laws of the state shall be reduced by the amount of the workers' compensation payments actually received by the participant.

(Code 1968, § 2-110; Ord. of 1-12-1970; Code 1981, § 2-192)

Sec. 80-516. - Benefits to cease upon reemployment; exceptions.

The Internal Revenue Code has provided guidance that to be considered retired for purposes of prohibitions against “in-service distributions”, one must have an at least six (6) month break before returning to employment with the same employer and that such a return cannot be pre-planned at the time of retirement. If the individual is under the normal retirement age of 65, the individual will be subject to an annual earnings limit of \$30,000.

Any employee of the city who is receiving, or who shall receive, benefits under this division, and who is thereafter reemployed by the city or appointed to any position by the mayor or council bearing remuneration, shall cease to draw benefits during the period of reemployment. Upon termination of the reemployment, the benefits shall be restored. The provisions of this section shall not apply to any employee who receives remuneration as a result of being elected or appointed to an elective or appointed office in the city, nor to any employee reemployed by the city in a casual/seasonal capacity, not to exceed 180 calendar days. Employees would be eligible to return to casual/seasonal status immediately following retirement.

Casual/seasonal employees may be employed by the City on a temporary basis in order to provide assistance for the following situations:

- (a) *Casual assistance.* Employee is needed on a sporadic or on-call basis where hours cannot be predetermined and vary greatly from week to week. Such employees may be used as needed.

- (b) *Seasonal assistance.* Employee is needed for peak operating seasons.

- (c) *Project assistance.* Employee performs duties related to a specific project that has defined objectives and an established time period of completion that does not exceed 180 calendar days.

- (d) *Primary incumbent replacement.* Employee is needed to fulfill the job responsibilities of the primary incumbent who is unable to perform such responsibilities for an extended period of time. Such employees may be used for a maximum of 180 calendar days or the length of time the incumbent is unable to perform the job responsibility, whichever is less.

- (e) *Contracting.* Any individual participating in the plan who contracts with the City or represents any private enterprise that has a contract with an employer participating in the plan must have a 6-month separation from their effective date of retirement if the individual is under 65. The City shall maintain, in a form prescribed by the Human Resources Director, a certification of the worker's status. The certification will be used for a determination of the individual meeting the definition of eligible employees under this section.

(Code 1968, § 2-111; Ord. of 1-12-1970; Code 1981, § 2-193; Ord. of 8-27-1990; Ord. of 4-25-1994; Ord. of 6-11-2007; Ord. No. 2010-13, 6-28-2010)

Sec. 80-517. - Benefit assignment, transfer, etc.

No participant or beneficiary under the plan shall assign, transfer, hypothecate, encumber, commute or anticipate any interest he may have in payments, funds or contracts under this plan. No interest shall in any way be subject to any legal process, levy of execution, attachment or garnishment proceedings for the payment of any claim against the participant or any beneficiary under the plan, nor shall any such interest be subject to the jurisdiction of any bankruptcy court or insolvency proceedings.

(Code 1968, § 2-112; Ord. of 1-12-1970; Code 1981, § 2-194)

Sec. 80-518. - Contributions.

(a) *Payroll deductions*

- (1) *Amount.* For each year, while a participant of the plan, a participant shall contribute, by payroll deductions, an amount equal to 3½ percent of his average actual monthly earnings as described in section 80-508 - Amount of retirement benefits (effective May 1, 1994).
- (2) *Employer contributions.* The city, pursuant to the provisions of section 414(h)(2) of the United States Internal Revenue Code (26 USC 414(h)(2)), shall pick up and pay the contributions which would otherwise be payable by the employee under this section. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to be withheld from the employee's compensation.
- (3) *Employee contributions picked up by city.* Employee contributions picked up by the city shall be paid from the same source of funds used for the payment of compensation to an employee. A deduction shall be made from each employee's compensation equal to the amount of the employee's compensation picked up by the employer. This deduction, however, shall not reduce the employee's compensation for purposes of computing benefits under the retirement system pursuant to this *division.
- (4) *Employee contributions credited.*
 - a. Employee contributions shall be credited to a separate account within the employee's individual account so that the amount contributed prior to the effective date for the pickup of employee's contributions may be distinguished from the amounts contributed on or after the effective date.
 - b. The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

- (b) *City contributions.* The city shall make such contributions as necessary to meet the requirements of the plan. Effective May 1, 1994, the city shall pick up the employee contributions by a reduction in current earnings. Such picked up contributions shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code; however, the contributions so picked up shall be included in earnings for purposes of the plan. Participant contributions which are picked up shall be treated, for all purposes of this plan, in the same manner as participant contributions made prior to May 1, 1994.
- (c) *Other contributions.* The general employee pension plan board shall receive all appropriations, contributions and interest allowances as may be received from time to time by the city from the state or any other source, and designated specifically for employee pensions.
- (d) *Withdrawal from plan.* A member who withdraws from the general employee pension plan for any reason, other than retirement, death or disability, may request their accumulated contributions, plus 5 percent interest, be paid to them after such date of withdrawal; provided, however, their contributions shall not be refunded to them earlier than 90 days after receipt of their notarized application for the same.
- (e) *Death of ineligible member.* Upon the death of a member not eligible to retire under any provision of this division, their employee contributions shall be payable in a single sum to their designated beneficiary or their estate if no designation has been made.

(Code 1981, § 2-196; Ord. of 10-12-1982, § 4; Ord. of 12-13-1982; Ord. of 7-11-1983; Ord. of 4-25-1994(2); Ord. of 12-11-1995; Ord. of 7-10-2000; Ord. of 5-12-2003; Ord. No. 2010-13, 6-28-2010)

Sec. 80-519. - City paramedics transferred to county.

Notwithstanding any other provision of this division, all persons employed by the city as paramedics, who are transferred to the county emergency medical services department and who make a written election to remain in the city general employee pension plan, shall continue to be considered eligible employees within the meaning of the pension plan as long as they are employed by the county emergency medical services department. All benefits for any such paramedic shall be calculated as if the paramedic had remained a city employee during his employment with the county emergency medical services department.

(Code 1981, § 2-197; Ord. of 8-26-1991)

Sec. 80-520 – General employee pension plan board; established; duties.

There is hereby established a general employee pension plan board, the duties of which shall be to manage the general employee pension plan.

(Code 1968, §§ 2-72, 2-89; Ord. of 1-12-1970; Code 1981, § 2-201; Ord. of 5-22-2000)

Sec. 80-521. - Composition.

The general employee pension plan board shall consist of the following persons:

- (1) *Manager.* The city manager.
- (2) *City officials.* Two elected city officials who shall be appointed by the council president, subject to confirmation of a voting majority of the city council at its annual meeting.
- (3) *Participants.* Three participants or retired participants of the plan who shall be elected by the participants and retired participants of the plan.
- (4) *Controller/treasurer.* The city controller/treasurer.
- (5) *Election.*
 - (a) Such election shall be for three-year staggered terms, beginning July 1 and ending June 30 three years later. A regular election for filling these positions will be held the third week of June each year.
 - (b) In the first week of April of each year, the city clerk shall notify those eligible to vote of the exact time and place of the election. Any general employee pension plan member that is eligible to vote and appears on the listing of qualified voters who will be unable to appear at the polling place on the date and time of the election may cast his or her vote by absentee ballot in the general employee pension plan election for the following reasons: 1) armed forces, 2) public service, 3) occupation, 4) sickness, 5) disability, 6) religion, 7) vacation, or 8) residency outside of the Dover area which makes it infeasible to vote in person.

(Code 1968, §§ 2-89, 2-90; Ord. of 1-12-1970; Code 1981, § 2-202; Ord. of 5-10-1982; Ord. of 8-23-1982; Ord. of 11-26-1990, § 5; Ord. of 4-25-1994; Ord. of 5-22-2000; Ord. of 10-8-2007(1); Ord. No. 2009-23, 10-26-2009)

Sec. 80-522. - Term of office of members.

The term of office of each member of the general employee pension plan board, except the city controller/treasurer, city manager, and elected city officials, shall commence on the first day of the month following their election and continue for a period of three years or until their successor shall be elected and qualified.

(Code 1968, § 2-91; Ord. of 1-12-1970; Code 1981, § 2-203; Ord. of 8-23-1982; Ord. of 4-25-1994; Ord. of 5-22-2000; Ord. No. 2009-23, 10-26-2009)

Sec. 80-523. - Officers and ex officio members.

The general employee pension plan board shall elect a chairperson. The city controller/treasurer shall be the pension fund treasurer and their bond shall cover all monies deposited with them.

(Code 1968, § 2-1992; Ord. of 1-12-1970; Code 1981, § 2-204; Ord. of 4-25-1994; Ord. of 5-22-2000; Ord. No. 2009-23, 10-26-2009)

Sec. 80-524. - Vacancies.

If a vacancy occurs in the offices of the general employee pension plan board , the vacancy shall be filled for the unexpired term within 60 days and in the same manner as the office was originally filled. Should a member of the pension plan board cease to be in the employ of the city, other than by retiring in accordance with this division, their office as a member of the board shall be declared vacant.

(Code 1968, § 2-95; Ord. of 1-12-1970; Code 1981, § 2-205; Ord. of 5-22-2000; Ord. of 10-8-2007(2))

Sec. 80-525. - Compensation of members.

Members of the general employee pension plan board shall serve without compensation.

(Code 1968, § 2-89; Ord. of 1-12-1970; Code 1981, § 2-206; Ord. of 5-22-2000)

Sec. 80-526. - Meetings.

The general employee pension plan board shall make all rules as to the time and place of meetings; and a majority of its membership shall be required to transact pension board business.

(Code 1968, § 2-94; Ord. of 1-12-1970; Code 1981, § 2-207; Ord. of 5-22-2000)

Sec. 80-527. - Powers.

The general employee pension plan board, in administering the pension plan, shall have the following powers in carrying out the purposes thereof:

- (1) *Payment of funds.* To pay funds to those entitled to receive them. The controller/treasurer shall sign all vouchers for the disbursements of the funds and shall report to the general employee pension board all financial transactions on an annual basis;
- (2) *Purchase annuity contracts.* To purchase and pay the costs of group annuity contracts from any insurance company for the benefit of participants;
- (3) *Employment of agents, employees, etc.* To employ agents, employees or experts to assist the pension board in carrying out the provisions of this division, including an agent to advise and make recommendations concerning the investment of funds, and to pay reasonable compensation for those services, and the compensation may be paid from income or corpus of the pension fund or by direct appropriation by the city council as the pension board and the city council may determine;
- (4) *Investments.* To invest and reinvest money in the pension fund, without any limitation, in United States or state municipal bonds or group annuity contracts. Money in the pension fund may also be invested and reinvested in other types of bonds, stocks, and securities to the extent the pension board may deem best

and as is not prohibited by any law now or hereafter in force limiting the investments of the trustees. The pension board may from time to time change the investments of the fund and, to this end, may make sales of any investment privately, without advertisement and without the necessity of any court order, upon the terms that the pension board deems proper. The funds and investments may also be from time to time turned over to and placed in the custody of any fiscal agent designated by the pension board;

- (5) *Contracts.* To generally contract in matters relevant to effectuating and achieving the purposes of this plan;
- (6) *Pension benefits.* To receive and pay out pension benefits in accordance with the provisions of this division, or designate a fiscal agent to receive and pay out the pension benefits;
- (7) *Rules and regulations.* To make rules and regulations as may be necessary to effectuate this subdivision.

(Code 1968, § 2-93; Ord. of 1-12-1970; Code 1981, § 2-208; Ord. of 5-22-2000; Ord. of 5-12-2003; Ord. No. 2010-13, 6-28-2010)

Sec. 80-528. - City solicitor to render legal services.

The city solicitor shall render whatever legal service the general employee pension plan board shall require.

(Code 1968, § 2-115; Ord. of 1-12-1970; Code 1981, § 2-209; Ord. of 5-22-2000)

Sec. 80-529. - Appeals.

Any employee dissatisfied with the action of the general employee pension plan board shall have the right to appeal to the city council within 30 days from the date of formal notification of that action.

(Code 1968, § 2-116; Ord. of 1-12-1970; Code 1981, § 2-210; Ord. of 5-22-2000)

Sec. 80-530-80-599. – Reserved.

DIVISION 4. – MONEY PURCHASE PLAN (IRC 401(A))

Sec. 80-600. - Established; purpose.

There is hereby established a Money Purchase Plan (IRC 401 (a)). The purpose of the plan is to provide pension (retirement) benefits and to establish the basic terms and conditions under which employees shall participate in this plan. Terms and conditions under which retirement, disability, termination, and survivor benefits shall be provided to eligible employees are defined in the Money Purchase Plan documents. The benefits under the plan shall be in addition to amounts received as social security benefits or from any other employers pension plan.

Sec. 80-601. - For employee exclusively.

This plan is created for the exclusive benefit of the employees of the city and shall be interpreted in a manner consistent with it being an employee's trust, as defined in section 401(a) of the Internal Revenue Code (26 USC 401(a)). Therefore, under no circumstances shall any funds contributed to this plan or any assets of the plan or trust ever revert to or be used or enjoyed by the city, nor shall any such funds or assets ever be used other than for the benefits of the employees of the city and their beneficiaries, prior to the satisfaction of all liabilities under this plan to the employees.

Sec. 80-602. - Eligibility of participants.

Each eligible employee not drawing any retirement benefits from the city as of May 1, 1994, who makes an irrevocable decision to join the Money Purchase Plan, shall, upon compliance with the provisions of this division, become a Money Purchase Plan participant and shall forfeit participation in the general employee pension plan. A member who withdraws from the general employee pension plan in this manner shall have his/her accumulated contributions paid to him/her after such date of withdrawal and he/she shall forfeit any other payments from the general employee pension plan. Thereafter, each eligible employee who selects the Money Purchase Plan upon employment shall become a participant in accordance with the plan.

Sec. 80-603. - Participation mandatory; exceptions.

Each eligible employee not drawing any retirement benefits from the city as of February 1 of each year who makes an irrevocable decision to join the Money Purchase Plan shall become a plan participant on February 1 of that same year and shall forfeit participation in the general employee pension plan. A member who withdraws from the pension plan in this manner shall have his accumulated contributions paid to him after such date of withdrawal and he shall forfeit any other payments from the general employee pension plan.

The Money Purchase Plan shall not be construed to give any employee the right to be retained in the employ of the city. All employees hired after September 28, 2009, except those police officers who are participating in the State of Delaware pension plan, shall be required, as a condition of employment, to join the Money Purchase Plan.

Sec. 80-604. - Defraudment.

It shall be unlawful for any person to knowingly make any false statement or falsify, or permit to be falsified, any record of the pension plan in an attempt to defraud the plan.

Sec. 80-605. - Contributions.

- (a) *Employee contributions.* For each year while a participant of the Money Purchase Plan, a participant shall contribute, by payroll deductions, a percentage

of their compensation, in accordance with the applicable collective bargaining agreements or Money Purchase Plan documents.

For each year while also a participant of the deferred compensation plan, a participant may elect to contribute, by payroll deductions, a percentage of their compensation, which shall be a participant's base pay, plus scheduled overtime, payment for being on-call, except those hours reported for being called out, and any retroactive pay corrections which involve any one of the mentioned payments, up to the legal limits as defined in the collective bargaining agreement or personnel policy.

Employee contributions picked up by the city shall be paid from the same source of funds used for the payment of compensation to an employee. A deduction shall be made from each employee's compensation equal to the amount of the employee's compensation picked up by the employer. This deduction, however, shall not reduce the employee's compensation for purposes of computing benefits under the retirement system pursuant to this division.

- (b) *Employer contributions.* The city shall contribute an amount equal to each individual's employee contributions, in accordance with the appropriate collective bargaining agreements or Money Purchase Plan documents.

The city, pursuant to the provisions of section 414(h)(2) of the United States Internal Revenue Code (26 USC 414(h)(2)), shall pick up and pay the contributions which would otherwise be payable by the employee under this section. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to be withheld from the employee's compensation.

- (c) *Treatment.* Treatment of contributions shall be handled in accordance with federal and state laws.

Sec. 80-606-80-699. - Reserved.

DIVISION 5. - OTHER POST-EMPLOYMENT BENEFITS (OPEB)

Sec. 80-700. - OPEB fund; established.

- (a) There shall be established an OPEB fund, a trust fund, separate and distinct from the General Employee Pension fund and the Police Pension fund, the contributions to which are subject to city appropriations and rules regarding employer and/or employee contributions as may be promulgated, changed or amended from time to time, and to which earnings on investments, refunds and reimbursements shall be deposited upon receipt, and from which the city's premiums shall be paid, and any fees and expenses authorized by the board shall be paid. No money shall be disbursed from this fund except for the purpose of payment of the city's premiums for postretirement health insurance for retired employees, Medicare B premiums for eligible employees, and actuarial and investment consulting fees.

- (b) The amounts remaining in the OPEB fund, if any, after all premiums, fees, and expenses have been paid for any year shall be retained in such trust for future payments until all city liabilities for post-retirement health insurance premium benefits have been satisfied.
- (c) The OPEB fund shall be an irrevocable trust exempt from federal income tax under § 115 of the Internal Revenue Code [26 U.S.C. § 115], remote from city creditors, and subject to the financial reporting, disclosure and actuarial requirements of Government Accounting Standards Board Statements 43 and 45 or any subsequent Government Accounting Standards Board updates or statements that may be applicable.

(Ord. No. 2009-10, 5-11-2009)

Sec. 80-701. - OPEB Board; established; duties.

- (a) The board shall be comprised of the controller/treasurer, human resources director, city manager, and two elected city officials. This board shall adopt a trust agreement for the OPEB fund and may amend the trust agreement from time to time, shall take all actions necessary and appropriate to establish and maintain the OPEB fund, and shall have control and management of the OPEB fund and may utilize its powers pursuant to this chapter in the administration of the OPEB fund.
- (b) The board shall take the actions necessary and appropriate to establish and maintain the OPEB fund as a trust that is exempt from taxation under Internal Revenue Code § 115 [26 U.S.C. § 115]. The trust shall be maintained and administered by the board solely for the benefit of participants, retirees, and beneficiaries by providing payments for retiree health insurance for medical care in compliance with Internal Revenue Code § 105 [26 U.S.C. § 105] and with this chapter as presented and verified by representatives and/or retiree health insurance service providers of the city.
- (c) The board shall have no ability or responsibility for setting benefit levels, handling claims, or arbitrating, mediating or otherwise adjudicating claims appeals. Those responsibilities continue to be handled in accordance with the personnel policies of the city.
- (d) The city shall indemnify a board member in the additional duties contained in this chapter pertaining to the administration and management of the OPEB fund or to sit on a committee of the board who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that the board member is or was a board member against expenses, including attorneys' fees if the city solicitor determines that the city solicitor may not provide representation, judgments, fines and amounts paid in settlement actually and reasonably incurred by that board member in connection with such action, suit or proceeding, if the board member acted in good faith and in a manner the board member reasonably believed to be in the best interest of the city and with respect to any criminal action or proceeding had no reasonable cause to believe that board member's own conduct was unlawful. Expenses incurred in defending a civil, administrative or

investigative action, suit or proceeding shall be paid by the city in advance of final disposition of such action, suit or proceeding if:

- (1) Initially authorized by a majority vote of the board exclusive of the member or members to be indemnified unless more than a majority of the board shall also be parties to the same action, suit or proceeding, in which instance, such authorization shall be by the city council of the City of Dover; and
- (2) Such board member agrees to repay such amount if it is ultimately determined by the board or the city council, as the case may be, pursuant to paragraph (1) that such member is not entitled to indemnification under this section.

(Ord. No. 2009-10, 5-11-2009)

Sec. 80-702. - Actuarial valuations.

- (a) The actuary shall prepare a biennial actuarial valuation of the assets and liabilities of the OPEB fund as prescribed by the Governmental Accounting Standards Board. On the basis of reasonable actuarial assumptions and tables approved by the board, the actuary shall determine:
 - (1) The city's annual determined contribution for payment of the city's premiums for post-retirement health insurance for employees under the personnel policies of the city;
 - (2) Any unfunded actuarial accrued liability.
- (b) The city anticipates making contributions to the OPEB fund in such a manner that it will ultimately contribute its full annual determined contribution within a period of years. In the interim, use of the OPEB fund assets to pay retiree health-care-related premiums will be subject to the appropriations process of the city and the contribution and distribution processes necessary to carry out the efficient processing of retiree premium payments by the city. It is further anticipated that for auditing and reporting convenience, each current year's retiree healthcare expenses will be contributed and distributed from the OPEB fund without respect to whether the full annual required contribution has been deposited.

(Ord. No. 2009-10, 5-11-2009)

Sec. 80-703. – Post-retirement benefits.

- (a) *Retiree health care.*

Health care shall be provided in accordance with the appropriate collective bargaining agreement or City of Dover Personnel Policy.

The City shall provide group hospital, surgical, and health insurance coverage for eligible retired employees and their families in accordance with the appropriate collective bargaining agreement or City of Dover Personnel Policy. The cost of dependent care coverage in retirement is the retiree's responsibility. This applies to all retirees, unless otherwise specified in employee labor agreements.

(1) *Eligibility.* Employees retiring under the following conditions may be eligible for retiree health care:

a. *Normal retirement.* The normal retirement date for each participant shall be the first day of the month following the attainment of the age of 65 years, provided that he has completed ten years of continuous service.

b. *Early retirement.*

(1) *Age 55 with 10 years of service.* A participant who has completed ten years of continuous service and who has attained the age of 55 years may retire at any time within the ten years preceding his normal retirement date.

(2) *Hired May 1, 1994, or later.* For eligible employees hired on or after May 1, 1994, a participant who has attained the age of 55 years, and whose attained age plus years of continuous service is equal to or greater than 80.

(3) *Hired before May 1, 1994.* For eligible employees hired before May 1, 1994, a participant who has completed 25 years of continuous service, or has attained the age of 50 years and completed 20 years of continuous service.

(4) *Permanent disability.* Any employee who, after completing at least ten years of continuous service, shall be injured or whose health shall become permanently impaired to such an extent as to render him/her totally and permanently disabled, shall be eligible upon application to the Human Resources Director and approval by the City Manager.

(5) *Later Retirement.* If a participant works beyond his normal retirement date, the participant's post-employment benefits shall be deferred until his actual retirement.

(b) *Medicare part B premium reimbursements.*

Effective July 27, 2009, Medicare Part B premium reimbursement was discontinued for non-bargaining employees hired after that date. Employees hired on or before July 27, 2009 who were not previously entitled to Medicare Part B premium reimbursement and who were promoted or transferred to a non-bargaining position after May 28, 2013 (date of adoption), shall not be entitled to the reimbursement. The city will provide the standard Medicare Part B premium reimbursement for non-bargaining employees hired on or before July 27, 2009 and those eligible due to promotion or transfer to a non-bargaining position on or before May 28, 2013 (date of adoption), with the understanding that it is not considered a vested right and can be changed or eliminated by council at any time by ordinance or resolution enacted to that effect and, further, as required by Section 3 of the Charter, that the fund for payment of the costs of such premium reimbursement shall be continued, as in the past.

(Ord. No. 2010-05, 4-12-2010; Ord. No. 2013-07, 5-28-2013)

ADOPTED: FEBRUARY 13, 2017

SYNOPSIS

The Ordinance consolidates all pension related ordinances into
a new Chapter 80 - Personnel

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(SPONSORS: COLE, HOSFELT, AND HUTCHISON)

Actions History

02/13/2017 - Final Reading – City Council

01/23/2017 - First Reading – City Council

01/10/2017 - Introduction – Council Committee of the Whole/Legislative,
Finance, and Administration Committee