

AN ORDINANCE REVISING ARTICLE I OF CHAPTER 2.5 “EMPLOYEES’ RETIREMENT FUND,” OF THE CODE OF THE CITY OF FORT WORTH (2015), AS AMENDED, TO ADDRESS COUNCIL AIDE POSITIONS BECOMING MEMBERS OF THE RETIREMENT PLAN AND TO PROVIDE A ONE-TIME, IRREVOCABLE ELECTION ALLOWING THOSE CURRENTLY SERVING NOT TO BECOME MEMBERS OF THE PLAN SO LONG AS CERTAIN IDENTIFIED CONDITIONS ARE MET; PROVIDING THAT THIS ORDINANCE IS CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article 6243i of the Texas Revised Civil Statutes (“Article 6243i”) applies to the Employees’ Retirement Fund of the City of Fort Worth (“the Fund”); and

WHEREAS, Section 1.02 of Article 6243i defines “Participating member” of the Fund as an individual “who makes contributions to the public retirement system as an employee of a municipality to which [Article 6243i] applies,” with such contributions being made on a pre-tax basis; and

WHEREAS, Section 2.01(a) of Article 6243i provides that a person “becomes a participating member . . . on the date of the person’s employment” unless “otherwise provided by administrative rule, municipal ordinance, or this section”; and

WHEREAS, Section 2.01(b) of Article 6243i identifies classes of individuals who are not eligible to be participating members; and

WHEREAS, because participating members can receive retirement benefits via the Fund, the City does not participate in the Social Security program under the Federal Insurance Contributions Act (“FICA”), does not withhold Social Security contributions from individuals’ paychecks, and does not make employer contributions for Social Security benefits; and

WHEREAS, the individuals who assist members of the City Council as council aides or district directors historically worked on a less than full time basis; were traditionally hired, disciplined, and fired directly by the Councilmember; and have not been regular City employees or participating members of the Fund; and

WHEREAS, council aides/district directors are *not* rendered ineligible to be participating members under Section 2.01(b) of Article 6243i; and

WHEREAS, council aides/district directors and those individuals who are ineligible under Section 2.01 have been required to participate in the City’s FICA-alternative plan, which involves

withholding, on a pre-tax basis, a percent of the compensation of each individual not participating in the Fund and placing that amount in a fund from which the individual will receive payment in retirement; and

WHEREAS, in recent years the role of council aide/district director has evolved, with many individuals serving on a full-time basis; and

WHEREAS, the Fort Worth City Council wishes to revise the City's retirement ordinance so that council aides/district directors who are hired in the future automatically become participating members of the Fund on beginning their employment with the City and so that those currently serving as council aides/district directors can join the Fund; and

WHEREAS, some individuals currently serving in the aide/director role have expressed concerns with being required to join the Fund; and

WHEREAS, the Fort Worth City Council wishes to allow individuals serving in the role of council aide/district director at the time the change goes into effect a one-time option of becoming participating members of the Fund or of remaining outside the Fund; and

WHEREAS, to comply with the regulations and guidance of the Internal Revenue Service ("IRS"), elections between alternative pre-tax retirement contributions must result in the same amount being withheld from the individual's paycheck regardless of which option is selected; and

WHEREAS, to comply with IRS requirements, the FICA-alternative contributions for council aides/district directors are being adjusted to align with participating members' contributions to the Fund and going forward the FICA-alternative contributions will track Fund contributions as they go up and down under the terms of automatic risk sharing adjustments and any contribution-rate changes the City Council might approve in the future; and

WHEREAS, per Section 2-27 of the City Code, council aides/district directors serve within a division of the City Manager's Office; and

WHEREAS, any council aide/district director who elects to become a participating member of the Fund would, under Section 2.5-5(b)(3) of the City Code, be a member of group C and entitled to cast votes for and be nominated and/or elected to Place 3 of the board of trustees of the Fund; and

WHEREAS, any council aide/district director who elects not to become a participating member of the Fund would be required to continue participation in the City's FICA-alternative plan and to make contributions to that plan mirroring the contribution that would be made to the

Fund.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

SECTION 1.

That Section 2.5-2, "Membership in the Fund," of the Code of the City of Fort Worth is hereby amended to revise paragraph (a) to add a new sentence addressing individuals serving in a class of positions being converted from non-employee to employee status to allow such individuals to make an election on whether to become members of the Fund, with such section 2.5-2(a) to read as follows:

(a) Membership in the fund shall be based on the requirements set forth in Tex. Revised Civil Statutes Article 6243i, § 2.01, provided however, that membership in the fund shall be a condition of employment for all employees who are eligible to be members unless otherwise provided in subsection (a-1).

(a-1)

(a) An individual who is eligible to be a member may elect not to become a member of the fund only if all of the following conditions are met.

(1) The individual has, for at least one full pay period prior to making the election, been serving in a position that is part of a class of position that is not eligible to be a member of the Fund but that is participating in the City's social security alternative plan, also known as the FICA alternative plan.

(2) The class of position described in paragraph (1) is being eliminated and replaced with a class of position that will be eligible to be a member of the Fund.

(3) The contribution rate under the FICA alternative plan for the class of position being eliminated and the contribution rate under the Fund for the replacement class of position are the same at the time of the election and will continue to be the same thereafter.

(4) An individual who elects not to become a participating member of the Fund shall be required to continue participating in and making contributions to the FICA-alternative plan.

(5) An election is offered and may be made no more than once.

(6) The election is required to be and actually is made prior to first date for which a contribution under the Fund is scheduled to be made for the replacement class of position.

(7) The election is irrevocable.

(b) An individual who fails to make an election or whose attempt to elect does not fully comply with all conditions listed in subsection (a) shall become a member of the Fund effective as of the first date for which a contribution under the Fund is made for the replacement class of position.

SECTION 2.

That this ordinance shall be cumulative of all provisions of ordinances of the Code of the City of Fort Worth, Texas (2015), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

That it is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall render the entire section invalid and section will revert back to the section in effect prior to the passage of this ordinance. Otherwise, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4.

That the City Council finds that all acts, conditions and things required by provisions of the Constitution of Texas and Charter and Ordinances of the City of Fort Worth precedent to and in the adoption of this Ordinance have been done, have happened and have been performed in proper and lawful time.

SECTION 5.

That this ordinance shall take effect on January 1, 2022 and shall apply to all service rendered to the City on or after that date.

APPROVED AS TO FORM
AND LEGALITY:

ATTEST:

By: _____
Assistant City Attorney

By: _____
Jannette Goodall, City Secretary