



Legal Department

DATE: January 9, 2024

FROM: Jannelle Combs, City Attorney

ITEM: Public hearing on Ordinance 6568 to amend the city pension.

REQUEST:

Hold a public hearing on Ordinance 6568 to amend the City Employee Pensions.

BACKGROUND INFORMATION:

This item was introduced at the December 12, 2023, meeting with action to call for a public hearing on December 26, 2023. Due to publication constraints, the public hearing was not able to be advertised ten days prior to the public hearing; therefore, the public hearing was extended to the January 9, 2024, meeting. The City's pension plan has two different contribution and eligibility processes: one for city police officers and another for the remainder of the city employees. Typically, the plans will have a review every few years with expert pension counsel as the Internal Revenue Service changes its laws regularly. That review has been completed, and several changes need to be made. We also included a change to the levy. The state law was amended to eliminate the specific levy for pension plans and allow cities to levy taxes for their pension plans under the general levy. One change that is not yet in law that we must amend but will need to do so soon is the RMD age, which was increased to 72 under the SECURE Act and increased to 73 in 2023 and 75 in 2033 under SECURE 2.0. These are required changes that do not have to be formally adopted yet (however, the plan must operationally meet these requirements. However, please note there are additional RMD changes that apply to defined benefit plans that we did not include in this amendment. There are lots of questions about these additional RMD changes, so we recommend waiting to adopt an amendment for those changes until the IRS issues regulations. The IRS has extended the deadline to adopt these amendments generally until 12/31/2025; however, there is an even further delayed deadline for governmental plans, which is 90 days after the close of the third regular legislative session of the legislative body with authority to amend the plan that begins after December 31, 2023.

RECOMMENDED CITY COMMISSION ACTION:

Hold public hearing for Ordinance 6568, relating to city police employee pensions and consider for final action.

STAFF CONTACT INFORMATION:

Jannelle Combs, City Attorney, 701-355-1342, jcombs@bismarcknd.gov

ATTACHMENTS:

1. Ord 6568 Bismarck - Ordinance - City Pension Plan - IRC Required Amendments

**CITY OF BISMARCK
ORDINANCE NO. 6568**

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND CHAPTER 9-07 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.), AS AMENDED, RELATING TO THE CITY EMPLOYEE PENSION PLAN

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amend. Section 9-07-05 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Military Service is hereby amended to read as follows:

9-07-05. Military Service. Any employee of the city subject to the provisions of this chapter who has resigned or who resigns to serve in the Army, Navy, Air Force or Marine Corps, or Reserves of the United States, or who has been selected for training under the Selective Service Provisions of the Laws of the United States and who has returned with an honorable discharge or other document showing honorable service, and who applies for reemployment with the city within 90 days of discharge, shall have the period of military service included as part of his or her period of service in the city, provided that credit allowed for military service shall not exceed a total of five years. Any employee who seeks credit for military service shall, upon return to the employment of the city, pay into the fund for each year of military service, five percent of the last full year's salary paid by the city, or five percent of annual military pay, whichever is less. Notwithstanding the foregoing, effective December 12, 1994, contributions, benefits and service credited with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u). In addition, the beneficiary of any participant, who dies on or after January 1, 2007, while performing qualified military service (as defined in Internal Revenue Code Section 414(u)), is entitled to any additional benefits (other than contributions relating to the period of qualified military service, but including vesting service credit for such period and any other survivor benefits) that would have been provided under the plan had the participant resumed employment on the day preceding the participant's death and then terminated employment on account of death.

(Ord. 5041, 04-11-00)

Section 2. Amend. Section 9-07-09 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Contribution of the City is hereby amended to read as follows:

9-07-09. Contribution of City. The board of city commissioners shall annually levy a tax as may be needed to maintain the pension fund in a sound actuarial condition, the proceeds of which shall be placed in the pension fund. The levy shall be included in the levy ~~in addition to any other levies~~ authorized by law for a general purpose; provided, however, that when there is a sufficient balance in the fund to meet any proper or legitimate charges that may be made against it, the city shall not be required to levy a tax for this purpose.
(Ord. 5153, 01-08-02)

Section 3. Amend. Subsection 7 of Section 9-07-15 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Pension Eligibility; Computations; Required Distributions, Distributions Upon Death is hereby amended to read as follows:

7. Distributions Upon Death.

(a) Death After Commencement of Benefits. If distribution of an employee's interest has begun in accordance with subsection 1, 2, or 3 of this section 9-07-15, and the employee dies before his or her entire interest has been distributed to him or her, then the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of his or her death.

(b) Death Before Commencement of Benefits. If an employee dies before distribution of the employee's interest has begun, the entire interest of the employee shall be distributed no later than December 31 of the calendar year which contains the fifth anniversary of the date of the employee's death. This five-year distribution rule shall not apply if (1) any portion of the employee's interest (or of the deceased spouse of such employee, as provided below) is payable to or for the benefit of a designated beneficiary, as determined pursuant to Proposed Treasury regulations § 1.401(a) (9)-1 (or any successor regulation); (2) this portion will be distributed over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of the designated beneficiary), and (3) the distributions commence no later than December 31 of the calendar year immediately following the calendar year in which the employee died. If the surviving spouse is the beneficiary and dies before payments are deemed to have begun, the five-year distribution rule and the exception to

it stated in this paragraph are to be applied as if the surviving spouse were the employee and the spouse's date of death shall be substituted for the employee's date of death.

This five-year distribution rule shall also not apply if: (1) the portion of the employee's interest to which the surviving spouse is entitled will be distributed over the life of the surviving spouse (or over a period not extending beyond the life expectancy of the surviving spouse, which may be recalculated not more frequently than annually); and (2) the distributions commence on or before the later of December 31 of the calendar year in which the employee would have attained ~~age 70 1/2~~ the "applicable RMD age" or December 31 of the calendar immediately following the calendar year in which the employee died.

(c) Designated Beneficiary. For purposes of this section, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

Section 4. Amend. Subsection 8 of Section 9-07-15 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Pension Eligibility; Computations; Required Distributions, Required Distributions is hereby amended to read as follows:

8. Required Distributions. Notwithstanding any provision of the plan to the contrary, the following provisions shall control:

(a) General Rule. The entire interest of each employee shall be distributed to such employee not later than the required beginning date (as defined below), or will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(b) Required Beginning Date. For purposes of this section, the term "required beginning date" means April 1st of the calendar year following the later of (i) the calendar year in which the employee attains ~~age 70 1/2~~ the "applicable RMD age"; or (ii) the calendar year in which the employee retires.

For purposes of this section 9-07-15, "applicable RMD age" means age 70 1/2 for a participant born on or before June 30, 1949; age 72 for a participant born after June 30, 1949 and before January 1, 1951; age

73 for a participant born on or after January 1, 1951 and before January 1, 1960; or age 75 for a participant born on or after January 1, 1960.

(c) Designated Beneficiary. For purposes of this section, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(d) Continued Service Beyond Age 62. An employee may at his or her request be continued in employment beyond age 62. In such event, no retirement benefit will be paid to such employee until he or she actually retires, subject, however, to any required minimum distributions pursuant to this section 9-07-15. Such an employee shall continue to accrue credit for years of service after attainment of age 62, and changes in average basic monthly compensation shall also be taken into account.

~~(e) All required minimum distributions required under this section 9-07-15 shall be determined and made in accordance with a reasonable good faith interpretation of Internal Revenue Code Section 401(a)(9) and any regulations promulgated thereunder. With respect to distributions under the city employee pension plan made for calendar years beginning on or after January 1, 2001, the plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.~~

Section 5. Amend. Subsection 2 of Section 9-07-20 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Direct Rollovers is hereby amended to read as follows:

2. Definitions.

A "direct rollover" is an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the distributee.

"Distributee" means the employee or the surviving spouse of an employee.

An “eligible retirement plan” is an individual retirement account described in Internal Revenue Code Section 408(a), a Roth individual account or annuity described in Internal Revenue Code Section 408A, an individual retirement annuity (other than an endowment contract) described in Internal Revenue Code Section 408(b), a qualified defined contribution or defined benefit retirement plan that accepts rollover distributions, or an annuity plan described in Internal Revenue Code Section 403(a) that accepts rollover distributions. Notwithstanding the foregoing, if the distributee is the employee’s surviving spouse, “eligible retirement plan” shall mean either an individual retirement account or an individual retirement annuity (other than an endowment contract).

For the purposes of the direct rollover provisions in this Section 9-07-20, for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Internal Revenue Code Section 403(b) and an eligible plan under Internal Revenue Code Section 457(b) 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 and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p).

“Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of an employee in a qualified plan, provided, however, that an eligible rollover distribution does not include:

- (a) any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, for the life or life expectancy of the distributee, or for the joint lives or life expectancies of the distributee and his or her spouse or designated beneficiary, or for a specified period of 10 years or more;
- (b) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9), relating to minimum distribution requirements; or
- (c) the portion of any distribution that is not includible in income.

Section 6. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent remaining portions of this ordinance.

Section 7. Effective Date. This ordinance shall take effect after final passage and adoption.