

EMERGENCY

City of Cincinnati

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An Ordinance No. \_\_\_\_\_

- 2021

**MODIFYING** Article XV, "Retirement System," of the Administrative Code of the City of Cincinnati by amending Section 1, "Board of Trustees," Section 3, "Organization of Board," Section 7, "Actuary," and Section 9, "Actuarial Investigations," to harmonize the Administrative Code with the provisions of the Collaborative Settlement Agreement reached in *Sunyak, et al. v. City of Cincinnati, et al.*, Case Number 1:11-cv-445 in the United States District Court, Southern District of Ohio, Western Division.

WHEREAS, on May 7, 2015, the City of Cincinnati entered into a Collaborative Settlement Agreement ("CSA") to resolve multiple consolidated court cases against the City that were pending in the United States District Court for the Southern District of Ohio, Western Division, in Case Number 1:11-cv-445; and

WHEREAS, the terms of the CSA prevail over conflicting provisions of Article XV of the Administrative Code; and

WHEREAS, amendment of the Administrative Code to conform it to the terms of the CSA and current policies and procedures of the Cincinnati Retirement System provides increased clarity and transparency; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio, with three-fourths of its members concurring:

Section 1. That existing Section 1, "Board of Trustees," Section 3, "Organization of Board," Section 7, "Actuary," and Section 9, "Actuarial Investigations," of Article XV, "Retirement System," of the Cincinnati Administrative Code are hereby amended to read as follows:

**Sec. 1. Board of Trustees.**

a) The general administration and responsibility for the proper operation of the retirement system shall be vested in a board of trustees. The board of trustees shall consist of ~~eleven~~ nine members:

- i. ~~Six~~ Four members with qualifications specified in subsection (b) shall be appointed by the Mayor with the advice and consent of Council.

- ii. ~~Four~~ Two members, who ~~may~~shall be employee members of the system, shall be elected by deferred ~~members~~ retirees and active members, as defined in Sections 203-1-~~DM1~~ and 203-1-A23, who are not currently receiving a retirement benefit.
  - iii. ~~One~~ Three members, who ~~may~~shall be a retired members of the system, shall be elected by persons who are receiving retirement allowances, optional benefits, or survivor benefits from the system.
- b) ~~The Mayor shall appoint a nominating committee to recruit and recommend candidates for appointment to the board. At least two of the~~ The appointed members of the board shall have the following qualifications:
- i. ~~Baccalaureate degree from an accredited college or university in~~ finance, economics, business, or other field of study involving financial management; or addition to the expertise required pursuant to subsection (b)(ii) herein.
  - ii. ~~A minimum of ten years of experience in~~ pension administration, pension actuarial practice, institutional investment management, employee benefits/investment law, banking, asset/liability management for an insurance company, or university or college professor with a focus on fiduciary or trust fund law or quantitative background in financial theory or actuarial math. corporate or municipal finance, institutional investments, law, corporate governance, risk management, health care administration, employee benefits, retirement plan administration, insurance or actuarial science.
  - iii. ~~Except for any appointed member appointed on the basis of expertise in municipal finance, the appointed member shall not be a current or former City employee; a current or former appointed City official; a participant, retiree, or beneficiary in the retirement system; a representative from any union representing City employees; or an immediate relative or spouse of a City employee or City retiree.~~
  - iiiv. ~~The appointed member shall not have any business, personal, or family interests related to the~~ City or the retirement system that would constitute a conflict of interest, or that would create the appearance of a conflict of interest, with the duties of a trustee. Being a member of the Cincinnati Retirement System or a beneficiary of the Cincinnati Retirement System shall not constitute a conflict of interest.
  - iv. ~~Residency shall not be considered as a qualification for~~ any appointed member.
  - vi. ~~A current or former elected~~ City official appointed as a member of the board pursuant to this subsection b)iii herein does not have to meet the requirements of subsection b)i and b)ii of this section. No more than two current or former elected City officials appointed as members of the board pursuant to this subsection b)iii herein shall be eligible to simultaneously serve as members of the board.
- c) ~~Board members shall serve four-year terms, except that:~~
- i. ~~when the Mayor makes initial appointments to the board under this Article, the Mayor shall appoint two members to serve four-year terms, two members to serve~~

~~three-year terms, and two members to serve two-year terms, so that the terms overlap to establish continuity in board membership from year to year.~~

ii. for the initial election of the board members elected pursuant to subsection a)ii of this section, the ~~two~~ active employee candidates with the highest vote totals shall serve a four-year terms and the ~~other two~~ active employee candidates with the next highest vote totals shall serve a two-year terms.

iii. for the initial election of the board members elected pursuant to subsection a)iii of this section, the two retiree candidates with the two highest vote totals shall serve four year terms and the retiree candidate with the third highest vote total shall serve a two year term.

d) Each board member may serve up to three four-year terms, either consecutive or non-consecutive, except that persons serving ~~three-year or two-year terms upon the~~ their initial appointments to the board may serve the initial term and two subsequent four-year terms.

e) Each board member shall hold office from the first date of the term until the end of the term for which the member was appointed. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the unexpired term. Any member shall continue in office after the expiration date of the member's term until the member's successor takes office, or until a period of thirty days has elapsed, whichever occurs first.

i. Appointed members: A vacancy on the board shall be filled in the same manner as the original appointment,~~; however, if the vacancy is not filled within ninety days, the board members may appoint a member to complete the unexpired term.~~

ii. Elected members: If the remaining portion of the unexpired term is ~~six~~nine months or less, the position will remain vacant until the next regularly-scheduled election. If the remaining portion of the unexpired term is more than ~~six~~nine months, ~~the entity whose representative position is vacant shall nominate candidates to fill the unexpired term. The board shall choose a member to fill the vacancy from the nominated candidates~~ an election to elect a new board member shall be held in accordance with the election rules promulgated by the board, regarding vacancies of more than six ~~ten~~ months.

f) An entity authorized to appoint or elect a member under subsection a) shall remove its appointee or representative from the board for any act of misconduct involving the trustee's duties, including breach of fiduciary duty and failure to properly discharge the duties of the trustee, to the extent permitted by state law.

g) The board shall meet regularly and shall convene other meetings at the request of the chairperson or a majority of the members. A member who fails to attend at least ~~three-fifths~~two-thirds of the regular and special meetings of the board during any two-year period forfeits membership on the board.

h) The board shall report to ~~Council~~council at least ~~quarterly~~annually on the following issues:

i. Success at meeting the investment and funding objectives.

- ii. Investment performance and attribution.
  - iii. Compliance with conflict of interest and ethics policies.
  - iv. Compliance with benefit delivery policies.
  - v. Results of external and internal audit findings and follow-up efforts.
  - vi. Board member attendance, travel, and educational efforts.
- i) The board shall vote to disqualify any candidate from seeking election to the board or any member from remaining as a board trustee for any of the following reasons:
- i. Finding of dishonesty in any civil proceeding or disciplinary decision.
  - ii. Conviction of a felony for an act committed while the candidate or member was an adult.
  - iii. Failure to comply with election requirements established by the board.

**Sec. 3. - Organization of Board.**

The board shall elect from its membership a chair and vice-chair. The ~~manager~~ executive director of the retirement system shall be secretary, ex officio, of the board, but shall not vote on items considered by the board. At least ~~seven~~ six board members shall be present for the board to meet. The concurring votes of ~~six~~ five board members ~~trustees~~ shall be necessary for any decision by the board.

**Sec. 7. - Actuary.**

The board shall ~~designate~~ approve an actuary who shall be its technical adviser on matters regarding the operation of the retirement system and shall perform such other duties as are required in connection therewith. The retention of the actuary shall follow the city's established procurement process. The board shall keep in convenient form such data as shall be necessary for actuarial valuation of the retirement system and for checking the experience of the retirement system.

**Sec. 9. - Actuarial Investigations.**

At least once in each five-year period, the board shall cause an actuarial investigation to be made into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system, and shall make a valuation of its assets and liabilities. Taking into account the results of such investigation and valuation, the board shall:

- (a) Adopt such mortality service and other tables as it shall consider necessary; and
- ~~(b) Certify the rates of contributions payable by members in accordance with ordinance provisions;~~
- ~~(be) Certify the rates of contribution payable by the city on account of new entrants at various ages~~ Cause an actuarial valuation to be made of the assets and liabilities of the retirement system at least once every two years.

Section 2. That existing Section 1, "Board of Trustees," Section 3, "Organization of Board," Section 7, "Actuary," and Section 9, "Actuarial Investigations," of Article XV, "Retirement System," of the Cincinnati Administrative Code are hereby repealed.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter be effective immediately. The reason for the emergency is the immediate need to update the Administrative Code so that the Board of the Cincinnati Retirement System's ability to meet and conduct business is not affected.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

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New language underscored. Deletions indicated by strike-through.