

MACOMB COUNTY EMPLOYEES RETIREMENT SYSTEM ORDINANCE



HISTORY:

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SECTION 1. ESTABLISHMENT AND PURPOSE

Under the authority of Section 12a of Act No. 156 of the Public Acts of 1851, as added by Act No. 249 of the Public Acts of 1943, as amended, there is hereby established the Macomb County Employees Retirement System, for the purpose of providing pension and retirement benefits for the employees of the County of Macomb and employees and officials of its several offices, departments and boards, including the County Board of Road Commissioners and its employees.

SECTION 2. DEFINITIONS

The following words and phrases as used in this Ordinance, unless a different meaning is clearly required by the context, shall have the following meanings:

- (1) "Accumulated Contributions" means the sum of all amounts deducted from the compensations of a member or paid in and credited to his/her individual account in the employees savings fund, together with regular interest thereon.
- (2) "Beneficiary" means any person, except a retirant, who is in receipt of, or who is designated to receive, a retirement allowance, pension, or other benefit, payable by the Retirement System.
- (3) "Compensation" means the salary or wages paid a member by the County for personal services rendered by him/her to the County, including cost of living allowance, longevity, sick leave, annual leave, overtime, holidays, retroactive wages, court time, per diem, commissioner special pays, shift leader pay, beeper pay, stand by pay, Martha T. Berry and Youth Home special pay and marine law pay. A member's annual compensation in excess of \$200,000 (as adjusted from time to time by the Internal Revenue Service) shall not be considered for purposes of calculating a member's retirement allowance under the Retirement System.

For Purposes of applying the limitations on benefits in Section 51, compensation shall include elective deferrals as defined in Code Section 402(g)(3) and any amount which is contributed or deferred by the County at the request of the Employee and which is not includible in the gross income of the employee by reason of Code Section 125, 135(f)(4) or 457.

In addition to other applicable limitations set forth in the Retirement System, and notwithstanding any other provision of the Retirement System to the contrary, for Retirement System fiscal years beginning on or after January 1, 1994, the annual compensation of each member taken into account under the Retirement System shall not exceed the OBRA '93 annual compensation limit. The OBRA '93' annual compensation limit is \$150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For Retirement System fiscal years beginning on or after January 1, 1994, any reference in the Retirement System to the limitation under Code Section 401(a)(17) shall mean the OBRA '93 annual compensation limit set forth in this provision.

If compensation for any prior determination period is taken into account in determining a member's benefits accruing in the current fiscal year of the Retirement System, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first fiscal year of the Retirement System beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

- (4) "County" means the County of Macomb, State of Michigan, and shall include the Macomb County Road

Commission, the Human Services Board and the Martha T. Berry Medical Care Facility.

(5) "County Pension" means any annual amount, derived from money provided by the County, payable in equal monthly installments throughout the future life of a person, or for a temporary period as provided in this Ordinance.

(6) "County Pension Reserve" means that present value of all payments to be made on account of any County pension. The County pension reserve shall be computed upon the basis of such mortality and other tables of experience, and regular interest, as the Retirement Commission shall from time to time adopt.

(7) "Credited Service" means service standing to a member's credit to the extent provided in this Ordinance.

(8) "Employee" means any person who is in the employ of the County and who is paid by the County 25 percent or more of all remuneration received by him/her for personal services rendered by him/her to all government units.

An employee includes judges of the Circuit Court, District Court and Probate Court employed by the County, based on the portion of his/her annual judicial salary attributable to the County.

An employee also includes persons employed at the Martha T. Berry Medical Care Facility regardless of whether or not that facility or the Human Services Board that supervises and operates that facility has a separate federal employer identification number.

For purposes of crediting service rendered, employees shall be considered as either of two classes:

(a) Full-time employees are those whose appointments to positions normally requiring 37.5 hours or more per week.

(b) Part-time employees are those persons whose appointments are to a position normally requiring 1,000 hours or more per year but less than 37.5 hours per week.

(9) "Employee Pension" or "Annuity" means an annual amount, derived from a member's accumulated contribution, payable in equal monthly installments throughout the future life of a person, or for a temporary period as provided in this Ordinance.

(10) "Employees Pension Reserve" or "Annuity Reserve" means the present value of all payments to be made on account of any employee pension or annuity. The employee pension reserve or annuity reserve shall be computed upon the basis of such mortality tables and regular interest as the Retirement Commission shall from time to time adopt.

(11) "Final Average Compensation" means the average of the highest annual compensations received by a member during a period of four consecutive years of his/her credited service contained within his/her ten years credited service immediately preceding the date his/her employment by the County terminates. If he/she has less than five years of credited service, his/her final average compensation shall be the average of his/her annual compensation for his/her total period of credited service, provided, however, that the final average compensation of a member who is a Circuit Court Judge, District Court Judge or Probate Judge, when combined with the member's final salary under the Probate Judges' Retirement System or the Judges' Retirement System shall not exceed the member's total annual judicial salary, payable from all State and County sources, at the time of the member's retirement.

(12) "Final Compensation" means a member's annual compensation, which includes cost of living allowance, longevity, sick leave, annual leave, overtime, holidays, retroactive wages, court time, per diem, commissioner special pays, shift leader pay, beeper pay, stand by pay, Martha T. Berry and Youth Home special pay and marine law pay, at the time he/she last terminates his/her employment with the County.

- (13) "Member" means any person included in the membership of the Retirement System.
- (14) "Regular Interest" means such rate or rates of interest per annum, compounded annually, as the Retirement Commission shall from time to time adopt, subject to the approval of the County Board of Commissioners.
- (15) "Retirant" means any member who retires with a retirement allowance payable by the Retirement System.
- (16) "Retirement" means a member's withdrawal from the employ of the County with a retirement allowance paid by the Retirement System.
- (17) "Retirement Allowance" means the sum of the employee pension and County pension payable to a retirant or beneficiary.
- (18) "Retirement Commission" or "Commission" means the Retirement Commission created in this Ordinance.
- (19) "Retirement System" or "System" means the Macomb County Employees Retirement System established effective May 1, 1946.
- (20) "Service" means personal service rendered to the County.
- (21) "Worker's Compensation Period" means the period a person is in receipt of worker's compensation on account of a member's disability or death arising out of and in the course of his/her County employment. If the said person is paid a single sum in lieu of his/her future worker's compensation, his/her "worker's compensation period" shall be the period, if any, he/she was in receipt of weekly worker's compensation, plus the period arrived at by dividing the said single sum by his/her weekly worker's compensation award.
- (22) Words of the plural number with respect to persons shall include the singular number, and vice versa.

SECTION 3. RETIREMENT COMMISSION CREATED

There is hereby created a Retirement Commission in whom is vested the general administration, management and responsibility for the proper operation of the Retirement System, and for construing and making effective the provisions of this Ordinance.

SECTION 4. RETIREMENT COMMISSION MEMBERS

The Retirement Commission shall consist of seven commissioners, as follows:

- (a) The County Executive or his/her designee.
- (b) The Treasurer or his/her designee.
- (c) The chairperson of the Board of Commissioners or his/her Board of Commissioners' designee.
- (d) The director of the department responsible for the functions formally performed by the County Road Commission.
- (e) Three active employees of the Retirement System elected by active employees. The election of the members pursuant to this subsection shall be conducted in the manner provided by the rules and regulations adopted by the Retirement Commission to govern such elections.

(f) One additional non-voting member shall be elected by retired County employees in the manner provided by the rules and regulations adopted by the Retirement Commission.

SECTION 5. COMMISSIONER'S TERM OF OFFICE

The regular term of the position of commissioner for the commissioners provided in Section 4(e) shall be three years; one such term to expire annually.

SECTION 6. OATH OF OFFICE

Each member of the Retirement Commission shall, before assuming the duties of commissioner, take an oath of office to be administered by the County Clerk.

SECTION 7. VACANCY ON COMMISSION

A vacancy shall occur in the position of commissioner upon the separation of any commissioner from County service. A vacancy shall also occur if a commissioner resigns or if a member elected commissioner becomes employed in the same department as another member elected commissioner. If a vacancy occurs in the position of commissioner through separation from County service, or for other reasons, the vacancy shall be filled within 90 days after the date of the vacancy, for the unexpired term, in the same manner as the position was previously filled.

SECTION 8. COMMISSION CHAIRPERSON – MEETINGS

The Retirement Commission shall elect from its members a chairperson and a vice-chairperson. It shall adopt its own rules of procedure and shall keep a record of its proceedings. The Retirement Commission shall hold meetings regularly and shall designate the time and place thereof. All meetings of the Retirement Commission shall be public.

SECTION 9. QUORUM – VOTING

Each commissioner shall be entitled to one vote on each question before the Commission. Four commissioners shall constitute a quorum and at least four concurring votes shall be necessary for a decision by the commissioners at any meeting of the Commission.

SECTION 10. COMPENSATION OF COMMISSIONERS

The commissioners provided for in Section 4 shall receive the same per diem compensation payable to members of the Macomb County Board of Commissioners for meetings, conferences, seminars and other activities, as approved by the Retirement Commission, except that the commissioners provided for in Section 4(e) shall serve without additional compensation for services rendered during regularly scheduled working hours. All commissioners shall be entitled to all expenses actually and necessarily incurred in attending meetings of the Retirement Commission and in performing required services as commissioners.

SECTION 11. OFFICERS AND ADVISERS OF THE RETIREMENT SYSTEM

(a) Professional and Other Services. The Retirement Commission shall employ such professional and other services as the Commission determines as shall be required for the proper operation of the Retirement System. Such services shall be paid in accordance with applicable laws. Employees so engaged shall be engaged and compensated in the same manner that similar employment is engaged and compensated by the departments of Macomb County government.

(b) Secretary. In the absence of an appointed Retirement System administrative officer, the County Finance Director shall be the secretary of the Retirement Commission and the administrative officer of the Retirement System. If there is an administrative officer, the Finance Director shall be a budget and finance adviser to the

Retirement Commission.

- (c) Legal Advisor. The County Corporation Counsel shall be legal adviser to the Retirement Commission.
- (d) Treasurer. The County Treasurer shall be treasurer of the Retirement Commission.
- (e) Custodial Agent(s). The Retirement Commission shall appoint a custodial agent or agents who are not eligible to participate in the Retirement System either as a member or a beneficiary, to serve as custodian of the assets of the Retirement System. The custodial agent(s) shall give to the Retirement Commission regular accountings of the assets of the Retirement System and shall be directly responsible to and shall hold office at the pleasure of the Retirement Commission.
- (f) Actuary. The Retirement Commission shall appoint an Actuary who is not eligible to participate in the Retirement System either as a member or as a beneficiary, to serve as the technical adviser to the Retirement Commission on matters regarding the operation of the Retirement System on an actuarial basis, and who shall perform such other services as are required in connection therewith. The Actuary shall be directly responsible to and shall hold office at the pleasure of the Retirement Commission.
- (g) Medical Director. The Retirement Commission shall appoint as Medical Director a physician who is not eligible to participate in the Retirement System as a member nor as a beneficiary. The Medical Director shall be directly responsible to and hold office at the pleasure of the Retirement Commission; he/she shall arrange for and pass upon all medical examinations required under the provisions of the Retirement System; he/she shall investigate all essential statements and certificates of a medical nature by or on behalf of a member, or other claimant, in connection with any application for disability retirement, or death in line of duty benefits; he/she shall report in writing to the Retirement Commission his/her conclusions and recommendations on matters referred to him/her by the Commission. The Retirement Commission may also consult with other specialists as the need arises.

SECTION 12. USE OF MONIES AND ASSETS; PROHIBITED ACTIONS

- (a) All monies and assets of the Retirement System shall be held and invested for the sole purpose of meeting the legitimate obligations of the Retirement System and shall be used for no other purpose.
- (b) Members of the Retirement Commission and its employees are prohibited from:
 - (1) Having a beneficial interest, direct or indirect, in an investment of the Retirement System.
 - (2) Borrowing Money or assets of the Retirement System.
 - (3) Receiving any pay or emolument from any individual or organization providing services to the Retirement System other than compensation for services or reimbursement of authorized expenses paid by the Retirement System.

SECTION 13. RECORDS

The secretary shall keep, or cause to be kept, such data as shall be necessary for an actuarial valuation of the assets and liabilities of the Retirement System.

SECTION 14. REPORT TO BOARD OF COMMISSIONERS

- (a) The Retirement Commission shall render an annual report to the County Board of Commissioners showing the fiscal transactions of the Retirement System for the year ending the preceding 31st day of December and a balance sheet showing the financial condition of the Retirement System by means of an actuarial valuation of the assets and liabilities of the Retirement System. The Retirement Commission shall

furnish any information requested by the County Board of Commissioners concerning the Retirement System to said Board of its duly authorized representatives.

(b) The Retirement Commission shall be subjected to an abide by all policies established by the Macomb County Board of Commissioners providing those are not in conflict with State law.

SECTION 15. MORTALITY AND OTHER TABLES

The Retirement Commission shall from time to time adopt such mortality and other tables of experience, and a rate or rates of regular interest, as are necessary in the Retirement System on an actuarial basis. For purposes of determining actuarial equivalent Retirement Allowances, the Retirement Commission is currently using 7 ½% interest rate and a RP 2000 Mortality Table, adjusted for projected mortality improvements to 2015 with no setbacks for males or females; provided, however, that for purposes of determining the actuarial equivalent of an Employee's accumulated contribution standing to his/her credit in the employee savings fund, the Retirement Commission is currently using the interest rate used by the Pension Benefit Guaranty Corporation for purposes of immediate lump sum payments determined for the month of January or July that immediately precedes the date on which the Member applies for his of her Retirement Allowance under the Retirement System.

SECTION 16. MEMBERSHIP OF THE RETIREMENT SYSTEM

The membership of the Retirement System shall consist of the following:

(a) All persons who are either full-time or part-time employees of the County, and all persons who become full-time or part-time employees of the County shall become members of the Retirement System, except as provided in Subsection (d) of this section.

(b) The elected County officials, including members of the Macomb County Board of Commissioners, who serve at the pleasure of the electorate shall have the option of becoming members of the Macomb County Employees Retirement System.

(c) Members of the Macomb County Board of Road Commissioners shall have the option of becoming members of the Macomb County Employees Retirement System.

(d) The membership of the Retirement System shall not include (1) any person engaged for special services on a contract or fees basis, nor (2) the medical director, nor (3) the Actuary, nor (4) any temporary employee, nor (5) any County employee who is included by law in any other pension or retirement system, except the Federal Social Security System, by reason of the compensation he/she receives from the County, nor (6) any member of a board or commission paid exclusively on a per diem basis, nor (7) any person receiving a pension from the Macomb County Employees Retirement System, nor (8) any person whose appointment is to a position normally requiring less than 1,000 hours or more per year.

(e) In all cases of doubt, the Retirement Commission shall decide who is a member of the Retirement System within the meaning of the provisions of the Ordinance.

(f) Under such rules and regulations as the Retirement Commission shall from time to time adopt, each member shall furnish such information as the Commission may require for the proper operation of the Retirement System.

SECTION 17. MEMBERSHIP CEASES

Except as otherwise provided in this Ordinance, should any member no longer be employed by the County in a position normally requiring 1,000 hours or more per year, for any reason except to become a retiree or his/her death, she/she shall thereupon cease to be a member. The former member shall be eligible for a refund of his/her accumulated contributions, and upon such refund, his/her credited service at that time shall be forfeited

by him/her.

SECTION 18. MEMBERSHIP REINSTATEMENT

Except as otherwise provided in this Ordinance, in the event a former member is re-employed by the County, he/she shall again become a member of the Retirement System. Should his/her re-employment occur within a period of three years from and after the date he/she last separated from County service, his/her credited service forfeited by him/her at the time he/she last separated from County service shall be restored to his/her credit: Provided the member shall, within one year from and after his/her re-employment by the County, pay into the employees' savings fund, by a single contribution, or by an increased rate of contribution as approved by the Commission, the amounts he/she may have withdrawn therefrom and not returned thereto together with regular interest thereon from the date of withdrawal to the date of repayment.

SECTION 19. SERVICE CREDITABLE

(a) In accordance with such rules and regulations as the Retirement Commission shall from time to time adopt, the Commission shall credit each member with the number of years and months of service to which he/she is entitled; but in no case, shall less than ten days of service rendered in a calendar month be credited as a month of service; nor shall less than ten months of service be rendered in a calendar year be credited as a year of service; nor shall more than one year of service be credited any member for all service rendered by him/her in a calendar year.

(b) Upon the adoption of any amendment to the Macomb County Employees Retirement System Ordinance that extends membership to an employee not heretofore covered, such employee shall receive credit for services rendered in the employ of the County during a period of eight years immediately preceding the effective date of such amendment; provided that he/she pays into the employees savings fund, by a single contribution or by an increased rate of contribution as approved by the Commission, the amount he/she would have paid had he/she been a member during such period of service, together with regular interest.

(c) For a member who is a part-time employee, as defined in this Ordinance, for any portion of a calendar year, service credit in a calendar year shall be one year multiplied by the following fraction: the numerator shall be the number of hours worked during the year, and the denominator shall be full-time hours for the year. Not more than one year of service shall be credited any member for all service rendered by him/her in any calendar year.

(d) Subject to the provisions of this Ordinance and to such rules and regulations as the Commission may from time to time adopt, the Commission shall credit each member's service account with the number of years and months of service for which he/she is entitled to receive credit.

SECTION 20. MILITARY SERVICE CREDIT

(a) A member who entered the armed service of the United States before June 1, 1980, or who entered the armed service of the United States on or after June 1, 1980, during a time of war or emergency condition as defined in Section 1 of Act No. 190 of the Public Acts of 1965, as amended being Section 35.61 of the Michigan Compiled Laws, may elect to receive credited service for not more than five years of active military service. Credit for military service shall be given upon request and payment to the Retirement System of an amount equal to five percent of the member's full-time or equated full-time annual compensation for the year in which the payment is made multiplied by the number of years, and fraction of a year, of credited service that the member elects to purchase up to the maximum. Service shall not be credited if the service is or would be credited under and other federal, state, or local publicly supported retirement system. Service shall not be credited under this subsection until the member has eight years of credited service in force. Only completed years and months of armed service shall be credited under this subsection.

(b) A member who enters or entered any armed service of the United States may purchase credited service

for periods of continuous active duty lasting 30 days or more, subject to the following conditions:

(1) The county board of commissioners authorizes the purchase of credited service by an affirmative vote of a majority of the members of the county board of commissioners.

(2) The member has at least eight (8) years of credited service needed to vest under the plan, not including any credited service purchased under this subsection and subsection (a).

(3) The member pays the plan 5% of the member's annual compensation multiplied by the period of credited service being purchased. As used in this subdivision, "annual compensation" means the aggregate amount of compensation paid the member during the 4 most recent calendar quarters for each of which the member was credited 3/12 of a year of credited service.

(4) Fractional months of armed service shall not be recognized for the purposes of this subsection.

(5) Armed service credited a member under subsection (a) shall not be the basis of credited service under the section.

(6) Armed service credited a member under this subsection shall not exceed either 5 years or the difference between 5 years and the armed service credited the member under subsection (a).

(7) Credited service shall not be granted for periods of armed service that are or could be used for obtaining or increasing a benefit from another retirement system.

(c) Notwithstanding any provision of the Retirement System Resolution to the contrary, effective on and after December 12, 1994, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA), Code Section 414(u) and related regulations and rules.

Qualified military service that is credited to a Member under this subsection (c) shall not be the basis for Credited Service under Sections 20(a) and (b) above.

SECTION 21. VOLUNTARY SERVICE RETIREMENT

(a) Any non-union member who meets the following criteria may retire upon his/her application filed with the Commission:

(1) As of January 1, 2003, attained age 50 years with 8 or more years of credited service, if the member's age, when added to the member's years of credited service, equal the sum of 75 or more; or

(2) As of January 1, 2004, attained age 50 years with 8 or more years of credited service, if the member's age, when added to the member's years of credited service, equal the sum of 70 or more; or

(3) Attained age 60 years and has 8 or more years of credited service.

Upon his/her retirement, he/she shall receive a retirement allowance as provided in section 22.

(b) Any union member shall be entitled to voluntary retirement pursuant to the provisions of his/her collective bargaining agreement in effect at the termination of County employment.

SECTION 22. RETIREMENT ALLOWANCE

(a) Provided: general County non-union members and elected officials who retire on or after January 1, 1989, as provided in the Retirement System Ordinance, shall receive a straight life retirement; however, prior to

the beginning date of receiving his/her retirement allowance, he/she may elect to receive his/her retirement allowance under an option provided in Section 26 in lieu of a straight life retirement allowance. His/her straight life retirement allowance shall be as follows:

(1) Any employee pension which shall be the actuarial equivalent of his/her accumulated contributions standing to his/her credit in the employee savings fund at the time of his/her retirement; and

(2) A County pension which when added to his/her employee pension will provide a retirement allowance equal to the number of years, and fraction of a year, of his/her credited service multiplied by the sum of 2.4% of his/her final average compensation for the first twenty-six (26) years of credited service and one (1%) percent for each year of credited service thereafter. In no case shall his/her County pension exceed 65% of his/her final average compensation.

(b) A union represented member who retires on or after January 1, 1989, as provided in the applicable collective bargaining agreement, shall receive a straight life retirement; however, prior to the beginning date of his/her retirement allowance, he/she may elect to receive his/her retirement under an option provided in Section 26 in lieu of a straight life retirement allowance. His/her straight life retirement allowance shall be as detailed in the applicable collective bargaining agreement in effect at his/her termination of County employment.

SECTION 23. DEFERRED RETIREMENT ALLOWANCE

In the event a member, who has eight or more years of credited service, leaves the employ of the County prior to the date he/she has satisfied the age and service requirements for retirement provided in Section 21, for any reason except his/her disability retirement or death, he/she shall be entitled to retire at the normal retirement age and be subject to the retirement formula in effect at the time he/she left County employment and as provided for in Section 22 of this Ordinance, provided that he/she does not withdraw his/her accumulated contributions from the employees savings fund. His/her retirement allowance under the plan in effect at the employee's termination of County employment shall begin the first day of the calendar month next following the date his/her application for same is filed with the Commission after the employee would have become eligible for retirement under the plan had the employee's employment not been terminated, but not later than 90 days after the employee becomes 65 years of age.

A vested former member who withdraws accumulated member contributions and voluntarily forfeits credited service in the System thereby forfeits all rights in and to the portion of the pension attributable to the forfeited credited service.

SECTION 24. NON-DUTY DEATH BEFORE RETIREMENT – BENEFICIARY NOMINATED

Any non-union member who continues in County employment on or after the date he/she either (1) has acquired ten years of credited service, or (2) has attained age 60 years and has eight or more years credited service, may at any time prior to the effective date of his/her retirement elect Option A provided in Section 26 in the same manner as if he/she were then retiring from County employment, and nominate a beneficiary whom the Retirement Commission finds to be dependent upon the said member for at least fifty percent of his/her support due to lack of financial means. Prior to the effective date of his/her retirement, a member may revoke his/her said election of Option A and nomination of beneficiary, and he/she may again elect the said Option A and nominate a beneficiary as provided in this section. Upon the death of a member who has Option A election in force, his/her beneficiary, if living, shall immediately receive a retirement allowance computed in the same manner in all respects as if the said member had retired the day preceding the date of his/her death, notwithstanding that he/she might not have attained age 60 years. If a member has an Option A election in force at the time of his/her retirement, his/her said election of Option A and nomination of beneficiary shall thereafter continue in force; provided, that prior to the effective date of his/her retirement, he/she shall have the right to elect to receive his/her retirement allowance as a straight life retirement allowance or upon any available option provided in Section 26. No retirement allowance shall be paid under this section on account of the death of a member if any benefits are paid or will become payable under Section 25 on account of his/her death.

SECTION 25. NON-DUTY DEATH RETIREMENT ALLOWANCE AUTOMATIC PROVISIONS

Any non-union member who continues in the employ of the County for more than ten years and has not nominated a beneficiary as provided in this Ordinance, and (1) dies while in County employment and (2) leaves a spouse, the spouse shall immediately receive a retirement allowance computed in the same manner in all respects as if the member had (1) retired the day preceding the date of his/her death, notwithstanding that he/she might not have attained age 60 years, (2) elected Option A in Section 26 and (3) nominated his/her spouse as beneficiary.

SECTION 26. RETIREMENT ALLOWANCE OPTIONS

(a) Prior to the receipt of his/her monthly retirement payment but not thereafter, a member may elect to receive his/her retirement allowance as a straight life retirement allowance payable throughout his/her life or he/she may elect to receive the actuarial equivalent, at that time, of his/her straight life retirement allowance in a reduced retirement allowance payable throughout his/her life and nominate a beneficiary, in accordance with the provisions of Option A, B, C, D or E set forth below. If a member does not elect an option, his/her retirement allowance shall be paid as a straight life retirement allowance.

Option A. 100% Survivor Allowance. Under Option A, subject to subsection (b) of this section, upon the death of the retirant, his/her reduced retirement allowance shall be continued throughout the life of an paid to such person, having an insurable interest in his/her life, as he/she shall have nominated by written designation duly executed and filed with the Commission prior to the beginning date of his/her retirement allowance; or

Option B. 50% Survivor Allowance. Under Option B, subject to subsection (b) of this section, upon the death of a retirant, one half of his/her reduced retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his/her life, as he/she shall have nominated by written designation duly executed and filed with the Commission prior to the beginning date of his/her retirement allowance; or

Option C. Allowance For Ten Years Certain and Life Thereafter. Under Option C, subject to subsection (b) of this section, a retirant shall receive a reduced retirement allowance payable throughout his/her life with the provision that if he/she dies before he/she has received 120 monthly retirement allowance payments, the payments shall be continued for the remainder of the period of 120 months to such person or persons, in equal shares, as the retirant shall have nominated by written designation duly executed and filed with the Commission. If there be no such designated person surviving the retirant, such remaining monthly payments shall be continued and paid to the estate of the survivor of the retirant and his/her last surviving beneficiary. Under this option, the beneficiary may be changed during the first 120 months of the pension.

Option D. According to such rules and regulations as the Commission may from time to time adopt, any member who retires under Section 21 prior to his/her attainment of age 65 years, may elect to have his/her straight life retirement allowance actuarially equated to provide an increased retirement allowance payable to his/her attainment of age 65 years and a reduced retirement allowance payable thereafter. His/her increased retirement allowance payable to his/her attainment of age 65 years shall approximate the sum of his/her reduced retirement allowance to be payable after his/her attainment of age 65 years and his/her estimated primary social security amount. The retirant shall also have the right to select survivor's benefits as described in Option A, Option B, or Option C. This section shall not apply to a member who retires prior to his/her attainment of age 60 years. The retirant shall also have the right to select survivor's benefits as described in Option A, Option B, or Option C.

Option E. Pop-Up Option. A retirant may elect this option in combination with Option A or B. Under this option, a reduced retirement allowance is payable during the joint lifetime of the retirant and his/her beneficiary nominated under Option A or B, whichever is elected. Upon the death of the retirant, his/her

beneficiary will receive a retirement allowance for life equal to the percentage specified by Option A or B of the reduced retirement income payable during the joint lifetime of the retirant and his/her beneficiary. Upon the death of the beneficiary, the retirant will receive a retirement allowance equal to one hundred percent of the amount specified by Section 26(a) above for the remaining lifetime of the retirant. The reduced retirement allowance payable during the joint lifetime of the retirant and his/her beneficiary together with the retirement allowance payable to one upon the death of the other will be actuarially equivalent to the retirement allowance provided by Section 22 as a single life annuity. This provision shall be without force or effect unless or until the retirant submits acceptable documentation of the death of his/her beneficiary to the Secretary of the Retirement Commission.

(b) If any benefits become payable under Section 34 on account of the death of a retirant who was receiving a retirement allowance under Option A, B, C, D or E provided in subsection (a) of this section, no retirement allowance shall be paid under the said Option A, B, C, D or E to his/her designated beneficiary. If all allowance payments permanently terminate before there has been paid an aggregate amount equal to the member's accumulated contributions standing to his/her credit in the employees savings fund at the time of his/her retirement, the different between his/her accumulated contributions and the aggregate amount of retirement allowance payments received by him/her shall be paid from the retirement reserve fund to his/her designated beneficiary, if living, otherwise to his/her estate or legal representative.

(c) This paragraph (c) applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Retirement System to the contrary that otherwise would limit a member's distribution elections under the Retirement System, a member may elect, at the time and in the manner prescribed by Section 26, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the member in a direct rollover.

(1) **Definitions.**

(A) **Eligible Rollover Distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more, and any distribution to the extent such distribution is required under Code Section 401(a)(9). Effective for distributions made after December 31, 2001, for purposes of the direct rollover provision, a portion of a distribution shall not fail to be an eligible rollover distribution merely because such portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Code Sections 408(a) or (b), or to a qualified plan described in Code Sections 401(a) or 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includible in gross income and the portion of such distribution that is not so includible.

(B) **Eligible Retirement Plan:** Effective January 1, 2002, an eligible retirement plan is an individual account described in Code Section 408(a), an individual retirement account described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an eligible plan under Code Section 457(b) that is maintained by a state or political subdivision of a state, and that agrees to separately account for the amounts transferred into such plan or a qualified trust described in Code Section 401(a), which accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a former spouse who is the alternative payee under a domestic relations order.

(C) **Distributee:** A distributee includes a member or former member. In addition, the member's or former member's surviving spouse is a distributee with regard to the interest of the spouse or former spouse.

(D) **Direct Rollover:** A Direct rollover is a payment by the Retirement System to the eligible retirement plan specified by the distributee.

SECTION 27. SUPPLEMENTAL RETIREMENT PAYMENTS

- (a) The Retirement Commission shall establish a reserve for supplemental retirement payments. Such reserve may be funded each year by a portion of investment gains, if any, from the preceding calendar year, attributable to that portion of the total retirement system assets which are reserved to pay the retirement benefits of current retirees.
- (b) The Retirement Commission shall credit the reserve with as much of said investment gain, as exceeds the actuarial assumption of the fund, as the said Commission may deem appropriate for said year.
- (c) The Retirement Commission shall distribute to retired County employees and survivor beneficiaries, after approval by the Macomb County Board of Commissioners; said amount of annual reserve in a single sum as provided for by a formula to be determined by the Retirement Commission.
- (d) The Retirement Commission shall distribute a retired Road Commission employees and survivor beneficiaries, after approval by the Macomb County Board of Commissioners, said amount of annual reserve in a single sum as provided for by a formula to be determined by the Retirement Commission.
- (e) The Retirement Commission, in its own discretion, may determine that no monies paid into said reserve or be distributed in any year.
- (f) The formula for distribution of said additional benefit shall be from time to time determined by the Retirement Commission but in all instances shall take into account the period of time since a person has retired and begun receiving benefits and the period of credited service rendered to the County of the Road Commission prior to retirement.

SECTION 28. DISABILITY INCURRED CREDITED SERVICE TEN OR MORE YEARS

Upon the application of a member, or his/her department head, a member who (1) is in the employ of the County, (2) has ten or more years of credited service, and (3) has become or becomes totally and permanently incapacitated for duty in the employ of the County, may be retired by the Retirement Commission: Provided, that after a medical examination of the member made by or under the direction of the medical director, the medical director certifies to the Commission (1) that the member is mentally or physically totally incapacitated for duty in the employ of the County, (2) that such incapacity will probably be permanent, and (3) that the member should be retired.

SECTION 29. DUTY DISABILITY INCURRED – CREDITED SERVICE LESS THAN TEN YEARS

Any member with less than ten years of credited service shall have his/her credited service increased to ten years for the exclusive purpose only of qualifying for disability retirement as provided in Section 28: Provided, that (1) the Commission finds he/she is totally and permanently incapacitated for duty as the natural and proximate result of a personal injury or disease arising out of and in the course of his/her actual performance of duty in the service of the County, and (2) he/she is in the receipt of worker's compensation on account of his/her said physical or mental incapacity.

SECTION 30. DISABILITY RETIREMENT ALLOWANCE

Upon a member's retirement on account of disability as provided in the Retirement System Ordinance, he/she shall receive a straight life disability retirement allowance computed according to Section 22. His/her disability retirement allowance shall be subject to section 32 and shall not be less than \$400.00 per month. During his/her worker's compensation period, the County pension portion of his/her disability retirement allowance shall not

exceed the difference between (1) sixty percent of his/her final average compensation, and (2) his/her worker's compensation, if any, converted to an annual basis. Prior to the date of his/her retirement, he/she may elect to receive his/her retirement allowance under an option provided in Section 26, except Option D, in lieu of a straight life retirement allowance.

SECTION 31. RECOMPUTATION OF DUTY DISABILITY RETIREMENT ALLOWANCE

(a) Upon termination of his/her worker's compensation period, if any, arising on account of his/her County employment, or at his/her attainment of age 65 years, whichever occurs first, a disability retirant shall be given service credit for his/her worker's compensation period, but in no case beyond his/her attainment of age 65 years; and his/her disability retirement allowance provided in Section 30 shall be recomputed to include such additional service credit.

(b) Any employee who is found to be totally and permanently disabled due to an on-the-job injury and who receives social security disability benefits as a result of said injury, shall at the end of the worker's compensation period have their final pension computed using the formula which is then in effect for the employee's group to which they belonged at the time they were determined to be disabled. Any employee whose disability has caused a discontinuation of their County employment but who subsequently is determined not to be eligible to receive social security benefits shall have their final pension computed using the formula in effect at the time they were originally determined to be disabled from County employment.

SECTION 32. RE-EXAMINATION OF DISABILITY RETIRANTS

At least once each year during the first five years following the retirement of a member with a disability retirement allowance, and at least once in each three-year period thereafter, the Commission may require said retirant to undergo a medical examination by or under the direction of the medical director. If the retirant refuses to submit to such medical examination in any such period, his/her disability retirement allowance may be suspended by the Commission until his/her withdrawal of such refusal. Should such refusal continue for one year, his/her disability retirement allowance may be revoked by the Commission. If, upon such medical examination of a retirant, the medical director reports to the commission that the retirant is physically able and capable of resuming employment with the County, and his/her report is concurred in by the Commission, the disability retirement allowance shall terminate.

SECTION 33. DISABILITY RETIRANTS RESTORED TO SERVICE – CONDITIONS

The membership status of a terminated disability retired member who is returned to County employment shall be governed by the provisions of Section 16. Actual credited service at time of disability retirement shall be restored when the member again acquires membership. Credited service shall not be granted for the period of disability retirement unless the member was in receipt of worker's compensation on account of a disability arising out of and in the course of County employment.

A terminated disability retired member who does not reacquire membership and restoration of credited service shall have actual credited service at time of disability retirement restored if such restoration enables the individual to become vested in a deferred benefit.

SECTION 34. REFUND OF MEMBERS' CONTRIBUTIONS

(a) Should any member cease to be employed by the County for any reason except his/her retirement or his/her death, before he/she has satisfied the age and service requirements for retirement provided in Section 21, she/she shall be paid his/her accumulated contributions, including interest, and including any payments for purchase of service credits, standing to his/her credit in the employees savings fund upon his/her demand in writing on forms furnished by the Retirement Commission.

(b) Refund to Beneficiary. Should any member die and no retirement allowance becomes or will become

payable by the Retirement System on account of his/her death, except as provided in Section 35, his/her accumulated contributions standing to his/her credit in the employees savings fund at the time of his/her death, including credited interest, shall be paid to such person or persons as he/she shall have nominated by written designation duly executed and filed with the Retirement Commission. If there be no such designated person surviving the member, his/her accumulated contributions shall be paid to his/her estate.

(c) If No Beneficiary. In any member dies without heirs and without a designated beneficiary surviving him/her and no retirement allowance becomes or will become payable by the Retirement System on account of his/her death, except as provided in Section 35, his/her accumulated contributions standing to his/her credit in the employees savings fund at the time of his/her death may be used to pay his/her burial expenses, not to exceed a reasonable sum to be determined by the Retirement Commission: Provided, that he/she leaves no other estate sufficient for such purpose.

(d) Payments of accumulated contributions, as provided in this section may be made in a single sum or in installments according to such rules and regulations as the Retirement Commission may from time to time adopt.

(e) Annuity Withdrawal. Any non-union member who retires on or after January 1, 1988, pursuant to Sections 21, 13, 29 or 30 of the Macomb County Employees Retirement System Ordinance may elect, prior to the effective date of the retirement but not thereafter, to be paid the accumulated contributions, excluding amounts paid in for purchases of prior government and/or military credited service, including interest, as defined in the Macomb County Employees Retirement Ordinance, standing to the member's credit in the employees' savings fund. Upon this election and the payment of the accumulated contributions and interest, the retiring member's straight life retirement allowance shall be reduced by an amount which is the actuarial equivalent of the accumulated contributions paid. The actuarial equivalent shall be determined on the basis of the interest rate established by the Pension Benefit Guaranty Corporation for immediate annuities. Such rates are to be adjusted semi-annually on January 1st and July 1st of each year and used for the succeeding six months. After such reduction, the member may elect to receive the actuarial equivalent of the reduced allowance in accordance with the provisions of Options A, B, C, D or E as described in Section 26.

SECTION 35. DEATH IN LINE OF DUTY

In the event (1) a member dies as a result of a personal injury or disease arising out of and in the course of his/her employment by the County, or (2) a disability retiree dies prior to attaining age 60 years and within a period of three years following his/her disability retirement as the result of the same injury or disease for which he/she retired, and in either case, his/her death, injury, or disease resulting in death, be found by the Commission to have occurred as the natural and proximate result of causes arising out of and in the course of his/her actual performance of duty in the service of the County, the applicable benefits provided in paragraphs (a), (b), (c), and (d) of the section shall be paid, subject to the condition that worker's compensation is paid on account of the death of the said member or retiree.

(a) Accumulated Contributions. In the case of a deceased member, his/her accumulated contributions standing to his/her credit in the employees savings fund at the time of his/her death shall be paid in accordance with Section 34.

(b) Payments to Spouse. Upon termination of the statutory period for payment of worker's compensation to the spouse of said deceased member or retiree, the said spouse shall receive a County pension equal to the spouse's weekly worker's compensation converted to an annual basis: said County pension to continue until the spouse's death.

The statutory period for the payment of worker's compensation shall be reduced proportionate to any payback of worker's compensation received as the result of recovery based upon the liability of a third party.

(c) Payments to Children. Upon termination of the statutory period for payment of worker's compensation to the child or children of the said deceased member or retiree, the said children shall receive a

County pension equal to the child's weekly worker's compensation converted to an annual basis; said child's county pension to terminate upon his/her attainment of 18 years, or death or marriage prior thereto. Should the spouse's County pension be terminated as provided in paragraph (b) of this section, and should an unmarried child or children under age 18 years survive the said spouse, each such child's County pension shall be increased by an equal share of said spouse's County pension.

The statutory period for payment of worker's compensation shall be reduced proportionate to any payback of worker's compensation received as the result of recovery based upon the liability of a third party.

(d) Payment to Parents. Upon termination of the statutory period for payment of worker's compensation to the parent or parents of said deceased member or retirant, the said parent or parents shall each receive a County pension equal to the parent's weekly worker's compensation converted to an annual basis; said parent's County pension to terminate upon his/her death.

The statutory period for the payment of worker's compensation shall be reduced proportionate to any payback of worker's compensation received as the result of recovery based upon the liability of a third party.

SECTION 36. EMPLOYEES SAVINGS FUND

(a) The employees savings fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensations of members as determined from time to time by the Macomb County Board of Commissioners for non-union personnel and for persons covered by collective bargaining agreements, and from which shall be made refunds and transfers of accumulated contributions as provided in the Retirement System Ordinance.

(b) The officer or officers responsible for preparing the payroll shall cause the contribution provided in subsection (a) of this section to be deducted from the compensation of each member on each and every payroll, for each and every payroll period, so long as he/she remains a member. The said contributions shall be made notwithstanding that the minimum compensation provided by law for any member shall be changed thereby. Every member shall be deemed to consent and agree to the deduction made and provided herein. Payment of his/her compensation less said deduction shall be full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by him/her during the period covered by such payment, except as to benefits provided in the Retirement System Ordinance. The said contributions when deducted from the compensation of a member shall be paid to the Retirement System and shall be credited the member's individual account in the employees savings fund.

(c) Upon the retirement of a member, his/her accumulated contributions, including interest, shall be transferred from the employees savings fund to the retirement reserve.

SECTION 37. COUNTY PENSION RESERVE FUND

The County pension reserve fund is hereby created. It shall be the fund in which shall be accumulated reserves for the payment of all County pensions payable from funds provided by the County. Upon the basis of such mortality and other experience tables and regular interest, as the Commission shall from time to time adopt, the Actuary shall annually compute the County pension reserves (1) for County pensions being paid retirants and beneficiaries, and (2) covering service rendered and to be rendered by members. The said County pension reserves shall be financed by annual appropriations, to be made by the County, The appropriations for County Road Commission members, retirants and beneficiaries shall be made from Board of County Road Commissioners funds.

SECTION 38. RETIREMENT RESERVE FUND TRANSFERS

Upon the retirement of a member, or at the time a County pension becomes payable to a beneficiary on account of the death of a member, the County pension reserve for such County pension shall be transferred from the

County pension reserve fund to the retirement reserve fund. The Retirement Commission may from time to time authorize transfers between the County pension reserve fund and the retirement reserve fund of any difference between the amount it determines to be necessary for the proper maintenance of the retirement reserve fund and the actual balance of the retirement reserve fund.

SECTION 39. FINANCIAL OBJECTIVE OF THE RETIREMENT SYSTEM

The financial objective of the Retirement System is to receive contributions each fiscal year which are sufficient to (a) fund the actuarial cost of benefits likely to be paid on account of credited service earned by members during the fiscal year, and (b) fund the unfunded actuarial cost of benefits likely to be paid on account of credited service earned by members prior to the fiscal year over a period of not more than 40 years.

SECTION 40. ADMINISTRATIVE FUNDS

The administrative funds shall be an administrative account of the Retirement System from which shall be paid all expenses necessary in connection with the administration and operation of the Retirement System.

SECTION 41. MANAGEMENT OF FUNDS

(a) The Retirement Commission shall be the trustees of the assets of the Retirement System and shall have full power to invest and reinvest such assets subject to Act No. 314 of the Public Acts of 1965, as amended, and as the same might from time to time be amended. The Commission shall have the power to purchase notes, bonds, or other obligations of Macomb County before or after the same are offered to the public and with or without advertising for bids.

(b) The Retirement Commission shall have full power to purchase, hold, sell, assign, transfer, exchange, and dispose of any of the securities and investments in which any of the monies of the Retirement System have been invested, as well as the proceeds of the investments and any monies belonging to the System.

(c) The Retirement Commission shall keep on deposit available cash not exceeding five percent of the total assets of the Retirement System. All assets of the System shall be held for the sole purpose of meeting disbursements for retirement allowances and other payments authorized by this Ordinance and shall be used for no other purpose. The description of the various funds of the System shall be interpreted to refer to the accounting records of the System and not to the segregation of assets in the funds of the System.

SECTION 42. INCOME FUND ALLOWANCE OF REGULAR INTEREST

(a) An income fund is hereby created. It shall be the fund to which shall be credited all interest, and other income from investments of the Retirement System; all transfers from the employees savings fund by reason of lack of claimant; and all other monies received by the System, the disposition of which is not specifically provided in this Ordinance. The Retirement Commission may accept gifts and bequests, and the same shall be credited to the income fund. There shall be paid or transferred from the income fund all amounts required to credit regular interest to the employees savings fund, retirement reserve fund, and County pension reserve fund, as provided in this Ordinance. Whenever the Commission determines that the balance in the income fund is more than sufficient to cover the charges to the fund, the Commission may provide for contingency reserves, or may transfer such excess or portions thereof to cover the needs of other funds of the System.

(b) The Retirement Commission shall at the end of each fiscal year allow and credit regular interest to the funds of the Retirement System. The interest to be credited to the retirement reserve fund and the County pension reserve fund shall be computed on the fund's mean balance for the year. The interest to be credited to a member's individual balance in the employees savings fund shall be computed on his/her balance standing to his/her credit at the beginning of the year: Provided, that no interest shall be credited on any portion of accumulated contributions refunded during the year; nor shall interest be credited a member after he/she leaves County employment, except as is otherwise specifically provided in this Ordinance. The amounts of interest so

allowed shall be paid from the income fund.

SECTION 43. METHOD OF PAYMENT FROM FUNDS

All payments from the funds of the Retirement System shall be made according to provisions of law, this Ordinance, and County procedure, only upon regular County vouchers signed by two persons designated by the Retirement Commission. A duly attested copy of a resolution of the Retirement Commission, designating such persons and bearing upon its face specimen signatures of such persons, shall be filed with the County Treasurer as his/her authority for making payments upon such vouchers. No voucher shall be drawn unless it shall have been previously authorized by the Retirement Commission.

SECTION 44. ASSIGNMENTS PROHIBITED

The right of a person to an employee pension, a County pension, a retirement allowance, to the return of accumulated contributions, the employee pension, the County pension, or the retirement itself, any optional benefit, and any other right accrued or accruing to any member, retirant or beneficiary under the provisions of this Ordinance, and the monies belonging to the Retirement System, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever, and shall be unassignable except as is specifically provided in this Ordinance or by law. The County shall have the right of setoff for any claim arising from embezzlement by or fraud of a member, retirant, or beneficiary. If a member is covered by a group insurance or prepayment plan participated in by the County and should he/she be permitted to, and elect to, continue such coverage as a retirant, he/she may authorize the Retirement Commission to have deducted from his/her retirement allowance the payments required of him/her to continue coverage under such group insurance or prepayment plan.

The right of a member, a vested former member of a retirant to Retirement System assets is subject to an eligible domestic relations order under the Eligible Domestic Relations Order Act, 1991 PA 46, MCL §38.1701 to 38.1711. If a retirant is receiving a reduced retirement allowance under an optional form of payment and is divorced from a spouse who had been named the retirant's survivor beneficiary under the Retirement System, the election of a reduced retirement allowance form of payment shall be considered void by the Retirement System if the judgment of divorce or award or court order, as amended, dated after July 19, 1991, provides that the election of a reduced retirement allowance form of payment is to be considered void by the Retirement System, and the retirant provides a certified copy of such order of award to the Retirement System. If the election of a reduced retirement allowance form of payment is considered void by the Retirement System under this subsection, the retirant's retirement allowance shall revert to a straight life retirement allowance form of payment, including post-retirement adjustments, if any, subject to an award or order of the court. The retirement allowance shall revert to a straight life retirement allowance form of payment under this subsection effective the first of the month after the date on which the Retirement System receives a certified copy of the judgment of divorce or award or other order of the court. This subsection does not supersede a judgment of divorce or award or order of the court in effect on July 18, 1991. This subsection also does not require the Retirement System to distribute or pay retirement assets on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

SECTION 45. ERRORS

Should any change in the records result in any member, retirant, or beneficiary receiving from the Retirement System more or less than he/she would have been entitled to receive had the records been correct, the Commission shall correct such error, and as far as practicable shall adjust the payment in such manner that the actuarial equivalent of the benefit to which the said member, retirant, or beneficiary was correctly entitled shall be paid.

SECTION 46. PROTECTION AGAINST FRAUD

Whoever with intent to deceive shall make any statement and/or reports required under this Ordinance which are

untrue, or shall falsify or permit to be falsified any record or records of the Retirement System, or who shall otherwise violate, with intent to deceive, any of the terms or provisions of this Ordinance, shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed five hundred dollars plus costs of prosecution, or sentenced to ninety days imprisonment, or both, in the discretion of the Court.

SECTION 47. VESTING UPON RETIREMENT SYSTEM TERMINATION

Members shall be one hundred percent vested in their accrued benefit, to the extent funded, upon the termination of the Retirement System or upon a complete discontinuation of contributions to the Retirement System. Notwithstanding anything in this Retirement System Ordinance to the contrary, after the satisfaction of all liabilities with respect to members, vested former members and retirants upon termination of the Retirement System, the County reserves the right to recover any balance of assets remaining in the Retirement System in accordance with law.

SECTION 48. FORFEITURES

A member or prior member's forfeiture of County contributions under the Retirement System shall not be used to increase benefits to the remaining members in the Retirement System.

SECTION 49. EXCLUSIVE BENEFIT OF MEMBERS

Diversion of any portion of Retirement System corpus or income for any purpose other than the exclusive benefit of members, retirants or beneficiaries is prohibited.

SECTION 50. LIMITATIONS ON COMMENCEMENT OF PAYMENTS

The commencement and form of benefit payments to a member or his/her beneficiary shall be governed by the distribution rules set forth below. Notwithstanding any other provision of the ordinance, the commencement and form of benefit payments to a member or his/her beneficiary shall be subjected to the following distribution rules and otherwise shall comply with Internal Revenue Code Section 401(a)(9) and the regulations thereunder, including the minimum distribution incidental benefit requirement of Proposed Treasury Regulation Section 1.401(a)(9)-2, the provisions of which are incorporated herein by reference.

(a) In no event shall payment of benefits to a member prior to his/her death commence later than the April 1st following the latter of:

- (1) the calendar year in which the member attains the age 70-1/2, or
- (2) the calendar year in which the member retires. Such payments shall be made:

(aa) in accordance with regulations prescribed by the Secretary of the Treasury, in the form of a lifetime annuity for the life of such member or for the joint lives of such member and his/her beneficiary, of

(bb) in accordance with such regulations, in the form of periodic payments for a period which does not exceed the life expectancy of the member and his/her beneficiary.

(b) If the amount to be distributed is other than a lump sum, then the amount to be distributed each year must be at least an amount equal to the quotient obtained by dividing the lump sum actuarial equivalent of the member's entire nonforfeitable accrued benefit at the beginning of each plan year by the life expectancy of the member or joint life expectancy of the member and his/her beneficiary. Life expectancy and joint life expectancy are computed by the use of the return multiples contained in Section 1.72-9 of the Treasury Regulations. For purposes of this computation, a member's and spouse's life expectancy each may be recalculated no more frequently than annually; the life expectancy of a non-spouse beneficiary may not be recalculated. If the member's spouse is not the beneficiary, the method of distribution selected must assure that at least fifty percent

of the present value of the amount available for distribution is paid within the life expectancy of the member.

(c) Upon the death of a member, the following distribution provisions shall take effect:

(1) If the member dies after distribution of his/her benefit has commenced, the remaining portion, if any, of such benefit will continue to be distributed least as rapidly as under the method of distribution being used prior to the member's death.

(2) If the member dies before distribution of his/her benefit has commenced, the member's entire nonforfeitable interest under the Retirement System, if any, will be distributed no later than five years after the member's death except to the extent that an election is made to receive distributions in accordance with (aa) or (bb) below:

(aa) If any portion of the member's interest is payable to a beneficiary, distributions may be made in substantially equal installments over the life or life expectancy of the beneficiary commencing no later than one year after the member's death;

(bb) If the beneficiary is the member's surviving spouse, the date distributions are required to begin in accordance with (aa) above shall not be earlier than the date on which the member would have age 70-1/2, and, if the spouse dies before payments begin, subsequent distributions shall be made as if the spouse had been made the member.

(3) For purposes of (2) above, payments will be calculated by use of the return multiples specified in Section 1.72-9 of the Treasury Regulations. Life expectancy of a surviving spouse may be recalculated annually; in the case of any other beneficiary, such life expectancy will be calculated at the time payment first commences without further reaction.

(4) For purposes of (1), (2), (3) above, any amount paid to a child of the member will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of maturity.

(d) Notwithstanding the above distribution requirements, distribution on behalf of any other member may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(1) The distribution is one which would not have disqualified the ordinance under Section 401(a)(9) of the Internal Revenue Code as in effect prior to amendment by the Deficit Reduction Act of 1984;

(2) The distribution is in accordance with a method of distribution designated by the member whose interest in the plan is being distributed or, if the member is deceased, by a beneficiary of such member;

(3) Such designation was in writing, was signed by the member or the beneficiary and was made before January 1, 1984;

(4) The member had accrued a benefit under the ordinance as of December 31, 1983; and

(5) The method of distribution designated by the member or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the member's death, the beneficiaries listed in order of priority.

A distribution upon death shall not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the member. For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the member, or the beneficiary to whom such distribution is being made, shall be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was

specified in writing and the distribution satisfies the requirement in (1) and (2) above. If a designation is revoked, any subsequent distribution must satisfy the requirements of Code Section 401(a)(9). Any changes in the designation shall be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation shall not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under designation, directly or indirectly (for example, by altering the relevant measuring life). Any election designation hereunder shall be construed in accordance with terms of Code Section 417.

(e) Notwithstanding and provision in the Retirement System Ordinance to the contrary, distributions to a Member shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the regulations thereunder. With respect to distributions under the Retirement System Ordinance made for calendar years beginning on or after January 1, 2002, the Retirement System Ordinance will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the regulations under Code Section 401(a)(9) that were proposed in January, 2001, notwithstanding any provision in the Retirement System Ordinance to the contrary. This subsection shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Code Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

SECTION 51. LIMITATIONS ON AMOUNT OF BENEFIT PAYMENTS

No member, beneficiary or retirant shall receive benefits under the Retirement System in excess of those permitted under Section 415 of the Internal Revenue Code, as modified for state and local government plans pursuant to Section 415(b)(2)(F) of the Internal Revenue Code and further modified for qualified police and firefighter members pursuant to Sections 415(b)(2)(G) and 415(b)(2)(H) of the Internal Revenue Code.

SECTION 52. RECIPROCAL RETIREMENT ACT

The provisions of the Reciprocal Retirement Act, 1961 PA 88, as amended, have been adopted by the Macomb County Employees Retirement System on December 9, 1964.

SECTION 53. APPLICABILITY OF PROVISIONS TO UNION AND TO NON-UNION EMPLOYEES AND ELECTED OFFICIALS

(a) All of the provisions of this Ordinance as heretofore stated are applicable to all non-union County employees as well as to the elected officials of the County.

(b) Not all provisions of this Ordinance are applicable to the employees of the County who are members of a collective bargaining unit; such provisions are applicable only if they are specifically provided for in the appropriate collective bargaining agreement. The provisions of this Ordinance applicable to union employees shall be governed by terms and conditions of the collective bargaining agreement in effect at the time of their separation from County employment.

The appendix attached hereto is intended to assist union employees in ascertaining which provisions are applicable to them, and it is not intended to be a binding and all-inclusive reference of retirement provisions for such members.

All union employees must look to their own collective bargaining agreements for a determination as to which retirement provisions are applicable to them.

SECTION 54. LAWS INCONSISTENT REPEALED

All applicable provisions of ordinance, resolution or local act inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency insofar as the County Board of Commissioners has

authority to repeal the same.

SECTION 55. SAVING PROVISION

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such holding shall not be construed as affecting the validity of any of the remaining sections, subsections, paragraphs, sentences, clauses or phrases of this Ordinance, of the Ordinance as an entirety; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any section or part of any section.

SECTION 56. EFFECTIVE DATE

The effective date of this Retirement Ordinance shall be the first day of May 1946. The Retirement System Ordinance's Plan Year is the 12-month period commencing on January 1 and ending December 31.

SECTION 57. QUALIFIED RETIREMENT SYSTEM

The County intends that the Retirement System shall be qualified pension plan under Code Section 401 or successor provisions of the law, to the extent applicable to a government plan and that the trust be an exempt organization in compliance with Code Section 501. The Retirement System does not elect to be subject to provisions of the Code that are not applicable to a government plan, nor to any provisions of the Employee Retirement Income Security Act of 1974, as amended. The County Board of Commissioners may adopt such additional provisions to the Retirement System as necessary to fulfill the intent of being qualified pension plan.