03-O-0117

CITY COUNCIL
ATLANTA, GEORGIA

A SUBSTITUTE ORDINANCE
BY FINANCE/EXECUTIVE COMMITTEE

AN ORDINANCE TO AMEND THE CITY OF ATLANTA GENERAL EMPLOYEES' PENSION FUND, FIREFIGHTERS PENSION FUND AND POLICE OFFICERS PENSION FUND SO AS TO PROVIDE FOR REQUIRED MINIMUM DISTRIBUTIONS, LIMIT THE AMOUNT OF CONSIDERED COMPENSATION, CLARIFY THE LIMITATION ON ANNUAL BENEFITS AND MAKE CERTAIN OTHER CHANGES ALL AS REQUIRED BY THE U.S. INTERNAL REVENUE CODE; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION I:

That Georgia Laws 1927, p. 265, as amended, codified in Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article II (Nonuniformed Officers and Employees) of the Code of Ordinances of the City of Atlanta, Georgia, is hereby further amended as follows:

Section 1. By deleting the existing Section 6-91 of the Code of Ordinances of the City of Atlanta, Georgia, and by substituting the following:

"**Salary and Earnings.**

For the purposes of determining any benefit or contribution under this act, 1927 Ga. Laws, page 265, as amended, the "salary," "earnings" or "wages" or "total" "salary," "earnings" or "wages" of an officer or employee of the City of Atlanta for any period shall include the base wages or salary paid to such officer or employee (including lump-sum payments thereof); amounts contributed or deferred by the officer or employee and not includable in gross income under sections 125, 132(f) or 457 of the U.S. Internal Revenue Code (the "Code"); amounts contributed by the officer or employee to a governmental qualified retirement plan and treated as employer contributions under Code section 414(h); and amounts credited to the officer or employee for furlough hours. Such salary, earnings or wages shall not include the following amounts: disability insurance payments to an officer or employee; travel, mileage or automobile-related allowances or reimbursements; bonuses (other than sick-leave bonuses) or

performance awards; overtime or premium payments; or any other special, unusual or nonrecurring payment.

For the purposes of determining any benefit or contribution under this act, the "salary," "earnings" or "wages" or "total" "salary," "earnings" or "wages" of an officer or employee of the Atlanta Independent Public School System for any period shall include the regular pay, shift differential pay and salary-prorated or retroactive regular pay paid to such officer or employee; adjustments to earnings paid to an officer or employee under the payroll code "premium pay," the officer's or employee's elective deferrals as defined in Code section 402(g)(3); amounts contributed or deferred by the officer or employee and not includable in gross income under Code sections 125, 132(f) or 457; and amounts contributed by the officer or employee to a governmental qualified retirement plan and treated as employer contributions under Code section 414(h). Notwithstanding the foregoing, such salary, earnings or wages shall not include the following amounts: disability insurance payments to an officer or employee; travel, mileage or automobile-related allowances or reimbursements; bonuses or performance awards; overtime or premium payments; or any other special, unusual or nonrecurring payment.

The City of Atlanta may amend this provision at any time to the extent permitted by applicable law."

Section 2. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article II (Nonuniformed Officers and Employees), Section 6-92 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Distribution Requirements.**

(a) The requirements of this section shall apply to the distribution of all benefits under this act, 1927 Ga. Laws, page 265, as amended, and will take precedence over any inconsistent provisions of this act.

(b) All distributions required under this section will be determined and made in accordance with section 401(a)(9) of the U.S. Internal Revenue Code (the 'Code'), including the incidental death benefit requirements of Code section 401(a)(9)(G), and the regulations thereunder.

(c) The entire benefit of an officer or employee under this act will be distributed beginning not later than his required beginning date over the life of such officer or employee or, if applicable, over the lives of such officer or employee and a designated beneficiary. 'Required beginning date' shall mean April 1 of the calendar year following the later of (1) the calendar year in which the officer or employee attains age 70 ½ or (2) the calendar year in which the officer or employee terminates employment.

(d) If the distribution of a benefit has begun in accordance with subsection (c) above and the officer or employee dies before his entire benefit has been distributed to him, the remaining portion of such benefit will be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

(e) If an officer or employee dies before the distribution of his benefit has begun in accordance with subsection (c) above, his interest will be distributed to his designated beneficiary (as defined in Code section 401(a)(9)(E)) over a period not extending beyond the life or life expectancy of such beneficiary, beginning not later than December 31 of the calendar year following the calendar year of the officer's or employee's death. If such benefit is payable to (or for the benefit of) his surviving spouse, the date on which the distributions are required to begin shall not be earlier than December 31 of the calendar year in which the officer or employee would have attained age 70 ½. If the spouse dies before the distribution to such spouse is made or begun, this subsection (e) shall be applied as if the surviving spouse were the officer or employee.

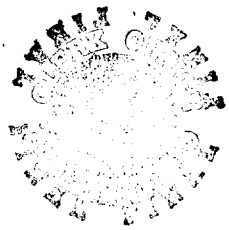
(f) If an officer or employee dies before the distribution of his benefit has begun in accordance with the foregoing provisions of this section and the officer or employee does not have a designated beneficiary (as defined in Code section 401(a)(9)(E)), the officer's or employee's benefit, if any, shall be distributed in a single lump-sum payment by December 31 of the year in which occurs the five-year anniversary of the officer's or employee's death."

Section 3. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article II (Nonuniformed Officers and Employees), Section 6-93 of the Code of Ordinances of the City of Atlanta, Georgia:

"Limitation on Benefits.

(a) *Basic Limitation.* Notwithstanding any provision of this act, 1927 Ga. Laws, page 265, as amended, to the contrary, the amount of an officer's or employee's annual retirement benefit, calculated as a single life annuity commencing before age 62 or after age 65, shall not exceed $160,000, as adjusted as of the first day of each limitation year to the dollar limitation determined by the Commissioner of Internal Revenue pursuant to regulations issued by the Secretary of the Treasury under the authority granted by section 415(d) of the U.S. Internal Revenue Code (the 'Code') (the 'Maximum Permissible Dollar Amount'). For purposes of this section, the term 'limitation year' shall mean the calendar year.

As of each January 1, the dollar limitation as determined by the Commissioner of Internal Revenue for that calendar year will become effective as the Maximum Permissible Dollar Amount for that calendar year. The dollar limitation



applicable to officers and employees who have commenced distribution of their benefit shall be adjusted annually to reflect any changes to the Maximum Permissible Dollar Amount.

Employee contributions treated as employer contributions made pursuant to section 6-37(u) shall be considered a part of the benefit subject to the limitations of this section. Officer or employee contributions for prior service with certain other employers shall be subject to the rules of section 6-94. Employee contributions not made pursuant to section 6-37(u) and not made for credit for prior service with certain other employers shall be converted to an annual benefit amount pursuant to Code section 411(c)(2)(B) and shall be subtracted from the total annual benefit subject to the limitations of this subsection (a), provided that such contributions shall be considered to be a separate defined contribution plan maintained by the City of Atlanta and subject to the limitations of Code section 415(c).

Notwithstanding the foregoing, the following values shall not be taken into account in adjusting any benefit under the act to a single life annuity:

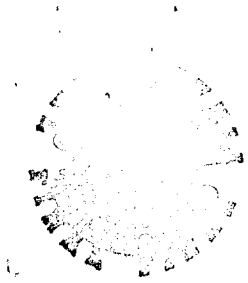
(1) the value of a qualified joint and survivor annuity (as defined in Code section 417 and the regulations thereunder) to the extent such value exceeds the sum of (A) the value of a single life annuity beginning on the same date and (B) the value of any post-retirement death benefits that would be payable even if the annuity was not in the form of a joint and survivor annuity,

(2) the value of benefits that are not directly related to retirement benefits (such as pre-retirement disability and death benefits); and

(3) the value of benefits that reflect post-retirement cost-of-living increases to the extent such increases are in accordance with Code section 415(d) and the regulations thereunder.

(b) *Exception to Basic Limitation.* If the annual retirement benefit payable to an officer or employee under this act does not exceed $10,000 for the limitation year with respect to which a determination is being made or any prior limitation year, and the officer or employee has not at any time participated in a defined contribution plan maintained by the City of Atlanta, the limitation otherwise imposed by subsection (a) shall not apply.

(c) *Reduction for Fewer Than 10 Years of Participation.* If an officer or employee has participated under the provisions of this act for fewer than 10 years, the Maximum Permissible Dollar Amount shall be adjusted by multiplying such limitation by a fraction, the numerator of which is the number of the officer's or employee's years of participation as of such date (and any fraction thereof) and the denominator of which is 10. The foregoing reduction shall not apply to (1)



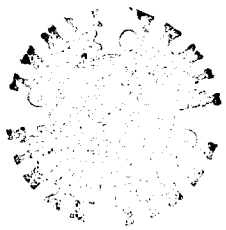
disability retirement benefits received by an officer or employee under this act or (2) death benefits received by an officer's or employee's beneficiary under this act.

(d) *Actuarial Adjustment When Benefits Commence Before Age 62 or After Age 65.* If an officer's or employee's annual retirement benefit commences before he attains age 62, the Maximum Permissible Dollar Amount for the limitation year shall be reduced so that it is the actuarial equivalent of the Maximum Permissible Dollar Amount that would be applicable if the retirement benefit had commenced at age 62. The interest rate assumption used to make such actuarial reduction shall be the greater of 5% or the interest rate specified in the act for determining actuarial equivalence for early retirement benefits applicable to the officer or employee. If an officer's or employee's retirement benefit commences after age 65, the Maximum Permissible Dollar Amount for the limitation year shall be increased so that it is the actuarial equivalent of the Maximum Permissible Dollar Amount at age 65. The interest rate assumption used to make such actuarial increase shall be 5%. The actuarial adjustments required under this subsection (d) shall be computed using the mortality table prescribed by Revenue Ruling 2001-62, 2001-2 C.B. 632, or any successor revenue ruling, notice or other guidance provided by the Commissioner of Internal Revenue that establishes a replacement mortality table pursuant to Code section 415(b)(2)(E)(v).

Notwithstanding the foregoing, the Maximum Permissible Dollar Amount shall not be reduced by reason of the commencement of annual retirement benefits before age 62 for (1) any full-time officer or employee of any police or fire department that is organized and operated by the City of Atlanta, (2) disability retirement benefits paid to an officer or employee pursuant to this act or (3) a death benefit paid to a beneficiary pursuant to this act.

(e) *Preservation of Old Law Benefits.* In the case of an officer or employee who participated in one or more defined benefit plans of the City of Atlanta as of the first day of the first limitation year beginning after December 31, 1994, the application of the limitations of this section shall not cause the maximum permissible benefit for such officer or employee under all such defined benefit plans to be less than the officer's or employee's RPA '94 Old-Law Benefit.

For officers or employees with RPA '94 Old-Law Benefits, for purposes of determining whether an officer's or employee's benefit exceeds the limitations of this section after December 31, 1999 (the "RPA '94 Freeze Date"), an officer's or employee's total annual benefit under the act calculated as a straight life annuity shall be determined, and this benefit shall not exceed the Maximum Permissible Dollar Amount applicable to the officer or employee. Where an officer's or employee's benefit must be adjusted to an actuarially equivalent straight life annuity, such adjustment shall be calculated as provided under subsection (a) above.



In no event shall an officer or employee receive less than the officer's or employee's RPA '94 Old-Law Benefit. For purposes of determining that an officer or employee receives no less than the officer's or employee's RPA '94 Old-Law Benefit, the limitation applicable to the officer's or employee's RPA '94 Old-Law Benefit ("Old-Law Limitation") shall be determined, and the officer or employee shall receive the RPA '94 Old-Law Benefit to the extent it does not exceed such Old-Law Limitation. Before January 1, 2000 (the "Final Implementation Date"), adjustments to the Old-Law Limitation for benefits that commence before age 62 or after age 65 shall be calculated as provided under Code section 415(b)(2)(E) and the terms of the act as in effect on December 7, 1994. On or after the Final Implementation Date, adjustments to the Old Law Limitation for commencement of benefits before age 62 or after age 65 shall be calculated as provided in subsection (d) above. In no event, however, may an officer's or employee's Old-Law Benefit exceed the officer's or employee's Old-Law Benefit as of the RPA '94 Freeze Date.

For the purposes of this subsection, the term "RPA '94 Old-Law Benefit" shall mean the officer's or employee's accrued benefit under the terms of the act as of the RPA '94 Freeze Date, for the annuity starting date and optional form and taking into account the limitations of Code section 415 as in effect on December 7, 1994, including the participation requirements under Code section 415(b)(5). In determining the amount of an officer's or employee's RPA Old-Law Benefit, the following shall be disregarded: (1) any ordinance or amendment to the act increasing benefits adopted after the RPA '94 Freeze Date, and (2) any cost-of-living adjustments that become effective under Code section 415(d) after the RPA '94 Freeze Date.

If, at any date after the RPA '94 Freeze Date, the officer's or employee's total benefit under the act, before the application of Code section 415, is less than the officer's or employee's Old-Law Benefit, the RPA '94 Old-Law Benefit will be reduced to a benefit equal to the officer's or employee's total benefit.

The use of a different interest rate and mortality table may not increase an officer's or employee's RPA '94 Old-Law Benefit to an amount greater than such benefit as of the RPA '94 Freeze Date."

Section 4. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article II (Nonuniformed Officers and Employees), Section 6-94 of the Code of Ordinances of the City of Atlanta, Georgia:

"Treatment of Employee Contributions for Prior Service with Certain Other Employers.

(a) *Basic Limitation.* If an officer or employee makes one or more

contributions under this act, 1927 Ga. Laws, page 265, as amended, to purchase permissive service credit on or after January 1, 1998, the requirements of section 6-93 shall be treated as satisfied if either:

(1) the requirements of section 415(b) of the U.S. Internal Revenue Code (the 'Code') are satisfied, determined by treating the accrued benefit derived from all contributions under this act for permissive service credit as an annual benefit for purposes of Code section 415(b), provided, however, that the reduced limit under Code section 415(b)(2)(C) (as described in section 6-93(d)) shall not be exceeded solely by reason of this section 6-94; or

(2) the requirements of Code section 415(c) are satisfied, determined by treating all contributions under this act for permissive service credit as an annual addition for purposes of Code section 415(c), provided, however, that the percentage limitation under Code section 415(c)(1)(B) shall not be exceeded solely by reason of this section 6-94.

(b) *Limitation on Nonqualified Service.* Notwithstanding the foregoing, not more than five years of permissive service credit attributable to nonqualified service shall be taken into account for purposes of this section, and no permissive service credit shall be taken into account before the officer or employee has participated under the provisions of this act for at least five years.

(c) *Definitions.*

(1) *Permissive Service Credit.* For purposes of this section, the term 'permissive service credit' shall mean service credit that (A) is recognized under this act for purposes of calculating an officer's or employee's benefit, (B) such officer or employee has not received under this act and (C) such officer or employee may receive only by making a voluntary additional contribution in an amount determined under this act that does not exceed the amount necessary to fund the benefit attributable to such service credit.

(2) *Nonqualified Service.* For purposes of this section, the term 'nonqualified service' means service for which permissive service credit is allowed, other than:

(A) service (including parental, medical, sabbatical and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof or any agency or instrumentality of any of the foregoing (other than military service or service for credit that was obtained as a result of a repayment under Code section 415(k)(3));

(B) service (including parental, medical, sabbatical and similar leave) as an employee (other than as an employee described in clause (A) above) of an educational organization described in Code section 170(b)(1)(A)(ii) that is a public, private or sectarian school providing elementary or secondary education (though grade 12), as determined under the laws of the State of Georgia;

(C) service as an employee of an association of employees who are described in clause (A), above; or

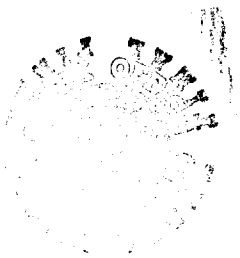
(D) military service (other than qualified military service under Code section 414(u)) recognized under this act.

In the case of service described in clauses (A), (B) or (C), such service will be nonqualified service if recognition of such service would cause an officer or employee to receive a retirement benefit for the same service under more than one retirement plan."

Section 5. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article II (Nonuniformed Officers and Employees), Section 6-95 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Limitation on Monthly Earnings.**

For the period from January 1, 1996 to December 31, 2001, the annual compensation of each officer and employee taken into account for determining all benefits provided under this act, 1927 Ga. Laws, page 265, as amended, for any year shall not exceed $150,000, as adjusted for the cost of living in accordance with section 401(a)(17)(B) of the U.S. Internal Revenue Code (the 'Code'). For years beginning on and after January 1, 2002, the annual compensation of each officer and employee taken into account for determining all benefits provided under this act for any year shall not exceed $200,000, as adjusted for the cost of living in accordance with Code section 401(a)(17)(B).
If compensation for any prior year is taken into account in determining the benefits of an officer or employee, the compensation for such prior year shall be subject to the applicable annual compensation limit in effect under Code section 401(a)(17) for that prior year. Notwithstanding the foregoing, effective January 1, 2002, the limit on compensation taken into account with regard to years before January 1, 2002 shall be increased to $200,000, and the monthly benefit of officers and employees who have terminated employment, including officers and employees who have commenced receiving a benefit, shall be recalculated to reflect such increase.



The annual compensation of an officer or employee who commenced participation under this act before January 1, 1996 shall not be limited by the terms of this section."

Section 6. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article II (Nonuniformed Officers and Employees), Section 6-96 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Uniformed Services Employment and Reemployment Rights Act.** Notwithstanding any other provision of this act, 1927 Ga. Laws, page 265, as amended, to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the U.S. Internal Revenue Code."

Section 7. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article II (Nonuniformed Officers and Employees), Section 6-97 of the Code of Ordinances of the City of Atlanta, Georgia:

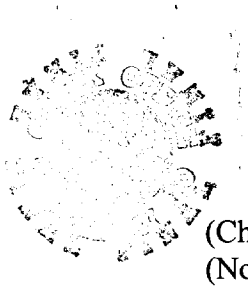
"**Supplemental Benefit Arrangement.**

(a) *Purpose.* The purpose of this Supplemental Benefit Arrangement is to provide officers and employees participating under the provisions of this act, 1927 Ga. Laws, page 265, as amended, with the full amount of benefit intended under the act, without regard to the limitations imposed by section 415 of the U.S. Internal Revenue Code (the 'Code').

(b) *Benefits.* If the annual retirement benefit of an officer or employee under the act is reduced as a result of the limitations in Code section 415 (as described in sections 6-93 and 6-94) such officer or employee shall receive an amount from the Supplemental Benefit Arrangement equal to the difference between (i) the amount that would have been payable under the terms of the act without the application of Code section 415 and (ii) the amount payable under the terms of the act determined with the application of the limitations in Code section 415.

(c) *Elective Deferrals Not Permitted.* Officers and employees shall not be permitted to defer compensation either directly or indirectly under the Supplemental Benefit Arrangement at any time.

(d) *Subfund.* Notwithstanding any other provision of the act, the benefits payable under this section shall be paid from the assets of a subfund established under the existing fund, provided that such subfund shall be maintained solely for the purpose of providing benefits under the Supplemental Benefit Arrangement. The assets of the fund (other than the subfund) shall not be used to pay benefits under this section."



Section 8. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article II (Nonuniformed Officers and Employees), Section 6-98 of the Code of Ordinances of the City of Atlanta, Georgia:

"Eligible Rollover Distributions.

(a) *General Rule.* The distributee of any eligible rollover distribution made under this act, 1927 Ga. Laws, page 265, as amended, may elect, in the manner and at the time specified by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Definitions.*

(1) *Distributee.* For purposes of this section, a 'distributee' shall include any current or former officer or employee who has a right to a benefit under this act. In addition, the surviving spouse of any such current or former officer or employee shall be a distributee with respect to the interest of such surviving spouse.

(2) *Eligible Rollover Distribution.* For purposes of this section, an 'eligible rollover distribution' is any distribution from the fund established under the act 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; any distribution to the extent such distribution is required under section 401(a)(9) of the U.S. Internal Revenue Code (the 'Code'); and any hardship distribution.

(3) *Eligible Retirement Plan.* For purposes of this section, an 'eligible retirement plan' is an individual retirement account or annuity described in Code sections 408(a) or 408(b); a qualified trust described in Code section 401(a); an annuity plan described in Code section 403(a); an annuity contract described in Code section 403(b); and an eligible deferred compensation plan described in 457(b) that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and that agrees to account separately for amounts transferred into such plan from this fund. With respect to that portion of an eligible rollover distribution that consists of

after-tax contributions that are not includible in gross income, an eligible retirement plan shall include only an individual retirement account or annuity described in Code sections 408(a) or (b) or a qualified defined contribution plan described in Code sections 401(a) or 403(a) that agrees to account separately for the amounts so transferred, including separate accounting for that portion of such distribution that is not includible in gross income."

Section 9. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article II (Nonuniformed Officers and Employees), Section 6-99 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Employees of the Atlanta Independent School System.** Employees of the Atlanta Independent School System, or any predecessor entity, who are not participating in the Teachers Retirement System of Georgia, shall be eligible to participate under the provisions of this act, 1927 Ga. Laws, page 265, as amended, under the same terms and conditions that are applicable to officers and employees of the City of Atlanta, and service with the Atlanta Independent School System, or any predecessor entity, shall be treated as service with the City of Atlanta for the purpose of determining an employee's benefits under this act."

Section 10. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article II (Nonuniformed Officers and Employees), Section 6-100 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Exclusive Benefit.** At no time prior to the satisfaction of all liabilities with respect to officers and employees participating under the provisions of this act, 1927 Ga. Laws, page 265, as amended, and their beneficiaries shall any part of the corpus or income of the fund established under this act be used for, or diverted to, purposes other than for the exclusive benefit of such officers, employees and beneficiaries, except that a contribution by an employer to the fund established under this act made under a mistake of fact may be returned to such employer within one year after the payment of the contribution."

Section 11. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article II (Nonuniformed Officers and Employees), Section 6-101 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Minimum Vesting Standards.** Upon the termination of the fund established under this act, 1927 Ga. Laws, page 265, as amended, or upon complete discontinuance of contributions under the act, the rights of all officers and employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable."

Section 12. The provisions of Section 1 are effective as of January 1, 2004. The provisions of Section 2 are effective as of January 1, 1997. The provisions of Sections 3, 4 and 8 are effective as of January 1, 2002. The provisions of Section 5 are effective as of January 1, 1996. The provisions of Section 6 are effective as of December 12, 1994. The provisions of Section 7 are effective January 1, 2004. The provisions of Section 9 shall be effective as of the date on which the Atlanta Independent School System, or any predecessor entity, first employed any individual. The provisions of Sections 10 and 11 are effective as of January 1, 1997.

Section 13. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION II:

That Georgia Laws 1924, p. 167, as amended, codified in Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article IV (Firefighters), of the Code of Ordinances of the City of Atlanta, Georgia, is hereby further amended as follows:

Section 1. By deleting the existing Section 6-248 of the Code of Ordinances of the City of Atlanta, Georgia, and by substituting the following:

"**Salary and Earnings.**

For the purposes of determining any benefit or contribution under this act, 1924 Ga. Laws, page 167, as amended, the "salary," "earnings" or "wages" or "total" "salary," "earnings" or "wages" of an officer or employee of the City of Atlanta for any period shall include the base wages or salary paid to such officer or employee (including lump-sum payments thereof); amounts contributed or deferred by the officer or employee and not includable in gross income under sections 125, 132(f) or 457 of the U.S. Internal Revenue Code (the "Code"); amounts contributed by the officer or employee to a governmental qualified retirement plan and treated as employer contributions under Code section 414(h); and amounts credited to the officer or employee for furlough hours. Such salary, earnings or wages shall not include the following amounts: disability insurance payments to an officer or employee; travel, mileage or automobile-related allowances or reimbursements; bonuses (other than sick-leave bonuses) or performance awards; overtime or premium payments; or any other special, unusual or nonrecurring payment.

The City of Atlanta may amend this provision at any time to the extent permitted by applicable law."

Section 2. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article IV (Firefighters), Section 6-391 of the Code of Ordinances of the City of Atlanta, Georgia:

"Distribution Requirements.

(a) The requirements of this section shall apply to the distribution of all benefits under this act, 1924 Ga. Laws, page 167, as amended, and will take precedence over any inconsistent provisions of this act.

(b) All distributions required under this section will be determined and made in accordance with section 401(a)(9) of the U.S. Internal Revenue Code (the 'Code'), including the incidental death benefit requirements of Code section 401(a)(9)(G), and the regulations thereunder.

(c) The entire benefit of an officer or employee under this act will be distributed beginning not later than his required beginning date over the life of such officer or employee or, if applicable, over the lives of such officer or employee and a designated beneficiary. 'Required beginning date' shall mean April 1 of the calendar year following the later of (1) the calendar year in which the officer or employee attains age 70 ½ or (2) the calendar year in which the officer or employee terminates employment.

(d) If the distribution of a benefit has begun in accordance with subsection (c) above and the officer or employee dies before his entire benefit has been distributed to him, the remaining portion of such benefit will be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

(e) If an officer or employee dies before the distribution of his benefit has begun in accordance with subsection (c) above, his interest will be distributed to his designated beneficiary (as defined in Code section 401(a)(9)(E)) over a period not extending beyond the life or life expectancy of such beneficiary, beginning not later than December 31 of the calendar year following the calendar year of the officer's or employee's death. If such benefit is payable to (or for the benefit of) his surviving spouse, the date on which the distributions are required to begin shall not be earlier than December 31 of the calendar year in which the officer or employee would have attained age 70 ½. If the spouse dies before the distribution to such spouse is made or begun, this subsection (e) shall be applied as if the surviving spouse were the officer or employee.

(f) If an officer or employee dies before the distribution of his benefit has begun in accordance with the foregoing provisions of this section and the officer or employee does not have a designated beneficiary (as defined in Code section 401(a)(9)(E)), the officer's or employee's benefit, if any, shall be distributed in a

single lump-sum payment by December 31 of the year in which occurs the five-year anniversary of the officer's or employee's death."

Section 3. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Firefighters), Section 6-392 of the Code of Ordinances of the City of Atlanta, Georgia:

"Limitation on Benefits.

(a) *Basic Limitation.* Notwithstanding any provision of this act, 1924 Ga. Laws, page 167, as amended, to the contrary, the amount of an officer's or employee's annual retirement benefit, calculated as a single life annuity commencing before age 62 or after age 65, shall not exceed $160,000, as adjusted as of the first day of each limitation year to the dollar limitation determined by the Commissioner of Internal Revenue pursuant to regulations issued by the Secretary of the Treasury under the authority granted by section 415(d) of the U.S. Internal Revenue Code (the 'Code') (the 'Maximum Permissible Dollar Amount'). For purposes of this section, the term 'limitation year' shall mean the calendar year.

As of each January 1, the dollar limitation as determined by the Commissioner of Internal Revenue for that calendar year will become effective as the Maximum Permissible Dollar Amount for that calendar year. The dollar limitation applicable to officers and employees who have commenced distribution of their benefit shall be adjusted annually to reflect any changes to the Maximum Permissible Dollar Amount.

Employee contributions treated as employer contributions made pursuant to section 6-367(u) shall be considered a part of the benefit subject to the limitations of this section. Officer or employee contributions for prior service with certain other employers shall be subject to the rules of section 6-393. Employee contributions not made pursuant to section 6-367(u) and not made for credit for prior service with certain other employers shall be converted to an annual benefit amount pursuant to Code section 411(c)(2)(B) and shall be subtracted from the total annual benefit subject to the limitations of this subsection (a), provided that such contributions shall be considered to be a separate defined contribution plan maintained by the City of Atlanta and subject to the limitations of Code section 415(c).

Notwithstanding the foregoing, the following values shall not be taken into account in adjusting any benefit under the act to a single life annuity:

(1) the value of a qualified joint and survivor annuity (as defined in Code section 417 and the regulations thereunder) to the extent such value exceeds the sum of (A) the value of a single life annuity beginning on the same date and (B) the value of any post-retirement death benefits that

would be payable even if the annuity was not in the form of a joint and survivor annuity,

(2) the value of benefits that are not directly related to retirement benefits (such as pre-retirement disability and death benefits); and

(3) the value of benefits that reflect post-retirement cost-of-living increases to the extent such increases are in accordance with Code section 415(d) and the regulations thereunder.

(b) *Exception to Basic Limitation.* If the annual retirement benefit payable to an officer or employee under this act does not exceed $10,000 for the limitation year with respect to which a determination is being made or any prior limitation year, and the officer or employee has not at any time participated in a defined contribution plan maintained by the City of Atlanta, the limitation otherwise imposed by subsection (a) shall not apply.

(c) *Reduction for Fewer Than 10 Years of Participation.* If an officer or employee has participated under the provisions of this act for fewer than 10 years, the Maximum Permissible Dollar Amount shall be adjusted by multiplying such limitation by a fraction, the numerator of which is the number of the officer's or employee's years of participation as of such date (and any fraction thereof) and the denominator of which is 10. The foregoing reduction shall not apply to (1) disability retirement benefits received by an officer or employee under this act or (2) death benefits received by an officer's or employee's beneficiary under this act.

(d) *Actuarial Adjustment When Benefits Commence Before Age 62 or After Age 65.* If an officer's or employee's annual retirement benefit commences before he attains age 62, the Maximum Permissible Dollar Amount for the limitation year shall be reduced so that it is the actuarial equivalent of the Maximum Permissible Dollar Amount that would be applicable if the retirement benefit had commenced at age 62. The interest rate assumption used to make such actuarial reduction shall be the greater of 5% or the interest rate specified in the act for determining actuarial equivalence for early retirement benefits applicable to the officer or employee. If an officer's or employee's retirement benefit commences after age 65, the Maximum Permissible Dollar Amount for the limitation year shall be increased so that it is the actuarial equivalent of the Maximum Permissible Dollar Amount at age 65. The interest rate assumption used to make such actuarial increase shall be 5%. The actuarial adjustments required under this subsection (d) shall be computed using the mortality table prescribed by Revenue Ruling 2001-62, 2001-2 C.B. 632, or any successor revenue ruling, notice or other guidance provided by the Commissioner of Internal Revenue that establishes a replacement mortality table pursuant to Code section 415(b)(2)(E)(v).

Notwithstanding the foregoing, the Maximum Permissible Dollar Amount shall not be reduced by reason of the commencement of annual retirement benefits before age 62 for (1) any full-time officer or employee of any police or fire department that is organized and operated by the City of Atlanta, (2) disability retirement benefits paid to an officer or employee pursuant to this act or (3) a death benefit paid to a beneficiary pursuant to this act.

(e) *Preservation of Old Law Benefits.* In the case of an officer or employee who participated in one or more defined benefit plans of the City of Atlanta as of the first day of the first limitation year beginning after December 31, 1994, the application of the limitations of this section shall not cause the maximum permissible benefit for such officer or employee under all such defined benefit plans to be less than the officer's or employee's RPA '94 Old-Law Benefit.

For officers or employees with RPA '94 Old-Law Benefits, for purposes of determining whether an officer's or employee's benefit exceeds the limitations of this section after December 31, 1999 (the "RPA '94 Freeze Date"), an officer's or employee's total annual benefit under the act calculated as a straight life annuity shall be determined, and this benefit shall not exceed the Maximum Permissible Dollar Amount applicable to the officer or employee. Where an officer's or employee's benefit must be adjusted to an actuarially equivalent straight life annuity, such adjustment shall be calculated as provided under subsection (a) above.

In no event shall an officer or employee receive less than the officer's or employee's RPA '94 Old-Law Benefit. For purposes of determining that an officer or employee receives no less than the officer's or employee's RPA '94 Old-Law Benefit, the limitation applicable to the officer's or employee's RPA '94 Old-Law Benefit ("Old-Law Limitation") shall be determined, and the officer or employee shall receive the RPA '94 Old-Law Benefit to the extent it does not exceed such Old-Law Limitation. Before January 1, 2000 (the "Final Implementation Date"), adjustments to the Old-Law Limitation for benefits that commence before age 62 or after age 65 shall be calculated as provided under Code section 415(b)(2)(E) and the terms of the act as in effect on December 7, 1994. On or after the Final Implementation Date, adjustments to the Old Law Limitation for commencement of benefits before age 62 or after age 65 shall be calculated as provided in subsection (d) above. In no event, however, may an officer's or employee's Old-Law Benefit exceed the officer's or employee's Old-Law Benefit as of the RPA '94 Freeze Date.

For the purposes of this subsection, the term "RPA '94 Old-Law Benefit" shall mean the officer's or employee's accrued benefit under the terms of the act as of the RPA '94 Freeze Date, for the annuity starting date and optional form and taking into account the limitations of Code section 415 as in effect on December 7, 1994, including the participation requirements under Code section 415(b)(5). In determining the amount of an officer's or employee's RPA Old-Law Benefit,

the following shall be disregarded: (1) any ordinance or amendment to the act increasing benefits adopted after the RPA '94 Freeze Date, and (2) any cost-of-living adjustments that become effective under Code section 415(d) after the RPA '94 Freeze Date.

If, at any date after the RPA '94 Freeze Date, the officer's or employee's total benefit under the act, before the application of Code section 415, is less than the officer's or employee's Old-Law Benefit, the RPA '94 Old-Law Benefit will be reduced to a benefit equal to the officer's or employee's total benefit.

The use of a different interest rate and mortality table may not increase an officer's or employee's RPA '94 Old-Law Benefit to an amount greater than such benefit as of the RPA '94 Freeze Date."

Section 4. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Firefighters), Section 6-393 of the Code of Ordinances of the City of Atlanta, Georgia:

"Treatment of Employee Contributions for Prior Service with Certain Other Employers.

(a) *Basic Limitation.* If an officer or employee makes one or more contributions under this act, 1924 Ga. Laws, page 167, as amended, to purchase permissive service credit on or after January 1, 1998, the requirements of section 6-392 shall be treated as satisfied if either:

(1) the requirements of section 415(b) of the U.S. Internal Revenue Code (the 'Code') are satisfied, determined by treating the accrued benefit derived from all contributions under this act for permissive service credit as an annual benefit for purposes of Code section 415(b), provided, however, that the reduced limit under Code section 415(b)(2)(C) (as described in section 6-392(d)) shall not be exceeded solely by reason of this section 6-393; or

(2) the requirements of Code section 415(c) are satisfied, determined by treating all contributions under this act for permissive service credit as an annual addition for purposes of Code section 415(c), provided, however, that the percentage limitation under Code section 415(c)(1)(B) shall not be exceeded solely by reason of this section 6-393.

(b) *Limitation on Nonqualified Service.* Notwithstanding the foregoing, not more than five years of permissive service credit attributable to nonqualified service shall be taken into account for purposes of this section, and no permissive service credit shall be taken into account before the officer or employee has participated under the provisions of this act for at least five years.

(c) *Definitions.*

(1) *Permissive Service Credit.* For purposes of this section, the term 'permissive service credit' shall mean service credit that (A) is recognized under this act for purposes of calculating an officer's or employee's benefit, (B) such officer or employee has not received under this act and (C) such officer or employee may receive only by making a voluntary additional contribution in an amount determined under this act that does not exceed the amount necessary to fund the benefit attributable to such service credit.

(2) *Nonqualified Service.* For purposes of this section, the term 'nonqualified service' means service for which permissive service credit is allowed, other than:

(A) service (including parental, medical, sabbatical and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof or any agency or instrumentality of any of the foregoing (other than military service or service for credit that was obtained as a result of a repayment under Code section 415(k)(3));

(B) service (including parental, medical, sabbatical and similar leave) as an employee (other than as an employee described in clause (A) above) of an educational organization described in Code section 170(b)(1)(A)(ii) that is a public, private or sectarian school providing elementary or secondary education (though grade 12), as determined under the laws of the State of Georgia;

(C) service as an employee of an association of employees who are described in clause (A), above; or

(D) military service (other than qualified military service under Code section 414(u)) recognized under this act.

In the case of service described in clauses (A), (B) or (C), such service will be nonqualified service if recognition of such service would cause an officer or employee to receive a retirement benefit for the same service under more than one retirement plan."

Section 5. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Firefighters), Section 6-394 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Limitation on Monthly Earnings.**

For the period from January 1, 1996 to December 31, 2001, the annual compensation of each officer and employee taken into account for determining all benefits provided under this act, 1924 Ga. Laws, page 167, as amended, for any year shall not exceed $150,000, as adjusted for the cost of living in accordance with section 401(a)(17)(B) of the U.S. Internal Revenue Code (the 'Code'). For years beginning on and after January 1, 2002, the annual compensation of each officer and employee taken into account for determining all benefits provided under this act for any year shall not exceed $200,000, as adjusted for the cost of living in accordance with Code section 401(a)(17)(B).

If compensation for any prior year is taken into account in determining the benefits of an officer or employee, the compensation for such prior year shall be subject to the applicable annual compensation limit in effect under Code section 401(a)(17) for that prior year. Notwithstanding the foregoing, effective January 1, 2002, the limit on compensation taken into account with regard to years before January 1, 2002 shall be increased to $200,000, and the monthly benefit of officers and employees who have terminated employment, including officers and employees who have commenced receiving a benefit, shall be recalculated to reflect such increase.

The annual compensation of an officer or employee who commenced participation under this act before January 1, 1996 shall not be limited by the terms of this section."

Section 6. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Firefighters), Section 6-395 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Uniformed Services Employment and Reemployment Rights Act.** Notwithstanding any other provision of this act, 1924 Ga. Laws, page 167, as amended, to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the U.S. Internal Revenue Code."

Section 7. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Firefighters), Section 6-396 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Supplemental Benefit Arrangement.**

(a) *Purpose.* The purpose of this Supplemental Benefit Arrangement is to provide officers and employees participating under the provisions of this act, 1924 Ga. Laws, page 167, as amended, with the full amount of benefit intended under the act, without regard to the limitations imposed by section 415 of the U.S. Internal Revenue Code (the 'Code').

(b) *Benefits.* If the annual retirement benefit of an officer or employee under the act is reduced as a result of the limitations in Code section 415 (as described in sections 6-392 and 6-393) such officer or employee shall receive an amount from the Supplemental Benefit Arrangement equal to the difference between (i) the amount that would have been payable under the terms of the act without the application of Code section 415 and (ii) the amount payable under the terms of the act determined with the application of the limitations in Code section 415.

(c) *Elective Deferrals Not Permitted.* Officers and employees shall not be permitted to defer compensation either directly or indirectly under the Supplemental Benefit Arrangement at any time.

(d) *Subfund.* Notwithstanding any other provision of the act, the benefits payable under this section shall be paid from the assets of a subfund established under the existing fund, provided that such subfund shall be maintained solely for the purpose of providing benefits under the Supplemental Benefit Arrangement. The assets of the fund (other than the subfund) shall not be used to pay benefits under this section."

Section 8. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Firefighters), Section 6-397 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Eligible Rollover Distributions.**

(a) *General Rule.* The distributee of any eligible rollover distribution made under this act, 1924 Ga. Laws, page 167, as amended, may elect, in the manner and at the time specified by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Definitions.*

(1) *Distributee.* For purposes of this section, a 'distributee' shall include any current or former officer or employee who has a right to a benefit under this act. In addition, the surviving spouse of any such current or former officer or employee shall be a distributee with respect to the interest of such surviving spouse.

(2) *Eligible Rollover Distribution.* For purposes of this section, an 'eligible rollover distribution' is any distribution from the fund established under the act 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; any distribution to the extent such distribution is required under section 401(a)(9) of the U.S. Internal Revenue Code (the 'Code'); and any hardship distribution.

(3) *Eligible Retirement Plan.* For purposes of this section, an 'eligible retirement plan' is an individual retirement account or annuity described in Code sections 408(a) or 408(b); a qualified trust described in Code section 401(a); an annuity plan described in Code section 403(a); an annuity contract described in Code section 403(b); and an eligible deferred compensation plan described in 457(b) that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and that agrees to account separately for amounts transferred into such plan from this fund. With respect to that portion of an eligible rollover distribution that consists of after-tax contributions that are not includible in gross income, an eligible retirement plan shall include only an individual retirement account or annuity described in Code sections 408(a) or (b) or a qualified defined contribution plan described in Code sections 401(a) or 403(a) that agrees to account separately for the amounts so transferred, including separate accounting for that portion of such distribution that is not includible in gross income."

Section 9. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Firefighters), Section 6-398 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Exclusive Benefit.** At no time prior to the satisfaction of all liabilities with respect to officers and employees participating under the provisions of this

act, 1924 Ga. Laws, page 167, as amended, and their beneficiaries shall any part of the corpus or income of the fund established under this act be used for, or diverted to, purposes other than for the exclusive benefit of such officers, employees and beneficiaries, except that a contribution by an employer to the fund established under this act made under a mistake of fact may be returned to such employer within one year after the payment of the contribution."

Section 10. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Firefighters), Section 6-399 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Minimum Vesting Standards.** Upon the termination of the fund established under this act, 1924 Ga. Laws, page 167, as amended, or upon complete discontinuance of contributions under the act, the rights of all officers and employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable."

Section 11. The provisions of Section 1 are effective as of January 1, 2004. The provisions of Section 2 are effective as of January 1, 1997. The provisions of Sections 3, 4 and 8 are effective as of January 1, 2002. The provisions of Section 5 are effective as of January 1, 1996. The provisions of Section 6 are effective as of December 12, 1994. The provisions of Section 7 are effective January 1, 2004. The provisions of Sections 9 and 10 are effective as of January 1, 1997.

Section 12. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION III:

That Georgia Laws 1933, p. 213, as amended, codified in Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Police Department) of the Code of Ordinances of the City of Atlanta, Georgia, is hereby further amended as follows:

Section 1. By deleting the existing Section 6-390 of the Code of Ordinances of the City of Atlanta, Georgia, and by substituting the following:

"**Salary and Earnings.**

For the purposes of determining any benefit or contribution under this act, 1933 Ga. Laws, page 213, as amended, the "salary," "earnings" or "wages" or "total" "salary," "earnings" or "wages" of an officer or employee of the City of Atlanta for any period shall include the base wages or salary paid to such officer or employee (including lump-sum payments thereof); amounts contributed or deferred by the officer or employee and not includable in gross income under sections 125, 132(f) or 457 of the U.S. Internal Revenue Code (the "Code");

amounts contributed by the officer or employee to a governmental qualified retirement plan and treated as employer contributions under Code section 414(h); and amounts credited to the officer or employee for furlough hours. Such salary, earnings or wages shall not include the following amounts: disability insurance payments to an officer or employee; travel, mileage or automobile-related allowances or reimbursements; bonuses (other than sick-leave bonuses) or performance awards; overtime or premium payments; or any other special, unusual or nonrecurring payment.

The City of Atlanta may amend this provision at any time to the extent permitted by applicable law."

Section 2. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Police Department), Section 6-249 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Distribution Requirements.**

(a) The requirements of this section shall apply to the distribution of all benefits under this act, 1933 Ga. Laws, page 213, as amended, and will take precedence over any inconsistent provisions of this act.

(b) All distributions required under this section will be determined and made in accordance with section 401(a)(9) of the U.S. Internal Revenue Code (the 'Code'), including the incidental death benefit requirements of Code section 401(a)(9)(G), and the regulations thereunder.

(c) The entire benefit of an officer or employee under this act will be distributed beginning not later than his required beginning date over the life of such officer or employee or, if applicable, over the lives of such officer or employee and a designated beneficiary. 'Required beginning date' shall mean April 1 of the calendar year following the later of (1) the calendar year in which the officer or employee attains age 70 ½ or (2) the calendar year in which the officer or employee terminates employment.

(d) If the distribution of a benefit has begun in accordance with subsection (c) above and the officer or employee dies before his entire benefit has been distributed to him, the remaining portion of such benefit will be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

(e) If an officer or employee dies before the distribution of his benefit has begun in accordance with subsection (c) above, his interest will be distributed to his designated beneficiary (as defined in Code section 401(a)(9)(E)) over a period not extending beyond the life or life expectancy of such beneficiary, beginning

not later than December 31 of the calendar year following the calendar year of the officer's or employee's death. If such benefit is payable to (or for the benefit of) his surviving spouse, the date on which the distributions are required to begin shall not be earlier than December 31 of the calendar year in which the officer or employee would have attained age 70 ½. If the spouse dies before the distribution to such spouse is made or begun, this subsection (e) shall be applied as if the surviving spouse were the officer or employee.

(f) If an officer or employee dies before the distribution of his benefit has begun in accordance with the foregoing provisions of this section and the officer or employee does not have a designated beneficiary (as defined in Code section 401(a)(9)(E)), the officer's or employee's benefit, if any, shall be distributed in a single lump-sum payment by December 31 of the year in which occurs the five-year anniversary of the officer's or employee's death."

Section 3. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Police Department), Section 6-250 of the Code of Ordinances of the City of Atlanta, Georgia:

"Limitation on Benefits.

(a) *Basic Limitation.* Notwithstanding any provision of this act, 1933 Ga. Laws, page 213, as amended, to the contrary, the amount of an officer's or employee's annual retirement benefit, calculated as a single life annuity commencing before age 62 or after age 65, shall not exceed $160,000, as adjusted as of the first day of each limitation year to the dollar limitation determined by the Commissioner of Internal Revenue pursuant to regulations issued by the Secretary of the Treasury under the authority granted by section 415(d) of the U.S. Internal Revenue Code (the 'Code') (the 'Maximum Permissible Dollar Amount'). For purposes of this section, the term 'limitation year' shall mean the calendar year.

As of each January 1, the dollar limitation as determined by the Commissioner of Internal Revenue for that calendar year will become effective as the Maximum Permissible Dollar Amount for that calendar year. The dollar limitation applicable to officers and employees who have commenced distribution of their benefit shall be adjusted annually to reflect any changes to the Maximum Permissible Dollar Amount.

Employee contributions treated as employer contributions made pursuant to section 6-222(u) shall be considered a part of the benefit subject to the limitations of this section. Officer or employee contributions for prior service with certain other employers shall be subject to the rules of section 6-251. Employee contributions not made pursuant to section 6-222(u) and not made for credit for prior service with certain other employers shall be converted to an annual benefit amount pursuant to Code section 411(c)(2)(B) and shall be subtracted from the

total annual benefit subject to the limitations of this subsection (a), provided that such contributions shall be considered to be a separate defined contribution plan maintained by the City of Atlanta and subject to the limitations of Code section 415(c).

Notwithstanding the foregoing, the following values shall not be taken into account in adjusting any benefit under the act to a single life annuity:

(1) the value of a qualified joint and survivor annuity (as defined in Code section 417 and the regulations thereunder) to the extent such value exceeds the sum of (A) the value of a single life annuity beginning on the same date and (B) the value of any post-retirement death benefits that would be payable even if the annuity was not in the form of a joint and survivor annuity,

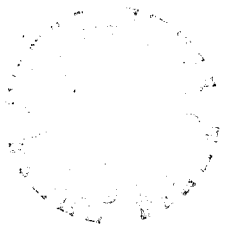
(2) the value of benefits that are not directly related to retirement benefits (such as pre-retirement disability and death benefits); and

(3) the value of benefits that reflect post-retirement cost-of-living increases to the extent such increases are in accordance with Code section 415(d) and the regulations thereunder.

(b) *Exception to Basic Limitation.* If the annual retirement benefit payable to an officer or employee under this act does not exceed $10,000 for the limitation year with respect to which a determination is being made or any prior limitation year, and the officer or employee has not at any time participated in a defined contribution plan maintained by the City of Atlanta, the limitation otherwise imposed by subsection (a) shall not apply.

(c) *Reduction for Fewer Than 10 Years of Participation.* If an officer or employee has participated under the provisions of this act for fewer than 10 years, the Maximum Permissible Dollar Amount shall be adjusted by multiplying such limitation by a fraction, the numerator of which is the number of the officer's or employee's years of participation as of such date (and any fraction thereof) and the denominator of which is 10. The foregoing reduction shall not apply to (1) disability retirement benefits received by an officer or employee under this act or (2) death benefits received by an officer's or employee's beneficiary under this act.

(d) *Actuarial Adjustment When Benefits Commence Before Age 62 or After Age 65.* If an officer's or employee's annual retirement benefit commences before he attains age 62, the Maximum Permissible Dollar Amount for the limitation year shall be reduced so that it is the actuarial equivalent of the Maximum Permissible Dollar Amount that would be applicable if the retirement benefit had commenced at age 62. The interest rate assumption used to make such actuarial reduction shall be the greater of 5% or the interest rate specified in



the act for determining actuarial equivalence for early retirement benefits applicable to the officer or employee. If an officer's or employee's retirement benefit commences after age 65, the Maximum Permissible Dollar Amount for the limitation year shall be increased so that it is the actuarial equivalent of the Maximum Permissible Dollar Amount at age 65. The interest rate assumption used to make such actuarial increase shall be 5%. The actuarial adjustments required under this subsection (d) shall be computed using the mortality table prescribed by Revenue Ruling 2001-62, 2001-2 C.B. 632, or any successor revenue ruling, notice or other guidance provided by the Commissioner of Internal Revenue that establishes a replacement mortality table pursuant to Code section 415(b)(2)(E)(v).

Notwithstanding the foregoing, the Maximum Permissible Dollar Amount shall not be reduced by reason of the commencement of annual retirement benefits before age 62 for (1) any full-time officer or employee of any police or fire department that is organized and operated by the City of Atlanta, (2) disability retirement benefits paid to an officer or employee pursuant to this act or (3) a death benefit paid to a beneficiary pursuant to this act.

(e) *Preservation of Old Law Benefits.* In the case of an officer or employee who participated in one or more defined benefit plans of the City of Atlanta as of the first day of the first limitation year beginning after December 31, 1994, the application of the limitations of this section shall not cause the maximum permissible benefit for such officer or employee under all such defined benefit plans to be less than the officer's or employee's RPA '94 Old-Law Benefit.

For officers or employees with RPA '94 Old-Law Benefits, for purposes of determining whether an officer's or employee's benefit exceeds the limitations of this section after December 31, 1999 (the "RPA '94 Freeze Date"), an officer's or employee's total annual benefit under the act calculated as a straight life annuity shall be determined, and this benefit shall not exceed the Maximum Permissible Dollar Amount applicable to the officer or employee. Where an officer's or employee's benefit must be adjusted to an actuarially equivalent straight life annuity, such adjustment shall be calculated as provided under subsection (a) above.

In no event shall an officer or employee receive less than the officer's or employee's RPA '94 Old-Law Benefit. For purposes of determining that an officer or employee receives no less than the officer's or employee's RPA '94 Old-Law Benefit, the limitation applicable to the officer's or employee's RPA '94 Old-Law Benefit ("Old-Law Limitation") shall be determined, and the officer or employee shall receive the RPA '94 Old-Law Benefit to the extent it does not exceed such Old-Law Limitation. Before January 1, 2000 (the "Final Implementation Date"), adjustments to the Old-Law Limitation for benefits that commence before age 62 or after age 65 shall be calculated as provided under Code section 415(b)(2)(E) and the terms of the act as in effect on December 7,

1994. On or after the Final Implementation Date, adjustments to the Old Law Limitation for commencement of benefits before age 62 or after age 65 shall be calculated as provided in subsection (d) above. In no event, however, may an officer's or employee's Old-Law Benefit exceed the officer's or employee's Old-Law Benefit as of the RPA '94 Freeze Date.

For the purposes of this subsection, the term "RPA '94 Old-Law Benefit" shall mean the officer's or employee's accrued benefit under the terms of the act as of the RPA '94 Freeze Date, for the annuity starting date and optional form and taking into account the limitations of Code section 415 as in effect on December 7, 1994, including the participation requirements under Code section 415(b)(5). In determining the amount of an officer's or employee's RPA Old-Law Benefit, the following shall be disregarded: (1) any ordinance or amendment to the act increasing benefits adopted after the RPA '94 Freeze Date, and (2) any cost-of-living adjustments that become effective under Code section 415(d) after the RPA '94 Freeze Date.

If, at any date after the RPA '94 Freeze Date, the officer's or employee's total benefit under the act, before the application of Code section 415, is less than the officer's or employee's Old-Law Benefit, the RPA '94 Old-Law Benefit will be reduced to a benefit equal to the officer's or employee's total benefit.

The use of a different interest rate and mortality table may not increase an officer's or employee's RPA '94 Old-Law Benefit to an amount greater than such benefit as of the RPA '94 Freeze Date."

Section 4. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Police Department), Section 6-251 of the Code of Ordinances of the City of Atlanta, Georgia:

"Treatment of Employee Contributions for Prior Service with Certain Other Employers.

(a) *Basic Limitation.* If an officer or employee makes one or more contributions under this act, 1933 Ga. Laws, page 213, as amended, to purchase permissive service credit on or after January 1, 1998, the requirements of section 6-250 shall be treated as satisfied if either:

(1) the requirements of section 415(b) of the U.S. Internal Revenue Code (the 'Code') are satisfied, determined by treating the accrued benefit derived from all contributions under this act for permissive service credit as an annual benefit for purposes of Code section 415(b), provided, however, that the reduced limit under Code section 415(b)(2)(C) (as described in section 6-250(d)) shall not be exceeded solely by reason of this section 6-251; or

(2) the requirements of Code section 415(c) are satisfied, determined by treating all contributions under this act for permissive service credit as an annual addition for purposes of Code section 415(c), provided, however, that the percentage limitation under Code section 415(c)(1)(B) shall not be exceeded solely by reason of this section 6-251.

(b) *Limitation on Nonqualified Service.* Notwithstanding the foregoing, not more than five years of permissive service credit attributable to nonqualified service shall be taken into account for purposes of this section, and no permissive service credit shall be taken into account before the officer or employee has participated under the provisions of this act for at least five years.

(c) *Definitions.*

(1) *Permissive Service Credit.* For purposes of this section, the term 'permissive service credit' shall mean service credit that (A) is recognized under this act for purposes of calculating an officer's or employee's benefit, (B) such officer or employee has not received under this act and (C) such officer or employee may receive only by making a voluntary additional contribution in an amount determined under this act that does not exceed the amount necessary to fund the benefit attributable to such service credit.

(2) *Nonqualified Service.* For purposes of this section, the term 'nonqualified service' means service for which permissive service credit is allowed, other than:

(A) service (including parental, medical, sabbatical and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof or any agency or instrumentality of any of the foregoing (other than military service or service for credit that was obtained as a result of a repayment under Code section 415(k)(3));

(B) service (including parental, medical, sabbatical and similar leave) as an employee (other than as an employee described in clause (A) above) of an educational organization described in Code section 170(b)(1)(A)(ii) that is a public, private or sectarian school providing elementary or secondary education (though grade 12), as determined under the laws of the State of Georgia;

(C) service as an employee of an association of employees who are described in clause (A), above; or

(D) military service (other than qualified military service under Code section 414(u)) recognized under this act.

In the case of service described in clauses (A), (B) or (C), such service will be nonqualified service if recognition of such service would cause an officer or employee to receive a retirement benefit for the same service under more than one retirement plan."

Section 5. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Police Department), Section 6-252 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Limitation on Monthly Earnings.**

For the period from January 1, 1996 to December 31, 2001, the annual compensation of each officer and employee taken into account for determining all benefits provided under this act, 1933 Ga. Laws, page 213, as amended, for any year shall not exceed $150,000, as adjusted for the cost of living in accordance with section 401(a)(17)(B) of the U.S. Internal Revenue Code (the 'Code'). For years beginning on and after January 1, 2002, the annual compensation of each officer and employee taken into account for determining all benefits provided under this act for any year shall not exceed $200,000, as adjusted for the cost of living in accordance with Code section 401(a)(17)(B).

If compensation for any prior year is taken into account in determining the benefits of an officer or employee, the compensation for such prior year shall be subject to the applicable annual compensation limit in effect under Code section 401(a)(17) for that prior year. Notwithstanding the foregoing, effective January 1, 2002, the limit on compensation taken into account with regard to years before January 1, 2002 shall be increased to $200,000, and the monthly benefit of officers and employees who have terminated employment, including officers and employees who have commenced receiving a benefit, shall be recalculated to reflect such increase.

The annual compensation of an officer or employee who commenced participation under this act before January 1, 1996 shall not be limited by the terms of this section."

Section 6. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Police Department), Section 6-253 of the Code of Ordinances of the City of Atlanta, Georgia:

> "**Uniformed Services Employment and Reemployment Rights Act.** Notwithstanding any other provision of this act, 1933 Ga. Laws, page 213, as amended, to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the U.S. Internal Revenue Code."

Section 7. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Police Department), Section 6-254 of the Code of Ordinances of the City of Atlanta, Georgia:

> "**Supplemental Benefit Arrangement.**
>
> (a) *Purpose.* The purpose of this Supplemental Benefit Arrangement is to provide officers and employees participating under the provisions of this act, 1933 Ga. Laws, page 213, as amended, with the full amount of benefit intended under the act, without regard to the limitations imposed by section 415 of the U.S. Internal Revenue Code (the 'Code').
>
> (b) *Benefits.* If the annual retirement benefit of an officer or employee under the act is reduced as a result of the limitations in Code section 415 (as described in sections 6-250 and 6-251) such officer or employee shall receive an amount from the Supplemental Benefit Arrangement equal to the difference between (i) the amount that would have been payable under the terms of the act without the application of Code section 415 and (ii) the amount payable under the terms of the act determined with the application of the limitations in Code section 415.
>
> (c) *Elective Deferrals Not Permitted.* Officers and employees shall not be permitted to defer compensation either directly or indirectly under the Supplemental Benefit Arrangement at any time.
>
> (d) *Subfund.* Notwithstanding any other provision of the act, the benefits payable under this section shall be paid from the assets of a subfund established under the existing fund, provided that such subfund shall be maintained solely for the purpose of providing benefits under the Supplemental Benefit Arrangement. The assets of the fund (other than the subfund) shall not be used to pay benefits under this section."

Section 8. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Police Department), Section 6-255 of the Code of Ordinances of the City of Atlanta, Georgia:

"Eligible Rollover Distributions.

(a) *General Rule.* The distributee of any eligible rollover distribution made under this act, 1933 Ga. Laws, page 213, as amended, may elect, in the manner and at the time specified by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Definitions.*

(1) *Distributee.* For purposes of this section, a 'distributee' shall include any current or former officer or employee who has a right to a benefit under this act. In addition, the surviving spouse of any such current or former officer or employee shall be a distributee with respect to the interest of such surviving spouse.

(2) *Eligible Rollover Distribution.* For purposes of this section, an 'eligible rollover distribution' is any distribution from the fund established under the act 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; any distribution to the extent such distribution is required under section 401(a)(9) of the U.S. Internal Revenue Code (the 'Code'); and any hardship distribution.

(3) *Eligible Retirement Plan.* For purposes of this section, an 'eligible retirement plan' is an individual retirement account or annuity described in Code sections 408(a) or 408(b); a qualified trust described in Code section 401(a); an annuity plan described in Code section 403(a); an annuity contract described in Code section 403(b); and an eligible deferred compensation plan described in 457(b) that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and that agrees to account separately for amounts transferred into such plan from this fund. With respect to that portion of an eligible rollover distribution that consists of after-tax contributions that are not includible in gross income, an

eligible retirement plan shall include only an individual retirement account or annuity described in Code sections 408(a) or (b) or a qualified defined contribution plan described in Code sections 401(a) or 403(a) that agrees to account separately for the amounts so transferred, including separate accounting for that portion of such distribution that is not includible in gross income."

Section 9. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Police Department), Section 6-256 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Exclusive Benefit.** At no time prior to the satisfaction of all liabilities with respect to officers and employees participating under the provisions of this act, 1933 Ga. Laws, page 213, as amended, and their beneficiaries shall any part of the corpus or income of the fund established under this act be used for, or diverted to, purposes other than for the exclusive benefit of such officers, employees and beneficiaries, except that a contribution by an employer to the fund established under this act made under a mistake of fact may be returned to such employer within one year after the payment of the contribution."

Section 10. By adding the following as a new section to be codified as Part I (Charter and Related Laws), Subpart B (Related Laws), Chapter 6 (Pensions), Article III (Police Department), Section 6-257 of the Code of Ordinances of the City of Atlanta, Georgia:

"**Minimum Vesting Standards.** Upon the termination of the fund established under this act, 1933 Ga. Laws, page 213, as amended, or upon complete discontinuance of contributions under the act, the rights of all officers and employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable."

Section 11. The provisions of Section 1 are effective as of January 1, 2004. The provisions of Section 2 are effective as of January 1, 1997. The provisions of Sections 3, 4 and 8 are effective as of January 1, 2002. The provisions of Section 5 are effective as of January 1, 1996. The provisions of Section 6 are effective as of December 12, 1994. The provisions of Section 7 are effective January 1, 2004. The provisions of Sections 9 and 10 are effective as of January 1, 1997.

Section 12. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

A true copy,
Rhonda Dauphin Johnson
Municipal Clerk, CMC

ADOPTED by the Council **NOV 15, 2004**
APPROVED by the Mayor **NOV 16, 2004**

RCS# 6246
11/15/04
2:48 PM

Atlanta City Council

Regular Session

03-O-0117 AMEND CITY OF ATLANTA GENERAL EMPLOYEES' FIREFIGHTERS & POLICE OFF PENSION FUNDS
ADOPT ON SUB

YEAS:	11
NAYS:	2
ABSTENTIONS:	0
NOT VOTING:	2
EXCUSED:	0
ABSENT	1

Y Smith	Y Archibong	N Moore	B Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
N Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	NV Sheperd	NV Borders

6

03-○-0117

(Do Not Write Above This Line)

AN ORDINANCE

Councilmember C. T. Martin

An Ordinance to amend Section 6-366 (c), 1978 Pension Act, Part of the Related Law Section (1978 Pension Act) of the Charter and the Code of Ordinances of the City of Atlanta so as to increase the multiplier from 2% to 3% for all the creditable years for sworn members of the Fire Pension Fund; and for other purposes

ADOPTED BY

NOV 15 2004

Substitute COUNCIL

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☑ PERSONAL PAPER REFER

Date Referred 1/21/03

Referred To: Finance/Exec

Date Referred

Refferred To:

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Referred To

Committee	Committee
Finance/Executive	Fin/Executive
Date 1/29/03	Date 11-10-04
Chair	Chair Dem M Stains
Action Fav, Adv, Hold (see rev. side)	Action Fav, Adv, Hold (see rev. side)
Other Refer to Fire Pen Fund	Other Substitute
Members	Members
	Felicia A. Moore Nay Moore
	Howard Shook
	Nay Fauver
Refer To	Refer To Clair Muller

Committee	Committee
Date	Date
Chair	Chair
Action Fav, Adv, Hold (see rev. side)	Action Fav, Adv, Hold (see rev. side)
Other	Other
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☑ 2nd ☐ 1st & 2nd ☐ 3rd

Readings

☐ Consent ☐ V Vote ☑ RC Vote

CERTIFIED

CERTIFIED

NOV 15 2004

MAYOR'S ACTION

APPROVED

NOV 16 2004

MAYOR