

Introduced by: Councilmember Snipper

First Reading: May 14, 2012
Second Reading: May 29, 2012
Effective Date: July 1, 2012

**CITY OF TAKOMA PARK, MARYLAND
ORDINANCE NO. 2012-24**

An Ordinance Amending the City of Takoma Park Police Employees' Retirement Plan to conform to changes required by the federal Heroes Earnings Assistance and Relief Tax Act of 2008.

WHEREAS, under the current Code, the City of Takoma Park Police Employees' Retirement Plan provides a participant will receive credit for service during a leave of absence for "service in the uniformed services" within the meaning of the Uniformed Services Employment and Reemployment Relief Act of 1994; and,

WHEREAS, the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") requires that the City of Takoma Park Police Employees' Retirement Plan treat police officers who receive wage differential payments from the City as "employees" and permits the City to treat wage differential payments as "compensation" within the meaning of the Plan; and,

WHEREAS, the HEART Act further requires that the Plan treat an employee who dies during service in the uniformed services as if the employee had died during employment; and,

WHEREAS, the HEART Act further permits the Plan to treat an employee who becomes disabled during service in the uniformed services as if the employee had become disabled during employment; and,

WHEREAS, the Retirement Plan Committee has recommended an amendment to the City of Takoma Park Police Employees' Retirement Plan to address the changes that are permitted or required by the HEART Act.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND.

SECTION 1. The definition of "Compensation" in Title 4, Personnel, Chapter 4.24, Police Employees' Retirement Plan, Section 060 of the *Takoma Park Code* (2004 edition) is amended as follows:

"Compensation" means the monthly equivalent of the participant's base annual salary rate or wages in effect on the first day of the month, determined without regard to:

1. Overtime, bonuses and other extra remuneration;
2. Amounts in excess of 1/12th of the applicable dollar limit in effect as of the first day of the plan year under Section 401(a)(17) of the Internal Revenue Code and regulations promulgated thereunder, as adjusted by the Commissioner of the Internal Revenue

Service for increases in the cost of living in accordance with Section 401(a)(17)(b) of the Internal Revenue Code;

3. Contributions, credits or benefits under this Plan or under any other retirement, deferred compensation, fringe benefit or employee welfare benefit plan; or

4. Direct reimbursement for expenses; provided, however, that compensation shall include any amount that would have qualified as compensation but for the fact that it constitutes a pick-up contribution under Section 4.4, or a salary reduction under any plan described in Section 132(f), 414(h)(2), 457(b) or 125 of the Internal Revenue Code.

Effective July 1, 2009, Compensation shall include Differential Wage Payments.

SECTION 2. Title 4, Personnel, Chapter 4.24, Police Employees' Retirement Plan, Section 060 of the *Takoma Park Code* (2004 edition) is amended by adding the following definition immediately following the definition of "Covered Employee."

"Differential Wage Payments" mean differential wage payments as defined in Section 3401(h) of the Internal Revenue Code. A differential wage payment generally refers to an employer payment to an employee called to Military Service for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

SECTION 3. The definition of "Employee" in Title 4, Personnel, Chapter 4.24, Police Employees' Retirement Plan, Section 060 of the *Takoma Park Code* (2004 edition) is amended as follows:

"Employee" means any person employed by the City and includes a person receiving Differential Wage Payments on or after July 1, 2009.

SECTION 4. Title 4, Personnel, Chapter 4.24, Police Employees' Retirement Plan, Section 060 of the *Takoma Park Code* (2004 edition) is amended by adding the following definition immediately following the definition of "Maryland Employer."

"Military Service" means service in the uniformed services within the meaning of the Uniformed Services Employment and Reemployment Rights Act of 1994.

SECTION 5. The definition of “Participant” in Title 4, Personnel, Chapter 4.24, Police Employees’ Retirement Plan, Section 060 of the *Takoma Park Code* (2004 edition) is amended as follows:

“Participant” means any employee who is currently benefiting under the Plan, and, where appropriate according to the context of the Plan, any former employee who is or may become (or whose beneficiaries may become) eligible to receive a benefit under the Plan. Effective July 1, 2007, participant shall include any employee on a leave of absence for Military Service.

SECTION 6. Title 4, Personnel, Chapter 4.24, Police Employees’ Retirement Plan, Section 110, subsection F of the *Takoma Park Code* (2004 edition) is amended as follows:

F. Credit for Service during Unpaid Leave of Absence for Military Service. A participant will receive credit for service during an unpaid leave of absence for Military Service service which is deemed to be “service in the uniformed services” within the meaning of the Uniformed Services Employment and Reemployment Rights Act of 1994 to the extent required by law. ~~Provided, if a participant fails to again become an employee as a result of his death while in Military Service on or after July 1, 2007, the participant shall be entitled to credited service for such Military Service.~~

SECTION 7. Title 4, Personnel, Chapter 4.24, Police Employees’ Retirement Plan, Section 250, subsection A of the *Takoma Park Code* (2004 edition) is amended as follows:

A. Ordinary Disability. If a participant reaches a termination date by reason of total and permanent disability and if the participant is credited with at least 5 years of eligibility service, the participant shall be entitled to receive a monthly disability benefit equal to the participant’s accrued benefit (based upon the participant’s average compensation at his or her termination date and the years of credited service the participant would have been credited with had he or she earned 25 years of credited service or reached age 62, if sooner), without actuarial reduction and, notwithstanding the provisions of subsection (C) of this section, without reduction for any benefits payable under the Workers’ Compensation Law of Maryland. Military Service that results in the participant’s disability shall count as eligibility service for purposes of this Section 4.24.250. A participant who reaches a termination date by reason of a disability incurred during Military Service shall be eligible to apply for ordinary disability benefits under subsection A of this Section 4.24.250.

SECTION 8. Title 4, Personnel, Chapter 4.24, Police Employees’ Retirement Plan, Section 250, subsection E of the *Takoma Park Code* (2004 edition) is amended as follows:

E. General Provisions Relating to Disability.

1. Commencement of Disability Benefits. Disability benefits shall commence on the first day of the month coincident with or otherwise next following the determination of disability by the City; provided, however, that benefits payable pursuant to this section shall be reduced by any benefits payable from workers’ compensation.

2. Forms of Benefit. The benefits payable pursuant to this section shall be payable in the normal form provided by Section 4.24.220, unless an optional form of payment has been elected pursuant to Section 4.24.330.

3. Definitions.

a. "Total and permanent disability" means a medically determinable physical or mental impairment which can be expected to be permanent or result in death, and by reason of which the participant will be prevented from performing the usual duties of his or her position with the City as required by the City Code or other established employment practices and requirements.

b. The total and permanent disability must be evidenced by a certificate of a physician selected or approved by the City.

c. Total and permanent disability shall not include any injury or disease which arose as a result of willful negligence by the participant.

4. Continuing Disability.

a. Until a participant who has reached a termination date by reason of disability attains his or her normal retirement date, the continuation of the participant's right to receive disability benefits shall depend on the participant's continued disability, and the case shall be subject to periodic review in accordance with the rules established by the City to determine the participant's health and employment status, including the requirement that the participant furnish to the City a copy of his or her Federal income tax return each year.

b. In the event a disabled participant ceases to submit to such review, prior to his or her normal retirement date, the disability benefits payable pursuant to this section shall cease.

5. Death of Disabled Participant. In the event of the death of a participant who is receiving benefits pursuant to this section, no benefits with respect to the participant shall be payable except as otherwise provided in Sections 4.24.300 and 4.24.310.

6. A participant who reaches a termination date by reason of a disability incurred during Military Service shall be eligible to apply of ordinary disability benefits under subsection A of this Section 4.24.250 but shall not be eligible to apply of line-of-duty disability benefits under subsection B of this Section 4.24.250.

SECTION 9. Title 4, Personnel, Chapter 4.24, Police Employees' Retirement Plan, Section 300, subsection A of the *Takoma Park Code* (2004 edition) is amended as follows:

A. Ordinary Death Benefit.

1. General Benefit. In the event of the death of a participant (including a participant who is on a leave of absence for Military Service) prior to his or her benefit commencement date, while not in the line of duty, the participant's beneficiary shall be entitled to receive as a single lump sum the benefit described in paragraph (a) of this subdivision plus that described in paragraph (b) of this subdivision, where:

a. Is an amount equal to the participant's employee contributions benefit; and

b. Is an amount equal to the participant's annualized compensation determined as of the date of death; provided, however, that the benefit provided by this paragraph shall be payable only if the participant had died while a covered employee and

after completing at least 1 year of eligibility service. Effective January 1, 2007, Military Service that results in the participant's death shall count as eligibility service under this Section 4.24.300.

2. Surviving Spouse/Domestic Partner Annuity Benefit.

a. If all of the following conditions are met, then the surviving spouse or domestic partner of a deceased participant shall be entitled to receive a survivor annuity, in lieu of any other plan benefit:

i. The participant is married on the date of death, or the participant and his or her partner are validly listed as domestic partners on the City's Domestic Partnership Registry on the date of death;

ii. The participant's death occurs before the participant's benefit commencement date;

iii. The participant has designated his or her surviving spouse or domestic partner as the participant's only primary beneficiary;

iv. Either: (A) The participant would have been eligible to receive normal retirement benefits pursuant to Section 4.24.220 had the participant retired on the day before his or her death, or (B) the participant would have been eligible to receive early retirement benefits pursuant to Section 4.24.230 had the participant retired on the day before his or her death;

v. The participant has not died in the line of duty as described in subsection (B)(4) of this section; and

vi. The spouse or domestic partner does not elect to receive the benefit provided in subsection (A)(1) of this section.

b. For purposes of this subdivision, a survivor annuity is a monthly income commencing in the month next following the participant's death, and continuing for the remainder of the spouse's or partner's life, in an amount equal to the actuarial equivalent of the benefit the spouse or partner would have received under an immediate joint and survivor annuity pursuant to Section 4.24.330 (with a 100% survivor benefit) had the participant retired on the day before his or her death.

SECTION 10. The HEART Act requires the changes described in Section 5, 6 and 9 of this Ordinance to be effective as of July 1, 2007 and the changes described in Section 3 of this Ordinance to be effective as of July 1, 2009. The remaining provisions of this Ordinance shall be effective July 1, 2012.

Adopted this 29th day of May, 2012, by roll-call vote as follows:

Aye: Williams, Daniels-Cohen, Grimes, Male, Seamens

Nay: None

Absent: Schultz

Abstain: None

EXPLANATORY NOTE

Additions to the existing language of the *Takoma Park Code* are shown by underlining. Deletions to the existing language of the *Takoma Park Code* are shown by ~~strikeout~~.