

IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE

JOHNNY H. FRAZIER, REUBEN K. SALTER,)

WILLIAM A. MELHORN, Jr., and JAMES G.)

GASTON,)

Plaintiffs)

Vs.)

Docket No: 14-0221

Part: _____

CITY OF CHATTANOOGA, TENNESSEE and)

THE CHATTANOOGA FIRE AND POLICE)

PENSION FUND,)

Defendants.

COMPLAINT

The Plaintiffs herein, by and through counsel, hereby bring this Complaint against Defendants, The City of Chattanooga, Tennessee and The Chattanooga Fire and Police Pension Fund, and for their causes of action would show unto the Court as follows:

(1) The Plaintiffs bring this action seeking a declaratory judgment and further seeking a permanent injunction against the respective Defendants, seeking to invalidate and permanently prevent the implementation by the respective Defendants of an ordinance recently adopted by the Chattanooga City Council which would purport to eliminate an annual three-percent (3%) increase to pensions earned by years of service and paid for

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with significant financial contributions by the respective Plaintiffs, which benefits have previously been vested, and are not subject to change, elimination, and/or modification by the respective Defendants.

(2) Plaintiffs Johnny Frazier and Rueben Salter are individuals who reside within Hamilton County, Tennessee, and are both retired from The Chattanooga Police Department. Plaintiff William Melhorn resides within Hamilton County, Tennessee and Plaintiff James Gaston resides within Bledsoe County, Tennessee, and both are retired from the Chattanooga Fire Department. The Plaintiffs are all retired and are currently receiving the pension benefits they earned and paid for while employed by The City of Chattanooga.

(3) There are numerous other retired policemen and firefighters from the City of Chattanooga who will also be adversely affected by actions undertaken by the Defendant which reduce the retirees vested pension benefits that had previously been guaranteed to them by the City of Chattanooga. The Plaintiffs bring this suit individually, and also ask, pursuant to Rule 23 of the Tennessee Rules of Civil Procedure, to be allowed to serve as representative parties for all other retirees from the City of Chattanooga who are similarly situated.

(4) Defendant City of Chattanooga, Tennessee, is a municipal corporation organized under the laws of the State of Tennessee.

(5) Defendant The Chattanooga Fire and Police Pension Fund is an entity established by the State of Tennessee in a series of Private Acts starting in 1949, thereby making it part of the Charter of the City of Chattanooga. The voters of the City of Chattanooga adopted an amendment of that Private Act thereby effectively removing it from the Charter and incorporating it into the Chattanooga City Code as Article III, Division

8, Sections 2-400 et seq. It is governed by a Board consisting of three active members of the Chattanooga Police Department and an equal number from the Chattanooga Fire Department. The Mayor's appointed representative and a member appointed by the City Council are also members of that board.

(6) The plaintiffs aver and charge that the city council for the City of Chattanooga passed, on March 11, 2014, an ordinance No. 12813, which effectively changes the terms of The Chattanooga Fire and Police Pension Fund to unnecessarily deprive current retirees and vested employees of a three-percent (3%) guaranteed annual benefit adjustment, and other benefits they were promised, which have vested, and to which they are entitled. A copy of this recently Enacted Ordinance No. 12813 *is attached hereto as Exhibit One.*

(7) The Plaintiffs would show that the Defendant City of Chattanooga had previously adopted an ordinance no. 11012 to amend the charter of the City of Chattanooga, and all acts, ordinances, and other charter provisions amendatory thereto, to make certain improvements to the firemen's' and policemen's insurance and pension fund. This ordinance no. 11012 was enacted and passed by referendum in the year 2000, *(hereinafter referred to as The 2000 Plan).*

(8) Among the changes thus enacted by the City of Chattanooga in The 2000 Plan, was a three-percent (3%) guaranteed annual benefit adjustment (Code of The City of Chattanooga, Section 2-417), which reads:

"Cost of Living Adjustments to Pension Benefits."

"The benefits payable to retired members or any of their survivors or beneficiaries shall be increased each January 1, following the first twelve months of benefit, by three-percent (3%)."

(9) The Plaintiff retirees, and on information and belief, all other retirees, have regularly received the three-percent (3%) annual adjustments in each year since the plan was adopted. The Plaintiffs aver and charge that representations were made to them at the time of the enactment by the City of Chattanooga of The 2000 Plan, that their future cost of living adjustments would be guaranteed, and one or more of the Plaintiffs actually made the decision to retire, when they did, based upon these representations and promises.

(10) The Plaintiffs aver and charge that the recent enactment by the Defendants of ordinance no. 12813 changes that guaranteed three-percent (3%) annual adjustment to the detriment of existing retirees and their survivors, and to the detriment of employees who are vested in future benefits under The 2000 Plan. Section six (6) of Ordinance no. 12813 purports to delete and repeal the vested provisions of Section 2-417 of the Chattanooga City Code, and replace the Plaintiffs' vested benefits with reduced pension benefits. Ordinance no. 12813 provision would limit the aggregate benefit to *one, point five-percent* (1.5%), with individuals receiving variable percentages capped at two-percent (2%), not compounded or placed under the base pension amount for the first two (2) years, beginning January 01st, 2015, and imposes other limitations based on the earnings of The Pension Fund, thus having no relationship to The 2000 Plan, and being substantially less than the guarantee under The 2000 Plan.

(11) Ordinance no. 11012, which passed and adopted The 2000 Plan, specifically provided that The City Council shall not decrease any vested benefits accrued by any participant or beneficiary of The Firemen's and Policemen's Insurance and Pension Fund. Section 2-411(d), of The 2000 Plan provides as follows:

[d] The City Council, City of Chattanooga, in its' discretion, only after a recommendation of the Board of Directors of The Firemen's and Policemen's Insurance and Pension Fund, upon advice by the Mayor, may, by ordinance, passed on three (3) separate readings, amend any Section of the private acts of 1949, as amended, provided that such amendment is not inconsistent with sound, actuarial principles, methods, and actuarial assumptions, and further provided that such amendment shall not in any way decrease any vested financial benefits accrued by any participant or beneficiary of The Firemen's and Policemen's Insurance and Pension Fund.

(12) The Plaintiffs aver and charge that the enactment by the Defendants of Ordinance no. 12813 is in violation of their vested rights under their pension, and that Ordinance no. 12813 effectively repeals and replaces Section 2-417 of The Chattanooga City code, to their financial detriment and in derogation of their vested financial rights.

(13) The City of Chattanooga adopted the recently repealed Section 2-417, despite having been placed on notice of at least two (2) decisions of The Tennessee Supreme Court, dealing with pensions for public officers and employees. Both decisions were, and are binding upon these Defendants.

(14) In 1981, The Tennessee Supreme Court in *Blackwell v. Quarterly County Court of Shelby County*, 622 S.W. 2d 535, was presented with the question of when a government may affect vested rights of its public employees under a pension plan. The Tennessee Supreme Court stated that vested benefits are "immutable", even if the funding municipality is in a financial crisis. "At some point after an employee has performed services, or has paid into a pensioned retirement plan, such employee acquires fixed and immutable rights to the system..." It seems to us that public policy demands that there be a right on the part of the public employer to make reasonable modifications in an existing plan if necessary to create or safeguard actuarial stability, provided that no then

accrued or vested rights of members or beneficiaries are thereby impaired". 622 S.W. 2d 535, @540.

(15) The Tennessee Supreme Court revisited this same issue in *Felts vs. Tennessee Consolidated Retirement System*, 650 S.W. 2d 371, 374 (Tenn. 1983). The Tennessee Supreme Court then reaffirmed the rule applicable to Tennessee local governments as follows:

A public employer may make changes in such a plan when reasonably required to do so for the fiscal integrity thereof, even though such changes be detrimental to the beneficiaries of the plan, except that, no such modification can be permitted to adversely affect an employee who has complied with all conditions necessary to be eligible for a retirement allowance.

(16) The Defendants adopted, in The 2000 Plan, and maintained the provision for an annual three-percent (3%) increase with knowledge of the applicable rules of The Tennessee Supreme Court.

(17) The Plaintiffs earned and paid for contractual rights to an annual three-percent (3%) increase in their pension benefit. Their service to the city and the citizens of the city of Chattanooga, and their payments paid for a contractual right to an annual three-percent (3%) increase, and their rights have been vested.

(18) The Plaintiffs aver and charge that the Defendants have violated the *Law of the Land* provision of The Tennessee Constitution as contained in Article I, Section 8, when they repealed the provisions of the pension plan which provided for an annual three-percent (3%) increase. The Plaintiffs would also state that the detrimental changes to their vested retirement benefits, sought to be undertaken by the Defendants, would violate the contract clause, due process clause, and the takings clause, found in Article I, Section 10, and the 5th & 14th amendments of the U.S. Constitution, and the law of the State of

Tennessee as articulated by The Supreme Court of Tennessee.

(19) The Plaintiffs and all others who are similarly situated are entitled to the continuation of the annual three-percent (3%) increase which had been previously guaranteed to them, or they will suffer considerable financial loss over the lengths of their retirements. Awarding the reliefs sought herein will confer a considerable benefit not only upon the Plaintiffs, but also all other persons entitled to such benefits, the Pension Fund itself, and the public at large.

(20) The Plaintiffs to this lawsuit would show that there are innumerable other retirees with The Chattanooga Police Department and The Chattanooga Fire Department who are similarly situated and who will suffer immediate and irreparable harm in the future unless Ordinance no. 12813 is invalidated. Pursuant to Rule 23 of The Tennessee Rules of Civil Procedure, the Plaintiffs ask that this action be maintainable as a Class Action, so that the interest of all other retirees can be protected and represented in this action.

WHEREFORE, the Plaintiffs pray for relief as follows:

(A) That process issue and be served upon the Defendants, requiring them to answer this Complaint within the time allowed by law;

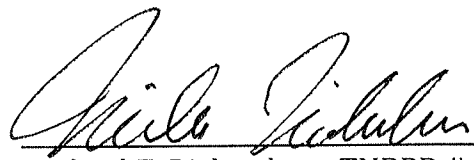
(B) That the Court determine this matter be maintained as a Class Action for the benefit of all other retirees whose pension benefits are at risk;

(C) That the Court conduct a hearing, and enter a declaratory judgment, adjudicating that Ordinance no. 12813 is invalid and in violation of the Plaintiffs vested pension rights;

(D) That this Court enter an injunction that permanently enjoins the Defendants from implementing the changes to Section 2-417 of The Chattanooga City Code;

(E) That the Court award the Plaintiffs their reasonable attorney's fees and expenses incurred in connection with this matter, to be paid by the Defendants;

(F) That the Plaintiffs have such other and further relief to which they may be entitled.

A handwritten signature in cursive script, appearing to read "Michael Richardson", is written over a horizontal line.

Michael E. Richardson, TNBPR # 07191

THE RICHARDSON LAW FIRM

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Chattanooga, Tennessee 37402

(423) 602-9623

Attorney for Plaintiffs

COPY

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHATTANOOGA CITY CODE, PART II, CHAPTER 2, ARTICLE III, DIVISION 18 TO ENACT CERTAIN REASONABLE REFORMS NECESSARY TO ENSURE THE FINANCIAL STABILITY AND ACTUARIAL INTEGRITY OF THE CHATTANOOGA FIRE AND POLICE PENSION FUND.

WHEREAS, the Chattanooga Fire and Police Pension Fund exists to provide financial benefits to members of the Chattanooga Fire and Police Departments and their designated beneficiaries after the qualified retirement, disability, or death of the member; and

WHEREAS, the City and the Board of Directors of the Fund have determined that, based on the current benefit structure and expected funding levels identified in the Board's own January 1, 2013 actuarial valuation report and subsequent evaluations, the unfunded liabilities of the Fund pose a financial risk to the Fund and to its long-term ability to pay benefits; and

WHEREAS, the Mayor of Chattanooga created a task force composed of citizens and active and retired members of the Chattanooga Fire and Police Departments, including leaders of employee organizations, as well as representatives from the Fund to develop recommendations for reasonable reforms to ensure the long-term fiscal and actuarial integrity of the Fund and its ability to meet benefits payable, the ability of the Chattanooga Fire and Police Departments to recruit and retain a talented workforce, and the City's fiscal health and ability to deliver quality services while being fair and responsible to the City's taxpayers without affecting benefits payable as of the effective date of this ordinance; and

WHEREAS, the task force has reported to the Mayor of Chattanooga its consensus recommendations for reforms to the Fund that achieve these goals without reducing benefits payable to, or any vested financial benefits accrued by, any member or beneficiary; and

WHEREAS, the actuary for the Fund has acknowledged that the task force's consensus recommendations are consistent with sound actuarial principles and assumptions; and

WHEREAS, the Mayor of Chattanooga has accepted the task force's consensus recommendations for reforms and the Board has recommended to the City Council of the City of Chattanooga that those reforms be implemented,

Be it ordained by the City Council of the City of Chattanooga,

Section 1. That Section 2-402 of the Chattanooga City Code is amended by striking the text in its entirety and inserting the following language in its place:

(a) Beginning on the effective date of this ordinance and continuing until June 30, 2015, each Member will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than nine percent (9%) of the Member's Base Salary. However, each Member eligible for and who has elected to participate in the DROP provided for in Section 2-422 will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than ten percent (10%) of the Member's Base Salary.

(b) Beginning July 1, 2015, and continuing until June 30, 2016, each Member will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than ten percent (10%) of the Member's Base Salary. However, each Member eligible for and electing to participate in the DROP provided for in Section 2-422 will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than eleven percent (11%) of the Member's Base Salary.

(c) Beginning July 1, 2016, and continuing thereafter, each Member will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than eleven percent (11%) of the Member's Base Salary. However, each Member eligible for and electing to participate in the DROP provided for in Section 2-422 will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than twelve percent (12%) of the Member's Base Salary.

(d) Notwithstanding the provisions of subsection (a), (b), and (c), a Member hired prior to July 1, 1999, whose Average Base Salary as of that date was less than \$41,138 and whose Average Base Salary as of July 1, 2007, was less than \$41,138, will be assessed a sum, beginning July 1, 2007 and continuing thereafter, to be fixed by a majority vote of the Board, which will not be less than eight percent (8%) of that Member's Base Salary, and in no event will be less than eight percent (8%) of \$41,138, annually.

(e) The contribution amounts set forth in this Section 2-402 will be deducted and withheld from the salary of each Member during the time that the Member is employed by the Chattanooga Fire or Police Department. The city officer responsible for disbursing salary payments to Members will make the appropriate deductions and withholdings of contribution amounts and will pay all such amounts to the Fund at the time deducted and withheld to be kept by its trustee in accordance with the provisions of Section 2-400 of the Chattanooga City Code.

Section 2. That Section 2-410(b)(3) of the Chattanooga City Code is amended by striking the text following the term "November 3, 1992," and inserting the following language in its place: "and made no election of benefits under Section 2-418, the surviving spouse will receive the benefit paid under Option D of Section 2-418."

That the first sentence of Section 2-410(c) is amended by inserting the phrase "an amount equal to" immediately before the term "\$500.00 per month" and by inserting the phrase ", increased by

all appropriate cost of living adjustments under this Division from and after July 1, 1999," immediately after the term "\$500.00 per month."

Section 3. That Section 2-411 of the Chattanooga City Code is amended by inserting a new subsection (a) providing as follows:

(a) Minimum Age and Service Requirements for Service Retirement Pension.

(1) Any Member who has completed ten (10) or more years of Active Service with the Chattanooga Fire or Police Department as of the effective date of this ordinance may, at his or her election, retire upon completing twenty-five (25) years of Active Service with the Chattanooga Fire or Police Department and, upon notifying the Board of his or her election pursuant to this subsection, will be entitled to receive the annual Service Retirement Pension provided in subsection (b) to be distributed in twelve (12) equal payments as benefits become payable each month.

(2) Any Member who has completed fewer than ten (10) years of Active Service with the Chattanooga Fire or Police Department as of the effective date of this ordinance, including, for purposes of this subsection, any person who is a fire or police academy cadet as of the effective date of this ordinance and subsequently becomes a Member, may, at his or her election, retire upon (i) completing twenty-five (25) years of Active Service with the Chattanooga Fire or Police Department and attaining the age of fifty (50) years or (ii) completing twenty-eight (28) years of Active Service with the Chattanooga Fire or Police Department and, upon notifying the Board of his or her election pursuant to (i) or (ii) of this subsection, will be entitled to receive the annual Service Retirement Pension provided in subsection (b) to be distributed in twelve (12) equal payments as benefits become payable each month.

(3) Any Member hired by the Chattanooga Fire or Police Department after the effective date of this ordinance (except current fire and police academy cadets covered under subsection (a)(2)) may, at his or her election, retire upon (i) completing twenty-five (25) years of Active Service with the Chattanooga Fire or Police Department and attaining the age of fifty-five (55) years or (ii) completing thirty (30) years of Active Service with the Chattanooga Fire or Police Department and, upon notifying the Board of his or her election pursuant to (i) or (ii) of this subsection, will be entitled to receive an annual Service Retirement Pension. The total annual pension for the Member will be an amount equal to two-and-one-half percent (2.5%) of the average Base Salary paid to the Member during his or her three (3) highest-earning years of Active Service in the Chattanooga Fire or Police Department multiplied by the Member's years of Active Service up to a maximum annual payment equal to no more than seventy-five percent (75%) of the average Base Salary paid to the Member during his or her three (3) highest-earning years of Active Service in the Chattanooga Fire or

Police Department. The annual pension will be distributed in twelve (12) equal payments as benefits become payable each month.

(4) Notwithstanding the foregoing, the age and service requirements of paragraphs (1), (2), and (3) of this subsection (a) must comply with the rules and regulations of the Internal Revenue Service relating to normal retirement as they may change from time to time. If the age and service requirements do not comply with these rules and regulations, then they will change automatically to comply.

That current subsection (a) of Section 2-411 of the Chattanooga City Code will become new subsection (b) and is amended by striking all language following the second sentence, beginning with the word "Notwithstanding."

That new subsection (b) is further amended by striking the phrase "payable in twelve (12) monthly installments" and inserting the phrase "to be distributed in twelve (12) equal payments as benefits become payable each month" in its place.

That current subsection (b) of Section 2-411 of the Chattanooga City Code is amended by striking that subsection in its entirety.

That the first sentence of Section 2-411(c) of the Chattanooga City Code is amended inserting the phrase ", increased by all appropriate cost of living adjustments under this Division from and after July 1, 1999," immediately after the term "\$500.00 per month."

That the first sentence of Section 2-411(e) of the Chattanooga City Code is amended by striking each occurrence of the phrase "the date of the passage of this amendment" and inserting the term "July 1, 1999," in its place.

That the second sentence of Section 2-411(e) of the Chattanooga City Code is amended by striking that sentence in its entirety and inserting the following language in its place: "No participant or beneficiary vested as of July 1, 1999, will receive an amount that would be less than the amount payable to a participant or beneficiary with equivalent service retiring as of July 1, 1999."

Section 4. That Section 2-412(b) of the Chattanooga City Code is amended by inserting the phrase ", increased by all appropriate cost of living adjustments under this Division from and after July 1, 1999" after the second parenthesis and before the period in the second sentence of the first paragraph, and by inserting the phrase ", increased by all appropriate cost of living adjustments under this Division from and after July 1, 1999," immediately after the term "\$500.00 per month" in the first sentence of the second paragraph.

That Section 2-412 of the Chattanooga City Code is amended by inserting a new subsection (c) providing as follows:

(c) Notwithstanding the provisions of subsection (b), if any Member employed by the Chattanooga Fire or Police Department on or after April 1, 2011, is killed in the

line of duty prior to retirement, the Member's surviving spouse will be placed on an annual pension calculated as one hundred percent (100%) of the average Base Salary paid to the Member during his or her three (3) highest-earning years of Active Service in the Chattanooga Fire or Police Department. This pension will be distributed in twelve (12) equal payments as benefits become payable each month until the death of the Member's surviving spouse.

That current subsection (c) of Section 2-412 of the Chattanooga City Code will become new subsection (d) and is amended by striking the phrase "under the provision of this Section," and inserting the phrase "under the provisions of subsection (a)," in its place.

Section 5. That Section 2-416(e) of the Chattanooga City Code is amended by striking the text in its entirety. The City Council declares its intent to rescind the sunset provisions of Section 2-416(e) of the Chattanooga City Code.

Section 6. That Section 2-417 of the Chattanooga City Code is amended by striking the text in its entirety and inserting the following language in its place:

(a) The annual pension to a Member retired before the effective date of this ordinance, or to any qualified survivor or beneficiary of such Member will be increased in the manner described in subsection (b) or (c), whichever is applicable, each January 1 after the twelfth monthly benefit payable.

(b) Any time the Fund is less than eighty percent (80%) funded on a market value basis as determined by the Fund's most recently completed annual actuarial valuation and review, the total amount payable from the Fund to eligible recipients will be increased effective each January 1, beginning as soon as practicable after January 1, 2015, by one and one-half percent (1.5%). This increase will be allocated among eligible retired Members receiving annual pensions and the qualified survivors or beneficiaries of such Members by the Board, after consultation with the Fund's actuary, to provide higher cost of living adjustments to those receiving lower monthly benefits payable. In no event, however, will any annual pension be increased by greater than two percent (2%) or less than one percent (1%) of the monthly benefit payable.

(c) Any time the Fund is at least eighty percent (80%) funded on a market value basis as determined by the Fund's most recently completed annual actuarial valuation and review, all cost of living adjustments beginning the following January 1 will correspond to the Consumer Price Index up to a maximum cost of living adjustment of three percent (3%), provided that the Fund, inclusive of this change, would not be less than eighty percent (80%) funded on a market value basis.

(d) The cost of living adjustment for the annual pension to a Member retiring on or after the effective date of this ordinance, or to any qualified survivor or beneficiary of such Member, will be as follows:

(1) The annual pension to a Member retiring on or after the effective date of this ordinance, or to any qualified survivor or beneficiary of such Member, will not be increased until the January 1 after the thirty-sixth monthly benefit payable, at which time the annual pension will be increased in the manner described in subsection (b) or (c), whichever is applicable, except as provided in subsection (d)(2).

(2) If after the twelfth monthly benefit payable but before the thirty-sixth monthly benefit payable to a Member retiring on or after the effective date of this ordinance, or to any qualified survivor or beneficiary of such Member, the Fund is at least seventy percent (70%) funded on a market value basis as determined by the Fund's most recently completed annual actuarial valuation and review, the annual pension will be increased, beginning the following January 1, in the manner described in subsection (b) or (c), whichever is applicable, so long as the increase would not cause the Fund to fall below seventy percent (70%) funded on a market value basis. If the increase is applied, but the Fund subsequently falls below seventy percent (70%) funded on a market value basis before the thirty-sixth monthly benefit payable, then the increase for these Members will be discontinued until the January 1 following the first thirty-sixth monthly benefit payable.

(e) For individuals eligible for cost of living adjustments effective January 1, 2015, and January 1, 2016, such cost of living adjustments will be dividend cost of living adjustments and will not be compounded or placed into the base pension amount in subsequent years. Nothing in this Section 2-417 should be construed to affect benefits payable as of the effective date of this ordinance.

Section 7. That Section 2-418 of the Chattanooga City Code is amended by inserting the phrase "and eligible to retire on or before December 31, 2012," immediately after the second occurrence of the term "November 3, 1992," in the second paragraph of subsection 1, and by striking the term "\$500.00" in the second paragraph of subsection 1 and inserting the term "\$750.00, increased by all appropriate cost of living adjustments under this Division," in its place.

Section 8. That Section 2-419 of the Chattanooga City Code is amended by striking paragraph 6 in its entirety and inserting the following language in its place:

6. The term "Service Retirement Pension" means the annual pension that a Member who has elected to retire upon meeting the applicable minimum age and service requirements of Section 2-411(a) is entitled to receive and which will be distributed in twelve (12) monthly benefits payable subject to adjustment as provided in Sections 2-418, 2-422, and 2-423, if applicable.

That Section 2-419 of the Chattanooga City Code is amended by inserting the following language after paragraph 8:

9. The term "Consumer Price Index" means the percent change in the Chained Consumer Price Index for All Urban Consumers (C-CPI-U) as reported by the Bureau of Labor Statistics of the United States Department of Labor for the twelve (12) months ending the previous September.

Section 9. That Section 2-422 of the Chattanooga City Code is amended by inserting a new subsection (a) providing as follows:

(a) Only Members who have completed at least twenty-four (24) years of Active Service with the Chattanooga Fire Department or Police Department as of the effective date of this ordinance and filed a written election with the Board on or before December 31, 2008, agreeing to contribute an additional one percent (1%) of their Average Base Salary to the Fund will be eligible for the Deferred Retirement Option Provision (DROP) described in this Section 2-422 so long as the Member complies with the contribution requirements of Section 2-402.

That current subsection (a) of Section 2-422 of the Chattanooga City Code will become new subsection (b) and is amended by striking the word "and" between the terms "Fire Department" and "Police Department" and inserting the word "or" in its place.

That current subsection (b) of Section 2-422 of the Chattanooga City Code will become new subsection (c), that current subsection (d) of Section 2-422 of the Chattanooga City Code will become new subsection (e), and that current subsection (e) of Section 2-422 of the Chattanooga City Code will become new subsection (f).

That current subsection (c) of Section 2-422 of the Chattanooga City Code will become new subsection (d) and is amended by changing the two internal cross-references from "subsection (b), above" to "subsection (c), above."

Section 10. That Section 2-423 of the Chattanooga City Code is amended by striking the text in its entirety and inserting the following language in its place:

(a) Members who do not meet the requirements of Section 2-422(a) are eligible only for the DROP described in this Section 2-423. A Member may elect to receive, and may receive, only one DROP. Any Member not eligible for the DROP described in Section 2-422 who, as of the effective date of this ordinance, filed a written election with the Board on or before December 31, 2008, agreeing to contribute an additional one percent (1%) of their Average Base Salary to the Fund will have the total amount of their additional one percent (1%) contributions refunded to them as soon as practicable after the effective date of this ordinance.

(b) Beginning on the effective date of this ordinance, a Member of the Chattanooga Fire Department or Police Department currently employed in such capacity with the City who serves at least twenty-five (25) years of Active Service, but no more than thirty-three (33) years of Active Service (the DROP Period), may elect to receive the DROP described in this Section 2-423. Any Member hired by the Chattanooga Fire or

Police Department after the effective date of this ordinance who reaches the age and service requirement for a normal retirement as noted in section 2-411(a)(3), but has achieved no more than thirty-three (33) years of Active Service (the DROP Period), may elect to receive the DROP described in this Section 2-423. The Service Retirement Pension for a Member who has elected to receive the DROP described in this Section 2-423 will be adjusted as follows: Upon retiring and providing written notice of retirement to the Board, the Member's Service Retirement Pension will be calculated as provided in Section 2-411, and further adjusted as provided in Section 2-418, if applicable, except that, for purposes of the calculation under Section 2-411, the Member's Active Service will be reduced by the number of months elected by the Member on his or her DROP election form. The number of months elected by the Member may not exceed the lesser of (i) the number of months of Active Service accumulated by the Member beginning on the date the Member completes twenty-five (25) years of Active Service and ending on the Member's actual retirement date or (ii) thirty-six (36) months.

(c) The DROP will be calculated by multiplying the number of months elected by the Member as provided in subsection (b) by the Member's Average Base Salary at the time the Member first becomes eligible to elect to receive the DROP as provided in subsection (b). The resulting dollar amount will be paid, in a single lump sum, from the Fund as soon as practicable after the Member's retirement. No cost of living adjustment or interest will be applied to or earned by the DROP payment.

(d) To elect to receive the DROP described in this Section 2-423, an eligible Member must complete a written election form provided by the Board and file it with the Board during the DROP Period. The right of a Member who elects to receive the DROP described in this Section 2-423 will not accrue or vest until the Member retires.

(e) A member's right to participate in the DROP shall not be vested until the member retires and elects to take the DROP. The DROP may be discontinued or modified at any time.

Section 11. That Section 2-424 of the Chattanooga City Code is amended by striking the text in its entirety and inserting the following language in its place:

(a) Immediately upon the effective date of this ordinance and once every five years thereafter, the Board will commission a full actuarial study of the financial impact and cost neutrality of the DROPs on the Fund. The study will be performed by a third party actuary (an actuary or actuarial firm holding membership in the Academy of American Actuaries that does not serve as actuary for either the Board or the Fund), which will prepare a report of the study and its findings. The study and report will be submitted to the Mayor, the City Council, and the Board and will include an assessment of whether the DROP provided for in Section 2-423 is cost neutral to the Fund. The first report required by this subsection (a) is due as soon as practicable after the effective date of this ordinance. In the event that a report indicates that the DROP provided for in Section 2-423 is not cost neutral to the Fund, the Board will modify the DROP to ensure its cost neutrality to the Fund.

(b) The Board will submit to the Mayor and City Council quarterly performance evaluations of the Fund.

Section 12. That the specific intent of the City Council in passing this ordinance is to create a structure for the Fund that ensures its long-term actuarial integrity and ability to pay benefits while preserving the City's fiscal health. This ordinance must be construed to effectuate this specific intent.

Section 13. That this ordinance will take effect on July 1, 2014.

Passed on second and final reading: _____, 2014

CHAIRPERSON, CITY COUNCIL

APPROVED: ____ DISAPPROVED: ____

MAYOR