

## **CHAPTER 40-46 EMPLOYEES' PENSIONS IN CITIES**

**40-46-01. Adoption of employees' pension plan - Exclusion of police and members of firefighters relief associations.** The provisions of this chapter become operative in any city qualified to adopt the same by:

1. The adoption by the governing body of the city of a plan substantially setting forth the provisions of this chapter; and
2. The concurrence in the plan by the employees of the city by a majority vote thereof.

Thereafter, all employees of the city are bound by the provisions of the plan without further action by the governing body or by the employees of the city. For purposes of this chapter, members of the police force of the city are not considered employees of the city and members of a firefighters relief association are not considered employees of the city, if by a majority vote of the members thereof, they exclude themselves.

**40-46-02. Tax levy for city employees' pension fund authorized - Limitations.** Any city may levy an annual tax not exceeding the limitation in subsection 12 of section 57-15-10 for the purpose of creating and maintaining a city employees' pension fund. A city may make payment from a city employees' pension fund to any pension plan or retirement program for city employees provided the receiving plan or program is approved by the internal revenue service. Any pension system shall be based on actuarial tables and actuarial valuation shall be performed at intervals of not more than five years.

**40-46-02.1. Tax levy for city employees' pension plan authorized - Limitations.**  
Repealed by S.L. 1983, ch. 465, § 2.

**40-46-03. Tax levy may be discontinued when fund sufficient.** Whenever a city which has established a city employees' pension fund under the provisions of this chapter has a sufficient balance in such fund to meet any proper and legitimate charges that may be made against it, such city shall not be required to levy further taxes for the fund.

**40-46-04. Membership fees and assessments.** Every full-time city employee who qualifies for membership in the city employees' pension fund shall, at the time of employment, pay to the treasurer of the pension fund a membership fee to be fixed by the board of trustees in an amount not exceeding twenty-five dollars. Each member shall be assessed and required to pay annually an amount not more than seven percent, to be determined by the board of trustees, upon the amount of annual salary paid to the member, and such assessment shall be deducted and retained out of such salary in equal monthly installments. No assessment shall be made after retirement.

**40-46-05. City employees' pension fund - How established.** All moneys derived from taxes levied to create and maintain a city employees' pension fund, all moneys received as membership fees and dues, and all moneys received from grants, donations, legacies, and devises for the benefit of such fund, shall constitute a fund to be known and designated as the city employees' pension fund.

**40-46-06. Board of trustees - Management of pension fund - What constitutes - Officers - Bond of auditor - Compensation.** The executive officer, the city auditor, the city attorney, and two persons elected by and from the members of the city employees' pension plan, which persons are currently being assessed, shall constitute the board of trustees for the management of the city employees' pension fund. No member shall be eligible for election until the member has eight years of service as a city employee. The election shall be held on the second Tuesday in June of each year. Each elected member shall serve for a term of two years, except that at the first election one trustee shall be elected for a term of one year and the other for a term of two years. The terms of elected members shall commence on July first of each

year. The executive officer shall be the president and the city auditor shall be the treasurer of the board. The faithful performance of the duties of the treasurer shall be secured by that person's official bond as the city auditor. Such trustees shall receive no compensation for their services as members of the board.

**40-46-07. Acceptance of money and property by the board.** The board of trustees may take by gift, grant, devise, or bequest any money or real or personal property or other thing of value for the benefit of the city employees' pension fund, and when received, such property shall become a part of such fund.

**40-46-08. Investment of surplus in fund - Limitations.** At the end of each fiscal year, the board of trustees may invest any surplus left in the city employees' pension fund, but no part of the moneys realized from any tax levy shall be used for any purpose other than the payment of pensions. Such surplus funds may be invested in interest-bearing bonds of the United States or the state of North Dakota, or bonds or warrants of any county, township, or municipal corporation of this state which constitute the general obligations or contingent general obligations of the issuing tax authority, or investments with any federally insured bank or savings and loan association. All securities in which moneys belonging to the fund are invested shall be deposited with the treasurer of the board for safekeeping. The board may also invest all or part of such surplus funds in other investments by selecting a funding agent or agents and establish an investment agreement contract regarding such surplus funds. The contract shall authorize the funding agent or agents to hold and invest such funds for the board and such funds shall be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed.

**40-46-09. Who may be retired on pension - Amount paid to retiring employee.** Any appointed full-time employee, who shall be a member of a city employees' pension fund, including librarians and other employees of a public library, and full-time employees of a city recreation commission, of a city having an employees' pension fund who shall have served two hundred forty months or more, whether or not consecutive, as an employee and shall have reached the age of sixty years, or who, while employed by such city, shall suffer permanent mental or physical disability so that the person is unable to discharge the person's duties, shall be entitled to be retired. Upon retirement, the person shall be paid out of the pension fund of such city a monthly pension of not to exceed sixty percent of one-twelfth of the person's highest three-year average annual earnings as provided for in the plan adopted by the governing body of the city. If any member shall have served two hundred forty months in such city employment but shall not have reached the age of sixty years, the person shall be entitled to retirement, but no pension shall be paid while the person lives until the person reaches the age of sixty years.

**40-46-09.1. Credit for service as employee of recreation commission.** Any full-time employee of a city recreation commission who is eligible for receipt of a pension pursuant to this chapter may, with the approval of, and under terms and conditions set by, the board of trustees, have that person's previous full-time employment with the city recreation commission of that city counted as a portion of the two hundred forty months of service required by section 40-46-09. The credit given for previous service with the city recreation commission pursuant to this section shall not exceed one hundred twenty months in total. Board of trustee terms shall include payment of pension fund contributions by the employee for the months of service credited.

**40-46-09.2. Purchase of legislative service credit.** An employee of a city having a pension fund under this chapter may, prior to retirement, purchase service for inclusion in the period of service required under this chapter for eligibility for retirement the time during each legislative session spent serving as a member of the legislative assembly while a member of the pension fund. The employee shall pay for this service an amount equal to the required member assessments and employer contributions plus interest as established by the board of trustees. Service credit for legislative sessions prior to July 1, 1985, must be purchased before January 1, 1986. Service credit for each later legislative session must be purchased within one year after the adjournment of that legislative session.

**40-46-10. Eligibility for retirement because of disability.** No employee of the city who shall become disabled mentally or physically, nor the employee's dependents, shall be eligible for a pension because of such disability unless such employee shall have been on active duty with the city for a period of at least ten years, regardless of the employee's age, unless the retirement of such employee shall be caused by mental or physical impairment sustained by the employee in the line of duty which totally and permanently disabled the employee. The question of total and permanent disability shall be determined by the board of trustees upon the concurring report of at least two out of three physicians designated by the board to make a complete physical examination of the employee.

**40-46-11. Period of service spent in armed forces included as service to city.** Any employee of a city having an employees' pension fund who resigns therefrom or who has been granted or shall be granted a leave of absence to serve in the armed forces of the United States or armed forces reserve thereof, or who shall have been selected for training under the selective service provisions of the laws of the United States, and who has returned to the employ of the city with an honorable discharge from, or other documents showing honorable service in, such service, shall have the period of such service included as part of the employee's period of service to such city.

**40-46-12. Assignment of retired employees to light duties in work of city.** The chief executive of the city may assign any employee of such city, retired or drawing a pension under the provisions of this chapter, to the performance of light duties in the work of such city.

**40-46-13. Payments to spouse, children, and surviving parents upon death of active or retired member.** Upon the death of any active or retired employee of a city maintaining a city employees' pension fund under this chapter, leaving a surviving spouse or minor child, or surviving dependent father or mother, there shall be paid out of the fund as follows:

1. To the surviving spouse as long as the surviving spouse remains unmarried, a sum equal to two-thirds of the pension to which the employee would have been entitled, but not less than forty dollars per month.
2. If there is no surviving spouse, or if such spouse shall die or remarry, then to the dependent father and mother, if both survive, or to either dependent parent if one survives, the sum of forty dollars per month.
3. To the father or mother of each surviving child, if such parent survives, for the benefit of such surviving child, until the surviving child shall arrive at the age of eighteen years, a sum not to exceed twenty-five dollars per month, and in case no parent of any such surviving child survives, then to the guardian of each surviving child a sum not to exceed twenty-five dollars per month until the surviving child shall arrive at the age of eighteen years.

The aggregate of all such payments shall not exceed the amount provided for in the plan and in no event more than sixty percent of the highest three-year average earnings of such employee during the most recent two hundred forty months of the employee's employment, if the employee was employed that long, and if not, during the total period of the employee's employment, or the maximum amount fixed by the governing body by ordinance.

**40-46-14. Definitions for benefit purposes.** The benefits provided for in section 40-46-13 shall be subject to the following definitions:

1. "Child" or "children" means only the surviving issue of a deceased active or retired employee, or the child or children legally adopted by a deceased employee prior to the employee's retirement from active service, or by a retired employee prior to February 21, 1941.

2. "Widow" or "husband" means only the surviving spouse of a marriage contracted prior to the retirement of a deceased employee from active service, or of a marriage of a retired employee contracted prior to February 21, 1941.

**40-46-15. Employees of city retire upon request of executive officer.** Any employee of the city who has reached the retirement age or who is unfit, physically or mentally, to continue in the service of the city, upon the request of the executive officer of the city, shall retire from active service, and, if the employee shall have been employed by the city for periods totaling one hundred twenty months or longer, the board of trustees shall make provision for the payment of a pension, such pension to be in a sum equal to the proportion of a full pension as herein provided which the total number of months employed by the city bears to two hundred forty months.

**40-46-16. Right of retirement once acquired cannot be lost.** After any employee of the city shall become entitled to be retired, such right shall not be lost nor forfeited by discharge or for any other reason.

**40-46-17. Insufficiency of pension fund to meet withdrawals - Apportioning contents of fund to pensioned persons.** Whenever the sums of money in the employees' pension fund shall be insufficient to meet the demands of the withdrawals due to retirements, the board of trustees, in its judgment, shall apportion among the employees entitled to a pension such amount as is available in the pension fund.

**40-46-18. Reexamination of retired member physically or mentally disabled - Notice - Witnesses.** The board of trustees, at any time, may cause any employee of the city who has been retired by reason of physical or mental disability to be brought before it and again examined by three competent physicians appointed by the board to discover whether such disability continues, whether it can be improved, and whether such retired employee should be continued on the pension roll, and the board may examine witnesses for such purposes. The question of continued disability or ability to perform regular or light duty shall be determined by the concurring report of at least two of the three examining physicians. Such employee shall have reasonable notice that the examination will be made and that the employee shall be present at the time of the taking of any testimony. The employee may examine the witnesses brought before the board and introduce evidence in the employee's own behalf. All witnesses shall be examined under oath, which may be administered by any member of the board.

**40-46-19. Decision on reexamination is final - Exception.** The decision of the board of trustees upon the reexamination provided for in section 40-46-18 shall be final and conclusive in the absence of fraud, and no appeal shall be allowed therefrom. The disabled employee shall remain upon the pension roll unless and until reinstated in service by reason of the reexamination.

**40-46-20. Employee entitled to refund from fund or partial retirement upon termination of employment with city.** Any employee who shall have contributed to the city employees' pension fund, and who voluntarily and while in good standing as an employee of said city shall have left the employment of such city, shall be entitled, upon application at the time of such retirement, to a refund of all contributions made by the employee without interest and exclusive of the membership fee, payable in a lump sum. If a participant dies and no dependent benefits are payable, the participant's named beneficiary or estate shall receive the participant's contributions without interest, less any benefit payments theretofore received. Any employee who shall have served one hundred eighty months or more, but less than two hundred forty months, and who shall have contributed to the city employees' pension fund, and who voluntarily and while in good standing as an employee of said city shall have left the employment of such city, shall be entitled to elect retirement instead of refund, but at a pension equal to the proportion of a full pension as herein provided which the total number of months employed under the plan bears to two hundred forty months, but no pension shall be paid while the employee lives until the employee reaches the age of sixty years.

**40-46-21. Warrants on pension fund - Treasurer's report - Contents.** All pensions paid and all moneys drawn from the pension fund under the provisions of this chapter shall be

upon warrants signed by the board of trustees and issued by the treasurer of such board. Such warrants shall designate the person to whom and the purpose for which payment is made. The treasurer's annual report shall show the receipts and expenditures of the fund for the preceding fiscal year, the money on hand, and how the same is invested. Such report shall be made to the board of trustees and shall be filed with the city auditor.

**40-46-22. Pensions not subject to assignment, debts, execution, or other process.** Repealed by S.L. 1987, ch. 386, § 2.

**40-46-23. Question of continuance of employees' pension plan.** The governing body of a city having an employees' pension plan may discontinue such plan upon receipt of a petition requesting such discontinuance signed by sixty percent of the employees and pensioners of the city under such plan as of the date of the filing of such petition and upon the subsequent adoption by the governing body of a resolution by two-thirds vote of the members present, stating that the plan is not desirable or workable.

**40-46-24. Form of ballot to be used at election.** Repealed by S.L. 1959, ch. 311, § 3.

**40-46-25. Procedure upon discontinuance of employees' pension plan.** If the governing body of the city shall determine by a two-thirds vote as provided in section 40-46-23 that the employees' pension plan be discontinued, the plan shall be discontinued in such city and the governing body shall proceed to liquidate the pension fund created under such plan. Liquidation shall be accomplished by returning to each employee still in the employ of the city ten days after the date of the adoption of the resolution, provided for in section 40-46-23, the entire amount which has been deducted from the employee's salary as an assessment or membership fee and then by payment of pension claims theretofore allowed in the same amounts as are then in effect until the death or disqualification of the pension claimant, and thereafter continuing such payments as would have accrued to survivors of such pension claimant under the local pension provisions if the plan had been continued. If the fund is insufficient to return the amount to which each employee is entitled as provided herein and to pay such claims in full, the governing body shall make an annual tax levy, which shall be in addition to any other tax levies authorized by law, in an amount sufficient to assure the payment in full of the pension claims theretofore allowed. If the fund exceeds the amount required to satisfy such returns and such claims, such excess shall be placed in the general fund of the city.

**40-46-26. Tax levy for city having provided its employees with the federal social security plan.** In addition to any other levies authorized by law for general purposes, any city having provided its employees with the federal social security plan may levy such annual tax upon its taxable valuation as will be necessary to pay such city's share as employer of the cost of providing its employees with the federal social security plan.

**40-46-27. Pension cost of living increase.** In July of each year, the city employees' pension board may add, if found actuarially sound, a cost of living increase to the monthly amounts paid beneficiaries. The total monthly payment under this section shall not exceed sixty percent of the monthly salary average during the preceding thirty-six months for the same or comparable position in the city's employment service as held by the retiree in the last month of the retiree's employment.

**40-46-28. Pension cost of living decrease.** The pensions provided in this chapter may be decreased by the city employee's pension board if the cost of living goes down.