

Summary

1. 2.64.030 – Board of trustees – Membership.

Additional language will be provided after existing subsection D to clarify that: (1) elections held pursuant to this section are open only to participants and not to the general public; (2) this election is not governed by the restrictions on City employees for municipal elections outlined in the City of El Paso’s Civil Service Rules; (3) the City Manager is authorized to develop rules related to the posting of election material in common areas at work and in verbal communications from candidates seeking participant votes.

2. 2.64.190(A) - Contributions.

2.64.190(A) will be deleted in its entirety. The existing language of 2.64.190(A) currently provides that the executive, based on an agreement made with the City and former City Manager on October 7, 2022, is relieved of the obligation to make employee participant contributions to the Trust.

3. 2.64.200(B) - Retirement pensions.

2.64.200(B)(2)

Additional clarification language is being added to replace existing 2.64.200(B)(2) to avoid unintended consequences of rehiring retirees and combining service time earned under 2.64.200(F). The language now provides that after a break in service, the Trust will use the last 3 years preceding retirement for which a participant received service credit to calculate pensionable gross compensation. This will avoid the unintended consequences pursuant to the existing language under 2.64.200(B)(2), which could have potentially resulted in zero calculations regarding a participant’s pensionable gross compensation.

2.64.200(B)(5)

Additional language is being added as new subsection (5), to provide to define “pensionable gross compensation” to mean gross income paid by the City to the Participant. This includes all forms of compensation such as: wages, salaries, bonuses, commissions, overtime pay, permanent cost of living adjustments, and any other payments made to the Participant in relation to their employment. It does not include vacation, sick time payout, one-time payments or ad hoc payments. The Trust has historically not taken pension on one-time payment nor included such in compensation in pension calculations. This change is to clarify prior policy and eliminate confusion around the usage of the term in the municipal ordinance.

4. 2.64.205(A)(3)(b) - Proportionate retirement benefits.

Additional clarification language is being added to replace existing 2.64.205(A)(3)(b) to avoid unintended consequences of rehiring retirees and combining service time earned under 2.64.200(F). The language now provides that after a break in service, the Trust will use the last 3 years preceding retirement for which a participant received service credit to calculate pensionable gross compensation. This will avoid the unintended consequences pursuant to the existing language under 2.64.205(A)(3)(b), which could have potentially resulted in zero calculations regarding a participant’s pensionable gross compensation.

5. 2.64.210 - Disability pensions.

Additional language will be provided at the beginning of 2.64.210 to define “Disability” to mean having a significant physical, neurological, cognitive, or mobility limitation (or a combination of

these) that is so severe that a person can't do a job they're qualified for by training and experience. It also means that medical treatment is unlikely to significantly improve the condition at the time the disability application is made.

- Subsection 2.64.210A will be replaced and amended to remove the following language "...as to incapacitate him in the performance of his job with the city or any other job, whether with the city or not, for which one is qualified by training and experience and which does not result in a significant reduction in pay and benefits..."
- Subsection 2.64.210B will be replaced and amended to remove the following language "...as to incapacitate him in the performance of his job with the city or any other job, whether with the city or not, for which one is qualified by training and experience and which does not result in a significant reduction in pay and benefits..."
- Subsection 2.64.210C(1) will be replaced and amended to provide additional clarification language to now state that no participant shall become entitled to receive a disability pension benefit under this section if the participant's disability is a result of excessive and habitual use of illegal drugs, intoxicants or narcotics.
- Full deletion of subsection(s):
 - o C(3) of Section 2.64.210
 - o C(5) of Section 2.64.210
- Subsection 2.64.210E will be replaced and amended to state that a disabled individual may be required to submit verification on a prescribed schedule regarding that individual's disability status.

6. 2.64.230 - Death benefits of widows and children

Additional language be added to the ended of 2.64.230 will be provided to define "proving incapacitation." The requirements for proving incapacitation may be met through a decree or court order with proper jurisdiction. In the absence of a decree or court order, the board may consider available evidence to determine the incapacity of an individual.

*Note, the word "widow" as used in Chapter 2.64 is currently defined to be gender neutral under subsection 2.64.230F.

STATE OF TEXAS § **RESOLUTION PROPOSING AMENDMENTS TO EL PASO MUNICIPAL CODE REGARDING VARIOUS REMEDIAL AMENDMENTS**

COUNTY OF EL PASO §

WHEREAS, Section 2.64.010 of the City Code of the City of El Paso creates a pension fund for all non-uniformed employees of the City of El Paso known as the City of El Paso Employees Retirement Trust (the “*Trust*”); and,

WHEREAS, Section 2.64.020 provides that the Trust be administered by a board of trustees (the “*Board*”);

WHEREAS, pursuant to the Code, the Board of Trustees has reviewed the attached proposed amendments with legal counsel;

WHEREAS, the Board is of the opinion that the remedial amendments are in the best interest of the participants of the Trust;

NOW THEREFORE, be it resolved by the Board that the Board approve, ratify and recommend that the City of El Paso adopt the attached amendments, as described in Exhibit “A,” attached hereto and incorporated herein.

IN WITNESS WHEREOF, the Board of Trustees for the City of El Paso Employees Retirement Trust resolve that the proposed amendments be approved, ratified and recommended to be adopted by the City of El Paso as provided in Exhibit “A.”

RESOLVED this _____ day of _____, 2024.

**CITY OF EL PASO EMPLOYEES
RETIREMENT TRUST**

BY: _____

**MATT KERR
BOARD CHAIRMAN**

DRAFT

ATTEST:

DRAFT

BOARD SECRETARY

APPROVED AS TO FORM:

DRAFT

LEGAL COUNSEL

EXHIBIT A
PROPOSED AMENDMENTS

**AN ORDINANCE AMENDING CHAPTER 2.64
(CITY EMPLOYEES' PENSION TRUST)**

WHEREAS, Section 2.64.080 of Chapter 2.64 entrusts the Board of Trustees of the City Employees' Pension Trust with the task of administering the City Employee's Pension Trust and directing the investment of its assets; and,

WHEREAS the Board of Trustees and the City of El Paso believe that certain amendments to Chapter 2.64 are necessary to improve the operation and efficiency of the Pension Trust; and,

WHEREAS, the Board of Trustees, in the exercise of its fiduciary responsibility believes that it would be in the best interest of the Pension Trust and the City of El Paso if Chapter 2.64 of the City Code is amended as described below.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO THAT CHAPTER 2.64 BE AMENDED AS FOLLOWS:

a. That Section 2.64.030 be amended by the addition of the following language inserted after subsection D as an additional paragraph:

“As this election is only open to participants and not the general public, it is not governed by the restrictions on City employees for municipal elections outlined in the City of El Paso’s Civil Service Rules. However, the City Manager or designee shall have the authority to develop rules related to the posting of material by candidates in common areas of the workplace and in verbal communications when seeking votes from fellow participants.”

b. That the following language be deleted from subsection 2.64.190A:

“Notwithstanding the other provisions of this subsection A, pursuant to the terms of a certain agreement executed by the City and an executive on October 7, 2022, and effective as of the date set forth in such agreement, and so long as the agreement is in effect, the executive shall be relieved of the obligation to make employee participant contributions to the fund, and the employee participant contributions the executive would have otherwise been obligated to make shall instead be made by the City on the executive’s behalf and shall be subject to all other plan provisions that apply to such employee participant contributions excepting only the provisions of Section 2.64.500. The provisions of the prior sentence shall not affect the executive’s entitlement to additional City contributions made under the second sentence of this subsection A.”

c. That Section 2.64.200(B)(2) be amended and replaced by the addition of the following language:

“Any person so retired who was first a fund participant on or after September 1, 2011 shall be entitled to receive a monthly pension from the fund in an amount equal to two and one-fourth percent of the monthly average of the pensionable gross compensation received by the participant during the last three years immediately preceding retirement (for purposes of 2.64.200(F), the last three years immediately preceding retirement shall mean the last three years immediately preceding retirement which the participant received service credit), multiplied by the number of completed years of service credit, plus 0.1875 of one percent of such average monthly pay for each complete or fractional part of a month which is not part of a complete year; provided, however, that under no circumstance shall said

monthly pension exceed ninety percent of the participant's three year average monthly pensionable gross compensation, and

d. That Section 2.64.200(B) be amended by addition of sub section 5 with the following language:

“For the purposes of this Plan, the term "pensionable gross compensation" shall refer to the gross income paid by the City to the Participant and includes all forms of compensation, including but not limited to, wages, salaries, bonuses, commissions, overtime pay, permanent cost of living adjustments, and any other payments made to the Participant in relation to their employment, but shall expressly exclude vacation, sick time payout, one time payments or ad hoc payments.”

e. That Section 2.64.205(A)(3)(b) be amended and replaced by the addition of the following language:

For employees who first became fund participants on or after September 1, 2011, the final pay for purposes of retirement calculations shall be the monthly average of the pensionable gross compensation received by the participant during the last three years immediately preceding retirement (for purposes of 2.64.200(F), the last three years immediately preceding retirement shall mean the last three years immediately preceding retirement which the participant received service credit); provided, however, that under no circumstance shall said final pay exceed ninety percent of the participant's average monthly gross pay.

f. That the following language be added to the beginning of section 2.64.210:

“For purposes of this chapter, “disability” shall mean the condition of a significant impairment of physical, neurological, cognitive, or ambulatory abilities, or combination thereof, to such an extent that a participant is unable to perform a job for which he is qualified by training and experience, and where medical improvement of the impairment or combination thereof does not have medically reasonable prognosis for improvement under the conditions at the time of the application for disability.”

g. That subsection 2.64.210A be amended to read as follows:

“A. Whenever a participant (as limited by Section 2.64.120) shall become disabled, through no fault of his own, as the result of a job-related injury or cause, and shall make written application therefor, within 30 days of his termination date, approved by the board, he shall be entitled to be retired from his employment and to receive a pension in the same amount as specified in Section 2.64.200, the amount of which shall be determined by and based on whether the person was first a fund participant before September 1, 2011, or first a fund participant on or after September 1, 2011. This subsection shall apply only to original applications filed on or after February 4, 1992.

h. That subsection 2.64.210B be amended to read as follows:

“B. Whenever a participant (as limited by Section 2.64.120) shall have completed seven years of pension credited service with the city or other approved employer and shall become disabled, through no fault of his own, from any cause not related to his job with the city or other approved employer, and shall make written application therefor, within 30 days of his termination date, approved by the board of trustees, he shall be entitled to be retired from his employment and to receive a pension in the same amount as specified in Section 2.64.200. If such disability occurs before completion of seven years of pension credited service, the

participant so disabled shall be entitled to receive a refund of the amount he paid into the fund, in accordance with Section 2.64.200. This subsection shall apply only to original applications filed on or after February 4, 1992.

i. That Subsection C(1) of Section 2.64.210 be amended to read as follows:

“1. Excessive and habitual use by the participant of illegal drugs, intoxicants or narcotics;

j. That Subsection C(3) of Section 2.64.210 be deleted in its entirety and replaced with:

“Intentionally deleted per amendment.”

k. That Subsection C(5) of Section 2.64.210 be deleted in its entirety and replaced with:

“Intentionally deleted per amendment.”

l. That Subsection 2.64.210E be amended to read as follows:

“Disability pension benefits approved under this section shall continue for as long as the individual concerned remains disabled as defined in this section, subject to subsection F. of this section. A disabled individual may be required to submit verification, on a prescribed schedule, that he is still disabled as defined in this section.

n. That the following language be added to the end of Section 2.64.230:

“For purposes of this section, a decree or order by a court with proper jurisdiction to hear cases regarding the incapacitation of an individual, that declares an individual described in this section as being incapacitated and that appoints a guardian of said individual, shall serve as evidence sufficient to prove incapacitation. However, in the absence of such decree or order, the board may consider any evidence made available to it in order to determine whether an individual is incapacitated.”

PASSED AND APPROVED this ____ day of _____, 2024.

CITY OF EL PASO

Mayor Oscar Leeser

DRAFT

ATTEST:

City Clerk

DRAFT

APPROVED AS TO FORM:

Assistant City Attorney

DRAFT