

**CITY OF DEARBORN HEIGHTS
ORDINANCE NO. H-19-05**

AN ORDINANCE OF THE CITY OF DEARBORN HEIGHTS, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF DEARBORN HEIGHTS, BE AMENDED BY ADDING: A NEW ARTICLE X. RETIREE HEALTH CARE BENEFITS; A NEW DIVISION UNDER THIS NEW ARTICLE, NAMELY DIVISION 1. ACT 345 POLICE AND FIRE RETIREE HEALTH CARE BENEFITS TRUST AND RELATED MATTERS; AND ANOTHER NEW DIVISION UNDER THIS NEW ARTICLE, NAMELY DIVISION 2. GENERAL GOVERNMENT RETIREE HEALTH CARE BENEFITS TRUST AND RELATED MATTERS. THE NEW SECTIONS SHALL BE CODIFIED AS SECTIONS 2-1000 AND 2-1100 UNDER CHAPTER 2 OF THE CODE.

THE CITY OF DEARBORN HEIGHTS ORDAINS THAT THE CODE OF ORDINANCES OF THE CITY OF DEARBORN HEIGHTS, MICHIGAN IS HEREBY AMENDED BY ADDING SECTIONS TO BE NUMBERED 2-1000 AND 2-1100, WHICH SHALL READ AS FOLLOWS AS STATED UNDER SECTION I. OF THIS ORDINANCE, AND FURTHER BY ADDING ARTICLE X. RETIREE HEALTH CARE BENEFITS, BY ADDING UNDER THIS NEW ARTICLE DIVISION 1. ACT 345 POLICE AND FIRE RETIREE HEALTH CARE BENEFITS TRUST AND RELATED MATTERS; AND BY ADDING UNDER THIS NEW ARTICLE DIVISION 2. GENERAL GOVERNMENT RETIREE HEALTH CARE BENEFITS TRUST AND RELATED MATTERS, AS MORE FULLY STATED UNDER SECTION I. OF THIS ORDINANCE.

SECTION I.

ARTICLE X. - RETIREE HEALTH CARE BENEFITS

DIVISION 1. - ACT 345 POLICE AND FIRE RETIREE HEALTH CARE BENEFITS TRUST AND RELATED MATTERS

Sec. 2-1000. - CITY OF DEARBORN HEIGHTS ACT 345 POLICE AND FIRE RETIREE HEALTH CARE BENEFITS TRUST.

(a) GENERAL PROVISIONS

1:100. Purpose.

The Trust is created, under the authority of the Fire Fighters and Police Officers Retirement Act, Public Act 345 of 1937, as Amended (MCL 38.551 *et. seq.*) ("Act 345"), Public Employee Health Care Fund Investment Act, Public Act 149 of 1999 (MCL 38.1211 *et seq.*)

("Act 149"), and shall constitute a governmental trust pursuant to Section 115 of the Internal Revenue Code of 1986, as amended ("Section 115"). The Trust is established to allow for the City of Dearborn Heights to fund required retiree health care benefits, an essential governmental function, and is created for the exclusive purpose of providing a funding vehicle for the payment of health care, hospitalization, dental, optical and life insurance benefits or such other benefits approved by the City of Dearborn Heights ("City") or approved by Collective Bargaining Agreements or personal services contracts for the welfare of certain retirees of the City of Dearborn Heights who are eligible to receive a retirement benefit from the City of Dearborn Heights Act 345 Police and Fire Retirement System, and the eligible spouses and eligible dependents of such retirees.

1:101. Short Title.

This Plan may be known and cited as the City of Dearborn Heights Act 345 Police and Fire Retiree Health Care Benefits Trust ("Trust").

1:102. Interpretation and law; Construction.

The Trust is established in accordance with Act 345 and Act 314, shall be administered consistent with applicable federal and Michigan law, and shall constitute a Section 115 governmental trust. If any provisions of the Trust shall be, for any reason, invalid or unenforceable, the remaining provisions nevertheless shall be carried into effect.

Neither the establishment of the Trust nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any person covered under the Trust, or other person, any legal or equitable right against the City, its elected or appointed officials or employees, the Trustees or any individual Trustee, except as may otherwise be provided in this Trust.

1:103. Collective Bargaining Agreements.

Nothing contained in this Trust shall be deemed to modify or limit in any way the rights that the parties to a Collective Bargaining Agreement may have, any supplements or memoranda thereto, or any arbitrator's award to enforce the terms of the Trust, inclusive of the collection of any amounts due to the Trust and the right of the parties to sue for same.

1:104. Definitions.

For the purposes of this Trust, the following words shall have the meanings respectively ascribed to them by this section:

- (1) *City* means the City of Dearborn Heights.
- (2) *Code* means the Internal Revenue Code of 1986, as amended. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provision

of any legislation which amends or replaces such section or subsection and any regulations thereto.

- (3) *Collective Bargaining Agreement(s)* means any written agreement, supplemental agreement, memorandum of understanding, final arbitrator's decision, judicial decision or decision of any public board or agency, by and between applicable Collective Bargaining Associations and the City, and any amendments, continuations, or renewals, which require the City or any other entity to make payments into group health insurance programs for employees of the City.
- (4) *Collective Bargaining Associations* means those associations which have negotiated to participate in this Trust.
- (5) *Contributions* means the payment to be made to the Trust by the City under the terms of the Trust or payment to be made to the Trust by Employees pursuant to the terms of an applicable collective bargaining agreement or City personnel policy for the purpose of providing group health insurance for Retirees and beneficiaries covered by the Plan.
- (6) *Health Care Benefits* shall mean health, dental, vision, prescription drug or other health care benefits to eligible retirees and their qualified spouses and dependents as determined by the City and applicable collective bargaining agreements.
- (7) *Insurance Agreement* means the health insurance plan(s) and any amendment(s) thereto, including any substitute insurance agreement with a commercial insurance carrier, health maintenance organization, preferred provider organization, or any other qualified entity currently existing or created for the purpose of providing benefits under the Plan. The term "Insurance Agreement" shall include the plural where applicable.
- (8) *Insurance Carrier* means a commercial health insurance carrier, health maintenance organization, preferred provider organization or other qualified entity designated by the City to provide benefits under the Plan.
- (9) *Personnel Policy* means any personal services contracts between the City and an individual employee, or any City Council resolutions extending retiree health care benefits, including fringe benefits, to non-union personnel.
- (10) *Plan* means the City of Dearborn Heights Act 345 Police and Fire Retiree Health Care Benefits Plan and any subsequent amendments, and any Insurance Agreement(s), Collective Bargaining Agreements, personnel policies, or other applicable insurance policy documents incorporated by reference into the Plan.
- (11) *Plan Administrator* means such person, persons, firm, corporation or insurance company or companies, appointed by the City to administer the Plan. The Plan Administrator shall be responsible for the day-to-day operations of the Plan and shall carry out the directives of the City as may be applicable.

- (12) *Plan Year* means the period commencing on July 1 and ending on June 30 of each year.
- (13) *Trust* means the Declaration of Trust of the City of Dearborn Heights Act 345 Police and Fire Retiree Health Care Benefits Trust as provided for in this Section.
- (14) *Trustee(s)* or *Board* means the Board of Trustees of the Trust or a member of the Board of Trustees of the Trust as provided for herein.

1:106. Notice.

Notice shall be given in accordance with applicable law including The Open Meetings Act (MCL §15.261 *et seq.*).

1:107. Reporting and Disclosure.

The Board, or their respective designees, shall complete and provide to appropriate individuals or entities any reports as may be required by the Code, applicable federal, state or local law.

1:108. Amendments.

The provisions of the Trust may be amended at any time by the City in accordance with applicable law.

(b) DECLARATION OF TRUST

1:200. Irrevocable Trust, Established.

This Section 115 governmental Trust shall be irrevocable and shall be administered consistent with applicable federal and Michigan law, and shall constitute a governmental trust under Section 115 of the Code, as amended, Revenue Rulings 77-261 and 90-74, and other relevant guidance. The Trust shall conform to all applicable sections of the Internal Revenue Code, the applicable Collective Bargaining Agreements, Personnel Policies, the statement of purpose in this Trust, and all statutes, ordinances, rules, regulations, arbitrators' awards and judicial decisions interpreting the foregoing provisions.

The Trust shall consist of City Contributions, any Contributions which may be paid by Employees, Retirees and other Qualified Beneficiaries due pursuant to the provisions of an applicable Collective Bargaining Agreement or City personnel policy, all investments made or held under Trust, and all income therefrom, both received and accrued, and any other property, which may be received or held by reason of this Trust. The Trust is intended to be a trust governed by Subpart E of Part I of Subchapter J of Chapter 1 of the Code and related Treasury regulations, under which the City is treated as the owner of the Trust for U.S. federal income tax purposes. The income accruing to the Trust shall be excluded from gross income as such Trust

income is derived from the exercise of an essential government function. Any funds paid by retirees and other qualified beneficiaries as a result of premium sharing required pursuant to an applicable Collective Bargaining Agreement or City policy, shall be paid directly to the City and/or the applicable Insurance Carrier and shall not be paid into the Trust.

1:201. Use of Trust Assets.

- (1) No part of the net earnings of the Trust may inure to the benefit of any participant, retiree or other beneficiary other than by benefit payments or for services provided to the Trustees in their administration of the Trust. The Trust assets shall not be used for or diverted to purposes other than to provide the benefits contemplated under the Plan for the exclusive benefit of Retirees and their eligible Spouses and eligible dependents, except any administrative expenses for which the Trust is liable. A portion of net earnings may be used for payment for reasonable and necessary professional services, costs and expenses related to assisting the Trustees in the operation of the Trust.
- (2) All income, profits, recoveries, contributions, forfeitures and any and all monies, securities and properties of any kind at anytime received or held by the Trustees hereunder, shall become part of the Trust when received, and shall be held for the use and purposes hereof.

1:202. Funding.

- (1) For the purpose of creating and maintaining a fund for the payment of health care benefits payable as provided in the Plan, the City will pay to the Trust an amount consistent with the actuarial valuations and calculations made by the Actuary for the Trust to result in a pre-funded plan. The City reserves the right to fund these health care benefits on a "pay-as-you-go" basis and the right to provide such lesser amount as the City determines. Such contributions shall also be made in accordance with any regulations of the Board of Trustees as are not inconsistent with the authority stated in this Trust and any Collective Bargaining Agreements between the Collective Bargaining Associations and the City.

- (2) Individuals shall contribute those amounts required by an applicable Collective Bargaining Agreement and/or City personnel policy, and otherwise as determined by the Plan Administrator.
- (3) Subject to the tax provisions of applicable ordinances, resolutions and state law, the Trustees may, to the extent matters are not set forth in the Trust, in their discretion decide the manner and means of payments, the procedures to be followed in making the payments, and the forms required to accompany the payments to the Trust. Upon determination by the Trustees of these matters, the Trustees shall provide written notice to the City and will provide for payments by the City to be made pursuant to the rules and regulations of the Trust.
- (4) Time is of the essence in making and processing all payments to the Trust. The parties recognize that the regular and timely payments of Contributions are essential to the operation of the Trust and the providing of benefits under various insurance programs.

1:203. Board of Trustees.

- (1) The Board of Trustees shall consist of five (5) trustees which shall be the trustees of the City of Dearborn Heights Act 345 Police and Fire Retirement System.
- (2) The general, administration, management and responsibility for the proper operation of the Trust and for making effective and construing the provisions of the Trust shall be vested in the Board of Trustees established by this Section, consistent with applicable state and federal laws and regulations. A Trustee or other fiduciary under the Trust shall discharge his or her duties with respect to the Trust solely in the interest of the participants and qualified beneficiaries for the exclusive purpose of providing benefits to participants and qualified beneficiaries and paying reasonable expenses of administering the Trust. A Trustee shall discharge his or her duties with the care, skill, and caution under the circumstances then prevailing which a prudent person, acting in a like capacity and familiar with those matters, would use in the conduct of an activity of like character and purpose.

1:204. Trustees' Terms of Office.

- (1) The regular terms of office of the Trustees shall be the Trustee's terms of office under the City Of Dearborn Heights Act 345 Police and Fire Retirement System.
- (2) Each Trustee shall serve until the expiration of his or her term of office or until his or her death, incapacity, resignation or removal.
- (3) In the event an employee Trustee leaves the employ of the City, he or she shall be considered to have resigned from the Board. The Board shall, by resolution, declare

his/her office of Trustee vacated as of the date of such resolution. Any vacancy occurring in the office of Trustee shall be filled within sixty (60) days following the date of the vacancy, for the unexpired portion of the term, in the same manner in which the office was previously filled.

- (4) A vacancy or vacancies in the office of the Trustees shall not impair the powers of the remaining Trustees to administer the affairs of the Trust, provided there are sufficient Trustees to constitute a quorum.

1:205. Officers and Administration.

- (1) At its first meeting in the calendar year, the Trustees shall elect a chairperson and a chairperson pro-tem. The chairperson and chairperson pro-tem shall serve until a new chairperson and chairperson pro-tem are elected.
- (2) The Board of Trustees shall designate an individual or entity to serve as its secretary. The secretary term shall be at the pleasure of the Board.
- (3) The Board shall designate a treasurer and custodian of the assets of the Trust. The custodian shall be a nationally chartered bank or trust company. The general bond of the City shall cover all liability for acts of the treasurer of the Trust. The treasurer shall credit all receipts of money and assets of the Trust to the Trust. No Trust assets shall be transferred unless previously authorized by a general or specific resolution of the Board.
- (4) Consistent with applicable state and federal laws and regulations, the Trustees shall have the power to promulgate rules and regulations for the day-to-day management of the Trust, the investment of monies held by the Trust, to determine all questions regarding the interpretation of the Trust, and such other Trust related subjects as shall be deemed necessary and proper by the Trustees. If any rule or regulation of the Trust or part thereof is found to be in conflict with any law, statute, judicial decision, arbitration decision or any other competent body or tribunal, such rule or regulation or part thereof shall be deemed voided and, all other rules and regulations of the Trust shall remain in full force and effect.
- (5) Whenever the signature of a Trustee is required on any document, signature of the chairperson or other designated Trustee, only as authorized by the Board of Trustees, shall be required.
- (6) In the event of any suit brought against the Trustees arising out of the acts within the scope and powers and duties of the Trustees, or in the event of any authorized lawsuit brought by the Trustees, the cost of defense or prosecution of such lawsuit shall be charged to the Trust, and shall be paid directly from the Trust, provided such costs are not incurred by reason of bad faith, gross negligence, or breach of a fiduciary obligation to the Trust or to the beneficiaries thereof.

- (7) The Board of Trustees may employ such other clerical staff or administrative staff to perform whatever administrative activities are required in the proper performance of the Trust. In addition thereto, the Trustees may, if they desire, utilize other staff to perform such clerical and administrative duties as they may, in their sole discretion, determine is reasonably and prudently necessary to carry out the Trust's activities and purposes. Under no circumstances shall said staff have control or authority with respect to the management of the Trust or its assets. The said staff shall not be clothed with any type of authority or power which will constitute the staff as a fiduciary. Said staff will not have the power or authority to act as an investment counselor or manager and will not be authorized to furnish investment advice.
- (8) The Board of Trustees may utilize City staff for such functions as personnel administration, accounting, banking and purchasing and will comply with all established City control procedures and policies related to these services. The Board will annually reimburse the City for actual costs of these services as determined by a method jointly agreed upon by the Board of Trustees and the City.
- (9) Employees of the City, upon the request of the Board of Trustees, may also be assigned to the Trust for the proper operation of the Trust. Said employees shall be subject to the supervision of the Board of Trustees. The Board of Trustees shall have the authority to establish job descriptions and promulgate rules and regulations appropriate for the Trust in addition to those adopted by the City. The Board will annually reimburse the City for the actual costs of these employees as determined by a method jointly agreed upon by the Board and the City.
- (10) The Board of Trustees may employ an investment manager(s) to manage the assets of the Trust. Such investment manager(s) must be registered under the Investment Advisor's Act of 1940, as amended, (15 USCS 80b-1) and must meet any applicable state and federal requirements to act as an investment manager. The Trustees may, if they deem proper in their discretion, or if the circumstances require it, appoint such investment manager, managers, banks or insurance companies as fiduciaries and enter into an agreement with such institutions, naming it a fiduciary and conveying to such fiduciary all or a portion of the assets of the Trust, so that said fiduciary may handle, manage and hold those assets conveyed to it. All assets conveyed to said fiduciary shall be subject to the provision of the agreement or agreements between the Trustees and the fiduciary.
- (11) The Board of Trustees may employ an investment consultant to advise the Board on investing the assets of the Trust. Such investment consultant must be registered under the Investment Advisor's Act of 1940, as amended, (15 USCS 80b-1) and must meet any applicable state and federal requirements to act as an investment consultant. The Trustees may, if they deem proper in their discretion, or if the circumstances require it, appoint such an investment consultant to oversee the investment manager, managers, banks or insurance companies naming it a fiduciary.

- (12) The Board of Trustees may employ legal counsel with whom they may seek advice, consult, require attendance at meetings, and to otherwise represent the Trustees in matters relating to the Trust.
- (13) The Board of Trustees may authorize the purchase of insurance for the Trust and for the Trustees to cover liability or losses occurring for any reason, including but not limited to, an act or omission (errors or omissions) of a fiduciary, including the Trustees.
- (14) The Board of Trustees shall appoint an Actuary who shall advise the Trustees on the actuarial operation of the Plan and Trust. The Trustees shall, from time to time, adopt such mortality and other tables of experience and a rate or rates of regular interest as are necessary in the operation of the Trust on an actuarial basis.

1:206. Board Meetings.

- (1) The Trustees shall meet at least once quarterly. The Trustees shall determine the time for the regular meetings of the Trustees and the place or places where such meetings shall be held. The chairperson or his or her designee shall be responsible for giving notice of the time and place of such meetings to the other Trustees.
- (2) Notice and conduct of all meetings of the Trustees, both regular and special; shall be given in accordance with applicable law including the Michigan Open Meetings Act (MCL 15.261 *et seq.*).
- (3) The Board of Trustees shall adopt its own rules of procedure and shall keep a record of its proceedings. Three (3) Trustees shall constitute a quorum at any meeting of the Board of Trustees. Each Trustee shall be entitled to one vote on each question before the Board of Trustees and at least three (3) concurring votes shall be required for a decision by the Board at any meeting of the Board.

1:207. Compensation.

All Trustees shall serve without compensation as members of the Board of Trustees, except that employee Trustees shall suffer no loss in compensation on account of their services as Trustees.

1:208. Trustees' Powers and Responsibilities.

The Trustees shall hold all the powers that are necessary to carry out the purposes of the Trust and are generally available to Trustees under the laws of the State of Michigan, except as limited by the Trust and by federal law and regulations. It is intended that the Trust shall be tax exempt and shall qualify under the Internal Revenue Code and any amendments of the Code applicable to trusts of this type. The Trustees shall have the continuing duty to propose, to the City, amendments to this Trust to the extent it becomes necessary to qualify said Trust under the Internal Revenue Code and to continue the tax exempt status of the Trust. The Trustees shall take

no action nor make any determination inconsistent with any qualification or ruling of the Internal Revenue Service, an arbitrator or the courts with respect to the Trust. In the case of amendments to the Internal Revenue Code or changes of regulations by the Internal Revenue Service or the Labor Department, the Trustees are empowered to take all necessary action(s) authorized by the Plan and Trust, federal and state law and regulations, to continue the qualification of the Trust as a qualified Trust. In carrying out the purposes of the Trust, the Trustees shall have the following powers and duties:

- (1) The Trustees shall, in order to effectuate the purposes of the Trust, be bound by the terms of the Plan and any applicable Collective Bargaining Agreements between the City and the Collective Bargaining Associations, or applicable personnel policies.
- (2) The Trustees shall establish a uniform system for the timely transmission of required reports and contributions from the City on behalf of the Participants and/or qualified beneficiaries.
- (3) The Trustees, in accordance with the requirements of law, may direct an impartial firm of independent certified public accountants to act as agent of the Trustees to examine the payroll records and reports as may be necessary to determine the monies due on behalf of a participant or qualified beneficiary covered by this Trust and to make a written report to the Trustees.
- (4) The Trustees shall maintain, or cause to be maintained, proper books of accounts and records of and for the administration of the Trust, including the minutes of all meetings, make them available for inspection at the permanent office of the Trust during reasonable business hours by the City, or any participant or qualified beneficiary.
- (5) The financial records of the Trust shall be subject to the annual audit of the City. The Trustees shall fully comply with all applicable statutory and municipal budgetary and accounting procedures and provide access to and documentation of all assets and liabilities of the Trust and a resume of the operations of the Trust for the preceding year together with such other data as may be required by law or as part of the City's annual financial report.
- (6) The Trustees shall be authorized, pursuant to Public Act 149 of 1999 (MCL 38.1211 *et seq.*), as amended, to invest the assets of the Trust in accordance with the provisions of Public Act 314 of 1965 (MCL 38.1132 *et seq.*), as amended.

1:209. Trust Liabilities.

- (1) The City shall not be liable for payment to the Trust of any amount. Neither the City, nor any participant or qualified beneficiary or Trustee shall be liable for any debts, liabilities or obligations of the Trust except as provided for in this Division. Neither the City nor any participant or qualified beneficiary shall have any right to the return of any money properly paid into the Trust, except as otherwise specifically provided in this Trust, or to

money improperly paid which has already been invested or distributed. Any contribution improperly paid into the Trust by the City or on behalf of a participant or qualified beneficiary shall be returned by the Trustees upon the request of the City, the participant or the qualified beneficiary or upon discovery by the Trustees that such monies have been improperly paid into the Trust, unless those monies have already been invested or distributed.

- (2) No part of the Trust or any benefits payable by the Trustees shall be subject to alienation, sale, transfer, assignment, pledge or encumbrance charge by any person. No participant or qualified beneficiary shall be entitled to receive any part of the Contributions made by the City or payments required to be made by the Trust, in lieu of such benefits provided under the Plan as determined by the Trustees in accordance with the Trust.

1:210. Termination of the Trust.

- (1) Subject to the limitations of the Plan and this Trust, the parties hereby contemplate that new employment benefit decisions may be made by the City and new Collective Bargaining Agreements may be entered into which continue or modify the provisions of the Plan or this Trust. The Trust shall continue during such period of time as may be necessary to carry out the provisions of the Plan or any Collective Bargaining Agreement requiring payment to the Trust and the fact that such Collective Bargaining Agreements or employment benefit decisions are not extended, shall not by itself terminate the Trust, which shall continue for a period of time sufficient to wind up the affairs of the Trust.
- (2) Provided there are no longer any retirees or qualified beneficiaries eligible for benefits from the Trust, the Trust may be terminated at any time by the Trustees so long as the termination is not inconsistent with any then existing City decisions. It shall not be necessary for the City to execute such an agreement for the Trust to terminate.
- (3) If the Trust shall terminate, the Trustees shall notify any Insurance Carrier or Carriers then providing insurance to retirees and qualified beneficiaries in the Trust as soon as administratively feasible.
- (4) In the event of the termination of the Trust, the remaining funds available after providing for all the outstanding obligations, shall be distributed to the City. In no event will the Trust assets revert to any entity that is not a state, a political subdivision of the State, or an entity whose income is excluded from gross income under Code Section 115.

DIVISION 2. - GENERAL GOVERNMENT RETIREE HEALTH CARE BENEFITS TRUST AND RELATED MATTERS

Sec. 2-1100. - CITY OF DEARBORN HEIGHTS GENERAL GOVERNMENT RETIREE HEALTH CARE BENEFITS TRUST.

(a) GENERAL PROVISIONS

1:100. Purpose.

The Trust is created, under the authority of the Public Employee Health Care Fund Investment Act, Public Act 149 of 1999 (MCL 38.1211 *et seq.*) (“Act 149”), and shall constitute a governmental trust pursuant to Section 115 of the Internal Revenue Code of 1986, as amended (“Section 115”). The Trust is established to allow for the City of Dearborn Heights to fund required retiree health care benefits, an essential governmental function, and is created for the exclusive purpose of providing a funding vehicle for the payment of health care, hospitalization, dental, optical and life insurance benefits or such other benefits approved by the City of Dearborn Heights ("City") or approved by Collective Bargaining Agreements or personal services contracts for the welfare of certain retirees of the City of Dearborn Heights who are eligible to receive a retirement benefit from the City of Dearborn Heights General Government Pension System, and the eligible spouses and eligible dependents of such retirees.

1:101. Short Title.

This Plan may be known and cited as the City of Dearborn Heights General Government Retiree Health Care Benefits Trust ("Trust").

1:102. Interpretation and law; Construction.

The Trust is established in accordance with the Public Employee Health Care Fund Investment Act, Public Act 149 of 1999 (MCL 38.1211 *et seq.*), shall be administered consistent with applicable federal and Michigan law, and shall constitute a Section 115 governmental trust. If any provisions of the Trust shall be, for any reason, invalid or unenforceable, the remaining provisions nevertheless shall be carried into effect.

Neither the establishment of the Trust nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any person covered under the Trust, or other person, any legal or equitable right against the City, its elected or appointed officials or employees, the Trustees or any individual Trustee, except as may otherwise be provided in this Trust.

1:103. Collective Bargaining Agreements.

Nothing contained in this Trust shall be deemed to modify or limit in any way the rights that the parties to a Collective Bargaining Agreement may have, any supplements or memoranda

thereto, or any arbitrator's award to enforce the terms of the Trust, inclusive of the collection of any amounts due to the Trust and the right of the parties to sue for same.

1:104. Definitions.

For the purposes of this Trust, the following words shall have the meanings respectively ascribed to them by this section:

- (1) *City* means the City of Dearborn Heights.
- (2) *Code* means the Internal Revenue Code of 1986, as amended. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provision of any legislation which amends or replaces such section or subsection and any regulations thereto.
- (3) *Collective Bargaining Agreement(s)* means any written agreement, supplemental agreement, memorandum of understanding, final arbitrator's decision, judicial decision or decision of any public board or agency, by and between applicable Collective Bargaining Associations and the City, and any amendments, continuations, or renewals, which require the City or any other entity to make payments into group health insurance programs for employees of the City.
- (4) *Collective Bargaining Associations* means those associations which have negotiated to participate in this Trust.
- (5) *Contributions* means the payment to be made to the Trust by the City under the terms of the Trust or payment to be made to the Trust by Employees pursuant to the terms of an applicable collective bargaining agreement or City personnel policy for the purpose of providing group health insurance for Retirees and beneficiaries covered by the Plan.
- (6) *Dependent* generally means a retiree's unmarried child at the time of retirement until the end of the year in which he or she reaches age 18.
- (7) *Effective Date* means the effective date of this Section.
- (8) *Employee* means a person employed by the City on a full-time basis who meets one of the following requirements:
 - (a) A non-union person employed by the City; or
 - (b) A person employed by the City who is a member of a Collective Bargaining Association which has negotiated to participate in this Trust.

Part-time employees, retired employees, and persons employed on a retainer or fee

basis are not to be considered Employees for purposes of this Trust.

- (9) *Health Care Benefits* shall mean health, dental, vision, prescription drug or other health care benefits to eligible retirees and their qualified spouses and dependents as determined by the City and applicable collective bargaining agreements.
- (10) *Insurance Agreement* means the health insurance plan(s) and any amendment(s) thereto, including any substitute insurance agreement with a commercial insurance carrier, health maintenance organization, preferred provider organization, or any other qualified entity currently existing or created for the purpose of providing benefits under the Plan. The term "Insurance Agreement" shall include the plural where applicable.
- (11) *Insurance Carrier* means a commercial health insurance carrier, health maintenance organization, preferred provider organization or other qualified entity designated by the City to provide benefits under the Plan.
- (12) *Personnel Policy* means any personal services contracts between the City and an individual employee, or any City Council resolutions extending retiree health care benefits, including fringe benefits, to non-union personnel.
- (13) *Plan* means the City of Dearborn Heights General Government Retiree Health Care Benefits Plan and any subsequent amendments, and any Insurance Agreement(s), Collective Bargaining Agreements, personnel policies, or other applicable insurance policy documents incorporated by reference into the Plan.
- (14) *Plan Administrator* means such person, persons, firm, corporation or insurance company or companies, appointed by the City to administer the Plan. The Plan Administrator shall be responsible for the day-to-day operations of the Plan and shall carry out the directives of the City as may be applicable.
- (15) *Plan Year* means the period commencing on July 1 and ending on June 30 of each year.
- (16) *Qualified Beneficiary* means any person satisfying the benefit eligibility requirements of the Plan.
- (17) *Retiree* means an individual who retired from employment with the City and satisfies the requirements of a collective bargaining agreement, personnel policy or personal services contract for retiree health care benefits from the Plan.
- (18) *Retirement Plan* means the City of Dearborn Heights General Government Pension System.
- (19) *Spouse* for purposes of a retiree from the City of Dearborn Heights General Government Pension System means a Participant's or Retiree's spouse by legal marriage who is the

Participant's or Retiree's spouse for a minimum of one (1) year before the date the Participant retires from employment with the City.

(20) *Trust* means the Declaration of Trust of the City of Dearborn Heights General Government Retiree Health Care Benefits Trust as provided for in this Section.

(21) *Trustee(s) or Board* means the Board of Trustees of the Trust or a member of the Board of Trustees of the Trust as provided for herein.

1:106. Notice.

Notice shall be given in accordance with applicable law including The Open Meetings Act (MCL §15.261 *et seq.*).

1:107. Reporting and Disclosure.

The Board, or their respective designees, shall complete and provide to appropriate individuals or entities any reports as may be required by the Code, applicable federal, state or local law.

1:108. Amendments.

The provisions of the Trust may be amended at any time by the City in accordance with applicable law.

(b) DECLARATION OF TRUST

1:200. Irrevocable Trust, Established.

This Section 115 governmental Trust shall be irrevocable and shall be administered consistent with applicable federal and Michigan law, and shall constitute a governmental trust under Section 115 of the Code, as amended, Revenue Rulings 77-261 and 90-74, and other relevant guidance. The Trust shall conform to all applicable sections of the Internal Revenue Code, the applicable Collective Bargaining Agreements, Personnel Policies, the statement of purpose in this Trust, and all statutes, ordinances, rules, regulations, arbitrators' awards and judicial decisions interpreting the foregoing provisions.

The Trust shall consist of City Contributions, any Contributions which may be paid by Employees, Retirees and other Qualified Beneficiaries due pursuant to the provisions of an applicable Collective Bargaining Agreement or City personnel policy, all investments made or held under Trust, and all income therefrom, both received and accrued, and any other property, which may be received or held by reason of this Trust. The Trust is intended to be a trust governed by Subpart E of Part I of Subchapter J of Chapter 1 of the Code and related Treasury regulations, under which the City is treated as the owner of the Trust for U.S. federal income tax purposes. The income accruing to the Trust shall be excluded from gross income as such Trust

income is derived from the exercise of an essential government function. Any funds paid by retirees and other qualified beneficiaries as a result of premium sharing required pursuant to an applicable Collective Bargaining Agreement or City policy, shall be paid directly to the City and/or the applicable Insurance Carrier and shall not be paid into the Trust.

1:201. Use of Trust Assets.

- (1) No part of the net earnings of the Trust may inure to the benefit of any participant, retiree or other beneficiary other than by benefit payments or for services provided to the Trustees in their administration of the Trust. The Trust assets shall not be used for or diverted to purposes other than to provide the benefits contemplated under the Plan for the exclusive benefit of Retirees and their eligible Spouses and eligible dependents, except any administrative expenses for which the Trust is liable. A portion of net earnings may be used for payment for reasonable and necessary professional services, costs and expenses related to assisting the Trustees in the operation of the Trust.
- (2) All income, profits, recoveries, contributions, forfeitures and any and all monies, securities and properties of any kind at anytime received or held by the Trustees hereunder, shall become part of the Trust when received, and shall be held for the use and purposes hereof.

1:202. Funding.

- (1) For the purpose of creating and maintaining a fund for the payment of health care benefits payable as provided in the Plan, the City will pay to the Trust an amount consistent with the actuarial valuations and calculations made by the Actuary for the Trust to result in a pre-funded plan. The City reserves the right to fund these health care benefits on a "pay-as-you-go" basis and the right to provide such lesser amount as the City determines. Such contributions shall also be made in accordance with any regulations of the Board of Trustees as are not inconsistent with the authority stated in this Trust and any Collective Bargaining Agreements between the Collective Bargaining Associations and the City.

- (2) Individuals shall contribute those amounts required by an applicable Collective Bargaining Agreement and/or City personnel policy, and otherwise as determined by the Plan Administrator.
- (3) Subject to the tax provisions of applicable ordinances, resolutions and state law, the Trustees may, to the extent matters are not set forth in the Trust, in their discretion decide the manner and means of payments, the procedures to be followed in making the payments, and the forms required to accompany the payments to the Trust. Upon determination by the Trustees of these matters, the Trustees shall provide written notice to the City and will provide for payments by the City to be made pursuant to the rules and regulations of the Trust.
- (4) Time is of the essence in making and processing all payments to the Trust. The parties recognize that the regular and timely payments of Contributions are essential to the operation of the Trust and the providing of benefits under various insurance programs.

1:203. Board of Trustees.

- (1) The Board of Trustees shall consist of five (5) trustees which shall be the trustees of the City of Dearborn Heights General Government Pension System.
- (2) The general, administration, management and responsibility for the proper operation of the Trust and for making effective and construing the provisions of the Trust shall be vested in the Board of Trustees established by this Section, consistent with applicable state and federal laws and regulations. A Trustee or other fiduciary under the Trust shall discharge his or her duties with respect to the Trust solely in the interest of the participants and qualified beneficiaries for the exclusive purpose of providing benefits to participants and qualified beneficiaries and paying reasonable expenses of administering the Trust. A Trustee shall discharge his or her duties with the care, skill, and caution under the circumstances then prevailing which a prudent person, acting in a like capacity and familiar with those matters, would use in the conduct of an activity of like character and purpose.

1:204. Trustees' Terms of Office.

- (1) The regular terms of office of the Trustees shall be the Trustee's terms of office under the City of Dearborn Heights General Government Pension System.
- (2) Each Trustee shall serve until the expiration of his or her term of office or until his or her death, incapacity, resignation or removal.
- (3) In the event an employee Trustee leaves the employ of the City, he or she shall be considered to have resigned from the Board. The Board shall, by resolution, declare his/her office of Trustee vacated as of the date of such resolution. Any vacancy occurring in the office of Trustee shall be filled within sixty (60) days following the date of the

vacancy, for the unexpired portion of the term, in the same manner in which the office was previously filled.

- (4) A vacancy or vacancies in the office of the Trustees shall not impair the powers of the remaining Trustees to administer the affairs of the Trust, provided there are sufficient Trustees to constitute a quorum.

1:205. Officers and Administration.

- (1) At its first meeting in the calendar year, the Trustees shall elect a chairperson and a chairperson pro-tem. The chairperson and chairperson pro-tem shall serve until a new chairperson and chairperson pro-tem are elected.
- (2) The Board of Trustees shall designate an individual or entity to serve as its secretary. The secretary term shall be at the pleasure of the Board.
- (3) The Board shall designate a treasurer and custodian of the assets of the Trust. The custodian shall be a nationally chartered bank or trust company. The general bond of the City shall cover all liability for acts of the treasurer of the Trust. The treasurer shall credit all receipts of money and assets of the Trust to the Trust. No Trust assets shall be transferred unless previously authorized by a general or specific resolution of the Board.
- (4) Consistent with applicable state and federal laws and regulations, the Trustees shall have the power to promulgate rules and regulations for the day-to-day management of the Trust, the investment of monies held by the Trust, to determine all questions regarding the interpretation of the Trust, and such other Trust related subjects as shall be deemed necessary and proper by the Trustees. If any rule or regulation of the Trust or part thereof is found to be in conflict with any law, statute, judicial decision, arbitration decision or any other competent body or tribunal, such rule or regulation or part thereof shall be deemed voided and, all other rules and regulations of the Trust shall remain in full force and effect.
- (5) Whenever the signature of a Trustee is required on any document, signature of the chairperson or other designated Trustee, only as authorized by the Board of Trustees, shall be required.
- (6) In the event of any suit brought against the Trustees arising out of the acts within the scope and powers and duties of the Trustees, or in the event of any authorized lawsuit brought by the Trustees, the cost of defense or prosecution of such lawsuit shall be charged to the Trust, and shall be paid directly from the Trust, provided such costs are not incurred by reason of bad faith, gross negligence, or breach of a fiduciary obligation to the Trust or to the beneficiaries thereof.
- (7) The Board of Trustees may employ such other clerical staff or administrative staff to perform whatever administrative activities are required in the proper performance of the Trust. In addition thereto, the Trustees may, if they desire, utilize other staff to perform

such clerical and administrative duties as they may, in their sole discretion, determine is reasonably and prudently necessary to carry out the Trust's activities and purposes. Under no circumstances shall said staff have control or authority with respect to the management of the Trust or its assets. The said staff shall not be clothed with any type of authority or power which will constitute the staff as a fiduciary. Said staff will not have the power or authority to act as an investment counselor or manager and will not be authorized to furnish investment advice.

- (8) The Board of Trustees may utilize City staff for such functions as personnel administration, accounting, banking and purchasing and will comply with all established City control procedures and policies related to these services. The Board will annually reimburse the City for actual costs of these services as determined by a method jointly agreed upon by the Board of Trustees and the City.
- (9) Employees of the City, upon the request of the Board of Trustees, may also be assigned to the Trust for the proper operation of the Trust. Said employees shall be subject to the supervision of the Board of Trustees. The Board of Trustees shall have the authority to establish job descriptions and promulgate rules and regulations appropriate for the Trust in addition to those adopted by the City. The Board will annually reimburse the City for the actual costs of these employees as determined by a method jointly agreed upon by the Board and the City.
- (10) The Board of Trustees may employ an investment manager(s) to manage the assets of the Trust. Such investment manager(s) must be registered under the Investment Advisor's Act of 1940, as amended, (15 USCS 80b-1) and must meet any applicable state and federal requirements to act as an investment manager. The Trustees may, if they deem proper in their discretion, or if the circumstances require it, appoint such investment manager, managers, banks or insurance companies as fiduciaries and enter into an agreement with such institutions, naming it a fiduciary and conveying to such fiduciary all or a portion of the assets of the Trust, so that said fiduciary may handle, manage and hold those assets conveyed to it. All assets conveyed to said fiduciary shall be subject to the provision of the agreement or agreements between the Trustees and the fiduciary.
- (11) The Board of Trustees may employ an investment consultant to advise the Board on investing the assets of the Trust. Such investment consultant must be registered under the Investment Advisor's Act of 1940, as amended, (15 USCS 80b-1) and must meet any applicable state and federal requirements to act as an investment consultant. The Trustees may, if they deem proper in their discretion, or if the circumstances require it, appoint such an investment consultant to oversee the investment manager, managers, banks or insurance companies naming it a fiduciary.
- (12) The Board of Trustees may employ legal counsel with whom they may seek advice, consult, require attendance at meetings, and to otherwise represent the Trustees in matters relating to the Trust.

- (13) The Board of Trustees may authorize the purchase of insurance for the Trust and for the Trustees to cover liability or losses occurring for any reason, including but not limited to, an act or omission (errors or omissions) of a fiduciary, including the Trustees.
- (14) The Board of Trustees shall appoint an Actuary who shall advise the Trustees on the actuarial operation of the Plan and Trust. The Trustees shall, from time to time, adopt such mortality and other tables of experience and a rate or rates of regular interest as are necessary in the operation of the Trust on an actuarial basis.

1:206. Board Meetings.

- (1) The Trustees shall meet at least once quarterly. The Trustees shall determine the time for the regular meetings of the Trustees and the place or places where such meetings shall be held. The chairperson or his or her designee shall be responsible for giving notice of the time and place of such meetings to the other Trustees.
- (2) Notice and conduct of all meetings of the Trustees, both regular and special; shall be given in accordance with applicable law including the Michigan Open Meetings Act (MCL 15.261 *et seq.*).
- (3) The Board of Trustees shall adopt its own rules of procedure and shall keep a record of its proceedings. Three (3) Trustees shall constitute a quorum at any meeting of the Board of Trustees. Each Trustee shall be entitled to one vote on each question before the Board of Trustees and at least three (3) concurring votes shall be required for a decision by the Board at any meeting of the Board.

1:207. Compensation.

All Trustees shall serve without compensation as members of the Board of Trustees, except that employee Trustees shall suffer no loss in compensation on account of their services as Trustees.

1:208. Trustees' Powers and Responsibilities.

The Trustees shall hold all the powers that are necessary to carry out the purposes of the Trust and are generally available to Trustees under the laws of the State of Michigan, except as limited by the Trust and by federal law and regulations. It is intended that the Trust shall be tax exempt and shall qualify under the Internal Revenue Code and any amendments of the Code applicable to trusts of this type. The Trustees shall have the continuing duty to propose, to the City, amendments to this Trust to the extent it becomes necessary to qualify said Trust under the Internal Revenue Code and to continue the tax exempt status of the Trust. The Trustees shall take no action nor make any determination inconsistent with any qualification or ruling of the Internal Revenue Service, an arbitrator or the courts with respect to the Trust. In the case of amendments to the Internal Revenue Code or changes of regulations by the Internal Revenue Service or the Labor Department, the Trustees are empowered to take all necessary action(s) authorized by the Plan and Trust, federal and state law and regulations, to continue the qualification of the Trust as

a qualified Trust. In carrying out the purposes of the Trust, the Trustees shall have the following powers and duties:

- (1) The Trustees shall, in order to effectuate the purposes of the Trust, be bound by the terms of the Plan and any applicable Collective Bargaining Agreements between the City and the Collective Bargaining Associations, or applicable personnel policies.
- (2) The Trustees shall establish a uniform system for the timely transmission of required reports and contributions from the City on behalf of the Participants and/or qualified beneficiaries.
- (3) The Trustees, in accordance with the requirements of law, may direct an impartial firm of independent certified public accountants to act as agent of the Trustees to examine the payroll records and reports as may be necessary to determine the monies due on behalf of a participant or qualified beneficiary covered by this Trust and to make a written report to the Trustees.
- (4) The Trustees shall maintain, or cause to be maintained, proper books of accounts and records of and for the administration of the Trust, including the minutes of all meetings, make them available for inspection at the permanent office of the Trust during reasonable business hours by the City, or any participant or qualified beneficiary.
- (5) The financial records of the Trust shall be subject to the annual audit of the City. The Trustees shall fully comply with all applicable statutory and municipal budgetary and accounting procedures and provide access to and documentation of all assets and liabilities of the Trust and a resume of the operations of the Trust for the preceding year together with such other data as may be required by law or as part of the City's annual financial report.
- (6) The Trustees shall be authorized, pursuant to Public Act 149 of 1999 (MCL 38.1211 *et seq.*), as amended, to invest the assets of the Trust in accordance with the provisions of Public Act 314 of 1965 (MCL 38.1132 *et seq.*), as amended.

1:209. Trust Liabilities.

- (1) The City shall not be liable for payment to the Trust of any amount. Neither the City, nor any participant or qualified beneficiary or Trustee shall be liable for any debts, liabilities or obligations of the Trust except as provided for in this Division. Neither the City nor any participant or qualified beneficiary shall have any right to the return of any money properly paid into the Trust, except as otherwise specifically provided in this Trust, or to money improperly paid which has already been invested or distributed. Any contribution improperly paid into the Trust by the City or on behalf of a participant or qualified beneficiary shall be returned by the Trustees upon the request of the City, the participant or the qualified beneficiary or upon discovery by the Trustees that such monies have been improperly paid into the Trust, unless those monies have already been invested or distributed.

- (2) No part of the Trust or any benefits payable by the Trustees shall be subject to alienation, sale, transfer, assignment, pledge or encumbrance charge by any person. No participant or qualified beneficiary shall be entitled to receive any part of the Contributions made by the City or payments required to be made by the Trust, in lieu of such benefits provided under the Plan as determined by the Trustees in accordance with the Trust.

1:210. Termination of the Trust.

- (1) Subject to the limitations of the Plan and this Trust, the parties hereby contemplate that new employment benefit decisions may be made by the City and new Collective Bargaining Agreements may be entered into which continue or modify the provisions of the Plan or this Trust. The Trust shall continue during such period of time as may be necessary to carry out the provisions of the Plan or any Collective Bargaining Agreement requiring payment to the Trust and the fact that such Collective Bargaining Agreements or employment benefit decisions are not extended, shall not by itself terminate the Trust, which shall continue for a period of time sufficient to wind up the affairs of the Trust.
- (2) Provided there are no longer any retirees or qualified beneficiaries eligible for benefits from the Trust, the Trust may be terminated at any time by the Trustees so long as the termination is not inconsistent with any then existing City decisions. It shall not be necessary for the City to execute such an agreement for the Trust to terminate.
- (3) If the Trust shall terminate, the Trustees shall notify any Insurance Carrier or Carriers then providing insurance to retirees and qualified beneficiaries in the Trust as soon as administratively feasible.
- (4) In the event of the termination of the Trust, the remaining funds available after providing for all the outstanding obligations, shall be distributed to the City. In no event will the Trust assets revert to any entity that is not a state, a political subdivision of the State, or an entity whose income is excluded from gross income under Code Section 115.

SECTION II.

CODIFICATION DIRECTIVES

Sections 2-902 through 2-999 and Sections 2-1001 through 2-1099 are deemed to be added and reserved.

Section 2-1000 presently constitutes Division 1 of Article X of Chapter 2 of this Code. As shown in Section 1 above, "Article X" and "Division 1" shall precede Section 2-1000 when Chapter 2 is codified and/or supplemented.

Section 2-1100 constitutes Division 2 of Article X of Chapter 2 of this Code. As shown in Section 1 above, "Division 2" shall precede Section 2-1000 when Chapter 2 is codified and/or supplemented.

SECTION III.

REPEAL

All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

SECTION IV.

SEVERABILITY

Should any section, subsection, clause, or phrase of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

SECTION V.

EFFECTIVE DATE

The City is required by the City Charter to adopt its budget on the day that this ordinance has been introduced. The City Council finds that the Trusts established pursuant to this ordinance should be established subject to appropriate publication at the time that the City budget is approved. In the light of the foregoing, the City adopts this ordinance on an emergency basis. This ordinance shall become effective upon publication as provided by law.

SECTION VI.

AUTHENTICATION

This is to certify that the undersigned do hereby authenticate the foregoing record of the ordinance herein set forth.

DANIEL S. PALETKO, Mayor

WALTER J. PRUSIEWICZ, Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of this ordinance adopted by the Council for the City of Dearborn Heights at a special meeting of the Council held on the 3rd day of June, 2019, and became effective by publication in the official newspaper of the City of Dearborn Heights and/or by publication as otherwise permitted by the City Charter on the 4th day of June, 2019.

WALTER J. PRUSIEWICZ, Clerk

Publication Date: June 4, 2019.