Ken Nakatsu
SCERS IRC Compliance ORD
November 25, 2013
Version #2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117987

AN ORDINANCE relating to the Seattle Retirement System; making changes to conform with the Internal Revenue Code; making technical corrections; amending Sections 4.36.040, 4.36.193 and 4.36.385, and repealing Section 4.36.285 of the Seattle Municipal Code; and ratifying and confirming certain acts.

WHEREAS, it is necessary to amend such Sections of the Municipal Code to reflect changes to the Internal Revenue Code; and

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 4.36.040 of the Seattle Municipal Code, last amended by Ordinance 123871, is amended as follows:

4.36.040 Definitions — Alphabetical "C" through "D"

Unless a different meaning is plainly required by the context the terms used in this chapter shall have the following meanings: "City" means The City of Seattle.

* * *

"Compensation" means ((~~the salary or wage, exclusive of overtime, indicated on payrolls and/or vouchers. Compensation in excess of the limitations set forth in 401(a)(17) of the Internal Revenue Code shall not be included in determining contributions or in determining benefits. This restriction does not apply to any individual who was a member prior to January 1, 1996~~)) the salary or wage, exclusive of overtime, indicated on payrolls and/or vouchers. With respect to plan years beginning on and after July 1, 2002, the annual compensation of a plan member that exceeds $ 200,000 (as adjusted for cost-of-living increases in accordance with Code § 401(a)(17)(B)) may not be included in determining benefits or contributions for any plan year. Annual compensation means compensation during the plan year or such other consecutive 12-

month period over which compensation is otherwise determined under the plan, referred to as the determination period. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. This restriction does not apply to any individual who was a member prior to January 1, 1996.

"Code" means the Internal Revenue Code of 1986, as amended.

* * *

Section 2. Section 4.36.193 of the Seattle Municipal Code, last amended by Ordinance 122414, is amended as follows:

4.36.193 Election to rollover to an eligible retirement plan((.))

1. This section applies notwithstanding ((~~Notwithstanding~~)) any contrary provision ((~~provision of the City Employee's Retirement System to the contrary~~)) that would otherwise limit a distributee's ability to make a rollover election ((~~under this section, a~~)). A distributee may elect, at the time and in the manner prescribed ((~~by the Board of Administration~~)) under this chapter, to have any portion of ((~~any~~)) an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

2. The following definitions apply to this Section:

((~~A. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover~~

~~distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income unless it is paid to an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.~~

~~B. Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution.~~))

a. "Direct rollover" means a payment under this chapter to the eligible retirement plan specified by the distributee.

((~~C~~))b. "Distributee" ((~~: A distributee includes~~)) means an employee or former employee. ((~~In addition,~~)) It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee

under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse.

((~~D. Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.~~))

c. "Eligible retirement plan" means an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), a qualified trust described in Code § 401(a), an arrangement described in Code § 403(b), an eligible governmental deferred compensation plan described in Code § 457(b), or for distributions made after December 31, 2007, a Roth IRA described in Code § 408A(b).

d. "Eligible rollover distribution" means any distribution of all or any portion of the member's benefits under this chapter, except: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the member or the joint lives (or joint life expectancies) of the member and the member's Designated Beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent required under Code § 401(a)(9); (c) the portion of any distribution which is not includible in gross income; (d) any hardship distribution; (e) a corrective distribution; (f) a deemed distribution resulting from a defaulted member loan which is not also an offset distribution; (g) any other distributions described in Treas. Reg. §1.402(c)-2; and (h) as to a direct rollover, any distributions during that calendar year are reasonably expected to total less than $200.

e. "Individual retirement plan" means an individual retirement account ("IRA") described in Code § 408(a) or an individual retirement annuity described in Code § 408(b), and, as the context requires, includes a Roth IRA or a Roth individual retirement annuity.

3. Non-Spouse Designated Beneficiary Direct Rollover. For distributions made after December 31, 2006, a non-spouse designated beneficiary (including a trust which qualifies as a designated beneficiary), may, by direct rollover, roll over an eligible rollover distribution to an eligible retirement plan; provided that for this purpose, an eligible retirement plan is an individual retirement plan that the non-spouse designated beneficiary establishes for purposes of receiving the distribution and which is treated as an inherited IRA under Code § 408(d)(3)(C). If a non-Spouse Designated Beneficiary receives a distribution from the Plan, the distribution is not eligible for a 60-day rollover.

4. Certain Requirements Not Applicable Before 2010. Although a non-Spouse Designated Beneficiary may roll over directly a distribution as provided in this section, any distribution made prior to January 1, 2010, is not subject to the Direct Rollover requirements of Code § 401(a)(31) (including Code § 401(a)(31)(B)), the notice requirements of Code § 402(f) or the mandatory withholding requirements of Code § 3405(c)).

5. Effective January 1, 2006, in the event of a mandatory lump sum distribution in an amount greater than $1,000, if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly, then such distribution shall be paid in a direct rollover to an individual retirement plan designated by the Board.

Section 3. Section 4.36.385 of the Seattle Municipal Code, last amended by Ordinance 119590, is amended as follows:

4.36.385 Compliance with Internal Revenue Code((.))

A. In General. This chapter shall be administered in a manner to comply with the applicable requirements of 26 U.S.C. Section 401(a), and the Board is authorized to promulgate rules as it deems necessary to effectuate such compliance.

B. Compliance with Code § 401(a)(2) – Exclusive Benefit. See Section 4.36.360.

C. Compliance with Code § 401(a)(9) – Required Minimum Distributions

1. The requirements of this section will take precedence over any inconsistent provisions of this chapter.

2. All benefits and distributions required under this section will be determined and paid in accordance with a reasonable and good faith interpretation of the requirements of Code § 401(a)(9) and the regulations thereunder, as applicable to a governmental plan within the meaning of Code § 414(d).

3. Distributions to a member and his or her beneficiaries under this section shall only be made in accordance with the incidental death benefit requirements of IRC § 401(a)(9)(G) and the Treasury Regulations thereunder.

4. The Board will begin distributions of a member's retirement benefits under this chapter no later than the member's "required beginning date." A member's "required beginning date" is the later of the April 1st following the close of the calendar year in which the member leaves City employment or, the April 1st following the close of the calendar year in which the member attains the age of seventy and one-half (70 1/2).

5. If the member dies before distributions begin, the member's retirement benefits must begin to be distributed, no later than as follows:

i. If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age 70 1/2, if later.

ii. If the member's surviving spouse is not the member's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.

iii. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

iv. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subparagraph (rather than 5.1 above) will apply as if the surviving spouse were the member. For purposes of this subsection, unless this subparagraph applies, distributions are considered to begin on the member's required beginning date. If this subparagraph applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under 5.1 above. If distributions under an annuity purchased from an insurance company irrevocably commence to the member before the member's required beginning date or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse, the date distributions are considered to begin is the date distributions actually commence.

If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code § 401(a)(9) and the Treasury Regulations thereunder.

D. Compliance with Code § 401(a)(17) – Compensation Limit. The compensation limit is addressed under the definition of "Compensation" in Section 4.36.040.

E. Compliance with Code § 401(a)(31) – Eligible Rollover Distributions. See Section 4.36.193.

F. Compliance with Code § 414(p) – Qualified Domestic Relations Orders (QDRO). The treatment of QDROs under this chapter is described under Section 4.36.295.

G. Compliance with Code § 415. See subsection 4.36.380.A.

H. Compliance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART)

1. HEART Act Death Benefits. In the case of a death occurring on or after January 1, 2007, if a member dies while performing qualified military service (as defined in Code § 414(u)(5), the member's beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under this chapter as if the member had resumed employment and then terminated employment on account of death. Moreover, the member's qualified military service will count as service for vesting purposes, as though the member had resumed employment under USERRA immediately prior to the member's death.

2. Effective January 1, 2009, to the extent required by Code §§ 414(u)(12) and 3401(h), any member receiving a differential wage payment (as defined under Code § 3401(h)(2)) from an employer will be treated as employed by that employer, and the differential wage payment will be treated as compensation for purposes of applying the limits on annual additions under Code § 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Section 4. Section 4.36.285, last amended by Ordinance 121030, is repealed as follows:

~~((**4.36.285 Required time of distribution.**~~

~~Notwithstanding any other provision of this chapter, the Board shall begin to distribute retirement benefits pursuant to this chapter no later than a member's required beginning date. For the purposes of this section, a member's "required beginning date" is the later of the April 1st following the close of the calendar year in which the member leaves City employment or, the April 1st following the close of the calendar year in which the member attains the age of seventy and one-half (70½).~~))

Section 5. This ordinance is curative and remedial and any act consistent with the authority of this ordinance taken prior to its effective date is ratified and confirmed.

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Ken Nakatsu
SCERS IRC Compliance ORD
November 25, 2013
Version #2

Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Retirement System	Ken Nakatsu / 615-1423	

Legislation Title: AN ORDINANCE relating to the Seattle Retirement System; making changes to conform with the Internal Revenue Code; making technical corrections; amending Sections 4.36.040, 4.36.193 and 4.36.385, and repealing Section 4.36.285 of the Seattle Municipal Code; and ratifying and confirming certain acts.

Summary of the Legislation: This legislation adds necessary technical amendments mandated by the Internal Revenue Code and Treasury Regulations to maintain the Retirement Fund's tax qualified status. None of the amendments makes any substantive changes to members' benefits.

Background: From time to time, the Seattle Municipal Code must be updated to conform to changes in the Internal Revenue Code and Treasury Regulations in order to maintain the tax-qualified status of the Retirement System. The Seattle Municipal Code currently permits a mandatory withdrawal of a member's contributions if the Retirement Board finds that the member has been terminated due to intemperance, willful misconduct or violation of law. Under the Internal Revenue Code, such a mandatory withdrawal requires the Retirement System to rollover such contributions into an Individual Retirement Account if the amount exceeds $1,000 and the member has not elected to receive the distribution or specified that payment be made to another recipient plan. The legislation allows the Board to set up IRAs for such purposes. The legislation also makes technical additions that will allow the Retirement System to secure a determination from the Internal Revenue Service that the System is in compliance with Internal Revenue Code requirements to maintain the system's tax-qualified status. None of the amendments in this legislation makes any substantive changes to members' benefits.

Please check one of the following:

__X__ **This legislation does not have any financial implications.**
(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

____ **This legislation has financial implications.**
(If the legislation has direct fiscal impacts (e.g., appropriations, revenue, positions), fill out the relevant sections below. If the financial implications are indirect or longer-term, describe them in narrative in the "Other Implications" Section. Please delete the instructions provided in parentheses at the end of each title and question.)

Appropriations:

(This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation please provide details in the Appropriation Notes section below. If the appropriation is not supported by revenue/reimbursements, please confirm that there is available fund balance to cover this appropriation in the note section.)

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL				

**See budget book to obtain the appropriate Budget Control Level for your department.*

Appropriations Notes:

Anticipated Revenue/Reimbursement Resulting from this Legislation:

(This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.)

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
TOTAL				

Revenue/Reimbursement Notes:

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

(This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.)

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL							

** 2014 positions and FTE are <u>total</u> 2014 position changes resulting from this legislation, not incremental changes. Therefore, under 2014, please be sure to include any continuing positions from 2013.*

Position Notes:

Do positions sunset in the future?
(If yes, identify sunset date)

Spending/Cash Flow:
(This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.)

Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
TOTAL				

** See budget book to obtain the appropriate Budget Control Level for your department.*

Spending/Cash Flow Notes:

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No.

b) **What is the financial cost of not implementing the legislation?**
Non-conformance with the Internal Revenue Code could result in all benefits under the system being subject to immediate federal income taxation.

c) **Does this legislation affect any departments besides the originating department?**
No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives.**
There are none.

e) **Is a public hearing required for this legislation?**
No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

g) **Does this legislation affect a piece of property?**
No.

h) **Other Issues:**
None.

List attachments to the fiscal note below: