

Chapter 26
PIEDMONT POLICE AND FIRE PENSION PLAN

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SEC. 26.1 PENSION BOARD

A board is hereby created whose duty it shall be to handle and administer pensions for retired members and benefits for members, their nominees and the widows and minor children of deceased members of the police and fire departments of the City of Piedmont. The Pension Board shall be comprised of the mayor, one member of the City Council, one member of the police department, one member of the fire department, and one community representative appointed by the Council for a three-year term of office commencing April 1. Each said department member shall be selected from the rank and file of each respective department. The Council member and the community representative shall be selected by the members of the Council of the City of Piedmont.

The pension board shall select its own chairman and secretary and shall administer all matters pertaining to pensions in accordance with the provisions of this Chapter 26.

The pension board shall have power, by resolution, to provide rules and regulations for the administration of all matters pertaining to pensions and benefits hereunder, and shall invest the pension fund, or direct that their investments be made by or through investment counsel, trust companies, or trust departments of banks, or any combination thereof, in accordance with City ordinances applicable to the investment of funds of municipal retirement systems, and if there be none, in accordance with state law. (Ord. No. 396 N.S., §1; Ord. No. 421 N.S., §1)

SEC. 26.2 DEFINITIONS

The term "board" shall mean the "pension board"; the term "member" shall mean every person including probationary employees in full-time active service in either the police or fire departments of the City of Piedmont, excluding temporary employees of every character; the term "fund" shall mean the "pension fund"; the term "widow" shall include "widowers," and the masculine, feminine or neuter gender shall be deemed to include the others whenever the context so indicates. (Ord. No. 396 N.S., §2; Ord. No. 441 N.S., §2, eff. 5/18/83)

SEC. 26.3 PENSION FUND

There is hereby established a pension fund for retired members, and for benefits for eligible members, their nominees and the eligible widows and minor children of deceased members of the police and fire departments of the City of Piedmont, as hereinafter defined. The fund shall receive its funds as provided in Section 26.4 of this section and no payment shall be made from such fund except as provided in this Chapter 26.

The balance of money on hand in that certain fund heretofore created by Section 47 of the Charter of the City of Piedmont, as passed on the 29th of April 1944, herein amended, and any and all investments made from cash from said fund, either United States Government Bonds or otherwise, shall be transferred and/or credited to the pension fund created by Section 26.3 hereunder. (Ord. No. 396 N.S., §3)

SEC. 26.4 CONTRIBUTIONS TO PENSION FUND

There shall be paid to the fund of the City of Piedmont such sums as may be determined by the City Council of the City of Piedmont from time to time by tax levy or otherwise and the City Council, if necessary, shall levy a tax to provide extra revenue for maintaining such pension fund.

Each member shall pay to the fund a monthly payment of a sum equal to nine (9) percent of the salary of said member, which payment shall be deducted from the monthly salary of said member, and each member shall be deemed to consent and agree to such deduction.

The City shall pay to such fund each year an amount of money which, in the aggregate shall equal the total of 15.23% of said member's salaries for each said year until July 1, 1957, and thereafter in accordance with the provisions hereinafter set forth, irrespective of whether any portion of such deductions from said salaries shall have been paid from said fund to any member, his heirs, representatives, or nominees, pursuant to any provisions of this Chapter 26.

Interest earned and received on cash balances and income on investments shall be paid into the fund.

The board shall be empowered and authorized to receive and accept all donations, gifts or bequests for said fund.

The pension board shall obtain an actuarial study of the actuarial solvency of the fund, which study shall be conducted by accredited actuarial consultants as of January 1 of every third year commencing January 1, 1982, and at such additional time or times as the board shall deem necessary.

The City Council shall adjust the City of Piedmont's percentage of salary contribution on July 1, 1985, and on July 1 of every third year thereafter in order to assure adequate funding in accordance with the actuarial study herein referred to.

There shall be levied and collected at the time and place and in the same manner as other property taxes for municipal purposes are levied and collected, if no other provision for payment is made, a tax sufficient to meet all the obligations of the City for the creation, establishment, and maintenance of the pension plan herein provided for, which tax shall not be subject to any limitation or provision of Section 4.08 of the City Charter as the same now exists or may hereafter be amended. (Ord. No. 396 N.S., §4; Ord. No. 424 N.S., §1; Ord. No. 450 N.S., §2, eff. 12/7/83)

SEC. 26.5 ELIGIBILITY FOR RETIREMENT

Any person who was a member either at the time of the adoption of this section or who shall thereafter become a member and who shall have been in active service for a period of at least twenty-five (25) years and shall have attained the age of fifty-five (55) years shall be eligible for retirement. The board, upon satisfactory proof to it of such facts by order of such board shall, upon written request retire and relieve from service such member, and from the effective date of said order the services of such member shall cease and such member so retired shall thereafter be paid from the fund, and not otherwise, during the remainder of his lifetime such amount as is provided and set forth in Section 26.10 of this Chapter 26.

Compulsory retirement. Any member who reaches the age of sixty-five (65) years shall retire from active service, unless the City Council extends the active service of such member on a year to year basis. Any member who reaches the age of seventy (70) years shall retire from active service and there may not be any extended active service. (Ord. No. 396 N.S., §5)

SEC. 26.6 INDUSTRIAL DEATH OR DISABILITY

Whenever a member shall lose his life due to an injury, disability or disease caused by and received in the course of his employment and in the performance of his duty, then upon satisfactory proof of such facts made to it, said board shall order and direct a sum equal to 50 percent (50%) of the sum provided for in the last paragraph of this article, said sum to be paid monthly from said fund, to the widow of said deceased member as long as she lives, or until she shall earlier remarry.

Should said deceased member leave no widow but should leave an orphan child or children under the age of eighteen (18) years, or should the deceased member leave a widow and child or children under the age of eighteen (18) years and the widow die without remarrying

while such child or children are yet under the age of eighteen (18) years, said monthly amount shall be paid in equal shares to such child or children of the deceased member who are then under the age of eighteen (18) years and such payment shall cease when the youngest such child attains the age of eighteen (18) years; provided that no child shall receive any payment or portion thereof after attaining the age of eighteen (18) years or after marrying before attaining the age of eighteen (18) years.

Whenever a member, as a result of accident, injury, disability or disease, directly caused by and received in the course of employment and in the performance of his duty, is sufficiently disabled that he is no longer able to perform his regular duties, then upon satisfactory proof of such fact made to it, the City shall pay such member from the City general fund a monthly sum sufficient to make up the difference between the workman's compensation and social security payments to which such member is otherwise entitled, and the monthly salary he was receiving at the time of his disability, such monthly sum to be paid for a period not to exceed one year or for such lesser time as such member's disability shall continue. If such period of disability extends beyond one year, then the board shall order and direct the monthly payment from the pension fund to such member of an amount equal to fifty percent (50%) of the sum provided for in the last paragraph of this article, said payments to continue until such member's disability terminates or until such member's death; provided, however, that should the City continue to pay the salary of such disabled member during the period of disability and at a time during which the pension plan should be making payments to such member, the City, rather than the disabled member, shall receive from the pension fund such payments as the disabled member would have otherwise been entitled to receive from the fund during such period that the City continues to pay such disabled member's salary; provided, further, that should such period of disability extend beyond one year, and, at such time such disabled member shall have accrued sick leave due him from the City, then such disabled member shall first be restored to full salary by the City during a period equal to his accrued sick leave, and only thereafter shall he be paid the fifty percent (50%) monthly pension from the pension fund as hereinabove provided. There shall be no right to payments under this section where the employee has elected to withdraw all contributions and earned interest from the pension fund pursuant to Section 26.7 of this Chapter. Upon the death of a former member who is receiving monthly disability pension payments from the pension fund pursuant to this section, his spouse, as defined in Section 26.12, shall receive from the fund so long as he shall live, or until he shall earlier remarry, a monthly pension equal to fifty percent (50%) of the sum to which the former member was entitled immediately prior to his death.

All payments set forth in this Section 26.6 shall be subject to the deductions set forth in Section 26.9 of this Chapter 26.

In the event the board shall order payments under this Section 26.6, whether because of death or because of disability which extends beyond one year, if at the time of such death, accident, injury, disability or disease the member has in excess of twenty-five (25) years of active service, the monthly sum to be paid out shall, instead of being fifty percent (50%) of the sum provided for in the last paragraph of this article, be computed upon the following percentages of the monthly salary as set forth in the last paragraph of this section:

Percentage of Amount of

<u>Years of Active Service</u>	<u>the Monthly Salary</u>
26	53.33
27	56.67
28	60.00
29	63.33
30 or over	66.66

The sum to which reference is hereinabove made is the average monthly salary received by such member during the period of twelve months immediately preceding the date of the death, accident, injury, disability or disease of such member; provided, however, that if such member has advanced in rank at any time during the three (3) years preceding such last-mentioned date, the sum to which reference is hereinabove made shall be equal to the following fraction:

The sum of the current monthly salary paid by the City on such date for each rank held by such member during the preceding thirty-six (36) months with each salary multiplied by the number of months during which each such rank was held in said thirty-six (36) month period, divided by thirty-six (36). (Ord. No. 396 N.S., §6; Ord. No. 424 N.S., §2; Ord. No. 450 N.S., §3, eff. retroactively 12/3/76)

SEC. 26.7 **ORDINARY DEATH; TERMINATION OF EMPLOYMENT; DEATH BEFORE ELIGIBILITY**

Except members who are then eligible for retirement, in the event a member hereafter dies from natural causes before retirement, (and his death is not due to an injury, disability or disease received in the course of his employment and in the performance of his duty) a sum equal to the aggregate amount of payments paid by such member into said fund together with the pro rata of interest earned by such deceased member's contributions to the fund from the date of deposit as determined by the pension board, and a sum equal to twice the monthly salary the deceased member received for his last month of active service shall be paid from said fund, and not otherwise, to his heirs or legal representatives or to such person said member shall have nominated by written designation, duly executed and filed with said board; provided, however, that in the event said member is married, the nomination shall not be considered valid unless the execution thereof is joined in by his lawful wife.

In the event a member who is then eligible for retirement hereafter dies from natural causes before retirement, (and his death is not due to an injury, disability, or disease received in the course of his employment and the performance of his duty) such member shall be considered as having retired the day before his death, and his widow, as defined in Section 26.12, shall have the option of receiving either the benefits to which she would be entitled under Section 26.10 as the survivor of a retired member, or the payments from the fund provided in the first paragraph of this Section 26.7. Such option may be effectively exercised by the member, prior to his death, so as to be binding upon his widow under procedures established by the pension board. If there is no surviving widow, payments shall be made from the fund in accordance with the first paragraph of this Section 26.7.

In the event a member hereafter leaves the service before retirement and has rendered satisfactory service, and the board shall so find, a sum equal to the aggregate amount of the payments paid by said member into said fund, together with interest earned by such member's contributions to the fund at an interest rate to be determined from time to time by the Pension Board shall be paid to said member so leaving the service; provided, however, that the election to withdraw said contributions and interest shall preclude the employee's rights to any other post-termination benefits provided by this Chapter. (Ord. No. 424 N.S., §3)

Also in the event a retired member and his widow hereafter die before the member and his widow collectively have received in pension payments a sum equal in the aggregate to the aggregate amount paid by said member into said fund, a sum equal to the difference between the said aggregate sum received in pension payments by said retired member and his widow and the aggregate sum paid into said fund by said member plus his pro rata of interest earned by his contributions to the fund from the date of deposit to date of retirement as determined by the pension board shall be paid from said fund, and not otherwise, to his heirs or legal representatives or to such person said member shall have nominated by written designation, duly executed and filed with the said board, provided, however, that in the event said member is married, the nomination shall not be considered valid unless the execution thereof is joined in by his lawful wife.

Notwithstanding any payments paid to any member as provided in Section 26.7 herein, no payments theretofore made to the fund by the City shall be withdrawn by said City except for the payments made or authorized under the provisions of Section 26.6 and 26.10 hereof. (Ord. No. 396 N.S., §7; Ord. No. 424 N.S., §3)

SEC. 26.8 MILITARY SERVICE

Any member who leaves the City's employ on or after January 1, 1940 for the purpose of entering directly into active military service will be re-employed in such member's former job or in a position of like seniority, status and pay unless circumstances beyond the City's control make such re-employment impossible or unreasonable in the opinion of the City Council, if (1) such member is released from active duty within four years after the date he entered active duty plus any period of additional service involuntarily imposed by law as an enlistee or volunteer, or as soon after the expiration of said four years as he is able to obtain orders relieving him from active duty as a reservist, and (2) such member applies for re-employment by the City of Piedmont within ninety (90) days after he is released from active duty, except that if he is hospitalized immediately after being released and such hospitalization does not last for more than one (1) year, he may apply for re-employment within ninety (90) days after release from the hospital, and (3) such member presents to the City of Piedmont evidence of satisfactory completion of military service, and (4) such member is at the time of his application for re-employment qualified in the opinion of the City Council to perform the duties of such position.

The period during which any member is in the active military service shall be considered as service for the City of Piedmont in computing the years of active service for the purpose of qualifying and becoming eligible for a pension under the provisions of Section 26.5 of this

section. The City of Piedmont shall provide for the cost of the pension accruing during such period of military service by such member based on the salary received from the City of Piedmont at the time of entering military service. (Ord. No. 396 N.S., §8)

SEC. 26.9 CONSIDERATION OF OTHER PENSION

In the event any retired member, widow, minor child or children or nominee are receiving payments from said fund under the provisions of Section 26.6 or 26.10 of this Chapter and are also receiving or are eligible to receive a payment or payments from any other public source pursuant to the provisions of any Federal and/or State Relief Pension Statutes except a military service pension or payment which accrues during credited service hereunder, said payment or payments so received shall be deducted from time to time from the amount payable under the provisions of Section 26.6 or 26.10 of this Chapter; provided, however, the monthly payments received under the provisions of Section 26.6 or Section 26.10 of this Chapter, together with the payments from such other public source in the aggregate shall not exceed or be less than the sum said member, widow, minor child or children would normally be entitled to receive under the provisions of Sections 26.6 or 26.10 hereof. (Ord. No. 396 N.S., §9)

SEC. 26.10 AMOUNT OF PENSION; JOINT AND SURVIVOR PENSION

Whenever any member is retired by the board as provided in article 5, he shall receive from the fund for the remainder of his life a monthly pension in a sum equal to one-half of the average monthly salary received by such member during the period of twelve months immediately preceding the date of his retirement; provided, however, that if said member has advanced in rank at any time during the three (3) years preceding the date of his retirement, his monthly pension shall be a sum equal to one-half of the following fraction:

The sum of the current monthly salary paid by the City on the date of retirement for each rank held by said member during the preceding thirty-six (36) months with each such salary multiplied by the number of months during which each such rank was held in said thirty-six (36) month period, divided by thirty-six (36).

By way of illustration, the fraction is as follows:

Current salary for A rank multiplied by x months, plus

Current salary for B rank multiplied by Y months, plus

Current salary for C rank multiplied by Z months;

Divided by thirty-six (36).

Where A, B and C are the ranks held by said member during the said thirty-six (36) month period, and X plus Y plus Z equal thirty-six (36). In the event such member remains in service after reaching normal retirement age (having been in active service for twenty-five (25) years and having attained the age of 55 years) the contributions of both the member and the City

of Piedmont shall continue until the employee is actually retired from active service, and his pension shall be based upon his average monthly salary for the last twelve months of active service by such member; unless he was advanced in rank during the thirty-six (36) month period immediately preceding his retirement in which case the amount of such pension shall be computed as provided in the fraction set forth above.

If a member who is retired by the board hereunder has in excess of twenty-five (25) years of active service, such member shall receive a monthly pension computed upon the following percentages of average monthly salary:

<u>Years of Active Service</u>	<u>Percentage of Amount of Average Monthly Salary</u>
26	53.33
27	56.67
28	60.00
29	63.33
30 or over	66.66

Upon the death of a retired member who is receiving a monthly pension from the fund, his widow, as defined in Section 26.12, shall receive from the fund, so long as she shall remain unmarried and until her death, a monthly pension in a sum equal to one-half of the monthly pension to be received by the member as hereinabove set forth in this Section.

Subject to such conditions as the pension board may prescribe at the time any member is retired by the board, as provided in Section 26.5, he shall have the option of electing a joint and survivor pension with someone other than his wife in lieu of the individual retirement pension as set forth in the first paragraph above. In the event a member elects to receive a joint and survivor pension such pension shall have the same actuarial value as the individual pension and shall provide for monthly payments to the survivor (joint annuitant) of the member for the remainder of such survivor's life in accordance with such actuarial value. Furthermore, in such event, the wife of the member, if any, must consent to such election. (Ord. No. 396 N.S., §10)

SEC. 26.11 **DISABILITY-NONOCUPATIONAL**

In the event a member has completed five (5) or more years of service regardless of age, if such member becomes totally and permanently disabled due to non-occupational bodily injury or disease, excluding self-inflicted injury or attempt at suicide, the pension plan shall provide a pension for such member commencing at the time of disability and such pension shall be the sum computed as follows: If the member has completed between five (5) and 18.51 years of service, the pension shall equal 1.8% of the monthly salary at the time of disability multiplied by years of service, but in no case shall such pension exceed 33-1/3% of monthly salary at the time of disability; if the member has completed 18.52 or more years of service, the pension shall equal 1.8% of monthly salary at the time of disability multiplied by years of service. In the event a member ceases to be totally and permanently disabled as set forth in this Section 26.11, the

pension provided hereunder shall cease immediately. There shall be no right to payments under this Section where the employee has elected to withdraw all contributions and earned interest from the pension fund pursuant to Section 26.7 of this Chapter 26.

The term "total and permanent disability", as used in this section, is defined as incapacity of the member resulting from bodily injury or disease which prevents him from performing substantially all of the work pertaining to his occupation or any other occupation which requires similar work or equivalent abilities or training of the member; provided that this shall not preclude performance of work by the member which is not similar to his occupation with the City of Piedmont and does not require equivalent abilities or training of the member.

Upon the death of a retired member who is receiving or is entitled to receive a monthly pension from the fund under the provisions of this section, his widow, as defined in Section 26.12, shall receive from the fund so long as she shall remain unmarried and until her death, a monthly pension in a sum equal to one-half of the monthly pension to be received or being received by the member as hereinabove set forth in this section.

SEC. 26.12 APPLICATION BY SURVIVOR

When a spouse, who shall be defined as the wife or husband of a member for at least one year prior to his retirement, or for at least one year prior to his disability or death while employed in the police or fire departments of the City of Piedmont, or minor child or children or a nominee become eligible for a payment or payments under the provisions of this Chapter 26, application to the board must be filed within ninety days after the date of eligibility, and said board shall act on said application within ninety days after the filing thereof. The term "widow" as used in this Chapter 26 shall be deemed to refer to the surviving spouse whether a wife or a husband. It is intended that all terms used in this Chapter 26 shall apply regardless of gender, including, but not limited to, "he" or "she", "his" or "her", "wife" or "husband". (Ord. No. 396 N.S., §12; Ord. No. 450 N.S., §4, eff. 12/7/83)

SEC. 26.13 HEARINGS

Before making any order for the payment of any sum or sums from said fund, the board may call and conduct hearings, and may subpoena such witnesses, hear and take such evidence in relation to the subject as in its discretion it may deem proper. (Ord. No. 396 N.S., §13)

SEC. 26.14 SOCIAL SECURITY

In the event that legislation is adopted which would permit the City of Piedmont to place its policemen and firemen under Federal Social Security, then with the concurrence of two-thirds of the then active regular members of the police and fire departments, all regular members shall be obligated to accept Social Security (if such is permitted by the Social Security Law) provided that the total individual retirement pension set forth under Section 26.10 above including such Social Security, shall not be less than the individual retirement pension as now provided for

under Section 26.10 above. In the event two-thirds of the members concur to accept Social Security as set forth above, the City Council shall be required to place the members under Social Security provided that the aggregate cost to the City of Piedmont shall not exceed the cost of the pension plan set forth in this Chapter 26. (Ord. No. 396 N.S., §14)

SEC. 26.15 COST OF LIVING ADJUSTMENTS

As of April 1 of each year the computation of the monthly pension benefit of each retired member shall be adjusted to reflect the change, if any, whether an increase or a decrease, in the California consumer price index from March of the prior year to March of the year in which the adjustment is made. The "California consumer price index" as used herein is an index stated as the average of the separate annual consumer price indexes for the Los Angeles-Long Beach area and the San Francisco-Oakland area published by the Bureau of Labor Statistics of the United States Department of Labor.

Should the reference base of said consumer price indexes (presently 1957-59 = 100) be changed, each of said indexes used to determine the consumer price index as defined in this Chapter will be the indexes converted to the new base by standard statistical methods. The adjustment is subject to the following limitations:

- (a) No adjustment will be made in years for which the adjustment to the member's base pension benefit would be less than one (1) percent. "Base pension benefit" is the member's monthly pension benefit minus accumulated cost of living increases already granted.
- (b) Monthly pension benefits for a member may not be reduced below the base pension benefit of such member.
- (c) Adjustments will commence in the second calendar year following the year of retirement and may not exceed two (2) percent per year, compounded from the base year. The "Base year" is the year of retirement.
- (d) Adjustments shall apply to all members and beneficiaries receiving a monthly pension benefit from the fund, whose retirement or pension benefit commenced after the date this Section 26.15 becomes effective.
- (e) The member does not have to apply for these increases; they are calculated and granted automatically, and appear when applicable, in the May 1st pension benefit payment. (Ord. No. 396 N.S., §15)

SEC. 26.16 ACTUARIAL CALCULATIONS

All actuarial calculations regarding the pension fund created by Section 26 of the Charter of the City of Piedmont, particularly including those set forth in Section 26.4 hereof, shall be computed on a 30 year prior service funding basis. (Ord. No. 396 N.S., §16)

SEC. 26.17 AMENDMENTS

In conformance with Section 5.05 of the City Charter, no amendment may be made to this Chapter 26 changing the provisions of the pension system for members of the police and fire department unless by a majority of voters voting thereon at a general or special election. (Ord. No. 396 N.S., §17)

SEC. 26.18 AUTHORIZATION TO ENTER PERS

The City Council is authorized at any time to enter into a contractual relationship with the Public Employees Retirement System to provide pension, disability, death and related benefits for current participants in the Police and Fire Pension Plan as an alternative that may be elected by such participants after the effective date set forth in the contract with the Public Employees Retirement System, and to enter into any related agreements with the Public Employees Retirement System and to take any related actions necessary to further the purposes set forth herein. Any such contractual relationships with the Public Employees Retirement System shall not terminate the Police and Fire Pension Plan until all of its funds have been appropriately paid out according to its terms and provisions. (Ord. No. 492 N.S. 12/7/87)

SEC. 26.19 COMPLIANCE WITH INTERNAL REVENUE CODE

Notwithstanding any other provisions of Chapter 26 of the Piedmont City Code, it is intended that Chapter 26 shall be implemented in a manner to conform with the requirements of Section 415 of the Internal Revenue Code, and to continue the tax-exempt status of the Police and Fire Pension pursuant to the Internal Revenue Code. The election provided pursuant to Section 415 of the Internal Revenue Code, specifically pursuant to Section 415 (b)(10) relating to a "qualified participant" being a participant in the plan prior to January 1, 1990, and limitations on benefits, are hereby implemented as to any participant in the Piedmont Police and Fire Pension prior to January 1, 1990, so that the benefit limitations of Section 415 shall not apply to such participants. To the extent any additional action is required to conform Chapter 26 with the provisions of the Internal Revenue Code or to implement Section 415 of the Internal Revenue Code or any election pursuant to the Internal Revenue Code, or to revoke any such election, including that made in the second sentence of this Section 26.19, such additional action may be taken by resolution of the Piedmont City Council without further amendments or additions to Chapter 26 of the City Code. (Ord No. 514 N.S., 12/89)