

FINANCE COMMITTEE

12-0642R

RESOLUTION ESTABLISHING A PROCEDURE TO CORRECT ERRORS
RELATED TO ELIGIBLE SALARY REPORTING TO THE PUBLIC
EMPLOYEES RETIREMENT ASSOCIATION (PERA).

CITY PROPOSAL:

WHEREAS, The city auditor discovered in July of 2007 that certain employer-paid benefits, primarily city provided deferred compensation / family health care premium subsidies had been incorrectly treated as Public Employees Retirement Association (PERA) eligible salary since approximately 1995; and

WHEREAS, Chapter 8 of House File Number 14, and Senate File Number 7 of 2011 Minnesota 1st Special Session Laws, passed into law by Governor Mark Dayton on July 20, 2011, established procedures by which the executive director of PERA shall adjust erroneous employee deductions and employer contributions paid on behalf of active employees and former members by the city of Duluth and by the Duluth Airport Authority on amounts determined by the executive director to be invalid salary under Minnesota Statutes, section 353.01, subdivision 10, reported between January 1, 1997, and October 23, 2008; and

WHEREAS, pursuant to the ruling *In re PERA Salary Determinations Affecting Retired & Active Employees*, 820 N.W.2d 563 (Minn. Ct. App. 2012) on August 6, 2012, the Minnesota Supreme Court found that the PERA board erred by adjusting employees' contributions and benefits and by recouping overpayments of benefits based on the city of Duluth's salary-supplement payments relating to deferred compensation; the Minnesota Court of Appeals ordered PERA to modify its adjustments to the contributions and benefits and to modify its recoupment of overpayments of benefits so as to ensure that the city of Duluth's salary-supplement payments related to deferred compensation were included in the calculation of PERA eligible salary, however salary-supplement payments relating to health care premiums were upheld to be non-PERA eligible salary; and

WHEREAS, the PERA board has not appealed the Minnesota Court of Appeals decision *In re PERA Salary Determinations Affecting Retired & Active Employees*, 820 N.W.2d 563 (Minn. Ct. App. 2012) to the Minnesota Supreme Court; all appeal

deadlines have since passed;

WHEREAS, the Minnesota Court of Appeals' decision *In re PERA Salary Determinations Affecting Retired & Active Employees*, 820 N.W.2d 563 (Minn. Ct. App. 2012) is legally binding on the amounts that the PERA board must deem to be valid versus invalid salary;

WHEREAS, considering the provisions of the above-referenced 2011 Special Session Law, the city has three possible options available to it for the correction of erroneous employee deductions, employer contributions and the adjustment of overpaid benefits (1) follow existing law, (2) a compromise option, and (3) limit application to three years; and

WHEREAS, The city council has reviewed the options available and has determined which procedure is in the best interests of the city to pursue.

THEREFORE BE IT RESOLVED, that in accordance with Minnesota Statutes Section 645.021, Subd. 2, the Duluth city council hereby approves the provisions of Chapter 8 of House File Number 14, and Senate File Number 7 of the 2011 Minnesota 1st Special Session Laws and directs the city clerk to file the applicable certificate of approval with the secretary of state.

FURTHER RESOLVED, that the city council hereby elects to employ Option _____, as set forth on Public Document No. _____ on file in the office of the city clerk, in order to correct erroneous employee deductions, employer contributions and adjusting overpaid benefits due to certain employer-paid benefits being incorrectly treated as PERA eligible salary since approximately 1995 through 2007.

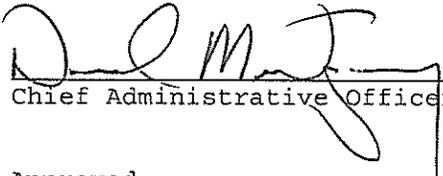
[If Option C is elected insert below language.]

FURTHER RESOLVED, that the city council has determined that it is in the best interests of the city to elect to limit the period of adjustment for amounts determined to be invalid salary to apply to the fiscal year in which the error was reported to, and the salary determined to be invalid by, the PERA board, and the immediate two preceding fiscal years;

FURTHER RESOLVED, the city council requests and directs the PERA executive director to limit the period of adjustment for amounts determined to be invalid salary to apply to the fiscal year in which the error was reported to, and the salary determined to be invalid by, the PERA board, and the immediate two preceding fiscal years;

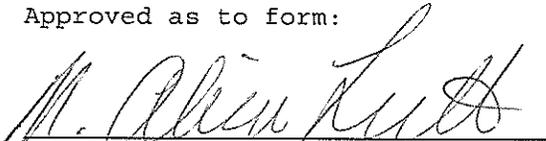
FURTHER RESOLVED, that all funds used to pay for the benefit adjustment shall be payable from the city's General Fund 110.

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

ADM/FIN/ATTY SBH:cjk 12/11/2012

STATEMENT OF PURPOSE: This resolution establishes a procedure by which the city of Duluth will address erroneous employee deductions, employer contributions and adjusting overpaid benefits which resulted from certain employer-paid benefits, primarily city provided deferred compensation / family health care premium subsidies being incorrectly treated as PERA eligible salary since approximately 1995.

	Option A Existing Law	Option B Compromise Option	Option C 3-Year Statute of Limitations
Description	Utilize existing law prior to the 2011 Special Session. No limit on look back period. Active Employees and City are refunded erroneous deductions and contributions. Retirees will have benefits reduced or suspended until pension overpayments are recovered. Future monthly benefits reset to correct amounts. Interest is paid on active employee refunds.	The 2011 Special Session law is certified. Adjustment period goes back to January 1, 1997. Active employees are refunded excess deductions plus interest. Retirees will have future monthly benefits reduced to the correct monthly pension amount. Prior pension overpayments will be repaid by applying the City's excess contributions that would otherwise be refunded to the City. Retirees will not be responsible for the repayment of any overpayment. City will apply its contributions refunds to credit the retiree's repayment obligations.	The 2011 Special Session law is certified with the option to elect to apply a three (3) year statute of limitations starting with the year PERA was notified of the issue. The resulting adjustment period runs from July 1, 2006 to June 30, 2009. Active employees and the City are refunded excess deductions and contributions for the period July 1, 2006 to July 22, 2007, the date the City corrected the withholding. Retirees will have future monthly benefits reduced to the correct monthly pension amount. Prior pension overpayments between July 1, 2006 and July 1, 2009 will be repaid by the retirees.
Impact	<i>Actives:</i> Receive all excess deductions and upon retirement receive the pension they are entitled to. <i>Retirees:</i> Current monthly pensions will be reduced to the correct level going forward. Retirees will be required to repay previously received excess pension payments.	<i>Actives:</i> Receive excess deductions back to 1997 and upon retirement receive the pension they are entitled to. <i>Retirees:</i> Current monthly pensions will be reduced to the correct level going forward. Retirees will not be required to repay previously received excess pension payments	<i>Actives:</i> Most disadvantageous to active employees as they will not receive a pension benefit for pre 2007 deductions and will not receive refunds for those deductions. <i>Retirees:</i> Most advantageous to retirees. Monthly pensions will increase above the correct level to reflect PERA over calculation of the employee high five by including non-

	<p>City: Receive all excess contributions paid in either cash or credit against future contribution obligations.</p>	<p>City: Will forgo its excess contributions refund and instead apply it to retiree overpayment obligations so retirees will not have to repay the overpayments after such offset will be refunded to the City.</p>	<p>PERA eligible salary for years prior to the new statute of limitations.</p> <p>City: Receive excess contributions for the one year period between July 1, 2006 and July 22, 2007.</p>
<p>Cost</p>	<p>Employee refunds total approximately \$_____ (<i>Amount to be determined</i>).</p> <p>City refund or credit carry forward totals approximately \$399,000. Retiree overpayments to be repaid total approximately \$305,000.</p>	<p>Employee refunds total approximately \$_____ (<i>Amount to be determined</i>)</p> <p>City offset to retiree overpayments totals approximately \$399,000. Retiree overpayments offset by City credit totals approximately \$305,000.</p>	<p>Employee refunds total approximately \$_____ (<i>Amount to be determined</i>)</p> <p>City refund or credit carry forward totals approximately \$_____ (<i>Amount to be determined</i>).</p> <p>Cost to retirees to be determined.</p>