

SUPREME COURT OF ARIZONA

FRANK PICCIOLI, et al.,

Plaintiffs/Intervenors/
Appellees/Cross-Appellants,

vs.

CITY OF PHOENIX, et al.,

Defendants/Appellants/
Cross-Appellees.

Arizona Supreme Court
No. CV-19-0116-PR

Court of Appeals
Division One
No. 1 CA-CV 16-0690

Maricopa County
Superior Court
No. CV2012-010330

**COMBINED RESPONSE TO
PETITION FOR REVIEW AND APPENDIX**

Colin F. Campbell (004955)
Eric M. Fraser (027241)
Hayleigh S. Crawford (032326)
OSBORN MALEDON, P.A.
2929 North Central Avenue, Suite 2100
Phoenix, Arizona 85012
(602) 640-9000
ccampbell@omlaw.com
efraser@omlaw.com
hcrawford@omlaw.com

Attorneys for Defendants/
Appellants/Cross-Appellees

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INTRODUCTION

This is a case about whether municipal employees have a permanent, prospective, and perpetual right to inflate their lifetime pension benefits by treating one-time cash payouts for accrued leave as part of their salary or wages for pension purposes. The Court of Appeals correctly rejected this blatant attempt to “constitutionalize” pension spiking because, under the plain terms of the City’s retirement plan, one-time cash payouts for unused leave are not pensionable “compensation.” There is no split of authority over this question, nor any novel legal issue at play. The Court should deny review.

BACKGROUND

I. COPERS

City employees participate in the City of Phoenix Employees’ Retirement System (COPERS), the terms of which are established in the City Charter.¹ [Charter ch. XXIV, art. II](#). COPERS members become eligible upon retirement to receive a fixed pension benefit for life. *Id.* § 19. The benefit is

¹ References to COPERS or the Charter refer to the 2012 version of COPERS (excerpted at [CAPP028-72](#)).

based on a Member's length of service (time) and pre-retirement earnings (pay), multiplied by a benefit rate set by the Plan:

$$\text{Pension} = \text{Credited Service} \times \text{Final Average Compensation} \times \text{Benefit Rate}$$

Id.

Not all money paid to City employees is pensionable, however.

COPERS defines "final average compensation" and "compensation":

"Final average compensation" means the average of the highest annual compensations paid a member for a period of 3 consecutive, but not necessarily continuous, years of his credited service contained within his 10 years of credited service immediately preceding the date of [sic] his City employment last terminates. . . .

"Compensation" means a member's salary or wages paid him by the City for personal services rendered by him to the City. In case a member's compensation is not all paid in money the City Council shall, upon recommendation of the City Manager, fix the value of the portion of his compensation which is not paid in money.

Id. §§ 2.14, 2.13 (emphases added).

For the time component of the formula, COPERS defines credited service as "the number of years and months of service credited a member by the Retirement Board pursuant to the provisions of this Article." *Id.* § 2.8.

In 1973, Phoenix voters amended COPERS to allow Members to use the accrued sick leave left over at retirement towards their *credited service*. *Id.*

§ 14.4; Op. ¶ 4. The Charter thus explicitly treats a Member's unused sick leave at retirement as a *time* factor for pension purposes.

The Charter gives the Retirement Board sole responsibility for administering the Plan. Charter ch. XXIV, art. II, § 4.1. Although the Board has some discretion to develop practical solutions for administering the Plan, the Charter fixes COPERS's terms and benefits. The Plan can be changed only by a majority vote of the taxpayers responsible for funding it. *Id.* ch. XXII, § 2.

II. AR 2.441

In 1996, the City enacted Administrative Regulation ("AR") 2.441, which permitted qualifying City employees to exchange some of their unused sick leave for a cash payout at retirement. Op. ¶ 5. Before 2012, the City defaulted to including these sick-leave payouts when calculating employees' "final average compensation" for pension purposes. *Id.* In 2012, the City revised AR 2.441 to exclude sick leave payouts from pensionable compensation prospectively only. Op. ¶ 6. (The revisions have no retroactive impact.) The Members sued, claiming that revised AR 2.441 unlawfully diminished and impaired their pension benefits in violation of

the Charter, the Arizona and U.S. Constitutions, and their labor contracts. Op. ¶ 7; IR-1 at 1.

III. Procedural history

Relying on grounds not raised in the Petition, the trial court granted the Members narrow relief limited to their 2012-2014 labor contracts. IR-372 at 42-43, ¶¶ 1-7. Both sides appealed. IR-462; IR-464.

The Court of Appeals reversed. Op. ¶ 38. Interpreting the Charter's plain text, the Panel held that COPERS "does not compel the City to include lump-sum, irregular cash payouts for accrued sick leave benefits at separation as pensionable 'compensation,'" and thus "the City did not violate common-law or constitutional principles by adopting Revised A.R. 2.441." *Id.*

Another panel then reached a similar conclusion regarding *vacation-leave* payouts: "The Plan does not compel the City Defendants to count lump sum cash payouts to retirees for accrued vacation leave as 'final average compensation,' and the City Defendants did not offend constitutional or common law safeguards by revising A.R. 2.18 to conform with the Plan."

Am. Fed. of State Cty. & Mun. Emps. AFL-CIO Local 2384 v. City of Phoenix, 2019 WL 2191112, ¶ 38 (Ariz. App. May 21, 2019).²

REASONS THE COURT SHOULD DENY REVIEW

The Panel correctly held that the Charter prohibits counting one-time cash payouts for accrued leave as pensionable “compensation.” Moreover, the Panel properly applied settled pension and contract law to determine that the only constitutionally protected right to pension benefits the Members have are those contained in the Retirement Plan itself. And in any event, this case presents a poor vehicle for analyzing the issues.

I. The Panel correctly interpreted the City Charter.

A. Accrued-leave payouts are not pensionable “compensation” under the Charter’s plain text.

This Court should deny review because the Panel reached the right result under the Charter’s text.

As urged by all parties, the Panel looked first to COPERS’s text to determine whether the payouts are pensionable “compensation,” defined in relevant part as “salary or wages.” Op. ¶ 15; City’s Opening Br. at 33-36; Members’ Answering/Cross-Opening Br. at 39-41. Because “salary or

² Petition for Review filed: No. CV-19-0143-PR.

wages” is not further defined in the Charter, the Panel correctly looked to dictionaries and binding precedent to determine that the usual meaning of “salary or wages” is a fixed sum paid on a regular basis. Op. ¶ 16.

Both before and since the voters adopted the definition of “compensation” in 1953, dictionaries have defined “salary” and “wages” as fixed, regular payments:³

Dictionary	“Salary”	“Wages”
Webster’s New International Dictionary (2d ed. 1946) (CAPP076–78)	The recompense or consideration paid , or stipulated to be paid, to a person at regular intervals for services, esp. to holder of official, executive, or clerical positions; fixed compensation regularly paid, as by the year, quarter, month, or week	Pay given for labor , usually manual or mechanical, at short stated intervals , as distinguished from salaries or fees.
New Oxford American Dictionary (3d ed. 2010) (CAPP079–81)	[A] fixed regular payment, typically paid on a monthly basis but often expressed as an annual sum , made by an employer to an employee, esp. a professional or white-collar worker	[A] fixed regular payment, typically paid on a daily or weekly basis , made by an employer to an employee, esp. to a manual or unskilled worker

³ Emphases added; additional definitions at [CAPP073–92](#).

Moreover, the Opinion follows the majority of courts in recognizing that salary and wages ordinarily refer to regular periodic payments, as opposed to one-time cash payouts at separation or retirement. Op. ¶ 21; *see also Craig v. City of Huntington*, [371 S.E.2d 596, 600](#) (W. Va. 1988) (“Other courts that have considered this issue have uniformly found a lump sum payment upon retirement for accumulated benefits is not includable in the salary base for calculating pension benefits.”); *Stover v. Ret. Bd. of St. Clair Shores Firemen & Police Pension Sys.*, [260 N.W.2d 112, 114](#) (Mich. Ct. App. 1977) (“Annual compensation received does not include unused sick or vacation payments because those payments are not made regularly during a worker’s tenure with the City.”).

The Members do not dispute that “an employee is eligible to receive this [accrued sick leave] payout only once, and only during his or her retirement year.” Op. ¶ 21. Given the usual meaning of “salary or wages,” the Panel correctly found that an accrued leave payout “is not paid to employees on a regular basis and is therefore not ‘compensation’ under the Plan.” Op. ¶ 21.

B. Only the voters can amend the Charter.

The Panel also correctly recognized that the City's past practice cannot change the terms of the Charter adopted by Phoenix voters.

As the Members acknowledge, black-letter contract law requires a meeting of the minds and mutual understanding of the contracting parties. Pet. at 17-18 (the "parties' mutual understanding prevails 'even where the contractual term has been defined differently by statute or administrative regulation'" (quoting [Restatement \(Second\) of Contracts § 201 cmt. c](#) (1981)); [Demasse v. ITT Corp.](#), [194 Ariz. 500, 506, ¶ 18](#) (1999) ("to effectively modify a contract, whether implied-in-fact or express, there must be: (1) an offer to modify the contract, (2) *assent to or acceptance of that offer*, and (3) consideration") (emphasis added)). In contrast to a public retirement plan established by statute, Phoenix voters established COPERS in the City Charter; thus, the voters are a contracting party for Plan purposes. Op. ¶ 35 ("These charters command a special democratic legitimacy because constitutional procedures require they be approved both by the city's qualified electors and the Governor."). Accordingly, any modifications to the retirement contract, whether express or implied, require the voters' approval.

In addition, the Charter specifically requires that voters approve any amendments to its terms, including COPERS. [Charter ch. XXII, § 1](#). Because the Charter forecloses implicit modifications to COPERS, the Panel correctly concluded that the various implied theories of contract modification offered by the Members cannot change the terms and benefits of COPERS codified in the Charter. Op. ¶¶ 31, 35.

C. The Members’ interpretation clashes with the Charter’s text and Arizona law.

The Panel rightly rejected the Members’ expansive reading of pensionable “compensation” because it conflicts with the text of the Charter and Arizona law on public retirement benefits.

First, relying on additional dictionary definitions and out-of-state cases, the Members contend (at 12-14) that the Panel picked the wrong usual meaning of “salary or wages.” But the existence of several definitions of “salary” and “wages” does not mean the Opinion got the “usual” meaning wrong. *See City’s Reply/Cross-Answering Br.* at 18-23. To the contrary, the Panel examined the various definitions offered by the parties to identify their common feature – regularity. Op. ¶¶ 16-18.

Second, the Members' proposed definition of "wage" cannot be reconciled with "salary." Like the non-legal dictionaries cited above, Black's Law Dictionary defines "salary" as regular, periodic pay: "An agreed compensation for services – esp. professional or semiprofessional services – *usu. paid at regular intervals on a yearly basis*, as distinguished from an hourly basis." Black's Law Dictionary (10th ed. 2014) (emphasis added) ([CAPP087](#)). Before the Court of Appeals, the Members argued that the plain meaning of "wages" is "*payment in almost any form for an individual's labor or services.*" Members' Answering/Cross-Opening Br. at 47 (citation omitted, emphasis added). But using these conflicting definitions would mean that sick-leave payouts qualify as pensionable "compensation" for wage-earners, but not for salary-earners. *See id.* (arguing that "even if the definition of 'salary' were so limited, the payments at issue clearly fall within the definition of wages . . .").

The Charter's text does not support this absurd result. *See Arnold Constr. Co. v. Ariz. Bd. of Regents*, [109 Ariz. 495, 498](#) (1973) (courts interpret statutory language to avoid absurd results). Some City employees earn wages; others earn salaries. Nothing in the Charter suggests that voters intended "compensation" to mean something different depending on

whether the employee receives salary or wages. To the contrary, the Charter's other provisions do not distinguish between salary-earners and wage-earners—"final average compensation" and pension benefits are calculated the same way for both.

Third, the Members misconstrue the Opinion when suggesting that it held the Charter "unambiguously require[s] regular payment in *every paycheck*." Pet. at 6 (emphasis added). Although the Panel referenced the bi-weekly nature of payroll under state law as consistent with the court's interpretation, Op. ¶ 19, it never concluded that *only* amounts included in every paycheck are "regular" and thus pensionable under COPERS. *Id.* ¶¶ 16, 21. Rather, the Opinion found that regularity is "a cardinal feature" of both "salary" and "wages" according to their usual meanings. *Id.* ¶ 17.

The Panel properly tailored its Opinion to the question presented: whether lump-sum sick leave payouts are regular payments (i.e., "salary or wages") under COPERS. Op. ¶ 21. And it correctly concluded that, whatever "regular" means, it plainly does not include a one-time cash payout an employee can receive "only once, and only during his or her retirement year." *Id.* The Opinion thus stands for the unremarkable

conclusion that, at a minimum, a payment must be available more than once in an employee's career to be "regular."

Fourth, the Panel correctly looked to settled Arizona precedent when determining the usual meaning of "salary or wages." Op. ¶ 16 (citing *Wade v. Ariz. State Ret. Sys.* and *Cross v. Elected Officials' Ret. Plan*). The Members fail to distinguish these cases. First, neither *Wade* nor *Cross* relied solely on the 2009 Black's Dictionary definition of "salary," as the Members suggest (at 13). See *Wade*, 241 Ariz. 559, 562, ¶ 14 (2017); *Cross*, 234 Ariz. 595, 604-05, ¶¶ 30-35 (App. 2014). Second, *Wade* concerned the same terminology ("salary or wages"), in the same context (as used in a retirement plan). When discerning the plain meaning of that phrase, this Court did not treat "salary" differently from "wages," as the Members contend (at 13) should be done here. *Wade*, 241 Ariz. at 561-63, ¶¶ 11, 14-19. Accordingly, the Panel properly considered this precedent when determining the ordinary meaning of "salary or wages."

II. The Panel correctly applied Arizona law on public retirement benefits.

A. The Pension Clause secures the benefits of a public retirement contract.

On the Members' constitutional claims, the Panel correctly applied existing precedent holding that contract principles and the Pension Clause protect the terms and benefits of the retirement contract itself, not all benefits of employment generally. Op. ¶¶ 24-30.

Under Arizona law, the right to receive a pension benefit, if offered to a public employee, is a contractual right. *Yeazell v. Copins*, 98 Ariz. 109, 112-15 (1965) (holding that public employee benefits are contractual rights, not illegal gratuities); *Ariz. Const. art. XXIX, § 1(C)-(D)* ("Membership in a public retirement system is a contractual relationship that is subject to article II, § 25," and "[p]ublic retirement system benefits shall not be diminished or impaired." (emphases added)). But contract principles and the Pension Clause are not independent sources of any right to retirement benefits – they "only protect whatever pension rights [a plaintiff] has under applicable law." *Cross*, 234 Ariz. at 599, ¶ 9; see also *Mathews v. Chicago Transit Auth.*, 51 N.E.3d 753, 772 (Ill. 2016) ("the agreement that controls [public servants'] membership in a retirement system consists of the relevant provisions in the Pension Code

that define the rights and obligations that arise from that membership”); *Oden v. Bd. of Admins.*, 28 Cal. Rptr. 2d 388, 392 (Ct. App. 1994) (“public agencies are not free to define their employee contributions as compensation or not compensation under [the Public Employees’ Retirement Law] – the Legislature makes those determinations”).

Here, the Members’ contractual rights to retirement benefits flow from the Charter. Because the Charter “does not compel the City to include lump-sum, irregular cash payouts for accrued sick leave benefits at separation as pensionable ‘compensation,’” contract principles and the Pension Clause do not protect pension spiking as a “public retirement system benefit.” Op. ¶¶ 27, 38. For that reason, the pension cases cited by the Members (such as *Yeazell v. Copins*, 98 Ariz. 109 (1965), *Norton v. Ariz. Dep’t of Public Safety Local Ret. Bd.*, 150 Ariz. 303 (1986), and *Hall v. Elected Officials’ Ret. Plan*, 241 Ariz. 33 (2016)) do not apply here. In each of those cases, the retirement plan itself expressly granted the right the pensioners claimed had been impaired or diminished.

That does not mean that public employees who rely on promises made by their employers are robbed of any remedy, however. Past practice cannot create a constitutional claim to benefits, but it may give rise to an equitable

one. *See Cross*, 234 Ariz. at 606-07, ¶¶ 39-45 (remanding for consideration of equitable estoppel argument). (Here, the Members asserted no equitable claims, presumably because the City grandfathered in previously accrued leave.) The Opinion merely confirms that any such extra-contractual retirement benefits do not originate from the Pension and Contracts Clauses. *See Op.* ¶ 30.

B. The Members ask the Court to create an entirely new class of constitutionally protected benefits.

Faced with the Charter’s textual limitations, the Members argue that under *Yeazell*, the right to include sick leave payouts in pensionable compensation became a term of the retirement plan by virtue of the City’s past practice. But the Charter *is* the retirement plan, and only the voters can modify its provisions. *See Sections I.B & II.A*, above.

Moreover, even if terms outside of the Charter could be part of the Members’ “retirement contract,” the materials they cite (including retirement presentations and handouts) merely reflect the undisputed fact that the City allowed pension spiking prior to 2012. They *described* then-current practice, but did not purport to interpret the Charter. *See City’s Reply/Cross-Answering Br.* at 46-47, 49; *Pet.* at 9-10 (referencing financial,

actuarial, and retirement materials prepared by third parties, not the Board). As the Members' own authorities explain, statements describing the employer's then-current practice are "neither a promise nor a statement that could reasonably be relied upon as a commitment." *Demasse*, 194 Ariz. at 505, ¶ 15 (citation omitted).

In addition, no Arizona court has ever held that the length of an administrative practice justifies departing from constitutional text and creating additional vested rights to pension benefits beyond those contained in a retirement plan. In cases like *Yeazell*, *Fields*, and *Hall*, the plaintiffs claimed a vested right in an express statutory term of the retirement plan, which the Legislature later amended. Those cases don't recognize any right outside the terms of the retirement plan, like the one the Members argue for here.

The only case the Members cite to the contrary (at 20-21) is a nonbinding Washington case, *Bowles v. Wash. Dep't of Ret. Sys.*, 847 P.2d 440

(Wash. 1993).⁴ But Washington does not have Arizona's robust constitutional protection for pension benefits. Following *Bowles* (itself an outlier) would make administering Arizona's public retirement systems nearly impossible because any presentation, handbook, and administrative practice would create new, constitutionally-protected vested rights. See Pet. at 10 (citing budget and actuarial reports, orientation materials, etc., as evidence of vested right to continue pension spiking).

Bowles's approach also would allow administrative practice to override the voters, who elected to incorporate the terms and benefits of the City's retirement plan in the Charter, rather than leaving them to the City's discretion. When doing so, the voters chose to include unused sick leave as a *time* factor in employee pensions, not a *pay* factor. Op. ¶ 4. Ultimately, the voters are on the hook for the cost of COPERS benefits; the Panel correctly declined to rely on *Bowles* to frustrate the intent of the people stuck with paying the bill for government employees' pensions. *Id.* ¶¶ 33-36.

⁴ *Kranker v. Levitt*, 327 N.Y.S.2d 259, 262 (Sup. Ct. 1971), *aff'd*, 281 N.E.2d 840 (N.Y. 1972) interpreted an ambiguous pension statute; it didn't determine whether past practice created independent rights beyond the statute's express terms. See Pet. at 20.

III. This case is a poor vehicle for addressing the Members' administrative practice arguments.

Existing caselaw teaches that mere administrative practice cannot create constitutionally-protected retirement benefits. *See* Op. ¶¶ 27-36. Even if the Court were inclined to reconsider that precedent, however, this case presents a poor vehicle because COPERS is unlike any other retirement plan in the State.

In contrast to the State-run retirement plans, which the Legislature created by statute, Phoenix voters established COPERS in the City Charter. The Charter is akin to a constitution. Op. ¶ 12 & n.1. Whether a city's general administrative practice can modify a constitutional provision adopted by its citizens is a much different question than whether the formal policy or practice of the administering agency can modify a pension statute adopted by the legislature. *Cf. Kranker*, 327 N.Y.S.2d at 261-62 (rejecting legislative amendment purporting to retroactively change long-standing practice where "there [was] no doubt that the Legislature was aware of this course of conduct" and no one was challenging the practice's legality). Given COPERS's unique character, Op. ¶ 35, this case is a poor vehicle for

reconsidering the larger administrative practice questions posed by the Petition (at 20-21).

ATTORNEYS' FEES

The City requests fees and costs incurred in connection with the Petition under [ARCAP 21](#), [A.R.S. §§ 12-331](#), [12-341.01](#), and [12-342](#).

CONCLUSION

This case bears none of the hallmarks warranting Supreme Court review. *See* [ARCAP 23\(d\)\(3\)](#). The Court of Appeals applied settled Arizona law to reach the correct result under the text of the City Charter. Moreover, several Arizona decisions already address these issues, and the Members do not contend that any of those decisions are in conflict or should be overruled. The Court should deny the Petition.

RESPECTFULLY SUBMITTED this 3rd day of September, 2019.

OSBORN MALEDON, P.A.

By: /s/ Eric M. Fraser

Colin F. Campbell

Eric M. Fraser

Hayleigh S. Crawford

2929 North Central Avenue, Suite 2100

Phoenix, Arizona 85012-2793

Attorneys for Defendants/ Appellants/
Cross-Appellees

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* Counsel has added emphasis to selected pages in this appendix using yellow highlighting. This appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).

CHARTER OF THE CITY OF PHOENIX*
(version in effect as of July 1, 2012)
***Excerpts**

...

PREAMBLE

We, the people of the City of Phoenix, a City incorporated under the name and style of “The Common Council of the City of Phoenix,” now having a population of more than three thousand five hundred (3500), acting in this behalf under the Constitution and laws of the State of Arizona, have framed, adopted and ordained, and do hereby frame, adopt and ordain, the following as the Charter of said City, which shall supersede, as provided in the Constitution of the State, the Charter of the said “The Common Council of the City of Phoenix,” and all laws amendatory thereof and supplementary thereto.

CHAPTER III. GOVERNMENT

1. Powers of City to be exercised by City Council; Mayor and Councilmen to be elected; City Manager to execute and administer laws; qualifications of Councilmen.

The municipal government provided for by this Chapter shall be known as the “Council-Manager” government. All powers of the City shall be vested in the Council to consist of the Mayor and eight (8) other members to be elected by the qualified electors of the City of Phoenix as follows:

(A) The Mayor shall be elected from the City at large, pursuant to the election procedure (primary and general elections) specified in ordinances which are adopted according to law.

(B) The eight other Council Members shall be elected from eight geographic districts within the City of Phoenix. Each district shall be substantially equal in population. Electors in each district shall vote only for the Council candidates nominated from the district in which the electors reside.

(C) Each candidate for one of the eight Council seats shall at the time of his nomination and during his tenure maintain his permanent residence within the district from which he is nominated.

(D) No candidate for the eight Council seats may run for more than one district in any regular election.

(E) The Members of the Council shall be qualified electors of the City of Phoenix and shall hold no other public office for which they shall receive compensation except that of a notary public, a member of the school board or member of the National Guard or Naval or Military Reserve; if a Councilman shall cease to possess any of these qualifications or violate any provisions of this Chapter or shall be convicted of a crime involving moral turpitude his office shall immediately become vacant.

The Council shall enact local legislation, adopt budgets, determine policies, and appoint the City Manager, who shall execute the laws and administer the government of the City. All powers of the City shall be exercised in the manner prescribed by the Charter, or if the manner has not been prescribed, then in such manner as may be prescribed by ordinance.

(Election of 12-1-1982; election of 11-1-1983)

2. The City Manager.

A. The City Manager shall be the chief administrative officer of the City. He shall be responsible to the Council for the proper administration of all affairs of the City; the City Manager shall be chosen by the Council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office as set forth in this Charter;

The Manager need not when appointed be a resident of the City or State, except as may be otherwise provided by law, but must be a citizen of the United States. He shall, upon his appointment, become a resident of the City;

No Member of the Council shall, during the time for which he was elected or for one (1) year thereafter be eligible to hold the position of City Manager.

The Council shall appoint the City Manager for an indefinite term and may remove him without cause by the affirmative vote of two thirds of its members: provided, that for incompetence, malfeasance, misfeasance, or neglect of duty the City Manager may be removed by the affirmative vote of a majority of its members. At least thirty (30) days before the passage of a resolution for such removal, the Council shall by a majority vote of its members adopt a preliminary resolution of intention, and, if the removal is for cause, said resolution shall state the reason for removal. In either case the City Manager may within ten (10) days reply in writing and may request a public hearing which shall be held not earlier than twenty (20) days nor later than thirty (30) days from the passage of the aforesaid preliminary resolution. After such public hearing, if one be requested, and after full consideration, but not earlier than thirty (30) days after the passage of the preliminary resolution, the Council may adopt a final resolution of removal. By the preliminary resolution the Council may suspend the Manager from duty. If the removal is for cause the Council shall cause to be paid him any salary due him to the date of the preliminary resolution and suspension. Otherwise, the Manager shall be paid forthwith upon his removal without cause his salary for the next three (3) calendar months following the adoption of the preliminary resolution of removal.

The action of the Council in suspending or removing the Manager shall be final and conclusive on everyone, it being the intention of this Charter to vest all authority and fix all responsibility for such suspension and removal in the Council.

The Manager shall receive a salary to be fixed by ordinance.

To perform his duties during the temporary absence or disability of both the Manager and Assistant Manager, the Manager shall designate by letter filed with the City Clerk, a qualified administrative officer of the City. In the event of failure of the Manager to make such designation, the Council may by resolution appoint an officer of the City to perform the duties of the Manager until the Manager or Assistant Manager is able to perform those duties. In the event of a vacancy in the office of the City Manager the Council shall fill the same within sixty days after the vacancy occurs. The City Manager shall have the right to appoint his personal secretary and the assistant City Manager, neither of whom shall be subject to the civil service of the City of Phoenix.

The position of Assistant City Manager is hereby elevated to the “Office of Assistant City Manager” and he shall be the Deputy Chief Administrative Officer of the City of Phoenix. While the City Manager is exercising the prerogatives of his office, the Assistant City Manager shall perform such functions and have such duties and responsibilities as the City Manager may designate. In the absence of the City Manager, or when the City Manager is unable to perform the prerogatives of his office, or when the office of City Manager is vacant, the Assistant City Manager shall ascend to all of the powers and duties of the City Manager as set forth in this Charter.

B. Powers and duties of the City Manager. The City Manager shall have the following powers and duties:

(1) He shall appoint and when he deems it necessary for the good of the service, suspend or remove all City employees and appointive administrative officers except as otherwise provided by law or this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer’s department, office, or agency.

(2) He shall direct and supervise the administration of all departments, offices, and agencies of the City, except as otherwise provided by this Charter or by law.

(3) He shall attend all Council meetings, unless excused by the City Council, and if excused shall be represented by someone designated by him. He shall have the right to take part in discussion but may not vote.

(4) He shall, subject to the legislative and emergency powers of the Mayor and City Council, see that all ordinances, provisions of this Charter, and acts

of the Council are faithfully executed, through enforcement by him or by officers subject to his direction and supervision.

(5) He shall prepare and submit the proposed annual budget and the capital improvement program to the City Council.

(6) He shall first submit to the Council and thereafter make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year.

(7) He shall make such other reports as the Council may require concerning the operations of the City departments, offices, and agencies which are subject to his direction and supervision.

(8) He shall keep the Council fully advised as to the financial condition and future needs of the City and make recommendations to the Council concerning the affairs of the City.

(9) He shall perform such other duties as are specified in this Charter or required by the Council.

(Election of 11-4-1975)

...

9. Salaries generally.

A. The salaries applicable to all positions in the classified and unclassified civil service may be fixed, increased, decreased or modified by the Council only upon recommendation of the City Manager; provided, that the Council alone at the time it finally adopts the annual budget may fix, increase, decrease or modify the salaries applicable to any position in the classified or unclassified civil service, except the salaries of the Mayor and Members of the City Council, and except for those previously established by a duly executed and approved Memorandum of Understanding which does not exceed three years in duration.

B. No officer or employee shall be allowed any fees, perquisites, emoluments, rewards or compensation aside from the salary as fixed by law. All fees in connection with official duties shall be paid into the City Treasury daily.

(Election of 11-3-1981)

CHAPTER XXII. AMENDMENTS

1. Authority.

This charter, or any part or subdivision thereof, may be amended in the manner provided in the state constitution and this Charter:

1. By initiative petition of the people as herein provided;
2. By referral by affirmative vote of a majority of the Members of the City Council as herein provided;
3. By referral by affirmative vote of all Members of the City Council as provided in Section 3 hereof.

(Election of 11-9-1971)

2. Limitations.

No amendment shall be effective until approved by a majority vote of the qualified electors voting thereon at a regular or special election.

(Election of 11-9-1971)

3. Ballot form; vote by descriptive title and condensed statement.

If approved by a unanimous vote of all Members of the City Council, the form of ballot for such charter amendment election may state the various propositions and questions thereof by descriptive title expressing the purpose of the amendment by a true and impartial statement that fairly represents the content of such amendment. No descriptive title shall contain more than one subject matter and each individual proposition or question shall be so separately stated that a vote for or against each may be expressed. Immediately following the descriptive title and statement shall be printed the words "Shall the amendment (stating the descriptive title) be adopted?" and immediately thereafter the words "Yes" and "No" shall be printed on separate lines with voting squares.

(Election of 11-9-1971)

CHAPTER XXIV. PHOENIX CITY EMPLOYEES' RETIREMENT LAW OF 1953

...

ARTICLE II. CITY OF PHOENIX EMPLOYEES' RETIREMENT PLAN

1. Short title.

- 1.1. This Article II may be cited as the City of Phoenix Employees' Retirement Law of 1953.

2. Definitions.

- 2.1. The following words and phrases as used in this Article, unless a different meaning is clearly required by the context, shall have the following meanings:
- 2.2. "City" means the City of Phoenix, Arizona.
- 2.3. "Retirement Plan" or "plan" means the City of Phoenix Employees' Retirement Plan continued in this Article.
- 2.4. "Retirement Board" or "board" means the Retirement Board provided in this Article.
- 2.5. "Employee" means any person, in the employ of the City on a full time basis, who is under the classified civil service, except as hereinafter excluded, and shall include appointive officials whose employment with the City is on a full time basis. For the purposes of this Article, "full time basis" means employment on a work schedule which consists of the number of full time hours per week designated for the class of employment for the employee's classification, and which work schedule is intended to be continuous over a period of 12 months at the aforementioned full time hours per week. The term "employee" shall not include (1) policemen and firemen who are covered by another retirement system or pension plan to which the City makes contributions; nor (2) any person who furnishes personal services to the City on a contractual or fee basis. The definition of "employee" shall not exclude from membership in the Retirement Plan any person in the employ of the City who was a member of the former system.
- 2.6. "Member" means any person who is included in the membership of the Retirement Plan.
- 2.7. "Service" means personal service rendered to the City by an employee of the City and shall include service rendered in any function or enterprise the City may engage in as a municipal corporation or may have heretofore acquired

through purchase or eminent domain, provided, however, that in the event a function or enterprise is hereafter acquired by the City through purchase or eminent domain the rights acquired by the employees thereof under this Retirement Plan shall be set forth and determined in a written agreement between the City, the Retirement Board, and a duly elected or appointed committee, recognized by the Board. authorized to represent said employees.

2.8. “Credited Service” means the number of years and months of service credited a member by the Retirement Board pursuant to the provisions of this Article.

2.9. “Retirant” means a member who retires with a pension payable by the Retirement Plan.

2.10. “Beneficiary” means any person, except a retirant, who is in receipt of, or who is designated to receive, a pension or other benefit payable by the Retirement Plan.

2.11. “Regular interest” means such rate or rates of interest per annum, compounded annually, as the Retirement Board shall from time to time adopt.

2.12. “Accumulated contributions” means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the employees’ savings fund, together with regular interest therein. It shall include such other amounts as the member may deposit or have transferred to his employees’ savings fund account, including regular interest thereon, as provided in this Article.

2.13. “Compensation” means a member’s salary or wages paid him by the City for personal services rendered by him to the City. In case a member’s compensation is not all paid in money the City Council shall, upon recommendation of the City Manager, fix the value of the portion of his compensation which is not paid in money.

2.14. “Final average compensation” means the average of the highest annual compensations paid a member for a period of 3 consecutive, but not necessarily continuous, years of his credited service contained within his 10 years of credited service immediately preceding the date of his City employment last terminates. If he has less than 3 years of credited service, his final average compensation shall be the average of his compensations for his total period of service. For the purposes of determining benefits based on

final average compensation, any compensation in excess of the limitations established by Section 401 (a) (17) of the Internal Revenue Code (including applicable adjustments), shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount which was allowed to be taken into account under the plan as in effect on July 1, 1993. For this purpose an eligible employee is an individual who was a member of the retirement plan before the first plan year beginning after December 31, 1995.

2.15. “Final compensation” means a member’s annual rate of compensation at the time his City employment last terminates.

2.16. “Retirement” means a member’s withdrawal from City employment with a pension payable by the Retirement Plan.

2.17. “Pension” means an annual amount payable by the Retirement Plan, in equal monthly installments, throughout the future life of a person, or for a temporary period, as provided in this Article.

2.18. “Pension reserve” means the present value of all payments to be made on account of any pension, and shall be computed upon the basis of such tables of experience, and regular interest, as the Retirement Board shall from time to time adopt.

2.19. “Former system” means the Phoenix City Employees’ Retirement System, created and established under Chapter XXIV of the Charter of the City of Phoenix, and repealed December 29, 1953.

2.20. “Workmen’s compensation period” means the period a person is in receipt of monthly payments of workmen’s compensation on account of a member’s disability or death arising out of and in the course of his City employment. If he is paid a single sum in lieu of future workmen’s compensation his “workmen’s compensation period” shall be the sum of (1) the period, if any, he was paid monthly payments of workmen’s compensation, plus (2) the period arrived at by dividing the said single sum by such monthly payment award.

2.21. “Nominee” means a partnership selected and authorized by a resolution of the Retirement Board to perform certain duties in connection with the buying, selling, holding and registration of securities on behalf of the board.

(Election of 11-13-1973; election of 10-3-1995)

3. Retirement plan continued.

- 3.1. The City of Phoenix Employees' Retirement Plan, heretofore created and established effective December 31, 1953, is hereby continued to provide for the retirement of employees of the City who become superannuated on account of age or total and permanent disability; to provide pensions to members and their eligible dependents; to provide that contributions be made to the Plan by the members and the City; and to provide for the administration of the Plan.

4. Retirement Board.

- 4.1. The authority and responsibility for the administration, management and operation of the Retirement Plan and for construing and carrying into effect the provisions of this Article, except as otherwise provided in this Article, are vested in a Retirement Board.

- 4.2. The Retirement Board shall consist of (9) Board Members as follows:

(a) Three employee board members, who all members of the Retirement Plan, each of whom shall have at least 10 years of credited service, to be elected by the members of the Plan for 3 year terms expiring after December 31, 1945. The elections shall be held under such rules and regulations as the Retirement Board shall from time to time adopt.

(b) Four ex-officio Board members consisting of the City Manager, City Treasurer, the Finance Director and Urban Manager or Department head to be selected by the City Manager. The City Manager shall have the right to delegate his responsibilities and powers as ex-officio Board Member to an employee who is a member of the Plan.

(c) A citizen Board Member, who is a resident of but not employed by the City, or receiving benefits from the Retirement Plan, who shall have at least five years experience in a responsible position with a private or public pension plan, to be elected by the other Board Members to a three-year term that is concurrent with the term of the elected employee members of the Retirement Board.

(d) One member who shall be a retired member to be elected by the employee Board members for a three-year term that is concurrent with the term of the elected employee members of the Retirement Board.

- 4.3. Upon the expiration of any term of employee Board member or citizen Board member a successor shall be elected for a term of three years. The office of Board member shall be deemed to be vacated by a Board member if prior to the expiration of his term he resigns from the Board, or dies, or leaves the employ of the City. In the event a vacancy occurs in the office of employee Board member, the vacancy shall be filled within 90 days after the date of the vacancy, for the unexpired portion of the term, by a member selected by the two remaining employee Board members and the citizen Board member. If a vacancy occurs in the office of a citizen Board member the vacancy shall be filled within 90 days after the date of the vacancy, for the unexpired portion of the term, in the same manner as the office was previously filled. If a vacancy occurs in the office of retired Board member the vacancy shall be filled within 90 days after date of vacancy, for the unexpired portion of the term, in the same manner as the office was previously filled.
- 4.4. Each Board member shall serve without remuneration or compensation whatsoever.
- 4.5. Within 10 days after his election or appointment a Board member shall take the oath prescribed for City officials and shall subscribe to and file same with the City Clerk.

(Election of 11-1-1983)

5. Retirement plan officers.

- 5.1. The Retirement Board shall elect from its own number a chairman and a vice-chairman.
- 5.2. The Retirement Board shall appoint an executive secretary who shall not be a Board member. His appointment shall be made in accordance with civil service rules and he shall have a civil service status of a full time classified employee. He shall perform such duties as are required of him in this Article and such other duties as the Board may from time to time prescribe.
- 5.3. The City Attorney shall be the legal advisor to the Retirement Board.
- 5.4. The City Treasurer shall be Treasurer of the Retirement Plan. The Treasurer shall be custodian of the assets of the Retirement Plan except as to such assets as the Retirement Board may from time to time place in the custody of an investment fiduciary.

5.5. Disability Assessment Committee. The Disability Assessment Committee shall consist of five members as follows:

(a) Two ex-officio members consisting of the personnel Safety Administrator and the Executive secretary to the Retirement Board.

(b) Two employee members, who are members of the Retirement Plan, each of whom shall have at least 5 years of credited service, to be nominated by the Disability Assessment Committee and approved by the Retirement Board.

(c) A citizen member who is a resident of Maricopa County and not employed by the City or receiving benefits from the Retirement Plan, who shall have at least 5 years experience in a responsible position in the health care field, to be nominated by the Disability Assessment Committee and approved by the Retirement Board.

The implementation of this Section 5.5, the length of the employee and citizen member terms, the effective date of said terms, and the establishment of policy and procedure of the Disability Assessment Committee shall be vested in the Retirement Board.

5.6. The Retirement Board shall appoint an actuary who shall be its technical advisor on matters regarding the operation of the Retirement Plan. He shall perform such other duties as are required of him in this Article.

5.7. The Retirement Board may employ investment counsel and such other services as it shall from time to time deem necessary in the proper operation of the Retirement Plan.

(Election of 10-6-1987)

6. Surety bonds.

6.1. The Retirement Board may require that a surety bond for the faithful performance of duty be furnished by any Board member and any officer of the Retirement Plan. The surety bonds shall be in such amounts as the Board shall from time to time determine and shall be subject to the approval of the City Manager and the City Attorney.

7. Records.

- 7.1. The executive secretary shall keep such data as shall be necessary for an actuarial valuation of the assets and liabilities of the Retirement Plan; and for determining benefits to which retirants, and beneficiaries are entitled.

8. Board meetings.

- 8.1. The Retirement Board shall hold meetings regularly, at least quarterly, and shall designate the time and place thereof. It shall adopt its own rules of procedure and shall keep a record of its proceedings, which shall be open to public inspection. All meetings of the Board shall be public.
- 8.2. Five Board members, of which at least two are not ex-officio members, shall constitute a quorum at any meeting of the Retirement Board. Each attending Board member shall be entitled to one vote on each question before the Board and at least three concurring votes shall be necessary for a decision by the Board at any of its meetings.

(Election of 11-1-1983)

9. Annual report.

- 9.1. The Retirement Board shall publish annually a report, certified to by a certified public accountant, showing the fiscal transactions of the Retirement Plan for the preceding fiscal year, and balance sheet of the Plan as of the preceding June 30.

10. Adoption of experience tables and regular interest.

- 10.1. The Retirement Board shall from time to time adopt such mortality and other tables of experience, and a rate or rates of regular interest, as are required in the operation of the Retirement Plan and for an actuarial valuation of its assets and liabilities.

11. Annual valuations.

- 11.1. The actuary shall annually make an actuarial valuation of the assets and liabilities of the Retirement Plan.

12. Membership.

- 12.1. Any person who becomes an employee as defined in this Article, shall become a member of the Retirement Plan beginning with the date of his first employment by the City.
- 12.2. All persons who are employees, as defined in this Article, shall become members of the Retirement Plan.
- 12.3. In any case of doubt as to who is a member of the Retirement Plan the Retirement Board shall decide the question.

13. Membership terminates.

- 13.1. Should any member leave City employment, for any reason except his retirement or death, he shall thereupon cease to be a member and his credited service in force at that time shall be forfeited by him except as otherwise provided in Section 15 or Section 20 of this Article. In the event he again becomes an employee of the City he shall again become a member. His credited service or a portion thereof last forfeited by him shall be restored to his credit; provided he returns to the employees' savings fund the amount, he withdrew therefrom or a portion thereof equal to the service sought to be credited together with regular interest from the date of withdrawal to the date of repayment. Payment of a portion of withdrawn contributions plus interest will restore that portion of credited service to the employee's account pursuant to policies established by the retirement board. Credited service shall not be restored to a member until he has returned to the employees' savings fund the full amount, including interest, herein before required of him in this section. In the event a member becomes a retirant or dies he shall thereupon cease to be a member.

(Election of 11-13-1973; election of 9-7-1999; election of 9-9-2003, eff. 10-1-2003)

14. Credited service.

- 14.1. The Retirement Board shall fix and determine by appropriate rules and regulations, consistent with the provisions of this Article, the amount of service to be credited any member; provided, that in no case shall less than 10 days of service rendered by a member in any calendar month be credited him as a month of service, nor shall less than 6 months of service rendered in any calendar year be credited as a year of service, nor shall more than one

year of service be credited any member for all service rendered by him in any calendar year.

14.2. Service rendered prior to December 29, 1953 shall be credited a member only if he deposits in the employees' savings fund of this Retirement Plan, by transfer or otherwise, less his share of accrued social security taxes:

(a) The amount of accumulated contributions standing to his credit in the annuity savings fund of the former system at December 29, 1953; said deposit to be made on or prior to July 1, 1954; and

(b) All amounts of accumulated contributions withdrawn by him from the annuity savings fund of the former system and not returned thereto; said deposit to be made on or prior to July 1, 1955; and

(c) The aggregate amount of contributions the said member would have made to the annuity savings fund of the former system for the period he was an employee after January 1, 1947 and prior to December 29, 1953 if he was not a member of the former system; said deposit to be made in a manner determined by the Retirement Board.

14.3. Service rendered prior to December 29, 1953 by a member who did not make a deposit as provided in Section 14.2 shall be credited a member as non-contributory service for the exclusive purpose of meeting the service requirement specified in Section 17.2 provided (1) the member remains in continuous employment by the City from December 29, 1953 to the date of his retirement, and (2) the member has attained age 55 years.

14.4. A member shall be granted unused sick leave credited service for the period of unused sick leave standing to the member's credit at time of retirement, death or termination of City employment. Unused sick leave credited service may be used only as credited service under the provisions of Section 17, Section 18, Section 20, Section 21 and Section 25 and further as provided in Section 19.1(a).

14.5. In the event a policeman or fireman employed by the City becomes a member of the Retirement Plan the service rendered by him in the employ of the police or fire department of the City may be credited him, pursuant to the provisions of this Article, under such conditions as the Retirement Board may from time to time determine; which shall include, but not be limited to, the following:

(a) He transfers to the employees' savings fund the aggregate amount of contributions made by him to the retirement system or pension plan covering the City's policemen and/or firemen, together with interest additions, if any; and

(b) In no case shall service credit be given by the Retirement Board for any period for which he is entitled or becomes entitled to a benefit payable by such retirement system or pension plan for the City's policemen and/or firemen.

14.6. In any case of doubt as to the amount of service to be credited a member of the Retirement Board shall have final power to determine the amount.

(Election of 11-13-1973; election of 10-6-1987)

15. Military service credit.

15.1. An employee who while employed by the City entered any armed service of the United States, or a member who entered or enters any armed service of the United States, and who has been or shall be on active duty during time of war or period of compulsory military service shall have such armed service credited him as City service in the same manner as if he had served the City uninterruptedly; provided, that (1) he shall have been or shall be re-employed by the City as an employee within one year from and after termination of such armed service actually required of him, (2) he returned to the employees' savings fund the amount, if any, he withdrew therefrom at the time he entered or while in such armed service, together with regular interest from the date of withdrawal to the date of repayment, and (3) in no case shall more than 5 years of City service be credited any member for all such armed service rendered by him. In any case of doubt as to the period of service to be so credited any member the Retirement Board shall have final power to determine such period. During the period of such armed service and until his re-employment by the City his contributions to the Retirement Plan shall be suspended and his balance in the employees' savings fund shall be accumulated at regular interest.

16. Crediting service.

16.1. The Retirement Board shall credit each member with the service to which he is entitled pursuant to the provisions of this Article.

17. Voluntary retirement.

- 17.1. Any member who has attained or attains age 60 years and has 10 or more years of credited service or attains age 62 years and has 5 or more years of credited service may retire upon his written application on filed with the Retirement Board setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Upon his retirement he shall receive a pension provided in Section 19.1.
- 17.2. Any member of the former system who has acquired or acquires 25 or more years of credited service pursuant to the provisions of this Article, may retire prior to his attainment of age 60 years upon his written application filed with the Retirement Board setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. If the member of the former system has attained age 55 years he may use both credited service and non-contributory service for the exclusive purpose of satisfying the 25 years required of the preceding service. Upon his retirement he shall receive a pension provided in Section 19.1.
- 17.3. Any member whose age and years of service, when added, equals 80 or more may retire upon the member's written application filed with the Retirement Board setting forth the date the member desires to be retired. Upon retirement the member shall be paid the pension provided in Section 19.1.

(Election of 11-13-1975; election of 11-1-1983; election of 10-6-1987; election of 10-3-1995)

18. Reserved.

Editor's note—An election held September 9, 2003, repealed this Charter Section 18 in its entirety. Formerly, said section pertained to normal retirement and derived from an election of November 13, 1973. It should be noted that the repeal of this section shall take effect October 1, 2003.

19. Pension.

- 19.1. The amount of a member's straight life pension, payable upon retirement as provided in this Article, shall, be the greater of the sum of subsections (a), (b), and (c), or the amount set forth in (d)(I) or (d)(ii):

- (a) 2.0 percent of the member's final average compensation multiplied by the sum of the member's credited service, subject to a maximum of 32.5 years, plus the member's unused sick leave credited service; and
- (b) 1.0 percent of the member's final average compensation multiplied by the portion, if any, of the member's credited service which is in excess of 32.5 years, subject to a maximum of 3 years; and
- (c) 0.5 percent of the member's final average compensation multiplied by the portion, if any, of the member's credited service which is in excess of 35.5 years;
- (d) (I) or \$500.00 per month if member has 15 or more years of credited service, or
 - (ii) \$250.00 per month if member has less than 15 years of credited service.
- (e) Unused sick leave shall not be included as credited service for computation of years of service under foregoing subsections 19.1(b), 19.1(c), and 19.1(d).

A member may elect, at any time prior to the date of the first payment of the member's pension is made, to be paid the pension under an optional form of payment provided in Section 24.1 in lieu of the straight life form of payment.

19.2. In the event a retirant dies before the aggregate amount of straight life pension payments received by him equals the accumulated contributions standing to his credit in the employee's savings fund at the time of his retirement, the difference between his said accumulated contributions and the said aggregate amount of pension payments received by him shall be paid from the pension reserve fund to such person or persons as he shall have nominated by written designation duly executed and filed with the Retirement board. In the event there be no such designated person surviving the retirant such difference, if any, shall be paid to his legal representative. No benefits shall be paid under this section on account of death of a retirant if he was receiving a pension under Options A Standard, A Pop-up, B Standard, B Pop-up, or C provided in Section 24.1.

19.3. The amount of each pension having an effective date prior to January 2, 1988 shall be redetermined and the redetermined amount shall be the basis of pension payments from and after June 1, 1988. The amount of the

redetermined pension provided in this section, shall be equal to the base amount of the pension multiplied by 80 percent of the average of the monthly consumer price indexes for calendar year 1987 and divided by the average of the monthly consumer price indexes for the calendar year containing the effective date of the pension. The base amount of a pension is the amount of pension that would have been paid for the month of June 1988 in the absence of all prior redeterminations. The effective date of a survival pension being paid the beneficiary of a deceased retiree who elected an optional form of payment provided in Section 24.1 shall be the effective date of the retiree's pension. Consumer Price Index means the Consumer Price for Urban Wage Earners as published by the United States Department of Labor. The minimum amount of redetermined pension shall be the greater of 101 percent of the amount of pension that would be payable for the month of June 1988 in the absence of the redetermination provided by this section and \$1,200 annually. Additional pension amounts payable pursuant to the redetermination provided by this section shall be financed in part by the positive difference between the Pension Reserve Fund and retired life liabilities which were effective prior to the redetermination.

- 19.4. A normal, voluntary or disability pension shall commence the first day of the month following retirement. A survivor pension shall commence the first day of the month following the date of the death resulting in the pension.
- 19.5. Termination of payment of a pension shall occur at the end of the month in which the event causing termination occurs. Payment shall be made for the full month of termination.
- 19.6. Tax equity adjustment. Any member of the City of Phoenix Employees' Retirement Plan who has retired prior to January 1, 1989, shall receive a 3% increase in benefits as a tax equity adjustment effective as of January 1, 1989. Any member retiring between January 1, 1989 and January 1, 1990, shall receive a 3% increase in benefits as a tax equity adjustment effective upon their date of retirement.
- 19.7. (a) Effective January 2, 2000, notwithstanding any other provision of the Charter, all retirees and surviving option beneficiaries pursuant to Sections 24 and 25.2(a), with 15 or more years of credited service shall receive a pension of at least \$500.00 per month.

(b) Effective January 2, 2000, notwithstanding any other provision of the Charter, all retirees and surviving option beneficiaries pursuant to Sections

24 and 25.2(a), with less than 15 years of credited service shall receive a pension of at least \$250.00 per month.

(Election of 11-13-1973; election of 10-6-1987; election of 10-3-1989; election of 9-7-1999)

20. Deferred pension.

20.1. Should any member who has five or more years of credited service leave City employment for any reason except his retirement or death he shall be entitled to a pension as provided in Section 19.1 as that section was in effect at the time he left City employment. His pension shall begin the first day of the calendar month next following the month in which his written application for same is filed with the Retirement Board on or after his attainment of age 62 years. In the event he withdraws his accumulated contributions from the Employees' Savings Fund, he shall thereupon forfeit his rights to a deferred pension as provided in this section. Except as otherwise provided in this Article, he shall not receive service credit for the period of his absence from City employment and his balance in the Employees' Savings Fund shall accumulate at regular interest.

(Election of 11-1-1983)

21. Disability retirement.

21.1. Entitlement to Benefits. Any member with ten (10) or more years of credited service who experiences total and permanent disability resulting in the inability to perform in the service of the City and/or in a termination of employment by the City shall be entitled to a benefit commencing at Disability Retirement Date computed in the manner set forth in Section 19.1 of this Plan.

21.2. Waiver of Service Requirement. The ten (10) or more years of service requirement contained in Section 21.1 shall be waived in the case of a member whose total and permanent disability is found by the Disability Assessment Committee to be the natural and proximate result of a personal injury or disease arising out of and in the course of his actual performance of duty in the employ of the City.

21.3 Disability Retirement Date. Shall mean the date upon the member's written application or the date upon which the application is approved by the disability assessment committee or the retirement board or upon the

application of his department head, filed with the Executive Secretary or, if later, the date upon which a member has exhausted any sick leave, vacation time and compensation time standing to the member's credit.

- 21.4. Minimum Benefit. In the event that a member has less than seven (7) years and six (6) months of credited service in determining his benefit in the manner set forth in Section 19.1 of this Plan, his credited service shall be increased to seven (7) years and six (6) months.
- 21.5. Benefit Limitation. The monthly benefit payable to a disability retiree during his workmen's compensation period shall not exceed the difference between his final monthly compensation as determined at the date of his disability and his monthly workmen's compensation award, if any.
- 21.6. Termination of Workmen's Compensation. Upon termination of a disability retiree's workmen's compensation period, if any, he shall be given credited service for the said period and his disability benefit shall be recomputed in the manner set forth in Section 19.1 of this Plan to include such additional credited service.

(Election of 10-6-1987; election of 9-9-2003, eff. 10-1-2003)

22. Form and duration of disability benefit payments.

- 22.1. Alternative modes of benefit payments are available pursuant to Section 24.1. Unless the member files a timely election in writing to receive benefits by an alternative mode, the following shall prevail with respect to benefits payable pursuant to Section 21:
 - (a) Members who are unmarried as of the date on which benefits first become payable pursuant to Section 21 shall receive payments in the form of a straight life pension.
 - (b) Participants who are married as of the date as of which benefits first become payable pursuant to Section 21 shall receive benefits in the form of Option A.
 - (c) Except to the extent that continued benefits may be payable by reason of the provisions of Option A or any alternative mode of benefit payment in force, benefits payable pursuant to this Section 22 shall be:

(1) Suspended in the event of the member's recovery from total and permanent disability with benefits to resume as retirement benefits at the later of

(i) Voluntary or Normal Retirement, or

(ii) The date of the actual retirement unless the member again suffers total and permanent disability prior to Voluntary or Normal Retirement (in which case benefits shall resume upon recurrence of total and permanent disability);

(2) Terminated in the event of the member's death.

(Election of 10-6-1987)

23. Determination of disability.

23.1. Determination of Total and Permanent Disability. The existence or continuance of a condition of total and permanent disability shall be determined by the Disability Assessment Committee on the basis of such medical evidence as the Disability Assessment Committee deems necessary by applying such criteria in making medical determinations in a uniform, consistent and non-discriminatory manner to all members in similar circumstances. Each person alleging a condition of total and permanent disability or the continuance of such condition shall be required to undergo any medical examinations required by the Disability Assessment Committee. Each person alleging the continuance of total and permanent disability shall not be required to undergo medical examinations more frequently than twice annually, and further provided that all such examinations shall be at the expense of the Plan. Any person claiming total and permanent disability or the continuance of such condition, and refusing to submit to any medical examination required by the Disability Assessment Committee, or refusing to authorize the release to the Disability Assessment Committee, of any medical information with respect to such condition, shall be presumed not to suffer total and permanent disability, for the purposes of this Plan.

Failure to qualify for disability benefits under this Plan shall not adversely affect any right the member may otherwise have to benefits under any other provision of this Plan.

23.2. Appeals of Denied Claims for Disability Benefits. In the event that any claim for benefits is denied in whole or in part, the member whose claim has

been so denied shall be notified of such denial in writing by the Executive Secretary. The notice advising of the denial shall specify the reason or reasons for denial, make specific reference to pertinent Plan provisions, describe any additional material or information necessary for the claimant to perfect the claim (explaining why such material or information is needed), and shall advise the member of the procedure for the appeal of such denial. All appeals shall be made by the following procedure:

(a) The member whose claim has been denied shall file with the Executive Secretary a notice of desire to appeal the denial. Such notice shall be filed within sixty (60) days of notification by the Executive Secretary of claim denial, shall be made in writing, and shall set forth all of the facts upon which the appeal is based. Appeals not timely filed shall be barred.

(b) The Executive Secretary shall, within thirty (30) days, of receipt of the member's notice of appeal, establish a hearing date on which the member may make an oral presentation to the Retirement Board in support of his appeal. The member shall be given not less than ten (10) days notice of the date set forth for the hearing.

(c) The Retirement Board shall consider the merits of the claimant's written and oral presentations, the merits of any facts or evidence in support of the denial of benefits, and such other facts and circumstances as the Retirement board shall deem relevant. If the claimant elects not to make an oral presentation, such election shall not be deemed adverse to his interest, and the Retirement Board shall proceed as set forth below as though an oral presentation of the contents of the claimant's written presentations had been made.

(d) The Retirement Board shall render a determination upon the appealed claim which determination shall be accompanied by a written statement as to the reasons therefore.

(Election of 10-6-1978; election of 10-6-1987)

24. Pension options.

24.1. (a) Prior to the date the first payment of his pension is made, but not thereafter, a member may elect to receive his pension as a straight life pension payable throughout his life and terminating at his death, or he may elect to receive the actuarial equivalent, computed as of the date of his retirement, of his straight life pension in a reduced pension payable

throughout his life, and nominate a beneficiary, in accordance with the provisions of Option A Standard, A Pop-up, B Standard, B Pop-up, or C set forth below:

(b) The normal option for members legally married at the time of retirement shall be Option A Standard (100% survivor). The normal option for members unmarried at the time of retirement shall be Straight Life.

(c) If a member, legally married at the time of retirement, selects an option other than Option A Standard (100% survivor), the spouse shall consent to the change at the same time. Such consent shall be in writing on the forms supplied by the Retirement Systems Office.

(d) Option A Standard—100 Percent Survivor Pension: Under Option A Standard upon the death of the retirant his reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Retirement Board prior to the date the first payment of his pension is made.

(e) Option A Pop-up—100 Percent Survivor Pension: Under Option A Pop-up upon the death of the retirant his reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Retirement Board prior to the date the first payment of his pension is made. Should the person nominated die before the retirant, the pension paid to the retirant shall be increased to equal a straight life pension for the remainder of his life.

(f) Option B Standard—50 Percent Survivor Pension: Under Option B Standard upon the death of the retirant, one-half of his reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Retirement Board prior to the date the first payment of his pension is made.

(g) Option B Pop-up—50 Percent Survivor Pension: Under Option B Pop-up upon the death of the retirant, one-half of his reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Retirement Board prior to the date the first

payment of his pension is made. Should the person nominated die before the retirant, the pension paid the retirant shall be increased to equal a straight life pension for the remainder of his life.

(h) Option C—Pension 10 Years Certain and Life Thereafter: Under Option C the retirant shall receive a reduced pension payable throughout his life with the provision that if he dies before he has received 120 monthly pension payments the payments shall be continued for the remainder of the period of 120 months to such person or persons, in equal shares, as the retirant shall have nominated by written designation duly executed and filed with the Retirement Board. If there be no such designated person surviving the retirant such payments shall be continued for the remainder of the period of 120 months and paid to the estate of the survivor of the retirant and his last surviving designated beneficiary.

(Election of 10-3-1989)

25. Survivor pensions.

25.1. In the event a member with less than 10 years of credited service dies while in the employ of the City his credited service shall be increased to 10 years if the Retirement Board finds his death (1) is the result of causes arising out of and in the course of his employment by the City, and (2) is compensable under the Workmen's Compensation Act of the State of Arizona.

25.2. In the event a member with 10 or more years of credited service dies while in the employ of the City the applicable benefits provided in paragraphs (a), (b) and (c) of this Section shall be paid, subject to Sections 25.3 and 25.4.

(a) If the deceased member leaves a widow or a widower, the widow or widower shall be paid a pension computed in the same manner in all respects as if the member had (1) retired the day preceding the date of his death, notwithstanding that he might not have attained age 60 years, (2) elected the normal option in Section 24.1 that provides a widow or widower pension, and (3) nominated his widow or widower as beneficiary. Upon the death of the widow or widower his pension shall terminate.

(b) If the deceased member leaves an unmarried child or children under age 18 years, each such child shall receive a pension of \$200 per month. Upon a child's adoption, marriage, death, or attainment of age 18 years his pension shall terminate. It is also provided that any child pension in effect as of January 1, 2000 shall be increased to \$200 per month.

(c) If the deceased member leaves neither a widow or widower, nor children, eligible to pensions under paragraphs (a) or (b) of this Section, but he leaves a parent or parents whom the Retirement Board finds to be dependent upon him for at least 50 percent of their support due to absence of earning power because of physical or mental disability, each such parent shall receive a pension of an equal share of \$720 per annum. Upon a parent's remarriage or death his pension shall terminate.

- 25.3 During the workmen's compensation period arising on account of the death of a member the total of the pensions provided in Section 25.2 payable in a year shall not exceed the difference between the member's final compensation and the workmen's compensation, if any, converted to an annual basis. *See editor's note at the end of this section.
- 25.4 In the event the pensions, provided in Section 25.2, payable on account of the death of a member are terminated before there has been paid to the survivor beneficiary or beneficiaries an aggregate amount equal to the member's accumulated contributions standing to his credit in the employees' saving fund at the time of his death the difference between his said accumulated contributions and the said aggregate amount of pensions paid shall be paid in accordance with such rules and regulations as the Retirement Board shall from time to time adopt. *See editor's note at the end of this section.

(Election of 10-3-1989; election of 9-7-1999)

Editor's note—At the request of The Office of the City Attorney, Subsections 25.3 and 25.4 were added to Section 25. These Subsections had been inadvertently omitted from codification after the Election of November 13, 1973.

26. Return of accumulated contributions.

- 26.1. Any member who leaves the employ of the City before he has satisfied the age and service requirements for retirement provided in Section 17.1, for any reason except his death or retirement, he shall be paid his accumulated contributions standing to his credit in the employees' savings fund upon his request in writing filed with the Retirement Board.
- 26.2. Should any member die and leave no beneficiary entitled to a pension provided for in this Article, his accumulated contributions standing to his credit in the employees savings fund at the time of his death shall be paid to such person or persons as he shall have nominated by written designation

duly executed and filed with the Retirement Board. If there be no such designated person or persons surviving the said member, then his said accumulated contributions shall be paid to his legal representative.

26.3. Refunds of accumulated contributions as provided in this Article, may be made in installments according to such rules and regulations as the Retirement Board may from time to time adopt.

27. Employees' savings fund.

27.1. (a) The employees' savings fund is hereby continued. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensations of members and from which shall be made transfers and refunds of accumulated contributions as provided in this Article.

(b) The contributions of a member to the Retirement Plan shall be 5 percent of his annual compensation. The officer or officers responsible for preparing the payroll shall cause the contributions provided herein to be deducted from the compensation of each member on each and every payroll, for each and every payroll period so long as he remains a member of the Retirement Plan. When deducted each of said amounts shall be paid to the Plan and shall be credited to the individual account in the employees' savings fund of the member from whose compensations said deductions were made.

(c) The contributions provided in Subsection (b) above shall be made notwithstanding that the minimum compensation provided by law for any member shall be thereby changed. Every member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of his compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him during the period covered by such payment, except as to benefits provided in this Article.

(d) In addition to the contributions hereinbefore provided in this Section, the repayment of any amounts pursuant to the provisions of Section 13.1 shall be deposited in the employees' savings fund and credited to the member's individual account. Repayments pursuant to the provisions of Section 13.1 may be made by a single contribution or by an increased rate of contribution as approved by the Retirement Board.

(e) The accumulated contributions transferred from the former system to the Retirement Plan and such other amounts as may be deposited by a member,

as provided in Sections 14.2 and 14.3, shall be credited to his individual account in the employees' savings fund.

(f) The accumulated contributions of a member standing to his credit in the employees' savings fund shall be transferred to the pension reserve fund upon his retirement, or upon his death if a pension becomes payable by the Retirement Plan on account of his death. At the expiration of a period of 2 years from and after the date an employee ceases to be a member any balance of accumulated contributions standing to his credit in the employees' savings fund, unclaimed by the member or his legal representative, shall be transferred to the income fund, except as otherwise provided in this Article.

(Election of 11-13-1973)

28. Pension accumulation fund.

28.1. (a) The pension accumulation fund is hereby continued. It shall be the fund in which shall be accumulated the contributions made by the City to the Retirement Plan, and from which shall be made transfers to the pension fund, as provided in this Section.

(b) Upon the basis of such mortality and other tables of experience, and regular interest, as the Retirement Board shall from time to time adopt the actuary shall annually compute (1) the pension reserves for pensions being paid retirants and beneficiaries, and (2) the pension reserves for service rendered and to be rendered by members. The pension reserves so computed, less applicable assets shall be financed by the City by annual contributions determined by the Retirement Board in accordance with the provisions of paragraphs (1), (2) and (3) below:

(1) The City's annual contribution for members' current service shall be a percent of their annual compensations which will be an amount which if paid annually by the City during their future service will be sufficient to provide the difference between (i) the pension reserves at the time of their retirements for the portions of the pensions to be paid them based upon their future service, and (ii) the present value of their future contributions.

(2) The City's annual contribution for members' accrued service shall be a percent of their annual compensations which will be an amount which if paid annually by the City over a period of years, to be determined by

the Retirement Board, will amortize at regular interest the unfunded pension reserves, if any, for the accrued service portions of the pensions to be paid them upon their retirements.

(3) The City's annual contribution for pensions being paid retirants and beneficiaries shall be a percent of the annual compensations of members which will be an amount which if paid annually by the City over a period of years, to be determined by the Retirement Board, will amortize at regular interest the unfunded pension reserves, if any, for pensions being paid retirants and beneficiaries.

(c) The Retirement Board shall, in each fiscal year, certify to the City Council the contributions determined in Subsection (b) of this Section and the City Council shall appropriate and the City shall pay, within the next fiscal year, the contributions so certified. When paid the contributions shall be credited to the pension accumulation fund.

(d) Should the balance in the pension reserve fund be insufficient to cover the pension reserve fund liabilities the amount of such insufficiency shall be transferred from the pension accumulation fund to the pension reserve fund.

(e) Upon the retirement of a member, or upon the death of a member if a pension becomes payable on account of his death, the pension reserve for the pension payable, less his balance in the employees' savings fund at the time of his retirement or death, shall be transferred from the pension accumulation fund to the pension reserve fund.

29. Pension reserve fund.

29.1. The pension reserve fund is hereby continued. It shall be the fund from which shall be paid all pensions payable pursuant to the provisions of this Article. In the case of a disability retirant who is returned to the employ of the City his pension reserve, computed as of the date of his return, shall be transferred from the pension reserve fund to the employees' savings fund and pension accumulation fund in the same proportion that his pension reserve, as of the date of his retirement, was transferred from the employees' savings fund and pension accumulation fund to the pension reserve fund. The amount transferred to the employees' savings fund shall be credited to his individual account therein.

30. Mortality reserve fund.

30.1. The mortality reserve fund is hereby discontinued. All pensions being paid from the mortality reserve fund of the City of Phoenix Employees' Retirement Law of 1953 shall hereafter be paid from the pension reserve fund. The pension reserves for pensions being paid from the mortality reserve fund shall be transferred to the pension reserve fund. Any excess balance in the mortality reserve fund shall be transferred to the pension accumulation fund.

31. Income fund.

31.1. The income fund is hereby continued. It shall be the fund to which shall be credited all interest, dividends and other income from investments of the Retirement Plan, all gifts and bequests, all unclaimed accumulated contributions as provided in this Article, and all other moneys the disposition of which is not specifically provided for in this Article. There shall be paid or transferred from the income fund all amounts required to credit regular interest to the various funds of the Plan as provided in this Article. Whenever the Retirement Board determines that the balance in the income fund is more than sufficient to cover current charges to the fund such excess may be transferred to the other funds of the plan to cover special needs of the funds, or such excess may be used to provide contingency reserves, as the Board shall determine. Whenever the balance in the income fund is found to be insufficient to cover the charges to the fund the amount of such insufficiency shall be transferred from the pension accumulation fund to the income fund.

31.2. A member's accumulated contributions which have been transferred to the income fund, as provided in this Article, shall be paid from the income fund to such person or persons making valid claim for same approved by the Retirement Board.

32. Allowance of regular interest.

32.1. At the end of each fiscal year the Retirement Board shall allow and credit regular interest to each member's account in the employees' savings fund; said interest for a member shall be computed on the mean balance in his account during the year. At the end of each fiscal year the Board shall allow and credit regular interest on the mean balances in the pension accumulation

fund and the pension reserve fund. The interest so allowed and credited shall be transferred from the income fund.

33. Expense fund.

33.1. The expense fund shall consist of all moneys provided by the City to pay the administration expenses of the Retirement Plan.

34. Fiscal management.

34.1. The Retirement Board shall be the trustees of the assets of the Retirement Plan. The Retirement Board shall have the power to contract for (1) investment advice, (2) safekeeping of securities, (3) handling of investments, (4) clearing of transactions, and (5) such other services it deems necessary for the proper and efficient handling of the monies and investments of the Retirement Plan. It shall have the power to register or re-register the investments of the Retirement Plan in the name of the Retirement Board as trustees of the Retirement Plan or in the name of its nominee. The Retirement Board shall develop, adopt, implement and maintain a statement of investment goals and guidelines spelling out clear investment parameters and policies for the fund consistent with their fiduciary duties as trustees of the plan. It shall have the power to invest and reinvest the monies of the Retirement Plan, purchase investments, hold, sell, assign, transfer and dispose of any of the securities and investments of the Retirement Plan subject to the following limitations:

(a) Bonds or other evidences of indebtedness of the United States of America or any of its agencies or instrumentalities when such obligations are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality thereof.

(b) General obligation bonds, revenue bonds, improvement district bonds, or other evidences of indebtedness of any state of the United States, or any of the counties or incorporated cities, towns, or duly organized school districts in the State of Arizona which are not in default as to principal and interest.

(c) Investment grade corporate bonds, debentures, notes and other evidences of indebtedness issues [issued], assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, district or territory thereof, which are not in default as to principal or interest.

(d) Preferred and common stock. The Retirement Board may invest in the following stocks, listed in the New York or American Stock Exchange or over the counter:

(1) Investment grade preferred or guaranteed stock or shares of any solvent institution created or existing under the laws of the United States or of any state, district, or territory thereof. The Retirement Board shall not invest more than five percent of the retirement system's assets in the preferred stock of any one issuing company, nor shall the aggregate of its investments under this paragraph exceed ten percent of the retirement system's assets.

(2) Nonassessable, except for taxes or wages, common stock or shares of any solvent institution, created or existing under the laws of the United States or of any states, district or territory thereof. The Retirement Board shall not, however, invest more than five percent of the retirement system's assets in common stock or capital stock of any one issuing company, nor shall the aggregate of its investments under the provisions of this paragraph, at cost, exceed sixty percent of the retirement system's assets.

(e) Money market funds and interest-bearing secured savings accounts or certificates of deposit, in banks, savings and loan institutions or credit unions doing business in Arizona, which have purchased depository insurance from a federal agency. If not otherwise fully secured by collateral, investments made in institutions which have purchased depository insurance from a federal agency shall not exceed the insured amount.

(f) The Retirement Board shall not have at any time any combination of investment in any one institution, corporation, or political in [sic] subdivision aggregating an amount exceeding ten percent of the assets of the retirement system, nor shall it have any combination of investments, in any one industry, other than the electric utility industry or the communications industry, exceeding twenty percent of the assets of the retirement system. The Retirement Board shall not have at any time any combination of investments in the electric utility industry or the communications industry, exceeding twenty-five percent of the assets of the retirement system. The restrictions in subsection (f) shall not apply to investments in direct obligations of the United States of America or agencies of the United States of America.

(g) Real property of any kind or description, improved or unimproved, provided that such real property shall not be purchased or acquired, directly or indirectly, from the State of Arizona, or its political subdivisions nor from any incorporated cities or towns.

(h) Any other investment category authorized by a two-thirds vote of the authorized membership of the Retirement Board exercising the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims and consistent with the statement of investment goals and guidelines.

34.2. The Board may delegate its power to purchase or sell any of the securities and investments of the Retirement Plan to a member or committee of members of the Board.

(Election of 11-13-1973; election of 11-1-1983; election of 9-7-1999)

35. False statements.

35.1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the Retirement Plan, in any attempt to defraud the Plan, shall be guilty of a misdemeanor and subject to a fine not exceeding \$300 or 90 days imprisonment in the City Jail, or both.

36. Errors.

36.1. In the event any change or error in the records of the Retirement Plan results in any person receiving from the Plan more or less than he would have been entitled to receive had the records been correct, the Retirement Board shall correct such error and, as far as practicable, shall adjust subsequent payments in such manner that the actuarial equivalent of the benefits to which the said person was correctly entitled shall be paid. In the event of overpayment to any person the Board may take legal action, if necessary, to recover such overpayment.

37. Exemption from taxation and execution.

37.1. The right of a person to a pension, to the return of accumulated contributions, and any other right accrued or accruing to any person under the provisions of this Article shall be unassignable and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or

insolvency law, or any other process of law whatsoever, except as is specifically provided in this Article. All benefits payable by the Retirement Plan and the cash and other assets of the Plan shall be exempt from all municipal taxes.

- 37.2. If a member or a beneficiary, excluding minors, is covered under a group insurance or prepayment plan participated in by the City, and should he or she be permitted to and elect to continue such coverage as a retirant or beneficiary, he or she may authorize the Retirement Board to have deducted from his or her pension the payments required to continue coverage under such insurance or pre-payment plan. The City shall have the right to set-off for any claim arising from theft or embezzlement by any member, retirant or beneficiary.

(Election of 11-1-1983)

38. Applicability of amendments.

- 38.1. The provisions of this Article in effect at the time a member retires, or at the time a pension becomes payable on account of his death before retirement, shall be applicable as to the payment of the pension arising on account of his retirement or death, except as is otherwise specifically provided in this Article.

39. Pension guarantee.

- 39.1. The pension payable to a retirant whose credited service includes service rendered prior to December 29, 1953 shall be not less than the pension portion of the retirement allowance to which he would have been entitled under the former system had the former system been in effect at the time of his retirement plus an annuity which is the actuarial equivalent of his accumulated contributions standing to his credit in the employees' savings fund of this Retirement Plan at the time of his retirement without offset or deduction of social security benefits he might receive.

40. Adjustment of pensions.

- 40.1. All members, spouses of deceased members, beneficiaries of deceased members named pursuant to Section 24 herein, who are receiving pensions at the time this section becomes effective shall receive an increase in benefits and pensions effective January 1, 1982 in accordance with the following:

(a) 5% per year for each year that benefits or pensions were paid prior to December 31, 1960;

(b) 4% per year for each year that benefits or pensions were paid from January 1, 1961 through December 31, 1964;

(c) 2% per year for each year that benefits or pensions were paid from January 1, 1965 through December 31, 1969;

(d) 1% per year for each year that benefits or pensions were paid from January 1, 1970 through December 31, 1981.

40.2. All retirees and surviving option beneficiaries pursuant to Sections 24 and 25.2(a) of deceased retirees named pursuant to Section 24 herein, who are receiving pensions at the time this subsection becomes effective shall receive a pension increase effective January 1, 2000 in accordance with the following:

(a) 17.4% of pension amount as it existed on December 31, 1991, if retired prior to January 1, 1988.

(b) 13.9% of pension amount as it existed on December 31, 1991, if retired during calendar year 1988.

(Election of 11-3-1981; election of 9-7-1999)

41. Post-retirement distribution benefit for City employees.

41.1. After the end of each fiscal year, the Retirement Board shall determine the rate of investment return earned on Retirement Plan assets during the fiscal year, based upon methods established by the Retirement Board.

41.2. At the end of each fiscal year, the Retirement Plan actuary shall determine the present value of pensions to be paid after the end of the fiscal year to retirants and pension beneficiaries, excluding minors, in receipt of pensions at the end of the fiscal year. The assumed interest rate used in the determination shall be the rate adopted by the Retirement Board for purposes of the annual actuarial valuation.

41.3. The distribution income at the end of each fiscal year shall be equal to the product of the present value of pensions determined in subsection 2 at the end of the previous fiscal year times the positive excess, if any, of the rate of

investment return determined in subsection 1 exceeding the assumed rate defined in subsection 2.

- 41.4. The distribution amount for an individual retirant or pension beneficiary, excluding minors, shall be determined in accordance with a formula adopted by the Retirement Board. In no case shall the ratio of the distribution amount to the annual pension amount for an individual retirant or pension beneficiary, excluding minors, exceed one-half of the increase in the Consumer Price Index during the preceding calendar year, or 3% of the retirant's or beneficiary's pension, whichever is less.
- 41.5. The distribution amount for each retirant or beneficiary shall be payable in the form of a supplemental payment prior to the seventh month after the end of the fiscal year. If a retirant dies before receipt of the retirant's distribution amount the payment shall be made to the retirant's pension beneficiary, if any. If a pension beneficiary dies before receipt of the pension beneficiary's distribution amount, no payment shall be made.
- 41.6. Notwithstanding Sections 41.3 and 41.4, the ratio of distribution amount under Section 41 shall not be less than one percent, to the extent that funds are available in the Pension Equalization Reserve Fund.

(Election of 11-1-1983; election of 10-3-1995)

42. Post-retirement pension benefits equalization program.

42.1. There is hereby established the City of Phoenix Post-Retirement Pension Benefits Equalization Program (the "Program") which shall provide, but only to the extent that there are available earnings as computed pursuant to the provisions of Subsection 42.3 and 42.4 hereunder; for additional pension benefits to be paid to Eligible Persons, as provided in this Section.

42.2. For the purposes of this Section, the following definitions shall apply:

Eligible Pension shall mean the annual benefit, if any, payable under this Section to Eligible Persons;

Eligible Persons shall mean persons who, on January 1, 1992 and on any January 1 thereafter, have been receiving benefits as a retirant and/or a beneficiary, where benefit payments based on such retirant's service have been made for the thirty-six (36) consecutive months immediately prior thereto.

Excess Earnings mean investment earnings in excess of the amount that would have been earned had the Retirement Plan earned eight percent (8%) on assets allocated to the Pension Reserve Fund.

Pension Equalization Reserve Fund (“Equalization Fund”) shall mean the fund created pursuant to this Section to provide the source of payments to be made to Eligible Persons under the Program.

42.3. The Equalization Fund shall be established on January 1, 1992. The Equalization Fund shall be increased each calendar year by the Excess Earnings computed for the immediately preceding calendar year. The rate of actual investment earnings used to determine Excess Earnings is the annual average of the time weighted rates of return, reported by the Plan’s investment performance monitoring service, for the immediately preceding five calendar years. The Equalization Fund shall be decreased each calendar year by the actuarial present value of the increase, if any, in pensions paid during the calendar year as the result of any adjustment made under the provisions of this Section; with such amounts being transferred to the Pension Reserve Fund; and further decreased as the result of any adjustments under Section 41 of this Article.

42.4. The Final Percentage Adjustment to each Eligible Pension payment shall be computed as follows. The Basic Percentage Adjustment shall be determined; which adjustment shall be the percentage increase, not less than zero, in the Phoenix area Consumer Price Index as determined by the Center for Business Research at Arizona State University, or if this index is not available, the Consumer Price Index of the Department of Labor. The Board shall then determine that percentage adjustment which increases the actuarial present value of pensions being paid (as reported in the last annual actuarial valuation of the Plan) by the balance in the Equalization Fund. The Final Percentage Adjustment shall be lower of the two percentages.

42.5. The final percentage adjustment, if any, as determined under Subsection 42.4, shall then be applied to each Eligible Person’s annual benefit and paid on a monthly basis, commencing in March of each year for which applicable, retroactive to January 1 of that year, and shall constitute a permanent adjustment to such pension benefit.

42.6. This Section shall be effective from and after January 1, 1992.

(Election of 10-1-1991)

CHAPTER XXV. PERSONNEL SYSTEM

1. Purpose and policy.

1. It is the purpose of this chapter to designate those City employees in the classified services; set forth the rights and privileges of those employees; and to state the City's obligations in establishing and maintaining a merit system.
2. The City has determined the necessity of establishing a merit system of personnel administration based on merit principles and professional methods governing the appointment, tenure, promotion, transfer, layoff, separation, discipline, and other incidents of employment relating to City employees. These merit principles include:
 - a. Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applications for initial appointment;
 - b. Providing equitable and adequate compensation;
 - c. Training employees, as needed, to assure high-quality performance;
 - d. Retaining employees on the basis of the adequacy of their performance, and separating employees whose inadequate performance cannot be corrected;
 - e. Assuring impartial treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed or handicap, and with proper regard for their privacy and constitutional rights as citizens; and
 - f. Assuring that employees are protected against coercion for political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

(Election of 11-3-1981)

2. Civil Service Board.

1. There is hereby created a Civil Service Board to consist of five (5) residents, citizens and electors of the City to be appointed by the City Council, to serve (3)-year staggered terms to be fixed by the Council.
2. In the event of a vacancy, the vacancy shall be filled through an appointment by the Mayor for the unexpired term, subject to the approval of the Council. Not more than three (3) of the members shall be adherents of the same political party, and no member shall hold any other salaried public office.
3. Three (3) Board members shall constitute a quorum for the transaction of Business. Any Board member who fails to attend meetings of the Board in accordance with attendance standards set by the Council for City boards and commissions may be removed from his/her membership by the Council.

(Election of 11-3-1981)

3. Powers and duties of the Board.

The Board shall:

1. Adopt such rules and hold such hearings as it finds necessary in order to perform the duties and responsibilities vested in it by this chapter.
2. Submit periodic advisory reports to the Council regarding the activities of the Board as they relate to the application of merit principles in City personnel management.
3. Notwithstanding the provisions of Chapter III, Section 2B(1) of this Charter the Board shall hear appeals from disciplinary demotions, discharges, and suspensions by classified employees who have completed the prescribed probationary period. The Board may delegate to hearing officers the authority to conduct hearings. The decisions of the Board shall be final and binding.
4. Administer oaths, compel attendance of and examine witnesses and compel production of and examine documents.
5. Hear appeals from classified employees from interpretations of the personnel rules approved by the Council.
6. Propose personnel rules and amendments thereto.

(Election of 11-3-1981)

4. Legal representation.

The Board may retain legal counsel as necessary to serve as an advisor to the Board. (Election of 11-3-1981)

5. City service.

1. The City positions exempt from classified service shall be comprised of:
 - a. Elected officials.
 - b. Personal secretary to the Mayor and such staff to the Mayor as may be authorized by ordinance.
 - c. City Judges.
 - d. City Manager.
 - e. Personal Secretary to the City Manager.
 - f. Assistant City Attorneys.
 - g. Interns.
 - h. All part time and temporary employees.
 - i. Assistant City Manager.
 - j. Department heads.
 - k. Urban Service Managers.
 - l. Street Transportation Administrator.
 - m. Executive Assistant to the Council.
 - n. Assistant to the City Manager.
 - o. Executive Assistant to the City Manager.
 - p. Special Assistant to the City Manager.

q. And such other positions designated by the City Manager that are consistent with items d. through p.

2. The classified service shall be comprised of all other positions in the employ of the City existing on the effective date of this chapter.

(Election of 11-3-1981)

6. Personnel Official.

The City Manager shall be the City's Personnel Official. The City Manager may delegate any of the powers and duties conferred upon him as Personnel Official to any other officer or employee of the City.

The Personnel Official shall:

1. Administer all the provisions of this chapter and of the personnel rules not specifically reserved to the Civil Service Board pursuant to Sec. 3 herein or to the City Council pursuant to Sec. 7 herein.
2. Propose and promulgate personnel rules and amendments thereto.
3. Enforce approved personnel rules.
4. Prepare a position classification plan.
5. Prepare and maintain a compensation plan covering all employees.
6. Provide recruitment and selection for positions in the classified and unclassified service.
7. Perform all other duties required to administer the City Personnel System.
(Election of 11-3-1981)

7. Action Required by Council.

The Council shall approve by ordinance, resolution or formal action the:

1. Personnel rules.
2. Position classification plan.
3. Compensation plan.

(Election of 11-3-1981)

8. Proposal and promulgation of personnel rules.

1. The Personnel Official or the Civil Service Board shall propose personnel rules. Subject to approval by the City Council the Personnel Official shall promulgate such rules after notice and opportunity for comments from affected parties are given.
2. The rules shall establish regulations, subject to the provisions of this chapter and related ordinances, governing the Personnel System including but not limited to the following:
 - a. Preparation, installation, revision and maintenance of a position classification plan covering all positions in the City service.
 - b. Preparation, installation, revision and maintenance of a compensation plan covering all positions in the City service.
 - c. Selection practices and procedures.
 - d. Establishment of probationary periods.
 - e. Evaluation of employees during the probationary and continuing periods of employment.
 - f. Appointment, transfer, promotion, demotion, reinstatement, disciplinary action and layoff and recall of employees in the City service.
 - g. Administration of sick, industrial and military leaves.
 - h. Separation of employees from the City service.
 - i. The establishment of adequate personnel records.
 - j. The establishment of appeal procedures concerning the administration of this chapter and any rules adopted hereunder.
 - k. Employee residence requirements.

(Election of 11-3-1981)

9. Equal employment opportunity.

The City shall administer the Personnel System in a manner consistent with federal, state and local laws, rules and regulations concerning equal employment opportunity and affirmative action.

(Election of 11-3-1981)

10. Employees to retain positions.

Notwithstanding the provisions of Section 5 above, all employees who were deemed as “classified” at the time this chapter takes effect shall remain as “classified” employees until discharged, demoted, or promoted in accordance with the provisions of this chapter, and the personnel rules governing same.

(Election of 11-3-1981)

11. Political activity.

1. No officer or employee of the City shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution on behalf of any candidate for City of Phoenix elective office from any person holding a position with the City.
2. No person holding a position with the City, except elected officials, shall take any part in political management, affairs or campaigns in any election for City of Phoenix elective office further than to vote and privately express opinions.

(Election of 11-3-1981)

12. Penalty.

Any person violating any provisions of this Chapter is guilty of a Class I misdemeanor. (Election of 11-3-1981)

13. Repeal.

Article VI entitled “Civil Service” of Chapter 2 of the Code of the City of Phoenix, 1969, is hereby repealed.

(Election of 11-3-1981)

14. Strikes and binding arbitration prohibited.

A. The continued availability of City facilities and services is essential to the health, safety, and general welfare of all of the residents of the City and decisions relating to them should be informed management choices which are neither coerced by strikes nor imposed by third parties.

B. An employee of the City of Phoenix shall not in any manner participate in any strike against the City of Phoenix or any of its agencies.

C. Violation of this section by an employee of the City of Phoenix shall constitute a voluntary resignation from City employment and such employee forfeits and is no longer entitled to civil service, seniority, merit system or other employment protection. Following resignation by participating in a strike against the City of Phoenix, such employee shall not be eligible for rehire except by specific determination by the City Manager. Any employee thus rehired shall be placed in the class from which he resigned and in a pay grade at least one step below the one occupied at the time of resignation, except that an employee rehired under this paragraph who was at the lowest pay step in his class at the time of his resignation may be rehired at the pay step occupied at that time. Any employee rehired under the terms of this paragraph shall receive no increase in wages, salary, or employer contribution to any other benefits for a period of 12 months following his rehire.

D. A classified employee may have his alleged violation of this section adjudicated in accordance with the procedures used for testing terminations under the City of Phoenix civil service system. The only issue to be thus adjudicated shall be whether or not the employee violated this section.

E. Definitions.

(1) "Employee" means any persons holding any position with the City of Phoenix, by hire or by appointment, and includes both classified and unclassified positions under the City's civil service system.

(2) "Strike" means the failure to report for duty, the absence from one's position, the stoppage or deliberate slowing down of work or the withholding, in whole or in part, of the full, faithful and proper performance of the duties of employment, in concerted or contemporaneous action with others, for the purpose of inducing, influencing or coercing a change in the conditions, hours, compensation, rights, privileges or obligations of employment by the City of Phoenix.

F. The City of Phoenix may not use or agree to a method or procedure for determining the compensation, hours and conditions of employment of its employees, including binding interest or grievance arbitration, which prohibits the City Council or the City Manager from disapproving or altering such determinations. Alteration or disapproval by the City Council shall be by a simple majority of those members of the Council present and voting. Nor shall the City be subjected to such methods or procedures by any other governmental entity.

G. Except for the prohibition contained in paragraph F., above, all other decisions regarding methods or procedures for determining the compensation, hours, and conditions of employment of City of Phoenix employees are reserved to and are to be made by the City Council or the City Manager.

H. If any of the provisions of these amendments, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these amendments which can be given effect without the invalid provision or application, and to this end, the provisions of these amendments are declared to be severable.

I. The provisions of this article shall be self-executing.

(Election of 11-1-1983)

**The Concise
Oxford Dictionary
of Current English**

Adapted by

H. W. FOWLER AND F. G. FOWLER

Authors of 'The King's English'

from

The Oxford Dictionary

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of churches as *St Peter's*, & of towns called after their churches often with loss of possessive sign as *St Andrews* & *St Albans*, & many Christian & family names taken either from patron s. or from local names as above; also in some names of churches not called after ss., as *St Saviour's*, *Sepulchre's*, *Faith*, *Cross*; *St—'s day*, Church festival in memory of particular s.; *St VALENTINE's day*; *St Monday*, Monday as made by many workmen into a holiday or s.'s-day; *St Lubbock's day*, any of the BANK³ holidays instituted 1871 by Sir J. Lubbock's Act; *St Anthony's*, *Elmo's*, FIRE¹; *St Vitus's DANCE*²; *St Bernard dog* or *St Bernard*, breed kept by monks of Hospice on Great St Bernard pass for rescue of travellers; *St Leger*, horse-race at Doncaster for three-year-olds, f. founder's name; *St Michael*, kind of orange, f. one of the Azores so called). (N.) one of the blessed dead or other member of the company of heaven (*departed s.*, phr. used by or attributed to mourners, = deceased person); canonized person (see adj. sense; *patron s.*, selected as heavenly protector of person or place, esp. church, often named after him); (bibl., archaic, & with some mod. sects) one of God's chosen people, member of the Christian Church or speaker's branch of it; person of great real or affected holiness (*would provoke, try the patience of, a s.*; *young ss. old devils or sinners*, early piety is no good sign; *LATTER-day ss.*); *s.'s-day*, Church festival in memory of a s., often observed as holiday at schools &c.; hence *saint'hood*, *saint'hood*, *saint'ship*, *saint'ling*¹, nn., *saint'like*, *saint'ly*¹, aa., *saint'liness* n. (Vb) canonize, admit to the calendar of ss.; call or regard as a s.; (p.p.) worthy to be so regarded, of saintly life, (of place &c.) sacred. [vb f. n. f. adj., OF, f. L *sanctus* p.p. of *sancire* consecrate]

Saint-Simō'nian, a. & n. (Advocate) of the socialism of the Comte de Saint-Simon (1760-1825) with State control of property & distribution of produce. So **Saint-Simō'nist**(2), **Saint-Simō'nite**¹(1), **Saint-Simō'nism**(3), **Saint-Simō'nianism**(3), nn. [-IAN]

saith. See **SAY**².

Sā'itic, a. Of Sais, ancient capital of Lower Egypt (S. *dynasties*, 26th-30th of Egyptian kings). [f. L f. Gk *Saitikos* (*Saitēs* f. *Sais*, -ITE¹)]

sake, n. For the s. of—, for —'s or my &c. s., out of consideration for, in the interest of, because of, owing to, in order to please or honour or get or keep, (common n. with sibilant ending does not take the extra syllable of the possessive before s., but has usu. the apostrophe, as *for peace'*, *conscience'*, *goodness'*, s., cf. *for God's*, *the children's*, *Phyllis's*, s.; *for my own s. as well as yours*; *for both, all, our ss.* or rarely s.; *for his name's s.*, because he bears the name he does or in the interest of his reputation; *persecuted for opinion's s.*; *for any s.* in entreaties, for one reason if not for another; *for old s.'s s.*, in memory of old days. [OE *sacu* contention, charge, fault, sake, cf. Du *zaak* lawsuit, cause, thing, G *sache* affair, also OE *sacan* to quarrel; cogn. w. **SEEK**]

sā'ké (-ā), n. Japanese fermented liquor made from rice. [f. Jap. *sake*]

sā'ker, n. Large lanner falcon used in hawking, esp. the female larger than the male or **sā'keret**¹ n.; (Hist.) old form of cannon. [f. F *sacre* (in both senses) f. Sp., Port., *sacro* prob. f. Arab. *caqr*]

sal (sahl), **saul**, n. Valuable Indian timber (tree). [Hind.]

salaa'm (-lahm), n., & v.i. & t. Oriental salutation 'Peace'; Indian obeisance with this,

low bow of head & body with right palm on forehead; (vb) make s. (to). [f. Arab. *salam*]

sā'lable, a. Fit for sale, finding purchasers; s. *price*, that article will fetch. Hence **sala-bi'lity** n. [-ABLE]

salā'cious (-shus), a. Lustful, lecherous. Hence or cogn. **salā'ciously**² adv., **salā'ciousness**, **salā'city**, nn. [f. L *salax* (*salire* leap), -ACIOUS]

sā'lad (-ad), n. Cold dish of uncooked usu. sliced vegetables such as lettuce or endive seasoned with oil, vinegar, &c., & eaten with or including cold fish, meat, hard-boiled eggs, &c.; vegetable or herb suitable for eating raw; *s.-days*, inexperienced youth; *s.-dressing*, mixture of oil, vinegar, cream, &c., taken with s.; *s.-oil*, superior quality of olive-oil. [f. OF *salade* ult. f. L *sal* salt, -ADE(1)]

sā'lamā'nder, n. Lizard-like animal supposed to live in fire; person who can endure great heat, fire-eating soldier &c.; spirit living in fire (cf. *sylph*, *gnome*, *nymp*); (Zool.) kinds of tailed amphibian, whence **salama'ndroid** a. & n.; red-hot iron for firing gun-powder, hot iron plate for browning omelettes &c. Hence **salama'ndrian**, **salama'ndrine**¹, aa. [F (-dre), f. L f. Gk *salamandra*]

sāl-ammō'niac, n. Ammonium chloride. [L *sal* salt, AMMONIAC]

sā'langane (-ngg-), n. Swallow making edible nest. [F, f. *salanga* name in Luzon]

sā'lary, n., & v.t. Fixed periodical payment made to person doing other than manual or mechanical work (cf. *wages*); (vb; chiefly in p.p.) pay s. to. [AF (-ie), = OF *salaire* f. L *salarium* orig. soldier's salt-money (*sal* salt, -ARY¹)]

sale, n. Exchange of a commodity for money or other valuable consideration, selling (*on, for, s.*, offered for purchase; *s. &*, or *or*, *return*, arrangement by which retailer takes quantity of goods with right of returning all that he fails to sell), amount sold (*the ss. were enormous*); public auction (*put up for s.*, offer at auction); rapid disposal at reduced prices of shop's stock at end of season; **BILL**⁴ of s.; *s. ring*, ring of buyers at auction; *salesman*, -*woman*, person engaged in selling goods in sl op or as middleman between producer & retailer. [OE *sala* prob. f. ON *sala* cogn. w. **SALL**]

Sā'lem, n. Nonconformist chapel. [Heb. vii.2]

sā'lep, n. Nutritive meal from dried tubers of some orchidaceous plants. [F f. Turk., f. Arab. *tha'leb*]

sā'leratus, n. (U.S.). Impure bicarbonate of potash or sodium bicarbonate as ingredient in baking-powders. [f. mod. L *sal aeratus* AERATED salt]

Sā'lian¹, a. Of the Sali or priests of Mars. [L *Salii* pl. (*salire* leap), -AN]

Sā'lian², a. & n. (Member) of Frankish tribe near Zuyder Zee from which the Merovingians were descended. [LL *Salii* the tribe, *AN]

Sā'lic, **Sā'lic**, **Sā'lic** (-ēk), aa. (Form -ic) = prec. adj. (S. *law*, Frankish law-book extant in Merovingian & Carolingian times); (-ic, -ique) S. *law*, law excluding females from dynastic succession, esp. as alleged fundamental law of French monarchy (based on a quotation, not referring to such succession, from the law-book above). [F (-que) f. *Salii* (prec.), -IC]

sā'licin, n. Bitter crystalline principle got from willow-bark & used medicinally. So **sā'licyl** n., **salicylic** a. (-ic acid, used as antiseptic & for rheumatism), **salicylate**³(3) n., **salicylize**(5) & in same sense **salicylate**³ v.v.t., **salicylism**(5) n., **salicylois** (chem.) a. [F (-ine), f. L *salix -icis* willow, -IN]

salicō'nal (-shon-), **sā'licet**, nn. Organ

ing or practical jokes. Hence **wa'ggery**(4) n., **wa'ggish**¹ a., **wa'ggishly**² adv., **wa'ggishness** n. [prob. for obs. *wag-halter* gallows-bird (prec. vb)]

wage¹, n. Amount paid periodically, esp. by the day or week or month, for time during which workman or servant is at employer's disposal (usu. pl. exc. in certain phrr.; *gets good ww.*; *brings his ww. home*; *at a w. or ww. of £1 a week*; *living w.*, *ww.* that allow earner to live, without fear of starvation; *a fair day's work for a fair day's w.*); requital (usu. pl.; *the ww. of sin is death*); *wage(s)-fund* in Pol. Econ., part of community's capital devoted to paying *ww.* & salaries. [OF, = *guage* GAGE¹]

wage², v.t. Carry on (war, conflict). [earlier sense *declare (war)* f. OF *wager* (prec.)]

wā'ger, n., & v.t. = BET n. & v.t. (but not now in familiar use); (Hist.) *w. of battle*, ancient form of trial by personal combat between parties or champions, *w. of law*, COMPURGATION. [f. OF *wageure* f. LL *wadiatura* (*wadiare* pledge, as prec., -URE)]

wā'ggle, v.i. & t., & n. = WAG¹ (but in more familiar usc). [-LE(3)]

wā'g(g)on, n. Four-wheeled vehicle for drawing heavy loads, often with removable semicylindrical tilt or cover, usu. drawn by two or more horses (*hitch one's w. to a star*, utilize powers higher than one's own); open railway truck; *w.-boiler*, *-ceiling*, *-roof*, *-vault*, shaped like *w.-tilt*. [f. Du. *wagen*, cf. OE *wagn* WAIN]

wa'g(g)oner, n. Driver of wagon; (*the W.*) constellation Auriga. [-ER¹]

wag(g)onette, n. Four-wheeled open pleasure vehicle (or with removable cover) for one or more horses & with facing side seats. [-ETTE]

wagon-lit(F), n. Sleeping-car on continental railway.

Waha'bi, -ee, (-hah-), n. One of a set of Mohammedan puritans following the letter of the Koran. [Abd-el-*Wahhab*, founder c. 1700]

waif, n. Ownerless object or animal, thing cast up by or drifting in sea or brought by unknown agency; homeless & helpless person, esp. unowned or abandoned child; *ww. & strays*, odds & ends, unowned or neglected children. [OF, f. ON (Icel. *veif* thing flapping about); n. corresp. to WAIVE]

wail, v.i. & t., & n. (Lament, i. & t., with) prolonged plaintive inarticulate usu. high-pitched cry; (fig.) lament(ation) in words (often *over*); (of wind &c.) sound (v. & n.) like person wailing. Hence **wai'lful** a. (poet.), **wai'l-ingly**² adv. [f. ON *væla* (*væ* int., see WOE)]

wain, n. Wagon (chiefly poet. or agricultural); *Charles's*, *Arthur's*, or *the W.*, CHARLES'S WAIN. [f. OE *wægn*, cf. Du. & G *wagen*; cogn. w. L *vehere* carry, Skr. *vahana*- vehicle, Gk *okhos* car, & WEIGH]

wai'nscot, n., & v.t. Wooden panelling or boarding on room-wall; (vb) line with *w.*, whence **wai'nscoting**¹(3) n. [earlier sense *kind of oakwood*, f. Du. *wagenscot* perh. f. MDu. *wæghe* wave + Du. *schot* boarding cf. CAMPSHOT; w. ref. to wavy grain of wood]

waist, n. Part of human body below ribs & above hips (*large*, *small*, *w.*, of such circumference; *long*, *short*, *w.*, of such vertical extent); contraction marking this in normal figure (*has no w.*, of stout person), analogous contraction in middle of long object, e.g. fiddle or hour-glass; part of ship between fore-castle & quarter-deck; part of garment encircling *w.*, band round *w.* from which petticoats &c. may be suspended; *w.-band*, *-belt*, worn round *w.*; *w.-cloth*, = LOINCLOTH; *wai'stcoat* (also *pr. wē'skut*), garment reaching down to *w.* with front showing when

coat is open & usu. without sleeves (*sleeved w.*, with sleeves for extra warmth or for use without coat by workmen); *w.-deep* or *-high* aa. & adv., up to *w.*. Hence **-waisted**² a. [ME *wast* (WAX²), cf. OHG *wahst* growth]

wait¹, v.i. & t. Abstain from action or departure till some expected event occurs, pause, tarry, stay, kick one's heels, be expectant or on the watch, (often *for*, *till*; *w. a minute*; *shall not w. here any longer*; *kept me waiting or made me w.*; *have a month to w. yet*; *w. till I come*, *for high water* or *a fine day*; *everything comes to those who w.*; *always has to be waited for*, is unpunctual); await, bide, (is *waiting his opportunity*; *you must w. my convenience*; *am only waiting the signal*); act as waiter, as servant shifting plates &c. at table, (*are you accustomed to waiting?*; often *at table*), or as attendant (LORD¹, GROOM, *in waiting*); defer (meal) till some one arrives (*don't w. dinner for me*); *w. (up)on*, watch (archaic), await convenience of, serve as attendant esp. at table, pay visit to (person regarded as superior), escort (archaic), (in race) purposely keep close behind (competitor), follow as result; *waiting-room*, provided for persons to *w.* in esp. at railway-station or house of consultant. [f. OF *waiter* (now *guetter*) f. *waite* sentinel f. OHG *wahta* whence G *wacht* cogn. w. WAKE¹]

wait², n. 1. (Pl.) band(s) of persons singing cards &c. from house to house at Christmas. 2. Act or time of waiting (*had a long w. for the train*); watching for enemy, ambush, (*lie in or lay w.* usu. *for*). [sense 1 f. OF *waite* sec prec.; sense 2 f. prec.]

waiter, n. In vbl senses; also or esp.: man who takes & executes orders, shifts plates, &c., at hotel or restaurant tables, whence **waitress**¹ n.; tray, salver; DUMB¹-w.; TIDE-w. [-ER¹]

waive, v.t. Forbear to insist on or use, tacitly or implicitly relinquish or forgo, (right, claim, opportunity, legitimate plea, &c.). Hence **waiver**⁴ n. (legal). [f. OF *gairer* prob. f. ON (Icel. *veifa* vibrate)]

wake¹, v.i. & t. (past *woke*, *waked*; p.p. *waked*, *woken*, *woke*). Cease to sleep, rouse from sleep, (often *up*; also fig. as *spring wakes all nature*, *nature wakes*); be awake (archaic exc. in part. or gerund, as *in his waking hours*, *waking or sleeping*); cease or rouse from sloth, torpidity, inactivity, or inattention (usu. *up*; *w. up, there!*; *wants something to w. him up*; *the insult waked his dull spirit*), rise or raise from the dead; (chiefly Ir.) hold *w. over*; disturb (silence, place) with noise, make re-echo; *w.-robin*, wild arum or lords-&-ladies. [mixture of OE *wacan* *wóc* arise, be born, & *wacian* wake, watch, cf. Du. *waken*, G *wachen*; cogn. w. VIGIL, VEGETABLE]

wake², n. (Hist.) anniversary of dedication of church kept by watching all night, merry-making or fair in connexion with this; (Ir.) watch by corpse before burial, lamentations & merry-making in connexion with it. [f. prec.]

wake³, n. Strip of smooth water left behind moving ship (*in the w. of*, behind, following, after the example of). [f. Icel. *vök* opening in ice, cogn. w. Gk *hugros*, L *humidus*, wet]

wakeful, a. Unable to sleep, (of person's night &c.) passed with little or no sleep; vigilant. Hence **wakefully**² adv., **wakefulness** n. [WAKE¹, -FUL]

wā'ken, v.t. & i. Cause to be, become, awake (usu. = *wake up*, but conveying less of abruptness). [OE *wæcnan* (*wacan* WAKE¹)]

Waldenses (wō-), n. pl. Puritan sect in valleys of Piedmont, Dauphiné, & Provence, started c. 1170 & much persecuted in 16th &

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distinction to the proletariat.

sal'a-ried (säl'ä-rîd), *adj.* Receiving a salary; paid by a salary; having a salary attached; as, a *salaried* officer; a *salaried* office; *salaried* employees.

|| **sa'la-rie'go** (sä'lä-ryä'gō), *n.* [Sp.] In medieval Spain, land held by the nobles.

Sal'a-ri'no (säl'ä-rē'nō), *n.* A character in Shakespeare's *Merchant of Venice*.

sal ar-mo'ni-ac (är-mō'nī-äk) or **ar-mo'ni-ak**. = SAL AM-MONIAIC.

sal'a-ry (säl'ä-rî), *n.*; *pl.* -RIES (-rîz). [AF. *salarie*, OF. *salair*, fr. L. *salarium* pension, stipend, orig., salt money, the money given to the Roman soldiers for salt, which was a part of their pay, fr. *salarium* pertaining to salt, fr. *sal* salt. See SALT.] 1. The recompense or consideration paid, or stipulated to be paid, to a person at regular intervals for services, esp. to holders of official, executive, or clerical positions; fixed compensation regularly paid, as by the year, quarter, month, or week; stipend — now often distinguished from *wages*.

2. Compensation; recompense; reward; also, a remuneration for services given, as a fee or honorarium. *Obs.*
O, this is hire and *salary*, not revenge. *Shak.*

Syn. — Pay, hire, allowance. See WAGES.

sal'a-ry (säl'ä-rî), *v. t.*; -RIED (-rîd); -RY-ING (-rî-îng). [Cf. F. *salarier*.] To pay a salary to, as an employee; to attach a salary to, as a post; to provide salaries for those employed in, as a business; — chiefly in past participle.

sa'la-ry (säl'ä-rî). Dial. var. of CELERY.

sa-lat' (sä-lät'), *n.*; *pl.* SALAWAT (sä-lä'wät). [Ar. *ṣalāh*.] The ritual prayer of Mohammedans, made five times daily, in a standing position alternating with inclinations and prostrations, the worshiper facing toward Mecca.

Sa-la'thi-el (sä-lä'thī-ël). 1. Successor of Jehoiachin. *Bib.*

2. a A name sometimes given to the Wandering Jew.

b The title and hero of a novel (1829) by George Croly.

|| **sal At'ti-cus** or **At'ti-cum** (ät'tī-kūs, -kūm). [L.] Attic salt.

|| **sal'band'** (zäl'bänt'), *n.* [G. *salband*, *sahlband*, lit., self end (cf. SELVAGE). See SELF; END.] *Petrog.* The border of a dike or other igneous mass, usually characterized by a finer grain or even glassy texture produced by the chilling of the molten rock by the cold country rock.

|| **sal ca-thar'ti-cus** (kä-thär'tī-kūs). [NL.] Epsom salt.

|| **sal cu'li-na'ri-us** (kü'lī-nä'rī-ūs; 79). [L.] *Old Chem.* Common salt. See SALT, *n.*, 1.

|| **sal de du'o-bus** (dē dū'ō-būs). [NL.] *Old Chem.* Potassium sulphate; — erroneously supposed to be composed of two salts, one acid and one alkaline.

sale (säl), *n.* [Late AS. *sala*, fr. ON. *sala*. See SELL, *v.*; cf. HANDSEL.] 1. *Law.* Act of selling; a contract whereby the absolute, or general, ownership of property is transferred from one person to another for a price, or sum of money, or, loosely, for any consideration; also, a contract for such transfer of ownership in the future or upon the future fulfillment of some condition (this latter being by some differentiated as an *agreement to sell*). The word *sale* is often specifically used of the sale of personal property, as usually in the phrase *the law of sales*. Cf. GIFT, *n.*, 7 b.

2. Opportunity of selling or being sold; demand; market.

Where gingerbread wives have a scanty *sale*. *Keats.*

3. The purpose, end, or fact, of selling, being sold, or being offered for purchase; exhibition for selling; also, the status of being purchasable; — chiefly in phrases, as the obsolete *of sale*, *set to sale*, and *to sale*, and the current *on sale*, *to put up for sale*, and *for sale*. Hence, *for sale*, to be sold. "One who sets his services to *sale*." *Dryden*. "Still is *for sale*, next June, that same *château*." *Browning*.

4. Public disposal to the highest bidder; auction.

5. A selling off of surplus, shopworn, or other stock, at bargain prices; an advertised disposal of marked-down goods.

— *on sale* or *return*. On approval. See APPROVAL, 2.

sale, *adj.* 1. Orig., intended for selling rather than home use; as, *sale* milk or bread; later, produced or raised in large quantities for the trade; as, *sale* lambs; sometimes, esp. in

Wagling

bet.] Act of gaging, or giving a pledge, to do something or to abide the event of something; as, *wager* of battle (see TRIAL BY BATTLE); *wager* of law (see WAGER OF LAW). *Obs. exc. Hist.*

wa'ger (wā'jēr), *v. t.*; **WA'GERED** (-jērd); **WA'GER-ING**. To hazard on the issue of a contest, or on some question that is to be decided, or on some casualty; to risk; venture; also, to stake; bet; to lay as a gamble.

— *v. i.* To make a bet; to lay a wager.

wag'er (wāj'ēr), *n.* One who or that which wagers, or engages in a contest or competition; competitor.

The great numbers of these fish show that they are successful wagers of life. *William Beebe.*

wage rate. The amount of wages paid per unit of time for a particular job or class of jobs.

wa'ger-er (wā'jēr-ēr), *n.* One who wagers.

wa'ger-ing (-īng), *adj.* Hazarding; pertaining to the act of one who wagers; betting.

wager of battle. *Law*. Trial by battle. *Hist.*

wager of law. *Early Eng. Law*. The act of a party having the negative, usually the defendant, in an action in giving a pledge, or in binding himself, to resort to and abide the event of an attempt to prove his case by the oath of himself and the required number of oath helpers, or compurgators. In early times various causes civil and criminal were so settled, and the required number of oath helpers varied both with the rank of the parties and the nature of the offense or default. The procedure survived into modern times as a peculiarity of the actions of detinue and debt. It was abolished in England by 3 & 4 Wm. IV, c. 42, § 13, having already been long practically obsolete.

wager policy. See 3d POLICY, 1.

wag'es (wāj'ēz; -īz; 119), *n., pl.* of WAGE, *n.* (see WAGE, *n.*, *Note*). 1. Pay given for labor, usually manual or mechanical, at short stated intervals, as distinguished from salaries or fees.

2. *Theoretical Econ.* The share of the annual product or national dividend which goes as a reward to labor, as distinct from the remuneration received by capital in its various forms. This economic or technical sense of the word *wages* is broader than the current sense, and includes not only amounts actually paid to laborers, but the remuneration obtained by those who sell the products of their own work, and the *wages of management*, or *superintendence* (called also *earnings of management*), which are earned by skill in directing the work of others. See REAL WAGES, 1st EARNING, 2.

Syn.— WAGES, HIRE, SALARY, STIPEND, PAY, EMOLUMENT. WAGES and HIRE (the latter somewhat archaic in this sense) denote the price paid for labor, esp. by the day or week; as, a day laborer's, carpenter's, cook's *wages*; "The laborer is worthy of his *hire*" (*Luke x. 7*). SALARY and STIPEND denote a fixed compensation, commonly paid at longer intervals than *wages*, for services (often professional) which require training or ability; as, the *salary* of a minister, a teacher, a bank president, a consul. PAY, which is often general in its sense, may be equivalent esp. to *wages* (as in *payday*, *pay roll*, etc.); more specifically, it is used with reference to soldiers; as, an officer on half *pay*. EMOLUMENT applies to whatever profits arise from office or employment; as, "the *emoluments* of a profession" (*Gibbon*); "A worthier successor wears his dignity and pockets his *emoluments*" (*Hawthorne*). Cf. PAY.

wage scale. 1. A series of rates of wages paid for related tasks.

2. The level of wages paid by an individual employer.

wages fund. = WAGE FUND.

wag'es-man' (wāj'ēz-mān'; -īz; 119), *n., pl.* -MEN (-mēn'). A wageworker. *Rare*.

wage system. *Econ.* An industrial system in which free laborers are hired by capitalists to do a large part of the productive work of society; — contrasted with slavery or serfdom on the one hand, and small proprietorship on the other.

wage'work' (wāj'wŭrk'), *n.* Work done for wages.

wage'work'er (-wŭr'kēr), *n.* One who works for wages. — **wage'work'ing**, *adj. & n.*

wag'gel (wāg'ĕl), *n., or waggel gull*. A black-backed gull in immature plumage. *Local, Eng.*

wag'ger (wāg'ēr), *n.* One who or that which wags.

wag'ger-y (wāg'ēr-ī), *n., pl.* WAGGERIES (-īz). [From WAG.] 1. The manner or action of a wag; mischievous merriment; pleasantry; jocularly; waggishness.

2. A bit of foolery; a jest, esp. a practical joke.

wag'gle, **wag'gy** (wāg'ī), *n.* [See WAG, *v.*] A wagtail; esp., the pied wagtail. *Local, Brit.*

wag'gish (-ish), *adj.* 1. Like, or characteristic of, a wag; sportively or good-humoredly mischievous or roguish.

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sake /sə'keɪ/ *n.* 1 I felt I couldn't give up, for my own sake or for my family's. I have to make an effort for John's sake. 2 (for God's or goodness, etc., sake) used to express impatience, annoyance, urgency, or indignation: "Oh, for God's sake!" "snarled Dyson) "Did you get it, for heaven's sake?" 3 (for old times' sake in memory of former times or in acknowledgment of a shared past: they sat at the back seats for old times' sake. 4 (for Old English *sacu* 'contention, crime,' of Old Norse origin, related to Dutch *zaak* and German *sache* from a base meaning 'affair, legal action, the phrase for the sake of may be from Old Norse. **sake** (also *saki* or *saké*) *n.* a Japanese alcoholic drink made from fermented rice, usually drunk warm in small porcelain cups. **saker** /sə'keɪ/ *n.* 1 a large Eurasian falcon with black and whitish head, used in falconry. 2 (for the *therug*, family Falconidae. 3 (for the early form of cannon. 4 (for late Middle English: from Old French *sacré*, from Latin *sacr* 'falcon'. **Republic of /sə'keɪ/ official name for the Republic of Sakhalin. **sak** /sə'keɪ/ *n.* a large Russian island in the Sea of Okhotsk, situated off the coast of Russia and separated from it by the Strait of Tartary, capital, Yuzhno-Sakhalinsk. From 1905 it was divided into the northern part, held by the Japanese, and the southern part, occupied by Japan. **sak** /sə'keɪ/ *n.* a Russian nuclear physicist and rights campaigner. Although he helped to develop the Soviet hydrogen bomb, he campaigned against nuclear proliferation. He fought for reform of human rights in the former Soviet Union, for which he was sentenced to internal exile 1980-86. **sake** /sə'keɪ/ *n.* (1870-1916), British short-story writer, pseudonym of Hector Hugh Munro. His work encompasses the satiric, comic, macabre, and natural, and frequently depicts animals as seeking revenge on humankind. **sake** /sə'keɪ/ *n.* (pl. *sakis*) a tropical monkey with coarse fur and a long prehensile tail. **Genus Pithecia** and family Cebidae: several species. **18th cent.**: via French from Tupi *saiti*. **variant spelling of SAKÉ.** **sak** /sə'keɪ/ *n.* a northern Indian tree that yields timber and dammar resin. It is the most commercially important source of timber in India. **family Dipterocecarpaeae.** **18th cent.**: from Hindi *sāl*. **sal** /səl/ *exclam.* a common greeting in Arabic-speaking and Muslim countries. **of greeting or respect, with or without salutation, typically consisting of a low bow of the head and body with the hand or fingers to the forehead. Compare with SHALOM.** **respectful compliments.** **17th cent.**: from Arabic (*al-salām* 'peace (be upon you)'). **sal** /səl/ (also *saleable*) *adj.* fit or able to be sold. **salability** /sə'lə'bɪlə'ti/ *n.* **salacious** /sə'lə'si:əs/ *adj.* (Of writing, pictures, or other sexual matters in an indecent way and arousing undue interest in or enjoyment of.) **salacious stories.** **lustful; lecherous: her grin faltered.** **salaciously** *adv.* **salaciousness** /sə'lə'si:əs/ *n.* (Catech). **salad** /sə'ləd/ *n.* **18th cent.**: from Latin *salax*, *salacitudo* 'spicy'. **19th cent.**: a cold dish of various mixtures of vegetables, usually seasoned with oil or other dressing and sometimes with meat, fish, or other ingredients: a bowl of salad. **[with modifier]** a mixture specified in ingredient served with a dressing, filled with tuna salad | fruit salad | suitable for eating raw. **18th cent.**: from Old French *salada*, based on Latin *sal* 'salt'. **salad days** /sə'ləd 'deɪz/ *n.* (One's salad days) the period of youth and inexperience. **the peak or height of something.** **19th cent.**: from Shakespeare's *Antony and Cleopatra*. **sal** /səl/ *n.* see **DRESSING** (sense 1). **sal** /səl/ *n.* another term for **SALLET**.**

Sal-ad-din /səl'ədɪn/ *n.* (1137-93), sultan of Egypt and Syria 1174-93; Arabic name *Salah-ad-Din Yusuf ibn Ayyub*. He reconquered Jerusalem from the Christians in 1187, but he was defeated by Richard the Lionheart at Arsuf in 1191.

salal /sə'ləl/ *n.* a North American plant of the heath family, with clusters of pink or white flowers and edible purple-black berries. **Gaultheria shallon**, family Ericaceae. **ORIGIN** early 19th cent.: from Chinook/Jargon *sallal*.

Sal-lam /səl'ləm/ *n.* (1926-1996), Pakistani theoretical physicist. He independently developed a unified theory to explain electromagnetic interactions and the weak nuclear force. Nobel Prize for Physics (1979), shared with Sheldon Glashow and Steven Weinberg.

Sal-a-man-ca /səl'mə'nkə/ *n.* a city in western Spain; pop. 155,740 (2008).

sal-a-man-der /səl'mændər/ *n.* 1 a newtlike amphibian that typically has bright markings, and that once was thought to be able to endure fire. **Order Urodela:** four families, in particular Salamandridae, and numerous species, including the fire salamander. 2 a mythical lizardlike creature said to live in fire or to be able to withstand its effects. **an elemental spirit living in fire.** 3 a metal plate heated and placed over food to brown it. **a space-heater, usually fueled by propane.** 4 archaic a red-hot iron or poker.

DERIVATIVES **sal-a-man-drine** /səl'mændrɪn/ *adj.* **ORIGIN** Middle English (sense 2): from Old French *salamandre*, via Latin from Greek *salamandra*.

Sense 1 dates from the early 17th cent.

sal-a-mi /səl'mi/ *n.* (pl. *same* or *salamis*) 1 a type of highly seasoned sausage, originally from Italy, usually eaten cold in slices. 2 Baseball, informal a grand slam home run. [a play on the word 'slam.']

ORIGIN Italian, plural of *salamme*, from a late Latin word meaning 'to salt.'

Sal-a-mis /səl'mɪs/ *n.* an island in the Saronic Gulf in Greece, to the west of Athens.

sal-am-mo-ni-ac /səl'ə'mə'nɪ'æk/ *n.* old-fashioned term for AMMONIUM CHLORIDE.

ORIGIN Middle English: from Latin *sal ammoniacus* 'salt of Ammon' (see AMMONIACAL).

Sal-ang Pass /səl'æŋg/ a high-altitude route across the Hindu Kush in Afghanistan. A road and tunnel were built by the former Soviet Union during the 1960s to improve the supply route to Kabul.

sal-ar-i-ate /səl'ærɪ'et/ *n.* (the *salariat*) salaried white-collar workers.

ORIGIN early 20th cent.: from French, from *salairé* 'salaried', on the pattern of *prolétariat* 'proletariat.'

sal-a-ried /səl'ærɪd/ *adj.* receiving or recompensed by a salary rather than a wage: *salaried employees* | *he was in salaried employment.*

sal-a-ry /səl'ærɪ/ *n.* (pl. *salaries*) a fixed regular payment, typically paid on a monthly or biweekly basis but often expressed as an annual sum, made by an employer to an employee, esp. a professional or white-collar worker: *he received a salary of \$29,000* | *his modified a 15 percent salary increase.* Compare with **WAGE**.

v. (salaries, salaried, salaried) [with obj.] archaic pay a salary to.

ORIGIN Middle English: from Anglo-Norman French *salarie*, from Latin *salarium*, originally denoting a Roman soldier's allowance to buy salt, from *sal* 'salt.'

sal-a-ry-man /səl'ærɪ'mən/ *n.* (pl. *salarymen*) (esp. in Japan) a white-collar worker.

sal-at /səl'æt/ *n.* the ritual prayer of Muslims, performed five times daily in a set form.

ORIGIN Arabic, plural of *salāt* 'prayer, worship.'

Sal-a-zar /səl'əzər/, Antonio de Oliveira (1889-1970), Portuguese statesman; prime minister 1932-68. He maintained Portugal's neutrality throughout the Spanish Civil War and World War II.

sal-bu-ta-mol /səl'byʊdətə'mɒl, -mə'l/ *n.* Medicine a synthetic compound related to aspirin, used as a bronchodilator in the treatment of asthma and other conditions involving constriction of the airways.

ORIGIN 1960s: from *sal* (cyclic acid) + *but* (yl) + *am* (ine) + *-ol*.

sal-chow /səl'ʃəʊ/ (also *Satchow*) *n.* Figure Skating a jump in figure skating with a backward takeoff from the backward inside edge of one skate to the backward outside edge of the other, with one or more full turns in the air.

ORIGIN early 20th cent.: named after Ulrich Satchow (1877-1949), Swedish skater.

sale /səl/ *n.* 1 the exchange of a commodity for money; the action of selling something: *we withdrew it from sale* | *the sale has fallen through.*

u (sales) a quantity or amount sold: *price cuts failed to boost sales.* **u** (sales) the activity or business of selling products: *director of sales and marketing.*

2 an event for the rapid disposal of goods at reduced prices for a period, esp. at the end of a season: *a clearance sale.* **u** [often with modifier] a public or charitable event at which goods are sold. **u** a public auction.

PHRASES (up) for sale offered for purchase; to be bought: *cars for sale at reasonable prices.* on sale offered for purchase: *the November issue is on sale now.* **u** offered for purchase at a reduced price.

ORIGIN late Old English *salā*, from Old Norse *salā*, of Germanic origin; related to **SELL**.

sale-a-ble *adj.* variants spelling of **SALABLE**.

Sal-lem /səl'lem/ 1 an industrial city in Tamil Nadu in southern India; pop. 872,400 (est. 2009). 2 the state capital of Oregon, on the Willamette River, southwest of Portland; pop. 153,435 (est. 2008).

3 a city and port in northeastern Massachusetts, on the Atlantic coast, north of Boston; pop. 41,256 (est. 2008). First settled in 1626, it was the scene in 1692 of a notorious series of witchcraft trials.

sal-ep /səl'ep/ *n.* a starchy preparation of the dried tubers of various orchids, used as a thickener in cooking, and formerly in medicines and tonics.

ORIGIN mid 18th cent.: from French, from Turkish *sālep*, from Arabic (*kuṣa'a-t-*) *ta'lab*, the name of an orchid (literally 'fox's testicles').

sal-e-ra-tus /səl'ærətəs/ *n.* dated sodium bicarbonate (or sometimes potassium bicarbonate) as the main ingredient of baking powder.

ORIGIN mid 19th cent.: from modern Latin *sal aeratus* 'aerated salt.'

Sal-er-mo /səl'ærno/ *n.* a port on the western coast of Italy, on the Gulf of Salerno, southeast of Naples; pop. 140,489 (2008).

sales-clerk /səlz'klɜ:k/ (also *sales clerk*) *n.* an assistant who sells goods in a retail store.

sales-girl /səlz'gɜ:l/ *n.* a female salesclerk.

Sal-e-sian /səl'ezhən/ *adj.* of or relating to a Roman Catholic educational religious order founded near Turin in 1859 and named after St. Francis de Sales.

n. a member of this order.

sales-la-dy /səlz'lædi/ *n.* (pl. *salesladies*) a saleswoman, esp. one working as a salesclerk.

sales-man /səlz'mæn/ *n.* (pl. *salesmen*) a man whose job involves selling or promoting commercial products, either in a store or visiting locations to get orders: *an insurance salesman.*

DERIVATIVES **sales-man-ship** /-ʃɪp/ *n.*

sales-per-son /səlz'pɜ:sn/ *n.* (pl. *salespersons* or *salespeople*) a salesman or saleswoman (used as a neutral alternative).

sales-room /səlz'rəʊm, -rəʊm/ *n.* a room in which items are sold at auction. **u** a showroom displaying goods offered for sale.

sales tax *n.* a tax on sales or on the receipts from sales.

sales-woman /səlz'wʊmən/ *n.* (pl. *saleswomen*) a woman whose job involves selling or promoting commercial products.

Sal-ford /səl'fɜ:d/ *n.* an industrial city in northwestern England, near Manchester; pop. 69,600 (est. 2009).

Sal-i-an /səl'ɪən, -jən/ *adj.* of or relating to the Sali, a 4th-century Frankish people living near the Rhine River, from whom the Merovingians were descended.

n. a member of this people.

Sal-ic /səl'ɪk, 'səl-/ *adj.* another term for **SALIAN**.

sal-i-cin /səl'sɪn/ *n.* Chemistry a bitter compound present in willow bark. It is a glucoside related to aspirin, and accounts for the ancient use of willow bark as a pain-relieving drug.

ORIGIN mid 19th cent.: from French *alicine*, from Latin *salix*, *salic* 'willow.'

sa-li-cio-nal /səl'sɪʃə'nəl/ *n.* an organ stop with a soft reedy tone.

ORIGIN mid 19th cent.: from German *Saliclonal*, from Latin *salix*, *salic* 'willow' + the obscurely derived suffix *-ional*.

Sal-ic law *historical n.* 1 a law excluding females from dynastic succession, esp. as the alleged fundamental law of the French monarchy.

PRONUNCIATION KEY ə ago, up; ɔ: over, fur; a hat; ʌ ate; ʌ car; e let; e see; ɪ fit; ɪ by; ŋGsing; ō go; ɒ law, for; o: toy; ɒ food; ɒ good; ou out; ʌ thin; ʌ then; ʌ vision

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CAPP082



Saint Vincent and the Grenadines

Saint Vincent, Cape A promontory at the southwest extremity of Portugal. Prince Henry the Navigator established (c. 1420) a residence nearby that served as a base for the explorational voyages that he sponsored.

Saint Vincent and the Grenadines (grēn'ə-dēnz') An island country in the central Windward Islands of the West Indies. It comprises St. Vincent Island and the northern islets of the Grenadines. Part of the West Indies Federation from 1958 to 1962, the country gained self-governing status in 1969 and full independence in 1979. Kingstown, on St. Vincent, is the capital.

Saint Vi-tus' dance also Saint Vi-tus's dance (vī'tas, -tə-siz) *n.* See Sydenham's chorea. [After *Saint Vitus*, third-century AD Christian martyr.]

Sal-pan (sī-pān', -pān', sī'pān) The largest island of the Northern Mariana Islands in the western Pacific Ocean. It was held by Spain, Germany, and Japan before being captured by US troops in July 1944 during World War II. It was part of the US Trust Territory of the Pacific Islands from 1947 to 1978 and now serves as the capital of the Northern Marianas. —**Sal'pa-neso'** (-nēs', -nēs') *adj.* & *n.*

saith (sēth, sē'th) *v.* *Archaic* A third person singular present tense of say.

Sai-va (sī'va, shī'-) *n.* *Hinduism* One who worships Shiva. [Sanskrit *śaiva*, belonging to Shiva < *Śival*, Shiva.] —**Sai'va** *adj.* —**Sai'vism** *n.*

Sa-ja-ma (sə-hā'ma) An extinct volcano, 6,542 m (21,463 ft) high, in the Andes of western Bolivia near the Chilean border. It is the highest mountain in Bolivia.

Sa-ka-i (sā'ki) A city of southern Honshu, Japan, on Osaka Bay south of Osaka. It was a leading port from the 15th to the 17th century.

Sak-a-ka-we-wa (sāk'a-ka-wē'wə) **Lake** A reservoir in west-central North Dakota. It is a widening of the Missouri River and was created in 1956 when the Garrison Dam was completed.

sake (sāk) *n.* 1. Purpose; motive; a quarrel only for the sake of argument. 2. Advantage; good; for the sake of his health. 3. Personal benefit or interest; welfare; for her own sake. [Middle English, lawsuit, guilt < Old English *sacc*; see *sāg* - In App. I.]

sa-ke also sa-ki (sā'kē, -kē) *n.* A Japanese liquor made from fermented rice. [Japanese.]

sa-ker falcon (sā'kər) *n.* A Eurasian falcon (*Falco cherrug*) having brown plumage and often trained for falconry. [Middle English *sacre* < Old French < Arabic *sag*, probably < Turkic **soygar*, falcon.]

Sa-kha-lin (sāk'hə-lēn', -lən, sā-khə-lyen') An island of southeast Russia in the Sea of Okhotsk north of Hokkaido, Japan. Colonized by Russia and Japan in the 1700s and 1800s, it passed under Russian control in 1875.

Sa-kha-rov (sā'kə-rōf', sāk'hə-, sā'kha-rōf), **Andrei Dimitrievich** 1921-1989. Soviet physicist and dissident who helped develop the first Soviet hydrogen bomb. An outspoken advocate of human rights and nuclear disarmament, he won the 1975 Nobel Peace Prize and was banished to Gorky (now Nizhny Novgorod) from 1980 to 1986.

sa-ki (sā'kē, -kē) *n.* Variant of *sake*².

sa-ki² (sā'kē) *n., pl. -kīs* Any of several small omnivorous arboreal monkeys of the genera *Pithecia* and *Chiropotes* of northern and central South America, having long legs and a long bushy nonprehensile tail. [French, shortening (given as a name to a species of saki by Georges Louis Leclerc de Buffon) of English *sakke* *winkee*, *sakivinski*, ultimately < Tupi *sagui* or a kindred Tupi-Guarani source.]

Sa-ki (sā'kē) See Hector Hugh Munro.

Sa-ki-shi-ma (sā'kē-shē-mā, sā-kē-shē-mā') An island group of Japan in the southern Ryukyu Islands east of Iaiwan. The islands were heavily bombed by the Allies in April-June 1945.

Sak-ka-ra (sə-kār'a) See Saqqara.

sal (sāl) *n.* Salt. [Middle English < Old French < Latin *sāl*; see *sal* - In App. I.]

sa-laam (sə-lām') *n.* 1. A ceremonious act of deference or obeisance, especially a low bow performed while placing the right palm on the forehead. 2. A greeting in various Muslim cultures. *tr.* & *intr.* -laamed, -laam-ing, -laams To greet with or perform a salaam. [Arabic *salām*, peace, salaam < *salāna*, to be safe; see *šim* - In App. II.]

sal-a-ble also sale-a-ble (sāl'ə-bəl) *adj.* Offered or suitable for sale; marketable. —**sal'a-ble-ly**, **sal'a-ble-ness** *n.* —**sal'a-bly** *adv.*

sa-la-cious (sə-lā'shəs) *adj.* 1. Appealing to or stimulating sexual desire: *salacious reading material*. 2. Characterized by or indicating sexual desire; lustful: *a salacious wink*. [*<* Latin *salāx*, *salāx*, fond of leaping, lustful < *salire*, to leap; see *sol* - In App. I.] —**sa-la'cious-ly** *adv.* —**sa-la'cious-ness**, **sa-lac'i-ty** (sə-lās'i-tē) *n.*

sal-ad (sāl'əd) *n.* 1a. A dish of raw leafy green vegetables, often tossed with pieces of other raw or cooked vegetables, fruit, cheese, or other ingredients and served with a dressing. b. The course of a meal consisting of this dish. 2. A cold dish of chopped vegetables, fruit, meat, fish, eggs, or other food, usually prepared with a dressing, such as mayonnaise. 3. A green vegetable or herb used in salad, especially lettuce. 4. A varied mixture: *"The Declaration of Independence was ... a salad of illusions"* (George Santayana). [Middle English *salade* < Old French, possibly < Old Provençal *salada* < Vulgar Latin **salāta* < feminine past participle of *salāre*, to salt < Latin *sāl*, salt; see *sal* - In App. I.]

WORD HISTORY Salt was and is such an important ingredient in salad dressings that the very word *salad* is based on the Latin word for "salt." Vulgar Latin had a verb **salāre*, "to salt," from Latin *sāl*, "salt," and the past participle form of this verb, **salāta*, "having been salted," came to mean "salad." The Vulgar Latin word passed into languages descending from it, such as Portuguese (*salada*) and Old Provençal (*salada*). Old

French may have borrowed its word *salade* from Old Provençal. Medieval Latin also carried on the Vulgar Latin word in the form *salata*. As in the case of so many culinary delights, the English borrowed the word and probably the dish from the French. The Middle English word *salade*, from Old French *salade* and Medieval Latin *salata*, is first recorded in a cookbook composed before 1399. • Salt is of course an important ingredient of other foods and condiments besides salad dressings, as is evidenced by some other culinary word histories. The words *sauce* and *salsa*, borrowed into English from French and Spanish, respectively, both come ultimately from the Latin word *salsus*, meaning "salted." Another derivative of this word was the Late Latin adjective *salsicus*, "prepared by salting," which eventually gave us the word *sausage*.

salad bar *n.* A counter in a restaurant from which customers may serve themselves a variety of salad ingredients and dressings.

salad days *pl. n.* A time of youth, innocence, and inexperience: *"my salad days, / When I was green in judgment, cold in blood"* (Shakespeare). [Coined by William Shakespeare.]

salad dressing *n.* A sauce, such as one made of mayonnaise or of oil and vinegar, that is served on salad.

sa-lade ni-çoise (sā-lād' nē-swāz') *n.* A salad of tomatoes, anchovies, black olives, green beans, tuna, and hard-boiled eggs. [French: *salade*, salad + *niçoise*, fem. of *niçois*, of Nice.]

Sala-din (sāl'a-dīn) Full name Salah ad-Dīn Yusuf ibn-Ayyub. 1137-1193. Sultan of Egypt and Syria who captured (1187) Jerusalem and defended it during the Third Crusade (1189-1192).

Sa-la-do also **Sa-la-do del Norte** (sə-lā'do del nōr'tē, sā-) A river of northern Argentina rising in the Andes and flowing about 2,010 km (1,250 mi) southeast to the Paraná River.

salad oil *n.* An edible vegetable oil, such as corn oil or olive oil, that can be used in salad dressings.

Sa-la-fi (sā'lə-fē) *n., pl. Salafī* or *-fīs* An adherent of Salafism; a Salafist. *adj.* Of or relating to Salafism. [Arabic *salafī*, of the forebears of the predecessors < *salaf*, forebears, predecessors; see *šp* - In App. II.]

Sa-la-fism (sā'lə-fīz'm, sə-lā'fīz'm) *n.* A school of Sunni Islam that condemns theological innovation and advocates strict adherence to sharia and to the social structures existing in the earliest days of Islam. [*<* SALAF.] —**Sa-la'fist** *adj.* & *n.*

sa-lal (sə-lāl') *n.* A small evergreen shrub (*Gaultheria shallon*) in the heath family, native to the Pacific coast of North America, having white or pink flowers clustered in racemes and edible purple-black berries. [Chinook jargon *salal* < Chinook *salal*.]

Sa-lam (sā-lām'), **Abdus** 1926-1996. Pakistani theoretical physicist who shared a 1979 Nobel Prize for helping to develop the theory of the electroweak force, unifying two of the four fundamental forces of nature, the electromagnetic force and the weak force.

Sa-la-man-ca (sāl'a-māng'kə, sā'lā-māng'kə) A city of west-central Spain west-northwest of Madrid. Founded by Celts and subsequently held by Carthaginians, Romans, Visigoths, and Moors, after the Reconquista it became the site of one of Spain's first universities (founded 1218).

sa-la-man-der (sāl'ə-mān'dər) *n.* 1. Any of various small, tailed amphibians of the order Caudata, having porous scaleless skin and usually two pairs of limbs of equal size, found chiefly in northern temperate regions. 2a. A mythical creature, generally resembling a lizard, believed capable of living in or withstanding fire. b. In the occult philosophy of Paracelsus, a being having fire as its element. 3. An object, such as a poker, used in fire or capable of withstanding heat. 4. *Metallurgy* A mass of solidified material, largely metallic, left in a blast-furnace hearth. 5. A portable stove used to heat or dry buildings under construction. [Middle English *salmandre* < Old French < Latin *salmandra* < Greek.] —**sal'a-man'drine** (-drīn) *adj.*

sa-la-mi (sə-lā'mē) *n., pl. -mīs* Any of various highly spiced and salted sausages, made from beef or a mixture of pork and beef. [Italian, pl. of *salame*, salami < Vulgar Latin **saltamen* < **salāre*, to salt < Latin *sāl*, salt; see *sal* - In App. I.]

Sa-la-mis (sāl'ə-mīs, sā'lā-mēs') An island of Greece in the Saronic Gulf east of Athens. In an important naval battle off the island's north-east coast the Greeks, led by Themistocles, defeated the Persian fleet in 480 BC.

Sa-la-mis² (sāl'ə-mīs, sā'lā-mēs') An ancient city of eastern Cyprus. According to tradition, it was founded c. 1180 BC by Teucer, a hero of the Trojan War, and was visited by Saint Paul during his first missionary journey. The city was abandoned after AD 648.

sal ammoniac *n.* See ammonium chloride. [Middle English *sal armoniak* < Latin *sāl ammoniacus*, salt of Amen: *sāl*, salt; see *sal* - In App. I.]

sa-la-ry (sāl'ə-rē, sāl'rē) *n., pl. -rīes* Fixed compensation for services paid to a person on a regular basis. [Middle English *salarie* < Anglo-Norman < Latin *salarium*, money given to Roman soldiers to buy salt < neuter of *salarius*, pertaining to salt < *sāl*, salt; see *sal* - In App. I.] —**sal'a-ried** *adj.*

sal-a-ry-man (sāl'ə-rē-mān', sāl'rē-) *n.* A Japanese corporate businessman. [Anglicization of Japanese *salariman*, salaried man: English SALARY + English MAN.]

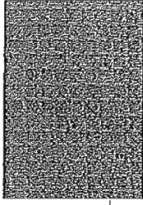
salary reduction plan *n.* See 401(k).

Sa-la-zar (sāl'ə-zār, sā'lə-) **António de Oliveira** 1889-1970. Portuguese dictator (1932-1968) known for his programs of fiscal austerity and his attempts to repress growing opposition in Portugal's African colonies.

sal-bu-ta-mol (sāl-byū'tə-mōl', -mōl', -mōl') *n.* See albuterol [salf(y)], the radical of salicylic acid (< French *salicyte* see SALICYLIC ACID) + BUT(YL) + AM(INE) + -OL'.



salamander
fire salamander
Salamandra salamandra



waffleweave

waf·fle·weave (wəf'fəl-wēv') *n.* A textile weave having a pattern of small raised squares or hexagons, used to produce a soft absorbent fabric.

waft (wāft, wāft) *v.* **wafted**, **wafting**, **wafts** —*tr.* To cause to go gently and smoothly through the air or over water: *The breeze wafted the fog through the fields.* —*intr.* To float easily and gently, as on the air; drift: *The smell of soup wafted from the kitchen.* **♦ n.** 1. Something, such as an odor, that is carried through the air: *a waft of perfume.* 2. A light breeze; a rush of air: *felt the waft of the sea breeze.* 3. The act or action of fluttering or waving: *the waft of her dress.* 4. *Nautical* A flag used for signaling or indicating wind direction. Also called *waif*. [Back-formation < *wajfer*, convoy ship, alteration of Middle English *waughte* < Middle Dutch or Middle Low German *wachten*, a guard < *wachten*, to guard; see *weg-* in App. I.] —**waft'er** *n.*

wag¹ (wāg) *v.* **wagged**, **wag-ging**, **wags** —*intr.* 1. To move briskly and repeatedly from side to side, to and fro, or up and down: *The dog's tail wagged.* 2. To move rapidly in talking. Used of the tongue. 3. *Archaic* To be on one's way; depart. —*tr.* To move (a body part) rapidly from side to side or up and down, as in playfulness, agreement, or admonition: *wagged his finger at the giggling students.* **♦ n.** The act or motion of wagging: *a farewell wag of the hand.* [Middle English *waggen*; see *wegh-* in App. I.] —**wag'ger** *n.*

wag² (wāg) *n.* A humorous or droll person; a wit. [Perhaps < *wag*¹.] **wage** (wāj) *n.* 1. A regular payment, usually on an hourly, daily, or weekly basis, made by an employer to an employee, especially for manual or unskilled work. 2. *Wages* The price of labor in an economy. 3. often *wages* (used with a *sing.* or *pl. verb*) A fitting return; a recompense: *the wages of sin.* **♦ tr.v.** **waged**, **wag-ing**, **wages** To engage in (a war or campaign, for example). [Middle English < Old North French, of Germanic origin.]

wage earner *n.* 1. One who works for wages. 2. One whose earnings support or help support a household.

wager (wā'jər) *n.* 1a. An agreement under which each bettor pledges a certain amount to the other depending on the outcome of an unsettled matter. b. A matter bet on; a gamble. 2. Something that is staked on an uncertain outcome; a bet: *a wager of \$20.* 3. *Archaic* A pledge of personal combat to resolve an issue or case. **♦ v.** **gered**, **ger-ing**, **gers** —*tr.* To risk or stake (an amount or possession) on an uncertain outcome; bet. —*intr.* To make a bet. [Middle English < Anglo-Norman *wageure* < Old North French *wagier*, to pledge < *wage*, pledge; see *WAG-* in App. I.] —**wag'er-er** *n.*

wage scale *n.* The scale of wages paid to employees for the various jobs within an industry, factory, or company.

wage slave *n.* *Informal* A wage earner whose livelihood is completely dependent on the wages earned.

wage-work-er (wāj'wɜrk'ər) *n.* A wage earner.

wag-ger-y (wāj'gə-rē) *n., pl.* -les 1. Waggish behavior or spirit; drollery. 2. A droll remark or act.

wag-gish (wāj'gɪʃ) *adj.* Characteristic of or resembling a wag; jocular or witty. —**wag'gish-ly** *adv.* —**wag'gish-ness** *n.*

wag-gle (wāj'gl) *v.* -gled, -gling, -gles —*tr.* To move (an attached part, for example) with short, quick motions: *waggled her foot impatiently.* —*intr.* To move shakily; wobble: *waggled down the steps.* **♦ n.** A wobbling motion. [Middle English *wagelen*, frequentative of *waggen*, see *WAG*.] —**wag'gly** *adj.*

wag-gon (wāj'gən) *n.* & *v.* *Chiefly British* Variant of *wagon*.

Wag-ner (wāj'nər), **Honus** 1874–1955. American baseball player who during his 21-year career (1897–1917) was consistently among the National League's best batters.

Wag-ner (wāj'nər), **Richard** 1813–1883. German composer known especially for his romantic operas, often based on Germanic legends. Among his works are *Tannhäuser* (1845) and the tetralogy *Der Ring des Nibelungen* (1853–1876).

Wag-ner-i-an (wāj'nɪr'ē-ən) *adj.* Of, relating to, or characteristic of Richard Wagner, his music dramas, or his theories. **♦ n.** also **Wag-ner-ite** (wāj'nə-rīt') An admirer or disciple of Richard Wagner.

wag-on (wāj'ən) *n.* 1. A four-wheeled, usually horse-drawn vehicle with a large rectangular body, used for transporting loads. 2a. A light automotive transport or delivery vehicle. b. A station wagon. c. A police patrol wagon. 3. A child's low, four-wheeled cart hauled by a long handle that governs the direction of the front wheels. 4. A small table or tray on wheels used for serving drinks or food: *a dessert wagon.* 5. *Wagon* The Big Dipper 6. *Chiefly British* An open railway freight car. **♦ tr. & intr.v.** **-oned**, **-on-ing**, **-ons** To transport or undergo transportation by wagon. —**idioms:** **off the wagon** *Slang* No longer abstaining from alcoholic beverages. **on the wagon** *Slang* Abstaining from alcoholic beverages. [Middle English *waggin* < Middle Dutch *wagen*; see *wegh-* in App. I.]

wag-on-er (wāj'ən-ər) *n.* 1. One who drives a wagon. 2. *Wagoner* *Auriga*.

wag-on-lit (wāj'gɒn-lɪt') *n., pl.* **wag-ons-lits** or **wag-on-lits** (wāj'gɒn-lɪt') A sleeping car on a European railroad train. [French: *wagon*, railroad car (< English *wagon*) + *lit*, bed (< Old French < Latin *lectus*, see *legh-* in App. I).]

wag-on-load (wāj'ən-lɔd') *n.* The amount that a wagon can hold.

wagon train *n.* A line or train of wagons traveling cross-country.

wagon vault *n.* See *barrel vault*.

Wa-gram (wāj'grəm') A town of northeast Austria northeast of Vienna. Napoleon defeated the Austrians here in July 1809.

wag-tail (wāj'tāl') *n.* Any of various chiefly Eurasian or African insectivorous birds of the family Motacillidae, having a slender body with a long tail that constantly wags.

Wah-ha-bi or **Wa-ha-bi** (wā-hā'bē) *n., pl.* -bis A member of a Muslim sect founded by Abdul Wahhab (1703–1792), known for its strict

observance of the Koran and flourishing mainly in Arabia. —**Wah-ha-bism** (-bɪz'əm) *n.*

wa-hi-ne (wā-hē'nē, -nā') also **va-hi-ne** (vā-) *n.* 1. *Hawaii* A Polynesian woman. 2. *Slang* A woman surfer. [Hawaiian < Proto-Polynesian **wahine*.]

wa-hoo¹ (wā-hōō', wā'hōō) *n., pl.* -hoos A deciduous shrub or small tree (*Euonymus atropurpureus*) of eastern North America, having small purplish flowers, pink fruit containing scarlet arils, and red foliage in the autumn. [Dakota *wahhu*: *wag*, arrow + *hu*, leg, stock or stem of a plant (< the use of its straight, slender shoots and branches to make arrow shafts).]

wa-hoo² (wā-hōō', wā'hōō) *n., pl.* -hoos See *winged elm*. [Origin unknown.]

wa-hoo³ (wā-hōō', wā'hōō) *n., pl.* **wahoo** or **-hoos** A large marine food and game fish (*Acanthocybium solandri*) of subtropical and tropical waters, having a pointed snout, narrow body, and long dorsal fin. [Perhaps of West Indian origin.]

wa-hoo⁴ (wā'hōō') *Chiefly Western US interj.* Used to express exuberance. **♦ n., pl.** -hoos An exuberant cry: *He let out a wahoo.* Also called *regionally rebel yell*.

Wah-pe-ku-te (wā'pə-koo'tē) *n., pl.* **Wahpekute** or **-tes** A member of a Native American people of the Santee branch of the Sioux, with present-day populations in Nebraska and Montana.

wah-wah also **wa-wa** (wā'wā) *n.* 1. A wavering sound resembling the vowels of human speech, produced by alternately covering and uncovering the bell of a trumpet or trombone with a mute. 2. A similar sound produced by means of an electronic attachment, as on an electric guitar, operated by a foot pedal. [imitative.] —**wah'-wah'** *adj.*

Wai-a-le-a-le or **Wai'a-le'a-le** (wā-ā-lā-ā'lā) A mountain, 1,569 m (5,148 ft) high, of central Kauai in Hawaii. Its summit is one of the rainiest spots on earth.

Wai-a-na-e Range (wā'ā-nā'ā) A mountain range of western Oahu, Hawaii, rising to 1,231 m (4,040 ft).

waif¹ (wāf) *n.* 1a. A homeless person, especially a forsaken or orphaned child. b. An abandoned young animal. 2. A person, especially a young woman, who is thin or gaunt. 3. Something found and unclaimed, as an object cast up by the sea. [Middle English, ownerless property, *fray* animal < Anglo-Norman, probably of Scandinavian origin; see *WEIF-* in App. I.]

waif² (wāf) *n.* *Nautical* See *waft* (sense 4). [Probably of Scandinavian origin; see *WEIF-* in App. I.]

Wai-ka-to (wā-kā'tō) A river of New Zealand rising in central North Island and flowing about 425 km (265 mi) northwest to the Tasman Sea. It is the longest river in the country.

Wai-ki-ki (wā'kī-kē) A famous beach and resort district in Hawaii on the southern shore of Oahu.

wail (wā) *v.* **wailed**, **wail-ing**, **wails** —*intr.* 1. To make a long, loud, high-pitched cry, as in grief, sorrow, or fear. See *Synonyms* at *cry*. 2. To make a prolonged, high-pitched sound suggestive of a cry: *The wind wailed through the trees.* —*tr.* *Archaic* To lament over; bewail. **♦ n.** 1. A long, loud, high-pitched cry, as of grief or pain. 2. A long, loud, high-pitched sound: *the wail of a siren.* 3. A loud, bitter protest: *A wail of misery went up when new parking restrictions were announced.* [Middle English *wailen*, probably of Scandinavian origin; akin to Old Norse *vāla*, *vāla*.] —**wail'er** *n.* —**wail'-ing-ly** *adv.*

wail-ful (wā'fəl) *adj.* 1. Resembling a wail; mournful. 2. Issuing a sound resembling a wail. —**wail'-ful-ly** *adv.*

Wail-ing Wall (wā'ling) *n.* See *Western Wall*.

Wai-me-a Bay (wā-mē'ā) An inlet of the Pacific Ocean on the north shore of the island of Oahu in Hawaii.

Waimea Canyon A deep gorge on the eastern part of Kauai in Hawaii.

wain (wān) *n.* A large open farm wagon. [Middle English < Old English *wāen*, *wegen*; see *wegh-* in App. I.]

Wain (wān) *n.* The Big Dipper.

wain-scot (wān'skɒt, -skɒt', -skɒt') *n.* 1. A facing or paneling, usually of wood, applied to the walls of a room. 2. The lower part of an interior wall when finished in a material different from that of the upper part. **♦ tr.v.** **-scot-ed**, **-scot-ing**, **-scots** or **-scot-ted**, **-scot-ting**, **-scots** To line or panel (a room or wall) with wainscoting. [Middle English < Middle Dutch *wagheuscot*: perhaps *waghen*, *wagen*, wagon (from the quality of wood used for carriage-work); see *WAGON* + *scot*, partition; see *skueid-* in App. I.]

wain-scot-ing or **wain-scot-ting** (wān'skɔ-tɪŋ, -skɒt'ɪŋ, -skɒt'ɪŋ) *n.* 1. A wainscoted wall or walls; paneling. 2. Material, such as wood, used for wainscoting.

wain-wright (wān'raɪt') *n.* One that builds and repairs wagons.

waist (wāst) *n.* 1a. The part of the human trunk between the bottom of the rib cage and the pelvis. b. The narrow part of the abdomen of an insect. 2a. The part of a garment that encircles the waist of the body. b. The upper part of a garment, extending from the shoulders to the waistline, especially the bodice of a woman's dress. c. *Archaic* A blouse. 3. The middle section or part of an object, especially when narrower than the rest. 4. *Nautical* The middle part of the upper deck of a ship between the forecabin and the quarterdeck. [Middle English *wast*, perhaps < Old English **wæst*, growth, size; see *aug-* in App. I.] —**waist'-less** *adj.*

waist-band (wāst'bænd') *n.* A band of material encircling and fitting the waist of a garment, such as trousers or a skirt.

waist-cloth (wāst'klōth', -klōth') *n.* A loincloth.

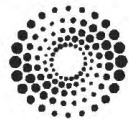
waist-coat (wāst'kōt, wāst'kōt') *n.* 1. A garment formerly worn by men under a doublet. 2. *Chiefly British* A short, sleeveless, collarless garment worn especially over a shirt and often under a suit jacket; a vest. —**waist'-coat'ed** *adj.*

Richard Wagner
1883 portrait by Giuseppe
Tivoli (1845-?)

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7. Bullets

Bullets are used to separate definitional information (before the bullet) from information that is not purely definitional (after the bullet), such as encyclopedic information or usage notes.

8. Cognate Forms

This dictionary lists corresponding parts of speech. For example, under the definition of *consultation*, the corresponding verb (*consult*) and adjectives (*consulting*, *consultative*) are listed.

If a cognate form applies to only one sense of a headword, that form is denoted as follows:

enjoin, *vb.* **1.** To legally prohibit or restrain by injunction <the company was enjoined from selling its stock>. **2.** To prescribe, mandate, or strongly encourage <the graduating class was enjoined to uphold the highest professional standards>. — **enjoinment** (for sense 1), *n.* — **enjoinder** (for sense 2), *n.*

9. Cross-references

a. See

The signal *See* is used in three ways.

- (1) To indicate that the definition is at another location in the dictionary:

call loan. See LOAN.

perpetuities, rule against. See RULE AGAINST PERPETUITIES.

- (2) To refer to closely related terms:

nationalization, *n.* **1.** The act of bringing an industry under governmental control or ownership. **2.** The act of giving a person the status of a citizen. See NATURALIZATION.

cognovit (kog-noh-vit). [Latin “the person has conceded (a debt or an action)”] An acknowledgment of debt or liability in the form of a confessed judgment. See *confession of judgment* under JUDGMENT.

- (3) To refer to a synonymous subentry:

binding instruction. See *mandatory instruction* under JURY INSTRUCTION.

b. Cf.

Cf. is used to refer to related but contrastable terms:

Gallagher agreement. A contract that gives one codefendant the right to settle with the plaintiff for a fixed sum at any time during trial and that guarantees payment of the sum regardless of the trial’s outcome. *City of Tucson v. Gallagher*, 493 P.2d 1197 (Ariz. 1972). Cf. MARY CARTER AGREEMENT.

false imprisonment. A restraint of a person in a bounded area without justification or consent. • False imprisonment is a common-law misdemeanor and a tort. It applies to private as well as governmental detention. Cf. *false arrest* under ARREST.

to help anyone who has serious problems or gets into a difficult predicament. — Also termed *social safety net*. 3. A guarantee designed to protect someone against an adverse contingency.

safety officer. See OFFICER (1).

safe workplace. (1910) A place of employment in which all dangers that should reasonably be removed have been removed; a place of employment that is reasonably safe given the nature of the work performed. See OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION.

sagibaro (sag-ə-bar-oh), *n.* [Old English] (17c) *Hist.* A determiner of disputes; a judge. — Also termed *sachbaro* (sak-bar-oh).

said, adj. (13c) Aforesaid; above-mentioned. • The adjective *said* is obsolescent in legal drafting, its last bastion being patent claims. But even in that context the word is giving way to the ordinary word *the*, which if properly used is equally precise. See AFORESAID.

"The word 'said' is used by many practitioners rather than 'the' to refer back to previously recited elements, sometimes to a previously cited anything. This practice is unobjectionable, although perhaps overly legalistic. If 'sai'ds' or 'thes' are used, one should be consistent in the usage and not alternate between those words in repetitions of the same element or among different elements." Robert C. Faber, *Landis on Mechanics of Patent Claim Drafting* § 23, at 50 (3d ed. 1990).

sailor. See SEAMAN.

sailor's will. See *soldier's will* under WILL.

Saint Lawrence Seaway Development Corporation. A wholly-owned corporation in the U.S. Department of Transportation responsible for developing, operating, and maintaining a part of the St. Lawrence Seaway from Montreal to Lake Erie. • It charges tolls at rates negotiated with the St. Lawrence Seaway Authority of Canada. — Abbr. SLSDC.

sake and soke (sayk / sohk). (16c) *Hist.* A lord's right to hold court and compel attendance. — Also spelled *sak and soc* (sak / sok). See SOC.

salable (say-lə-bəl or sayl-ə-bəl), *adj.* (16c) Fit for sale in the usual course of trade at the usual selling price; MERCHANTABLE. — **salability** (say-lə-bil-ə-tee or sayl-ə-bil-ə-tee), *n.*

salable value. See *fair market value* under VALUE (2).

salarium (sə-lair-ee-əm), *n.* [Latin "salt money"] 1. *Roman law.* An allowance, esp. for living expenses, given to persons in noble professions (such as teachers or doctors) who were not allowed to sue for fees. 2. *Roman law.* Wages for persons engaged in military service on an emergency basis. • The regular soldier's pay is a *stipendium*. 3. *Hist.* The rent or profits of a hall or house.

salary. (13c) An agreed compensation for services — esp. professional or semiprofessional services — usu. paid at regular intervals on a yearly basis, as distinguished from an hourly basis. • Salaried positions are usu. exempt from the requirements of the Fair Labor Standards Act (on overtime and the like) but are subject to state regulation. Cf. WAGE, *n.*

► **accrued salary.** (1893) A salary that has been earned but not yet paid.

sale, n. (bef. 12c) 1. The transfer of property or title for a price. See UCC § 2-106(1). 2. The agreement by which such

a transfer takes place. • The four elements are (1) parties competent to contract, (2) mutual assent, (3) a thing capable of being transferred, and (4) a price in money paid or promised.

"A sale is a transfer of the absolute title to property for a certain agreed price. It is a contract between two parties, one of whom acquires thereby a property in the thing sold, and the other parts with it for a valuable consideration. If the property in any commodity be voluntarily transferred without a valuable consideration, it is a gift; if one article be exchanged for another, it is a barter; but a sale takes place only, when there is a transfer of the title to property, for a price." William W. Story, *A Treatise on the Law of Sales of Personal Property* § 1, at 1 (1853).

► **absolute sale.** (17c) A sale in which possession and title to the property pass to the buyer immediately upon the completion of the bargain. Cf. *conditional sale*.

► **approval sale.** See *sale on approval*.

► **auction sale.** See AUCTION.

► **average gross sales.** (1927) The amount of total sales divided by the number of sales transactions in a specific period.

► **bargain sale.** See BARGAIN SALE.

► **bona fide sale.** (18c) A sale made by a seller in good faith, for valuable consideration, and without notice of a defect in title or any other reason not to hold the sale.

► **bootstrap sale.** (1960) 1. A sale in which the purchase price is financed by earnings and profits of the thing sold; esp., a leveraged buyout. See BUYOUT. 2. A seller's tax-saving conversion of a business's ordinary income into a capital gain from the sale of corporate stock.

► **bulk sale.** See BULK SALE.

► **cash-against-documents sale.** See *documentary sale*.

► **cash sale.** (1823) 1. A sale in which cash payment is concurrent with the receipt of the property sold. 2. A securities transaction on the stock-exchange floor requiring cash payment and same-day delivery.

► **compulsory sale.** (18c) The forced sale of real property in accordance with either an eminent-domain order or an order for a judicial sale arising from nonpayment of taxes.

► **conditional sale.** (18c) 1. A sale in which the buyer gains immediate possession but the seller retains title until the buyer performs a condition, esp. payment of the full purchase price. See *retail installment contract* under CONTRACT. 2. A sale accompanied by an agreement to resell on specified terms. Cf. *absolute sale*.

► **consignment sale.** (1930) A sale of an owner's property (such as clothing or furniture) by a third party entrusted to make the sale. UCC § 9-102(a)(20). See CONSIGNMENT.

► **consumer-credit sale.** (1966) A sale in which the seller extends credit to the consumer. • A consumer-credit sale includes a lease in which the lessee's rental payments equal or exceed the retail value of the item rented.

► **consumer sale.** (1941) A retail transaction in which something is sold in the normal course of a seller's business and is bought for private use and not in the normal course of the buyer's business.

► **convoysed sale.** *Patents.* The sale of unpatented collateral products that are functionally or economically

W

W-2 form. (18c) (1948) *Tax*. A statement of earnings and taxes withheld (including federal, state, and local income taxes and FICA tax) during a given tax year. • The W-2 is prepared by the employer, provided to each employee, and filed with the Internal Revenue Service. Cf. W-4 FORM.

W-4 form. (1955) *Tax*. A form indicating the number of personal exemptions an employee is claiming and that is used by the employer in determining the amount of income to be withheld from the employee's paycheck for federal-income tax purposes. — Also termed *Employee's Withholding Allowance Certificate*. Cf. W-2 FORM.

wacreour (wah-kroor), *n.* [Law French] *Hist.* A vagrant.

Wade hearing. (1969) *Criminal law*. A pretrial hearing in which the defendant contests the validity of his or her out-of-court identification. • If the court finds that the identification was tainted by unconstitutional methods, the prosecution cannot use the identification and must link the defendant to the crime by other means. *U.S. v. Wade*, 388 U.S. 218, 87 S.Ct. 1926 (1967).

wadia (way-dee-ə), *n.* [Law Latin] *Hist.* Pledges.

wadset, *n.* (15c) *Scots law*. **1.** A mortgage. — Also termed (in Roman law) *fiducia*. **2.** A pledge or pawn.

wadset, *vb.* (14c) *Scots law*. **1.** To mortgage. **2.** To pledge.

wafer seal. See SEAL.

wafter (waf-tər), *n.* [Middle English “convoyer”] (15c) *Hist.* An English naval officer appointed under Edward IV to protect fishermen, esp. on the coast of Norfolk and Suffolk. — Also spelled *waftor*.

waga (way-gə), *n.* [Law Latin] (17c) *Hist.* A measure of weight; a measure of goods.

wage, *n.* (*usu. pl.*) (14c) Payment for labor or services, usu. based on time worked or quantity produced; specif., compensation of an employee based on time worked or output of production. • Wages include every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, bonuses, and the reasonable value of board, lodging, payments in kind, tips, and any similar advantage received from the employer. An employer usu. must withhold income taxes from wages. Cf. SALARY.

“Wages are, in both common and legal language, the compensation paid or to be paid for services, whether computed by the day, week, or month, or by the piece or job. Payment for piece or job work is frequently spoken of as earnings, but it differs in no sense from payment computed by time, the words ‘earnings’ and ‘wages’ being often used together in statutes on the subject. In mining and elsewhere, much of the work is done by what is called contracting, one man being paid by the ton or other quantity, he paying a helper or helpers a fixed sum daily or at a given rate per unit used; but the sums received by the different workmen are alike wages; so also where a group of men are employed in the joint production of a designated unit, and the payment therefor is divided among them fractionally or by a percentage. The profits of contractors where agreements are made for the performance of work involving individual direction and the employment and guidance of subordinates, as in the erection of a building or the construction of public works,

are not classed as wages. The word ‘salary’ is also said by some courts to be synonymous with wages, though in others it is held to mean a larger compensation for more important services, or payment for services other than of a manual or mechanical kind. Salaries of public officers are not exempt from garnishment under laws exempting wages.” Lindley Daniel Clark, *The Law of the Employment of Labor* 45–46 (1911) (citations omitted).

“[I]t is held that the term ‘wages’ does not include the salary of the president, manager, or superintendent of a business corporation; nor sums payable to attorneys at law for professional services rendered to the corporation upon occasional retainers; nor the compensation of a person who is employed by the company to sell its goods in a foreign country, at a fixed annual salary, with the addition of a commission and his traveling expenses. Again, the term ‘wages’ is not applicable to the compensation of the public officers of a municipal corporation, who receive annual salaries, which are not due until the end of the year, and who are entitled to be paid so long as they hold their offices without regard to the services rendered. So also, a person who takes a contract to perform a specified work, as, to build a house according to plans and specifications, to execute a cutting on a line of railway at a given sum per cubic yard, or the like, and who employs men under him to do the actual work or to assist him in doing it, is not a ‘workman’ or ‘laborer,’ although he does a portion of the work himself, and his compensation is not ‘wages.’ So again, where manufacturers receive raw material from another, and work it up for him into a finished or partly finished product, by the use of their machinery and the labor of their employes, under a contract specifying a fixed rate of payment, the money due them therefor is not wages.” Henry Campbell Black, *A Treatise on the Law and Practice of Bankruptcy* § 105, at 259–60 (1914).

► **basic wage.** See MINIMUM WAGE.

► **covered wages.** (1938) Wages on which a person is required to pay social-security taxes.

► **current wages.** (18c) Wages for the current period; wages that are not past due.

► **front wages.** (1979) Prospective compensation paid to a victim of job discrimination until the denied position becomes available.

► **green-circle wage.** A wage that is lower than the usual minimum pay.

► **living wage.** (1888) **1.** A wage sufficient to provide for a worker and his or her family a reasonably comfortable existence.

“[A] living wage means:

“1. A wage by which the worker may obtain the means of subsistence (a) for himself, (b) for those legitimately dependent on him;

“2. A wage by which the worker may provide reasonable home comforts and fit himself for the discharge of duties of citizenship; and

“3. That the wage shall be earned under such conditions as regards sanitary regulations, physical and mental effort, and duration of working hours, and as will afford reasonable time for recreation and rest.

“A wage which would meet the requirements set out in the three clauses of the above definition would enable the worker, in the widest economic sense, to attain the highest state of industrial efficiency. We might therefore adopt a more concise form of words and say:

BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern
with
Guide to Pronunciation

By

HENRY CAMPBELL BLACK, M. A.

Author of Treatises on Judgments, Tax Titles, Intoxicating Liquors,
Bankruptcy, Mortgages, Constitutional Law, Interpretation
of Laws, Rescission and Cancellation of Contracts, Etc.

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SAIO — SALE

function itself, and the merits of the person who fulfills it. 1 Mill.Pol.Econ. 258.

SAIO. In Gothic law. The ministerial officer of a court or magistrate, who brought parties into court and executed the orders of his superior. Spelman.

SAISIE. Fr. In French law. A judicial seizure or sequestration of property, of which there are several varieties. See *infra*.

SAISIE-ARRÊT. An attachment of property in the possession of a third person.

SAISIE-EXÉCUTION. A writ resembling that of *feri facias*; defined as that species of execution by which a creditor places under the hand of justice (custody of the law) his debtor's movable property liable to seizure, in order to have it sold, so that he may obtain payment of his debt out of the proceeds. Dalloz, Dict.

SAISIE-FORAINÉ. A permission given by the proper judicial officer to authorize a creditor to seize the property of his debtor in the district which the former inhabits. Dalloz, Dict. It has the effect of an attachment of property, which is applied to the payment of the debt due.

SAISIE-GAGERIE. A conservatory act of execution, by which the owner or principal lessor of a house or farm causes the furniture of the house or farm leased, and on which he has a lien, to be seized; similar to the *distress* of the common law. Dalloz, Dict.

SAISIE-IMMOBILIÈRE. The proceeding by which a creditor places under the hand of justice (custody of the law) the immovable property of his debtor, in order that the same may be sold, and that he may obtain payment of his debt out of the proceeds. Dalloz, Dict.

SAKE. In old English law. A lord's right of amercing his tenants in his court. Keilw. 145.

Acquittance of suit at county courts and hundred courts. Fleta, l. 1, c. 47, § 7.

SALABLE. "Merchantable," fit for sale in usual course of trade, at usual selling prices. Foote v. Wilson, 104 Kan. 191, 178 P. 430; Stevens Tank & Tower Co. v. Berlin Mills Co., 112 Me. 336, 92 A. 180, 181.

SALABLE VALUE. Usual selling price at place where property is situated when its value is to be ascertained. Fort Worth & D. N. Ry. Co. v. Sugg, Tex.Civ.App., 68 S.W.2d 570, 572.

SALADINE TENTH. A tax imposed in England and France, in 1188, by Pope Innocent III., to raise a fund for the crusade undertaken by Richard I. of England and Philip Augustus of France, against Saladin, sultan of Egypt, then going to besiege Jerusalem. By this tax every person who did not enter himself a crusader was obliged to pay a tenth of his yearly revenue and of the value of all his movables, except his wearing apparel, books, and arms. The Carthusians, Bernardines,

and some other religious persons were exempt. Gibbon remarks that when the necessity for this tax no longer existed, the church still clung to it as too lucrative to be abandoned, and thus arose the tithing of ecclesiastical benefices for the pope or other sovereigns. Enc.Lond.

SALARIIUM. Lat. In the civil law. An allowance of provisions. A stipend, wages, or compensation for services. An annual allowance or compensation. Calvin.

SALARY. A reward or recompense for services performed.

In a more limited sense a fixed periodical compensation paid for services rendered; a stated compensation, amounting to so much by the year, month, or other fixed period, to be paid to public officers and persons in some private employments, for the performance of official duties or the rendering of services of a particular kind, more or less definitely described, involving professional knowledge or skill, or at least employment above the grade of menial or mechanical labor. State v. Speed, 183 Mo. 186, 81 S.W. 1260. A fixed, annual, periodical amount payable for services and depending upon the time of employment and not the amount of services rendered. In re Information to Discipline Certain Attorneys of Sanitary Dist. of Chicago, 351 Ill. 206, 184 N.E. 332, 359. It is synonymous with "wages," except that "salary" is sometimes understood to relate to compensation for official or other services, as distinguished from "wages," which is the compensation for labor. Walsh v. City of Bridgeport, 88 Conn. 528, 91 A. 969, 972, Ann.Cas.1917B, 318. See, also, Fee.

For "Executive Salaries," see that title.

SALE. A contract between two parties, called, respectively, the "seller" (or vendor) and the "buyer," (or purchaser,) by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property. Pard. Droit Commer. § 6; 2 Kent, Comm. 363; Poth. Cont. Sale, § 1; Butler v. Thomson, 92 U.S. 414, 23 L.Ed. 684. In re Frank's Estate, 277 N.Y. S. 573, 154 Misc. 472.

A contract whereby property is transferred from one person to another for a consideration of value, implying the passing of the general and absolute title, as distinguished from a special interest falling short of complete ownership. Arnold v. North American Chemical Co., 232 Mass. 196, 122 N.E. 283, 284; Faulkner v. Town of South Boston, 141 Va. 517, 127 S.E. 380, 381.

An agreement by which one gives a thing for a price in current money, and the other gives the price in order to have the thing itself. Three circumstances concur to the perfection of the contract, to-wit, the thing sold, the price, and the consent. Civ.Code La. art. 2439.

To constitute a "sale," there must be parties standing to each other in the relation of buyer and seller, their minds must assent to the same proposition, and a consideration must pass. Commissioner of Internal Revenue v. Frehofer, C.C.A.3, 102 F.2d 787, 789, 790, 125 A.L.R. 761.

W — WAGES

W

W. As an abbreviation, this letter frequently stands for "William," (king of England,) "Westminster," "west," or "western."

W. D. An abbreviation for "Western District."

WABBLE. To vacillate or sway unsteadily from side to side; to vacillate or show unsteadiness; to move or move along with an irregular rocking or staggering motion or unsteadily from one side to the other. *Meadows v. State*, 186 Ga. 592, 199 S.E. 133, 135.

WACREOUR. L. Fr. A vagabond, or vagrant. *Britt. c. 29.*

WADIA. A pledge. See *Vadium*; *Fides Facta*.

WADSET. In Scotch law. The old term for a mortgage. A right by which lands or other heritable subjects are impignorated by the proprietor to his creditor in security of his debt. Wadsets are usually drawn in the form of mutual contracts, in which one party sells the land, and the other grants the right of reversion. *Ersk. Inst.* 2, 8, 3.

WADSETTER. In Scotch law. A creditor to whom a wadset is made, corresponding to a mortgagee.

WAFORS. Conductors of vessels at sea. *Cowell.*

WAGA. In old English law. A weight; a measure of cheese, salt, wool, etc., containing two hundred and fifty-six pounds avoirdupois. *Cowell*; *Spelman.*

WAGE. In old English practice. To give security for the performance of a thing. *Cowell.*

WAGE EARNER. Within Bankruptcy Act exempting wage earners from involuntary bankruptcy proceedings must have as his paramount occupation the earning of salary or wages, indicia of wage earning being whether earner depends on his wages for his subsistence and whether wage earning is his paramount occupation. *Bankr. Act* §§ 1(27), 4b, 11 U.S.C.A. §§ 1(27), 22(b). *In re Gainfort*, D.C. Cal., 14 F. Supp. 788, 791.

WAGER. A contract by which two or more parties agree that a certain sum of money or other thing shall be paid or delivered to one of them or that they shall gain or lose on the happening of an uncertain event or upon the ascertainment of a fact in dispute, where the parties have no interest in the event except that arising from the possibility of such gain or loss. *H. Seay & Co. v. Moore*, *Tex. Com. App.*, 261 S.W. 1013, 1014; *Young v. Stephenson*, 82 Okl. 239, 200 P. 225, 228, 24 A.L.R. 978; *Odle v. State*, 139 *Tex. Cr. R.* 288, 139 S.W.2d 595, 597. See, also, *Bet.*

It was said that contract giving one party or the other an option to carry out the transaction or not at pleasure is not invalid as a "wager." *Palmer v. Love*, 18 *Tenn. App.* 579, 80 S.W.2d 100, 105; but if, under guise of contract of sale, real intent of both parties is merely to speculate in rise or fall of prices and property is not to be delivered, but at time fixed for delivery one party is to pay difference between contract price and market price, transaction is invalid as "wager." *Baucum & Kimball v. Garrett Mercantile Co.*, 183 La. 728, 178 So. 256, 259, 260.

WAGER OF BATTEL. The trial by wager of batTEL was a species of trial introduced into England, among other Norman customs, by William the Conqueror, in which the person accused fought with his accuser, under the apprehension that Heaven would give the victory to him who was in the right. 3 *Bl. Comm.* 337. It was abolished by *St. 59 Geo. III.*, c. 46.

WAGER OF LAW. In old practice. The giving of *gage* or sureties by a defendant in an action of debt that at a certain day assigned he would *make his law*; that is, would take an oath in open court that he did not owe the debt, and at the same time bring with him eleven neighbors, (called "compurgators,") who should avow upon their oaths that they believed in their consciences that he said the truth. *Glanv. lib. 1*, c. 9, 12; *Bract. fol. 156b*; *Britt. c. 27*; 3 *Bl. Comm.* 343; *Cro. Eliz.* 818.

WAGER POLICY. See *Policy of Insurance*.

WAGERING CONTRACT. One in which the parties stipulate that they shall gain or lose, upon the happening of an uncertain event, in which they have no interest except that arising from the possibility of such gain or loss. *Fareira v. Gabell*, 89 Pa. 89.

WAGERING GAIN. The share of each, where individuals carrying on business in partnership make gains in wagering transactions. *Jennings v. Commissioner of Internal Revenue*, *C. C. A. Tex.*, 110 F.2d 945, 946.

WAGES. A compensation given to a hired person for his or her services; the compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him. *Ciarla v. Solvay Process Co.*, 172 N.Y.S. 426, 428, 184 *App. Div.* 629; *Cookes v. Lymperis*, 178 *Mich.* 299, 144 N.W. 514, 515; *Phoenix Iron Co. v. Roanoke Bridge Co.*, 169 N.C. 512, 86 S.E. 184, 185. Every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for him. *Ernst v. Industrial Commission*, 246 *Wis.* 205, 16 N.W.2d 867.

In a limited sense the word "wage" means pay given for labor usually manual or mechanical at short stated inter-

WAGES — WAIVER

vals as distinguished from salary, but in general the word means that which is pledged or paid for work or other services; hire; pay. In its legal sense, the word "wages" means the price paid for labor, reward of labor, specified sum for a given time of service or a fixed sum for a specified piece of work. In re Hollingsworth's Estate, 37 Cal. App.2d 432, 99 P.2d 599, 600, 602.

Maritime Law

The compensation allowed to seamen for their services on board a vessel during a voyage.

Political Economy

The reward paid, whether in money or goods, to human exertion, considered as a factor in the production of wealth, for its co-operation in the process.

"Three factors contribute to the production of commodities,—nature, labor, and capital. Each must have a share of the product as its reward, and this share, if it is just, must be proportionate to the several contributions. The share of the natural agents is rent; the share of labor, *wages*; the share of capital, interest. The clerk receives a salary; the lawyer and doctor, fees; the manufacturer, profits. Salary, fees, and profits are so many forms of wages for services rendered." De Laveleye, Pol. Econ.

WAGON. A kind of four-wheel vehicle, especially one used for carrying freight or merchandise. *McMullen v. Shields*, 96 Mont. 191, 29 P.2d 652, 654. A vehicle moving on wheels and usually drawn by horses. The word wagon is a generic term and includes other species of vehicle by whatever name they may be called. An automobile is a vehicle propelled by power generated within itself, used to convey passengers or materials, and in a general sense is a wagon. *Strycker v. Richardson*, 77 Pa.Super.Ct. 252, 255, but see *contra United States v. One Automobile*, D.C. Mont., 237 F. 891, 892; *Whitney v. Welnitz*, 153 Minn. 162, 190 N.W. 57, 28 A.L.R. 68. For "Farm Wagon," see that title.

WAGONAGE. Money paid for carriage in a wagon.

WAGONWAY. That part of a street ordinarily used for the passage of vehicles within the curb lines. *Delaware, L. & W. R. Co. v. Chiara*, C.C.A. N.J., 95 F.2d 663, 666.

WAIF. Waifs are goods found, but claimed by nobody; that of which every one waives the claim. Also, goods stolen and waived, or thrown away by the thief in his flight, for fear of being apprehended. *Wharton*.

Waifs are to be distinguished from *bona fugitiva*, which are the goods of the felon himself, which he abandons in his flight from justice. *Brown*. See *People v. Kaatz*, 3 Parker, Cr.R. (N.Y.) 138; *Hall v. Gildersleeve*, 36 N.J.L. 237.

WAINABLE. In old records, That may be plowed or manured; tillable. *Cowell*; *Blount*.

WAINAGE. In old English law. The team and instruments of husbandry belonging to a coun-

tryman, and especially to a villein who was required to perform agricultural services.

WAINAGIUM. What is necessary to the farmer for the cultivation of his land. *Barring. Ob.St.* 12; *Magna Carta*, c. 14. *Instruments of husbandry*. 1 Poll. & Maitl. 399.

WAIN-BOTE. In feudal and old English law. Timber for wagons or carts.

WAITING CLERKS. Officers whose duty it formerly was to wait in attendance upon the court of chancery. The office was abolished in 1842 by St. 5 & 6 Vict. c. 103. *Mozley & Whitley*.

WAIVE, v. To abandon or throw away; as when a thief, in his flight, throws aside the stolen goods, in order to facilitate his escape, he is technically said to *waive* them.

In modern law, to abandon, throw away, renounce, repudiate, or surrender a claim, a privilege, a right, or the opportunity to take advantage of some defect, irregularity, or wrong. See *Brigham Young University v. Industrial Commission of Utah*, 74 Utah 349, 279 P. 889, 893, 65 A.L.R. 152.

A person is said to waive a benefit when he renounces or disclaims it, and he is said to waive a tort or injury when he abandons the remedy which the law gives him for it. *Sweet*.

In order for one to "waive" a right, he must do it knowingly and be possessed of the facts. *Barnhill v. Rubin*, D.C.Tex., 46 F.Supp. 963, 966.

WAIVE, n. In old English law. A woman outlawed. The term is, as it were, the feminine of "outlaw," the latter being always applied to a man; "waive," to a woman. *Cowell*.

WAIVER. The intentional or voluntary relinquishment of a known right, *Lehigh Val. R. Co. v. Ins. Co.*, 172 F. 364, 97 C.C.A. 62; *Vermillion v. Prudential Ins. Co. of America*, 230 Mo.App. 993, 93 S.W.2d 45, 51; or such conduct as warrants an inference of the relinquishment of such right, *Rand v. Morse*, C.C.A.Mo., 289 F. 339, 344; *Dexter Yarn Co. v. American Fabrics Co.*, 102 Conn. 529, 129 A. 527, 537; *Gibbs v. Bergh*, 51 S.D. 432, 214 N.W. 838, 841; or when one dispenses with the performance of something he is entitled to exact or when one in possession of any right, whether conferred by law or by contract, with full knowledge of the material facts, does or forbears to do something the doing of which or the failure of forbearance to do which is inconsistent with the right, or his intention to rely upon it. *Estoup Signs v. Frank Lower, Inc.*, La.App., 10 So.2d 642, 645. The renunciation, repudiation, abandonment, or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity, or wrong. *Christenson v. Carleton*, 37 A. 226, 69 Vt. 91; *Shaw v. Spencer*, 100 Mass. 395, 97 Am.Dec. 107, 1 Am.Rep. 115; *Smiley v. Barker*, 28 C.C.A. 9, 83 F. 684; *Boos v. Ewing*, 17 Ohio 523, 49 Am.Dec. 478. A doctrine resting upon an equitable principle, which courts of law will recognize. *Atlas Life Ins. Co. v. Schrimsher*, 179 Okl. 643, 66 P.2d 944, 948. See, also, *Estoppel*.