



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 8/17/10

SUBJECT: Proposed Ordinance Amendment Police Pension

DEPARTMENT: POLICE

RECOMMENDED MOTION:

Approving Ordinance No. 2010-23

Amend the existing ordinance to comply with Chapter 2009-97 Law of Florida which mandates certain amendments to the police officers' pension fund.

COMMENTS:

An ordinance of the City of Port Orange, Volusia County, Florida amending the City of Port Orange Police Officers' Pension Fund, providing for compliance with Chapter 2009-97, Laws of Florida, amending section 54-132, pre-retirement survivor benefits, providing for compliance with heroes earnings and retirement tax act requirements, providing for codification, providing for repeal for conflicting ordinances, providing for severability and providing for an effective date.

ATTACHMENTS: Ordinance Resolution Budget Resolution

Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD	Gerald M. Monahan, Jr.	Date	3/8/10
FINANCE DEPARTMENT	Approved as to Budget Requirements	Date	8/12/10
CITY ATTORNEY	Approved as to Form and Legality	Date	8/12/10
CITY MANAGER	Approved Agenda Item For:	Date	8/17/10

COUNCIL ACTION: Approved as Recommended Disapproved Tabled Indefinitely
 Continued to Date Certain Approved with Modification:

ORDINANCE NO. 2010-23

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE CITY OF PORT ORANGE POLICE OFFICERS' PENSION FUND, AMENDING SECTIONS 54-122, 54-127, 54-132, 54-134 AND 54-138 RELATING TO DEFINITIONS, FORMS OF BENEFITS, BOARD OF TRUSTEES, AND MISCELLANEOUS PROVISIONS; PROVIDING FOR COMPLIANCE WITH CHAPTER 2009-97, LAWS OF FLORIDA AND HEROES EARNINGS AND RETIREMENT TAX ACT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 2009 Florida Legislature enacted Chapter 2009-97, Law of Florida, which mandates certain amendments to the police officers' pension fund; and

WHEREAS, recent changes to state statutes require several amendments to the plan in order to maintain eligibility for receipt of state premium tax revenues; and

WHEREAS, an amendment to the City code is necessary to permit such new obligations and conditions; and

WHEREAS, the City Council has received and reviewed an actuarial statement to this change; and

WHEREAS, the City Council deems it to be in the public interest to provide this change to the police pension plan; and

WHEREAS, for purposes of this Ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council hereby amends Chapter 54, Article 5, Section 122, Definitions, in part, to read as follows:

Sec. 54-122. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Actuarial equivalence and *actuarially equivalent* mean that any benefit payable under the terms of this plan in a form other than the normal form of benefit shall have the same actuarial present value on the date payment commences as the normal form of benefit. ~~For purposes of establishing the actuarial present value of any form of payment, other than a lump sum distribution, all future payments shall be discounted for interest and mortality by using seven percent interest and the 1983 Group Annuity Mortality Table for Males, with ages set ahead five years in the case of disability retirees. The determination of the actuarial present value of any form of benefit, including lump sum distributions, shall be based on:~~

- (1) The RP-2000 static mortality table (h) unisex 50/50 for healthy lives projected to 2010 for healthy participants and the RP-2000 static mortality (d) unisex 50/50 projected to 2010 for disabled participants, and
- (2) The interest discount rate of 8% per annum, compounded annually.

[Remaining definitions remain unchanged]

Section 2. The City Council hereby amends Chapter 54, Article 5, Section 127, Forms of benefit payments, in part, to read as follows:

Sec. 54-127. Forms of benefit payments.

- (a) [Remains unchanged]
- (b) [Remains unchanged]
- (c) *Optional forms of benefits.*

(1) *Joint and survivor annuity.* This form of benefit shall provide monthly payments of a smaller amount for the life of the participant, with monthly payments continuing thereafter for the life of the participant's designated beneficiary. The monthly benefit payable to the beneficiary shall be 50 percent, 66 2/3 percent, 75 percent, or 100 percent of the monthly benefit payable during the joint lives of the participant and the beneficiary, as elected by the participant. If payment of a pension is to be made in the form of a joint and survivor pension, the pension amount shall be adjusted

so as to be actuarially equivalent to the standard benefit. The standard pension benefit shall be ten years certain and life. A retired participant may change his or her designated survivor up to two times without the approval of the Board or the current designated survivor. The retiree participant need not provide proof of the good health of the designated survivor being removed, and the designated survivor being removed need not be living. The amount of the retirement income payable to the participant upon changing his or her designated survivor shall be actuarially redetermined by the application of actuarial tables and calculations to ensure that the benefit is the actuarial equivalent of the present value of the participant's current benefit and that there is no impact to the plan.

- (2) [Remains unchanged]
- (3) [Remains unchanged]
- (4) [Remains unchanged]
- (d) [Remains unchanged]
- (e) [Remains unchanged]
- (f) [Remains unchanged]

Section 3. The City Council hereby amends Chapter 54, Article 5, Section 132, Pre-retirement survivor benefits, to read as follows:

Sec. 54-132. Pre-retirement survivor benefits.

Any participant, whether or not still in active employment, who has a nonforfeitable (vested) right to any portion of the accrued benefit, and who dies prior to the commencement of benefits, shall have a survivor benefit payable on his behalf. The survivor benefit shall be payable to the participant's designated beneficiary. The amount of the survivor benefit shall be either:

- (1) The benefits which were otherwise payable to the police officer had he survived and shall be payable upon the date the participant would have reached normal retirement age; or
- (2) A monthly benefit which is the actuarial equivalent of such benefit which shall be payable upon the first day of the month following the participant's death, as elected by the designated beneficiary.
- (3) In the event a Member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the Member are entitled to any benefits (other than benefit accruals relating to the period of military service) as if the Member had resumed employment and then died while employed.

Section 4. The City Council hereby amends Chapter 54, Article 5, Section 134, Board of trustees, in part, to read as follows:

Sec. 54-134. Board of trustees.

- (a) [Remains unchanged]
- (b) [Remains unchanged]
- (c) [Remains unchanged]
- (d) [Remains unchanged]
- (e) *Duties.* The duties and responsibilities of the board shall include, but not necessarily be limited to, the following:
 - (1) To construe the provisions of the plan and determine all questions arising thereunder.
 - (2) To determine all questions relating to eligibility and membership.
 - (3) To determine and certify the amount of all retirement allowances or other benefits under this article.
 - (4) To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the plan.
 - (5) To distribute to participants, at regular intervals, information concerning the plan.
 - (6) To receive and process all applications for benefits.
 - (7) To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, of approved benefit payments and other expenditures arising through operation of the plan and fund.
 - (8) To make recommendations regarding changes in the plan.
 - (9) To perform such other duties as are specified in this article.
 - (10) To invest and reinvest such funds as are not necessary for current expenditures or liquid reserves, as the board may from time to time determine, in a manner consistent with the investment policies or guidelines adopted by the board, provided that pension fund investments in common stocks shall not exceed 60 percent of the value of the pension fund investment portfolio, at cost. The board of trustees may sell, exchange or otherwise dispose of such investments at any time, and from time to time, as determined appropriate by the board. The board of trustees shall have the authority, in respect to any stocks, bonds or other property, real or personal, held by the board, to exercise all such rights, powers and privileges as may be lawfully exercised by any person owning similar stocks, bonds or other property in his own right. Notwithstanding the above, no more than ten percent of fund assets may be invested in foreign securities.
 - (11) The board shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in Florida Statutes, Section 215.473, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in such company beginning January 1, 2010 and shall thereafter be prohibited from

purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph.

Section 5. The City Council hereby amends Chapter 54, Article 5, Section 127, Miscellaneous, in part, to read as follows:

Sec. 54-138. Miscellaneous provisions.

(a) [Remains unchanged]

(b) [Remains unchanged]

(c) *Benefits not assignable.* The right of any person to any payment under this pension plan shall not be subject to assignment, alienation or voluntary or involuntary transfer, except that the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received through the city, to pay the certified bargaining agent of the city, and to make any payments for child support or alimony, and to pay for accident, health, and long-term care insurance premiums for the recipient, the recipient's spouse and the recipient's dependents and, to the fullest extent permitted by law, shall not be subject to attachment, execution, garnishment, sequestration or other legal or equitable process. If any person attempts to assign, transfer or dispose of such right, or if an attempt is made to subject such right to such process, such assignment, transfer or disposition shall be null and void. The Pension Fund shall not incur liability for participation in this permissive program if its actions are taken in good faith.

(d) [Remains unchanged]

(e) [Remains unchanged]

(f) *Termination of pension plan.* In the event of termination of the pension plan, the board of trustees shall determine the date of distribution and the asset value required to fund all of the nonforfeitable benefits. The Board shall inform the City if additional assets are required, in which event, the City shall continue to financially support the Retirement Plan until all nonforfeitable benefits have been fully funded. In the event of termination of the pension plan, the board of trustees shall make provision out of the pension fund for the payment of any and all obligations of the fund, including expenses incurred up to the date of termination of the fund and the expenses incidental to such termination, file all notices or reports in connection therewith as may be required by applicable law, and distribute the remaining asset in accordance with F.S. § 185.37, the Internal Revenue Code, and all other applicable laws.

(g) *Incorporation of state and federal law by reference.* This pension plan is maintained for the exclusive purpose of providing benefits to participants and beneficiaries, and is intended to satisfy all the requirements of Florida Statutes

and the Internal Revenue Code. If any requirements of such laws have been omitted, they shall be deemed to be incorporated in this article by reference.

(h) *Amendment of pension plan.* This pension plan may be amended at any time by the city council, provided that such amendment complies with the Internal Revenue Code, Florida Statutes and other applicable laws. The board of trustees may make recommendations to the city council concerning proposed pension plan amendments.

(i) *Purchase of insurance for fiduciaries.* The city or the board of trustees may purchase insurance for pension fund fiduciaries to cover liability or losses incurred by reason of acts or omissions of the fiduciaries.

Section 6. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 7. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 8. This ordinance shall become effective immediately upon adoption by the City Council.

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MAYOR ALLEN GREEN

ATTEST:

Kenneth W. Parker, City Manager

Passed on first reading on the _____ day of _____

Passed and adopted on second and final reading on the _____ day of _____

Reviewed and Approved: 
City Attorney