

ORDINANCE NO. 2012-06

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAKE WALES AMENDING THE CITY OF LAKE WALES GENERAL EMPLOYEES' PENSION PLAN AND TRUST; AMENDING SECTION 16-41 TO REVISE THE DEFINITION OF COMPENSATION TO COMPLY WITH CHAPTER 2011-216, LAWS OF FLORIDA; AMENDING SECTION 16-43(b) TO PROVIDE FOR FOUR YEAR TERMS OF OFFICE FOR TRUSTEES; AMENDING SECTION 16-44(f)(2)e TO PERMIT BUT NOT REQUIRE UP TO TWENTY-FIVE PERCENT OF THE PORTFOLIO TO BE INVESTED IN FOREIGN SECURITIES; AMENDING SECTION 16-48(f) TO ALLOW RETIREES TO SELECT REPLACEMENT BENEFICIARIES AND JOINT ANNUITANTS ON AN ACTUARIALLY EQUIVALENT MANNER; AMENDING SECTION 16-55 TO COMPLY WITH THE PLAN TERMINATION PROVISIONS OF CHAPTER 2009-97, LAWS OF FLORIDA; AMENDING SECTION 16-56(a) TO ALLOW RETIREES TO MAKE VARIOUS ALLOWABLE DEDUCTIONS FROM THEIR MONTHLY PENSION BENEFIT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature adopted Chapter 2011-216, Laws of Florida, governing municipal pension plans;

WHEREAS Chapter 2011-216 provides that municipal pensionable earnings may no longer include (1) in excess of 300 hours of overtime and (2) accrued unused annual or sick leave accrued after the applicable effective date;

WHEREAS, the Pension Plan is required to be amended to comply with Chapter 2011-216;

WHEREAS, the Florida Legislature has recognized the value of allowing municipal pension plans to provide for four (4) year terms of office for pension trustees;

WHEREAS, the City amended the Police Officer and Firefighter Pension Plans to allow for four year terms of office and to otherwise comply with Chapters 175 and 185, Florida Statutes;

WHEREAS, the Board of Trustees of the General Employees' Pension Plan has recommended similar amendments; and

WHEREAS, the City agrees that this ordinance is in the best interests of the City, the taxpayers, and the employees.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA THAT:

Section 1. Section 16-41 of the Code of Ordinances of the City of Lake Wales is hereby amended to read as follows:

Sec. 16-41. Definitions and rules of construction.

Compensation shall mean the total amount of all payments made by the city to an employee for services rendered to the city, including overtime pay and an employee's contributions to this plan. Compensation shall not include employee expense reimbursements, director's fees, contributions made by the city under the plan, nor contributions made by the city for group insurance, hospitalization and like benefits nor, except as otherwise provided in the preceding sentence, contributions made by the city under any other employee benefit plan it maintains. Notwithstanding the preceding, for computation periods ending prior to the effective date of Ordinance 88-19, "compensation" shall mean amounts paid to the employee by the city which were considered to be "earnings" pursuant to the city general employees' pension plan as the plan existed immediately prior to the effective date of Ordinance 88-19.

Compensation shall exclude the following: 1) overtime in excess of 300 hours and 2) accrued unused annual or sick leave ("accumulated leave") in excess of the hours accrued as of June 30, 2011 (hereinafter the "effective date"). The number of hours of accumulated leave used to calculate pension benefits shall be the lesser of the number of hours of accumulated leave on the effective date and the member's retirement date. For purposes of valuing accumulated leave earned prior to July 1, 2011: (i) compensation shall exclude accumulated leave hours in excess of the balance on June 30, 2011; (ii) accumulated leave balances shall be calculated using the future value of accumulated leave upon retirement; and (iii) the member's final accumulated leave balance accrued as of June 30, 2011 upon retirement shall be pensionable, notwithstanding the fluctuation of intervening accumulated leave balances after June 30, 2011. The intent of this amendment is to protect accrued benefits, consistent with Article I, Section 10 of the Florida Constitution.

Section 2. Section 16-43(b) of the Code of Ordinances of the City of Lake Wales is hereby amended to read as follows:

Sec. 16-43. Board of Trustees.

- (b) *Terms and election.* The regular term of office of each employee member and of the public member shall be ~~two (2)~~ four (4) years. Each employee member may succeed himself in office. Each public member trustee shall serve as trustee for a period of ~~two (2)~~ four (4) years, unless sooner replaced by the city commission at whose pleasure each trustee shall serve, and may succeed himself as a trustee without limitation. Employee members shall be elected in the following manner:

Section 3. Section 16-44(f)(2)e of the Code of Ordinances of the City of Lake Wales is hereby amended to read as follows:

Sec. 16-44. Finances and fund management; establishment and operation of fund.

(f)(2)(e) Such other investments as allowed by law, including the ability to invest up to twenty-five percent (25%) of the portfolio in foreign securities.

Section 4. Section 16-48(f) of the Code of Ordinances of the City of Lake Wales is hereby created to read as follows:

Sec. 16-48. Optional forms of benefits.

(f) If a member has elected an option with a joint pensioner or designated beneficiary and the member's retirement benefits have commenced, the member may thereafter change his or her joint pensioner or designated beneficiary up to two times without the approval of the Board or the current joint pensioner or designated beneficiary. The ability to change a joint pensioner is contingent on the retiree agreeing to an actuarial recalculation of the benefit to avoid any actuarial impact on the plan. The retiree is not required to provide proof of the good health of the designated beneficiary or joint pensioner being removed, who need not be living, but such information may be taken into account by the actuary in recalculating the value of the benefit. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment. Any actuarial expenses resulting from the request shall be charged to the retiree.

Section 5. Section 16-55 of the Code of Ordinances of the City of Lake Wales is hereby amended to read as follows:

Sec. 16-55. - Repeal or termination of plan.

(a) This ordinance establishing the plan and fund, and subsequent ordinances pertaining to said plan and fund, may be modified, terminated, or amended, in whole or

in part for any reason or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in Chapter 121; provided that if this or any subsequent ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall not be nonforfeitable. ~~affected thereby, except to the extent that the assets of the fund may be determined to be inadequate.~~

(b) If this ordinance shall be repealed, or if contributions to the plan are discontinued, the board shall continue to administer the plan in accordance with the provisions of this ordinance, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one (1) of the options provided for in this ordinance who are designated by any of said members. In the event of repeal, or if contributions to the plan are discontinued, there shall be full vesting (one hundred (100) percent) of benefits accrued to date of repeal and the assets of the plan shall be ~~allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof distributed in~~ accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits to be distributed, after taking into account the expenses of such distribution. The board shall inform the municipality if additional assets are required, in which event the municipality shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each member entitled to benefits under the plan as specified in subsection (3).

(3) The board of trustees shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income shall mean the single premium payable for such annuity. The actuarial single-sum value may not be less than the member's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

(4) If there is asset value remaining after the full distribution specified in subsection (3), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the City.

(5) The board of trustees shall distribute, in accordance with subsection (2), the amounts determined apportioned under subsection (3).

~~(e) The following shall be the order of priority for purposes of allocating the assets of the plan as of the date of repeal of this ordinance, or if contributions to the plan are discontinued with the date of such discontinuation being determined by the board.~~

~~(1) The accumulated contributions of the members, less any benefits received, in proportion to and to the extent of the then amount of accumulated contributions.~~

~~(2) If there be any asset value remaining after the apportionment under paragraph (1), apportionment shall next be made in respect of each retiree receiving a retirement benefit hereunder on such date, each person receiving a benefit on such date on account of a retired (but since deceased) member, and each member who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the actuarial equivalent of such benefit, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.~~

~~(3) If there be any asset value remaining after the apportionment under paragraphs (1) and (2), apportionment shall next be made in respect of each member in the service of the city on such date who is vested and who is not entitled to an apportionment under paragraphs (1) and (2), in the amount required to provide the actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), based on the credited service and average final compensation as of such date, and each vested former member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(4) — If there be any asset value remaining after the apportionments under paragraphs (1), (2), and (3), apportionment shall lastly be made in respect of each member included in paragraph (3) above to the extent of the actuarial equivalent of the non-vested accrued normal retirement benefit, less the amount apportioned in paragraph (3), based on the credited service and average final compensation as of such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(5) — In the event that there be asset value remaining after the full apportionment specified in paragraphs (1), (2), (3) and (4), such excess shall be returned to the city. The city shall state by written request to the board the amount of the over funding it wishes the board to return to it upon termination of the plan.~~

~~The allocation of the fund provided for in this section may, as decided by the board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The fund may be distributed in one (1) sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the board may direct. The fund may be continued in existence for purposes of subsequent distributions.~~

Section 6. Section 16-56(a) of the Code of Ordinances of the City of Lake Wales is hereby created to read as follows:

Sec. 16-56. - Exemption from execution, non-assignability.

- (a) Subject to Code section 414(p) relating to qualified domestic relations orders, neither a member nor a beneficiary shall anticipate, assign or alienate (either at law or in equity) any benefit provided under the plan, and the board shall not recognize any such anticipation, assignment or alienation. Furthermore, a benefit under the plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for (i) accident, health, and long-term care insurance premiums for the recipient, the recipient's spouse and the recipient's dependents, (ii) child support, or (iii) alimony. The Pension Fund shall not incur any liability for making or failing to make such withholding.

Section 7. Effective Date. This ordinance shall apply immediately upon adoption, unless otherwise provided.

Section 8. Inclusion in Code. It is the intention of the City Commission of the City of Lake Wales, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Lake Wales Code of Ordinances; and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "division," or such other appropriate word or phrase in order to accomplish such intentions.

Section 9. If any clause, section or other part of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be construed as eliminated and shall in no way affect the validity of the remaining portions of this Ordinance.

Section 10. All Ordinances or Resolutions or parts of Ordinances or Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

PASSED ON FIRST READING BY THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA, THIS 20th DAY OF March 2012.

PASSED AND ADOPTED ON SECOND AND FINAL READING BY THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA THIS 2nd DAY OF April 2012.

ATTEST:

Clara Van Zylgan
CITY CLERK

CITY OF LAKE WALES, FLORIDA

By: Mike Craton
MAYOR

I HEREBY CERTIFY that I have approved the form of this Ordinance.

[Signature]
CITY ATTORNEY