

ORDINANCE 2010-08

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA, AMENDING CHAPTER 16, ARTICLE III OF THE LAKES WALES CODE, TO PROVIDE THAT THE TRUSTEES OF THE FIREFIGHTERS' PENSION PLAN AND TRUST BE IN COMPLIANCE WITH CHAPTER 2009-97, LAWS OF FLORIDA; PROVIDING FOR CODIFICATION; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION 1: Section 16-163 of the City of Lake Wales Code be amended by deleting the stricken through language and adding the underlined language as follows:

Sec. 16-163. Board of trustees

(a) Make-up of board. The sole and exclusive administration of and responsibilities for the proper operation of the retirement system and for making effective the provisions of this article are hereby vested in a board herein designated the plan administrator, consisting of five (5) trustees, two (2) of whom, unless otherwise prohibited by law, shall be legal residents of the city, who shall be appointed by the city commission, and two (2) of whom shall be full-time firefighter members of the system, who shall be elected by a majority of the firefighters who are members of the system. The fifth trustee shall be chosen for a ~~four-year~~two-year term by a majority of the previous four (4) trustees as provided for herein, and such person's name shall be submitted to the city commission. Upon receipt of the fifth person's name, the city commission shall, as a ministerial duty, appoint such person to the board as its fifth trustee. The fifth trustee shall have the same rights as each of the other four (4) trustees appointed or elected as herein provided and shall serve a ~~four-year~~two-year term unless the office is sooner vacated and may succeed himself in office. Each resident 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. Each firefighter trustee shall serve as trustee for a period of ~~two-(2)~~four (4) years, unless he sooner leaves the employment of the city as a firefighter or otherwise vacates his office as trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each firefighter may succeed himself in office. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other powers and responsibilities contained

herein, the power to bring and defend lawsuits of every kind, nature, and description.

(b) Terms and election. The regular term of office shall be ~~two (2)~~four (4) years. Employee members shall be elected in the following manner:

...

SECTION 2: Section 16-164 of the City of Lake Wales Code be amended by deleting the stricken through language and adding the underlined language as follows:

Sec. 16-164. Finances and fund management.

...

(6) The board shall have the following investment powers and authority:

a. The board shall be vested with full legal title to said fund, subject, however, in any event to the authority and power of the city commission to amend or terminate this fund, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under the plan, except as otherwise provided herein. All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.

b. All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be limited to:

1. Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this plan and pay the initial and subsequent premium thereon.

2. Time or savings accounts of a national bank, a state bank or a savings/building and loan association insured by the Federal Deposit Insurance Corporation.

3. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

4. Bonds, stocks, mutual funds, commingled funds administered by national or state banks, or evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided that the security of the corporation is traded on a nationally recognized exchange and holds a rating or ranking in one (1) of the three (3) highest classifications by a major rating or ranking service, and if such investments are made in a commingled fund administered by a state or national bank, then the rating or ranking of each issue in the commingled fund shall hold a rating or ranking within the top three (3) rating or ranking classifications of a major rating or ranking service.

5. Foreign securities in an amount not to exceed ~~ten (10)~~twenty-five (25) percent of the assets of the fund at market value, as allowed under F.S. § 175.071.

6. Such other investments as allowed by law.

c. The board shall not invest more than five (5) percent of its assets in the common stock or capital stock of any one (1) issuing company, nor shall the aggregate investment in any one (1) issuing company exceed five (5) percent of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible bonds at cost exceed sixty (60) percent of the assets of the fund.

d. The board may retain in cash and keep unproductive of income such amount of the fund as it may deem advisable, having regard for the cash requirements of the plan.

e. The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.

f. The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be in the best interest of the fund to exercise.

g. The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.

h. Where any action which the board is required to take or any duty or function which it is required to perform either under the terms herein or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it from a member, the city, or any other entity, of specific information, certification, direction or instructions, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.

i. Any overpayment or underpayment from the fund to a member, retiree or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board in such a manner that the actuarial equivalent of the benefit to which the member, retiree or beneficiary was correctly entitled to, shall be paid. Overpayment shall be charged against payments next succeeding the correction or collected in another manner if prudent. Underpayment shall be made up from the fund in a prudent manner.

j. The board shall sustain no liability whatsoever for the sufficiency of the fund to meet the payments and benefits herein provided for.

k. In any application to or proceeding or action in the courts, any judgment entered in such a proceeding or action shall be conclusive upon all persons.

l. Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agent; provided further, that legal title to said fund shall always remain in the board.

(7) The board shall not have any obligation or responsibility with respect to any action required by the plan to be taken by the city or, any member, nor shall the board be required to collect any contribution required under the plan, or determine the correctness of the amount of any contribution. The board need not inquire into or be responsible for any action or failure to act on the part of the others.

(8) The board and the city in no way guarantee the trust fund from loss or depreciation. The city does not guarantee the payment of any money which may be or becomes due to any person from the fund. The liability of the board to make any payment from the fund at any time and all times is limited to the then available assets of the fund.

(9) The board shall not be liable for the acts or omissions of any investment manager or managers the board may appoint, nor shall the board be under any obligation to invest or otherwise manage any asset of the plan which is subject to the management of a properly appointed investment manager. The board and any properly appointed investment manager may execute a letter of agreement as a part of this plan delineating the duties, responsibilities and liabilities of the investment manager with respect to any part of the trust fund under the control of the investment manager.

(10) At least once every three (3) years, the board shall retain an independent consultant professionally qualified to evaluate the performance of professional money managers. The independent consultant shall make recommendations to the board regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board at its next regularly scheduled meeting. The date, time, place, and subject of this meeting shall be advertised in a newspaper of general circulation in the municipality at least ten (10) days prior to the date of the hearings.

(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 3. Section 16-169 of the City of Lake Wales Code be amended by deleting the stricken through language and adding the underlined language as follows:

Sec. 16-169. Optional forms of benefits.

...

(b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one (1) or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and the member's retirement income benefits have commenced, the member may thereafter change his or her designated beneficiary up to two times ~~at any time, and but may only change his or her joint pensioner up to two times without the approval of the Board or the current designated survivor. The retiree member need not provide proof of the good health of the designated survivor being removed, and the designated survivor being removed need not be living by converting the form of benefit to a single life annuity, and then only if the designated joint pensioner and the member were married at the time of member's retirement and are divorced subsequent thereto, the joint pensioner is alive at the time of the change and the member submits a certified copy of his divorce decree.~~

(c) The consent of a member's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously designated beneficiaries to receive benefits under the system shall thereupon cease.

(d) Upon change of a retiree's beneficiary or joint pensioner in accordance with this section, the board shall adjust the retiree's monthly benefit by application of actuarial calculations to insure that the benefit paid is the actuarial equivalent of the retiree's then current benefit. Any such retiree shall pay the actuarial recalculation expenses and shall make repayment of any overage of previously paid pension benefits as a result of said recalculations. Each request for a change will be made in writing on a form prepared by the board and on completion will be filed with the board. In the event that no designated beneficiary survives the retiree, such benefits as are payable in the event of the death of the retiree subsequent to his or her retirement shall be paid as provided in section 16-170.

(e) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

(1) If a member dies prior to his or her normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under section 16-168.

(2) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement under the system, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the member upon his or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the member prior to his or her retirement.

(3) If both the retiree and the beneficiary (or beneficiaries) designated by member or retiree die before the full payment has been effected under any option providing for payment for a period certain and life thereafter, made pursuant to the provisions of subsection (a), the board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 16-170.

(4) If a member continues beyond his or her normal retirement date pursuant to the provisions of section 16-166, and dies prior to his or her actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid,

under the option to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his or her death occurred.

(f) Except as set forth in subsection (b), hereof, a retiree may not change his or her retirement option after the date of cashing or depositing his or her first retirement check.

(g) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the total commuted value of the remaining monthly income payments to be paid do not exceed five thousand dollars (\$5,000.00). Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with the regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

SECTION 4: Section 16-177 of the City of Lake Wales Code be amended by deleting the stricken through language and adding the underlined language as follows:

Sec. 16-177. Repeal or termination of plan and distribution of fund.

(a) The article 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 article 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 are nonforfeitable affected thereby, except to the extent that the assets of the fund may be determined to be inadequate.~~

(b) If this article 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 article, 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 article 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 is 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 municipality less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality and the state.

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

If, after 24 months after the date the plan terminated or the date the board received written notice that the contributions thereunder were being permanently discontinued, the municipality or special fire control district or the board of trustees of the firefighters' pension trust fund affected has not complied with all the provisions in this section, the Department of Management Services shall effect the termination of the fund in accordance with this section.

~~(c) 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 article, or if contributions to the plan are discontinued with the date of such discontinuation being determined by the board:~~

~~(1) Apportionment shall first be made in respect of each retired firefighter receiving a retirement income hereunder on such date, each person receiving a retirement income on such date on account of a retired, disabled, (but since deceased) firefighter, and each firefighter who has, by such date, become eligible for normal retirement but has not yet retired, in the amount required to provide such retirement income, provided that, if such asset value is 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.~~

~~(2) If there is any asset value remaining after the apportionment under subsection (1), apportionment shall next be made in respect of each firefighter in the service of the city on such date who has completed at least ten (10) years of certified service, who has contributed to the firefighter's pension fund for at least ten (10) years, and who is not entitled to an apportionment under subsection (1), in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the firefighter's credited service and earnings to such date, and each former participant then entitled to a benefit under the provisions of F.S. Ch. 175 who has not by such date reached his or her normal retirement date, in the amount required to provide the actuarial equivalent of the accrued normal retirement income to which he or she is entitled under F.S. §. 175.211; provided that, if such remaining asset value is 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.~~

~~(3) If there is any asset value after the apportionments under subsections (1) and (2), apportionment shall lastly be made in respect of each firefighter in the service of the city on such date who is not entitled to an apportionment under subsections (1) and (2) in the amount equal to the firefighter's total contributions to the plan to date of termination; provided that, if such remaining asset value is 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) In the event that there is asset value remaining after the full apportionment specified in subsection (1), (2) and (3), such excess shall be returned to the city, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the city and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the city and the state.~~

~~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 5: Section 16-178 of the City of Lake Wales Code be amended by deleting the stricken through language and adding the underlined language as follows:

Sec. 16-178. Exemption from execution; non-assignability.

Except as provided by law, 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 trustees 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 the benefits being received from the city and/or for benefits being received by the retiree from the certified

bargaining unit, 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. The Pension Fund shall not incur any liability for making or failing to make such withholdings.

SECTION 6: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7: If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

CERTIFIED AS TO PASSAGE this 4th day of May, 2010.

**CITY COMMISSION OF THE
CITY OF LAKE WALES, FLORIDA**

(SEAL)

L Jack Van Sickle
Mayor

ATTEST:

Clara Van Blaugou
City Clerk

December 5, 2009

Ms. Susy Pita C.P.P.T.
P.O. Box 490858
Leesburg, FL 34749-0858

Re: City of Lake Wales
Firefighters' Pension Plan and Trust Fund

Dear Susy:

Upon your request, we have reviewed the proposed Ordinance amending the plan to include changes resulting from the recent adoption of Chapter 2009-97, Laws of Florida, and have determined that its adoption will have no impact on the assumptions used in determining the funding requirements of the program.

Because the changes do not result in a change in the valuation results, it is our opinion that a formal Actuarial Impact Statement is not required in support of its adoption. However, since the Division of Retirement must be aware of the current provisions of all public pension programs, it is recommended that you send a copy of this letter and a copy of the fully executed Ordinance to each of the following offices:

Mr. Keith Brinkman
Bureau of Local Retirement Systems
Division of Retirement
P. O. Box 9000
Tallahassee, FL 32315-9000

Patricia Shoemaker
Municipal Police and Fire
Pension Trust Funds
Division of Retirement
P.O. Box 3010
Tallahassee, FL 32315-3010

If you have any questions, please let me know.

Sincerely,



Patrick T. Donlan
PTD/mjg