

ORDINANCE 2013-08

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 16-53 REGARDING IRS LIMITATIONS ON BENEFITS; AMENDING SECTION 16-54 REGARDING THE LATEST DATE TO BEGIN DISTRIBUTION OF BENEFITS UNDER THE IRS CODE; AMENDING SECTION 16-61 REGARDING ELIGIBLE ROLLOVER DISTRIBUTIONS; AMENDING SECTION 16-62 REGARDING SEPARATION FROM SERVICE FROM EMPLOYMENT FOR MILITARY SERVICE

WHEREAS, the Internal Revenue Code is periodically revised by Congress, including the adoption of the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "Heart Act") relating to the rights of military personnel;

WHEREAS, the General Employees' Pension Plan and Trust is a qualified governmental plan operating under Internal Revenue Code Sections 401(a) and 414(d) and is required to periodically update plan provision; and

WHEREAS, the Board of Trustees of the City of Lake Wales General Employees' Pension Plan and Trust has recommended adoption of this ordinance.

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

Section 1: Section 16-53 of the Code of Ordinances of the City of Lake Wales is hereby repealed in its entirety and amended to read as follows:

Sec. 16-53. Limitation on benefits.

(a) The benefit of any member may not exceed the annual benefit authorized by Section 415(b) of the Internal Revenue Code. For purposes of determining whether a member's benefit exceeds the limitations of this Section, the following shall apply:

(1) Adjustment if benefit not a straight life annuity.

(i) If the form of benefit is other than a straight life annuity, such benefit shall be adjusted actuarially to the equivalent of a straight life annuity to determine whether the limitations set forth in this Section are met.

(ii) For the purposes of this Section, no adjustment shall be taken into account for any ancillary benefit which is not directly related to retirement income benefits.

(2) Adjustment if benefit commences before age sixty-two (62).

(i) If the benefit distribution commences before age sixty-two (62), the actual retirement benefit shall not exceed the adjusted dollar limitation. The adjusted dollar limitation shall be the equivalent, determined in a manner consistent with reduction of benefits for early retirement under Section 415(b)(2)(E) of the Internal Revenue Code, of one hundred sixty thousand dollars, as of January 1, 2002, adjusted annually pursuant to Section 415(d) of the Internal Revenue Code, commencing at age sixty-two (62). For purposes of this adjustment, survivor benefits, that portion of a joint and survivor annuity which is the survivor benefit, and any other ancillary benefits shall not be taken into account.

(ii) No adjustment shall be required under this Subsection if the member is a "qualified participant", as that term is defined in IRC §415(b)(2)(H).

(iii) No adjustment shall be required under this Subsection if the benefit is payable due to the member's disability or preretirement death.

(3) If the benefit distribution commences after age sixty-five (65), the adjusted dollar limitation shall be the equivalent, determined in a manner consistent with the adjustments under Section 415(b)(2)(E) of the Internal Revenue Code, of one hundred sixty thousand dollars, as of January 1, 2002, adjusted annually pursuant to Section 415(d) of the Internal Revenue Code, commencing at age sixty-five (65). For purposes of this adjustment, survivor benefits, that portion of a joint and survivor annuity which is the survivor benefit, and any other ancillary benefits shall not be taken into account.

(b) The maximum retirement benefit payable under this Section to any member who has completed less than ten (10) years of credited service shall be the number determined under Subsection (a) multiplied by a fraction, the numerator of which shall be the number of years of service, and the denominator of which shall be ten (10).

(c) Notwithstanding the foregoing, the benefit payable to a member shall not be deemed to exceed the limits of this Section if the total benefits payable to a member under all defined benefit plans maintained by the city do not exceed ten thousand (10,000) dollars and the city has never maintained a defined contribution plan in which the member has participated.

~~Sec. 16-53. — Maximum pension.~~

~~(a) Basic limitation. Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a member under this plan shall not exceed ninety thousand dollars (\$90,000.00) as such limitation under section 415 of the Code may be adjusted from time to time. For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by treasury regulations, so that such benefits are the actuarial equivalent of a straight life annuity. For purposes of this section, the following benefits shall not be taken into account:~~

- ~~(1) Any ancillary benefit which is not directly related to retirement income benefits;~~
 - ~~(2) Any other benefit not required under section 415(b)(2) of the Code and regulations thereunder to be taken into account for purposes of the limitation of section 415(b)(1) of the Code.~~
- ~~(b) Participation in other defined benefit plans. The limitation of this section with respect to any member who at any time has been a member in any other defined benefit plan (as defined in section 414(j) of the Code) maintained by the city shall apply as if the total benefits payable under all defined benefit plans in which the member has been a member were payable from one (1) plan.~~
- ~~(c) Adjustments in limitations~~
- ~~(1) In the event the member's retirement benefits become payable before age sixty two (62), the ninety thousand dollar (\$90,000.00) limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of section 415(b) of the Code, but not less than seventy five thousand dollars (\$75,000.00), if the benefit begins at or after age fifty five (55).~~
 - ~~(2) In the event the member's retirement benefit becomes payable before age fifty five (55), the seventy five thousand dollar (\$75,000.00) limitation shall be reduced from age fifty five (55) in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of section 415(b) of the Code.~~
 - ~~(3) The reductions provided for in the previous two (2) paragraphs shall not be applicable to pre-retirement death benefits paid pursuant to section 16-47.~~
 - ~~(4) If the member's retirement benefit becomes payable after age sixty five (65), for purposes of determining whether this benefit meets the limitation set forth in paragraph (a) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty five (65). This adjustment shall be made using an assumed interest rate of five (5) percent and shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his or her delegate.~~
- ~~(d) Less than ten (10) years of service. The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of credited service with the city shall be the amount determined under paragraph (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten (10). The reduction provided for in this subsection shall not be applicable to pre-retirement death benefits paid pursuant to section 16-47.~~

- ~~(e) Ten thousand dollar (\$10,000.00) limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the limitations set forth in this section if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the city contributes, do not exceed ten thousand dollars (\$10,000.00) for the applicable plan year and for any prior plan year and the city has not at any time, maintained a qualified defined contribution plan in which the member participated.~~
- ~~(f) Member in defined contribution plan. In any case where a member under this plan is also a member in a "defined contribution plan" as defined in section 414(i) of the Code, maintained by the city, the sum of the "defined benefit plan fraction" and the "defined contribution plan fraction" (both as defined in section 415(e) of the Code) shall not, subject to the restrictions and exceptions contained in section 2004 of the Act, exceed 1.0. This limitation is repealed effective January 1, 2000.~~
- ~~(g) Reduction of benefits. The reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the trustees and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be established by the trustees and the plan administrator for such other provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board of trustees and the plan administrator of all other plans covering such member.~~
- ~~(h) Cost of living adjustments. The limitations, as stated in paragraphs (a), (b), (e), and (f) herein, shall be adjusted to the time payment of a benefit begins, in accordance with any cost of living adjustments prescribed by the Secretary of the Treasury pursuant to section 415(d) of the Code.~~
- ~~(i) Additional limitation on pension benefits. Notwithstanding anything herein to the contrary, members of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from another retirement system or plan. This restriction does not apply to social security benefits or federal benefits under chapter 67, title 10, U.S. Code.~~
- ~~(j) Provisions of section 16-53 prevail. The provisions of this section 16-53 shall prevail over all other provisions of the plan to the contrary.~~

Section 2: Section 16-54 of the Code of Ordinances of the City of Lake Wales is hereby repealed in its entirety and amended to read as follows:

Sec. 16-54. Latest date to begin distribution of benefits.

Notwithstanding any other provision of this plan to the contrary, a member's benefit shall be distributed as follows:

- (a) A member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's Required Beginning Date, as defined in Paragraph (d) of this Section.
- (b) If the member dies before required distributions have begun, the member's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the member's surviving spouse is the member's sole designated beneficiary, distributions to the surviving spouse must begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date on or before December 31 of the calendar year in which the member would have attained age 70 ½.
 - (2) If the member's sole designated beneficiary is not the member's surviving spouse, distributions to the designated beneficiary must begin by December 31 of the calendar year immediately following the calendar year in which the member died.
 - (3) If the member does not have a designated beneficiary, the member's entire interest must be distributed within five years of the date of the member's death.
- (c) If the member dies after required distributions have begun, the remaining portion of the member's benefit must be distributed at least as rapidly as under the method of distributions being used at the time of the member's death.
- (d) Required Beginning Date is the later of:
April 1st of the calendar year following the calendar year in which the member attains or will have attained the age of 70 ½; or
April 1st of the calendar year following the calendar year in which the member retires.

~~Sec. 16-54. Latest date of begin distribution of benefits.~~

~~Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan after the effective date of this ordinance, must satisfy the following conditions:~~

- ~~(1) If the retirement income is payable before the member's death,~~

- ~~a. It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70½), or the calendar year in which the member retires;~~
- ~~b. The distribution shall commence not later than the calendar year defined above, and:
 - ~~1. Shall be paid over the life of the member or over the lifetimes of the member and spouse, issue or dependent; or~~
 - ~~2. Shall be paid over the period extending not beyond the life expectancy of the member and spouse, issue or dependent.~~~~

~~Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before their entire interest in the plan has been distributed, the remaining portion of such interest in the plan, if any, shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.~~

- ~~(2) If the member's death occurs before the distribution of their interest in the plan has commenced, member's entire interest in the plan, if any, shall be distributed within five (5) years of member's death, unless it is to be distributed in accordance with the following rules:
 - ~~a. The member's remaining interest in the plan is payable to their spouse, issue or dependent;~~
 - ~~b. The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and~~
 - ~~c. Such distribution begins within one (1) year of the member's death unless the member's spouse shall receive the remaining interest in which case the distribution need not begin before the date on which the member would have attained age seventy and one-half (70½) and if the spouse dies before the distribution to the spouse begins, this section shall be applied as if the spouse were the member.~~~~

Section 3: Section 16-61 of the Code of Ordinances of the City of Lake Wales is hereby repealed in its entirety and amended to read as follows:

Sec 16-61. Eligible Rollover Distributions

- (a) If the distributee of any eligible rollover distribution under this plan elects to have such distribution paid directly to an eligible retirement plan, and specifies the eligible retirement plan to which such distribution is to be paid, such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.
- (b) For the purposes of this Section, the term "eligible retirement plan" shall be given the same definition as provided for in Section 401(a)(31)(E) of the Internal Revenue Code and the regulations thereunder.

(c) For the purposes of this Section, the term “eligible rollover distribution” shall be given the same definition as provided for in Section 401(a)(31)(D) of the Internal Revenue Code and the regulations thereunder.

(d) Notice of Eligible Rollover Distributions

(1) The members’ retirement plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient of such distribution explaining the following:

- (i) the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and that the automatic distribution by direct transfer applies to certain distributions in accordance with §401(a)(31)(B) of the Internal Revenue Code,
- (ii) the provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan,
- (iii) the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution,
- (iv) the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

(2) For the purposes of Subsection (a), the term “reasonable period of time” shall have the meaning assigned to it under §401(a)(31) of the Internal Revenue Code and the regulations thereunder.

~~Sec. 16-61. — Direct transfers of eligible rollover distributions.~~

~~(a) *General.* A distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.~~

~~(b) *Definitions.*~~

~~(1) — *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income.~~

~~(2) — *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity~~

~~described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.~~

- ~~(3) *Distributee:* A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with the regard to the interest of the spouse.~~
- ~~(4) *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.~~

Section 4: Section 16-62 of the Code of Ordinances of the City of Lake Wales is hereby amended to read as follows:

Sec. 16-62. Separation from employment for military service.

- (a) ~~The years or parts of a year that a member serves in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, performs qualified military service after separation from employment as a general employee with the city to perform training or service, and reemployment on or after December 12, 1994, shall be added to the member's years of credited service for all purposes, including vesting, provided that:~~
 - (1) The general employee must return to their employment as a general employee within one (1) year from the earlier of the date of their military discharge or their release from service.
 - (2) The general employee deposits into the fund the same sum that the member would have contributed if they had remained a general employee during their absence. The general employee must deposit all missed contributions within a period equal to three (3) times the period of military service, but not more than five (5) years or he or she will forfeit the right to receive credited service for his or her military service pursuant to this section.
 - (3) The maximum credit for military service pursuant to this section shall be five (5) years.
 - (4) In order to qualify for the purchase of credited service pursuant to this section, the general employee must have been discharged or released from service under honorable conditions.
 - (5) Effective January 1, 2007, in the case of a member who dies while on a leave of absence to perform qualified military service as described in IRC §414(u), the member's beneficiary shall be entitled to any benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided

under the plan had the member resumed and then terminated employment on account of death, in accordance with IRC §401(a)(37).

(5) (6) This section is intended to meet or exceed the minimum requirements of the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), (P.L. 103-353) and the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act"). To the extent that this section does not meet the minimum standards of USERRA or the HEART Act, as ~~it~~ they may be amended from time to time, the minimum standards shall apply.

Section 5. 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 6. 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 7. All Ordinances or Resolutions or parts of Ordinances or Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

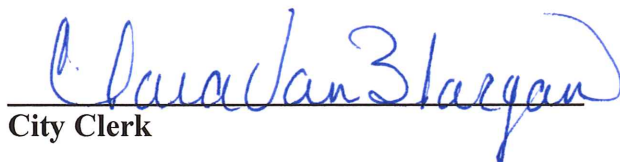
CERTIFIED AS TO PASSAGE this 21st day of May, 2013.

CITY OF LAKE WALES, FLORIDA



Mayor/Commissioner

ATTEST:



City Clerk