

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

The CITY OF HOLLYWOOD, FLORIDA,

Plaintiff,

v.

CASE NO.: CACE15-017333

**The BOARD OF TRUSTEES
OF THE EMPLOYEES RETIREMENT
FUND OF THE CITY
OF HOLLYWOOD, and
The BOARD OF TRUSTEES
OF THE CITY OF HOLLYWOOD
FIREFIGHTERS RETIREMENT
SYSTEM, and
The BOARD OF TRUSTEES
OF THE CITY OF HOLLYWOOD
POLICE OFFICERS
RETIREMENT SYSTEM,**

Defendants.

_____ /

JOINT MOTION TO RESUME LITIGATION

Plaintiff, CITY OF HOLLYWOOD, and Defendant, THE BOARD OF TRUSTEES OF THE EMPLOYEES RETIREMENT FUND OF THE CITY OF HOLLYWOOD, jointly, through undersigned counsel, hereby move for an order lifting the current stay and resuming this litigation, and as grounds for the instant Motion states:

1. This matter was filed on or about September 29, 2015 by Plaintiff, the City of Hollywood, Florida.
2. On or about April 14, 2016, all parties caused a “Joint Motion to Abate” to be filed in order to comply with Chapter 164, Fla. Stat., the Florida Intergovernmental Conflict Resolution Act.

3. On April 19, 2016, the Court entered an “Order Abating Case” until the procedural requirements of the Act have been exhausted.

4. On August 29, 2018, the City Commission passed a Resolution by sufficient margin authorizing this matter to proceed without exhausting the procedures contained in Chapter 164. A true and correct copy of this Resolution is attached hereto as Exhibit A.

5. The undersigned counsel for Plaintiff has conferred with counsel for Defendants, THE BOARD OF TRUSTEES OF THE CITY OF HOLLYWOOD FIRE FIGHTERS RETIREMENT SYSTEM, and THE BOARD OF TRUSTEES OF THE CITY OF HOLLYWOOD POLICE OFFICERS RETIREMENT SYSTEM and is authorized to represent that, while they do not join in the instant motion, they have no objection to the granting of the relief requested herein.

WHEREFORE, Plaintiff, CITY OF HOLLYWOOD, and Defendant, THE BOARD OF TRUSTEES OF THE EMPLOYEES RETIREMENT FUND OF THE CITY OF HOLLYWOOD, hereby jointly request that this Honorable Court enter an order lifting the stay in this matter so that the instant litigation can resume.

DATED this 8th day of October, 2018.

Respectfully submitted,

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Hollywood Retirement System*

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 8, 2018, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Filing Portal and that a true and correct copy of the foregoing has been served via E-mail to the following:

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/s/ J. Robert McCormack

Attorney

EXHIBIT A

RESOLUTION NO. R-2018-249

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, REGARDING SUPPLEMENTAL DISTRIBUTIONS MADE BY THE CITY'S PENSION BOARDS; FINDING AN IMMEDIATE DANGER OR THE COMPROMISE OF SIGNIFICANT LEGAL RIGHTS IF A COURT PROCEEDING DOES NOT TAKE PLACE BEFORE THE FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT IS COMPLIED WITH.

WHEREAS, each of the defined benefit pension plans sponsored by the City of Hollywood - general employees, fire, and police - provides for the pension board to make a supplemental distribution to eligible retirees when the rate of investment return on the assets of the pension fund exceeds a certain percentage; and

WHEREAS, supplemental distributions are governed not only by the pension plans but also by Florida Statutes Section 112.61; and

WHEREAS, each of the City's pension boards (collectively, the "Boards") has made one or more supplemental distributions totaling millions of dollars which, in the opinion of the City Attorney, violated Section 112.61 and/or the applicable pension plan; and

WHEREAS, those supplemental distributions have had the effect of increasing, by millions of dollars, the City's annual required contributions to the pension plans; and

WHEREAS, on July 8, 2015, the City Commission adopted Resolution No. R-2015-214, which authorized the filing of one or more civil actions against the Boards and any other appropriate parties to enforce the City's rights with respect to supplemental distributions made by the Boards; and

WHEREAS, Florida Statutes Chapter 164, known as the Florida Governmental Conflict Resolution Act (the "Act"), creates lengthy procedures ("Chapter 164 Procedures") that must be complied with prior to the filing of a civil action by one governmental entity against another governmental entity, unless the first government entity, by a three-fourths vote of its governing body, finds that an immediate danger to the health, safety, or welfare of the public requires immediate action, or that significant legal rights will be compromised if a court proceeding does not take place before the Chapter 164 procedures are complied with; and

WHEREAS, Resolution No. R-2015-214 contains the findings that are necessary to proceed immediately to a civil action without following the Chapter 164 Procedures; and

WHEREAS, Resolution No. R-2015-214 was approved by a 4-3 vote, but six affirmative votes of the City Commission were required to meet the three-fourths vote required by the Act; and

WHEREAS, pursuant to Resolution No. R-2015-214, the City filed a civil action (the "Action") against the Boards, but the Action was abated by court order and remains abated "until the procedural requirements of the Act have been exhausted"; and

WHEREAS, although the City and the Boards have attempted to follow the Chapter 164 Procedures, it would likely take months, if not a year or more, to complete them; and

WHEREAS, City staff believes it would be appropriate for the City Commission to reiterate the findings that were made in Resolution No. R-2015-214; and

WHEREAS, the City Attorney believes that if the City Commission makes the required findings by a 6-1 or 7-0 vote before the Chapter 164 Procedures are completed, a motion by the City to lift the order abating the Action could be granted, the Chapter 164 Procedures will not have to be completed, and the City will be able to move forward with the Action.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are incorporated in this Resolution.

Section 2: That it finds that, with respect to the current dispute over supplemental distributions made by the Boards, an immediate danger to the health, safety or welfare of the public requires immediate action or significant legal rights will be compromised if a court proceeding does not take place before the provisions of the Act are complied with, and as a result, waives the Chapter 164 proceedings.

RESOLUTION REGARDING SUPPLEMENTAL DISTRIBUTIONS MADE BY THREE PENSION BOARDS; MAKING FINDINGS NECESSARY, UNDER FLORIDA STATUTES CHAPTER 164, TO MOVE FORWARD WITH CIVIL ACTION FILED BY THE CITY AND SUBSEQUENTLY ABATED BY THE COURT.

Section 3: That this Resolution shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 29 day of August, 2018.



JOSH LEVY, MAYOR

ATTEST:



PATRICIA A. CERNY, MMC, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY for the use and reliance of the City of Hollywood, Florida only:



DOUGLAS R. GONZALES
CITY ATTORNEY