

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

CONSOLIDATED CASE NO. 12-001000 DIV. 09

THE BOARD OF TRUSTEES of the
CITY OF HOLLYWOOD FIREFIGHTERS'
RETIREMENT SYSTEM, and
WILLIAM HUDDLESTON,

Plaintiffs,

and

CITY OF HOLLYWOOD, FLORIDA,
a municipal corporation,

Defendant.

**DEFENDANT CITY'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS'
THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
OF PLAINTIFFS, BOARD OF TRUSTEES OF THE CITY OF HOLLYWOOD POLICE
OFFICERS' RETIREMENT SYSTEM AND VAN SZETO
AND COUNTERCLAIM FOR DECLARATORY JUDGMENT AND INJUNCTION**

Defendant, CITY OF HOLLYWOOD ("City"), through its counsel, Bryant Miller Olive, hereby files this Answer and Affirmative Defenses to Plaintiffs' Third Amended Complaint for Declaratory and Injunctive Relief of Plaintiffs, Board of Trustees of the City of Hollywood Police Officers' Retirement System and Van Szeto and Counterclaim for Declaratory Judgment and Injunction. The following headings and paragraphs of this Answer correspond to the headings and paragraphs of the Complaint.

ANSWER

In response to the initial unnumbered paragraph of the Plaintiffs' Third Amended Complaint for Declaratory and Injunctive Relief of Plaintiffs, Board of Trustees of the City of

Hollywood Police Officers' Retirement System and Van Szeto ("Complaint"), the City states as follows:

In response to the first sentence, the City admits that Plaintiffs have filed the Complaint but deny that there is any basis for the Complaint; the City admits it is a municipal corporation; the City admits the Complaint challenges the validity of Ordinance No. O-2011-27 ("Ordinance"), but denies there is any basis for the challenge; the City admits that Plaintiffs purport to attach a copy of the Ordinance as Exhibit A of the Complaint, but avers that the Ordinance speaks for itself and, to the extent the document attached as Exhibit A differs from the actual Ordinance, the City denies that Exhibit A is that Ordinance.

In response to the second sentence, the City admits that the City Commission passed and adopted the Ordinance on September 7, 2011, and admits the balance of the allegations of the second sentence. The City further avers that a large majority of voters approved the Ordinance in an election held on September 13, 2011, and that it did take effect on September 13, 2011.

In response to the third sentence, the City admits that the City Commission on September 7, 2011, passed and adopted two other ordinances, one of which applied to the retirement plan offered by the City to its police employees and one of which applied to the retirement plan offered by the City to its general employees. The City denies that the sole "design" of any of the three ordinances referred to so far was to "lower pension benefits," but admits that the ordinances had that effect for some but not all employees, among other effects.

In response to the fourth sentence set off in parentheses, the City admits that the three aforementioned ordinances are referred to as the "ordinances" in the Complaint and will be referenced as the "Ordinances" in this Answer.

In response to the fifth sentence, the City admits that the Ordinances were the subject of an election held on September 13, 2011, and that the Ordinances were approved by a large majority of voters. The City admits that this election is referred to as the “Referendum” in the Complaint and that the City will, for the sake of clarity, likewise reference the election as the “Referendum” for purposes of this Answer.

In response to the sixth sentence, the City admits that Plaintiffs seek the declaration and remedies stated, but deny that there is any basis for such declaration or remedies.

JURISDICTION AND VENUE

1. The City admits Plaintiffs invoke the Court’s jurisdiction but denies that there is any basis for the Court to exercise that jurisdiction.
2. The City admits that venue is proper in Broward County.

PARTIES

Board of Trustees

3. In response to paragraph numbered 3 of the Complaint, the City responds as follows:

In response to the first sentence, the City admits that Section 33.037 of the City Code pertains to the Board of Trustees. The City avers that the provisions of Code Section 33.037 speak for themselves and deny the description of those provisions to the extent they conflict with the language of the Code. The City avers that the Board of Trustees has responsibility under the Code for the administration and proper operation of the City of Hollywood Police Officers’ Retirement System. The City admits that said system is referred to in the Complaint as the “Retirement System” and will be likewise referenced in this Answer.

In response to the second sentence, the City admits that the Board of Trustees is composed of one member appointed by the City's mayor, one member appointed by the City Commission, five members elected by police officers, and the Chief of Police, who is a non-voting member. The City admits that the Retirement System's trust fund is referred to in the Complaint as the "Fund" and will be likewise referenced in this Answer.

4. In response to paragraph number 4 of the Complaint, the City admits that Section 33.132 of the City Code states: "The general administration and responsibility for the proper operation of the system and for making effective the provisions of this subchapter are hereby vested in a Board of Trustees"

5. Admitted.

6. Admitted.

Officer Van Szeto

7. In response to paragraph number 7 of the Complaint, the City responds as follows:

In response to the first sentence, the City is without sufficient knowledge to form a belief as to the truth of the allegations and, therefore, denies them.

In response to the second sentence, the City is without sufficient knowledge to form a belief as to the truth of the allegations and, therefore, denies them.

In response to the third sentence, the City admits that Szeto is employed as a police officer, is a member of the Retirement System, and has contributed to the Retirement System throughout his career as a Hollywood police officer.

In response to the fourth sentence, the City is without sufficient knowledge to form a belief as to the truth of the allegations and, therefore, denies them.

In response to the fifth sentence, the City is without sufficient knowledge to form a belief as to the truth of the allegations and, therefore, denies them.

8. In response to the allegations of paragraph numbered 8 of the Complaint, the City is without sufficient knowledge to form a belief as to the truth of the allegation that Szeto is a member of the union and, therefore, denies it. The City admits the Broward County PBA represents a bargaining unit of City police officers. The City avers that the provisions of the City Code governing the Retirement System have, at all relevant times, been consistent with the collectively bargained terms and conditions of employment of bargaining unit police or with terms and conditions of employment as lawfully modified pursuant to the Florida Public Employees Relations Act, including Florida Statutes Section 447.4095, "Financial Urgency."

9. In response to the allegations of paragraph numbered 9 of the Complaint, the City is without sufficient knowledge to form a belief as to the truth of the allegations and, therefore, denies them.

The City

10. In response to the allegations of paragraph numbered 10 of the Complaint, the City admits it is a municipal corporation in Broward County. The City admits that it is responsible for the enforcement of the City Code. The City denies it is responsible for the conduct of any referendum election.

HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM

11. Admitted.

12. In response to the allegations of paragraph numbered 12 of the Complaint, the City states that the Ordinance speaks for itself and, therefore, denies the allegations to the extent they differ from the language of the Ordinance. The City denies that the sole "design" of the

Ordinance was to “lower ... pension benefits,” but admits that the Ordinance had that effect for some but not all employees, among other effects. The City states that the word “substantially” as used in the last sentence of paragraph numbered 12 of the Complaint is argument, requires no response, and, therefore, denies the same. The City denies the balance of the allegations of paragraph numbered 12 of the Complaint.

13. In response to the allegations of paragraph numbered 13 of the Complaint, the City admits the first sentence. The City admits that the Ordinance amends Section 33.126 of the City Code. The City admits that amendments to Section 33.126 of the City Code change how remuneration and average final compensation are to be calculated for some Retirement System members after September 30, 2011. The City denies that the sole purpose of these changes is to reduce benefits to Retirement System members, but admits the changes may have that effect for some members. The City denies the balance of the allegations of paragraph numbered 13 of the Complaint.

14. In response to the allegations of paragraph numbered 14 of the Complaint, the City states that the City Code speaks for itself and, therefore, denies the allegations to the extent they differ from the language of the City Code. Moreover, the allegations of paragraph numbered 14 of the Complaint constitute legal conclusions, require no response, and, therefore, are denied.

15. The City admits the first sentence of paragraph numbered 15 of the Complaint with the proviso that DROP permits retirement only for purposes of the Pension System and, therefore, is not “retirement” in the ordinary sense of the word; moreover, DROP is an attribute of employment and not a retirement benefit. The City admits that the Ordinance provides that some, but not all, members who have not entered DROP by September 30, 2011, shall thereafter

not be able to enter DROP and that such members would, therefore, be ineligible for certain benefits as set forth in the Ordinance. The City denies the balance of the allegations of paragraph numbered 15 of the Complaint and further denies the allegations pertaining to the provisions of the Ordinance and City Code to the extent they differ from the language of the Ordinance and City Code. The City denies the legal argument and conclusions alleged in paragraph numbered 15 of the Complaint.

16. In response to paragraph numbered 16 of the Complaint, the City states that Code Section 33.131 speaks for itself and denies the allegations to the extent they differ from the language of the City Code. The City admits the allegations of the second sentence. The City admits the allegations of the third sentence.

17. Admitted.

18. Denied.¹ The City avers that terms of employment of represented employees that are changed through the collective bargaining process, including impasse, that are inconsistent with an ordinance do not take effect until such ordinance is amended. Fla. Stat. § 447.309(3).

19. The City denies the allegations of the first sentence of paragraph numbered 19 of the Complaint. The City admits that the City Commission adopted – not “issued” – Resolutions numbered R-2011-117 and R-2011-118 on May 18, 2011. The City admits those Resolutions declared the existence of financial urgency in fiscal years 2010-2011 and 2011-2012 based on projected budget shortfalls for both years. The City denies the balance of the allegations of paragraph numbered 19 of the Complaint.

¹ The reference in Complaint paragraph numbered 18 to “County Code” is, presumably, intended to be to the City Code and is interpreted as such herein.

20. In response to the allegations of paragraph numbered 20 of the Complaint, the City admits that the Resolutions state that the financial urgencies require the modification of labor agreements. The City denies that the number of such agreements was three, as stated in the Complaint; the number was five, as stated in the Resolutions. The City states that the Resolutions speak for themselves and deny the allegations of paragraph numbered 20 of the Complaint to the extent that they differ from the language of the Resolutions. The City denies that the “enactment” or passage of the Ordinance had the effect of implementing “these modifications.” The City states that the passage of the Ordinance was a part of effecting the implementation of some modifications of the labor agreement between the City and the union representing certain police employees.

**THE CITY’S REFERENDUM APPROVAL PROCESS FAILED TO COMPLY WITH
STATE AND CITY LAW**

City’s Referendum Approval Requirements

21. In response to the allegations of paragraph numbered 21 of the Complaint, the City admits that Section 33.138 of the City Code addresses amendment of the Retirement System. The City states that the City Code speaks for itself and, therefore, denies the allegations to the extent they differ from the language of the Code. The City further states that the Complaint’s quotation of the section in the second sentence of the paragraph is incomplete and omits pertinent language, to wit: “... or held in conjunction with a primary, general, or special election held in the city.”

22. In response to the allegations of the first sentence of paragraph numbered 22 of the Complaint, the City states that it is without sufficient knowledge to form a belief as to the truth of the assertion that members of the Retirement System did not vote on the amendments

and, therefore, denies the same. The allegations of the second sentence constitute legal argument or conclusion, do not require a response, and, therefore, the City denies them. The City denies the balance of the allegations of paragraph numbered 22 of the Complaint.

23. The City denies the allegations of the first sentence of paragraph numbered 23 of the Complaint. In response to the allegations of the second sentence of paragraph numbered 23 of the Complaint, the City states that the City Code speaks for itself and, therefore, denies the allegations to the extent that they are incomplete or otherwise differ from the language of the City Code.

24. In response to the allegations of paragraph numbered 24 of the Complaint, the City states that the City Code speaks for itself and, therefore, denies the allegations to the extent that they are incomplete or otherwise differ from the language of the City Code.

25. In response to the allegations of paragraph numbered 25 of the Complaint, the City states that the City Code speaks for itself and, therefore, denies the allegations to the extent that they are incomplete or otherwise differ from the language of the City Code.

26. In response to the allegations of paragraph numbered 26 of the Complaint, the City states that the Florida Statutes speak for themselves and, therefore, denies the allegations to the extent that they are incomplete or otherwise differ from the language of the Statutes.

27. In response to the allegations of paragraph numbered 27 of the Complaint, the City states that the allegations constitute legal argument and conclusions, require no response, and, therefore, the City denies them.

28. Denied. The City states that it passed on first reading Ordinance No. PO-2011-23 on July 18, 2011, and passed and adopted the Ordinance on September 7, 2011, as Ordinance No. O-2011-27.

29. In response to the allegations of paragraph numbered 29 of the Complaint, the City states that the Ordinance speaks for itself and, therefore, denies the allegations to the extent that they are incomplete or otherwise differ from the language of the Ordinance.

30. In response to the allegations of paragraph numbered 30 of the Complaint, the City admits that Plaintiffs purport to attach a copy of the ballot as Exhibit D of the Complaint, but avers that the ballot speaks for itself and, to the extent the document attached as Exhibit D differs from the actual ballot, the City denies that Exhibit D is that ballot. Similarly, the City denies the balance of the allegations of paragraph numbered 30 of the Complaint.

Improper Ballot Language

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. In response to the allegations of paragraph numbered 38 of the Complaint, the City states that the ballot speaks for itself and, therefore, denies the allegations to the extent that they are incomplete or otherwise differ from the language of the ballot.

39. In response to the allegations of paragraph numbered 39 of the Complaint, the City states that the allegations constitute legal argument or conclusions, require no response, and, therefore denies them.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

COUNT I – COMPLAINT FOR DECLARATORY RELIEF

47. The City’s responses to the allegations of paragraphs number 1 through 46 are realleged and incorporated herein by reference.

48. In response to the allegations of paragraph numbered 48 of the Complaint, the City states that the allegations constitute legal argument or conclusions, require no response, and, therefore denies them.

49. In response to the allegations of paragraph numbered 49 of the Complaint, the City states that the allegations constitute legal argument or conclusions, require no response, and, therefore denies them.

50. In response to the allegations of paragraph numbered 50 of the Complaint, the City is without sufficient information to form a belief as to the truth of what is “critically important” to the Board of Trustees and, therefore, denies the allegations.

51. Denied.

52. Denied.

53. Denied. The City further states that no declaration is necessary and that the Board of Trustees is required to follow the City Code as amended.

54. Denied.

In response to the unnumbered “WHEREFORE” paragraph of the Complaint on page 13, and all its subparts, the City admits that Plaintiffs seek the declarations and other relief set forth, but deny that there is any need for the declarations or that Plaintiffs are entitled to them.

COUNT II – COMPLAINT FOR INJUNCTIVE RELIEF

55. The City’s responses to the allegations of paragraphs number 1 through 46 are realleged and incorporated herein by reference.

Irreparable Injury

56. In response to the allegations of paragraph numbered 56 of the Complaint, the City admits that the Board of Trustees is required to administer the Retirement System in the proper legal manner. The City further states that the proper legal manner in which the Retirement System should be administered is for the Board of Trustees to follow the City Code as amended.

57. Admitted.² The City further states that the Board of Trustees should fulfill such duties by administering the Retirement System according to the City Code as amended.

58. Admitted. The City further states that the Board of Trustees should fulfill such duties by administering the Retirement System according to the City Code as amended.

59. In response to the allegations of paragraph numbered 59 of the Complaint, the City is without sufficient information to form a belief as to the truth of what is “critically important” to the Board of Trustees and, therefore, denies the allegations.

60. Denied.

² Plaintiffs, apparently inadvertently, refer to the “Second Amended Complaint” instead of the Third Amended Complaint.

61. In response to the allegations of paragraph numbered 61, the City states that the allegations are legal argument or conclusions, require no response, and, therefore, are denied.

62. Denied.³

63. Denied.

Clear Legal Right

64. Denied.

Lack of Adequate Remedy at Law

65. In response to the allegations of paragraph numbered 65 of the Complaint, the City admits that Plaintiffs request the relief stated. The City denies that there is any need or basis for the relief and deny the balance of the allegations.

66. Denied.

Not Contrary to the Public Interest

67. Denied.

68. In response to the allegations of paragraph numbered 68, the City admits that it is in the public interest for the City to follow the law. The City further states that it has and does follow the law and that the Pension Board should do the same. The City specifically denies the allegations of the second sentence of paragraph numbered 68 and denies the balance of the allegations not admitted.

69. In response to the allegations of paragraph numbered 69, the City states that the allegations are legal argument or conclusions or rhetoric, require no response, and, therefore, deny them.

³ Plaintiffs, apparently inadvertently, refer to the “Second Amended Complaint” instead of the Third Amended Complaint.

70. Denied.

In response to the unnumbered “WHEREFORE” paragraph of the Complaint on page 17, and all its subparts, the City admits that Plaintiffs seek the relief set forth, but deny that there is any need for the relief or that Plaintiffs are entitled to it.

The City denies any allegation not specifically admitted. Having fully answered all allegations of the Complaint, the City hereby interposes the following affirmative defenses.

AFFIRMATIVE DEFENSES

1. Article V of the City Charter does not apply to the election at issue herein. By its plain language and that of other provisions of the Charter, Article V applies only to elections sought to repeal a measure passed by the City Commission and which are commenced solely by petition. The election at issue was not a repeal and was not commenced by petition.

2. The ballot title and summary inform the voter clearly and unambiguously of the chief purposes of the amendment.

3. The ballot title and summary do not mislead the public.

4. Plaintiffs are not entitled to the relief they seek because, even if the election at issue were to be found invalid, the Ordinance was validly passed and effectuated by the City Commission and pursuant to the collective bargaining, impasse, and financial urgency processes, and the purported invalidity of the election could have no effect on the validity and effectiveness of the Ordinance.

5. The City reserves the right to interpose additional affirmative defenses as may be indicated during or after the course of discovery and litigation.

Having answered all the allegations of the complaint and interposed affirmative defenses, the City respectfully requests that the Complaint be dismissed in its entirety and that the Court enter a final judgment in favor of the City and sending Plaintiffs forth sine die, taking nothing.

**COUNTER CLAIM AND CROSS-CLAIM
FOR DECLARATORY JUDGMENT AND INJUNCTION**

THE CITY OF HOLLYWOOD (“City”), through its attorneys, Bryant Miller Olive, sues THE BOARD OF TRUSTEES OF THE CITY OF HOLLYWOOD POLICE OFFICERS’ RETIREMENT SYSTEM (“Board”), and further alleges:

Jurisdiction and Venue

1. This Court has jurisdiction pursuant to Florida Statutes Chapters 26 and 86. Monetary relief is not sought and, thus, no jurisdictional amount is applicable.

2. Venue is proper in this Court because all the parties are located in and/or conduct the bulk of their business in Broward County, the events giving rise to this Complaint occurred in Broward County, and the place fixed by law for the duty sought to be performed is Broward County and/or the rights as to which a declaration is sought arise in Broward County.

The Parties

3. Plaintiff City is a municipal corporation located in Broward County and organized under the laws of the State of Florida.

4. Defendant Board is the governing body of and is responsible for the administration and operation of the municipal employee retirement system, the City of Hollywood Police Officers’ Retirement System (“Plan”) set forth in Chapter 33 of the City of

Hollywood Code of Ordinances (“City Code”) and operating under Florida law. It may be sued pursuant to Florida Statutes Section 112.66(6).

General Allegations

5. The provisions of the Plan are set forth in Chapter 33 of the City Code. (The Plan provisions of Chapter 33 are attached hereto as Exhibit 1.)

6. The Plan is, for the most part, funded by employee payroll contributions, funds from the State of Florida, returns on investments, and, primarily, contributions from the City. The City is obligated to make whatever payment is actuarially determined to be required to maintain the Plan on a sound actuarial basis.

7. On May 18, 2011, the City declared the existence of a state of financial urgency for Fiscal Year 2011-2012 pursuant to Florida Statutes Section 447.4095. The declaration was made by the City Commission in Resolution R-2011-118. (The resolution is attached hereto as Exhibit 2.) One action taken by the City to resolve the financial urgency was to amend the Plan. The Plan was amended by the passage of City Ordinance O-2011-27 (the “Amendment”), which became effective when a majority of voters approved it in the September 13, 2011, election. (The Amendment is attached hereto as Exhibit 3.)

8. The Amendment provided, in pertinent part, that “a member who does not enter the DROP prior to October 1, 2011 shall not be eligible to participate in the DROP.”

9. DROP is a mechanism whereby an eligible member of the Plan – under its provisions prior to the Amendment – could retire for purposes of the Plan but remain employed by the City. The DROP participant’s retirement benefit would be calculated as of the date of entry into DROP. The amount of the monthly benefit would be credited to an account on behalf of the DROP participant, where it would earn interest at a rate of 6 percent (and more under

certain circumstances), but would not be available to the DROP participant. The DROP participant would be entitled to the amount credited to the DROP account upon termination of employment.

10. Prior to amendment, the Plan provided that members would receive an enhanced benefit after completion of 22 years of credited service. After the amendment, that enhancement was eliminated for years of credited service accrued after September 30, 2011.

11. On September 28, 2011, City police employee Lyle Bien submitted an application to enter the DROP. In his application, he requested to enter the DROP on July 10, 2012. Pursuant to the Amendment, neither Bien nor any Plan member could enter DROP after September 30, 2011, and, therefore, the provisions of the Plan in effect on September 28, 2011, precluded his entry on July 10, 2012.

12. On September 30, 2011, Deputy City Attorney Alan Fallik sent a letter to the Plan Administrator of Hollywood Police Officers' Retirement Plan, David M. Williams, outlining and enclosing copies of the pertinent resolution and ordinance amending the retirement plan and demanded that "the Board administer the plan in accordance with the terms of Ordinance No. O-2011-27. Should the Board fail to do so, the City is prepared to take any and all steps necessary to enforce the Ordinance." (Letter attached hereto as Exhibit 4). No response was received. However, upon the City being asked to process Bien's DROP application, City Attorney Jeffrey Sheffel sent another letter, on July 11, 2012, to plan administrator David M. Williams, again referring him to Ordinance O-2011-27 and enclosing a copy of Mr. Fallik's September 30, 2011 correspondence. (Letter (omitting attachments) attached hereto as Exhibit 5). In his correspondence, Mr. Sheffel warns that a resolution has been submitted to the City Commission that would authorize him to file suit against the Board to enforce the City's interest. On July 13,

2012, attorney Stephen Cypen responded stating that he had replied to the September 30, 2011 correspondence via e-mail on October 3, 2011 and herein reiterates his position that the Board disagrees with the “unsupported legal conclusion in said letter.” (Letter attached hereto as Exhibit 6).

13. Despite the provisions of the Plan, as amended, the Board permitted Bien to enter DROP on July 10, 2012 and has treated him as a DROP participant since.

14. The Board permitted City police employee Mark Ruggles to enter DROP on January 14, 2013, and has treated him as a DROP participant since.

15. The Board is required to administer the Plan according to all applicable law, including, of course, Chapter 33 of the City Code, as amended. The Board has no authority or discretion to pick and choose what law it will implement and what it will not.

16. The Board’s action in permitting Bien to enter DROP contravenes the plain language of Chapter 33. The Board is crediting a DROP account on Bien’s behalf with the amount of his monthly benefit, with interest. Under the terms of DROP, Bien could terminate employment at any time and be entitled, in the Board’s view, to the value of the DROP account, paid to him by the Board from Plan funds. Moreover, because the Board is treating Bien as if he were retired for purposes of the Plan, his service credit and compensation will not be properly reported by the Plan to the Plan’s actuary. The calculations of the Plan’s liabilities and the City’s required payment to the Plan will be inaccurate and will result in the Plan not being funded on an actuarially sound basis, in contravention of the Florida Constitution and Florida statutory law. If the Plan is not properly funded, the amount of the City’s future required contributions could be adversely affected.

17. Moreover, the elimination of DROP as of October 1, 2011, resulted in significant cost savings to the City by decreasing both its annual required contribution to the Plan and the unfunded liability of the Plan, which is an additional financial obligation of the City. Permitting Bien or others to participate in DROP will lessen those savings.

18. All conditions precedent for the filing of this action have been met.

COUNT I
Declaratory Judgment

1. The City realleges and incorporates the allegations of Paragraphs 1 – 18 as if fully set forth here.

2. There exists a bona fide, actual, present, and practical need for a declaratory judgment by the Court because the Board has refused to apply valid applicable law in direct contravention of the duly established authority of the City Commission to enact the same and, as a result of such action by the Board, substantial legal obligations of the City are in doubt. The City is in bona fide doubt as to its rights under the law in this matter because of the actions of the Board, Bien, and Ruggles.

3. The controversy is founded upon ascertainable facts, as set forth herein.

4. The rights and obligations of the City are dependent upon the application of Florida statutory law and the City Code to the facts, as explained in the General Allegations, above.

5. The Board, by refusing to apply the valid Amendment to the Plan, has asserted an adverse interest in the subject matter.

6. The City has incurred the costs of bringing this action, including attorney's fees, as a result of the refusal of the Board to comply with applicable law.

WHEREFORE, the City respectfully requests that the Court:

(a) Determine and declare that Chapter 33 of the City Code precludes any Plan member from entering DROP after September 30, 2011; and

(b) Determine and declare that the Board's actions in permitting Bien to enter DROP on July 10, 2012, and in permitting Ruggles to enter DROP on January 14, 2013, were invalid, null, and void; and

(c) Award the City such other relief as the Court deems proper and just.

COUNT II
Injunction

1. The City realleges and incorporates the allegations of Paragraphs 1 – 18 as if fully set forth here.

2. The City has a clear legal right to the declaratory judgment it seeks because the plain language of the Amendment precludes the actions by the Board relating to the purported entry into DROP by Bien and Ruggles. Specifically, Sections 33.125(2) and 33.128(E) of the City Code, as amended, provide that no Plan member shall enter DROP after September 30, 2011.

3. The City is suffering ongoing and irreparable harm from the purported entry into DROP by Bien and Ruggles and by the Board's failure to apply the Amendment's provision relating to DROP eligibility, which provides cost savings for the City that will be lost as the City is obligated to make a larger contribution to the Plan because of the entry into DROP by Bien and Ruggles and because the Board has continued and may be expected to continue to ignore the DROP eligibility provision to permit other members to enter DROP.

4. There is no adequate remedy available at law to require the Board to comply with applicable law; only equitable relief, i.e., a mandatory injunction from the Court, will afford adequate relief.

5. There is a substantial likelihood that the City will prevail on the merits, as its position is supported by Florida statutes, the City Code, and decisional law.

6. An injunction will serve the public interest because it will effectuate the cost savings intended to be recouped by the City and which are necessary to its fiscal health and will vindicate the will of the electorate expressed through the referendum.

WHEREFORE, the City respectfully requests that the Court:

(a) Issue a mandatory injunction directing the Board to reverse all actions treating Bien and Ruggles as DROP participants, including but not limited to reversing credits to their DROP accounts, and, also directing that in the future, the Board shall treat Bien and Ruggles as regular, non-DROP, employed participants in the Plan until that status should change according to the current provisions of the Plan; and

(b) Issue a mandatory injunction directing the Board to immediately and henceforward comply with the provisions of the Plan as amended; and

(c) Award the City its costs and attorney's fees; and

(d) Award the City such other relief as the Court deems proper and just.

DATED this 29th day of August, 2013.

/s/David C. Miller

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, via email, this 29th day of August, 2013, to Mitchell W. Berger, Esquire (mberger@bergersingerman.com), 350 E. Las Olas Blvd., Suite 1000, Fort Lauderdale, Florida 33301; Daniel H. Thompson, Esquire (dthompson@bergersingerman.com), 125 S. Gadsden St., Suite 300, Tallahassee, Florida 32301; and Steven H. Cypen, Esquire (scypen@cypen.com), 777 Arthur Godfrey Rd., Suite 320, Post Office Box 402099, Miami Beach, Florida.

/s/David C. Miller

David C. Miller

City of Hollywood Code of Ordinances

CHAPTER 33: CITY EMPLOYEES

Section

General Provisions

- 33.001 Publication of salaries, benefits of city employees
- 33.002 Military leave; salary
- 33.003 County Human Rights Ordinance inapplicable
- 33.004 Affirmative Action Plan

Employee Strikes

- 33.015 Definition
- 33.016 Strikes prohibited
- 33.017 What constitutes employee's engagement in strike
- 33.018 Violation by city employee; termination of employment by city
- 33.019 Right to appeal; hearing procedure
- 33.020 Amendment of regulations

*Retirement**Employees' Retirement Fund*

- 33.025 Pensions and retirement
- 33.026 Ordinances implemented and ratified
- 33.027 Transfer of a member to another level of government; continuation in pension plan
- 33.028 Assets of prior funds
- 33.029 Coordination of pension benefits
- 33.030 Tax qualification
- 33.031 Subchapter amendment or repeal

Firefighter's Pensions and Retirement

- 33.034 Intent
- 33.035 Definitions
- 33.036 Membership
- 33.037 Board of Trustees
- 33.038 Finances and fund management
- 33.039 Contributions
- 33.040 Benefit amounts and eligibility
- 33.041 Pre-retirement death
- 33.042 Disability
- 33.043 Vesting
- 33.044 Optional forms of benefits
- 33.045 Beneficiaries
- 33.046 Claims procedures
- 33.047 Reports to Division of Retirement
- 33.048 Roster of retirees
- 33.049 Maximum pension
- 33.050 Distribution of benefits
- 33.051 Miscellaneous provisions
- 33.052 Repeal or termination of system
- 33.053 Exemption from execution; non- assignability
- 33.054 Pension validity
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GENERAL PROVISIONS

§ 33.001 PUBLICATION OF SALARIES, BENEFITS OF CITY EMPLOYEES.

At the direction of the City Commission, the City Manager may, on an annual basis, publish in a newspaper of general circulation within the city, a list of the salaries, benefits and costs to the city for city employees. The format of such list shall be approved by the Commission prior to publication. The format may include but shall not be limited to the initials of each employee, a list of salaries, benefits and costs to the city for each employee without identification of the individual employee or a range of salaries, benefits and costs for each classification; however, said list shall not identify employees by name or employee number.

('72 Code, § 2-11) (Ord. O-75-3, passed 1-8-75; Ord. O-82-31, passed 7-7-82; Ord. O-82-49, passed 10-6-82)

accrued normal retirement income to which he is entitled under this act; 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.

(3) If there be any asset value after the apportionments under this division (C)(1) and (2), apportionment shall lastly be made on a proportionate basis so as to reflect the relative accrued service of each of the remaining members in service of the city on such date who are not otherwise entitled to a benefit per this division (C)(1) and (2);

(4) In the event that there be asset value remaining after full apportionment specified in this division (C)(1), (2) and (3) such excess shall be returned to the city, unless return of state's contributions to the state, 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.

(D) The Board shall distribute, in accordance with the manner of distribution determined under division (B), the amounts apportioned under division (C).

('72 Code, § 24-85) (Ord. O-76-93, passed 12-1-76)

§ 33.107 APPLICABILITY OF CERTAIN PROVISIONS.

Sections 3, 4, 9, 15, 18, 19, 20 and 21 of the prior system shall apply whenever applicable to members of this supplemental system.

('72 Code, § 24-88) (Ord. O-76-93, passed 12-1-76)

POLICE OFFICER'S RETIREMENT SYSTEM

§ 33.125 ESTABLISHMENT; PURPOSE.

(1) There is hereby established a Police Officer's Retirement System comprising a comprehensive amended retirement plan for the Police Officers of the city. The purpose of this plan is to establish amended terms and conditions under which retirement benefits will be provided to eligible employees of the city. The benefits under the plan shall be in addition to amounts received as Federal Social Security benefits, and shall also be in addition to benefits received by any member from any other private or public retirement system.

(2) The benefit structure in effect on September 30, 2011 is frozen at midnight on that date. All members will be vested in benefits accrued to that date and payable under the terms and conditions of plan provisions then in effect. No additional benefits of any kind shall accrue; provided, however, that for any member who is eligible to retire with normal retirement benefits on September 30, 2011, the benefit structure in effect on September 30, 2011 shall remain in effect beyond September 30, 2011 and shall not be frozen, except that any such member who does not enter the DROP on or before September 30, 2011 shall not be eligible to enter the drop after September 30, 2011 and no such member shall be an eligible person under § 33.136(N) below regarding supplemental pension distributions. Effective

October 1, 2011, all members who are not eligible to retire with normal retirement benefits on September 30, 2011 are subject to a new benefit structure applicable to future service as herein set forth.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2011-27, passed 9-7-11)

§ 33.126 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AVERAGE MONTHLY EARNINGS. One-twelfth of the arithmetic average of earnings for the highest three years preceding the actual retirement or termination date of a member. Effective June 7, 2006, one-twelfth of the arithmetic average of earnings for the highest three 12-month measurement periods preceding the actual retirement or termination date of a member, excluding, in the determination of the highest three 12-month measurement periods and calculation of the arithmetic average of earnings, pay for overtime in excess of 400 hours for each 12-month measurement period. The definitions of **AVERAGE FINAL COMPENSATION** set forth above are frozen at midnight on September 30, 2011. Under the benefit structure effective October 1, 2011, **AVERAGE FINAL COMPENSATION** means the arithmetic average of earnings for the 60 highest consecutive months of the last 120 months of credited service prior to retirement, termination, or death.

BENEFICIARY. The person or persons entitled to receive any benefits hereunder at the death of a member who has or have been designated in writing by the member and filed with the Board. If no person so designated is living at that time, the beneficiary shall be the estate of the member.

BOARD. The Board of Trustees, which shall supervise, administer and manage the system herein provided.

CITY. The City of Hollywood, Florida.

CONTINUOUS SERVICE. Uninterrupted service by a member (expressed as years and completed months) from the date he last entered employment as a Police Officer until the date his employment shall be terminated by death, retirement or discharge, provided however, the continuous service of any member shall not be deemed to be interrupted by:

(1) Any authorized leave of absence, vacation or period of suspension, provided that all members similarly situated in similar circumstances shall be treated alike pursuant to uniform, non-discriminatory rules established by the Board. Such absences from employment duties shall not count towards benefit computation purposes unless ruled otherwise by the Board.

(2) Any service, voluntary or involuntary in the Armed Forces of the United States; provided further, the preservation and status of all rights and benefits under this subchapter as regards members serving in the Armed Forces of the United States shall be as specified in § 33.133 hereof.

(3) Any period of disability as approved by the Board.

CUSTODIAN. The entity chosen to serve as custodian of the fund established as part of the retirement system.

EARNINGS. Earnings shall be the sum of the following amounts actually paid to a member: salary;

overtime pay; longevity pay; assignment pay; payments for accrued holiday time; payments for accrued blood time; annual "cash-out" payments for accrued vacation time; and payments for accrued compensatory time. Earnings shall not include payments for unused sick time or for unused vacation time which is paid upon retirement or termination. The definition of earnings set forth above is frozen at midnight on September 30, 2011. Under the benefit structure effective October 1, 2011, earnings shall be the sum of the following amounts actually paid to a member: salary; longevity pay; and assignment pay. Earnings shall not include overtime pay, payments for accrued holiday time, payments for accrued blood time, annual "cash-out" payments for accrued vacation time, payments for accrued compensatory time, and payments for unused sick time or for unused vacation time which is paid upon retirement or termination.

FUND. The trust fund originally established and continued hereunder as part of the plan.

INVESTMENT ADVISOR. Any person or entity designated to serve as investment agent and investment advisor for the fund.

MEMBER. All regular employees of the city classified as full time Police Officers who are classified as permanent and non-probationary under the rules of the Police Department of the city, and the rules of the Civil Service Board of the city.

PLAN. This subchapter setting forth the provisions of the retirement system.

POLICE OFFICER. Any person who is appointed or employed full time by the city, who is certified or required to be certified as a law enforcement officer in compliance with F.S. § 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in F.S. § 943.10(6) and (8), respectively.

SPOUSE or WIDOW(ER). The lawfully wedded wife or husband of a member of the Police Department at the time of his death.

SYSTEM. The City Police Retirement System as contained herein and all amendments thereto.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2007-15, passed 6-20-07; Am. Ord. O-2011-27, passed 9-7-11)

§ 33.127 ELIGIBILITY.

(A) *Conditions of eligibility.*

(1) Active, non-retired employees who are members of the "Police Pension Fund, City of Hollywood", at the time of the adoption of this retirement system shall become members of this system.

(2) It shall be mandatory for any future Police Officer to become a member if at least 18 years of age and provided that:

(a) Such Police Officer satisfactorily completes all required medical examinations for a Police Officer of his classification as prescribed by the Board and the Police Department at the time of initial employment;

(b) Such Police Officer completes his probationary period of employment as a Police Officer;
and

(c) Such Police Officer meets all other requirements of the city.

(d) The methods and procedures to be followed with regard to the above shall be determined by the Board.

(3) Police Officers who were previously employed by the city in a capacity other than as a Police Officer but who subsequently become members as defined herein shall be eligible for membership under this system; provided however, that for purposes of this system, continuous service shall include only that period of employment during which such persons are Police Officers as defined herein.

(4) A member may elect to purchase credit for the period of attendance at a basic recruit training program approved by the Criminal Justice Standards and Training Commission of the Florida Department of Law Enforcement while employed by the city and for the one year probationary period by contributing 8% of his or her earnings for those periods, plus interest as determined by the Board, into the system. A member shall have until the date on which he or she makes application for retirement within which to make this election and to make the necessary contribution.

(B) *Application.* Each Police Officer shall complete an application form, within the time limit established by the Board, covering the following points, as well as such other points or items as may be prescribed by the Board:

(1) Such Police Officer's acceptance of the terms and conditions of this plan; and, if requested;

(2) Such Police Officer's designation of a beneficiary or beneficiaries.

(C) *Change in designation of beneficiary.* A member may from time to time change his or her designated beneficiary by written notice to the Board upon forms provided by the Board; no change of beneficiary shall be effective until such written notice has been received by the Board. Upon such change, the rights of all previously designated beneficiaries to receive any benefit under the plan shall cease. Notwithstanding the foregoing, a member who has entered the DROP plan created pursuant to § 33.128(E) shall be limited to a maximum of two such changes during his or her participation in the DROP plan and retirement. Similarly, a member who retires without participating in the DROP plan shall be limited to two such changes during his or her retirement. Any actuarial cost of a change in designation of beneficiary shall be fully paid by the member or retiree. The actuarial cost shall be calculated based on the remaining value, rather than the initial value, of the members or retiree's benefits under the plan. In no event shall a change in the beneficiary of a member who has entered the DROP plan or retired result in an increase of such members or retiree's benefit amount under the plan.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-98-06, passed 4-1-98; Am. Ord. O-2001-13, passed 5-2-01; Am. Ord. O-2002-33, passed 9-18-02; Am. Ord. O-2007-15, passed 6-20-07)

§ 33.128 NORMAL RETIREMENT.

(A) *Normal retirement date.* A member may retire on the first day of the month coincident with or next following the attainment of age 50 or on the first day of the month coincident with or next following the completion of 25 years of creditable service. Effective June 7, 2006, a member may retire on the day he or she attains age 50 or completes 22 years of creditable service. A member hired prior to October 1, 2011 with less than ten years of credited service as of September 30, 2011 and a member hired on or after October 1, 2011 may retire on the day he or she attains age 55 and completes ten years of creditable service or on the day he or she attains age 52 and completes 25 years of creditable service. A member with 10 or more years of creditable service as of September 30, 2011 shall retain his or her current normal retirement date.

(B) *Normal retirement benefit.*

(1) Amount.

(a) The monthly retirement benefit shall be an amount equal to 3% of average monthly earnings times years and completed months of continuous service, up to September 30, 2011, not exceeding 20 years plus 4% of average monthly earnings times years and completed months of continuous service, up to September 30, 2011, after 20 years. Effective June 7, 2006, upon completion of 22 years of continuous service prior to October 1, 2011, a member shall be provided an accrued benefit of 80% of average monthly earnings (equivalent to three years of continuous service deemed earned at a 4% accrual rate). The maximum normal retirement benefit payable to a member whose accrued benefit as of June 7, 2006 is not in excess of 80% of average monthly earnings shall not exceed 80% of average monthly earnings, and the maximum normal retirement benefit payable to a member whose accrued benefit as of June 7, 2006 is in excess of 80% of average monthly earnings shall not exceed the member's accrued benefit as of June 7, 2006.

(b) Under the benefit structure effective October 1, 2011, the monthly retirement benefit shall equal 2.0% of average monthly earnings times years and completed months of continuous service earned on or after October 1, 2011 up to a maximum benefit equal to the net result of subtracting from 80% the sum of (i) the product of 3% times the number of years of continuous service, not exceeding 20 years, earned up to September 30, 2011 and (ii) the product of 4% times the number of years of continuous service, in excess of 20 years, earned up to September 30, 2011; provided, however, that if the member retires before attaining age 62, an additional benefit equal to 0.5% of average monthly earnings times continuous service on and after October 1, 2011 shall be paid up to age 62.

(c) Anything to the contrary herein notwithstanding, a member's accrual rate shall not be less than 2% per year of continuous service.

(2) Duration, survivor, benefits. Effective October 1, 2000, a member retiring hereunder on his or her normal retirement date shall receive a monthly benefit which shall commence with his or her normal retirement date and be continued thereafter during his or her lifetime as follows:

(a) Member is unmarried at time of retirement. If the member is not married on the member's retirement date and the member dies after retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid either to the beneficiary (or beneficiaries) as designated by the member, or, if all beneficiaries are deceased or if no beneficiaries are designated by the member, to the member's estate.

(b) Member is married at time of retirement and member's spouse is sole beneficiary.

1. If the member is married on the member's retirement date, the member's spouse is the

sole beneficiary, and the member dies after retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid either to the member's spouse, if alive, or to the member's estate. If the member's spouse is alive and unmarried after receipt of the 120th payment, then the monthly payment to the member's spouse shall be reduced by 50% until the earlier of either the spouse's death or remarriage.

2. If the member is married on the member's retirement date, the member's spouse is the sole beneficiary, and the member dies after receiving 120 payments, then the member's spouse, if alive, shall receive a monthly payment equal to 50% of the member's monthly payment until the earlier of either the spouse's death or remarriage.

(c) Member is married at time of retirement and member's spouse is not a designated beneficiary. If the member is married on the member's retirement date, the member's spouse is not a designated beneficiary, and the member dies after retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid to the member's beneficiary (or beneficiaries) pro-rata as designated by the member, or, if all beneficiaries are deceased or if no beneficiaries are designated by the member, to the member's estate.

(d) Member is married at time of retirement and member designates multiple beneficiaries, including member's spouse. If the member is married on the member's retirement date, the member designates multiple beneficiaries, including the member's spouse, and the member dies after retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid to the member's beneficiaries pro-rata as designated by the member, or, if all beneficiaries are deceased or no beneficiaries are designated by the member, to the member's estate.

(e) Surviving spouse eligibility requirements. No surviving spouse of a deceased member shall be eligible for the 50% survivor's benefit provided in divisions (b)1. or (b)2. above unless the deceased member was married to the surviving spouse on the member's retirement date. A surviving spouse who married the member after the member's retirement date shall be eligible for this 50% survivor's benefit only if the member, during his or her retirement, designated said spouse as sole beneficiary pursuant to § 33.127(C).

(C) *Disability.*

(1) Service-incurred. Effective October 1, 2000, any member who receives a medically substantiated service-connected injury, disease or disability, as determined by the medical board, which injury, disease or disability permanently incapacitates him or her, physically or mentally, from his or her regular and continuous duties as a Police Officer, shall receive a monthly benefit equal to the greater of his or her accrued benefit on the date of disability, based on the applicable benefit rate set forth in subdivision (B)(1) of § 33.128, or 50% of his or her earnings in effect on the date of disability. Such benefit shall commence on the 91st day following the date of disability and shall continue until the earlier of death or recovery from disability. In the event of recovery prior to the otherwise normal retirement date, credit for service during the period of disability shall be granted for purposes of subsequent retirement benefits.

(a) Member is unmarried at time of disability retirement. If the member is not married on the member's disability retirement date and the member dies after retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid either to the beneficiary (or beneficiaries) as designated by the member, or, if all beneficiaries are deceased or if no beneficiaries are designated by the member, to the member's estate.

(b) Member is married at time of disability retirement and member's spouse is sole beneficiary.

1. If the member is married on the member's disability retirement date, the member's spouse is the sole beneficiary, and the member dies after disability retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid either to the member's spouse, if alive, or to the member's estate. If the member's spouse is alive and unmarried after receipt of the 120th payment, then the monthly payment to the member's spouse shall be reduced by 50% until the earlier of either the spouse's death or remarriage.

2. If the member is married on the member's disability retirement date, the member's spouse is the sole beneficiary, and the member dies after receiving 120 payments, then the member's spouse, if alive, shall receive a monthly payment equal to 50% of the member's monthly payment until the earlier of either the spouse's death or remarriage.

(c) Member is married at time of disability retirement and member's spouse is not a designated beneficiary. If the member is married on the member's disability retirement date, the member's spouse is not a designated beneficiary, and the member dies after disability retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid to the member's beneficiary (or beneficiaries) pro-rata as designated by the member, or, if all beneficiaries are deceased or if no beneficiaries are designated by the member, to the member's estate.

(d) Member is married at time of retirement and member designates multiple beneficiaries, including member's spouse. If the member is married on the member's disability retirement date, the member designates multiple beneficiaries, including the member's spouse, and the member dies after retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid to the member's beneficiaries pro-rata as designated by the member, or, if all beneficiaries are deceased or no beneficiaries are designated by the member, to the member's estate.

(e) Surviving spouse eligibility requirements. No surviving spouse of a deceased member shall be eligible for the 50% survivor's benefit provided in divisions (b)1. or (b)2. above unless the deceased member was married to the surviving spouse on the member's disability retirement date. A surviving spouse who married the member after the member's retirement date shall be eligible for this 50% survivor's benefit only if the member, during his or her disability retirement, designated said spouse as sole beneficiary pursuant to § 33.127(C).

(2) Non-service incurred. Effective October 1, 2000, any member with five or more years of continuous service who receives a non-service incurred injury, illness, disease or disability, and which illness, injury, disease or disability permanently incapacitates him or her physically or mentally from his or her regular and continuous duty as a Police Officer, shall receive from the fund in equal monthly installments an amount equal to 2 ½% of his or her average monthly earnings for each year of continuous service. Until normal retirement date, death or recovery from disability, whichever shall first occur, the amount of such monthly disability benefit shall in no event be less than 25% of the member's earnings in effect on date of disability. Commencing with normal retirement date, the benefit shall be computed as a normal retirement benefit, except that continuous service shall include all years and completed months during the disability period. The benefit shall commence on the 91st day following the date of disability.

(a) Member is unmarried at time of disability retirement. If the member is not married on the member's disability retirement date and the member dies after retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid either to the beneficiary (or beneficiaries) as designated by the member, or, if all beneficiaries are deceased or if no beneficiaries are designated by

the member, to the members estate.

(b) Member is married at time of disability retirement and member's spouse is sole beneficiary.

1. If the member is married on the members disability retirement date, the members spouse is the sole beneficiary, and the member dies after disability retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid either to the members spouse, if alive, or to the members estate. If the members spouse is alive and unmarried after receipt of the 120th payment, then the monthly payment to the members spouse shall be reduced by 50% until the earlier of either the spouse's death or remarriage.

2. If the member is married on the members disability retirement date, the members spouse is the sole beneficiary, and the member dies after receiving 120 payments, then the members spouse, if alive, shall receive a monthly payment equal to 50% of the members monthly payment until the earlier of either the spouse's death or remarriage.

(c) Member is married at time of disability retirement and member's spouse is not a designated beneficiary. If the member is married on the members disability retirement date, the members spouse is not a designated beneficiary, and the member dies after disability retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid to the members beneficiary (or beneficiaries) pro-rata as designated by the member, or, if all beneficiaries are deceased or if no beneficiaries are designated by the member, to the members estate.

(d) Member is married at time of retirement and member designates multiple beneficiaries, including member's spouse. If the member is married on the members disability retirement date, the member designates multiple beneficiaries, including the members spouse, and the member dies after retirement but prior to receiving 120 payments, then the balance of the 120 payments shall be paid to the member's beneficiaries pro-rata as designated by the member, or, if all beneficiaries are deceased or no beneficiaries are designated by the member, to the member's estate.

(e) Surviving spouse eligibility requirements. No surviving spouse of a deceased member shall be eligible for the 50% survivor's benefit provided in divisions (b)1. or (b)2. above unless the deceased member was married to the surviving spouse on the member's disability retirement date. A surviving spouse who married the member after the member's retirement date shall be eligible for this 50% survivor's benefit only if the member, during his or her disability retirement, designated said spouse as sole beneficiary pursuant to § 33.127(C).

(3) Special eligibility for service incurred disability benefit. Upon the application of a member of the head of his department, any member who is not eligible for a regular normal retirement benefit and who becomes totally and permanently incapacitated for duty as the result of a condition or impairment of health caused by tuberculosis, hypertension, heart disease or hardening of the arteries, which condition is not shown to be the result of any accident or condition of employment so as to qualify under subdivision (1) above, may be retired by the Board, provided the Medical Board, after a medical examination of such member, shall certify that such member is totally incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired on a service incurred disability benefit. For the purpose of this subdivision, any condition or impairment of health of any member caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence; and any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite

time or place without willful negligence on the part of the Police Officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty; provided however, that such member shall have successfully passed a physical examination upon entering such service, which physical examination, including electrocardiogram, failed to reveal any evidence of such condition.

(4) Payments prior to approval of service incurred disability benefit. Whenever a member becomes disabled due to an injury or injuries received in the line of duty, he shall receive full pay from the city for a period of 90 days. At the end of the 90 day period, if the member is still incapacitated and unable to perform his normal police duties, the City Commission shall either approve full pay for the disabled member for a second 90 day period, or it may recommend that the Board of Trustees retire such disabled member as a service incurred disability retiree. Such retirement shall in any event be subject to the approval of the Medical Board of this retirement system. Under no circumstances will a member be penalized by the city, by using the member's accumulated sick leave, vacation time or holiday leave, for any line of duty injury or condition.

(5) Medical Board - disability. Whenever it becomes necessary for the Board of Trustees to avail itself of the services of physicians, such as in the case of an application for disability retirement, the Board of Trustees shall designate a Medical Board to be composed of three physicians. The Medical Board shall arrange for and pass upon the medical examinations required under the provisions of this subchapter, shall investigate all essential statements or certificates made by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the Board of Trustees its conclusions and recommendations upon all matters referred to it. The payment for such services shall be determined by the Board of Trustees.

(6) Return to active duty from disability retirement. In the event a member who has been retired on a pension on account of permanent and total incapacity regains his health and is found by the Medical Board designated by the Board of Trustees of the system to be in such physical and mental condition as to meet the requirements of the personnel department for service as a Police Officer of the city, the Board shall order his pension discontinued, and he shall be ordered to resume active duty in the city at the same rate of compensation currently in effect for his pay grade. Upon request of the Chief of Police, the Board of Trustees shall review the condition of any member receiving a pension for disability and shall submit to the Chief of Police a report thereon; and if there is substantial evidence that the retired member is capable of performing service acceptable to the city in the Police Department, he shall be ordered to resume active duty and his pension shall be discontinued.

(7) Disability exclusions. No member shall be granted a disability pension upon a showing to the satisfaction of the Board:

- (a) That the disability resulted from the use of narcotics, drugs or alcoholic beverages;
- (b) That the disability resulted from a member's participation or involvement in riots, insurrection or unlawful assembly; or
- (c) That the disability resulted from a member's participation or involvement in the commission of a crime or unlawful act.

(8) "Light Duty" positions for service-incurred disability. In the event a member receives a service connected injury as defined in § 33.128 which renders him or her incapable of performing all the regular duties of a sworn Police Officer the city will, based upon availability of a vacancy, assign the officer to a "light duty" position. A **LIGHT DUTY** position is defined as any position within the Police Department which does not require the member to perform all the duties of a Police Officer. If the city

makes available a light-duty position, and a member refuses to perform, said member shall be ineligible for either continued employment or retirement benefits.

(D) *Pre-retirement death.*

(1) Death with at least ten years of service.

(a) Effective October 1, 2000, if a member having at least ten years of continuous service dies prior to retirement, his or her beneficiary is entitled, until death, to a monthly benefit equal to the greater of the earned benefit or the benefit otherwise payable under (D)(2) or (D)(3) below, as applicable; provided, however, that, if the beneficiary dies before having received such benefit for a period of ten years, the estate of the member is entitled to the same monthly benefit for the balance of such ten-year period.

(b) Effective October 1, 2000, if a member having at least ten years of continuous service dies prior to retirement and fails to designate a beneficiary, the estate of the member is entitled, for a period of ten years, to a monthly benefit equal to the greater of the earned benefit or the benefit otherwise payable under (D)(2) or (D)(3) below, as applicable.

(2) Service incurred death with less than ten years of service. A death benefit shall be payable in behalf of any member having less than ten years of continuous service who is killed or dies within five years as a direct result of an occurrence arising in the performance of service. Effective October 1, 2000, the benefits shall be payable as follows:

(a) If the member is not married at the time of his or her death, then his or her designated beneficiary is entitled, for a period of ten years, to a monthly benefit equal to 50% of the member's earnings at the time of death; provided, however, that, if the beneficiary dies before having received such benefit for a period of ten years, the estate of the member is entitled to the same monthly benefit for the balance of such ten-year period.

(b) If the member is not married at the time of his or her death, the member has surviving children, and the member fails to designate a beneficiary, then a monthly benefit equal to 50% of the member's earnings at the time of death shall be paid to the member's surviving children for a period of ten years or until the youngest child reaches the age of 18 years, whichever is later. If the monthly benefit to the surviving children ceases before benefit payments have been made for a total of ten years, the estate of the member is entitled to the same monthly benefit for the balance of such ten-year period.

(c) If the member is not married at the time of his or her death, the member has no surviving children, and the member fails to designate a beneficiary, then a monthly benefit equal to 50% of the member's earnings at the time of death shall be paid to the member's estate for a period of ten years.

(d) If the member is married at the time of his or her death, the member's spouse is entitled, until the earlier of death or remarriage, to a monthly benefit equal to 50% of the member's earnings at the time of death. Upon remarriage or death of the widow(er), the benefit shall be paid to the member's surviving children until the youngest child reaches the age of 18 years. If the monthly benefit to the widow(er) or surviving children ceases before benefit payments have been made for a total of ten years, the estate of the member is entitled to the same monthly benefit for the balance of such ten-year period.

(e) The manner of handling and administering the pension to any child or children shall be determined by the Board including the establishment of a trust for the benefit of said child or children. However, funds payable by the Board to any trust shall be for maintenance, health and education of said

child or children during the period of existence of any such trust. No survivor pension shall be paid to any stepchild of a deceased member who had not been legally adopted by such member.

(3) Non-service incurred death within less than ten years of service. A death benefit shall be payable in behalf of any member having less than ten years of continuous service who is killed or dies within five years from causes not related to performance of duty. Effective October 1, 2000, the benefits shall be payable as follows:

(a) If the member is not married at the time of his or her death, his or her beneficiary is entitled, for a period of ten years, to a monthly benefit equal to 25% of the member's earnings at the time of death; provided, however, that, if the beneficiary dies before having received such benefit for a period of ten years, the estate of the member is entitled to the same monthly benefit for the balance of such ten-year period.

(b) If the member is not married at the time of his or her death, the member has surviving children, and the member fails to designate a beneficiary, then a monthly benefit equal to 25% of the member's earnings at the time of death shall be paid to the member's surviving children for a period of ten years or until the youngest child reaches the age of 18 years, whichever is later. If the monthly benefit to the surviving children ceases before benefit payments have been made for a total of ten years, the estate of the member is entitled to the same monthly benefit for the balance of such ten-year period.

(c) If the member is not married at the time of his or her, the member has no surviving children, and the member fails to designate a beneficiary, then a monthly benefit equal to 25% of the member's earnings at the time of death shall be paid to the member's estate for a period of ten years.

(d) If the member is married at the time of his or her death, his or her spouse is entitled, until the earlier of death or remarriage, to a monthly benefit equal to 25% of the member's earnings at the time of death. Upon remarriage or death of the widow(er), the benefits shall be paid to the member's surviving children until the youngest child reaches the age of 18 years. If the monthly benefit to the widow(er) or surviving children ceases before benefit payments have been made for a total of ten years, the estate of the member is entitled to the same monthly benefit for the balance of such ten-year period.

(4) For the purpose of benefits under this division (D), the date of death of any member shall be established as the end of the calendar month in which such member dies.

(E) *Deferred retirement option plan ("DROP" plan)*. A DROP plan is to be created and administered by the Board of Trustees of the Police Officer's Retirement System at no cost and with no liability to the city. Effective June 7, 2006, a member may enter into the DROP on the day he or she attains age 50 or completes 22 years of creditable service. A member who elects to enter the DROP plan shall have no recourse against the city for any claims with respect to the DROP payments or the DROP plan. A member, hired on or before September 30, 2009, who elects to enter the DROP plan shall have the option to receive a rate of return on his or her DROP account that is equal to the assumed rate of investment return on fund assets. In the case of a member hired on or after October 1, 2009, his or her DROP account shall earn interest at the rate of 6% per year. In the event the plan earning exceed 6% per year, the earnings in excess of 6% up to and including 12% per year shall offset the city's cost of maintaining the DROP program. Earnings in excess of 12% per year shall be equally divided between the DROP participant and the city. The maximum period of participation in the DROP plan for members who enter the DROP plan after June 7, 2006 shall be the lesser of 8 years or that period of participation in the DROP plan that would result in a total of 30 years of employment with the city. The city employment of each member who elects to participate in the DROP plan after June 7, 2006 shall terminate not later than the end of his or her maximum period of participation in the DROP plan. A

member who does not enter the DROP prior to October 1, 2011 shall not be eligible to participate in the DROP.

(F) *Purchase of additional benefits.* Effective June 7, 2006, a member who has completed 10 or more years of continuous service and who retires or enters the DROP plan after attaining age 50 shall be allowed to purchase additional pension benefits equal to the lesser of 8% of average monthly earnings or that percent of average monthly earnings that, consistent with division (B)(1) above, would result in a total benefit of 80% of average monthly earnings. The full actuarial cost of these additional benefits shall be paid by the member so that there is no cost to the city or the system.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2001-13, passed 5-2-01; Am. Ord. O-2002-33, passed 9-18-02; Am. Ord. O-2007-15, passed 6-20-07; Am. Ord. O-2009-28, passed 9-16-09; Am. Ord. O-2009-29, passed 9-16-09; Am. Ord. O-2011-27, passed 9-7-11)

§ 33.129 OPTIONAL FORMS OF RETIREMENT BENEFITS.

Each member up to the time of actual retirement, who is entitled to a regular normal retirement benefit shall have the right at any time prior to his or her actual retirement to elect to have such benefit payable by any one of the options hereinafter set forth in lieu of the retirement benefits otherwise provided herein, and revoke any such elections and make a new election at any time prior to actual retirement. The value of optional retirement benefits shall be actuarially equivalent to the value of benefits otherwise payable. The member shall make such an election by written request to the Board and such an election shall be subject to the approval of the Board.

(A) *Option 1: Joint and Last Survivor Option.* A retiring member may elect to receive a decreased retirement benefit during his lifetime and have such decreased retirement benefit (or a designated fraction thereof) continued after his death to and during the lifetime of a person other than his spouse. The election of Option 1 shall be null and void if the designated contingent annuitant dies before the member's retirement. Only a person in the immediate family of the retiring member may be designated as a beneficiary under this option.

(B) *Option 2: Other.* In lieu of the other optional form enumerated in this section, retirement benefits may be paid in any form approved by the Board so long as actuarial equivalence, as certified by the Board's actuary, with the benefits otherwise payable is maintained, provided, however, no portion of the benefit shall be paid in a lump sum.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2007-15, passed 6-20-07)

§ 33.130 VESTING.

If a member terminates his employment with the Police Department, either voluntarily or by discharge, and is not eligible for any other benefits under this system he shall be entitled to the following:

(A) With less than ten years of continuous service, a refund of member contributions plus 3% interest compounded annually.

(B) With ten or more years of continuous service:

(1) Under the benefit structure effective prior to October 1, 2011, the pension benefits accrued to

his date of termination, payable for the life of the member and commencing upon the member's attainment of age 50, provided he does not elect to withdraw his member contributions; and, under the benefit structure effective October 1, 2011, the pension benefits accrued to his date of termination, payable for the life of the member and commencing upon the member's attainment of age 55, provided he does not elect to withdraw his member contributions or, in the discretion of the member;

(2) Refund of member contributions plus 3% interest compounded annually, in which event no pension benefit shall be payable.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2011-27, passed 9-7-11)

§ 33.131 FINANCING OF THE SYSTEM.

The fund of the retirement system shall consist of monies derived from the following sources:

(A) There shall be transferred of the pension fund of this system, all monies paid by the city into any other pension and retirement system of the city on account of employees of the Police Department who are eligible for memberships in this system at the effective date of this act and become members according to the terms of this act. The funds so transferred together with the contributions of the transferring members, with interest thereof to the date of transfer, shall be credited against the city's liability for creditable service prior to the effective date of the act for persons who become members of the system created thereby.

(B) After October 1, 1969, the city shall pay into the fund of the system created by this subchapter, in payments not less frequent than quarterly, such amounts as will, together with the monies transferred under the provisions of division (A) of this section, amortize the city's liability for creditable service prior to the effective date of this subchapter for persons who become members of the system created hereby, at a uniform rate over a 40 year period, together with 4% interest on the unpaid balances of such prior service liability.

(C) During each city fiscal year, the city shall pay into the fund of the system created by this act such amounts as are determined to be required in this section, in addition to the personal contributions of the members to fully amortize the liability for pensions incurred during said fiscal year, to be computed on an interest rate as determined from time to time by the Board of Trustees on the advice of the actuary.

(D) Members of the system shall contribute 8% of their earnings. Effective October 1, 2006, members of the system shall contribute 8.5% of their earnings. Payments to the member for overtime in excess of 223 hours for the period from June 7, 2006 through December 31, 2006, and for overtime in excess of 400 hours in calendar year 2007 and each calendar year thereafter shall be excluded from earnings for this purpose. After completion of 27 years of continuous service, members of the system shall contribute only 0.5% of their earnings. Effective October 1, 2009, members of the System shall contribute 9% of their earnings. Effective October 1, 2010, members shall contribute 9.25% of their earnings.

(1) All computations of liability in connection with the system created hereby shall be based on such tables and rates as are approved by the Board of Trustees. The Board shall designate an actuary who shall recommend such tables and rates for adoption by the Board. The actuary designated by the Board, on the basis of such tables and rates shall determine the amounts to be paid into the system by the city, as provided for herein. There shall be a complete actuarial valuation prepared by the actuary at least every three years, and the city shall make such adjustments in its contributions as shall be shown to be required

by such actuarial valuation. The money required to meet all obligations of this system over and above the personal contributions forthcoming from members, is hereby declared to be the liability and obligation of the city. Therefore, the City Commission shall budget annually, in the manner provided by law, to produce the amounts required to be contributed by said city to this system.

(2) Nothing in this subchapter shall be construed to prevent the city administration from appropriating monies from the General Fund or from any special funds of the city, for the purpose of creating or adding to the Pension Fund created by this subchapter, and the city shall have the right to appropriate monies from the General Fund or any Special Fund of the city, and furthermore, the city shall have the right and power to designate other sources of revenue for the Pension Fund created by this subchapter. No monies raised by taxation or otherwise provided for said Pension Fund shall be used other than for the purpose of this subchapter.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2001-13, passed 5-2-01; Am. Ord. O-2007-15, passed 6-20-07; Am. Ord. O-2009-28, passed 9-16-09; Am. Ord. O-2009-29, passed 9-16-09; Am. Ord. O-2011-27, passed 9-7-11)

§ 33.132 THE BOARD OF TRUSTEES.

The general administration and responsibility for the proper operation of the system and for making effective the provisions of this subchapter are hereby vested in a Board of Trustees consisting of seven members, as follows:

(A) One representative appointed by the Mayor of the city; one representative appointed by the City Commission; and five members of the Police Department, including DROP participants, who shall be elected by a per capita vote of all members of the Police Department who come within the purview of this subchapter. The Chief of Police shall be a nonvoting, ex-officio member of the Board. All qualified members entitled to vote shall be notified in person or by mail five days in advance of said election. The first election shall be held within 30 days after passage of this subchapter. Five Trustees will be elected at that time. The two receiving the highest number of votes will serve for a term of two years and the remaining three elected will serve for a period of one year. Thereafter, annually, elections shall be held to replace the Trustees whose term of office expires at that time and the elected Trustees shall begin their term of office immediately, said term of office being two years, taking effect the first Monday after the election to said office. The Board of Trustees must meet and organize and elect one of their members as Chairperson and one of their members as Secretary within ten days after being elected and duly qualified.

(1) If any vacancy occurs in the office of Trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(2) Trustees may be reimbursed for all necessary expenses which they may actually expend through the services of the Board.

(3) Each Trustee shall, within ten days after his appointment or election, take an oath of office before the City Clerk, that so far as it devolves upon him, he will diligently and honestly administer the affairs of the Board and that he will not knowingly violate or willingly permit to be violated, any provisions of the law applicable to the retirement system. Such oath shall be subscribed by the member making it and certified by the Clerk and filed in his office.

(4) Each Trustee shall be entitled to one vote on the Board. Four votes shall be necessary for a decision by the Trustees at any meeting of the Board. The Chairman of the Board of Trustees shall have

the right to one vote only.

(5) Subject to the limitations of this subchapter, the Board of Trustees shall from time to time establish rules and regulations for the administration of the funds created by this subchapter and for the transaction of its business, including provisions for the compulsory attendance of its members which shall have the force of law.

(6) It shall engage such actuarial and other services as shall be required to transact the business of the system. The compensation of all persons engaged by the Board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the Board of Trustees shall agree but in no case shall the expenditures for such services or operations exceed 3% of the maximum of the fund each fiscal year. All expenditures shall be authorized and disbursed by the Board of Trustees. The Secretary shall be bonded for \$500. The premium of said bond shall be paid out of this fund.

(7) The Chief of Police of the city shall assign to the Board of Trustees, sufficient personnel, office space, equipment and stationery, at Police Headquarters to keep and maintain all records and transactions to permit the Board of Trustees to operate efficiently and exercise their powers and perform their duties.

(8) Each year on or before March 15, the Board of Trustees must submit to the Division of Retirement of the Department of Management Services in order for the fund to receive a share of the State Funds for the then current calendar year an annual report as required by F.S. § 185.221. The pension benefit improvements for ten years certain and life thereafter, normal retirement after 22 years of service, upgrade of benefits to 80% after 22 years, a maximum of 8 years' participation in the DROP plan, and the right to purchase additional benefits up to 8% of average monthly earnings contained in § 33.128 shall be deemed "minimum benefits" or "extra benefits," as those terms are used in F.S. Chapter 185, and the Board of Trustees shall report these improvements as "qualifying benefit improvements," on the "Actuarial Confirmation of the Use of State Moneys" page of the annual reports for the fiscal years ending September 30, 2006 and thereafter.

(9) The Board of Trustees shall publish annually in the city's budget report, a report for the preceding year showing a valuation of the assets and liabilities of the funds provided for by this subchapter as certified by the actuary, and a statement as to the accumulated cash and securities of the funds as certified by the City Comptroller and shall be set forth such other facts, recommendations and data as may be in advancement of knowledge concerning employee pensions.

(10) Any elected Trustee who neglects the duties of his office shall be subject to recall by the members of the system. Such recall shall be conducted as follows:

(a) A petition containing the signatures of a majority of the members of the system and stating the name of the Trustee or Trustees and the specific allegations to warrant their recall shall be filed with the Chairman of the Board.

(b) Trustee or Trustees against whom a petition of recall has been filed shall have 15 days in which to file a written rebuttal to any charges contained in the petition with the Chairman of the Board.

(c) The Chairman of the Board shall set an election by the members of the system 30 days subsequent to the filing by the Trustee complained against of his response or the conclusion of the 15-day period whichever occurs first, said election to be held by secret ballot at the offices of the City Clerk, for a four day period to facilitate the ability of the members of the system to cast their ballot.

(d) When two-thirds of the members of the system vote to recall a Trustee or Trustees, his seat shall be immediately declared vacant, and the recall of the Trustee or Trustees shall no longer serve.

(11) The Board of Trustees shall have the power to examine facts upon which any pensions are granted under this subchapter, and to ascertain if any pension has been granted erroneously, fraudulently, or illegally for any reason. Said Board shall also be empowered to purge the pension rolls of any pensions to the city Police Officers if same are found to be erroneous, fraudulent or illegal for any reason, and to reclassify any pensioner who, under this subchapter, is erroneously, improperly or illegally classified.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2001-13, passed 5-2-01; Am. Ord. O-2007-15, passed 6-20-07; Am. Ord. O-2009-29, passed 9-16-09)

§ 33.133 SPECIAL PROVISIONS REGARDING MEMBERS IN MILITARY SERVICE.

(A) Any member of this system created by this subchapter who enlists, or any such member who is involuntarily called into active service of the military with any branch of the Army of the United States, the United States Navy, United States Air Force, the United States Marine Corps, or the United States Coast Guard, shall be entitled to preserve all rights and privileges under this subchapter. However, any such member who becomes disabled or dies while in the military service shall not be entitled to service-incurred disability or service incurred death benefits, except as may otherwise be required by federal law to maintain qualified status under the Internal Revenue Code.

(B) The period of active military service shall, for the purposes of computation to determine whether such member may be entitled to retirement under this subchapter, be deemed continuous service in the Police Department of the city and shall be credited as part of such actual service; provided that any military service served after one year from the date hostilities cease, shall not be considered creditable pension time unless the member satisfactorily proves to the Board of Trustees that such military service was compulsory and not voluntary on his part; and provided further, that credit for military service during time other than when the United States is at war or in a state of national emergency shall be limited to a maximum of five years.

(C) A member of the Police Department shall be entitled to up to five years credit for service in the armed forces under certain conditions:

(1) He or she must have been in the active employ of the city as a member of the Department prior to such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the armed forces.

(2) He or she is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act.

(3) He or she returns to his or her employment as a Police Officer within one year after he or she is released from active duty in the military service. He or she shall be reinstated by the Police Department of the city to such position or a position of like seniority, status and pay, and shall not be penalized in any way for such military service.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2007-15, passed 6-20-07; Am. Ord. O-2009-29, passed 9-16-09)

§ 33.134 TERMINATION OF PLAN AND DISTRIBUTION OF FUND.

Upon termination of the plan for any reason, or upon written notice to the Board of Trustees that contributions thereunder are being permanently discontinued, the fund shall be apportioned and distributed in accordance with the following procedures:

(A) The Board of Trustees shall determine the date of distribution and the asset value to be distributed after taking into account the expenses of such distribution.

(B) The Board of Trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, 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 division (C).

(C) The Board of Trustees shall apportion the asset value as of the date of termination in the manner set forth below, on the basis that the amount required to provide any given retirement income shall mean the actuarially computed single-sum value of such retirement income; except that if the method of distribution determined under division (B) 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.

(1) Apportionment shall first be made in respect of each retired member receiving a retirement income hereunder on such date, each person receiving a retirement income 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, in the amount required to provide such retirement income, 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.

(2) If there be any asset value remaining after the apportionment under subdivision (1), apportionment shall next be made in respect of each member in the service of the city on such date who has completed at least ten years of continuous service and who has contributed to the municipal Police Officers' Retirement Trust Fund for at least ten years and who is not entitled to an apportionment under subdivision (1), in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the member's continuous service and earnings to such date, and each former member then entitled to a benefit under the provisions of this subchapter, who has not, by such date, reached his normal retirement date, in the amount required to provide the actuarial equivalent of the accrued normal retirement income to which he is entitled under this subchapter, 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.

(3) If there be any asset value after the apportionments under subdivisions (1) and (2), apportionment shall lastly be made in respect to each member in the service of the city on such date who is not entitled to an apportionment under subdivisions (1) and (2) in the amount equal to his total contributions to the plan to date of termination; 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) In the event that there be asset value remaining after full apportionment specified in subdivisions (1) through (3), such excess shall be returned to the city, less return of state's contributions

to the state, 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.

(D) Board of Trustees shall distribute, in accordance with the manner of distribution determined under division (B), the amounts apportioned under division (C).

(Ord. O-91-82, passed 11-20-91)

§ 33.135 INVESTMENT OF FUNDS.

(A) Money shall be withdrawn from the Pension Fund created by this subchapter only upon warrants executed or authorized by a majority of the Board of trustees. The Board shall have exclusive charge of the investment of any assets in accordance with the written investment policy adopted by the Board pursuant to division (B) below. Board members must discharge their duties with respect to the plan solely in the interest of the participants and beneficiaries and (i) for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan; (ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (iii) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(B) The Board shall adopt and periodically update a written investment policy in accordance with F.S. § 112.661, as such statute may be amended in the future. Within the limitations of the foregoing standards and investment policy, the Board is authorized to acquire and retain in the fund every kind of investment, specifically including, but not limited to, stocks, bonds, securities, debentures, real estate, mutual funds, trusts, and other obligations which persons of prudence, discretion and intelligence acquire or retain for their own account.

(C) The intent of subsections (A) and (B) above is to exclude any and all restrictions on investments otherwise imposed by F.S. Ch.185, but only if subsections (A) and (B), with the exclusion of such restrictions, are in compliance with the provisions of F.S. Ch.185. If subsections (A) and (B), with the exclusion of the restrictions imposed by F.S.Ch.185, are deemed not to be in compliance with F.S. Ch.185, then such restrictions shall be incorporated herein in their entirety.

(D) In carrying out its investment duties, the board shall engage such custodial, investment management, and other professional consultants as the board deems necessary and prudent. The city or such entity as may be designated by the Board shall have custody of and responsibility for any funds, stocks, bonds or other indebtedness; and such custody shall be for the purpose of safekeeping only, without discretion in the city or other entity appointed by the Board regarding propriety of any withdrawal or transfer of such funds, stocks, bonds or of other indebtedness of funds.

(E) Money withdrawn from the fund for investments, or otherwise, on warrants executed or authorized by the Board pursuant to this subchapter and rules and regulations prescribed by the Board of Trustees, shall be by draft. All such drafts shall be consecutively numbered, and be signed by the Chairman and Secretary manually, or by facsimile, or such administrative function may be delegated so that authorized drafts may be signed by the City Manager for the Chairman, and by the Director of Finance for the Secretary, manually or by facsimile. All such drafts shall state upon their faces the purpose for which they were drawn.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2003-08, passed 5-7-03)

§ 33.136 MISCELLANEOUS PROVISIONS.

(A) *Retirees under Chapter 185 of Florida Statutes or under the Police Pension Fund.* Retirement compensation for retired members of the Hollywood Police Department, who retired under the provisions of the Hollywood Police Retirement Trust Fund, empowered by Chapter 185 of the Florida Statutes or under the provisions of the Police Pension Fund, which was in effect immediately prior to this subchapter, shall continue to receive pensions by this fund, which assumes all assets and liabilities of the Hollywood Police Officer's Retirement Trust Fund and the Police Pension Fund. Such pensions shall continue at the same rate as in effect immediately preceding this subchapter, and shall not be reduced or added to as provided by this subchapter.

(B) *Legally adopted children.* A legally adopted child shall have the same rights as a natural born child or children, but no pension shall be allowed to any stepchild or stepchildren of a deceased member.

(C) *No offsets to widow(ers) and children's benefits.* The pension payments to widow(ers) and/or children shall not be decreased or reduced due to benefits received by them under any Workmen's Compensation law.

(D) *Special duty time.* Any Member of the Police Department who is called or notified to report to duty, not on his regular work day or work schedule, shall be deemed to be on duty from the time he is notified to report to duty, and should he sustain injury or death in any manner while en route to Police Headquarters or any special assignment point, such injury or death shall be deemed in the line of duty.

(E) *Extra work details deemed duty time.* Any member of the Police Department who accepts extra work details even though paid by any other person, company or corporation, shall be deemed eligible for death and disability benefits under this plan while on such details, provided such work details have the approval of the Chief of Police or other authorized member of the Police Department.

(F) *Pension nonassignable.* No pension provided for herein shall be assignable or subject to garnishment for debt or to other legal process, and no pension provided for herein shall be subject to any deductions or assessments by the city, nor shall any benefits hereunder be altered or modified in any respect due to the fact that any member may be the recipient of any benefits from any other pension or pension plan.

(G) *Member contributions cease on retirement.* Member contributions shall cease upon their service of disability retirement.

(H) *Minimum benefit, return of member contributions.* Whenever any member in the service of the Police Department shall sever his connection with the Police Department either voluntarily or by discharge, or by death, from any cause, such member or his estate shall be entitled to the return of all moneys he has contributed into this system together with accumulated interest on said sum at the rate of 3% per annum compounded annually computed until date of payment to said member, unless at the time of such discharge, voluntary severance or death of such member has qualified under the terms of this subchapter for a pension as herein provided for. In the event a member has qualified for a service retirement or disability pension, the minimum benefit payable to such member, his beneficiary or estate shall in any event be an amount equal to his member contributions plus 3% interest as specified above.

(I) *Continuous service credit.*

(1) In computing any benefit based upon service, continuous service shall include all periods of time of actual work for which earnings were received by members in service of the Police Department, and notwithstanding anything to the contrary in this subchapter.

(2) In the event that the Board of Trustees may permit a former member of the system to "buy back" past service, such former member must return his or her withdrawn contributions with interest, as determined by the Board from time to time, not later than 90 days after his or her reemployment.

(J) *Appeal of compulsory retirement.* On compulsory retirement of a member on act of the Board of Trustees, any such retired member shall have the right to appeal against such retirement by the Board of Trustees by appealing to a court of proper jurisdiction; and said member shall defray his own expense in his appeal of such compulsory retirement.

(K) *Dismissal from department, nonforfeiture of vested benefits.* Members entitled to a pension shall not forfeit the same upon dismissal from the department, but shall be retired as herein prescribed.

(L) *Gender reference.* Reference to the word "his" shall also mean "her" wherever applicable and reference to the word "her" shall also mean "his" whenever applicable.

(M) *Annual increase in benefits.* Effective June 7, 2006, commencing three years after the date retirement benefits begin, a retired member who did not participate in the DROP plan shall receive a 2% annual increase in retirement benefits. Effective June 7, 2006, commencing upon the later of (i) separation from employment with the city and (ii) three years after the member entered the DROP plan, a retired member who participated in the DROP plan shall receive a 2% annual increase in retirement benefits. The benefit provided in this subsection is frozen as of midnight on September 30, 2011. Under the benefit structure effective October 1, 2011, there shall be no annual increase in retirement benefits.

(N) *Supplemental pension distribution.* There shall be payable to eligible persons a supplemental pension distribution for each fiscal year in which the actual rate of investment return earned on fund assets exceeds the assumed rate of investment return on fund assets. The total amount of the supplemental pension distribution for a particular fiscal year shall be equal to the actuarial present value of future retirement benefits, as calculated on the eligible retirees' portion of the Fund's earnings attributable to assets apportioned to retiree benefit liability, multiplied by the excess (not to exceed 2%) of the actual rate of investment return over the assumed rate of investment return for the fiscal year. The Board of Trustees shall determine who is an eligible person and the specific amount to be paid to each eligible person; provided, however, that a member who does not retire or enter the DROP on or before September 30, 2011 (and the surviving spouse and other beneficiaries thereof) shall not be an eligible person.

(O) *Use of state funds for individual "share" accounts.* Commencing October 1, 2000, the state funds received by the city pursuant to F.S. Chapter 185 shall be used to fund the plan increase in actuarial present value attributable to the additional benefits, including "minimum benefits" and "extra benefits," as provided in F.S. Chapter 185 consisting of ten years' certain and life as normal form for normal retirement, disability, and death prior to retirement, which benefits are set forth in § 33.128(B)(2), 33.128(C)(1) and (2), and 33.128(D) above. To accomplish this, a portion of the F.S. Chapter 185 funds received by the city after the said additional benefits were recognized as applicable under the plan shall be used to fund the actuarial present value of such benefits; however, the annual amounts so used shall be limited to the increase in annual contributions needed to fund such benefits until fully funded. In addition to the annual amounts needed for the funding of the ten years' certain and life normal benefit form, the increase in actuarial present value attributable to the October 1, 2000 retroactive effective date shall be paid in a single-sum payment from the remaining balance of unused F.S. Chapter 185 funds made available by the addition of the ten years' certain and life normal benefit. The remaining state funds shall

be divided equally into individual "share" accounts for active members of the system. The Board of Trustees shall administer this "share" program.

Commencing June 7, 2006, the state funds received by the city pursuant to F.S. Chapter 185 subsequent to the funds normally received during Fiscal Year 2006 shall not be divided into individual "share" accounts but shall be used exclusively to fund plan benefits, including "minimum benefits" and "extra benefits." as provided in F.S. Chapter 185.

(P) *Maximum benefits; tax qualification.* No benefit shall be paid from the plan in excess of the maximum benefit permitted under Section 415(b), Internal Revenue Code. The plan shall be administered as a qualified plan under the terms of the Internal Revenue Code.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2001-13, passed 5-2-01; Am. Ord. O-2002-33, passed 9-18-02; Am. Ord. O-2007-15, passed 6-20-07; Am. Ord. O-2009-29, passed 9-16-09; Am. Ord. O-2011-27, passed 9-7-11)

§ 33.137 COORDINATION OF PENSION BENEFITS.

In the event that a city employee changes his or her job status with the city such that he or she is considered a member pursuant to this subchapter, he or she may become a member of the system subject to the following rules:

(A) Date of transfer shall be the date when the change in job status occurs such that he is considered a member pursuant to this subchapter.

(B) A member's total retirement benefits shall consist of a combination of the following:

(1) Benefits payable by the previous plan. The member's accumulated contributions, if any, shall remain funds of the previous plan. The member's retirement benefit payable from the previous plan shall be calculated by using benefit percentage rates and his credited service as of the date of transfer, and the greater of his salary as of the date of his termination of employment or as of the date of transfer. This benefit shall be payable commencing on the member's normal retirement date pursuant to the system. The transferred employee shall not be eligible for any other benefits from the previous plan.

(2) Benefits payable by the system. For purposes of determining eligibility for retirement benefits under the system, the employee's credited service prior to and after the date of transfer shall be included. For purposes of determining the amount of benefits payable under the system, excluding death and disability benefits, only service following the date of transfer shall be included, and, effective June 7, 2006, the maximum amount of service for which the employee shall be credited under the system is that amount of service that would result in total credited service of 22 years under the previous plan and the system. For purposes of determining the amount of any death or disability benefits payable under the system, credited service both prior to and after the date of transfer shall be included, and, effective June 7, 2006, the maximum amount of such service that shall be included is 22 years. Anything to the contrary herein notwithstanding, a member's accrual rate shall not be less than 2% per year of continuous service.

(C) In the event that a city employee who is a member of the system is no longer considered an employee pursuant to this subchapter, the rules regarding his transfer to another retirement plan sponsored by the city shall be as set forth above, provided such other plan has appropriate language to accept transfers on the same basis.

(D) If, prior to the date when this language regarding transferred employees becomes effective, an employee had transferred from one retirement plan sponsored by the city to another and had thereby lost credit under the previous plan for his service prior to the date of transfer, his credited service under the previous plan shall be restored under the following conditions:

(1) The person must be an employee of the city on the date this language becomes effective.

(2) Upon notification, the employee must repay to the previous plan that amount of his contributions that he received from the previous plan due to his transfer to another plan within the city. The employee will have 60 days to exercise this option. He will be given one year to repurchase every two years of prior service.

(3) All previous contributions must be repaid prior to the employee's retirement to be eligible for any benefit under the previous plan.

(4) Upon satisfaction of these conditions, the employee will be credited with service in each plan as indicated in division (B) hereof.

(E) Effective October 1, 2009, the provisions of this section shall no longer apply to benefits with the General Employees Retirement Plan.

(Ord. O-91-82, passed 11-20-91; Am. Ord. O-2007-15, passed 6-20-07; Am. Ord. O-2009-29, passed 9-16-09)

§ 33.138 AMENDMENT.

This subchapter, including this section, may only be amended, in whole or in part, or repealed by the City Commission upon approval of any such amendment or repeal by:

(A) A 5/7ths vote of the City Commission and 50% plus one of the active members of the City Police Officers' Retirement System; or

(B) A majority vote of those qualified electors of the city voting in a referendum election called for such purpose by the City Commission and held in accordance with the provisions of law relating to elections currently in force in the city, or held in conjunction with a primary, general, or other special election held in the city.

(Ord. O-91-82, passed 11-20-91; Am. Ord. 0-2000-14, passed 3-22-00)

SOCIAL SECURITY

§ 33.150 APPLICABILITY.

(A) It is hereby declared to be the policy and purpose of the city to extend, effective as of October 1, 1961, to the employees and officials thereof, not excluded by law, and whether employed in connection with a governmental or proprietary function, the benefits of the system of old age and survivor's insurance as authorized by the Federal Social Security Act and amendments thereto, including

RESOLUTION NO. R-2011-118

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, DECLARING THE EXISTENCE OF A FINANCIAL URGENCY, WITH REGARD TO FISCAL YEAR 2012, REQUIRING MODIFICATION OF: THE THREE CURRENT COLLECTIVE BARGAINING AGREEMENTS BETWEEN THE CITY OF HOLLYWOOD AND AFSCME LOCAL 2432, THE CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF HOLLYWOOD AND BROWARD COUNTY PBA, AND CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF HOLLYWOOD AND HOLLYWOOD PROFESSIONAL FIREFIGHTERS, LOCAL #1375.

WHEREAS, the City Manager is charged with the responsibility of recommending a budget for adoption by the City Commission ("Commission"); and

WHEREAS, by law, that budget must be balanced between anticipated revenues and projected expenses; and

WHEREAS, due to the reduction in property values within the City of Hollywood ("City"), as well as various other economic factors, if the Commission were to adopt a millage rate of 6.7100, which is the millage rate in effect for fiscal year 2011, the City budget would have a deficit of approximately \$25,000,000.00 for fiscal year 2012 ("Deficit"); and

WHEREAS, the elimination of a sufficient number of positions to make up the Deficit would result in an unacceptable reduction in the level of service provided to the citizens and businesses of the City; and

WHEREAS, in order to eliminate the Deficit and maintain a balanced budget in accordance with law, while maintaining acceptable levels of service, the City has an urgent and drastic need to modify the agreements between the City and the unions representing its five bargaining units and modify the employee terms and conditions applicable to non-bargaining unit employees;

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



Section 1: That it hereby declares the existence of a financial urgency for fiscal year 2012, pursuant to Florida Statute Section 447.4095 (the "Statute"), requiring modification of the three current collective bargaining agreements between the City and AFSCME Local 2432, the current collective bargaining agreement between the City and the Broward County PBA, and the current collective bargaining agreement between the City and the Hollywood Professional Firefighters, Local #1375.


Section 2: That, in view of the above declaration and pursuant to the Statute, it hereby directs the City Manager to meet with the unions representing the City's five bargaining units as soon as possible to negotiate the impact of the financial urgency.

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

PASSED AND ADOPTED this 18 day of May, 2011.


PETER BOBER, MAYOR

ATTEST:


PATRICIA A. CERNY, MMC
CITY CLERK

APPROVED AS TO FORM & LEGALITY
for the use and reliance of the
City of Hollywood, Florida only:


JEFFREY P. SHEFFEL, CITY ATTORNEY

70-2011-22

ORDINANCE NO. 0-2011-27

AN ORDINANCE OF THE CITY OF HOLLYWOOD, FLORIDA, AMENDING THE SUBCHAPTER OF CHAPTER 33 OF THE CODE OF ORDINANCES TITLED "POLICE OFFICER'S RETIREMENT SYSTEM"; FREEZING THE POLICE OFFICERS' RETIREMENT PLAN EFFECTIVE SEPTEMBER 30, 2011 AND CREATING A NEW POLICE OFFICERS' RETIREMENT PLAN EFFECTIVE OCTOBER 1, 2011.

WHEREAS, on May 18, 2011, the City Commission of the City of Hollywood, Florida, declared a financial urgency for fiscal year 2012 pursuant to Florida Statute Section 447.4095; and

WHEREAS, the City Commission has determined that it is necessary to address the financial urgency by amending the Police Officers' Retirement Plan as set forth in this ordinance; and

WHEREAS, Section 33.138 of the Code of Ordinances provides, as one of two methods of amending the Police Officers' Retirement Plan, a majority vote of those qualified electors of the City voting in a referendum election called for such purpose by the City Commission; and

WHEREAS, the City Commission has called a referendum for the purpose of amending the Police Officers' Retirement Plan as set forth in this ordinance;

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

Section 1: That Section 33.125 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

* * *

CHAPTER 33: CITY EMPLOYEES

* * *

POLICE OFFICER'S RETIREMENT SYSTEM

§ 33.125 ESTABLISHMENT; PURPOSE.

(Coding: Words and figures underscored are additions to existing law; words and figures ~~struck-through~~ are deletions.)



(1) There is hereby established a Police Officer's Retirement System comprising a comprehensive amended retirement plan for the Police Officers of the city. The purpose of this plan is to establish amended terms and conditions under which retirement benefits will be provided to eligible employees of the city. The benefits under the plan shall be in addition to amounts received as Federal Social Security benefits, and shall also be in addition to benefits received by any member from any other private or public retirement system.

(2) The benefit structure in effect on September 30, 2011 is frozen at midnight on that date. All members will be vested in benefits accrued to that date and payable under the terms and conditions of plan provisions then in effect. No additional benefits of any kind shall accrue; provided, however, that for any member who is eligible to retire with normal retirement benefits on September 30, 2011, the benefit structure in effect on September 30, 2011 shall remain in effect beyond September 30, 2011 and shall not be frozen, except that any such member who does not enter the DROP on or before September 30, 2011 shall not be eligible to enter the drop after September 30, 2011, and no such member shall be an eligible person under subsection 33.136(N) below regarding supplemental pension distributions. Effective October 1, 2011, all members who are not eligible to retire with normal retirement benefits on September 30, 2011 are subject to a new benefit structure applicable to future service as herein set forth.

Section 2: That Section 33.126 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

* * *

CHAPTER 33: CITY EMPLOYEES

* * *

POLICE OFFICER'S RETIREMENT SYSTEM

* * *

§ 33.126 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AVERAGE MONTHLY EARNINGS. One-twelfth of the arithmetic average of earnings for the highest three years preceding the actual retirement or termination date of a member. Effective June 7, 2006, one-twelfth of the arithmetic average of earnings for the highest three 12-month measurement periods preceding the actual retirement or

termination date of a member, excluding, in the determination of the highest three 12-month measurement periods and calculation of the arithmetic average of earnings, pay for overtime in excess of 400 hours for each 12-month measurement period. The definitions of AVERAGE FINAL COMPENSATION set forth above are frozen at midnight on September 30, 2011. Under the benefit structure effective October 1, 2011, AVERAGE FINAL COMPENSATION means the arithmetic average of earnings for the 60 highest consecutive months of the last 120 months of credited service prior to retirement, termination, or death.

* * *

EARNINGS. Earnings shall be the sum of the following amounts actually paid to a member: salary; overtime pay; longevity pay; assignment pay; payments for accrued holiday time; payments for accrued blood time; annual "cash-out" payments for accrued vacation time; and payments for accrued compensatory time. Earnings shall not include payments for unused sick time or for unused vacation time which is paid upon retirement or termination. The definition of earnings set forth above is frozen at midnight on September 30, 2011. Under the benefit structure effective October 1, 2011, earnings shall be the sum of the following amounts actually paid to a member: salary; longevity pay; and assignment pay. Earnings shall not include overtime pay, payments for accrued holiday time, payments for accrued blood time, annual "cash-out" payments for accrued vacation time, payments for accrued compensatory time, and payments for unused sick time or for unused vacation time which is paid upon retirement or termination.

* * *

Section 3: That Section 33.128 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

* * *

CHAPTER 33: CITY EMPLOYEES

* * *

POLICE OFFICER'S RETIREMENT SYSTEM

* * *

§ 33.128 NORMAL RETIREMENT.

(A) *Normal retirement date.* A member may retire on the first day of the month coincident with or next following the attainment of age 60 or on the first day of the month

coincident with or next following the completion of 25 years of creditable service. Effective June 7, 2006, a member may retire on the day he or she attains age 50 or completes 22 years of creditable service. A member hired prior to October 1, 2011 with less than ten years of credited service as of September 30, 2011 and a member hired on or after October 1, 2011 may retire on the day he or she attains age 55 and completes ten years of creditable service or on the day he or she attains age 62 and completes 25 years of creditable service. A member with 10 or more years of creditable service as of September 30, 2011 shall retain his or her current normal retirement date.

(B) *Normal retirement benefit.*

(1) Amount.

(a) The monthly retirement benefit shall be an amount equal to 3% of average monthly earnings times years and completed months of continuous service, up to September 30, 2011, not exceeding 20 years plus 4% of average monthly earnings times years and completed months of continuous service, up to September 30, 2011, after 20 years. Effective June 7, 2006, upon completion of 22 years of continuous service prior to October 1, 2011, a member shall be provided an accrued benefit of 80% of average monthly earnings (equivalent to three years of continuous service deemed earned at a 4% accrual rate). The maximum normal retirement benefit payable to a member whose accrued benefit as of June 7, 2006 is not in excess of 80% of average monthly earnings shall not exceed 80% of average monthly earnings, and the maximum normal retirement benefit payable to a member whose accrued benefit as of June 7, 2006 is in excess of 80% of average monthly earnings shall not exceed the member's accrued benefit as of June 7, 2006.

(b) Under the benefit structure effective October 1, 2011, the monthly retirement benefit shall equal 2.0% of average monthly earnings times years and completed months of continuous service earned on or after October 1, 2011 up to a maximum benefit equal to the net result of subtracting from 80% the sum of (i) the product of 3% times the number of years of continuous service, not exceeding 20 years, earned up to September 30, 2011 and (ii) the product of 4% times the number of years of continuous service, in excess of 20 years, earned up to September 30, 2011; provided, however, that if the member retires before attaining age 62, an additional benefit equal to 0.5% of average monthly earnings times continuous service on and after October 1, 2011 shall be paid up to age 62.

(c) Anything to the contrary herein notwithstanding, a member's accrual rate shall not be less than 2% per year of continuous service.

* * *

(E) *Deferred retirement option plan ("DROP" plan).* A DROP plan is to be created and administered by the Board of Trustees of the Police Officer's Retirement System at no cost and with no liability to the city. Effective June 7, 2006, a member

may enter into the DROP on the day he or she attains age 50 or completes 22 years of creditable service. A member who elects to enter the DROP plan shall have no recourse against the city for any claims with respect to the DROP payments or the DROP plan. A member, hired on or before September 30, 2009, who elects to enter the DROP plan shall have the option to receive a rate of return on his or her DROP account that is equal to the assumed rate of investment return on fund assets. In the case of a member hired on or after October 1, 2009, his or her DROP account shall earn interest at the rate of 6% per year. In the event the plan earning exceeds 6% per year, the earnings in excess of 6% up to and including 12% per year shall offset the city's cost of maintaining the DROP program. Earnings in excess of 12% per year shall be equally divided between the DROP participant and the city. The maximum period of participation in the DROP plan for members who enter the DROP plan after June 7, 2006 shall be the lesser of 8 years or that period of participation in the DROP plan that would result in a total of 30 years of employment with the city. The city employment of each member who elects to participate in the DROP plan after June 7, 2006 shall terminate not later than the end of his or her maximum period of participation in the DROP plan. A member who does not enter the DROP prior to October 1, 2011 shall not be eligible to participate in the DROP.

* * *

Section 4: That Section 33.130 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

* * *

CHAPTER 33: CITY EMPLOYEES

* * *

POLICE OFFICER'S RETIREMENT SYSTEM

* * *

§ 33.130 VESTING.

If a member terminates his employment with the Police Department, either voluntarily or by discharge, and is not eligible for any other benefits under this system he shall be entitled to the following:

* * *

(B) With ten or more years of continuous service:

(1) Under the benefit structure effective prior to October 1, 2011, the pension benefits accrued to his date of termination, payable for the life of the member and commencing upon the member's attainment of age 50, provided he does not elect to withdraw his member contributions; and, under the benefit structure effective October 1, 2011, the pension benefits accrued to his date of termination, payable for the life of the member and commencing upon the member's attainment of age 55, provided he does not elect to withdraw his member contributions or, in the discretion of the member;

(2) Refund of member contributions plus 3% interest compounded annually, in which event no pension benefit shall be payable.

Section 5: That Section 33.131 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

* * *

CHAPTER 33: CITY EMPLOYEES

* * *

POLICE OFFICER'S RETIREMENT SYSTEM

* * *

§ 33.131 FINANCING OF THE SYSTEM.

The fund of the retirement system shall consist of monies derived from the following sources:

* * *

(D) Members of the system shall contribute 8% of their earnings. Effective October 1, 2008, members of the system shall contribute 8.5% of their earnings. Payments to the member for overtime in excess of 223 hours for the period from June 7, 2008 through December 31, 2008, and for overtime in excess of 400 hours in calendar year 2007 and each calendar year thereafter shall be excluded from earnings for this purpose. After completion of 27 years of continuous service, members of the system shall contribute only 0.5% of their earnings. Effective October 1, 2009, members of the System shall contribute 9% of their earnings. ~~Effective October 1, 2010, members shall contribute 9.25% of their earnings. Effective October 1, 2011, members shall contribute 0.5% of their earnings.~~

* * *

Section 6: That Section 33.136 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

* * *

CHAPTER 33: CITY EMPLOYEES

* * *

POLICE OFFICER'S RETIREMENT SYSTEM

* * *

§ 33.136 MISCELLANEOUS PROVISIONS.

* * *

(M) *Annual increase in benefits.* Effective June 7, 2006, commencing three years after the date retirement benefits begin, a retired member who did not participate in the DROP plan shall receive a 2% annual increase in retirement benefits. Effective June 7, 2006, commencing upon the later of (i) separation from employment with the city and (ii) three years after the member entered the DROP plan, a retired member who participated in the DROP plan shall receive a 2% annual increase in retirement benefits. The benefit provided in this subsection is frozen as of midnight on September 30, 2011. Under the benefit structure effective October 1, 2011, there shall be no annual increase in retirement benefits.

(N) *Supplemental pension distribution.* There shall be payable to eligible persons a supplemental pension distribution for each fiscal year in which the actual rate of investment return earned on fund assets exceeds the assumed rate of investment return on fund assets. The total amount of the supplemental pension distribution for a particular fiscal year shall be equal to the actuarial present value of future retirement benefits, as calculated on the eligible retirees' portion of the Fund's earnings attributable to assets apportioned to retiree benefit liability, multiplied by the excess (not to exceed 2%) of the actual rate of investment return over the assumed rate of investment return for the fiscal year. The Board of Trustees shall determine who is an eligible person and the specific amount to be paid to each eligible person; provided, however, that a member who does not retire or enter the DROP on or before September 30, 2011 (and the surviving spouse and other beneficiaries thereof) shall not be an eligible person.

* * *

ORDINANCE FREEZING POLICE PENSION PLAN

Section 7: That it is the intention of the City Commission that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Hollywood, Florida, and the provisions of this ordinance may be renumbered to accomplish such intention.

Section 8: That if any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not effect the validity of any remaining portions of this ordinance.

Section 9: That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 10: That this ordinance shall be in full force and effect immediately upon approval by:

A) A 5/7ths vote of the City Commission and 50% plus one of the active members of the Police Officers' Retirement System; or

B) A majority vote of those qualified electors of the City voting in a referendum election called for such purpose by the City Commission.

ADVERTISED on Aug 26, 2011.

PASSED on first reading this 18 day of July, 2011.


PASSED AND ADOPTED on second reading this 7 day of Sept, 2011.

ATTEST:


PATRICIA A. CERNY, MMC
CITY CLERK


PETER BOBER, MAYOR

APPROVED AS TO FORM & LEGALITY
for the use and reliance of the
City of Hollywood, Florida only:


JEFFREY P. SHEFFEL, CITY ATTORNEY
0/0/11pao



CITY of HOLLYWOOD, FLORIDA

Office of the City Attorney

2600 Hollywood Blvd. • P.O. Box 229045 • Hollywood, Florida 33022-9045
Phone (954) 921-8435 • Fax (954) 921-8081 • www.hollywoodfl.org

Jeffrey R. Sheffield
City Attorney



September 30, 2011

David M. Williams, Plan Administrator
Hollywood Police Officers' Retirement System
4205 Hollywood Blvd., Suite 4
Hollywood, Florida 33021

Re: DROP Applications Submitted on or before 9/30/2011

Dear Mr. Williams:

Regarding the above-captioned matter, you have submitted several DROP applications to the City with a request that the City process them. In response thereto, I am writing to advise you of the City's position that the applications are not proper to the extent that the applicants seek to commence their participation in the DROP on a date subsequent to September 30, 2011. As such, the Board of Trustees (the "Board") should have either denied the applications or approved them with a commencement date on or before September 30, 2011.

In support of the City's position, I state the following:

1. On May 18, 2011, the City Commission adopted Resolution No. R-2011-118 (copy enclosed) declaring a financial urgency for fiscal year 2012 pursuant to Florida Statute Section 447.4095.
2. On September 7, 2011, the City Commission adopted Ordinance No. O-2011-27 (the "Ordinance") (copy enclosed) amending the Police Officers' Retirement Plan. One amendment is the addition of subsection 33.125(2), which, among other things, preserves retirement benefits for members who are eligible for normal retirement on September 30, 2011, "except that any such member who does not *enter* the DROP on or before September 30, 2011 shall not be eligible to enter the DROP after September 30, 2011." There is one other exception that is not relevant for the purposes of this letter.



Our Mission: We are dedicated to providing municipal services for our diverse community in an atmosphere of cooperation, courtesy and respect. We do this by ensuring all who live, work and play in the City of Hollywood enjoy a high quality of life.

"An Equal Opportunity and Service Provider Agency"

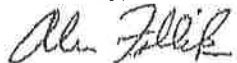


David M. Williams, Plan Administrator
September 30, 2011
Page 2

3. On September 21, 2011, the City Commission adopted Resolution No. R-2011-254 (copy enclosed) addressing the Fiscal Year 2012 financial urgency by modifying certain wages and other terms and conditions in the collective bargaining agreement between the Broward County PBA and the City.
4. The applicants are apparently eligible for normal retirement but do not wish to *enter* the DROP until sometime after September 30, 2011. The plain language of subsection 33.125(2) establishes September 30, 2011 as the last day on which a member can enter the DROP.
5. You mention in your e-mail that the Board of Trustees affirmed the status of the members who are currently eligible for normal retirement prior to October 1, 2011 through its legal counsel. This seems to be a reference to the principle that when a member becomes eligible for normal retirement, his or her retirement benefits cannot be reduced. However, Florida courts have determined that DROP is an employment status, not a retirement benefit. Thus, effective October 1, 2011, the Ordinance properly terminates the right of a member who is eligible for normal retirement to enter the DROP.

By reason of the foregoing, the City demands that the Board administer the plan in accordance with the terms of Ordinance No. O-2011-27. Should the Board fail to do so, the City is prepared to take any and all steps necessary to enforce the Ordinance.

Sincerely,



Alan Fallik
Deputy City Attorney

Enclosures

Cc: Cathy Swanson-Rivenbark, City Manager
Gail Reinfeld, Director of Human Resources & Risk Management
Stephen Cypen, Esq.



CITY of HOLLYWOOD, FLORIDA

Office of the City Attorney

2600 Hollywood Blvd. • P.O. Box 229045 • Hollywood, Florida 33022-9045
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Jeffrey P. Sheffield
City Attorney



July 11, 2012

David M. Williams
Plan Administrator
Hollywood Police Officers' Retirement System
4205 Hollywood Blvd., Suite 4
Hollywood, FL 33021

Re: Lyle Bien

Dear Mr. Williams:

You will recall that on September 30, 2011, Deputy City Attorney Alan Fallik sent you a letter regarding the ordinance that, among other things, prohibits police officers from entering the DROP after September 30, 2011. A copy of the letter with enclosures is enclosed. The City is now being asked to process an application by Sergeant Lyle Bien to enter the DROP effective July 10, 2012. The City cannot process this application for the reasons expressed in Alan's letter and in this letter. Please distribute a copy of this letter to each member of your Board.

There can be no doubt of the intent of the City Commission in adopting Ordinance No. O-2011-27. Specifically, the sentence that was added to the end of subsection 33.128(E) says that a member who does not enter the DROP prior to October 1, 2011 shall not be eligible to participate in the DROP. Therefore, the recent Board action approving Sergeant Bien's application is in direct violation of the terms of the pension plan.

It is troubling that the Board would approve an application that so clearly violates the plan, especially considering section 33.132 of the Code of Ordinances, which says, in relevant part, that the general administration and responsibility for making effective the provisions of this subchapter are hereby vested in the Board.

In conclusion, the City does not recognize Sergeant Bien's entry into the DROP. Therefore, his pension contribution will not cease, and he will not receive his accumulated time. Furthermore, we have submitted a resolution to the City Commission that would authorize me to file suit against the Board to enforce the City's interests in this matter. The resolution is scheduled for Commission consideration on July 18, 2012. If the Commission adopts the



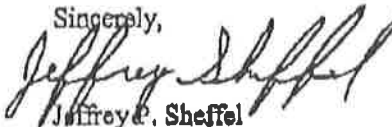
Our Mission: We are dedicated to providing municipal services for our diverse community in an atmosphere of cooperation, courtesy and respect. We do this by ensuring all who live, work and play in the City of Hollywood enjoy a high quality of life.

"An Equal Opportunity and Services Provider Agency"



David M. Williams
July 10, 2012
Page 2

resolution and the Board does not promptly rescind its action, I will file the appropriate action in accordance with the resolution.

Sincerely,

Jeffrey P. Sheffel
City Attorney

Enclosures

Cc: Cathy Swanson-Rivenbark, City Manager
Gail Reinfeld, Director of Human Resources & Risk Management
Matthew Lalla, Director of Financial Services
Stephen Cypen, Esq.
Sergeant Lyle Bien

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VIA E-MAIL AND REGULAR MAIL

July 13, 2012

Jeffrey P. Sheffel, Esq.
City Attorney
City of Hollywood
Post Office Box 229045
Hollywood, Florida 33022-9045

Re: Hollywood Police Pension Fund -
Lyle Bien - Our File No. 14333

HUMAN RESOURCES DIV.
JUL 16 PM 2:03

Dear Mr. Sheffel:

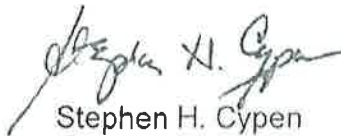
This letter is in response to your letter dated July 11, 2012 addressed to David M. Williams, Plan Administrator, Hollywood Police Officers' Retirement System.

In response to Deputy City Attorney Alan Fallik's September 30, 2011 letter, I responded by e-mail on October 3, 2011 that we respectfully disagreed with the unsupported legal conclusion in said letter.

I hereby reiterate our position.

Very truly yours,

CYPEN & CYPEN



Stephen H. Cypen
For the Firm

SHC:jes

cc: Cathy Swanson-Rivenbark, City Manager
Gail Reinfeld, Director of Human Resources & Risk Management
Matthew Lalla, Director of Financial Services
David M. Williams, Plan Administrator

