

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 34, "CITY POLICY", OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 34.026 "OPTIONAL FORMS OF RETIREMENT BENEFITS" TO CREATE A DEFERRED RETIREMENT OPTION PLAN ("DROP") FOR MEMBERS OF THE GENERAL EMPLOYEES' RETIREMENT SYSTEM; BY AMENDING SECTION 34.010 "DEFINITIONS" TO PROVIDE FOR DEFINITIONS OF TERMS CONTAINED IN THE DROP; BY CREATING SECTION 34.0263 "DEFERRED RETIREMENT OPTION PLAN" TO CONTAIN THE TERMS AND CONDITIONS OF THE DROP, INCLUDING LIMITED RETROACTIVITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Pompano Beach has established a retirement plan for its general employees, which is codified in Sections 34.010 through 34.038 of the City Code of Ordinances; and

WHEREAS, the certified bargaining agent of the City's general employees, the Federation of Public Employees, has negotiated with the City to establish an optional form of retirement benefit known as a Deferred Retirement Option Plan (hereinafter "DROP"); and

WHEREAS, the City believes that creating a DROP will provide a beneficial retirement-planning option for its general employees, will improve morale, and will inure to the benefit of the City in its ability to retain qualified employees subsequent to their reaching retirement eligibility; and

WHEREAS, the Board of Trustees of the General Employees Retirement System has approved the negotiated DROP as provided for in Section 34.012(B)(8) of the Code of Ordinances; and

WHEREAS, pursuant to law, ten (10) days notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 34.010, "Definitions", of Chapter 34, "City Policy", shall be amended as follows:

GENERAL EMPLOYEES' RETIREMENT SYSTEM

§ 34.010 DEFINITIONS.

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

...

DROP. The Deferred Retirement Option Plan established by Section 34.026(E).

DROP ELECTION DATE. The date a member elects to participate in the DROP.

DEFERRED RETIREMENT CALCULATION DATE. The date prior to a member's entering the DROP Period when benefits under the DROP shall be calculated as provided in § 34.0263.

DROP PARTICIPANT. Any eligible member of the General Employees Retirement System who has validly elected to participate in the DROP.

DROP ACCOUNT. The bookkeeping account established by the plan for each member of the DROP pursuant to § 34.0263.

DROP PERIOD. The period of time commencing on the Deferred Retirement Calculation Date and ending on the member's DROP Termination Date, which period may not exceed 60 months of elapsed time.

DROP TERMINATION DATE. The date a DROP Participant ceases to be an employee of the City and begins receiving their calculated retirement benefit.

...

RETIRED. Retirees who are receiving ~~months~~ monthly benefits from the General Employees' Pension Plan or participating in the DROP.

RETIREE. A retired employee or, after the retired employee's death, the retired employee's survivor or beneficiary, who is receiving monthly benefits, normal retirement, early retirement, disability, or remainder of ten-year certain or survivor from the General Employees' Pension Plan. A DROP participant is considered a "retiree" for purposes of this subchapter. For purposes of this subchapter, a retired employee and, after the retired employee's death, the retired employee's survivor or beneficiary who is receiving monthly benefits on account of the retired employee's death, shall be considered the same retiree.

RETIREMENT DATE. The date the employee retired, entered the DROP, or if the employee died before retiring or entering the DROP, the date of death.

SECTION 2. That Section 34.026, "Optional Forms of Retirement Benefits", of Chapter 34, "City Policy", shall be amended as follows:

§ 34.026 OPTIONAL FORMS OF RETIREMENT BENEFITS

...

(E) A Deferred Retirement Option Plan (DROP) is hereby established. The DROP is to be administered by the Board of Trustees subject to the terms and conditions set forth in Section 34.0623 of this Code. In no event shall the Board administer a plan in a way which results in the disqualification of the system under the Internal Revenue Code.

SECTION 3. That a new Section 34.0263, "Deferred Retirement Option Plan", is hereby created to read as follows:

§ 34.0263 DEFERRED RETIREMENT OPTION PLAN (DROP)

1. Eligibility.

(a) An active member shall be eligible to elect to enter DROP upon or after he or she has reached age 55 and completed 20 or more years of service, or has reached age 62 with 3 or more years of service.

(b) Prior service purchased pursuant to this chapter shall be included for purposes of determining eligibility for the DROP to the extent provided in § 34.015.

(c) A plan member must be an active employee of the City in order to enter DROP. Members who have left City service and who have elected deferred retirement pursuant to § 34.021(A) will not be eligible to participate in the DROP provisions until and unless they return to City service covered by the General Employees Retirement System after the DROP has been adopted by the City.

2. Each member, before electing to participate in DROP, shall be given information regarding how benefits under DROP would be calculated and a comparison of the member's anticipated benefits at retirement with and without participation in DROP. All members are advised to seek advice from professional tax and investment advisors before electing to participate in DROP.

3.1. DROP Election.

Any member who elects to participate in the DROP shall provide the City and the board at least 30 days notice and make the election on a form prescribed and retained by the board. On that form the member shall do all of the following:

(a) Designate a DROP Period that will not exceed 60 months of elapsed time, irrevocably agree to terminate covered employment under the system no later than the end of that designated period, and acknowledge that participation in the DROP is not a guarantee of continued employment for any period.

(b) Waive any claims with respect to age and other discrimination in employment laws as are required by the employer or the system.

(c) Waive the right to any disability retirement benefits from the system. This waiver shall include, but not be limited to, any rights the member may have under § 34.022.

(d) Waive the right to pre-retirement death benefits under § 34.023 if death occurs during the DROP period.

(e) Acknowledge that his or her COLA will not begin until one year after DROP participation ends, payable in accordance with § 34.038.

(f) Acknowledge that his or her election to participate in the DROP may not later be changed or modified.

(g) Make an irrevocable election as to whether the member wishes to select any optional retirement allowance pursuant to § 34.026(A), (B) or (C) and, if so, make such a selection.

(h) Designate a person or persons as beneficiaries of the balance in the member's DROP Account in the event the member dies during the DROP Period. The beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the member, and filed with the board.

3.2. (a) From and after the Deferred Retirement Calculation Date, the member shall cease to accrue retirement service credit under this chapter and shall no longer be required to make member contributions in accordance with § 34.025 and, instead, shall begin to accrue benefits under the DROP pursuant to the terms of this ordinance, which benefits shall be credited to the member's DROP Account.

(b) A member's election to participate in the DROP shall be irrevocable.

(c) A member in the DROP shall have all of the rights, privileges, and benefits, and is subject to all terms and conditions of active employment including, but not limited to, seniority, accrual and use of vacation and sick leave, and pay increases, and eligibility for other City benefit programs not related to retirement benefits.

4.1. DROP Account.

(a) A DROP Account shall be established as a nominal, bookkeeping account within the system for each member. No system assets shall be separately segregated for any DROP Account. A member may not have a claim on any specific assets of the system.

(b) A member's DROP Account shall be credited with an amount equal to the Retirement Benefit (calculated in accordance with § 34.020, including a COLA if one is later included as part of the DROP) the member would have received if the member had retired for service on the Deferred Retirement Calculation Date, taking into consideration any optional form of benefit selected under § 34.026.

(c) On the effective date that the member enters the DROP, the City will calculate the member's accrued sick and vacation leave payout utilizing existing payout formulas. The City will pay to the member his or her leave payout in five (5) equal payments over the next five (5) years, with each payment being made on the member's DROP participation anniversary date. However, should the member terminate participation in the DROP and terminate employment with the City before the full sixty (60) months, the remainder of the member's leave payout shall be paid to the member upon termination.

(d) Any accrued sick leave in excess of the maximum number of hours accruable for payout purposes will be carried over into the DROP. The member will continue to accrue sick and vacation leave while participating in the DROP.

Leave accrual will be in accordance with the appropriate collective bargaining agreement. However, at the member's conclusion of participating in the DROP, the member will forfeit all unused accumulated sick and annual leave and thus will not be compensated for any portion of said leave.

(e) The participant's DROP Account will be credited with interest or lose principle at the same rate as the investment earnings assumption for the pension plan. The investment earnings assumption may be adjusted up or down during an employee's participation in the DROP, which will result in a change in the prospective interest rate credit on the employee's DROP account.

4.2. The board shall provide a statement to the member that displays the value or balance of the member's DROP Account and summarizes any credits to the account or other transactions that occurred after the immediately preceding valuation date. The statement of account shall be provided at least once annually to each member, and may be provided more often.

4.3. The right of a member to benefits under the DROP is not subject to execution or any other process whatsoever, except to the extent permitted by Chapter 61, Florida Statutes, and is unassignable except as specifically provided under § 34.030. The rights of a member or his or her beneficiary/spouse under the DROP shall be subject to any applicable provisions of law or court orders relating to child support.

5. (a) If a member dies during the DROP Period, he or she shall be deemed to have terminated employment with the City on his or her date of death and his or her benefits shall be calculated as provided in subdivisions (b) and (c).

(b) If the member has elected an optional form of benefit under § 34.026(A), (B) or (C), a monthly benefit will be paid in accordance with subsection 6.3 below to the beneficiary designated by the member for this purpose.

(c) The balance in the member's DROP Account shall be distributed pursuant to subsection 6.4(b)(ii) below to the beneficiary designated by the member for this purpose.

6.1. Participation in DROP shall be completed and the member shall be entitled to benefits under the DROP upon the first occurrence of either of the following during the DROP Period:

(a) Termination of the member's employment from the City, whether voluntary or involuntary.

(b) Death of the member.

6.2. Upon termination of employment the DROP Participant shall:

(a) Receive a distribution, in the manner prescribed in subsection 6.4, of the balance in the member's DROP Account.

(b) Begin receiving a monthly retirement allowance in an amount calculated pursuant to subsection 6.3.

6.3. The member's monthly allowance shall be an amount equal to the monthly allowance the member would have received if he or she had retired under Normal Retirement on the Deferred Retirement Calculation Date, subject to the following:

(a) The member's allowance shall be adjusted based on any election by the member made at the time he or she entered the DROP of any optional retirement allowance pursuant to § 34.026(A), (B) or (C). The adjustment shall be based on the ages of the member and, if applicable, the member's beneficiary as of the Deferred Retirement Calculation Date.

(b) The member's allowance will be adjusted with a COLA pursuant to § 34.038 effective on the first anniversary of his or her DROP Termination Date, payable on the following October 1, and on each October 1 thereafter.

(c) The right of a member to benefits under the DROP is not subject to execution or any other process whatsoever, except to the extent permitted by Chapter 61, Florida Statutes, and is unassignable except as specifically provided under § 34.030. The rights of a member or his or her beneficiary/spouse under the DROP shall be subject to any applicable provisions of law or court orders relating to child support.

6.4. (a) The balance in the member's DROP Account shall be distributed to the member in a single lump-sum payment at the time of retirement. If requested by the member, the payment may be immediately deposited into a qualified tax-deferred account established by the member.

(b) Notwithstanding any other provision of this article, a member or beneficiary may not be permitted to elect a distribution under this article that does not satisfy the requirements of § 401(a)(9) of Title 26 of the United States Code, including the incidental death benefit requirements of § 401(a)(9)(G) and the regulations thereunder. The required beginning date of distributions that reflect the entire interest of the member shall be as follows:

(i) In the case of a lump-sum distribution to the member, the lump-sum payment shall be made, at the member's option, not later than April 1 of the calendar year following the latter of the calendar year in which the member attains the age of 70 and one-half years (or age determined by the Internal Revenue Service) or the calendar year in which the member terminates all

employment for the employer.

(ii) In the case of a benefit payable on account of the member's death, distribution shall be paid as soon as is administratively feasible, but no later than December 31 of the calendar year in which the first anniversary of the member's date of death occurs.

6.5. (a) A member may change the person or persons designated as beneficiaries of the balance in the member's DROP Account at any time during the DROP Period. The new beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the member, and filed with the board.

(b) Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump-sum distribution that shall be payable from the member's DROP Account upon the death of the member.

(c) If the member dies without a valid beneficiary designation on file, or if no designated beneficiary survives the member, any balance remaining in the member's account shall be payable to the member's estate as provided under Florida Law.

7. Legal Challenge to DROP

(a) If for any reason, a court of competent jurisdiction determines that the irrevocable election is not enforceable, and a member chooses to remain in the employment of the City beyond five (5) years, the General Employees' retirement benefit will be calculated as if the Member had never entered the DROP, and the member will be required to make contributions to the Pension Fund in an amount sufficient to cover the employee and City contributions that would have been made had the member not elected to participate in the DROP, along with interest, as determined by the Board of Trustees upon the advice of the actuary. The member shall forfeit any and all rights to the funds in his or her DROP Account and said funds cannot be used to satisfy the contributions required in this section.

(b) Should any person challenge the validity of the terms of the DROP, including the irrevocability of the election, or otherwise attempt to remain employed beyond the sixty (60) months provided herein, the prevailing party of such litigation shall be entitled to receive from the non-prevailing party all of its reasonable costs including reasonable attorney fees.

(c) In the event a court of competent jurisdiction determines that the irrevocable election of the DROP is not enforceable, the City may, in its sole and exclusive discretion, refuse to allow employees to enter the DROP until such time as the DROP is amended or repealed.

8. The Board of Trustees shall have the power to make administrative rules as are necessary for the efficient implementation and operation of the DROP and to ensure its continued compliance with the tax qualification requirements of the Internal Revenue Code, and provided such administrative rules are not inconsistent or contradicted by this ordinance.

9. An active member may enter DROP on a retroactive or semi-retroactive basis in accordance with the eligibility requirements specified in section 9.1 below, by following the election requirements in section 9.2 below, and will receive benefits in accordance with section 9.3 below 6.3, above.

9.1. Eligibility.

(a) A member currently employed by the City will be eligible to elect to enter DROP on a retroactive or partially retroactive basis if he or she reached age 55 and completed 20 or more years of service, or reached age 62 with 3 or more years of service on or after October 1, 2003.

(b) The election to enter DROP on a retroactive or partially retroactive basis can only be made after the effective date of this ordinance, but no later than 90 days thereafter.

9.2. Retroactive DROP Election.

Any member who elects to participate in the DROP on a retroactive or partially retroactive basis shall make the election on a form prescribed and retained by the board. In addition to the items required under subsection 3.1, above, the member shall also include a retroactive Deferred Retirement Calculation Date. This date must be a date on or after the member would have met the eligibility requirements of the DROP.

(a) From and after the Deferred Retirement Calculation Date, the member shall cease to accrue retirement service credit under this chapter and, instead, shall begin to accrue benefits under the DROP pursuant to the terms of this ordinance, which benefits shall be credited to the member's DROP Account.

(b) From and after the election date, the member shall no longer be required to make member contributions in accordance with § 34.025.

(c) A member's election to participate in the DROP on a retroactive or partially retroactive basis shall be irrevocable.

9.3. Pre-DROP Contributions.

In addition to the amounts credited to the DROP Account under subsection 4.1, above, the DROP Account for a member who enters DROP on a retroactive or

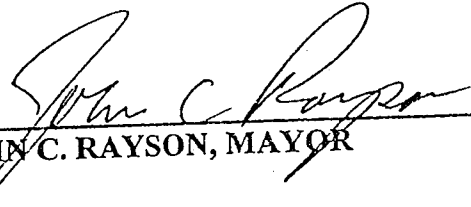
partially retroactive basis shall also include an amount equal to any member contributions made on or after the Deferred Retirement Calculation Date in accordance with § 34.025, along with interest on that additional amount at a rate consistent with the interest credited to member contributions under § 34.025.

SECTION 4. If any provision of this Ordinance or the application thereto to any person or circumstances is held invalid, such invalidity shall not affect any provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 5. This Ordinance shall become effective upon passage.

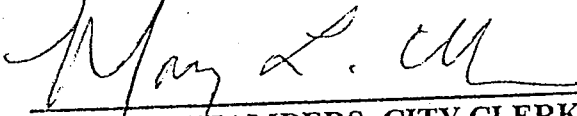
PASSED FIRST READING this 13th day of July, 2004.

PASSED SECOND READING this 27th day of July, 2004.



JOHN C. RAYSON, MAYOR

ATTEST:



MARY L. CHAMBERS, CITY CLERK

JDS
6/15/04
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