

**CITY OF HOMESTEAD, FLORIDA**

**ORDINANCE NO 2014-08-10**

**AN ORDINANCE OF THE CITY OF HOMESTEAD, FLORIDA, AMENDING THE FIREFIGHTERS' RETIREMENT SYSTEM AT ARTICLE V OF CHAPTER 22.5 "RETIREMENT PLANS" OF THE CITY CODE BY AMENDING SECTIONS 22.5-252 "DEFINITIONS"; 22.5-255 "FINANCES AND FUND MANAGEMENT; ESTABLISHMENT AND OPERATION OF FUND"; 22.5-256 "CONTRIBUTIONS"; 22.5-260 "VESTING"; 22.5-261 "OPTIONAL FORMS AND BENEFITS"; 22.5-269 "REPEAL OR TERMINATION OF SYSTEM; TRANSFER TO ANOTHER STATE RETIREMENT SYSTEM"; AND 22.5-274 "DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS" TO COMPLY WITH THE INTERNAL REVENUE CODE AND STATE LAW; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Homestead (the "City") has established the Firefighters' Retirement System (the "System") for the City's former firefighters in accordance with Chapter 175, Florida Statutes; and

**WHEREAS**, the System has received a determination letter from the Internal Revenue Service (Exhibit "A") which requires amendment of the System to comply with certain provisions of the Internal Revenue Code and the regulations issued thereunder; and

**WHEREAS**, the Florida Legislature passed Chapter 2009-97, Laws of Florida and Chapter 2011-216, Laws of Florida which requires amendment of the System; and

**WHEREAS**, the Board of Trustees recommends that the City Council approve this Ordinance amending the System in order to bring the System into compliance with state and federal law; and

**WHEREAS**, the City Council has reviewed the actuarial impact statement regarding the System amendments and finds that approval of this Ordinance is in the best interest of the City, its former employees and its residents.

**IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOMESTEAD, FLORIDA AS FOLLOWS:<sup>1</sup>**

**Section 1. Recitals.** The above are true and correct and are incorporated herein by this reference.

**Section 2. City Code Amended.** Section 22.5-252 "Definitions," of Article V of Chapter 22.5 "Retirement Plans," of the City Code is hereby amended to read as follows:

**Sec. 22.5-252. Definitions.**

(a) As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

\* \* \* \*

*Credited service* means the total number of years and fractional parts of years of service as a firefighter with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a firefighter. A member may voluntarily leave his accumulated contributions in the fund for a period of five (5) years after leaving the employ of the fire department pending the possibility of being reemployed as a firefighter without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the fire department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a firefighter within five (5) years, his accumulated contributions shall be returned. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated. Upon reemployment, a firefighter shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his accumulated contributions from the fund unless he repays

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<sup>1/</sup> Proposed additions to existing City Code text are indicated by underline; proposed deletions from existing City Code text are indicated by ~~strike through~~.

into the fund the contributions he has withdrawn, with interest, as determined by the board, within ninety (90) days after his reemployment.

The years or fractional parts of years that a member serves in the military service of the Armed Forces of the United States, voluntarily or involuntarily, after leaving active employment as a firefighter, to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

- (1) The member returns to his employment as a firefighter within one (1) year from the date of or release from such military service.
- (2) The member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act.
- (3) The maximum credit for military service shall be five (5) years.

Credited service shall not be deemed to be interrupted by any authorized leave of absence or vacation, provided that all members similarly situated shall be treated alike pursuant to uniform, nondiscriminatory rules. Notwithstanding any provision of this plan to the contrary, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414 of the Code, as amended; USERRA; and Chapter 175, Florida Statutes, as applicable.

\* \* \* \*

*Regular interest* means such rate of interest as shall be determined ~~and allowed from time to time by the board,~~ applied by the Board in determining actuarial equivalence.

\* \* \* \*

**Section 3. City Code Amended.** Section 22.5-255 "Finances and Fund Management; Establishment and Operation of Fund," of Article V of Chapter 22.5 "Retirement Plans," of the City Code is hereby amended to read as follows:

**Sec. 22.5-255. - Finances and fund management; establishment and operation of fund.**

\* \* \* \*

(f) The board, subject to the fiduciary standards in Sections 112.656, 112.661, and 518.11, Florida Statutes, and the Code of Ethics in Sections. 112.311-112.3187, Florida Statutes, shall have

the following investment powers and authority, which may be delegated to one (1) or more investment advisors selected and supervised by the board.

(1) The fund may be invested and reinvested in such securities or property real or personal wherever situated and of whatsoever kind, including but not limited to stocks, common or preferred, bonds and other evidences of indebtedness or ownership. Notwithstanding any other provision of law, the board may invest up to 25 percent of plan assets in foreign securities on a market-value basis.

\* \* \* \*

**Section 4. City Code Amended.** Section 22.5-256 "Contributions," of Article V of Chapter 22.5 "Retirement Plans," of the City Code is hereby amended to read as follows:

**Sec. 22.5-256. Contributions.**

(a) *Member contributions.*

1. *Amount.* Members shall contribute five (5) percent of compensation. Member contributions withheld by the city on behalf of members shall be deposited in the fund immediately after each pay period. The contributions made by each member to the fund shall be designated as employer contributions pursuant to section [IRC] 414(h) of the code. Such designation is contingent upon the contributions being excluded from the members' gross income for Federal Income Tax purposes. For all other purposes of the system, such contributions shall be considered to be member contributions. No employee shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the city to the system.

\* \* \* \*

**Section 5.** Section 22.5-260 "Vesting," of Article V of Chapter 22.5 "Retirement Plans," of the City Code is hereby amended to read as follows:

**Sec. 22.5-260. Vesting.**

\* \* \* \*

(b) Any member not otherwise eligible for any other benefits hereunder, but who has a vested interest at time of termination, shall receive monthly

benefits commencing on the date that would have been his normal retirement date had he remained in employment. Alternatively, such member may elect to receive his vested benefit, reduced for early retirement, at any time on or after the date that would have been his early retirement date, it being further understood that actuarially equivalent amounts shall be payable under any form or manner of payment provided. Each member shall become 100 percent vested in his/her accrued benefit on his/her normal retirement date.

**Section 6. City Code Amended.** Section 22.5-261 "Optional Forms of Benefits," of Article V of Chapter 22.5 "Retirement Plans," of the City Code is hereby amended to read as follows:

**Sec. 22.5-261. Optional forms of benefits.**

\* \* \* \*

(b) A member who elects any option in this section shall designate the beneficiary to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation ~~from time to time~~ up to two times without approval of the board or the current joint annuitant or beneficiary. The retired member need not provide proof of the good health of the joint annuitant or beneficiary being removed and the joint annuitant or beneficiary need not be living. Such designation shall name one or more primary beneficiaries where applicable. ~~If a member has elected an option with a beneficiary and such member's retirement benefits have commenced, such member may thereafter change his designated beneficiary at any time.~~

~~(e) The board may request such evidence of good health of the beneficiary being removed as it may require.~~

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

~~(d e)~~ Upon change of a retiree's beneficiary in accordance herewith, the amount of the monthly benefit payable to the retiree shall be actuarially recalculated to take into account the age and sex of the former beneficiary, of the new beneficiary and of the retiree. Each request for a change shall be made in writing on a form prepared by the board. In the event that no designated beneficiary survives the retiree, such benefits as may be payable in the event of the death of the retiree shall be paid as provided in subsection (a).

~~(f e)~~ Monthly benefits shall be made under the option elected and shall be subject to the following limitations:

\* \* \* \*

(g f) A retiree may not change his retirement option after the date of cashing or depositing his first benefit check.

(h g) Notwithstanding anything herein to the contrary, the board, in its discretion, may elect to make a lump-sum payment to a member or a member's beneficiary in the event that the monthly benefit amount is less than one hundred dollars (\$100.00) or the total commuted value of the remaining monthly benefits to be paid do not exceed five thousand dollars (\$5,000.00). Any such payment made pursuant hereto shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

**Section 7. City Code Amended.** Section 22.5-269 "Repeal or Termination of System; Transfer to Another State Retirement System," of Article V of Chapter 22.5 "Retirement Plans," of the City Code is hereby amended to read as follows:

**Sec. 22.5-269. Repeal or termination of system; transfer to another state retirement system.**

\* \* \* \*

(c) The fund shall be distributed in accordance with the following procedures:

(1) The board shall determine the date of distribution and the asset value required to fund all the non-forfeitable benefits after taking into account the expenses of such distribution. The board shall inform the City if additional assets are required, in which event the City shall continue to financially support the system until all non-forfeitable benefits have been funded.

(2) The board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each member entitled to benefits under the system as specified in subsection (3).

(3) The board shall distribute the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum

value may not be less than the member's accumulated contributions to the system, with interest if provided by the system, less the value of any system benefits previously paid to the member.

(4) If there is asset value remaining after the full distribution specified in subsection (3), and after the payment of any expenses incurred with such distribution, such excess shall be returned to the City, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the City and the state to date of termination of the system, such excess shall be divided proportionately to the total contributions made by the City and the state.

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

If, after 24 months after the date the system terminated or the date the board received written notice that the contributions thereunder were being permanently discontinued, the City or the board of the system's pension trust fund affected has not complied with all the provisions in this section, the Department of Management Services shall effect the termination of the fund in accordance with this section.

~~The following shall be the order of priority for purposes of allocating the assets \_\_\_\_\_ of the system as of the date of repeal of this article, or if contributions to the system are discontinued, with the date of such discontinuation being determined by the board:~~

~~1. Apportionment shall first be made in respect of each retiree receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) member and each member who has, by such date, become eligible for normal retirement but has not yet retired, in an amount that is the actuarial equivalent of such benefit; 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 subsection (1) above, apportionment shall next be made in respect of each member in the service of the city on such date who has service and who is not entitled to an apportionment under subsection (1) above, in an amount required to provide the actuarial equivalent of the accrued normal retirement benefit (but not less than accumulated contributions), based on credited service and average final compensation as of such date,~~

~~and each vested former member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in an amount required to provide said actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions); 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 subsections (1) and (2), apportionment shall be made in respect of each member in service of the city on such date who is not entitled to an apportionment under subsections (1) and (2) in the amount equal to member's accumulated contributions; provided, that if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~4. — If there be any asset value remaining after the apportionments under subsections (1), (2) and (3), apportionment shall lastly be made in respect of each member included in subsection (3) above to the extent of the actuarial equivalent of the non-vested accrued normal retirement benefit, less the amount apportioned in subsection (3), based on credited service and average final compensation as of such date; provided, that if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~5. — In the event that there be asset value remaining after the full apportionment specified in subsections (1), (2), (3) and (4), such excess shall be returned to the city, less return of the 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 the date of termination, such excess shall be divided proportionately to the total contributions made by the city and the state.~~

~~The allocation of the fund provided for in this subsection may, as decided by the board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the board may direct. The fund may be continued in existence for purposes of subsequent distributions.~~

~~If, at any time during the first ten (10) years after the effective date of the ordinance originally establishing this system, the system shall be terminated or the full current costs of the system shall not have been met,~~



~~anything in the system to the contrary notwithstanding, city contributions which may be used for the benefit of any one of the twenty five (25) highest paid members on the effective date whose anticipated annual retirement allowance provided by the city's contributions at member's normal retirement date would exceed one thousand five hundred dollars (\$1,500.00), shall not exceed the greater of either a) twenty thousand dollars (\$20,000.00) or by an amount computed by multiplying the smaller of ten thousand dollars (\$10,000.00) or twenty (20) percent of such member's average annual earnings during his last five (5) years of service by the number of years of service since the effective date. In the event that it shall hereafter be determined by statute, court decision, ruling by the Commissioner of Internal Revenue or otherwise that the provisions of this paragraph are not then necessary to qualify the system under the Code, this paragraph shall be ineffective without the necessity of further amendment of this article.~~

~~(d) — After all the vested and accrued benefits provided hereunder have been paid and after all other liabilities have been satisfied, then and only then may any remaining funds revert to the general fund of the city and the state pursuant to F.S., § 175.361(3)(d).~~

~~(e) — When every active participant in any pension plan created pursuant to F.S., Ch. 175, elects to transfer to another state retirement system, the pension plan created pursuant to this chapter shall be terminated and the assets distributed in accordance with F.S., § 175.361. If some participants in a pension plan created pursuant to this chapter elect to transfer to another state retirement system and other participants elect to remain in the existing plan created pursuant to this chapter, the plan created pursuant to this chapter shall continue to receive state premium tax moneys until fully funded. If the plan is fully funded at a particular valuation date and not fully funded at a later valuation date, the plan shall resume receipt of state premium tax moneys until the plan is once again fully funded. "Fully funded" means that the present value of all benefits, accrued and projected, is less than the available assets and the present value of future member contributions and future plan sponsor contributions on an actuarial entry age cost funding basis. Effective May 31, 1998, for plans discussed herein, the plan shall remain in effect until the final benefit payment has been made to the last participant or beneficiary and shall then be terminated in accordance with this section.~~

**Section 8. City Code Amended.** Section 22.5-274 "Direct Rollovers of Plan Distributions," of Article V of Chapter 22.5 "Retirement Plans," of the City Code is hereby amended to read as follows:

**Sec. 22.5-274. Direct rollovers of plan distributions.**

(a) *Effective date.* This section shall apply to distributions made after

December 31, 2001. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at any time and in any manner prescribed by the board, and to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For the purposes of this section the following definitions shall apply:

(1) *DIRECT ROLLOVER.* A payment by the plan to the eligible retirement plan specified by the distributee. Effective as of January 1, 2008, a non-spouse Beneficiary may make a direct rollover only to an "inherited" individual retirement account as described in Section 408(10) of the IRC.

(2) *DISTRIBUTEES.* An employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse. Effective as of January 1, 2008, an Employee's or former Employee's non-spouse Beneficiary is a distributee with regard to the interest of the Employee or former Employee.

~~(b) — Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions in section 21 of the system,~~

(3) *ELIGIBLE RETIREMENT PLAN.* An individual retirement account described in Section 408(a) of the Code, an individual retirement annuity account described in Section 408(b) of the Code, an individual retirement plan described in Section 403(a) of the Code, or a qualified trust described in § 401(a) of the IRC, that accepts the distributee's eligible rollover distribution. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

~~(c) — Modification of definition of eligible rollover distribution to include after tax employee contributions. For purposes of the direct rollover provisions in this section of the system, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in section 108(a) or (b) of the code, or to a qualified defined contribution plan described in section 101 (a) or 103(a) of~~

~~the code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.~~

(4) ELIGIBLE ROLLOVER DISTRIBUTION. Any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) of the distributee and the distributee's designated beneficiary, for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and, the portion of any distribution that is not includable in gross income.

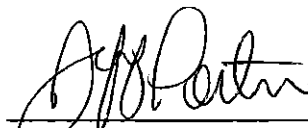
**Section 9. Inclusion In The Code.** It is the intention of the City Council that the provisions of this ordinance shall become and be made a part of the Code of Homestead, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**Section 10. Severability.** That the provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 11. Effective Date.** This ordinance shall become effective immediately upon adoption at second reading.

**PASSED AND ADOPTED** on first reading this 23<sup>rd</sup> day of July, 2014.

**PASSED AND ADOPTED** on second reading this 20<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
JEFF PORTER,  
Mayor

ATTEST

  
*Elizabeth Sewell*  
ELIZABETH SEWELL, MMQ  
City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.L.  
City Attorney

Motion to adopt by Councilwoman Waldman, seconded by Councilwoman Fairclough.

**FINAL VOTE AT ADOPTION**

Mayor Jeff Porter	<u>YES</u>
Vice Mayor Stephen Shelley	<u>YES</u>
Councilman Jon Burgess	<u>YES</u>
Councilwoman Patricia Fairclough	<u>YES</u>
Councilman Elvis Maldonado	<u>YES</u>
Councilwoman Judy Waldman	<u>YES</u>
Councilman Jimmy L. Williams, III	<u>YES</u>