

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE VI, PENSIONS, DIVISION 3, GENERAL EMPLOYEES PENSION, SECTION 2-123.1, DEFINITIONS, SECTION 2-123.2, MEMBERSHIP, SECTION 2-123.5, CONTRIBUTIONS; SECTION 2-123.7, DEATH BENEFITS; SECTION 2-123.15, MISCELLANEOUS PROVISIONS; SECTION 2-123.23, MILITARY SERVICE PRIOR TO EMPLOYMENT; SECTION 2-123.24, DEFERRED RETIREMENT OPTION PLAN; SECTION 2-123.25, PURCHASE OF NONQUALIFIED SERVICE CREDIT; AND SECTION 2-123.26, PRIOR GOVERNMENT SERVICE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral Municipal General Employees' Retirement Plan is presently providing pension benefits under Ordinances of the City of Cape Coral; and

WHEREAS, it is the desire of the City Council to clarify what compensation is used in the calculation of pension benefits and member contributions; and

WHEREAS, the City Council approved a new classification plan for city employees; and

WHEREAS, the new classification plan necessitates modification of the City ordinance to reference the new classifications; and

WHEREAS, it is the desire of the City Council to comply with all IRS regulations and utilize IRS guidelines concerning defined contribution plans.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, Administration, is hereby amended as follows:

**CHAPTER 2: ADMINISTRATION**

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**ARTICLE VI: PENSIONS**

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**DIVISION 3. GENERAL EMPLOYEES PENSION**

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**§ 2-123.1 - Definitions.**

**SALARY.** The total compensation for services rendered to the city as a general employee reportable on the member's W-2 form, excluding imputed income (the value of all non-monetary compensation provided to a member by the City in connection with the member's employment by the City, e.g., use of vehicles, clothing/uniforms suitable for personal use, cellular telephones, life insurance, and other fringe benefits), but including overtime payments for up to 300 hours of overtime worked per year, plus all tax deferred, tax sheltered or tax exempt items of income, derived from elective employee payroll deductions or salary reductions. Notwithstanding the foregoing overtime limit, the definition of **SALARY** for the 2013 calendar year shall also include overtime payments accrued as of the date July 30, 2013. Compensation in excess of the limitations set forth in §401(a)(17) of the Code as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code §401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual

compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. **ELIGIBLE EMPLOYEE** is an individual who was a member before the first plan year beginning after December 31, 1995. Notwithstanding the foregoing definition of **SALARY**, effective July 30, 2013, salary for members employed on July 30, 2013 shall not include any payments for accrued leave balances in excess of the number of hours the member has accrued as of July 30, 2013 that would have been included in the member's salary if he/she had retired on July 30, 2013. Upon retirement, salary for such members shall include payment for accrued leave up to the number of eligible hours accrued as of July 30, 2013. The cash value of pensionable hours of accrued leave (determined at the time of termination of employment or entry into the DROP) will be included in average final compensation, based on the rate of pay at the time of termination or DROP entry. For employees hired on or after July 30, 2013, payouts of accrued leave shall not be included in salary.

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## § 2-123.2 Membership.

### (a) *Conditions of eligibility.*

- (1) All general employees who are current plan members as of May 1, 1994, shall continue to be members of this system and all future new general employees employed on or after May 1, 1994 shall become members of the system as a condition of employment.
- (2) *Opt out option.*
  - a. The city has determined that it will provide a defined contribution plan for all non-bargaining unit positions that are Pay Grades ~~22 and higher~~ NB 114 and higher, IT 7 and higher, ENG 5 and higher, DIR I and higher, ("eligible positions") and the positions of City Manager, City Attorney and Assistant City Attorney ("eligible positions").
  - b. In the event that any person employed by the city in an eligible position, elects to participate in the defined contribution plan provided by the city, that person may elect to opt out of the system, provided that:
    1. Current members employed by the city in an eligible position shall notify the Board and the city, in writing, of his or her election to opt out of the system within ~~six months~~ sixty days of employment in the eligible position. In the event of such election, such member shall, for purposes of determining benefits from the system only, be treated as if he or she had terminated employment on the date of his or her election and shall receive a return of accumulated contributions or a future benefit, if vested, as provided in §2-123.9, Vesting. Once a member opts out of the system, the employee shall be barred from participation in the system and shall remain in the defined contribution plan regardless of whether or not the employee remains in an eligible position.
    2. Future persons ~~employed-hired in or promoted to in-an~~ eligible position may, within ~~six months~~ sixty days of their employment in the eligible position, notify the Board and the city, in writing, of their election not to be a member of the system. In the event of such election, any accumulated contributions shall be returned and they shall be barred from participation in the system and shall remain in the defined contribution plan regardless of whether or not they remain in an eligible position.
  - c. If an eligible position is reclassified to a Pay Grade ~~21 or below,~~ an ineligible position, any incumbent in the position who was in the defined contribution

~~plan at the time the position was reclassified may elect to will remain in the defined contribution plan, or may elect to become a member. An election to become a member must be submitted to the Board in writing. If a position is reclassified from an ineligible position to an eligible position Pay Grade 22 or higher, any incumbent in that position may, within six months sixty days of the effective date of the reclassification, elect to opt out of the system and participate in the defined contribution plan. In the event of such election, the employee shall be barred from participation in the system and shall remain in the defined contribution plan regardless of whether or not the employee remains in an eligible position.~~

- d. If a non-bargaining unit general employee in the defined contribution plan is demoted (voluntary or involuntary) ~~from an eligible position to an ineligible position, the employee will no longer be eligible to remain participate in the defined contribution plan, and will automatically become a member of the system as of the effective date of the demotion.~~
- e. Non-bargaining unit general employees who are in the DROP plan are not eligible to opt out of the system.

~~(3) *Election to become a member.* Any general employee who has previously opted out of the system may elect to become a member by filing a written election with the Board. Any general employee so electing shall begin to accrue credited service as a member beginning on the date of his election. No credited service shall be allowed for any period of employment prior to the date of election unless such credited service is purchased pursuant to § 2-123.26. Once an employee elects to become a member pursuant to this division, the employee shall not be eligible to opt out pursuant to division (a)(2) above.~~

(b) *Designation of beneficiary.* Each general employee shall complete a form prescribed by the Board designating a beneficiary or beneficiaries.

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#### §2-123.5 - Contributions.

(a) *Member contributions.*

- (1) *Amount.* Each member of the system shall be required to make regular contributions to the Fund, in the amount of 9.9% of his or her **SALARY**. However, if a member made an election pursuant to subsection (a)(3) of this section, the amount of the member's contribution shall be 11.5% of his or her SALARY. Member contributions withheld by the city on behalf of the member shall be deposited with the Board immediately after each pay period. The contributions made by each member to the Fund shall be designated as employer contributions pursuant to §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.
- (2) *Method.* Such contributions shall be made by payroll deduction.
- (3) A member who is employed by the city on or before September 30, 2013 may elect to retain the 3% cost of living adjustment provided in §2-123.6(e)(1) and (2) for all future benefits accrued, and the reversion of the monthly benefit to the normal form of benefit in the event the retiree is predeceased by the joint pensioner as provided in §2-123.8(a)(2), by making an irrevocable election to contribute an additional 1.6% of salary to the Fund, for a total member annual contribution of 11.5%, for all years the member remains an active member of the Fund, beginning October 1, 2013. The irrevocable election must be submitted to the pension administrator on a form provided by the administrator no later than September 30, 2013. Any member who does not submit an irrevocable election to contribute an additional 1.6% of salary to the fund on or before September 30, 2013 shall be ineligible for the 3% cost of living adjustment provided in §2-123.6(e)(1) and (2) for all future benefits accrued on and after October 1, 2013, and for the reversion of the monthly benefit to the normal form

of benefit on future service in the event the retiree is predeceased by the joint pensioner as provided in §2-123.8(a)(2).

- (b) *City contributions.* So long as this system is in effect, the city shall make monthly contributions to the Fund in an amount equal to the required city contribution, as shown by the applicable actuarial valuation of the system.
- (c) *Other.* Private donations, gifts and contributions may be deposited to the Fund, but such deposits must be accounted for separately and kept on a segregated bookkeeping basis. Funds arising from these sources may be used only for additional benefits for members, as determined by the Board, and may not be used to reduce what would have otherwise been required city contributions.

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#### § 2-123.7 - Death benefits.

- (a) *Benefit payable in the event of death prior to the normal retirement date while in service.* If the service of a member is terminated by reason of his or her death ~~on or~~ prior to his or her normal retirement date, there shall be payable to his or her beneficiary (or beneficiaries) the monthly retirement income, beginning on the first day of the month coincident with, or next following, the date of his or her death, or December 31 of the calendar year immediately following the calendar year in which the member died, which can be provided by the single-sum value of member's deferred monthly retirement income commencing at his or her normal retirement date which has accrued to the date of his or her death.
- (b) *Benefit payable in event of death on or after the normal retirement date but prior to commencement of benefit payments.*
  - (1) If the service of a member is terminated by reason of death on or after his or her normal retirement date, there shall be payable to member's designated beneficiary (or beneficiaries) the monthly retirement income, determined actuarially, beginning on the first day of the month coincident with, or next following, the date of death, which can be provided by the single-sum value of the retirement income to which he would have been entitled had he retired immediately prior to the date of his or her death.
  - (2) All computations shall be on the basis of the interest and mortality assumptions used for the actuarial valuation coincident with, or next preceding, the member's date of death.

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#### §2-123.15 - Miscellaneous provisions.

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- (i) *Missing Benefit Recipients.* The System shall follow the procedures outlined in the IRS Employee Plans Compliance Resolution System (EPCRS) Program and other applicable guidance published by the IRS to locate any missing individuals to whom a full, unreduced benefit payment is due and if, at the conclusion of such efforts, the individual cannot be located, the existing procedure of canceling payments otherwise due will apply, provided that the benefits due shall be paid if the individual is later located.

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#### § 2-123.23 - Military service prior to employment.

The time that a general employee serves or has served on active duty in the military service of the Armed Forces of the United States, United States Merchant Marine, or the United States Coast Guard voluntarily or involuntarily and honorably or under honorable conditions, prior to first and initial employment with the city shall be added to his or her years of credited service; provided that:

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- (e) The maximum credit under this section, when combined with credited service purchased pursuant to §2-123.25 or §2-123.26 for service with an employer other than the City of Cape Coral, shall be five years.
- (f) Credited service purchased pursuant to this section shall count for all purposes except vesting.

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**§2-123.24 - Deferred retirement option plan (DROP).**

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- (f) *General provisions.*

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~~(8) *Prevention of escheat.* If the Board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the Board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the Board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the Board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his or her beneficiary later notifies the Board of his or her whereabouts and requests the payment or payments due to him or her under the DROP, the amount so applied shall be paid to him or her in accordance with the provisions of the DROP.~~

~~(9)~~ (8) *Written elections, notification.*

- a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the Board in a time and manner determined by the Board under rules uniformly applicable to all employees similarly situated. The Board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
- b. Each member or retiree who has a DROP Account shall be responsible for furnishing the Board with his or her current address and any subsequent changes in his or her address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him or her at the last such address given to the Board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the Board of his or her address.

~~(10)~~ (9) *Benefits not guaranteed.* All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP Account and neither the city nor the Board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

~~(11)~~ (10) *Construction.*

- a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
- b. The titles and headings of the subsections in this § 2-123.24 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

- (11) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.
- (12) *Effect of DROP participation on employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.
- (13) **BAC-DROP.** In lieu of participation in the DROP, a member may elect to participate in an actuarially equivalent BAC-DROP to a date of the member's choosing; provided that, the date is not further back than the member's normal retirement date. The total BAC-DROP period shall not exceed 60 months and shall provide an immediate partial lump sum distribution, payable to the member's DROP Account. The lump sum shall be the accrued benefit, determined as if the member had entered the DROP retroactively, as described above, accumulated with interest at the annual fixed rate of 6.5%. The member may choose an actuarially equivalent form of benefit at the time of BAC-DROP entry, as described in §2-123.8. Member contributions shall be returned for the period of the BAC-DROP participation. A member electing the BAC-DROP shall terminate employment not later than the first day of the month following his or her election to participate in the BAC-DROP. The Board's authority and power for administration of the BAC-DROP shall be the same as those provided for in the DROP.

**§ 2-123.25. - Purchase of nonqualified service credit.**

Unless otherwise prohibited by law, any member shall be permitted to purchase additional participation (which does not include purchased service) under this system for periods when there was no performance of service ("air time") provided that:

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- (e) Service purchased pursuant to this section shall count toward eligibility and benefit calculations for any retirement benefit, but shall not count toward vesting. The maximum ~~combined purchase credit~~ under this section, when combined with credited service purchased pursuant to and sections §2-123.23 and §2-123.26 for service with an employer other than the City of Cape Coral, shall be five 5 years.

**§ 2-123.26 - Prior government service.**

Unless otherwise prohibited by law, and except as provided for in §2-123.1, the time that a member previously served as an ~~general~~-employee with the City of Cape Coral during a period of previous employment and for which period accumulated contributions were withdrawn from the Fund, or when the general employee was not previously a member of the Plan, or the time that a member served as an ~~general~~-employee for any other municipal, county, state, or federal employment in the United States shall be added to his or her years of credited service; provided that:

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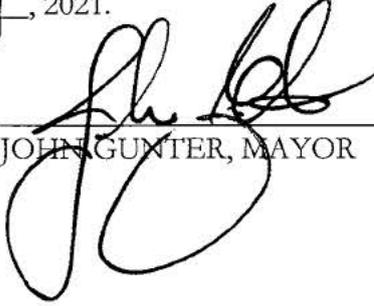
- (e) The maximum credit under this section for service other than with the City of Cape Coral, when combined with credited service purchased pursuant to §2-123.23 and §2-123.25, shall be five years of credited service and shall count for all purposes, except vesting. There shall be no maximum purchase of credit for prior service with the City of Cape Coral and such credit shall count for all purposes, including vesting.

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SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

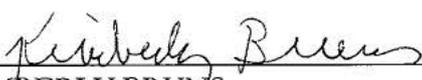
ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 17<sup>th</sup> DAY OF February, 2021.

  
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JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER	<u>aye</u>	NELSON	<u>aye</u>
DISTRICT 1	<u>VACANT</u>	WELSH	<u>aye</u>
SHEPPARD	<u>aye</u>	WILLIAMS	<u>aye</u>
HAYDEN	<u>aye</u>	COSDEN	<u>aye</u>

ATTESTED TO AND FILED IN MY OFFICE THIS 23<sup>rd</sup> DAY OF February, 2021.

  
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KIMBERLY BRUNS  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
ord/General Pension 2021  
1/7/21