

ORDINANCE NO. 2013 - 56

AN ORDINANCE OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES TO PROVIDE FOR COMPLIANCE WITH THE INTERNAL REVENUE CODE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on January 7, 2011, an application was filed with the Internal Revenue Service for a Favorable Determination Letter regarding the qualified status of the Plan under Section 401(a) of the Internal Revenue Code; and

WHEREAS, on January 31, 2013, the Internal Revenue Service issued a Favorable Determination Letter, finding that the Plan complies with all qualification requirements; and

WHEREAS, the Favorable Determination Letter is subject to the timely adoption of the amendments provided herein, and

WHEREAS, the trustees of the City of Pompano Beach Police & Firefighters' Retirement System have requested and approved such amendments as being in the best interests of the participants and beneficiaries as well as improving the administration of the plan,

WHEREAS, the City Commission has received, reviewed and considered an actuarial impact statement describing the actual impact of the amendments provided for herein;

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 notices 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: Section 34.045, Definitions, of the City of Pompano Beach Code of Ordinances is amended to read as follows:

...

EARNINGS. Basic wages and regular longevity bonuses paid to a member, excluding nonregular overtime for firefighter members, excluding nonregular overtime in excess of 25 hours per year for police officer members who retire on or after October 1, 2001, and excluding bonuses, but including the one-time lump sum 3.5% payment paid to firefighter members for Fiscal Year 2008/2009, and any other nonregular payments. 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. ~~For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code,~~ ***COMPENSATION*** shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in ~~§34.0571(A),~~ compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

...

SECTION 2: Section 34.0571(A), Internal Revenue Code Compliance, of the

City of Pompano Beach Code of Ordinances is amended to read as follows:

~~(A) — Maximum pension. Notwithstanding any provision of this Plan to the contrary, the annual pension that is accrued by or paid to a participant shall not exceed the dollar limitation set forth below. If the benefit the participant would otherwise accrue in a limitation year would produce an annual pension in excess of the dollar limitation, the benefit shall be limited to a benefit that does not exceed the dollar limitation.~~

~~(1) — Definitions used in this section.~~

~~(a) — **ANNUAL PENSION** means the benefits received by a participant under this Plan expressed in the form of a straight life annuity. In determining whether benefits payable exceed the dollar limitation set forth below, benefits payable in any form other than a straight life annuity shall be adjusted to the larger of:~~

~~1. — The annual amount of the straight life annuity (if any) payable to the participant under the Plan commencing at the same annuity starting date as the form of benefit payable to the participant; or~~

~~2. — The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5% interest assumption and the applicable mortality table described in Section 1.417(e) 1(d)(2) for that annuity starting date.~~

~~No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this subsection (A), and the amount payable under the form of benefit in any limitation year shall not exceed the limits of this subsection (A) applicable at the annuity starting date, as~~

increased in subsequent years pursuant to Section 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(b) — **LIMITATION** means \$160,000 (subject to the annual adjustments provided under Section 415(d) of the IRC). Said amount shall be adjusted based on the age of the participant when benefits begin, as follows:

1. — Except with respect to a participant who is a “Qualified Participant” as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code) beginning before age 62 the age-adjusted dollar limitation is equal to the lesser of:

i. — The actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age 62, where annual payments under the straight life annuity commencing at age 62 are equal to the dollar limitation (as adjusted pursuant to Section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5% interest rate and the applicable mortality table under Section 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant’s age based on completed calendar months as of the annuity starting date); and

ii. — The dollar limitation (as adjusted pursuant to Section 415(d)) multiplied by the ratio of the annual amount of the straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age 62, with both annual amounts determined without applying the rules of Section 415.

~~2. For benefits beginning after the age of 65, the age-adjusted dollar limitation is equal to the lesser of:~~

~~i. The actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age 65, where annual payments under the straight life annuity commencing at age 65 are equal to the dollar limitation of Section 415(b)(1)(A) (as adjusted pursuant to Section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5% interest rate and the applicable mortality table under Section 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and~~

~~ii. The Section 415(b)(1)(A) dollar limitation (as adjusted pursuant to Section 415(d) and Section 1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age 65 straight life annuity. The adjusted immediately commencing straight life annuity means the annual amount of the immediately commencing straight life annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of Section 415. The adjusted age 65 straight life annuity means the annual amount of the straight life annuity that would be payable under the plan to a hypothetical participant who is 65 years old and has the same accrued benefit (with no actuarial increases for commencement after age 65) as the participant~~

~~receiving the distribution (determined disregarding the participant's accruals after age 65 and without applying the rules of Section 415).~~

~~iii. There shall be no age adjustment of the dollar limitation with respect to benefits beginning between the ages of 62 and 65.~~

~~(2) The limitations set forth in this subsection (A) shall not apply if the annual pension does not exceed \$10,000 provided the participant has never participated in a defined contribution plan maintained by the city.~~

~~(3) Cost of living adjustments in the dollar limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section 415(d) of the Code.~~

~~(4) In the case of a participant who has fewer than ten years of participation in the Plan, the dollar limitation set forth in subsection (1)(b) of this subsection (A) shall be multiplied by a fraction (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is ten.~~

~~(5) Any portion of a participant's benefit that is attributable to mandatory employee contributions (unless picked up by the city) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.~~

~~(6) Should any participant participate in more than one defined benefit plan maintained by the city, in any case in which the participant's benefits under all such defined benefit plans (determined as of the same age) would exceed the dollar limitation applicable at that age, the accrual of the participant's benefit under this Plan shall be reduced so that the participant's combined benefits will equal the dollar limitation.~~

~~(7) For a participant who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this section~~

~~as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Section 1.401(a)-20, Q&A 10(d), and with regard to Section 1.415(b)-1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.~~

~~(8) The determination of the annual pension under subsection (1)(a) of this subsection (A) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) Social Security supplements described in Section 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Section 1.411(d)-4, Q&A 3(c) of the Income Tax Regulations.~~

~~(9) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the city shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this subsection (A) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this subsection (A) shall be used to decrease future employer contributions.~~

(A) Maximum Pension.

(1) The limitations of this Subsection (A) shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein, and are intended to comply with the requirements of the Pension Protection Act of 2006 and shall be construed in accordance with said Act and guidance issued thereunder. The provisions of this Subsection (A) shall supersede any provision of the Plan to the extent such provision is inconsistent with this Subsection.

The Annual Pension as defined in Paragraph (2) below otherwise payable to a Participant at any time shall not exceed the Dollar Limitation for the Participant multiplied by a fraction whose value

cannot exceed one, the numerator of which is the Participant's number of years (or part thereof, but not less than one year) of service with the City and the denominator of which is 10. For this purpose, no more than one year of service may be credited for any Plan Year. If the benefit the Participant would otherwise accrue in a limitation year would produce an Annual Pension in excess of the Dollar Limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Dollar Limitation.

(2) "Annual Pension" means the sum of all annual benefits, payable in the form of a straight life annuity. Benefits payable in any other form shall be adjusted to the larger of:

(a) For limitation years beginning on or after July 1, 2007

(I) the straight life annuity (if any) payable to the Participant under the Plan commencing at the same Annuity Starting Date as the Participant's form of benefit, or

(II) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

(b) For limitation years beginning before July 1, 2007

(I) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using the interest rate and mortality basis specified in Section 34.045 used for Actuarial Equivalence for the particular form of payment under the Plan, or

(II) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of

benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (A), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (A) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(3) “Dollar Limitation” means, effective for the first limitation year beginning after January 1, 2001, \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a Participant’s benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The Dollar Limitation shall be further adjusted based on the age of the Participant when the benefit begins as follows:

(a) For Annuity Starting Dates in limitation years beginning on or after July 1, 2007

(l) If the Annuity Starting Date for the Participant’s benefit is after age 65

(i) If the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement.

The Dollar Limitation at the Participant’s Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant’s Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the Participant’s age based on completed calendar months as of the Annuity Starting Date).

(ii) If the Plan does have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement

The Dollar Limitation at the Participant's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Subsection (A), and (bb) the limitation determined under Subparagraph (3)(a)(I)(i) of this Subsection (A). For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same Accrued Benefit as the Participant.

(II) Except with respect to a Participant who is a "Qualified Participant" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code), if the Annuity Starting Date for the Participant's benefit is before age 62

(i) If the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement-

The Dollar Limitation at the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

(ii) If the Plan does have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement-

The Dollar Limitation at the Participant's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Subsection (A), and (bb) the limitation determined under Subparagraph (3)(a)(II)(i) of this Subsection (A).

(b) For Annuity Starting Dates in limitation years beginning before July 1, 2007

<u>Age as of Annuity Starting Date:</u>	<u>Adjustment of Dollar Limitation:</u>
<u>Over 65</u>	<p>The smaller of: (I) <u>the actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified in Section 34.045, or</u></p> <p>(II) <u>the actuarial equivalent of the limitation for age 65, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).</u></p> <p><u>Any increase in the Dollar Limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.</u></p>
<u>62 to 65</u>	<u>No adjustment.</u>
<u>Less than 62</u>	<p>The smaller of: (I) <u>the actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified in Section 34.045 of the Plan, or</u></p> <p>(II) <u>the actuarial equivalent of the limitation for age 62, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).</u></p> <p><u>This adjustment shall not apply to any "Qualified Participant" as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code.</u></p>

(4) With respect to clause (3)(a)(I)(i), clause (3)(a)(II)(i) and Paragraph (3)(b) above, no adjustment shall be made to the Dollar Limitation to reflect the probability of a Participant's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date.

To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Participant's death.

(5) The term "limitation year" is the 12 month period which is used for application of the limitations under Code Section 415 and shall be the calendar year.

(6) The limitations set forth in this Subsection (A) shall not apply if the Annual Pension does not exceed \$10,000 provided the Participant has never participated in a Defined Contribution Plan maintained by the City.

(7) Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section Subsection 415(d) of the Code.

(8) In the case of a Participant who has fewer than 10 years of participation in the Plan, the Dollar Limitation set forth in Paragraph (3) of this Subsection (A) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10.

(9) Any portion of a Participant's benefit that is attributable to mandatory Participant contributions (unless picked-up by the City) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.

(10) Should any Participant participate in more than one defined benefit plan maintained by the City, in any case in which the Participant's benefits under all such defined benefit plans (determined as of the same age) would exceed the Dollar Limitation applicable at that age, the accrual of the Participant's benefit under this Plan shall be reduced so that the Participant's combined benefits will equal the Dollar Limitation.

(11) For a Participant who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of

benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

(12) The determination of the Annual Pension under Paragraph (2) of this Subsection (A) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant to § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.

(13) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Subsection (A) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this Subsection (A) shall be used to decrease future employer contributions.

(14) For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, Compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in this Subsection (A), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Participant by reason of Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007, compensation shall include payments that otherwise qualify as compensation and that are made by the later of: (a) 2 and ½ (two and one-half) months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance.

...

SECTION 3 Section 34.0571(C), Internal Revenue Code Compliance, of the

City of Pompano Beach Code of Ordinances is amended to read as follows:

(C) Required Minimum Distributions.

...

(3) Requirements For Annuity Distributions That Commence During participant's Lifetime.

(a) Joint Life Annuities Where the Beneficiary Is Not the participant's Spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's Required Beginning Date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6~~F~~ of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

...

(6) Definitions.

(a) *Designated beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section ~~1.401(a)(9)-1, Q&A-4, 1.401(a)(9)-4~~ of the Treasury regulations.

SECTION 4. Section 34.0571(D), Internal Revenue Code Compliance, of the

City of Pompano Beach Code of Ordinances is amended to read as follows:

~~(D) Eligible rollover distributions.~~

~~(1) Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.~~

~~(2) Definitions.~~

~~(a) **ELIGIBLE ROLLOVER DISTRIBUTION.** An **ELIGIBLE ROLLOVER DISTRIBUTION** is 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) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or 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 (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).~~

~~(b) **ELIGIBLE RETIREMENT PLAN.** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. An eligible retirement plan shall also mean, with respect to distributions made after December 31, 2001, 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. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a domestic relation order, as defined in Section 414(p) of the Code.~~

~~(c) **DISTRIBUTE.** A distributee includes a participant or former participant.~~

~~(d) **DIRECT ROLLOVER.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.~~

(D) (1) 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 the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions

The following definitions apply to this Section:

(a) **Eligible rollover distribution:** An eligible rollover distribution is 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:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

(ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;

(iii) the portion of any distribution which is made upon hardship of the Member; and

(iv) the portion of any distribution that is not includible in gross income (determined without regard

to the exclusion for net unrealized appreciation with respect to employer securities), provided that 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 transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(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.

(b) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, 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, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.

(c) Distributee: A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.

(d) **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

SECTION 5. Section 34.0571, Internal Revenue Code Compliance, of the City of Pompano Beach Code of Ordinances is amended by adding a subsection (H) to read as follows:

(H) Uniformed Services Employment and Reemployment Rights Act

The Plan shall at all times be administered in accordance with the provisions of the Uniformed Services Employment and Reemployment Rights Act, which Act is hereby incorporated by reference.

SECTION 6. Section 34.058(B), Preretirement Death, of the City of Pompano Beach Code of Ordinances is hereby amended by adding a subparagraph (5) to read as follows:

(B) Nonservice incurred. If any member dies in active service from causes not attributable to active duty or service; a death benefit shall be payable as follows:

...

(5) Death while performing USERRA-qualified active military service. In the case of a Member who dies on or after January 1, 2007 while performing "Qualified Military Service" under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act ("USERRA") within the meaning of Section 414(u) of the Internal Revenue Code, any "additional benefits" (as defined by Section 401(a)(37) of the Internal Revenue Code) provided under the Plan that are contingent upon a Member's termination of employment due to death shall be determined as though the Member had resumed employment immediately prior to his death. With respect to any

such "additional benefits," for vesting purposes only, credit shall be given for the period of the Member's absence from covered employment during "Qualified Military Service".

SECTION 7. Section 34.0603, Deferred Retirement Option Plan (DROP), of the City of Pompano Beach Code of Ordinances is hereby amended by adding a subsection (N) to read as follows:


(N) 415 Limitations. All benefit payments and accruals under the DROP shall be in accordance with Subsection 415(c) of the Internal Revenue Code and all regulations thereunder, which Subsections and regulations are incorporated herein by reference.

SECTION 8. If any provision of this Ordinance or the application thereof 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. The Sections of this Ordinance may be renumbered or re-lettered to accomplish this intention and the word "Ordinance" may be changed to "Section", "Article" or other appropriate word as the codifier may deem fit.

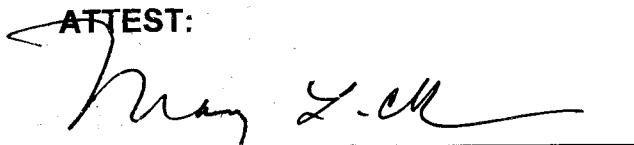
SECTION 9: This Ordinance shall become effective upon adoption.

PASSED FIRST READING this 23rd day of April,
2013.

PASSED SECOND READING this 14th day of May,
2013.



LAMAR FISHER, MAYOR

ATTEST:


MARY L. CHAMBERS, CITY CLERK