



MEMORANDUM

Office of the City Attorney

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TO: Mayor and City Commissioners

DATE: August 12, 2002

FROM: City Attorney

FIRST READING

SUBJECT: Ordinance No. 0-02-38

An ordinance of the City of Gainesville, Florida, amending section 2-523 of the Code of Ordinances of the City of Gainesville relating to the General Employees Pension Plan; relating to eligibility and limited participants and purchase of prior service; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance.

On June 24, 2002, the City Commission authorized the City Attorney to draft, and the Clerk of the Commission to advertise an amendment to the General Employees Pension Plan to provide that regular employees who have spent their city careers in the 401(a) Defined Contribution Plan or the 457 Deferred Compensation Plan will have the option to enter the General Employee Defined Benefit Pension Plan. Such employees are also allowed the option of purchasing prior regular service at the actuarial present value. As such, the amendment will be cost neutral to the General Employee Pension Plan, however, in terms of the impact on the City's operating fund savings will be generated for all employees who elect to switch from the 401(a) or the 457 Plan to the General Employees Pension Plan.

Prepared by:

Charles L. Hauck
Asst. City Attorney

Approved and
Submitted by:

Marion J. Radson
City Attorney

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ORDINANCE NO. _____
0-02-38

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4 **An ordinance of the City of Gainesville, Florida, amending section**
5 **2-523 of the Code of Ordinances of the City of Gainesville relating to**
6 **the General Employees Pension Plan; relating to eligibility and limited**
7 **participants and purchase of prior service; providing directions to the**
8 **codifier; providing a severability clause; providing a repealing clause;**
9 **and providing an immediate effective date.**
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11 **WHEREAS**, pursuant to law, at least ten days notice has been given prior to
12 adoption by publication in a newspaper of general circulation notifying the public of this
13 proposed Ordinance and of a Public Hearing to be held in the City Commission meeting
14 room, First Floor, City Hall, in the City of Gainesville; and

15 **WHEREAS**, Public Hearings were held pursuant to law, at which hearings the
16 parties in interest and all others had an opportunity to be and were, in fact heard.

17 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION**
18 **OF THE CITY OF GAINESVILLE, FLORIDA:**

19 **Section 1.** Section 2-523 of the Code of Ordinances of the City of Gainesville is
20 hereby amended to read as follows:

21 **Sec. 2-523. Membership and Service**

22 (a) *Eligible members.* Members of the pension plan established under this division
23 shall be:

24 (1) All employees of the city as of August 1, 1965, who participated in, and
25 contributed to, the predecessor retirement plan for employees of the city;

26 (2) All permanent employees of the city as of August 1, 1965, who did not participate
27 in and contribute to the predecessor retirement plan for employees of the city;

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- 1 (3) All subsequently hired ~~permanent~~ regular employees become members of the plan
2 established under this division on the first day of the month following (or
3 coinciding with) the date of their employment as permanent employees.
- 4 (b) *Service before the effective date of the plan.*
- 5 (1) A member of the plan described in subsection (a)(1) will be given full credit for
6 service prior to August 1, 1965, in this plan for all service to the city as a full-time
7 permanent employee before August 1, 1965.
- 8 (2) A member of the plan described in subsections (a)(2) and (a)(3) will be given full
9 credit for service to the city from date of employment or from January 1, 1964,
10 whichever date is later.
- 11 (c) *Members of the plan.*
- 12 (1) All ~~permanent~~ regular employees of the city as described in subsection (a) will be
13 members of the plan except as provided in subsection (c)(2) below.
- 14 (2) Regular employees who elected/requested ~~prior to April 23, 1996, or who were~~
15 ~~given a written job offer prior to April 23, 1996, and upon commencing~~
16 ~~employment elected/requested,~~ in accordance with section 2-579 of the City of
17 Gainesville Code of Ordinances or the provisions of the city's § 401(a) Plan, to
18 have future employer contributions made to the Deferred Compensation Plan (§
19 457) or the § 401(a) Defined Contribution Plan in lieu of this plan are ineligible
20 members of this plan, unless such persons make an election(s) described in
21 subsection (i), or are otherwise limited participants. Regular employees who are
22 eligible employees as defined in section 2-596 of the City of Gainesville Code of
23 Ordinances are ineligible members of this plan. ~~Regular employees first~~

1 ~~employed after April 23, 1996 in the position of Charter Officer or a position~~
2 ~~designated by the city manager and who at the time of initial employment~~
3 ~~elected/requested to have employer contributions made to the § 401(a) Defined~~
4 ~~Contribution Plan or § 457 Deferred Compensation Plan in lieu of this plan are~~
5 ~~ineligible members of this plan.~~

6 (3) Limited participation.

7 a. Definitions:

- 8 1. Ineligible member means an employee of the city who is not an
9 eligible member.
- 10 2. Limited participant means a member of the plan who, during part
11 or parts of his/her employment with the city, is an eligible member
12 and, during other parts of his/her employment with the city is an
13 ineligible member.
- 14 3. Limited participant service means, in the case of a limited
15 participant, credited service as defined in the plan, but including
16 service during all times of his/her employment with the city,
17 whether an eligible member or an ineligible member, except while
18 a retiree or a recipient of a termination benefit from any defined
19 benefit pension plan of the city.
- 20 4. Eligible service means, in the case of a limited participant, credited
21 service as defined in the plan, during the part or parts of his/her
22 employment during which he/she is an eligible member, except

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1 while a retiree or a recipient of a termination benefit from any
2 defined benefit pension plan of the City of Gainesville.

3 b. For the purpose of determining a limited participant's credited service for
4 any purpose of this plan, except for the purpose of determining his/her accrued benefit,
5 his/her credited service shall mean his/her limited participant service.

6 c. For the purpose of determining a limited participant's accrued benefit,
7 his/her credited service shall mean only his/her eligible service and calculation of final
8 average earnings shall be based upon his/her eligible service earnings.

9 (d) *Temporary, part-time and seasonal employees.* This plan shall not be construed
10 to include any temporary, part-time or seasonal employees (e.g., summer recreation
11 program) of the city. If a temporary employee, part-time employee or seasonal employee
12 subsequently becomes a permanent employee of the city as defined in this division,
13 he/she shall not receive credited service for the period of employment as a temporary,
14 part-time or seasonal employee, except that a member's period of employment while a
15 CETA employee, as determined by the city, shall be considered as service as a permanent
16 employee. Part-time employees as used in this section shall include only those persons
17 not defined as "permanent employees" in this division.

18 (e) *Questions and membership.* The board shall decide any question as to who is a
19 member of the plan and its decision shall be final and binding on all interested parties.

20 (f) *War service credit.* If a member who, while employed by the city, entered or
21 enters the armed forces of the United States in time of war or other national emergency
22 recognized by the city commission, and reenters the employ of the city in accordance with
23 the definition of "service credit rules" in section 2-521, such service in the armed forces

1 shall be credited him/her as credited service provided that he/she refunds withdrawn
2 contributions, if any, in accordance with section 2-526. In any case of doubt as to the
3 period to be so credited any member, the board shall have final power to determine such
4 period. During the period of such armed service and until the employee's return to
5 employment by the city the individual's contributions to the fund shall be suspended.

6 (g) *Deferred benefits.* A member of the plan who retires early in accordance with
7 section 2-526 may elect to, in lieu of immediately receiving benefits, defer payment of
8 benefits to a date subsequent to his/her early retirement date. In the event of such election,
9 which shall be irrevocable, the employees' benefit shall be calculated in accordance with
10 section 2-526, reduced for each month by which his/her benefit commencement date
11 precedes his/her unreduced benefit commencement date.

12 (h) *Participants in Gainesville Gas Group Pension Plan.* The City of Gainesville
13 shall purchase the Group Pension Plan for employees of Gainesville Gas and shall place
14 all of the cash, investments, and other assets of said plan in the trust fund of the City of
15 Gainesville Employees Pension Plan (the "plan"). Retired and former participants shall
16 remain entitled to the applicable benefits as described in the group pension plan, but shall
17 not become members of the "plan."

18 Active participants of the group pension plan who become employed by the City of
19 Gainesville upon the city's acquisition of the Gainesville Gas Company shall become
20 members of the "plan" on the first day following the acquisition date and shall be entitled
21 to the benefits described below.

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- 1 (1) The accrued benefit for such members shall be:
- 2 a. The accrued benefit earned under the Gainesville Gas Group Plan
- 3 as of the acquisition date, plus
- 4 b. Two percent of final average earnings times credited service earned
- 5 after the acquisition date, plus
- 6 c. For each year of credited service earned after the acquisition date,
- 7 an additional two percent of final average earnings will be credited,
- 8 not to exceed the service years earned under the accrued benefit
- 9 formula under the Gainesville Gas Group Plan, less
- 10 d. For each year of Gainesville Gas Group Plan service credited under
- 11 subsection c. above, the portion of the accrued benefit determined
- 12 under subsection a. above based on such year(s), payable as a
- 13 monthly life annuity from normal retirement date, except as
- 14 otherwise provided in this article.

15 (2) For purposes of determining normal retirement date, service accrued under
 16 the Gainesville Gas Group Plan prior to the acquisition date will be
 17 counted as vesting service.

18 (3) For the purpose of computing final average earnings, overtime and
 19 termination vacation pay shall not be included, except as provided below.
 20 For members retiring on or after October 1, 1996, overtime shall be
 21 included for the purpose of computing final average earnings.

22 (i) Re-entry; Purchase of ineligible service. ~~Limited participant re-entry, transfer of~~
 23 ~~vested accrued benefit.~~

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1 (1) ~~Actively employed, regular employees~~ Regular employees, actively
2 employed on or after August 27, 2002, who previously elected/requested
3 to have future employer contributions made to the Deferred Compensation
4 Plan (§ 457) or the § 401(a) Defined Contribution Plan in lieu of this plan,
5 thereby becoming limited participants; may elect during the ~~one-time~~
6 election periods described below to ~~re-enter~~ this plan as eligible members,
7 and to cease employer contributions to the § 457 Deferred Compensation
8 Plan or the §401(a) Defined Contribution Plan, ~~or may elect during the~~
9 ~~one-time election period described below to not re-enter but instead~~
10 ~~transfer the value of their vested accrued benefit, in accordance with the~~
11 ~~following provisions:~~ Elections may be made during the months of
12 September and October, 2002 and the months of November, December,
13 and January of each year.

14 (1) ~~The election period shall begin on March 15, 1999, and shall end on June~~
15 ~~15, 1999.~~

16 (2) If elected by the ~~limited participant~~ employee under (1) above, ~~resumption~~
17 of participation in this plan and cessation of employer contributions to the
18 §457 Deferred Compensation Plan or the § 401(a) Defined Contribution
19 Plan shall be effective commencing with the first administratively feasible
20 pay period following execution and submission by the participant of an
21 election form.

22 (3) An employee ~~limited participant~~ who elects to ~~re-enter~~ this plan as an
23 eligible member, as provided in subsection (i)(2), shall have the option

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1 during the periods of time described in (i)(1) above to have some or all
2 years of ineligible limited-participant service count as eligible service by
3 contributing to the plan the actuarial present value of benefits that are
4 projected to be applicable for some or all the years of service as an
5 ineligible member. If any particular "buy-back" involves less than all prior
6 ineligible service, then in each case the period for which the employee
7 receives credit must be for full years and must be the most recent
8 unclaimed ineligible service. Such present value shall be determined by
9 the Plan Actuary using the valuation assumptions then currently in effect
10 in the Plan-1983 Group Annuity Mortality Table Unisex 50/50 and an
11 interest rate of 9.5 percent. This option may be elected by the participant at
12 any time while actively employed as an eligible member employee during
13 any of the election periods described in (1) above. Appropriate portions of
14 those Aamounts contributed pursuant to this subsection (3) and (4) shall be
15 considered employee contributions for the purpose of subsections 2-
16 526(a)(3) and (e), (f), (g), and (h). Transfers of all or part of a member's
17 account in the City of Gainesville's Defined Contribution 401(a) Plan will
18 be accepted by this plan for this purpose.

- 19 (4) A former employee who became an eligible member described in (1) and
20 (2) above may also "buy-back" prior service as described in (3) above,
21 provided that the funds are received by the Plan within sixty (60) days of
22 the effective date of the former employee's termination of employment.
23 A
limited participant who is a participant in the § 401(a) Defined

1 ~~Contribution Plan and who elects not to re-enter the plan as an eligible~~
2 ~~member shall have the option to elect during the election period described~~
3 ~~in subsection (1), to transfer the actuarial present value as of June 30,~~
4 ~~1999, of his/her vested accrued benefit under this plan to the § 401(a)~~
5 ~~Defined Contribution Plan. Such present value shall be determined by the~~
6 ~~Plan Actuary on an actuarial equivalent basis as defined in section 2-521.~~
7 ~~Upon such transfer the employee shall forfeit all benefits previously~~
8 ~~accrued in the plan.~~

- 9 (5) Effective January 1, 2002, for purposes of contributing amounts to the
10 plan, as described in subsection (i)(3) and (4) above, the plan will accept a
11 cash or transfer of all or part of a member's account in the City of
12 Gainesville's 457(b) Plan and will accept rollover contributions and/or
13 direct rollovers of distributions (including after-tax contributions) made
14 after December 31, 2001 that are eligible for rollover in accordance with
15 Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the
16 Code, from all of the following types of plans; (1) a qualified plan
17 described in Section 401(a) or 403(a) of the Code; (2) an annuity contract
18 described in Section 403(b) of the Code; (3) an eligible plan under Section
19 457(b) of the Code which is maintained by a state, political subdivision of
20 a state, or any agency or instrumentality of a state or political subdivision
21 of a state; and (4) an individual retirement account or annuity described in
22 Section 408(a) or 408(b) of the Code (including SEPs, and Simple IRAs
23 after two years of participating in the Simple IRA). The amount distributed

1 from such plan must be rolled over to this plan no later than the 60th day
2 after distribution was made from the plan, unless otherwise waived by the
3 IRS pursuant to Section 402(c)(3) of the Code.

4 (j) *Re-employed retirees and recipients of termination benefits.* A retiree or a former
5 employee of the city receiving termination benefits from the city consolidated police
6 officers and firefighters retirement plan, or this plan may, upon becoming re-employed by
7 the City of Gainesville, become a new member of this plan, earn credited service, and
8 become entitled to receive an additional retirement benefit subject to the following
9 conditions:

10 (1) Such member shall satisfy the eligibility requirements for participation in
11 this plan.

12 (2) Such member shall not be entitled to disability benefits under the city
13 employees disability plan, or become entitled to any other disability
14 pension benefit payable from a retirement system or plan of the city.

15 (3) No service for which credit was received, or which remained unclaimed, at
16 retirement or termination may be claimed or applied toward credited
17 service earned following re-employment.

18 (4) Such re-employed member shall not be entitled to purchase additional
19 credit for service performed prior to re-employment.

20 **Section 2.** It is the intention of the City Commission that the provisions of Section 1
21 of this Ordinance shall become and be made a part of the Code of Ordinances of the City
22 of Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be
23 renumbered or relettered in order to accomplish such intentions.

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1 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be
2 invalid or unconstitutional by any court of competent jurisdiction, then said holding shall
3 in no way affect the validity of the remaining portions of this ordinance.

4 **Section 4.** All ordinances or parts of ordinances in conflict herewith are to the extent
5 of such conflict hereby repealed.

6 **Section 5.** This ordinance shall be effective immediately upon adoption.

7 **PASSED AND ADOPTED** this ____ day of _____, 2002.
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11
12 _____
13 THOMAS D. BUSSING, MAYOR
14

15
16 ATTEST:

Approved as to form and legality

17
18 _____
19 KURT M. LANNON
20 CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

21
22
23 This Ordinance passed on first reading this ____ day of _____, 2002.

24 This Ordinance passed on second reading this ____ day of _____, 2002.