

ORDINANCE NO. 060863
0-06-138

An ordinance of the City of Gainesville, Florida, amending Division 6 of Chapter 2 of the Code of Ordinances relating to the Disability Pension Plan, relating to definitions, penalties for fraud and deceit, administration, eligibility, benefits, amount of and limitations on and termination of payments, and medical examinations; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing to be held in the City Commission Auditorium, City Hall, City of Gainesville; and

WHEREAS, the Public Hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard; and

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

Section 1. The following definitions are hereby added to section 2-547, City of Gainesville Code of Ordinances:

Sec. 2-547. Definitions.

Except as otherwise stated in this division, where the purpose and intent of this division is consistent with the definitions contained in section 2-521, as amended, the definitions as contained in section 2-521, as amended, shall have the same meaning when used in this division.

“ACE” means “average current earnings,” as utilized to determine benefit under 42 U.S.C. §§ 402 and 423.

1
2 “*AWW*” means “average weekly wages” as utilized under Chapter 440, F.S., to
3 determine compensation for disability.

4
5 “*In line of duty*” means an injury or illness arising out of and in the actual
6 performance of duties required by a member’s employment, during his or her
7 regularly scheduled working hours or irregular working hours as required by the
8 City. The administrator may require such proof as he or she deems necessary as
9 to the time, date, and cause of any such injury or illness, including evidence from
10 any available witnesses. Workers’ compensation records under the provisions of
11 chapter 440 may also be used. Disability resulting from drug or alcohol abuse or
12 use of tobacco products shall not be considered in the line of duty.
13

14 **Section 2.** Section 2-548, City of Gainesville Code of Ordinances, is amended to
15 read as follows:

16 **Sec. 2-548. False, misleading, or fraudulent statements made to obtain retirement**
17 **benefits prohibited; penalty. –Penalty for fraud and deceit.**

18
19 (a) It is unlawful for a person to willfully and knowingly make, or cause to be made,
20 or to assist, conspire with, or urge another to make, or cause to be made, any false,
21 fraudulent, or misleading oral or written statement or withhold or conceal material
22 information to obtain any benefit available under the disability plan.
23

24 (b) A person who violates subsection (a) shall be punished as provided in section 1-9
25 of the Code of Ordinances.
26

27 (c) In addition to any applicable penalty under section 1-9, upon conviction for a
28 violation described in subsection (a), a participant or beneficiary of the disability plan
29 may, in the discretion of the Plan Administrator, be required to forfeit the right to receive
30 any or all benefits to which the person would otherwise be entitled under this division.
31 For purposes of this paragraph, “conviction” means a determination of guilt that is the
32 result of a plea or trial, regardless of whether adjudication is withheld.
33

34 ~~Whosoever with intent to deceive shall make or cause to be made any statement, report,~~
35 ~~certificate, election, notice, claim or other instrument, authorized or required under this~~
36 ~~division, whether of the enumerated classes or otherwise, which shall be untrue, or shall~~
37 ~~falsify or cause to be falsified any record compromising a part of the operation or~~
38 ~~administration of this plan contemplated by this division shall be punished as provided in~~
39 ~~section 1-9.~~
40

41 **Section 3.** A new subsection (d) of section 2-549, City of Gainesville Code of
42 Ordinances, is created to read as follows:

1 **Sec. 2-549. Administration.**

2 (d) The City Manager shall be the Plan Administrator. The Plan Administrator or
3 designee may condition processing the claim and the initial and continued payment of
4 benefits upon receipt of any information reasonably related to eligibility for, or the
5 amount of, benefits to be received by members or beneficiaries under this division,
6 including, but not limited to, information related to the member's earnings, Worker's
7 Compensation, and Social Security.

8
9 **Section 4.** Section 2-550, City of Gainesville Code of Ordinances, is amended to

10 read as follows:

11 **Section 2-550. Eligibility, service credit, leave of absence**

12
13 (a) Eligibility – Except as otherwise provided herein all regular employees of the City
14 will be eligible for benefits under the disability plan for:

15
16 1. "In-line-of-duty" disability.

17
18 2. Any other disability which occurs after the employee has been employed
19 for at least five consecutive years as a regular employee, provided further
20 that employment while on leave of absence without pay (not in pay status)
21 for at least a full pay period shall not constitute a break in service, nor
22 count towards the required years of employment. However, leave of
23 absence due to service in the uniformed service shall not constitute a break
24 in service and shall count towards the required years of employment.

25
26 (b) Credited Service. Credited service for the purpose of determining benefits for
27 disabled employees shall consist of service to the city rendered while a regular employee.
28 Leaves without pay (the employee is not in pay status) do not count as credited service
29 except as noted in (d).

30
31 (c) Military Service. If an employee was absent due to service in the uniformed
32 services and is eligible for, and in fact re-employed in accordance with the terms of
33 USERRA, the employee shall be granted credited service for the period(s) of service, not
34 including periods after discharge but before actual re-employment. Uniformed services
35 means the Armed Forces; the Army National Guard and the Air National Guard when
36 engaged in active duty for training, inactive duty training, or full-time National Guard
37 duty; the commissioned corps of the Public Health Service; and any other category of
38 persons designated by the President in time of war or national emergency. It covers all
39 categories of military training and service, including duty performed on a voluntary or
40 involuntary basis, in time of peace or war.

41
42 (d) Leaves of absence. Any employee who has been granted a leave of absence of at
43 least a full pay period without pay shall be accredited service prior to the leave of
44 absence, and service credit shall resume upon return to active employment; except that an

1 employee shall be given service credit for periods of leave of absence for military
2 service.

3
4 (e) Application for a disability retirement must be made while a regular employee
5 with the City of Gainesville.

6
7 ~~(a) Eligibility. All permanent employees of the city will be eligible for benefits under~~
8 ~~the disability plan in accordance with the following:~~

9
10 ~~(1) Disability due to a job-related injury in the course of employment with the~~
11 ~~city resulting in payment of worker's compensation benefits; or~~

12
13 ~~(2) Disability due to illness or any other injury with over one year of~~
14 ~~creditable service.~~

15
16 ~~(b) Creditable service. Creditable service for the purpose of determining benefits for~~
17 ~~disabled employees shall consist of service to the city rendered since the employee last~~
18 ~~became a permanent employee.~~

19
20 ~~(c) War service credit. If an employee entered or enters the armed forces of the~~
21 ~~United States in time of war or other national emergency recognized by the city~~
22 ~~commission and reenters the employment of the city or officially indicates a desire to be~~
23 ~~reinstated within 90 days from the date of his/her armed services, the service in the armed~~
24 ~~forces shall be credited him/her as city service.~~

25
26 ~~(d) Leaves of absence. Any employee who has been granted a leave shall be~~
27 ~~accredited service prior to the leave of absence, and service credit shall resume upon~~
28 ~~return to employment; except that an employee may be given service credit for periods of~~
29 ~~leave of absence for military service in accordance with the provisions of war service~~
30 ~~credit.~~

31
32 **Section 5.** Subsection (b) of Section 2-551, City of Gainesville Code of

33 Ordinances, is amended to read as follows:

34 **Sec. 2-551. Funding; administration of fund.**

35
36 ~~(b) Administration of fund. The finance director of the department of management~~
37 ~~and financial services shall be responsible for the safekeeping of the funds. The director~~
38 ~~shall transfer to the disability benefit fund all monies appropriated by the city~~
39 ~~commission on at least a quarterly basis. The director shall be responsible for making all~~
40 ~~payments and disbursements from the disability fund.~~

41
42 **Section 6.** Section 2-552, City of Gainesville Code of Ordinances, is amended to
43 read as follows:

1 **Sec. 2-552. Eligibility for both solely years of service-based retirement and for**
2 **disability payments.**

3
4 (a) In no event shall an employee be eligible to receive disability benefits, if, at the
5 date such benefits would commence, as provided in section 2-554(a), the employee
6 would then be eligible for a service-based normal retirement under the provisions of the
7 City of Gainesville General Employees Pension Plan, based upon the completion of 20 or
8 more years of credited service, as defined under that Plan, at any age.

9
10 (b) ~~If an employee who is a member of the predecessor retirement plan is determined~~
11 ~~pursuant to this division to be totally and permanently disabled, the employee may~~
12 ~~withdraw the total amount, without interest, that he/she contributed to the predecessor~~
13 ~~plan up to the time of his/her disability retirement. The employee shall thereupon~~
14 ~~immediately cease to be a member of and entitled to the benefits of the predecessor plan.~~
15 ~~Provided, however, notwithstanding anything to the contrary contained in this article, if~~
16 ~~the employee subsequently recovers and is offered and accepts reemployment with the~~
17 ~~city pursuant to this division, then the employee may participate in the predecessor~~
18 ~~retirement plan, and receive appropriate credit for his/her prior service, by paying back~~
19 ~~into the plan, within 30 days after the date of his/her reemployment by the city, the~~
20 ~~amount previously withdrawn by the employee. If the repayment is not timely made, the~~
21 ~~retirement pension rights of the employee shall be governed by the provisions of section~~
22 ~~2-523(h).~~

23
24
25 **Section 7.** Section 2-553, City of Gainesville Code of Ordinances, is amended to

26 read as follows:

27 **Section 2-553. Disability Benefits.**

28
29 (a) Disabled employees. An regular employee of the city who becomes, in the
30 opinion of the city commission, totally and permanently unable to perform substantial
31 work for pay within a 50-mile radius of his/her residence, or the distance between his/her
32 residence and city hall; whichever is greater), disabled and is wholly and continuously
33 unable to perform any and every essential duty of his/her employment, with or without a
34 reasonable accommodation, or of a position to which he/she may be assigned on the
35 recommendation of the disability review committee as approved by the administrative
36 department head, by reason of a medically determinable physical or mental impairment,
37 shall be entitled to disability payments in accordance with the disability plan. It is the
38 intent of this section to provide whenever practical and feasible for placement within the
39 city of employees who may become unable to perform the duties of a particular job. If
40 placement on another position is not practical or possible, this fact does not in itself
41 determine disability.

42
43 (b) Proof of disability. Before payment of any disability retirement benefit, the
44 administrator shall require proof that the member is totally and permanently disabled as
45 provided herein:

1
2 1. Such proof shall include the certification of the member's total and
3 permanent disability by a physician or other qualified medical practitioner(s), and
4 such other evidence of disability as the administrator may require, including
5 reports from vocational rehabilitation, evaluation, or testing specialists who have
6 evaluated the applicant for employment.

7
8 2. It must be documented that:

9
10 a. The member's medical condition occurred or became symptomatic
11 during the time the member was employed as a regular employee
12 of the City.

13
14 b. The member was totally and permanently disabled at the time he or
15 she terminated covered employment; and

16
17 c. The member has not engaged in any activity or employment or
18 self-employment inconsistent with the request for disability, after
19 such termination.

20
21 3. If the application is for "in-line-of-duty" disability, in addition to the
22 requirements of subparagraph 2., it must be documented by competent medical
23 evidence that the disability was caused as defined in Section 2-547.

24
25 4. If the application is for other than "in-line-of-duty" disability the
26 employee must have met the eligibility requirements of Section 2-550 on or
27 before the workday immediately preceding the occurrence or manifestation of the
28 injury or illness which caused the disability.

29
30 5. The unavailability of an employment position with the City that the
31 member is physically and mentally capable of performing will not be considered
32 as proof of disability, nor shall a finding of permanent total disability under the
33 Workers Compensation system be proof of permanent and total disability under
34 the Plan or that the injury or illness was incurred in-line-of-duty.

35
36 (b~~c~~) Disability review committee. A disability review committee is hereby created
37 consisting of the risk management director, the human resources director, the plan
38 administrator (who will serve as chair), the appropriate charter officer, and the
39 appropriate administrative department head. This committee shall review all requests for
40 disability payments, review and reexamine the entitlement of pensioners to the
41 continuance of the pension, and shall act as an advisory committee to the city
42 commission as to all matters provided for or related to this division. The committee shall
43 investigate each case, thoroughly considering all pertinent medical evidence which is
44 available or may be requested. ~~A statement from the employee's examining physician~~
45 ~~shall be furnished to the committee.~~ The committee shall establish the policies and
46 procedures necessary to carry out the provisions of this section, including, but not limited
47 to, the utilization of outside consultants and medical experts. After the investigation is

complete in each instance, a written recommendation will be prepared and submitted to the city commission.

(ed) *Determination of eligibility.* The city commission shall then consider the written recommendation of the disability review committee and may secure such other information as the commission desires and determines appropriate. Following thorough consideration, the city commission will then determine the eligibility of the employee for benefits as provided in this plan. The city commission may attach such conditions and safeguards to its findings and determinations as may be deemed appropriate in order to carry out the intent and purpose of this division. The determination of the city commission on any matters related to this division, its interpretation or the entitlement of one to its benefits shall rest solely with the city commission, and its determination shall be final.

Section 8. Section 2-554, City of Gainesville Code of Ordinances, is amended to read as follows:

Sec. 2-554. Amount of disability payments.

(a) Time payments begin. ~~An disabled employee of the city entitled to a benefit by reasons of disability through injury or illness shall receive a monthly benefit beginning latter of the month of following the occurrence of the disability or the month following the termination of sick leave payments any and all accumulated paid leave. Employees with accumulated sick paid leave to their credit at the time of disability may elect to use their sick must exhaust leave credit prior to being placed on disability retirement.~~

(b) Calculation of amount. The amount of monthly benefit to which a disabled employee will be entitled will be calculated as follows:

(1) An employee's basic disability benefit percent will be equal to the greater of his/her years of creditable service times two percent ~~or with a minimum 40 42 percent for in-line-of-duty disability and a minimum 25 percent for other than in-line-of duty disability.~~

(2) An employee's basic disability benefit will be equal to his/her disability benefit percent multiplied by his/her final average monthly earnings as would be calculated under the General Employees Pension Plan and using the highest three years to determine the average monthly earnings, or his/her total period of creditable service if such is less than three years.

(3) The employee's basic disability benefit will be reduced by:

a. ~~Any salary continuance he/she may receive.~~

ba. ~~A~~The portion of any early or normal retirement benefits he/she may receive, which are attributable to employer contributions and any service-based normal retirement that he/she is eligible to

1 receive whether or not he/she has applied for the service based
2 retirement benefit.

3
4 2. ~~The disability benefit shall only be reduced by the amount of~~
5 ~~normal or early retirement benefit received or eligible to be~~
6 ~~received, which is attributable to city contributions.~~

7
8 eb. His/Her disability benefit percent up to a maximum of 50%
9 multiplied by the monthly social security primary insurance amount (PIA)
10 to which he/she is initially receiving entitled as a disabled or retired
11 worker, or regardless of whether or not the employee has applied for the
12 benefit the amount to which he or she would initially be entitled as a
13 disabled worker if the employee has willfully failed or refused to apply
14 for, and in good faith pursue, obtaining such benefit, unless this latter
15 requirement is waived by the Plan Administrator for good cause. This
16 reduction, once determined, shall not be further adjusted by subsequent
17 increases in social security PIA amounts.

18
19 (4) In no event shall the disability benefit payable by the city to a disabled
20 employee exceed the lesser of ~~\$1,500.00~~ \$3,750.00 per month or an amount equal
21 to his/her maximum benefit percent, ~~less his/her initially determined amount of~~
22 ~~monthly social security benefits, including dependent benefits, to which he/she is~~
23 ~~entitled as a disabled or retired worker, and less any periodic or lump sum~~
24 ~~payments (3)(a) and (b) and the initially determined wage replacement benefit~~
25 ~~made to the employee under the worker's compensation laws. The deductions for~~
26 ~~worker's compensation payments shall not be made if the city commission~~
27 ~~determines that the disability for which benefits are payable is not, directly or~~
28 ~~indirectly, related to the injury for which worker's compensation payments were~~
29 ~~made. Any lump sum payments shall be converted to the monthly equivalent of~~
30 ~~the weekly rate upon which the lump sum benefit was based and deducted (if~~
31 ~~applicable) for the number of weeks the benefit would have applied. Unless~~
32 otherwise provided by law, the reduction attributable to Workers Compensation
33 payments shall not reduce the disability benefit below the amount which, when
34 such is combined with Social Security Disability and Workers Compensation
35 benefits received by the employee, equals 80 percent of the employee's AWW or
36 80 percent of the employee's ACE (on a weekly basis), whichever is greater. A
37 disabled employee's maximum benefit percent will be 80 percent if the
38 employee's disability is due to a job related injury in the course of employment
39 with the city resulting in payment of worker's compensation, and otherwise shall
40 be 70 percent.

41
42 (c) Duration of payment. Disability payments shall continue until death of the
43 employee or until termination of disability pension (as provided in section 2-556), ~~or until~~
44 ~~superseded by normal retirement benefits, as provided in section 2-554(b)(3)b.~~

1 **Section 9.** Section 2-555, City of Gainesville Code of Ordinances, is amended to
2 read as follows:

3 **Sec. 2-555. Limitations on payment of disability payments.**

4
5 Benefits are not payable for disability due to:

- 6
7 (1) Self-inflicted injuries if intentional ~~or while insane~~;
- 8
9 (2) Participation in or in consequence of having participated in the
10 commission of a crime, or while willfully participating in a riot, and
11 insurrection, or other act of violence;
- 12
13 (3). Service in uniformed services War.
- 14
15 (4) In the case of other than in-line-of-duty disabilities, a condition existing
16 prior to employment or re-employment by the City (a) which condition, as
17 it existed at that time, is the major contributory cause of the claimed
18 disability, or (b) for which medical advice, diagnosis , care, or treatment
19 was recommended, or received during the one year period immediately
20 preceding employment or re-employment, or (c) when during any medical
21 examination authorized under this Division or otherwise, including pre-
22 employment and post-employment medical examinations described in Sec.
23 2-560, the applicant, member or former employee, makes false
24 representations regarding previous injuries, impairments, anomalies or
25 disease, upon which the City has relied in making employment or benefit
26 decisions.
- 27

28 **Section 10.** Section 2-556, City of Gainesville Code of Ordinances, is amended
29 to read as follows:

30 **Sec. 2-556. Termination or reduction of disability pension.**

- 31
32 (a) In the event that a former employee is determined by the administrator to be no
33 longer disabled as provided for in the Plan, his/her disability pension shall be
34 discontinued as follows. In the event that he/she has been offered regular employment
35 with the City, the disability pension shall cease within 30 days of the date of the offer,
36 unless extended by the administrator for good cause shown, or the date of beginning such
37 employment, whichever sooner occurs. In any other case the disability pension shall be
38 discontinued six months after the date of such determination.
39 ~~Upon recovery, the employee's disability pension shall be continued temporarily (not to~~
40 ~~exceed six months) in order to give him/her an opportunity to find a position. If he/she is~~
41 ~~reemployed in the city service, his/her disability pension shall be discontinued as of the~~
42 ~~effective date of such reemployment. If he/she is not so reemployed, his/her disability~~
43 ~~pension shall be terminated at the expiration of the six-month period.~~

1
2 (b) A disabled pensioner shall be considered as no longer disabled nor entitled to the
3 benefits of this division when the pensioner becomes able to satisfactorily perform duties
4 similar to those required by the position from which he/she was retired, or duties of a
5 position which shall become and is available to the person and deemed suitable by the
6 city commission. Such determination shall be made by the city commission upon the
7 recommendation of the disability review committee concurred in by the appropriate
8 administrative department head. If the disability pensioner refuses to accept an offer of
9 reemployment or reinstatement made in accordance with this section, his/her disability
10 benefits shall cease immediately. The city commission shall make such termination of
11 recovery based upon information provided by the disability review committee and other
12 appropriate sources, and the determination shall be final and conclusive.
13

14 (c) In the event that a disabled pensioner is able to engage in full or part-time
15 employment for other employers, and/or substantial self-employment, resulting in current
16 employment earnings, disability payments made to such former employee shall be
17 reduced as follows. The pensioner's monthly reported (city employment and approved
18 outside employment) employment earnings at the date the disability occurred will be
19 adjusted for seasonal or other reasonable variations, and then adjusted by cost of living
20 increases to date of reduction. This amount (Adjusted Earnings) shall be compared with
21 the pensioner's current employment earnings. If the pensioner's current employment
22 earnings exceed 25% of his/her adjusted earnings, then for each three percent in excess of
23 that level, the disability pension shall be reduced by one percent. For example, if his/her
24 current earnings become 55% of his/her adjusted earnings, then the disability pension
25 payment shall be reduced by 10%. Such recovery of earning capacity shall not affect the
26 determination of disability unless the City specifically determines to discontinue pension
27 payments upon the basis that the pensioner is no longer disabled as provided for herein.
28 Any reduction authorized by this section shall be imposed in addition, and subsequent to,
29 any offsets authorized by section 2-554.
30

31 **Section 11.** Subsections (c) of Section 2-560, City of Gainesville Code of

32 Ordinances, is amended to read as follows:

33 **Sec. 2-560. Medical examinations.**

34 (c) Once each year following the retirement of an employee by reason of physical or
35 mental incapacity and/or any other time for good cause, the Plan Administrator ~~city~~
36 ~~commission~~ may require any such disability pensioner to undergo a medical examination
37 by a duly qualified and licensed physician designated by the Plan Administrator ~~city~~
38 ~~commission~~. The Plan Administrator ~~city commission~~ may cause an employee's disability
39 pension to be discontinued if he/she refuses to submit to the medical examinations.

1 **Section 12.** It is the intention of the City Commission that the provisions of
2 sections 1 through 11 of this ordinance shall become and be made a part of the Code of
3 Ordinances of the City of Gainesville, Florida, and that the Sections and Paragraphs of
4 this Ordinance may be renumbered or relettered in order to accomplish such intentions.

5 **Section 13.** If any section, sentence, clause or phrase of this ordinance is held to
6 be invalid or unconstitutional by any court of competent jurisdiction, then said holding
7 shall in no way affect the validity of the remaining portions of this ordinance.

8 **Section 14.** All ordinances, or parts of ordinances, in conflict herewith are to the
9 extent of such conflict hereby repealed.

10 **Section 15.** This ordinance shall become effective immediately upon final
11 adoption.

12

13 **PASSED AND ADOPTED** this 12th day of February, 2007.

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ATTEST:


KURT M. LANNON
CLERK OF THE COMMISSION


PEGEEN HANRAHAN,
MAYOR

Approved as to form and legality


MARION J. RADSON
CITY ATTORNEY

FEB 14 2007

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This Ordinance passed on first reading this 22nd day of January, 2007.

This Ordinance passed on second reading this 12th day of February, 2007.