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ORDINANCE NO. 130122

An ordinance of the City of Gainesville, Florida, amending Chapter 2, Article VII, Division 5 (Employees Pension Plan) of the Code of Ordinances of the City of Gainesville, for federal tax compliance purposes and to amend the investment authority of the board of trustees; amending Section 2-521, Definitions; amending Section 2-522, Establishment of system; amending Section 2-523, Membership and service; amending Section 2-524, Contributions and funding; amending Section 2-526, Benefits; amending Section 2-527, Administration of the plan; amending Section 2-530, Miscellaneous; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

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

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

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

25 **Section 1.** Section 2-521, Definitions, of the Code of Ordinances of the City of
26 Gainesville, is amended to read as follows (except as amended herein, the remaining definitions
27 in Section 2-521 remain unchanged and in full force and effect):

28 **Sec. 2-521. Definitions.**

29 *Earnings* shall mean only base pay (which shall include all paid leaves), all overtime pay
30 (which shall include time paid at time-and-a-half, double-time, and double-time-and-a-half),
31 stand-by pay, call-back pay, working out of classification pay, acting out of classification pay,

1 longevity pay, special assignment pay, and termination vacation pay, or for members entering a
2 DROP any lump sum payment of some or all of such member's vacation balance upon entering
3 the DROP, except as may be otherwise expressly provided for herein or in collective bargaining
4 agreements. To calculate earnings for service earned on or after October 1, 2012 by members
5 whose most recent appointment to employment with the city as a permanent or regular employee
6 occurred on or before October 1, 2012, no more than 300 hours of overtime pay per year earned
7 on or after October 1, 2012 shall be included, nor shall termination vacation pay earned on or
8 after October 1, 2012 be included. To calculate earnings for service earned on or after October 2,
9 2012 by members whose most recent appointment to employment with the city as a permanent or
10 regular employee occurred on or after October 2, 2012, no more than 150 hours of overtime pay
11 per year earned on or after October 2, 2012 shall be included, nor shall termination vacation pay
12 earned on or after October 2, 2012 be included. Effective October 1, 1996, earnings in excess of
13 \$150,000.00 annually shall be disregarded for all purposes of this plan. As of January 1 of each
14 calendar year, the dollar limitation ~~as determined by the commissioner of internal revenue in~~
15 Internal Revenue Code Section 401(a)(17) for that calendar year will become effective for the
16 plan year commencing thereafter in lieu of the dollar limitation provided in the preceding
17 sentence. For an employee who became a member of the plan prior to October 1, 1996, this
18 limitation shall not be applicable.

19 **Section 2.** Sub-section (c) of Section 2-522, Establishment of system, of the Code of
20 Ordinances of the City of Gainesville, is amended to read as follows:

21 **Section 2-522. Establishment of system.**

22 (c) *Purpose.* The purpose of the establishment of the fund and the system is to provide for
23 payment of benefits set forth under a predecessor retirement plan for employees of the city and to

1 establish a system of pension benefits for people who are and shall become employees of the city.
2 Neither the city nor the board of trustees shall authorize or permit any part of the trust fund to be
3 diverted for purposes other than for the exclusive benefit of members and their beneficiaries.

4 **Section 3.** Sub-section (i)(5) of Section 2-523, Membership and service, of the Code of
5 Ordinances of the City of Gainesville, is amended to read as follows:

6 **Sec. 2-523. Membership and service.**

7 (i) *Re-entry; purchase of limited participant service.*

8 (5) Effective January 1, 2002, for purposes of contributing amounts to the plan, as
9 described in subsection (i)(3) and (4) above, the plan will accept a cash or transfer
10 of all or part of a member's account in the City of Gainesville's 457(b) Plan and
11 will accept rollover contributions and/or direct rollovers of distributions
12 (including after-tax contributions) made after December 31, 2001 that are eligible
13 for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8),
14 408(d)(3)(A)(ii), or 457(e)(16) of the Internal Revenue Code, from all of the
15 following types of plans; (1) a qualified plan described in Section 401(a) or 403(a)
16 of the Internal Revenue Code; (2) an annuity contract described in Section 403(b)
17 of the Internal Revenue Code; (3) an eligible plan under Section 457(b) of the
18 Internal Revenue Code which is maintained by a state, political subdivision of a
19 state, or any agency or instrumentality of a state or political subdivision of a state;
20 and (4) an individual retirement account or annuity described in Section 408(a) or
21 408(b) of the Internal Revenue Code (including SEPs, and Simple IRAs after two
22 years of participating in the Simple IRA). The amount distributed from such plan
23 must be rolled over to this plan no later than the 60th day after distribution as

1 made from the plan, unless otherwise waived by the IRS pursuant to Section
2 402(c)(3) of the Internal Revenue Code.

3 **Section 4.** Sub-section (b)(1) of Section 2-524, Contributions and funding, of the Code of
4 Ordinances of the City of Gainesville, is amended to read as follows:

5 **Sec. 2-524. Contributions and funding.**

6 (b) *Member contributions.*

7
8 (1) Effective the first full pay period following October 1, 2000, members, except
9 members who have entered a DROP, will have a fixed employee contribution rate
10 of five percent of earnings. There shall be no member contributions deducted from
11 a member's compensation while participating in the DROP. Effective January 1,
12 1998, the contributions made by each member to the plan shall be designated as
13 employer contributions pursuant to the Internal Revenue Code (I.R.C.), Section
14 414(h), of 1986. Such designation is contingent upon the contributions being
15 excluded from the member's gross income for federal income tax purposes. For all
16 other purposes of the plan, such contributions shall be considered to be member
17 contributions. No member shall have the option of choosing to receive the
18 contributed amounts directly instead of having them paid by the city to the fund.

19 **Section 5.** Sub-sections (a)(3), (l)(1), (m)(2), and (n)(2) of Section 2-526, Benefits, of the
20 Code of Ordinances of the City of Gainesville, is amended to read as follows:

21 **Sec. 2-526. Benefits.**

22 (a) *Eligibility for service retirement.*

23 (3) *Termination of employment.* A member whose employment with the city terminates
24 prior to the completion of at least five years of credited service, for any reason, shall not

1 be entitled to any benefits under the plan; except as provided in paragraph e. below;
2 provided, however, that in any event upon the written election of the member (in a form
3 and manner determined by the board) amounts contributed by members shall be paid
4 without interest to the member or, as applicable, the member's beneficiary. A member
5 whose employment with the city terminates after the completion of at least five years of
6 credited service, but prior to retirement, shall be entitled to a termination benefit, or, if
7 applicable, return of contributions in accordance with subsections (e) and (f). Payment of
8 the termination benefit shall be governed by the following provisions of this section.

9 a. Benefit amount. A member who is entitled to a termination benefit shall
10 receive a monthly annuity equal to his/her accrued benefit, except as provided in
11 subsection (j), determined as of his/her date of termination.

12 b. Benefit commencement date. The benefit commencement date of a
13 member with at least five years' credited service but less than 20 years' credited
14 service shall be the first day of the month after the member has attained age 65.

15 c. Benefit payments. The termination benefits shall be payable on the last
16 day of each month. The first payment shall be made on the benefit commencement
17 date, and benefits shall be payable thereafter according to the terms of the accrued
18 benefit for the member's lifetime. A member may modify the amount and
19 conditions of payment described in this section by electing an annuity option in
20 accordance with the optional forms of benefit section.

21 d. Benefit forfeitures. That portion of a terminated member's benefit that is
22 not vested shall be forfeited and used only to reduce future costs of the plan,

1 provided, however, that amounts contributed by such a terminated member shall
2 be paid without interest to the member or, as applicable, the member's beneficiary.

3 e. The beneficiary(ies) of a member who dies while performing qualified
4 military service as described in the service credit rules shall receive the higher of
5 the actuarial present value of his or her accrued benefit calculated as of time of
6 death or return of employee contributions without any interest. In the alternative,
7 said beneficiary may receive an annuity as described in subsections (e), (g), or (h),
8 if such are applicable.

9 (l) *Maximum benefit limitation.*

10 (1) The maximum annual benefit payable under the plan shall be limited to
11 ~~\$90~~205,000.00, subject to adjustment for increases in the cost of living in
12 accordance with the following sentence. As of the first day of January of each
13 calendar year, the maximum dollar limitation shall be adjusted automatically to an
14 amount determined by the Commissioner of the Internal Revenue Service in
15 accordance with Section 415 of the Internal Revenue Code effective for that
16 calendar year and shall apply only to that calendar year.

17 (m) *Distribution rules.* Notwithstanding any other provision of this plan to the contrary, a
18 form of retirement income payable from this plan after November 24, 1997, shall satisfy the
19 following conditions:

20 (2) If the member's death occurs before the distribution of his or her interest in the
21 plan has commenced, his or her entire interest in the plan shall be distributed within five
22 years of his or her death, unless it is to be distributed in accordance with the following
23 rules:

- 1 a. The member's remaining interest in the plan is payable to his or her
2 spouse, issue or dependent.
- 3 b. The remaining interest is to be distributed over the life of the spouse,
4 issue, or dependent or over a period not extending beyond the life
5 expectancy of the spouse, issue or dependent; and
- 6 c. Such distribution begins within one year of the member's death unless the
7 member's spouse, ~~issue or dependent shall receive the remaining interest~~
8 is the sole designated beneficiary, in which case the distribution need not
9 begin before the date on which the member would have attained age 70½
10 years, and if the member's spouse, ~~issue or dependent~~ dies before the
11 distribution to the spouse, ~~issue or dependent~~ begins, this section shall be
12 applied as if the spouse, ~~issue or dependent~~ were the ~~plan~~ member.

13 (n) *Direct transfers of eligible rollover distributions.*

14 (2) Definitions.

- 15 a. *Eligible rollover distribution.* An eligible rollover distribution is any
16 distribution of all or any portion of the balance to the credit of the
17 distributee, except that an eligible rollover distribution does not include:
18 any distribution that is one of a series of substantially equal periodic
19 payments (not less frequently than annually) made for life (or life
20 expectancy) of the distributee, or the joint lives (or joint life expectancies
21 of the distributee and the distributee's designated beneficiary, or for a
22 specified period of ten years or more; any distribution to the extent such
23 distribution is required under I.R.C. section 401(a)(9); and the portion of

1 any distribution that is not includable in gross income, i.e., member
2 contributions made prior to 1998.

3 b. *Eligible retirement plan.* An eligible retirement plan as defined in I.R.C.
4 section 402(c)(8)(B), including an individual eligible retirement account
5 described in I.R.C. section 408(a), an individual retirement annuity
6 described in I.R.C. section 408(b), an annuity plan described in I.R.C.
7 section 403(a), an annuity contract described in I.R.C. section 403(b) or a
8 qualified trust described in I.R.C. section 401(a) that accepts the
9 distributee's eligible rollover distribution, or an eligible deferred
10 compensation plan described in I.R.C. section 457(b) maintained by a
11 state, political subdivision of a state, or any agency or instrumentality of a
12 state or political subdivision of a state and which agrees to separately
13 account for amounts transferred into such plan from this plan.

14 c. *Distributee.* A distributee includes an employee, or a former employee, a
15 surviving spouse as described in I.R.C. section 402(c)(9), or designated
16 ~~beneficiary~~ beneficiary. Effective as of January 1, 2008, an employee's or
17 former employee's non-spouse beneficiary is a distributee with regard to
18 the interest of the employee or former employee.

19 d. *Direct rollover.* A direct rollover is a payment by the plan to the eligible
20 retirement plan specified by the distributee. Effective as of January 1,
21 2008, a non-spouse beneficiary may make a direct rollover only to an
22 "inherited" individual retirement account as described in Section 408(b) of
23 the Internal Revenue Code.

1 **Section 6.** Sub-section (w) of Section 2-527, Administration of the plan, of the Code of
2 Ordinances of the City of Gainesville, is amended to read as follows:

3 **Sec. 2-527. Administration of the plan.**

4 (w) *Investment of funds.* The board shall have full power to invest and reinvest all
5 funds within its control and to make investment of all kinds except as otherwise
6 provided by statute or ordinance. Such investments shall not be subject to the
7 limitations and conditions set forth in Florida Statute Section 215.47.

8 **Section 7.** Sub-sections (d), (e) and (f) are added to Section 2-530, Miscellaneous, of the
9 Code of Ordinances of the City of Gainesville, to read as follows:

10 **Sec. 2-530. Miscellaneous.**

11 (d) *USERRA.* Notwithstanding any provision of this plan to the contrary, effective as of
12 December 12, 1994, contributions, benefits and service credit with respect to qualified
13 military service will be provide in accordance with Section 414(u) of the Internal
14 Revenue Code of 1986, as amended, USERRA, and Chapters 175 and 185, Florida
15 Statutes as applicable.

16 (e) *Use of Forfeitures.* Forfeitures arising from terminations of service of members shall
17 serve only to reduce current or future contributions to the fund.

18 (f) *Compliance with Federal Tax Laws.* Notwithstanding any other provisions, the benefit of
19 a member shall be reduced to the extent that it exceeds amounts specified in Section 415
20 of the Internal Revenue Code, and all distributions from the plan (including the DROP)
21 shall conform to the regulations issued under Section 401(a)(9) of the Internal Revenue
22 Code, including the incidental death benefit provision of Section 401(a)(9)(G) of the
23 Internal Revenue Code.

1 **Section 8.** It is the intention of the City Commission that the provisions of Sections 1
2 through 7 of this ordinance shall become and be made a part of the Code of Ordinances of the
3 City of Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be
4 renumbered or relettered in order to accomplish such intentions.

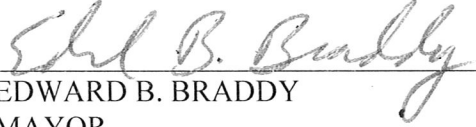
5 **Section 9.** If any word, phrase, clause, paragraph, section, or provision of this ordinance
6 or the application hereof to any person or circumstance is held to be invalid or unconstitutional,
7 such finding shall not affect the other provisions or applications of the ordinance which can be
8 given effect without the invalid or unconstitutional provisions or application, and to this end the
9 provisions of this ordinance are declared severable.

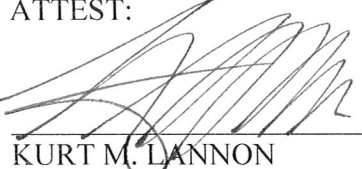
10 **Section 10.** All ordinances, or parts of ordinances, in conflict herewith are to the extent
11 of such conflict hereby repealed.

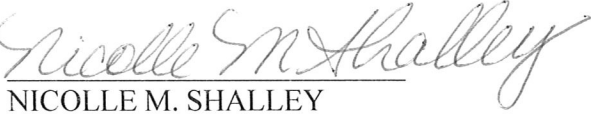
12 **Section 11.** This ordinance shall become effective immediately upon final adoption.

13 **PASSED AND ADOPTED** this 19th day of September, 2013.

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EDWARD B. BRADDY
MAYOR

ATTEST:

KURT M. LANNON
CLERK OF THE COMMISSION

Approved as to form and legality

NICOLLE M. SHALLEY
CITY ATTORNEY

26 This Ordinance passed on first reading this 5th day of September, 2013.

27 This Ordinance passed on second reading this 19th day of September, 2013.