



MEMORANDUM

Office of the City Attorney

Legistar No. 000050

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commission

DATE: June 12, 2000
FIRST READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-00-66
An ordinance of the City of Gainesville, Florida, amending Division 8 of Chapter 2 of the Code of Ordinances relating to the Consolidated Police Officers and Firefighters Retirement Plan relating to credited service, lump sum payments, the Board of Trustees, penalty for false statement, and exemptions from execution; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing retroactive and immediate effective dates.


Recommendation: The City Commission adopt the proposed ordinance.


Chapters 175 and 185, Florida Statutes, dealing with municipal fire and police pension funds, were substantially amended last year by Chapter 99-1, Laws of Florida. Those municipalities whose fire and police pension plans conform to certain requirements set forth in Chapters 175 and 185 receive from the State, as partial funding for those plans, local insurance premium tax revenues. Last August, the City Commission authorized the City Attorney's Office to evaluate what changes to the City of Gainesville's Police and Fire Consolidated Pension Plan would be necessary to conform to the newly enacted requirements of Chapter 99-1. The City Manager was directed to negotiate as necessary those changes. The City Attorney was authorized to prepare an ordinance incorporating the necessary changes and to present it to the Commission for adoption. Since last fall, those activities have been occurring.

Chapter 99-1 made numerous changes. Some of those changes would cost additional money to fund (would have an actuarial impact on the Plan) and some would not. Chapter 99-1 provides that the changes it requires need only to be made to the extent that any additional costs can be paid for by increases in the amount of insurance premium taxes that are received. Last year, the amount of insurance premium taxes received by the City did not increase over the preceding year's amount. Therefore, at this time, only the "no cost changes" need be made in order to remain in compliance. As a result of lengthy, recently concluded, dialog between City staff and the Consolidated Plan's actuary, it has been determined that only the attached "no cost" changes are required at this time.

The changes in Sections 1, 3 and 4 of the ordinance provide for additional cost neutral benefits. The changes in Sections 2, 6, and 7 reflect current practice. Section 5 deals with who can be employee representatives on the Board of Trustees and who can vote to elect such persons. Changes in Sections 8 and 9 replace existing Plan language with similar statutorily required language.

Management has discussed these changes with police and fire union representatives and they have no objection to the changes.

Prepared by: 
Charles L. Hauck,
Sr. Assistant City Attorney

Approved and Submitted by: 
Marion J. Radson,
City Attorney

MJR:CLH:sw

Ordinance No. _____
0-00-66

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

An ordinance of the City of Gainesville, Florida, amending Division 8 of Chapter 2 of the Code of Ordinances relating to the Consolidated Police Officers and Firefighters Retirement Plan relating to credited service, lump sum payments, the Board of Trustees, penalty for false statement, and exemptions from execution; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing retroactive and immediate effective dates.

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 in the City Commission Auditorium in City Hall, City of Gainesville; and

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

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

Section 1. The definition for Credited service in "Service credit rules" in Section 2-596 of the Code of Ordinances of the City of Gainesville, Definitions, shall be amended to read as follows:

Sec. 2-596. Definitions.

Service credit rules shall mean the following:

- (5) Credited service shall mean the total number of months of service with the city, expressed in terms of full and fractional year. Additional months of service shall be credited for unused sick leave credits, assigning one day of

1 service for each day of unused sick leave, unless otherwise provided in
2 applicable personnel policies, collective bargaining agreements, or DROP
3 provisions. Additional months of service and fractions thereof, as determined
4 by the city, shall be credited to members for periods of employment while a
5 CETA employee. Further provided, that, if the employment of a member is
6 terminated, and the member is subsequently reemployed by the city, the
7 credited service to which he/she was entitled as of his/her termination date
8 shall be included in any further computation of credited service under the
9 following circumstances:

10 a. If such a member was not entitled to a termination benefit in
11 accordance with section 2-600(e) and his/her number of calendar months that
12 he/she was not employed is less than his/her aggregate months of service
13 credited under the plan as of this termination date and he/she has repaid
14 withdrawn contributions as provided in section 2-600(e)~~(4)~~(5); or

15 b. If the member was not entitled to a termination benefit, and he/she
16 remains in the continuous employ of the city for at least ten years subsequent to
17 his/her reemployment, and he/she has repaid withdrawn contributions as
18 provided in section 2-600(e)~~(4)~~(5). Continuous employ shall not be deemed
19 interrupted because of absence, when the absence shall have been granted in
20 accordance with appropriate contract provisions or applicable personnel
21 policies as approved by the city commission. Approved absences shall count as
22 credited service under the plan, in accordance with the terms of the plan.

1 c. If a member was not entitled to a termination benefit, he or she may voluntarily
2 leave his or her contributions in the fund for a period of 5 years after leaving the
3 employ of the fire or police department, pending the possibility of being rehired by the
4 same department, without losing credit for the time he or she has participated actively
5 as a firefighter or police officer. If the firefighter or police officer is not reemployed as
6 a firefighter or police officer, with the same department within 5 years, his or her
7 contributions shall be returned without interest.

8
9 **Section 2.** Section 2-599(c)(1) of the Code of Ordinances of the City of Gainesville
10 shall be amended to read as follows:

11 Sec. 2-599. Contributions.

12 (c) City contributions.

13 (1) The city manager or his/her designee shall transfer to the plan's trust
14 fund all funds appropriated by the city commission as soon as practicable after
15 they are authorized or received and in any event at least quarterly. The net
16 proceeds of the tax levies imposed by subsection (b) above, as authorized by
17 F.S. §§ 175.101 and 185.08 ~~(1987)~~, shall be deposited in the plan's trust fund
18 immediately upon receipt, where they shall become an integral part of the fund,
19 and in no event more than five days after receipt. Employee contributions will
20 be deposited in the fund ~~at least monthly~~ immediately after each pay period.
21
22

23 **Section 3.** Section 2-600(e) of the Code of Ordinances of the City of Gainesville is
24 amended to read as follows:

1 Sec. 2-600. Retirement dates and benefits.

2 (e) Termination of employment. A member whose employment with the
3 city terminates prior to the completion of at least ten years of credited service,
4 for any reason other than his/her disability shall not be entitled to any benefits
5 under the plan, provided, however, that, except as provided in subsection (6)
6 below, amounts contributed by members shall be paid without interest to the
7 member or, as applicable, the member's beneficiary. A member whose
8 employment with the city terminates after the completion of at least ten years
9 of credited service shall be entitled to a termination benefit, or, if applicable,
10 return of contributions in accordance with section 2-600(d)(1) and (2).

11 Payment of the termination benefit shall be governed by the following
12 provisions of this section:

13 (1) Benefit amount. A member who is entitled to a termination
14 benefit shall receive a monthly retirement equal to his/her accrued
15 benefit, except as provided in section 2-601, determined as of his/her
16 date of termination.

17 (2) Benefit commencement date. The benefit commencement date
18 of a member with at least ten years credited service but less than 20
19 years credited service shall be the first day of the month after he/she has
20 attained age 60.

21 (3) Benefit payments. The termination benefits shall be payable on
22 the first day of each month. The first payment shall be made on the
23 benefit commencement date, and benefits shall be payable thereafter

1 according to the terms of the accrued benefit for the member's lifetime.

2 A member may modify the amount and conditions of payment

3 described in this section by electing an option in accordance with the

4 optional forms of benefit section, in which event the termination benefit

5 shall be paid in accordance with the terms of such option.

6 (4) Benefit forfeitures. That portion of a terminated member's

7 benefit that is not vested shall be forfeited and used only to reduce

8 future costs of the plan, provided, however, that amounts contributed by

9 such a terminated member shall be paid without interest to the member

10 or, as applicable, the member's beneficiary.

11 (5) Reemployed members. In the event employment of a member,

12 entitled to a termination benefit pursuant to this section, is terminated,

13 and he/she is subsequently reemployed by the city prior to his/her

14 benefit commencement date, he/she shall continue to be entitled to the

15 credited service he/she had previously earned, and shall again

16 participate in the plan and accrue benefits after such date of

17 reemployment, in accordance with the terms of the plan. A member

18 whose employment with the city terminated prior to his/her entitlement

19 to any termination benefits and who has had the amount, if any, he/she

20 contributed to this plan repaid without interest, shall no longer be a

21 member of the plan and shall not be entitled to receive any benefits

22 under the plan. If such member is subsequently reemployed by the city,

23 he/she may recoup his/her previous credited service to which he/she

D R A F T

6-1-00

1 was previously entitled, under the following circumstances:

2
3 a. If his/her period of absence is less than his/her period of
4 credited service, as provided in section 2-596, and if he/she,
5 within 30 days from the date of his/her successful completion of
6 his/her probationary period after reemployment, repays the
7 amount of contributions paid out, plus interest at the plan's
8 assumed rate as stated in the most recent actuarial valuation
9 report filed with the State of Florida, pursuant to F.S. §
10 112.63(2), for each year and portion thereof of his/her absence
11 and the period of time after reemployment until the date of
12 refund; or

13 b. If the member was not entitled to a termination benefit,
14 and he/she remains in the continuous employ of the city for at
15 least ten years subsequent to his/her reemployment, and he/she
16 has refunded withdrawn contributions as provided above.

17 Continuous employ shall not be deemed interrupted because of
18 absence, when the absence shall have been granted in
19 accordance with appropriate contract provisions or applicable
20 personnel policies as approved by the city commission.

21 Approved absences shall count as credited service under the
22 plan, in accordance with the terms of the plan.

23 (6) Reemployment within five (5) years. If a member was not

1 entitled to a termination benefit, he or she may voluntarily leave his or
 2 her contributions in the fund for a period of five (5) years after leaving
 3 the employ of the fire or police department, pending the possibility of
 4 being rehired by the same department, without losing credit for the time
 5 he or she has participated actively as a firefighter or police officer. If
 6 the firefighter or police officer is not reemployed as a firefighter or
 7 police officer, with the same department within five (5) years, his or her
 8 contributions shall be returned without interest.

9
 10 **Section 4.** Section 2-600(l) of the Code of Ordinances of the City of Gainesville is
 11 created and added to read as follows:

12 Sec. 2-600. Retirement dates and benefits.

13 l. Lump-sum payment of small retirement income. Notwithstanding any
 14 provisions of the plan to the contrary, if the monthly retirement income payable
 15 to any person entitled to benefits hereunder is less than \$100, or if the single-
 16 sum value of the accrued retirement income is less than \$5,000 for a firefighter
 17 or \$2,500 for a police officer, as of the date of retirement or termination of
 18 service, whichever is applicable, the board of trustees, in the exercise of its
 19 discretion, may specify that the actuarial equivalent of such retirement income
 20 be paid in a lump sum.

21
 22 **Section 5.** Section 2-602(b) of the Code of Ordinances of the City of Gainesville is
 23 amended to read as follows:

1 Sec. 2-602. Administration of the plan.

2 (b) Board of trustees. There is hereby created a board of trustees whose

3 duty shall be to administer, manage and operate the plan, carrying into effect its

4 provisions. The board of trustees shall consist of five members, two of whom,

5 unless otherwise prohibited by law, shall be legal residents of the city who

6 shall be appointed by the city commission. ~~Two members of the board shall be~~

7 ~~police officers or firefighters employed by the city, who shall be elected by a~~

8 ~~majority of the police officers and firefighters employed by the city who are~~

9 ~~members of the plan.~~ One member of the board shall be a full-time firefighter

10 as defined in Section 175.032, Florida Statutes, and may be a participant in the

11 DROP, and one member of the board shall be a full-time police officer as

12 defined in Section 185.02, respectively elected by a majority of the active

13 firefighters or police officers who are members of the plan. Retirees, including

14 those members who have entered the DROP are not considered “active

15 firefighters or police officers” for the purposes of the preceding sentence. The

16 fifth member shall be chosen by a majority of the previous four members and

17 shall be appointed, as a ministerial duty, by the city commission.

18

19 **Section 6.** Section 2-602(e)(2) of the Code of Ordinances of the City of Gainesville is

20 amended to read as follows:

21 Sec. 2-602. Administration of the plan.

22 (e) Meeting by the board; form.

1 (2) The majority of the board shall constitute a quorum at any meeting of
 2 the board. Each trustee shall be entitled to one vote at the meeting of the board
 3 ~~and any and all acts and decisions shall be effectuated by a simple majority~~
 4 vote of a majority of the members of the board-eligible to vote.

5
 6 **Section 7.** Section 2-602(f)(1) of the Code of Ordinances of the City of Gainesville is
 7 amended to read as follows:

8 Sec. 2-602. Administration of the plan.

9 (f) Plan officers.

10 (1) The director of the department of ~~management and financial services~~
 11 Finance may be treasurer of the plan and custodian of the fund.

12
 13 **Section 8.** Section 2-604 of the Code of Ordinances of the City of Gainesville is
 14 amended to read as follows:

15 Sec. 2-604. ~~Protection against fraud and deceit.~~ False, misleading, or fraudulent
 16 statements made to obtain public retirement benefits prohibited; penalty.

17 ~~Whosoever with intent to deceive shall make or cause to be made any statement,~~
 18 ~~report, certificate, election, notice, claim or other instrument, authorized or required under this~~
 19 ~~division, whether of the enumerated classes or otherwise, which shall be untrue, or shall~~
 20 ~~falsely or cause to be falsified any record comprising a part of the operation or administration~~
 21 ~~of the plan contemplated by this division shall be punished as provided in section 1-9.~~

22 (a) It is unlawful for a person to willfully and knowingly make, or cause to be
 23 made, or to assist, conspire with, or urge another to make, or cause to be made,

any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit available under this plan.

(b) (1) A person who violates subsection (a) commits a misdemeanor of the first degree, as provided in Sections 175.195 and 185.185, punishable as provided in Section 775.082 or Section 775.083, Florida Statutes.

(2) In addition to any applicable criminal penalty, upon conviction for a violation described in subsection (a), a participant or beneficiary of this plan may, in the discretion of the board of trustees, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under this plan. For purposes of this paragraph, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

Section 9. Section 2-606(a) of the Code of Ordinances of the City of Gainesville is amended to read as follows:

Sec. 2-606. Miscellaneous.

(a) Limitations of assignment. Exemption from execution. None of the benefit distributions under this plan shall be subject to the claim or to any legal process of any creditor of the member or beneficiary; and neither such member nor beneficiary shall have any right to alienate, commute or assign any of the benefit distributions under this plan. If any member shall attempt to dispose of his/her benefits or the right to receive the benefits, or if there should be an effort to seize the benefits

1 or the right to receive the benefits by attachment, execution, or other
2 legal or equitable process, the right may be transferred, at the discretion
3 of the board of trustees, to one or more beneficiaries, if any, designated
4 by the member, or to the spouse, children, or other dependents of the
5 member, in such shares as the board may appoint. The board may
6 revoke its appointment at any time and make further appointments,
7 which may include the member. The pensions, annuities, or any other
8 benefits accrued or accruing to any person under this plan and the
9 accumulated contributions and the cash securities in the funds created
10 under this plan are hereby exempted from any state, county, or
11 municipal tax and shall not be subject to execution or attachment or to
12 any legal process whatsoever, and shall be unassignable.

13
14 **Section 10.** It is the intention of the City Commission that the provisions of Sections
15 1 through 9 inclusive of this Ordinance shall become and be made a part of the Code of
16 Ordinances of the City of Gainesville, Florida, and that the Sections and Paragraphs of this
17 Ordinance may be renumbered or relettered in order to accomplish such intentions.

18
19 **Section 11.** If any section, sentence, clause or phrase of this ordinance is held to be
20 invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in
21 no way affect the validity of the remaining portions of this ordinance.

22
23 **Section 12.** All ordinances, or parts of ordinances, in conflict herewith are to the

D R A F T

6-1-00

1 extent of such conflict hereby repealed.

2

3 **Section 13.** Sections 1 through 7 and Section 9 of this ordinance shall be effective
4 retroactive to December 31, 1999, and Sections 8, 10, 11, and 12 of this ordinance shall be
5 effective immediately upon its adoption.

6

7 **PASSED AND ADOPTED** this _____ day of _____, 2000.

8

9

PAULA M. DeLANEY, MAYOR

10

11

12 ATTEST:

Approved as to form and legality

13

14

KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

15

16

17

18 This Ordinance passed on first reading this _____ day of _____, 2000.

19 This Ordinance passed on second reading this _____ day of _____, 2000.