

Legistar #

140657

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ORDINANCE NO. 140657

An ordinance of the City of Gainesville, Florida, amending Chapter 2, Article VII, Divisions 5 (Employees Pension Plan) and 6 (Disability Plan) of the Code of Ordinances of the City of Gainesville to transition the disability benefits currently provided to employees under the Disability Plan to the Employees Pension Plan; by amending Sections 2-523(c)(2) and 2-526 to add the disability benefits currently provided to employees under the Disability Plan to the Employees Pension Plan; by amending Section 2-524 to provide for city funding of disability benefits; by amending Section 2-546 to close the Disability Plan; by amending Section 2-549(c) to provide for procedures for termination of the Disability Plan; by amending Section 2-550(e) to stop future eligibility in the Disability Plan; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, the City of Gainesville currently provides its employees who are not members of the City of Gainesville Police Officers and Firefighters Consolidated Retirement Plan with disability benefits under the City of Gainesville Employees' Disability Plan (Disability Plan);

WHEREAS, the Disability Plan was 472% funded as of October 1, 2014, with an actuarial value of assets of \$8,442,616 and an actuarial liability of \$1,788,069;

WHEREAS, the \$6,654,547 in overfunding of the Disability Plan is all City monies; the Disability Plan does not now and has never required employee contributions;

WHEREAS, given the financial history of the Disability Plan, it is improbable that the bulk of this overfunding will ever be required to meet Disability Plan obligations. However, as long as the current Disability Plan Trust Fund is in place, these monies can be used only for Disability Plan obligations. Therefore, it is likely that without City Commission action, these monies will go unutilized;

WHEREAS, to better utilize these monies, as well as maintain the current disability benefits, the disability benefits currently provided to employees under the Disability Plan will be transitioned to the Employees Pension Plan and the Disability Plan will be terminated after the

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liabilities and requisite level of assets to satisfy the liabilities, as determined by the Disability Plan Actuary, are transferred from the Disability Plan to the Employees Pension Plan.

Thereafter, any residual assets of the Disability Plan may be distributed to the City;

WHEREAS, to initiate the transition of the disability benefits to the Employees Pension Plan and termination of the Disability Plan, it is necessary to amend the Employees Pension Plan to add the disability benefit currently provided to employees under the Disability Plan to the Employees Pension Plan, amend the Disability Plan to stop future eligibility in the Disability Plan, and amend the Disability Plan to provide for procedures for termination of the Disability Plan;

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 Auditorium of City Hall in the 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.

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

Section 1. Section 2-523(c)(2), of the Code of Ordinances of the City of Gainesville, is amended to read as follows. Except as amended herein, the remainder of Section 2-523 remains in full force and effect.

Sec. 2-523. – Membership and service.

(c) Members of the plan.

(2) Regular employees who elected/requested, in accordance with section 2-579 of the City of Gainesville Code of Ordinances or the provisions of the city's § 401(a) Plan, to have

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future employer contributions made to the Deferred Compensation Plan (§ 457) or the § 401(a) Defined Contribution Plan in lieu of this plan are eligible for the disability benefit under Section 5-526(d) of this plan but they are ineligible members of for any other benefits under this plan, unless such persons make an election(s) described in subsection (i), or are otherwise limited participants. Regular employees who are eligible employees as defined in section 2-596 of the City of Gainesville Code of Ordinances are ineligible members of this plan.

Section 2. Section 2-524(c), of the Code of Ordinances of the City of Gainesville, is amended to read as follows. Except as amended herein, the remainder of Section 2-524 remains in full force and effect.

Sec. 2-524. - Contributions and funding.

(c) *City contributions.* In addition to the contributions provided for herein to be paid by members of the plan, and any gifts, devises and bequests to the plan accepted by the city, the city commission is hereby authorized to deposit in the fund annually a sum which, together with the contributions from members and other sources of income to the fund, shall be sufficient to fund the normal cost of the plan and to amortize the unfunded liability, if any, of the plan over a period not longer than 40 years; provided, however, disability benefits under this division shall be funded by the city (not member contributions) through annual appropriations made to the fund, the amount of which shall be sufficient to fund the disability benefit on a sound basis. If the amortization schedule for the unfunded liability is to be based on a contribution derived in whole or in part from a percentage of the payroll of the plan membership, the assumption as to payroll growth shall not exceed the average payroll growth for the three years prior to the development of the amortization schedule, unless a different assumption is warranted by other circumstances. No city contributions shall be required or attributable to members during their participation in the DROP, or during any period subsequent to the conclusion of the DROP

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period when the member is not earning credited service. For the purpose of securing necessary funds, the city commission is hereby authorized to levy such taxes as may be necessary to fulfill these requirements.

Section 3. Section 2-526(d), of the Code of Ordinances of the City of Gainesville, is amended to read as follows. Except as amended herein, the remainder of Section 2-526 remains in full force and effect.

Sec.2-526. – Benefits.

(d) *Disability ~~benefits~~ pension.* ~~No provision is made for disability pensions under this division.~~

(1) Definitions. Except as otherwise stated in this subsection, where the purpose and intent of this subsection 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 subsection.

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

AWW means "average weekly wages" as utilized under Chapter 440, Florida Statutes, to determine compensation for disability.

In-line-of-duty means an injury or illness arising out of and in the actual performance of duties required by a member's employment, during his or her regularly scheduled working hours or irregular working hours as required by the city. The administrator may require such proof as he or she deems necessary as to the time, date, and cause of any such injury or illness, including evidence from any available witnesses. Workers' compensation records under the provisions of Chapter 440, Florida Statutes, may also be used. Disability resulting from drug or alcohol abuse or use of tobacco products shall not be considered "in-line-of-duty."

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1 (2) False, misleading, or fraudulent statements made to obtain disability benefits.

2 a. It is unlawful for a person to willfully and knowingly make, or cause to be made, or to
3 assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or
4 misleading oral or written statement or withhold or conceal material information to obtain a
5 disability benefit under this subsection.

6 b. A person who violates section 2-526(d)(2)a. shall be punished as provided in section 1-
7 9 of the Code of Ordinances.

8 c. In addition to any applicable penalty under section 1-9, upon conviction for a violation
9 described in section 2-526(d)(2)a., a participant or beneficiary of the plan may, in the discretion
10 of the plan administrator, be required to forfeit the right to receive any or all disability benefits to
11 which the person would otherwise be entitled under this subsection. For purposes of this
12 paragraph, "conviction" means a determination of guilt that is the result of a plea or trial,
13 regardless of whether adjudication is withheld.

14 (3) Administration. The plan administrator or designee may condition processing the
15 claim and the initial and continued payment of disability benefits upon receipt of any information
16 reasonably related to eligibility for, or the amount of, disability benefits to be received by
17 members or beneficiaries under this subsection, including, but not limited to, information related
18 to the member's earnings, workers' compensation, and Social Security.

19 (4) Eligibility. Except as otherwise provided herein, all regular employees of the city will
20 be eligible for disability benefits under the plan for:

21 a. "In-line-of-duty" disability.

22 b. Any other disability which occurs after the employee has been employed for at least
23 five consecutive years as a regular employee, provided further that employment while on leave
24 of absence without pay (not in pay status) for at least a full pay period shall not constitute a break

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1 in service, nor count towards the required years of employment. However, leave of absence due
2 to service in the uniformed service shall not constitute a break in service and shall count towards
3 the required years of employment.

4 (5) *Credited service.* Credited service for the purpose of determining benefits for disabled
5 employees shall consist of service to the city rendered while a regular employee. Leaves without
6 pay (the employee is not in pay status) do not count as credited service except as otherwise
7 provided in this subsection.

8 (6) *Military service.* If an employee was absent due to service in the uniformed services
9 and is eligible for, and in fact re-employed in accordance with the terms of USERRA, the
10 employee shall be granted credited service for the period(s) of service, not including periods
11 after discharge but before actual re-employment. Uniformed services means the Armed Forces;
12 the Army National Guard and the Air National Guard when engaged in active duty for training,
13 inactive duty training, or full-time National Guard duty; the commissioned corps of the public
14 health service; and any other category of persons designated by the President in time of war or
15 national emergency. It covers all categories of military training and service, including duty
16 performed on a voluntary or involuntary basis, in time of peace or war.

17 (7) *Leaves of absence.* Any employee who has been granted a leave of absence of at least
18 a full pay period without pay shall be accredited service prior to the leave of absence, and service
19 credit shall resume upon return to active employment; except that an employee shall be given
20 service credit for periods of leave of absence for military service.

21 (8) *Application.* Application for disability benefits must be made while a regular
22 employee with the city and on or after February 20, 2015.

23 (9) *Eligibility for both solely years of service-based disability retirement and for*
24 *disability benefits.* In no event shall an employee be eligible to receive disability benefits, if, at

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1 the date such benefits would commence, as provided in section 2-526(d)(14), the employee
2 would then be eligible for a normal retirement under the plan, based upon the completion of 20
3 or more years of credited service, as defined under the plan, at any age.

4 (10) Disabled employees. A regular employee of the city who becomes, in the opinion of
5 the board, totally and permanently unable to perform substantial work for pay within a 50-mile
6 radius of his/her residence, or the distance between his/her residence and city hall; whichever is
7 greater, and is wholly and continuously unable to perform any and every essential duty of his/her
8 employment, with or without a reasonable accommodation, or of a position to which he/she may
9 be assigned on the recommendation of the disability review committee as approved by the
10 administrative department head, by reason of a medically determinable physical or mental
11 impairment, shall be entitled to disability benefits in accordance with this subsection. It is the
12 intent of this paragraph to provide whenever practical and feasible for placement within the city
13 of employees who may become unable to perform the duties of a particular job. If placement on
14 another position is not practical or possible, this fact does not in itself determine disability.

15 (11) Proof of disability. Before payment of any disability benefit, the administrator shall
16 require proof that the member is totally and permanently disabled as provided herein:

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

21 b. It must be documented that the member's medical condition occurred or became
22 symptomatic during the time the member was employed as a regular employee of the city; the
23 member was totally and permanently disabled at the time he or she terminated covered

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employment; and the member has not engaged in any activity or employment or self-

employment inconsistent with the request for disability, after such termination.

c. If the application is for "in-line-of-duty" disability, in addition to the requirements of herein, it must be documented by competent medical evidence that the disability was caused as defined in section 2-526(d)(1).

d. If the application is for other than "in-line-of-duty" disability, the employee must have met the disability benefits eligibility requirements described herein on or before the workday immediately preceding the occurrence or manifestation of the injury or illness which caused the disability.

e. The unavailability of an employment position with the city that the member is physically and mentally capable of performing will not be considered as proof of disability, nor shall a finding of permanent total disability under the workers' compensation system be proof of permanent and total disability under the plan or that the injury or illness was incurred "in-line-of-duty."

(12) Disability review committee. A disability review committee is hereby created consisting of the risk management director, the human resources director, the plan administrator (who will serve as chair), the appropriate charter officer, and the appropriate administrative department head. This committee shall review all requests for disability payments, review and reexamine the entitlement of those members receiving disability benefits to the continuance of such benefits, and shall act as an advisory committee to the board as to all matters provided for or related to this subsection. The committee shall investigate each case, thoroughly considering all pertinent medical evidence which is available or may be requested. The committee shall establish the policies and procedures necessary to carry out the provisions of this subsection, including, but not limited to, the utilization of outside consultants and medical experts. After the

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1 investigation is complete in each instance, a written recommendation will be prepared and
2 submitted to the board.

3 (13) *Determination of eligibility.* The board shall then consider the written
4 recommendation of the disability review committee and may secure such other information as
5 the board desires and determines appropriate. Following thorough consideration, the board will
6 then determine the eligibility of the employee for benefits as provided in this subsection. The
7 board may attach such conditions and safeguards to its findings and determinations as may be
8 deemed appropriate in order to carry out the intent and purpose of this subsection. The
9 determination of the board on any matters related to this subsection, its interpretation or the
10 entitlement of one to disability benefits shall rest solely with the board, and its determination
11 shall be final.

12 (14) *Time disability payments begin.* A disabled employee shall receive a monthly
13 disability benefit beginning the later of the month following the occurrence of the disability or
14 the month following the termination of any and all accumulated paid leave. Employees with
15 accumulated paid leave to their credit at the time of disability must exhaust leave credit prior to
16 receiving disability benefits.

17 (15) *Calculation of disability benefit amount.* The amount of monthly disability benefit to
18 which a disabled employee will be entitled will be calculated as follows:

19 a. An employee's basic disability benefit percent will be equal to the greater of his/her
20 years of creditable service times two percent with a minimum 42 percent for "in-line-of-duty"
21 disability and a minimum 25 percent for other than "in-line-of duty" disability.

22 b. An employee's basic disability benefit will be equal to his/her disability benefit percent
23 multiplied by his/her final average earnings as would be otherwise calculated under this plan and
24 using his/her total period of creditable service if such is less than the applicable averaging period.

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1 c. The employee's basic disability benefit will be reduced by the portion of any early or
2 normal retirement benefits he/she may receive, which are attributable to employer contributions.

3 d. The employee's basic disability benefit will be reduced by his/her disability benefit
4 percent up to a maximum of 50 percent multiplied by the monthly Social Security primary
5 insurance amount (PIA) which he/she is initially receiving as a disabled worker, or the amount to
6 which he or she would initially be entitled as a disabled worker if the employee has willfully
7 failed or refused to apply for, and in good faith pursue, obtaining such benefit, unless this latter
8 requirement is waived by the plan administrator for good cause. This reduction, once determined,
9 shall not be further adjusted by subsequent increases in Social Security PIA amounts.

10 e. In no event shall the disability benefit payable by the city to a disabled employee
11 exceed the lesser of \$3,750.00 per month or an amount equal to his/her maximum benefit
12 percent, less any reductions under c. and d. above and the initially determined wage replacement
13 benefit made to the employee under workers' compensation laws. The deductions for workers'
14 compensation payments shall not be made if the board determines that the disability for which
15 benefits are payable is not, directly or indirectly, related to the injury for which workers'
16 compensation payments were made. Unless otherwise provided by law, the reduction attributable
17 to workers' compensation payments shall not reduce the disability benefit below the amount
18 which, when such is combined with Social Security disability and workers' compensation
19 benefits received by the employee, equals 80 percent of the employee's AWW or 80 percent of
20 the employee's ACE (on a weekly basis), whichever is greater. A disabled employee's maximum
21 benefit percent will be 80 percent if the employee's disability is due to a job related injury in the
22 course of employment with the city resulting in payment of workers' compensation, and
23 otherwise shall be 70 percent.

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1 (16) Duration of disability payment. Disability payments shall continue until death of the
2 employee or until termination of disability benefits as provided in section 2-526(d)(18).

3 (17) Limitations on payment of disability payments. Benefits are not payable for disability
4 due to:

5 a. Self-inflicted injuries if intentional;

6 b. Participation in or in consequence of having participated in the commission of a crime,
7 or while willfully participating in a riot, and insurrection, or other act of violence;

8 c. Service in uniformed services.

9 d. In the case of other than "in-line-of-duty" disabilities, a condition existing prior to
10 employment or re-employment by the city (a) which condition, as it existed at that time, is the
11 major contributory cause of the claimed disability, or (b) for which medical advice, diagnosis,
12 care, or treatment was recommended, or received during the one year period immediately
13 preceding employment or re-employment, or (c) when during any medical examination
14 authorized under this subsection or otherwise, including pre-employment and post-employment
15 medical examinations described in section 2-526(d)(20), the applicant, member or former
16 employee, makes false representations regarding previous injuries, impairments, anomalies or
17 disease, upon which the city has relied in making employment or benefit decisions.

18 (18) Termination or reduction of disability benefits.

19 a. In the event that a former employee is determined by the administrator to be no longer
20 disabled as provided for in the plan, his/her disability benefits shall be discontinued as follows.
21 In the event that he/she has been offered regular employment with the city, the disability benefits
22 shall cease within 30 days of the date of the offer, unless extended by the administrator for good
23 cause shown, or the date of beginning such employment, whichever sooner occurs. In any other
24 case the disability benefits shall be discontinued six months after the date of such determination.

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

11 c. In the event that a disabled employee is able to engage in full or part-time employment
12 for other employers, and/or substantial self-employment, resulting in current employment
13 earnings, disability payments made to such employee shall be reduced as follows. The
14 employee's monthly reported (city employment and approved outside employment) employment
15 earnings at the date the disability occurred will be adjusted for seasonal or other reasonable
16 variations, and then adjusted by cost of living increases to date of reduction. This amount
17 (adjusted earnings) shall be compared with the employee's current employment earnings. If the
18 employee's current employment earnings exceed 25 percent of his/her adjusted earnings, then for
19 each three percent in excess of that level, the disability benefits shall be reduced by one percent.
20 For example, if his/her current earnings become 55 percent of his/her adjusted earnings, then the
21 disability payments shall be reduced by ten percent. Such recovery of earning capacity shall not
22 affect the determination of disability unless the city specifically determines to discontinue
23 disability payments upon the basis that the employee is no longer disabled as provided for herein.

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Any reduction authorized herein shall be imposed in addition, and subsequent to, any offsets authorized by section 2-526(d)(15).

(19) *Payment in case of legal or other disability.* Whenever a person entitled to disability payments under this subsection is under legal disability, the disability benefits shall be payable to his/her legal guardian.

(20) *Medical examinations.*

a. All regular employees shall be required to complete a medical history record at the time of their employment or reemployment. Any false or misleading statements or omissions made by the employee on his/her medical history record may cause the employee to be ineligible for receiving future disability benefits.

b. All preexisting physical or mental disabilities, impairments or limitations shall be stated on the medical history record. The employees shall, by signing a statement, waive any and all future rights to a disability benefit (except one arising out of and in the course of employment with the city) from the city if the future disability results from or is caused by a condition existing prior to employment or reemployment by the city.

c. Once each year following the receipt of disability benefits by reason of physical or mental incapacity and/or any other time for good cause, the plan administrator may require any such disability employee to undergo a medical examination by a duly qualified and licensed physician designated by the plan administrator. The plan administrator may cause an employee's disability benefit to be discontinued if he/she refuses to submit to the medical examinations.

d. The board shall have the right to review the eligibility and entitlement of an eligible employee to a disability benefit at any time, and such determination as may be made by the board shall be final.

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Section 4. Section 2-546, of the Code of Ordinances of the City of Gainesville, is amended to add subsection (c) as follows. Except as amended herein, the remainder of Section 2-546 remains in full force and effect.

Sec. 2-546. - Creation; purpose.

(c) This disability plan shall be closed at 12:00 midnight on February 19, 2015, and no applications for benefits shall be accepted under this plan after that date. Effective at 12:01 a.m. on February 20, 2015, the benefits provided through this disability plan shall be provided through the City of Gainesville Employees Pension Plan, as to any application for disability pension benefits submitted on or after that date. This disability plan shall continue to be administered for eligible employees who submitted claims for disability pension benefits before February 20, 2015, and provide benefit payments to such employees determined to be disabled under the provisions of this plan, until this plan is terminated.

Section 5. Section 2-549(c), of the Code of Ordinances of the City of Gainesville, is amended to read as follows. Except as amended herein, the remainder of Section 2-549 remains in full force and effect.

Sec. 2-549. - Administration.

(c) Future changes in plan, power to amend, termination procedures. It is contemplated, and all original and new members of the plan shall be deemed to have notice, that the city commission may in the future decide that it is in the best interest of the city and/or the members of the plan to modify any of the benefits or procedures contained in this division, or of the terms and conditions contained in this division; provided, however, it is impossible for any part of the corpus or income of the trust fund to be used for, or diverted to, purposes other than the exclusive benefit of the plan participants and their beneficiaries. In the event of the termination of the plan, the rights, if any, of all members who are disabled under the terms of the plan as of

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1 the date of such termination shall be nonforfeitable. In the event of termination of the plan, the
2 city commission shall allocate the assets of the trust fund to the extent necessary to satisfy the
3 benefit obligations to the remaining disabled members. Any residual assets of the plan may be
4 distributed to the city after all liabilities of the plan to members have been satisfied.

5 **Section 6.** Section 2-550(e), of the Code of Ordinances of the City of Gainesville, is
6 amended to read as follows. Except as amended herein, the remainder of Section 2-550 remains
7 in full force and effect.

8 **Sec. 2-550. - Eligibility; service credit; leave of absence.**

9 (e) Application for a disability retirement must be made while a regular employee with
10 the city and on or before February 19, 2015.

11 **Section 7.** It is the intention of the City Commission that the provisions of Sections 1
12 through 6 of this ordinance shall become and be made a part of the Code of Ordinances of the
13 City of Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be
14 renumbered or relettered in order to accomplish such intentions.

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

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

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

23 **PASSED AND ADOPTED** this ____ day of _____, 2015.
24
25

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ED BRADDY
MAYOR

ATTEST:

Approved as to form and legality

KURT M. LANNON
CLERK OF THE COMMISSION

NICOLLE M. SHALLEY
CITY ATTORNEY

This Ordinance passed on first reading this _____ day of _____, 2015.

This Ordinance passed on second reading this _____ day of _____, 2015.