

ORDINANCE NO. 9858-26

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA; AMENDING CHAPTER 2, ARTICLE V, DIVISION 3, EMPLOYEES' PENSION PLAN, AMENDING SECTION 2.063 QUALIFICATIONS AND APPOINTMENT OF MEMBERS; AMENDING SECTION 2.411 PURPOSE OF THE PLAN AND THE TRUST; AMENDING SECTION 2.412 DEFINITIONS; AMENDING SECTION 2.413 PLAN ADMINISTRATION; AMENDING SECTION 2.425 PENSION FUND RECORDS; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Clearwater Employees' Pension Plan (the "Plan") governs the payment of retirement benefits for City employees; and

WHEREAS, in 2024, the process to determine whether a plan member meets the criteria for awarding a disability pension was changed; and

WHEREAS, the Pension Advisory Committee ("PAC") no longer determines whether a plan member is entitled to a disability retirement benefit; and

WHEREAS, the duties of the PAC are now ministerial in nature and non-substantive; and

WHEREAS, this Ordinance will eliminate the PAC, and the Pension Trustees will now perform these ministerial duties; and

WHEREAS, this Ordinance will not impact pension benefits, employee contributions, or the actuarial soundness of the plan; and

WHEREAS, the Plan's actuary has studied the cost of this Ordinance; and

WHEREAS, the City of Clearwater (the "City") has determined that the adoption of this Ordinance to be in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA, THAT:

Section 1: Section 2.063 of the Code of Ordinances of the City of Clearwater is hereby amended to read as follows:

Sec. 2.063. – Qualifications and appointment of members.

- (1) In addition to other qualifications which may be specified for board membership, a person appointed to a board shall be a resident of the city at

the time of appointment and shall maintain residency within the city during the term of the appointment as a condition of eligibility to hold office. No employee of the city shall be appointed to membership on a board of the city. As exceptions to the requirements of this section:

(a) The firefighters relief and pension fund (also known as the supplementary firefighters retirement fund) board of trustees shall be appointed or elected as provided in section 2.443.

(b) The firefighters pension fund board of trustees shall be elected or, in the case of the mayor and chief of the fire department, assume office as provided in Section 5 of Article I of the Related Laws of the city, derived from Chapter 30658, Laws of Florida, Special Acts (1955), or as may be amended from time to time.

(c) The gas fitter's examining board shall be appointed as provided in the Gas Code of the City of Clearwater, Florida, 1965, as adopted by Ordinance 1070 on December 6, 1965, or as may be amended from time to time.

~~(d) The pension advisory committee shall be elected as provided in section 2.394(d).~~

~~(e)~~(d) The police officers pension trust fund (also known as the supplementary police officers' retirement fund) board of trustees shall be appointed or elected as provided in section 2.473(1).

~~(f)~~(e) The Brownfields Advisory Board shall be appointed as provided in section 2.241.

~~(g)~~(f) The Clearwater Housing Authority shall be allowed to have members that are residents of Pinellas County who are employed within the city limits. This exception shall be limited to not more than two members serving concurrently.

~~(h)~~(g) The persons appointed to the neighborhood and affordable housing advisory board need not be residents of the city as long as they meet the qualifications set forth in section 2.226(2), except that the person referenced in subsection 2.226(2)(f) must be a resident of the city.

~~(i)~~(h) The public art and design board shall be appointed as provided in section 5-1102 of the Community Development Code.

~~(j)~~(i) The Sister Cities Board shall be appointed as provided in section 2.251.

Section 2: Section 2.411 of the Code of Ordinances of the City of Clearwater is hereby amended to read as follows:

Sec. 2.411. – Purpose of the plan and the trust.

(a) *Exclusive benefit.*

(1) This plan is created for the sole purpose of providing benefits to the participants. Except as otherwise permitted by law, in no event shall any part of the principal or income of the pension fund be paid to or reinvested in the employer or be used for or diverted to any purpose whatsoever other than for the exclusive benefit of the participants and their beneficiaries.

(2) Notwithstanding the foregoing provisions of subparagraph (1), any contribution made by the employer to this plan by a mistake of fact may be returned to the employer within one year after the payment of the contribution. The circumstances as to whether a mistake of fact has occurred shall be reviewed by the ~~pension advisory committee, which shall submit a written recommendation to the trustees. Notwithstanding the committee's recommendation,~~ The trustees shall have final authority as to the determination of a mistake of fact.

(b) *Participants' rights.* The establishment of this plan shall not be considered as giving any employee, or any other person, any legal or equitable right against the employer, the trustees, ~~the committee~~ or the principal or the income of the pension fund, except to the extent otherwise provided by law. The establishment of this plan shall not be considered as giving any employee, or any other person, the right to be retained in the employ of the employer.

(c) *Qualified plan.* This plan and the assets comprising the pension fund are intended to qualify under the Internal Revenue Code as a tax-free employees' plan and trust, and the provisions of this plan should be interpreted accordingly.

Section 3: Section 2.412 of the Code of Ordinances of the City of Clearwater is hereby amended to read as follows:

Section 2.412. – Definitions.

* * *

~~Committee shall mean the pension advisory committee described in section 2.413.~~

Section 4: Section 2.413 of the Code of Ordinances of the City of Clearwater is hereby amended to read as follows:

Section 2.413. – Plan Administration.

(a) *Administration of the plan.* The trustees, in conjunction with the committee, shall control and manage the operation and administration of the plan as provided in this section.

(b) *Trustees.*

(1) The members of the city council of the employer, whether elected or appointed, shall serve as the trustees. The term of office of each trustee shall be consistent with his term of office as a member of the city council.

(2) The finance director of the employer shall be the treasurer for the trustees and shall provide such bond as may be prescribed by the trustees.

(3) Each trustee shall be entitled to one vote. Three affirmative votes shall be necessary for any decision by the trustees at a meeting of the trustees. A trustee shall have the right to recuse himself from voting as the result of a conflict of interest provided that the trustee states in writing the nature of the conflict.

(4) The trustees shall not receive any compensation for service as a trustee, but may be reimbursed expenses as provided by law; provided, however, that the trustees may receive compensation for services as a member of the city council.

(c) *Powers and duties of trustees.* The trustees shall have final authority and control over the administration of the plan herein embodied, with all powers necessary to enable them to carry out their duties in that respect. Not in limitation, but in amplification of the foregoing, the trustees shall have the power and discretion to interpret or construe this plan and to determine all questions that may arise as to the status and rights of the participants and others hereunder. The trustees shall be deemed the named fiduciary of the plan and shall discharge their responsibilities solely in the interest of the members and beneficiaries of the plan for the exclusive purpose of providing benefits to the members and their beneficiaries and to defray the reasonable expenses of the plan. The trustees shall exercise those fiduciary responsibilities with the care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a

similar character and with similar aims under the circumstances then prevailing.

The trustees may:

- (1) Invest and reinvest the assets of the pension fund to the extent permitted by Florida law. Notwithstanding any provision to the contrary, direct investments, including real estate investments, in businesses or property located within the City of Clearwater shall be prohibited;
- (2) Maintain such records as are necessary for calculating and distributing retirement benefits;
- (3) Maintain such records as are necessary for financial accounting and reporting of retirement plan funds;
- (4) Maintain such records as are necessary for actuarial evaluation of the retirement plan, including investigations into the mortality, service and compensation experience of its members and beneficiaries;
- (5) Compile such other administrative or investment information as is necessary for the management of the retirement plan;
- (6) Process, certify and respond to all correspondence, bills and statements received by the retirement plan, as well as all applications submitted to the board for retirement benefits;
- (7) Establish and maintain communication with city departments and other agencies of government as is necessary for the management of the retirement plan, including preparing, filing and distributing such reports and information as are required by law to be prepared, filed or distributed on behalf of the retirement plan;
- (8) Determine all questions relating to, and process all applications for, eligibility, participation and benefits;
- (9) Distribute at regular intervals to employees a comprehensive summary plan description and periodic reports, not less than biennially, regarding the financial and actuarial status of the plan;
- (10) Retain and compensate such professional and technical expertise as is necessary to fulfill its fiduciary responsibilities;
- (11) Make recommendations regarding changes in the provisions of the plan;
- (12) Assure the prompt deposit of all member contributions, city contributions, and investment earnings;
- (13) Establish a uniform set of rules and regulations for the management of the trust;

- (14) Take such other action as the trustees shall deem, in their sole and exclusive discretion, as being necessary for the efficient management of the plan;
- (15) Cause any pension fund investment in securities to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain them unregistered and in form permitting transferability, but the books and records shall at all times show that all investments are part of the pension fund;
- (16) Vote upon any stocks, bonds, or securities of any corporation, association, or trust comprising the pension fund, and give general or specific proxies or powers of attorney with or without power of substitution; participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; deposit such stock or other securities in any voting trust or any protective or like committee with the trustees or with depositories designated thereby; amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the pension fund which it may deem to be in the best interest of the pension fund to exercise;
- (17) Retain in cash and keep unproductive of income such amount of the pension fund as it may deem advisable, having regard for the cash requirements of the plan; and
- (18) Retain the services of a custodian bank, an investment advisor registered under Investment Advisors Act of 1940 or otherwise exempt from such required registration, an insurance company, trust company or a combination of these, for the purposes of investment decisions and management. Such investment manager shall have discretion, subject to any guidelines as prescribed by the trustees, in the investment of all pension fund assets.
- (19) Arrange for the necessary physicians to pass upon all medical examinations required under this plan. Such physicians shall report in writing to the trustees their conclusions and recommendations.
- (20) Investigate and determine the eligibility of participants for disability pension as provided in section 2.418.

~~(d) Pension advisory committee.~~

~~(1) a. There shall be a pension advisory committee comprised of seven persons. Three members of the committee shall be employees who are active employees and participants in the plan; three members shall be city council members or appointees of the city council; and the seventh member, who shall be a resident of the City of Clearwater, shall be appointed by the other six members.~~

~~b. — Except as provided in subparagraph (3) below, terms of members shall be for two years.~~

~~(2) — Committee members representing the employees shall be elected by a majority of the active employees who are participants in the plan. Committee members representing the city council shall be appointed by a majority vote of the city council. The seventh member shall be appointed by a majority vote of the other six members of the committee.~~

~~(3) — Terms of office of employee elected committee members shall overlap, with two of the members to be initially elected for two years and the third member to be initially elected for one year. Terms of office of city council appointed members shall overlap, with two of the members to be initially appointed for two years and the third member to be initially appointed for one year.~~

~~(4) a. Members of the committee last elected by employees on the date of adoption of this amended and restated plan shall continue to serve as the employee elected committee members for the remainder of their respective terms.~~

~~b. — Not less than 60 days before each election to be scheduled for an employee elected committee member, the existing employee elected committee members shall select and appoint a nomination group composed of five persons from employees participating in the plan to conduct the election process. The department of the city clerk shall provide necessary assistance to the employees for the administration of elections.~~

~~(5) — Any vacancy on the committee, whether employee elected, city council appointed, or the committee appointed seventh member, shall be filled for the remainder of the term and in the same manner as the original committee member who vacated the position.~~

~~(6) — Members of the committee shall serve without compensation additional to that earned in their respective capacities as regular employees or elected city council members.~~

~~(7) — Each committee member shall be entitled to one vote. Four affirmative votes shall be necessary for any decision by the committee at any meeting. A committee member shall have the right to recuse himself from voting as a result of a conflict of interest provided that the committee member states in writing the nature of the conflict.~~

~~(e) — *Powers and duties of committee.*~~

~~(1) — The committee shall have authority to:~~

~~a. — Investigate and recommend to the trustees, in conjunction with the actuaries, such mortality/service and other tables as shall be deemed necessary for the operation of the plan.~~

~~b. — Make recommendations to the trustees for improvements or changes in the plan.~~

~~c. Receive all applications for benefits under this plan and determine all facts that are necessary to establish the right of an applicant to benefits under the plan.~~

~~d. Prepare and distribute to the participants information relating to the plan.~~

~~e. Investigate and determine the eligibility of participants for disability pension as provided in section 2.418.~~

~~(2) The committee shall, from time to time as it deems appropriate, submit recommendations to the trustees as to rules, procedures, forms and general administrative procedures relating to the responsibilities of the committee.~~

~~(3) No benefits or relief shall be provided to any participant under the plan unless the same has been reviewed by the committee and a recommendation provided to the trustees.~~

~~(4) The pension advisory committee members shall discharge their responsibilities solely in the interest of the members and beneficiaries of the plan and, in so doing, shall exercise their fiduciary responsibilities with the care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a similar character and with similar aims under the circumstances then prevailing.~~

~~(f)~~ (d) *Conflict in terms.* In the event of any conflict between the terms of this plan and any explanatory booklet or other material, this plan shall control.

~~(g)~~ (e) *Final authority.* Except to the extent otherwise required by law or by this plan, the decision of the trustees in matters within their jurisdiction shall be final, binding and conclusive upon the employer, the committee, each employee and beneficiary, and every other interested or concerned person or party.

~~(h)~~ (f) *Appointment of advisors.* The trustees may appoint such actuaries, accountants, professional investment counsel, legal counsel, specialists, third party pension administrators, and other persons that they deem necessary and desirable in connection with the administration of this plan or to assist them in the performance of their duties as trustees. The trustees are authorized to pay for such services from the pension fund.

~~(i)~~ (g) *Actuarial valuation; actuarial standards.*

(1) At least once in each six-year period, the trustees shall cause an actuarial investigation to be made into the mortality, service and compensation experience of the members of the retirement plan. Taking into account the result of such investigation, the trustees shall adopt for the retirement plan such mortality, service and other tables as are necessary and proper. On the basis of these tables, an annual actuarial valuation of the assets and liabilities of the retirement plan shall be made.

- (2) Actuarial assumptions based on the six-year experience analysis may be modified by the trustees at such times as they deem appropriate.

~~(j)~~ (h) *Defense of actions; trustee liability; indemnification.*

- (1) The board is authorized to prosecute or defend actions, claims or proceedings of any nature or kind for the protection of the fund assets or for the protection of the board in the performance of its duties.
- (2) Neither the board nor any of its individual members shall have any personal liability for any action taken in good faith. The trustees individually and the board as a whole shall be entitled to the protections in F.S. § 768.28. The trustees shall also be authorized to purchase from the assets of the fund, errors and omission insurance to protect the trustees and staff in the performance of their duties. Such insurance shall not provide the individual trustees and staff with protection against a fiduciary's fraud, intentional misrepresentation, willful misconduct or gross negligence.
- (3) To the extent not covered by insurance contracts in force from time to time, the employer shall indemnify and hold harmless the trustees and the members of the committee from all personal liability for damages and costs, including court costs and attorneys' fees, arising out of claims, suits, litigation, or threat of same, herein referred to as "claims," against these individuals because of acts or circumstances connected with or arising out of their official duty as trustees or members of the committee. The employer reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify and hold harmless any trustees or members of the committee from the judgment, execution, or levy thereon.
- (4) This section shall not be construed so as to relieve from liability any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, nor does this paragraph waive any provision of law affording the employer immunity from any suit in whole or part, or waive any other substantive or procedural rights the employer may have.
- (5) This section shall not apply to, nor shall the employer be responsible in any manner to defend or pay for claims arising out of, acts or omissions of the trustees or members of the committee which constitute felonies or gross malfeasance or gross misfeasance in office.

Section 5: Section 2.425 of the Code of Ordinances of the City of Clearwater is hereby amended to read as follows:

Sec. 2.425. – Pension fund records.

The trustees ~~and the pension advisory committee~~ shall keep a record of all of their proceedings which shall be maintained and open to public inspection in accordance with F.S. Chs. 119, and 286. Such records shall reflect a complete and comprehensive account of the discussions and actions taken by the trustees, ~~and the pension advisory committee.~~

Coding: Words in strikethrough type are deletions from existing text.
Words in underline type are additions.

Section 6: It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Clearwater, that the sections of the Ordinance may be renumbered or relettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 7: If any clause, section, or other part or application of this Ordinance shall be held in any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and shall not affect the validity of the remaining portions or applications which shall remain in full force and effect.

Section 8: All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9: This Ordinance shall become effective immediately upon adoption, unless otherwise provided.

PASSED ON FIRST READING

PASSED ON SECOND AND FINAL
READING AND ADOPTED

Bruce Rector
Mayor

Approved as to form:

Attest:

David Margolis
City Attorney

Rosemarie Call
City Clerk