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H. Lee Dehner  
(1952-2019)

September 13, 2019



Mr. Edward Lavallee  
City Manager  
City of Venice  
401 West Venice Avenue  
Venice, Florida 34285-2098

Re: City of Venice Municipal Police Officers' Pension Trust Fund - Proposed Ordinance

Dear Mr. Lavallee:

As you know, I represent the Board of Trustees of the City of Venice Municipal Police Officers' Pension Trust Fund. Enclosed please find a proposed ordinance amending the City of Venice Municipal Police Officers' Pension Trust Fund which is recommended by the Board of Trustees for adoption by the City. With changes to the Internal Revenue Code (IRC) and its associated Regulations, as well as guidance from the Internal Revenue Service (IRS) and recent litigation, the Board proposes the following amendments to the pension plan. These changes have been recently adopted by the City in Ordinance 2019-18, amending the Firefighters' Pension Trust Fund:

1. Section 50-138, Disability, is being amended to more clearly identify those individuals who may be eligible to apply for a disability pension in the event that they have resigned or their employment is terminated. This clarification does not change the way in which this provision has been applied or interpreted in the past. This change is being made because the current language has been challenged in litigation as being unclear and has resulted in unintended application of the language. The recommended change clarifies the language with no change in the intended application.
2. Section 50-145, Maximum Pension, is being amended by amending subsection (h) to provide that the limitation states exactly what is in the Internal Revenue Code.
3. Section 50-147, Miscellaneous Provisions, is being amended to add subsection (j), Missing Benefit Recipients. This provision is in accordance with a recent IRS Programs Compliance Memorandum that requires plans to have an approved method for locating terminated individuals who are due benefits from the plan.

4. Section 50-158, Deferred Retirement Option Plan, is being amended to remove subsection (f)(8), Prevention of Escheat and re-number the remaining subsections. The information contained in this subsection is being expanded in accordance with IRS guidance and moved to the Miscellaneous Provisions Section of the Plan where it will apply to all benefit recipients rather than just DROP recipients. This change was not made in the Firefighters' Plan, as that plan does not contain a DROP provision.
5. Section 50-160, Reemployment After Retirement, is being amended to make several changes as required by the Internal Revenue Code to satisfy the qualification requirements applicable to the reemployment of a disability retiree as well as changes necessary to reflect that the plan is closed to new members.

I am enclosing a copy of a letter from the Board's actuary, Foster & Foster, Inc., indicating that there is no cost associated with the adoption of this ordinance.

If you or any member of your staff have any questions with regard to this ordinance, please feel free to give me a call. In addition, if you feel it would be appropriate for me to be present at the meeting at which this ordinance is considered by the City Council, please contact my office to advise me of the date that the ordinance would be considered.

Yours very truly,



Scott R. Christiansen

SRC/dm  
enclosure

cc: Doug Lozen, with enclosure  
Amber McNeill, with enclosure

**ORDINANCE NO. 2019-**

**AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, FURTHER AMENDING CHAPTER 50, PERSONNEL, ARTICLE III, PENSIONS AND RETIREMENT, DIVISION 3, MUNICIPAL POLICE OFFICERS' PENSION TRUST FUND, OF THE CODE OF ORDINANCES OF THE CITY OF VENICE, FLORIDA, AS SUBSEQUENTLY AMENDED; AMENDING SECTION 50-138, DISABILITY; AMENDING SECTION 50-145, MAXIMUM PENSION; AMENDING SECTION 50-147, MISCELLANEOUS PROVISIONS; AMENDING SECTION 50-158, DEFERRED RETIREMENT OPTION PLAN; AMENDING SECTION 50-160, REEMPLOYMENT AFTER RETIREMENT; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.**

BE IT ORDAINED BY THE CITY OF VENICE, FLORIDA;

**SECTION 1:** Chapter 50, Article III, Division 3, Municipal Police Officers' Pension Trust Fund, of the Code of Ordinances of the City of Venice, as subsequently amended, is hereby further amended by amending Section 50-138, Disability, by amending subsections (a) *Disability benefits in-line of duty*, (c) *Disability benefits not in-line of duty* and adding subsection (i) *Eligibility for disability benefits*, to read as follows:

...

(a) *Disability benefits in-line of duty.* Any member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to perform the duties the police officer was assigned at the time of the impairment and is unable to perform the duties of another position with the police department which the city makes available to him in a similar job classification and rank at no reduction in salary for which the police officer is qualified by reason of training, education or experience, which disability was directly caused by the performance of his duty as a police officer, shall, upon establishing the disability to the satisfaction of the board, be entitled to a monthly pension equal to 62.5 percent of his salary at the time of disability, plus \$175.00. ~~Terminated persons either vested or nonvested, are not eligible for disability benefits. Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.~~ Eligibility requirements for disability benefits are set forth in subsection (i), below.

...

(c) *Disability benefits not in-line of duty.* Any member with five years or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to perform the duties the police officer was assigned at the time of the impairment and unable to perform the duties of another position with the police department which the city makes available to him in a similar job classification and rank at no reduction in salary for which the police officer is qualified by reason of training, education or experience, wherein such disability is not directly caused by the performance of his duties as a police officer shall, upon establishing the disability to the satisfaction of the board, be entitled to a monthly pension equal to 50 percent of his salary at the time of disability, plus \$175.00. ~~Terminated persons, either vested or nonvested, are not eligible for disability benefits. Notwithstanding the previous~~

sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above. Eligibility requirements for disability benefits are set forth in subsection (i), below.

...

(i) Eligibility for disability benefits. Subject to (i)(4) below, only active members of the system on the date the board determines entitlement to a disability benefit are eligible for disability benefits.

- (1) Terminated persons, either vested or non-vested, are not eligible for disability benefits.
- (2) If a member voluntarily terminates his employment, either before or after filing an application for disability benefits, he is not eligible for disability benefits.
- (3) If a member is terminated by the city for any reason other than for medical reasons, either before or after he files an application for disability benefits, he is not eligible for disability benefits.
- (4) The only exception to (1) above is:
  - a. If the member is terminated by the city for medical reasons and he has already applied for disability benefits before the medical termination, or;
  - b. If the member is terminated by the city for medical reasons and he applies within 30 days after the medical termination date.

If either (4)a., or (4)b. above applies, the member's application will be processed and fully considered by the board.

**SECTION 2:** Chapter 50, Article III, Division 3, Municipal Police Officers' Pension Trust Fund, of the Code of Ordinances of the City of Venice, as subsequently amended, is hereby further amended by amending Section 50-145, Maximum pension, subsections (h) *Ten thousand dollar limit; less than ten years of service*, to read as follows:

...

(h) Ten thousand dollar limit; less than ten years of service. Notwithstanding anything in this section 50-145, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection (h) of section 50-145 if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the city contributes, do not exceed \$10,000.00 for the applicable limitation year and or for any prior limitation year, and the city has not at any time maintained a qualified defined contribution plan in which the member participated; provided, however, that if the member has completed less than ten years of credited service with the city, the limit under this subsection (h) of section 50-145 shall be a reduced limit equal to \$10,000.00 multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten.

...

**SECTION 3:** Chapter 50, Article III, Division 3, Municipal Police Officers' Pension Trust Fund, of the Code of Ordinances of the City of Venice, as subsequently amended, is hereby further amended by amending Section 50-147, Miscellaneous provisions, adding subsection (j) *Missing benefit recipients*, to read as follows:

...

(j) *Missing benefit recipients.* The system shall follow the procedures outlined in the IRS Employee Plans Compliance Resolution System (EPCRS) Program and other applicable IRS guidance to locate any missing individuals to whom a full unreduced benefit payment is due and if, at the conclusion of such efforts, the individual cannot be located, the existing procedure of cancelling payments otherwise due (provided that, if the individual is later located, the benefits due shall be paid) will apply.

**SECTION 4:** Chapter 50, Article III, Division 3, Municipal Police Officers' Pension Trust Fund, of the Code of Ordinances of the City of Venice, as subsequently amended, is hereby further amended by amending Section 50-158, Deferred retirement option plan, deleting subsection (f)(8) *Prevention of Escheat* and renumbering subsections (8) through (12), to read as follows:

...

(f) *General provisions.*

...

~~(8) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.~~

(9 8) *Written elections, notification.*

- a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time and manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
- b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States Mail. If any check



mailed by registered or certified United States Mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.

(10 9) *Benefits not guaranteed.* All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the city nor the board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

(1110) *Construction.*

- a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
- b. The titles and headings of the subsections in this section 50-158 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

(1211) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

(1312) *Effect of DROP participation on employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

**SECTION 5:** Chapter 50, Article III, Division 3, Municipal Police Officers' Pension Trust Fund, of the Code of Ordinances of the City of Venice, as subsequently amended, is hereby further amended by adding Section 50-160, Reemployment after retirement, to read as follows:

**Sec. 50-160. - Reemployment after retirement.**

(a) Any retiree who is retired under this system, ~~except for disability retirement as previously provided for,~~ may be reemployed by any public or private employer, except the city, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this system. Notwithstanding the previous sentence, reemployment by the city shall be subject to the limitations set forth in this section.

(b) *After normal retirement.* Any retiree who is retired under normal retirement pursuant to this system and who is reemployed as a police officer after that retirement ~~and, by virtue of that reemployment, is ineligible to participate in this system, and his benefit shall upon being reemployed be discontinued~~ discontinue receipt of benefits and benefit payments shall remain suspended during any such subsequent employment period. Rehired retirees shall become members of the Florida Retirement System. Upon reemployment, ~~the retiree shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average final compensation, and credited service as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period), and credited service as of the date of subsequent retirement. The amount of any death or disability benefit received as a result of a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any~~

~~joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit.~~

(c) Any retiree who is retired under normal retirement pursuant to this system and who is reemployed by the city after that retirement and, by virtue of that reemployment is ineligible to participate in this system, shall, during the period of such reemployment, continue receipt of benefits during any subsequent employment period.

(d) ~~After early retirement. Any retiree who is retired under early retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity shall discontinue receipt of benefits from the system. If by virtue of that reemployment, the retiree is eligible to participate in this system, the retiree shall be deemed to be fully vested and the additional credited service accrued during the subsequent employment period shall be used in computing a second benefit amount attributable to the subsequent employment period, which benefit amount shall be added to the benefit determined upon the initial retirement to determine the total benefit payable upon final retirement. Calculations of benefits upon retirement shall be based upon the benefit accrual rate, average final compensation, credited service and early retirement reduction factor as of that date and the retirement benefit amount for any subsequent employment period shall be based upon the benefit accrual rate, average final compensation (based only on the subsequent employment period), and credited service as of the date of subsequent retirement. The amount of any death or disability benefit received as a result of a subsequent period of employment shall be reduced by the amount of accrued benefit eligible to be paid for a prior period of employment. The optional form of benefit and any joint pensioner selected upon initial retirement shall not be subject to change upon subsequent retirement except as otherwise provided herein, but the member may select a different optional form and joint pensioner applicable to the subsequent retirement benefit. Retirement pursuant to an early retirement incentive program shall be deemed early retirement for purposes of this section if the member was permitted to retire prior to the customary retirement date provided for in the system at the time of retirement.~~

Any retiree who is retired under early retirement pursuant to this system and who subsequently becomes an employee of the city in any capacity shall discontinue receipt of benefits from the system. If the reemployed person, is reemployed as a police officer, he shall become a member of the Florida Retirement System and benefit payments shall remain suspended during any such subsequent employment period. If the reemployed person is not reemployed as a police officer, that person's pension benefit payments shall be suspended until the earlier of termination of employment or such time as the reemployed retiree reaches the date that he would have been eligible for normal retirement under this system had he continued employment and not elected early retirement. "Normal retirement" as used in this subsection shall be the current normal retirement date provided for under this system. Retirement pursuant to an early retirement incentive program shall be deemed early retirement for purposes of this section if the member was permitted to retire prior to the customary retirement date provided for in the system at the time of retirement.

(e) After disability retirement.

(1) Subject to paragraph (2) below, any retiree who is retired under Section 50-138, Disability ("disability retiree"), may, subject to subsection (f), Physical examination requirement, of that section, be reemployed by any public or private employer, and may receive compensation from that employment without limiting or restricting in any way, the retirement benefits payable under this system.

(2) Any disability retiree who subsequently becomes an employee of the city in any capacity, except as a police officer, shall discontinue receipt of disability benefits from the system for the period of any such employment.

- (3) If a disability retiree is reemployed as a police officer for the city, his disability benefit shall cease and Section 50-138, subsection (f) shall apply.

(e f) *Reemployment of terminated vested persons.* Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits. Upon receipt of benefits, terminated vested persons shall be treated as normal or early retirees for purposes of applying the provisions of this section and their status as an early or normal retiree shall be determined by the date they elect to begin to receive their benefit.

(f g) *DROP participants.* ~~Members or~~ Retirees who ~~are or~~ were in the deferred retirement option plan shall, following termination of employment after DROP participation, have the options provided for in this section for reemployment.

**SECTION 6:** All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 7:** If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

**SECTION 8:** Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Venice.

**SECTION 9:** Effective Date. This Ordinance shall take effect upon adoption.

**PASSED BY THE COUNCIL OF THE CITY OF VENICE, FLORIDA,**  
**THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.**

First Reading:

Final Reading:

ADOPTION:

\_\_\_\_\_  
John W. Holic, Mayor

ATTEST:

\_\_\_\_\_  
Lori Stelzer, CMC  
City Clerk



I, LORI STELZER, City Clerk of the City of Venice, Florida, a municipal corporation in Sarasota County, Florida, do hereby certify that the foregoing is a full and complete, true and correct copy of an Ordinance duly adopted by the Venice City Council, at a meeting thereof duly convened and held on the \_\_\_\_ day of \_\_\_\_\_, 2019, a quorum being present.

WITNESS my hand and the official seal of said City this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Lori Stelzer, CMC, City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

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