

ORDINANCE NO. 2019-38

AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 50, PERSONNEL, ARTICLE III, PENSIONS AND RETIREMENT, DIVISION 3, MUNICIPAL POLICE OFFICERS' PENSION TRUST FUND, SECTION 50-131, DEFINITIONS; SECTION 50-138, DISABILITY; SECTION 50-145, MAXIMUM PENSION; SECTION 50-147, MISCELLANEOUS PROVISIONS; SECTION 50-158, DEFERRED RETIREMENT OPTION PLAN; AND SECTION 50-160, REEMPLOYMENT AFTER RETIREMENT; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE

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

SECTION 1. 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, as subsequently amended, is hereby further amended by amending Section 50-131, Definitions, by amending the definition of "Salary", to read as follows:

Sec. 50-131. Definitions.

Salary means the total monthly compensation for services rendered to the city as a police officer, reported on the member's W-2 form plus all tax-deferred, tax-sheltered or tax exempt items of income derived from elective employee payroll deductions or salary reductions, including amounts picked up by the city pursuant to section 414(h) of the code, as well as any employer final pay contribution and employer accrued leave contribution made to the City of Venice Non-Bargaining Retirement Plan for the member's benefit. For service earned after the date that a collective bargaining agreement is entered into after July 1, 2011 (the "effective date"), salary shall not include more than 300 hours of overtime per calendar year and shall also not include payments for accrued unused sick or annual leave. Provided however, in any event, payments for overtime in excess of 300 hours per year or accrued unused sick or annual leave accrued as of the effective date and attributable to service earned prior to the effective date, may still be included in salary for pension purposes even if the payment is not actually made until on or after the effective date. In any event, with respect to unused sick leave and unused annual leave accrued prior to the effective date, salary will include the lesser of the amount of sick or annual leave time accrued on the effective date or the actual amount of sick or annual leave time for which the retiree receives payment at the time of retirement, regardless of whether the amount of sick or annual leave was, at some time prior to retirement, reduced below the amount on the effective date. Notwithstanding the foregoing, effective October 1, 2014 through September 30, 2018 for members who are employed, have not reached normal retirement eligibility as of October 1, 2014 ~~on that date~~ and elect to continue participating in this system, salary shall mean base pay, excluding overtime and all other compensation; provided, the foregoing provisions regarding the inclusion of unused sick or annual leave time in the salary of members employed prior to the effective date shall continue to apply. Effective October 1, 2018, salary shall mean the total monthly compensation for services rendered to the city as a police officer reported on the member's W-2 form, excluding overtime, but including all tax-deferred, tax-sheltered or tax exempt items of income derived from elective employee payroll deductions or salary reductions, and amounts picked up by the city pursuant to section 414(h) of the code. Payments of accrued unused sick or annual leave accrued as of July 1, 2011 and attributable to service earned prior to that date may still be included in salary for pension purposes even if the payment is not actually made until on or after July 1, 2011.

Compensation in excess of the limitations set forth in section 401(a)(17) of the code as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining

benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000.00, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the code. Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an eligible employee shall not be less than the amount, which was allowed to be taken into account under this subsection as in effect on July 1, 1993. For purposes of this subsection, the term "eligible employee" means an individual who was a member before the first plan year beginning after December 31, 1995.

SECTION 2. 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, as subsequently amended, is hereby further amended by amending Section 50-138, Disability, to read as follows:

Sec. 50-138. Disability.

(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.~~

(b) No change.

(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.~~

(d) through (h) no change.

(e) 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 3. 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, as subsequently amended, is hereby further amended by amending Section 50-145, Maximum pension, to read as follows:

Sec. 50-145. Maximum pension.

(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 4. 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, as subsequently amended, is hereby further amended by adding Section 50-147, Miscellaneous provisions, to read as follows:

Sec. 50-147. Miscellaneous provisions.

(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 5. 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, as subsequently amended,

is hereby further amended by amending Section 50-158, Deferred retirement option plan, to read as follows:

Sec. 50-158. Deferred retirement option plan.

(f) *General provisions.*

(1) through (6) no change.

~~(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.

~~(11)~~ 10 *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.

- (12 11) *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 the retirement benefits, including DROP benefits.
- (13 12) *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 6. 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, as subsequently amended, is hereby further amended by amending 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, rReemployment 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 7. All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 8. 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 9. Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Venice.

SECTION 10. Effective Date. This Ordinance shall become retroactively effective on October 1, 2017.

PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA, THIS 10TH DAY OF DECEMBER, 2019.

First Reading: November 19, 2019

Second Reading: December 10, 2019

Adoption: December 10, 2019

Ron Feinsod, Mayor

Attest:

Lori Stelzer, MMC, City Clerk

I, Lori Stelzer, MMC, 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 City of Venice Council, a meeting thereof duly convened and held on the 10th day of December, 2019, a quorum being present.

WITNESS my hand and the official seal of said City this 10th day of December, 2019.

Lori Stelzer, MMC, City Clerk

Approved as to form:

Kelly Fernandez, City Attorney