

TAB 3

Law Offices
Christiansen & Dehner, P.A.

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November 14, 2011

Ms. Diane Ponder
Palmetto Police Officers' Retirement Plan
Post Office Box 1209
Palmetto, Florida 34220-1209

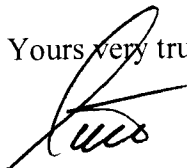
Re: City of Palmetto Police Officers' Retirement Plan - Proposed Ordinance

Dear Diane:

As directed by the Board at its last meeting, enclosed please find a proposed ordinance amending the City of Palmetto Police Officers' Retirement Plan. The ordinance makes changes to the definitions of actuarial equivalent and salary, and amends the investment section to provide for more liberal investment restrictions. Please provide a copy of this document to each member of the Board for review and discussion at the next meeting.

If you have any questions with regard to this ordinance, please feel free to give me a call.

Yours very truly,



Scott R. Christiansen

SRC/dm
enclosure

cc: Doug Lozen, with enclosure

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF PALMETTO, FLORIDA, AMENDING CHAPTER 22, PERSONNEL, ARTICLE V, POLICE OFFICERS' RETIREMENT PLAN, OF THE CODE OF ORDINANCES OF THE CITY OF PALMETTO; AMENDING SECTION 22-171, DEFINITIONS; AMENDING SECTION 22-174, FINANCES AND FUND MANAGEMENT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA;

SECTION 1: That Chapter 22, Personnel, Article V, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Palmetto, is hereby amended by amending Section 22-171, Definitions, to amend the definitions of "*Actuarial equivalent*" and "*Salary*", to read as follows:

Actuarial equivalent means a benefit or amount of equal value, based upon the ~~1983 Group Annuity RP 2000 Combined Healthy Mortality Table~~ and an interest rate ~~to be determined by the board of eight percent (8%) per annum~~. This definition may only be amended by the city pursuant to the recommendation of the board using assumptions adopted by the board with the advice of the plan's actuary, such that benefit calculations are not subject to city discretion.

* * * * *

Salary means the total compensation for services rendered to the city as a police officer reportable on the member's W-2 form, including overtime, bonuses and any payment of accrued vacation or sick time, and plus all tax deferred, tax sheltered, or tax exempt items of income derived from elective employee payroll deductions or salary reductions. For service earned after July 1, 2011, Salary shall not include more than three hundred (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 three hundred (300) hours per year or accrued unused sick or annual leave accrued as of July 1, 2011 and attributable to service earned prior to July 1, 2011, may still be included in Salary for pension purposes even if the payment is not actually made until on or after July 1, 2011. In any event, with respect to unused sick leave and unused annual leave accrued prior to July 1, 2011, Salary will include the lesser of the amount of sick or annual leave time accrued on July 1, 2011 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 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, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). 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 hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

* * * * *

SECTION 2: That Chapter 22, Personnel, Article V, Police Officers' Retirement Plan, of the Code of Ordinances of the City of Palmetto, is hereby amended by amending Section 22-174, Finances and Fund Management, subsection (6)b., to read as follows:

* * * * *

(6) b. All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be limited to subject to the following:

- ~~1. Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this system and pay the initial and subsequent premium thereon.~~
- ~~2. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund or a savings/building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.~~
- ~~3. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States or by an agency of the government of the United States.~~
- ~~4. Bonds issued by the State of Israel.~~
- ~~5. Stocks, commingled funds administered by national or state banks, mutual funds and bonds or other evidences of indebtedness, provided that:
 - ~~i. Except as provided in subparagraph (1), all individually held securities and all securities in a commingled or mutual fund must be issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia.~~
 - ~~ii. Up to twenty-five (25) percent of the assets of the fund at market value may be invested in foreign securities.~~
 - ~~iii. The board shall not invest more than five (5) percent of its assets in the common stock, capital stock, or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five (5) percent of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock,~~~~

capital stock and convertible securities exceed the greater of sixty (60) percent at cost or sixty (60) percent at market of the assets of the fund.

- ~~6. Real estate investments in an amount not to exceed at cost value fifteen (15) percent of the assets of the fund. The board may invest in real estate directly or through an investment vehicle approved by the board:~~
1. Notwithstanding any limitation provided for in Chapter 185, Florida Statutes to the contrary (unless such limitation may not be amended by local ordinance) or any limitation in prior city ordinances to the contrary, all monies paid into or held in the fund may be invested and reinvested in such securities, investment vehicles or property wherever situated and of whatever kind, as shall be approved by the board, including but not limited to common or preferred stocks, bonds, and other evidences of indebtedness or ownership. In no event, however, shall more than twenty-five percent of the assets of the fund at market value be invested in foreign securities.
 2. The board shall develop and adopt a written investment policy statement setting forth permissible types of investments, goals and objectives of investments and setting quality and quantity limitations on investments in accordance with the recommendations of its investment consultants. The investment policy statement shall be reviewed by the board at least annually.
 3. In addition, the board may, upon recommendation by the board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100 or successor rulings or guidance of similar import, and while any portion of the assets of the fund are invested in such a group trust, such group trust is itself adopted as a part of the system or plan.

* * * * *

SECTION 3: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Palmetto.

SECTION 4: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5: 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 6: This Ordinance shall take effect as provided for by law and by City Charter, Section 14, upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four votes..

First Reading: _____, 2011.

Publication: _____, 2011.

Second Reading and Public Hearing: _____, 2011.

PASSED AND DULY ADOPTED BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in regular session assembled, this _____ day of _____, 2011.

MAYOR

ATTEST:

CITY CLERK

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MEMORANDUM

TO: PENSION BOARD CLIENTS

FROM: CHRISTIANSEN & DEHNER, P.A.

RE: SENATE BILL 1128: BENEFIT CALCULATION ISSUES - SUPPLEMENT

DATE: OCTOBER 12, 2011

Based on further guidance received from the State the following information is provided to supplement our August 22, 2011 memorandum.

Paragraph 6 of our August 22, 2011 memorandum provided:

6. **Example 5.** Assume the same as Example 4., above, but after he took the 100 hours of vacation to reduce his accrued time to 180 hours, he continued to work and earned another 40 hours of vacation time, thereby restoring his lump sum accrued vacation time to 220 hours. If he retired at this point, he still would only be able to receive pension credit for 180 hours of lump sum vacation time because the restoration of the accrued vacation time from its low of 180 hours is attributable to accruals after the effective date and therefore, cannot be counted for pension purposes.

The State has now indicated that it is permissible, but not mandatory, to set the amount of sick or annual leave accrued on the effective date as the maximum amount that can be used for pension purposes. Accordingly, the pension calculation can 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.

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MEMORANDUM

TO: PENSION BOARD CLIENTS

FROM: CHRISTIANSEN & DEHNER, P.A.

RE: SENATE BILL 1128: BENEFIT CALCULATION ISSUES

DATE: AUGUST 22, 2011

Recently adopted Senate Bill 1128 amends Chapters 112, 175 and 185, Florida Statutes. Section 112.66(11), which is applicable to general employee, police and fire plans, now provides as follows:

“For non-collectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, when calculating retirement benefits, a defined benefits system or plan sponsored by a local government may include up to 300 hours per year of overtime compensation as specified in the plan or collective bargaining agreement, but may not include any accrued unused sick leave or annual leave. For those members whose terms and conditions of employment are collectively bargained, this Section is effective for the first agreement entered into on or after July 1, 2011 . . .”

Chapter 175, covering firefighters, has been amended to revise Section 175.032(3) to amend the definition of “salary” or “compensation” to read:

“Compensation” or “salary” means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the fixed monthly remuneration paid a firefighter. If remuneration is based on actual services rendered, as in the case of a volunteer firefighter, the term means the total cash remuneration received yearly for such services, prorated on a monthly basis. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

MEMORANDUM

Page 2

August 22, 2011

Chapter 185, covering police officers, has been amended to revise Section 185.02(4) to amend the definition of “salary” or “compensation” to read:

“Compensation” or “salary” means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

Pursuant to its terms, Section 112.66(11) becomes effective on July 1, 2011 for those plans which do not have a collective bargaining agreement and on the effective date that a new bargaining agreement is entered into (when all parties sign) on or after July 1, 2011 for those that have a collective bargaining agreement. (“Effective Date”) Plans that do not currently include lump sum payments of sick and vacation time or overtime in the definition of “compensation” or “salary” are not affected by these changes.

While this change is effective on the applicable effective date even if the plan has not been amended, changes will have to be made to all affected police officer, firefighter and general employee pension plans in order to comply with the restrictions set forth in the above section. Additional issues arise with respect to the application of the rules regarding the calculation of lump sum payments of sick and vacation time in order to comply with the new restrictions. In order to deal with these issues, it will be necessary for the Board, the union (if applicable), and the City to agree on the means by which the above restrictions will be applied. We would recommend that the pension plan be amended to incorporate the procedures which have been agreed upon in order to comply with the new restrictions. We recommend that the following be considered:

1. First, we recommend that the Board ask the City to run a calculation of all sick and vacation time that each member of the pension plan has accrued as of the applicable effective date. Anyone who retires on or after the effective date and who receives lump sum payments of sick and vacation time which would otherwise be included for pension purposes as “salary” under the current definition, may receive pension credit for such sums, subject to the following considerations.
2. **Example 1.** An individual who has 200 hours of accrued vacation time (or sick time) as of the effective date and retires one month after the effective date after having accrued an additional five hours of vacation time and who has not used any additional vacation time during this subsequent month would be permitted to receive credit for the 200 hours of vacation time accrued as of the effective date, but would not be permitted to receive pension credit for the 5 hours accrued after the effective date.
3. **Example 2.** If an individual had 200 hours of vacation time as of the effective date and accrues another 80 hours of vacation time during the next year and then retires, he would again be permitted to receive pension credit for the 200 hours of vacation time accrued as of the effective date, but not for any additional accruals after that date.
4. **Example 3.** Assume the same as Example 2., above, but after having accrued the additional 80 hours, the member takes 40 hours of vacation during the subsequent year leaving him with 240 hours of accrued vacation time. In this example, the Board would have to consider whether the 40 hours which is actually used would deplete the accruals prior to the effective date, or deplete the accruals after the effective date. In other words, First-In First-Out (FIFO) or Last-In First-Out (LIFO). Either option is legally acceptable. Interpreting this provision in the most advantageous way for plan members would dictate using the LIFO method, which means that the 40 hours of vacation time used would be deducted from accruals after the effective date, and therefore, would not reduce the 200 hours of vacation accrued as of the effective date. **This methodology must be determined by the Board/City/Union.**
5. **Example 4.** Assume the same as Example 3., above, but instead of using 40 hours of vacation time, the member uses 100 hours of vacation time, so that his accrued vacation time is reduced to 180 hours. In this instance, if he retired at this point, the City would pay him for 180 hours of accrued vacation time and he would receive pension credit for only 180 hours.

6. **Example 5.** Assume the same as Example 4., above, but after he took the 100 hours of vacation to reduce his accrued time to 180 hours, he continued to work and earned another 40 hours of vacation time, thereby restoring his lump sum accrued vacation time to 220 hours. If he retired at this point, he still would only be able to receive pension credit for 180 hours of lump sum vacation time because the restoration of the accrued vacation time from its low of 180 hours is attributable to accruals after the effective date and therefore, cannot be counted for pension purposes.
7. An additional decision needs to be made concerning the value of the lump sum sick and vacation time to be included for pension purposes at the time of retirement. Will the accumulated lump sum sick or vacation hours be valued at the hourly rate earned at the time of retirement, or at the hourly rate in effect on the effective date? Either option is legally acceptable. The position which would be most advantageous to the individual members would be to calculate the sick and vacation time based upon his rate of pay at the date of retirement, particularly since this is the actual amount which is received by the individual for the unused sick and vacation time. **This issue must also be determined by the Board of Trustees, the City and any union, so that we can establish a consistent basis for calculating retirement benefits.**
8. There may be other acceptable methods for handling these issues, such as freezing all or part of the accumulated sick/vacation time as of the effective date and not allowing this time to be used by the member until it is paid out in a lump sum at retirement, at which time pension credit will be given.
9. **With regard to the limitation on overtime, we need to determine whether we will apply the 300 hour annual limitation on a fiscal or calendar year basis. Either option is legally acceptable.** Also, we would recommend not including any hours treated as overtime pursuant to the Fair Labor Standards Act (FLSA) when calculating the 300 hours of includible overtime.

Once agreement is reached on the three benefit calculation issues above, we can prepare an ordinance to amend the plan to incorporate the new legislation and the three benefit calculation issues.