

Item 6

Legal Report

Sugarman, Susskind, Braswell & Herrera

Item 6.A.

**Proposed Ordinance Amendment for
SECURE 2.0**

ORDINANCE NO. _____

**AN ORDINANCE
TO BE ENTITLED**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING “RETIREMENT PLAN” OF CHAPTER 35, EMPLOYEE POLICIES AND BENEFITS, OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SUBSECTION (K), “DISTRIBUTION OF BENEFITS,” OF SECTION 35.097, “RETIREMENT INCOME; BASIS, AMOUNT AND PAYMENT” TO PROVIDE COMPLIANCE WITH THE SECURE 2.0 ACT; REPEALING ALL ORDINANCES IN CONFLICT HERewith, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Setting Every Community Up for Retirement Enhancement (“SECURE”) 2.0 Act, signed into law on December 29, 2022 as part of the Consolidated Appropriations Act, 2023, amended the definition of “Required Beginning Date” under Section 401(a)(9) of the Internal Revenue Code; and

WHEREAS, an amendment to the Plan is necessary to provide compliance with the Act; and

WHEREAS, an actuarial impact statement regarding this amendment has been prepared and has been attached to this Ordinance; and

WHEREAS, the City Commission deems it to be in the public interest to provide the following changes to the City of Delray Beach General Employees’ Retirement Plan;

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA;

SECTION 1. That Section 35.097, *Retirement Income; Basis, Amount and Payments*, subsection (K), *Distribution of Benefits*, of Chapter 35, Retirement Plan, of the City of Delray Beach Code of Ordinances, is hereby amended as follows:

Sec. 35-097. – RETIREMENT INCOME; BASIS, AMOUNT AND PAYMENTS.

[...]

(K) *Distribution of Benefits.* Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan after the effective date of this ordinance, shall satisfy the following conditions:

(1) If any retirement income is payable before the participant's death:

(a) It shall ~~either~~ be distributed or commence to the participant not later than April 1 of the calendar year following the later of the calendar year in which the participant attains ~~age seventy and one-half (70½) years~~ his or her required beginning date (as defined in Paragraph (3) below) or the calendar year in which he or she retires.

(b) The distribution shall commence not later than the calendar year defined in subparagraph (Aa) above and (1) shall be paid over the life of the participant or over the lifetimes of the participant and his spouse, issue or dependent, or (2) shall be paid over the period extending not beyond the life expectancy of the participant and his spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the participant dies before his entire interest in the plan has been distributed, the remaining portion of such interest in the plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the participant's death.

(2) If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained ~~age 70½~~ his or her required beginning date, if later.

[...]

(3) For the purposes of this Subsection, required beginning date shall mean the later of (a) and (b) below:

(a) With respect to a participant who reached age 70 ½ prior to January 1, 2020, April 1 of the calendar year that next follows the calendar year in which the participant attained the age of 70 ½ years; or

with respect to a participant who attained age 70 ½ on or after January 1, 2020, and age 72 prior to January 1, 2023, April 1 of the calendar year that next follows the calendar year in which the participant attained the age of 72 years; or

with respect to a participant who attains age 72 on or after January 1, 2023, in accordance with the SECURE 2.0 Act and any technical corrections thereto; or

(b) April 1 of the calendar year that next follows the calendar year in which the participant retires.

SECTION 2: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3: 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 4: This Ordinance shall become effective upon passage; however, the provisions of this Ordinance that are specified to take effect as of a date certain shall take effect as of the date specified herein.

PASSED and ADOPTED in regular session on second and final reading of the City Commission of the City of Delray Beach, Florida this ___ day of _____, 2024.

CITY OF DELRAY BEACH, FLORIDA

By: _____
MAYOR

ATTEST:

CITY CLERK

Approved as to form:

CITY ATTORNEY