

ORDINANCE NO. 41-23

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 33, "POLICE AND FIRE-RESCUE DEPARTMENTS", OF THE CODE OF ORDINANCES OF THE CITY OF DELRAY BEACH, FLORIDA, BY AMENDING SECTION 33.76, "BENEFIT AMOUNTS AND ELIGIBILITY", TO PROVIDE FOR COMPLIANCE WITH CHAPTER 2019-21, LAWS OF FLORIDA; AMENDING SECTION 33.88, "DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS" BY DELETING THE CURRENT LANGUAGE AND REPLACING IT WITH "INTERNAL REVENUE CODE COMPLIANCE", TO PROVIDE COMPLIANCE WITH THE INTERNAL REVENUE CODE AND THE SECURE 2.0 ACT; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE FOR OTHER PURPOSES.

WHEREAS, the 2019 Florida Legislature enacted Chapter 2019-21, Laws of Florida, which mandates certain amendments to the Firefighters' Retirement System; and

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, the Board of Trustees desire to group all Internal Revenue Code compliance provisions into a single section of the Code of Ordinances; and

WHEREAS, an amendment to the Plan is necessary to permit such new obligations and conditions; 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 Firefighters' Retirement System.

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

Section 1. That Section 33.76, *Benefit Amounts and Eligibility*, of Chapter 33, Police and Fire-Rescue Departments, of the City of Delray Beach Code of Ordinances, is hereby amended, as follows:

Sec. 33.76. - BENEFIT AMOUNTS AND ELIGIBILITY.

[...]

(E) Disability Retirement Provisions.

(1)

[...]

(c) Cancer Presumption. As provided and subject to the limitations in section 112.1816, Florida Statutes, effective July 1, 2019, a firefighter (as defined in section 112.1816(1), Florida Statutes) member shall be considered to be totally and permanently disabled in the line of duty if he or she meets the Plan's definition of Totally and Permanently Disabled due to a diagnosis of cancer (as defined in section 112.1816(1), Florida Statutes) or circumstances that arise out of the treatment of such cancer (as defined in section 112.1816(1), Florida Statutes).

(F) Pre-Retirement Death.

(1) *Service Incurred.* A death benefit shall be payable on behalf of any member who dies as a direct result of an occurrence arising in the performance of service. These benefits are not to be limiting to other benefits available under State law. The benefits shall be payable as follows:

(a) To the spouse, until the earlier of death or remarriage, a monthly benefit equal to fifty (50) percent of the member's average monthly earnings; or to a designated beneficiary or beneficiaries other than the spouse, until death, a monthly benefit equal to the actuarial equivalent of a lifetime benefit payable to the member if the amount of fifty (50) percent of the member's average monthly earnings at date of death, plus

(b) (1) For each unmarried child until he or she shall have reached the age of eighteen (18) years, and for each unmarried child from age eighteen (18) until age twenty-two (22) who is a full-time student in a fully accredited high school, college or university, there shall be paid in equal monthly installments, an amount equal to five (5) percent of the average monthly earnings subject to an overall limitation of a total of sixty (60) percent of average monthly earnings for the spouse and children combined. The nonstudent child's pension shall terminate on the earlier of

death, marriage or the attainment of age eighteen (18). The pension of a child who is a student shall terminate on the earlier of death, marriage or the attainment of age twenty-two (22). Legally adopted children shall be eligible the same as natural children.

(2) Upon remarriage or death of the spouse, the five (5) percent child allowance shall be increased to ten (10) percent for each child, not to exceed a combined total of thirty-five (35) percent of the member's average monthly earnings. The trusteeship and disbursements of the pension to any child shall be determined by the Board of Trustees.

(c) Notwithstanding any provision of this subsection to the contrary, the surviving spouse of any member killed in the line of duty shall not lose death benefits upon remarriage.

(d) *Cancer Presumption.* As provided and subject to the limitations in section 112.1816, Florida Statutes, effective July 1, 2019, a firefighter (as defined in section 112.1816(1), Florida Statutes) member shall be considered to have died in the line of duty if he or she dies as a result of cancer (as defined in section 112.1816(1), Florida Statutes) or circumstances that arise out of the treatment of such cancer (as defined in section 112.1816(1), Florida Statutes).

[...]

(I) *Maximum Benefits.* A member may not receive a pension or disability benefit which exceeds the lesser of:

[...]

~~(3) The maximum amount allowed under Section 415 of the Internal Revenue Code (increased to reflect the cost-of-living adjustment factor prescribed under Section 415(d) of the Internal Revenue Code), that is incorporated herein by reference. Notwithstanding any other provision of the system to the contrary, the annual benefit to which a member is entitled under the system shall not, in any limitation year, be in an amount which would exceed the applicable limitations under Section 415 of the Internal Revenue Code and the regulations issued thereunder. If the benefit payable under the system would (but for this Section) exceed the limitations of Section 415 of the~~

~~[Internal Revenue] Code by reason of a benefit payable under another defined benefit plan aggregated with this system under [Internal Revenue] Code Section 415(f), the benefit under this system shall be reduced only after all reductions have been made under such other plan. As of January 1 of each calendar year commencing on or after January 1, 2008, the dollar limitation as determined by the Commissioner of the Internal Revenue Service for that calendar year, adjusted for the member's age in accordance with the applicable IRS regulations, shall become effective as the maximum permissible dollar amount of benefit payable under the system during the limitation year ending within that calendar year.~~

~~(J) — *Required Payment of Pension Benefits.* Pension benefits shall begin no later than April 1 of the calendar year following the calendar year in which the member retires, or in which the member attains age seventy and one half (70½), even if the member has not filed a claim for pension benefits. In addition, payment of benefits shall be made in accordance with the applicable provisions of Section 401(a)(9) of the Internal Revenue Code, which is incorporated herein by reference. Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan, shall satisfy the following conditions:~~

~~(1) — If the retirement income is payable before the member's death:~~

~~a. — It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one half (70½), or the calendar year in which the member retires;~~

~~b. — The distribution shall commence not later than the calendar year defined above; and (i) shall be paid over the life of the member or over the lifetimes of the member and spouse, issue or dependent, or (ii) shall be paid over the period extending not beyond the life expectancy of the member and spouse, issue or dependent.~~

~~Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member 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 member's death.~~

~~(2) — If the member's death occurs before the distribution of his interest in the plan has commenced, member's entire interest in the plan shall be distributed~~

~~within five (5) years of member's death, unless it is to be distributed in accordance with the following rules:~~

- ~~a. — The member's remaining interest in the plan is payable to his spouse, issue or dependent;~~
- ~~b. — The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and~~
- ~~e. — Such distribution begins within one year of the member's death unless the member's spouse, is the sole designated beneficiary, in which case the distribution need not begin before the date on which the member would have attained age seventy and one half (70½); and if the member's spouse dies before the distribution to the spouse begins, this Section shall be applied as if the spouse were the member.~~

[...]

Section 2: That Section 33.88, *Direct Transfers of Eligible Rollover Distributions*, of Chapter 33, Police and Fire-Rescue Departments is hereby deleted in its entirety and replaced with the following, *Internal Revenue Code Compliance*, to read as follows:

Section 33.88. - Internal Revenue Code Compliance.

(A) *Maximum Amount of Retirement Income.*

- (1) The limitations of this Subsection (A) shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein, and are intended to comply with the requirements of the Pension Protection Act of 2006 and shall be construed in accordance with said Act and guidance issued thereunder. The provisions of this Subsection (A) shall supersede any provision of the Plan to the extent such provision is inconsistent with this Subsection.

The Annual Pension as defined in Paragraph (2) below otherwise payable to a member at any time shall not exceed the Dollar Limitation for the member multiplied by a fraction whose value cannot exceed one, the numerator of which is the member's number of years (or part thereof, but not less than one year) of service with the City and the denominator of which is 10. For this purpose, no more than one year of service may be credited for any Plan Year. If the benefit the member would otherwise accrue in a limitation year would

produce an Annual Pension in excess of the Dollar Limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Dollar Limitation.

- (2) “Annual Pension” means the sum of all annual benefits, payable in the form of a straight life annuity. Benefits payable in any other form shall be adjusted to the larger of:
- (a) For limitation years beginning on or after July 1, 2007
 - (I) the straight life annuity (if any) payable to the member under the Plan commencing at the same Annuity Starting Date as the member’s form of benefit, or
 - (II) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).
 - (b) For limitation years beginning before July 1, 2007
 - (I) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using the interest rate and mortality basis specified by the Board of Trustees for determining Actuarial Equivalence under the Plan for the particular form of payment, or
 - (II) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (A), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (A) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code.

For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

- (3) “Dollar Limitation” means, effective for the first limitation year beginning after January 1, 2001, \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a member’s benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The Dollar Limitation shall be further adjusted based on the age of the member when the benefit begins as follows:
 - (a) For Annuity Starting Dates in limitation years beginning on or after July 1, 2007
 - (I) If the Annuity Starting Date for the member’s benefit is after age 65
 - (i) If the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Dollar Limitation at the member’s Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member’s Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the member’s age based on completed calendar months as of the Annuity Starting Date).
 - (ii) If the Plan does have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Dollar Limitation at the member’s Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the member’s

Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Subsection (A), and (bb) the limitation determined under Subparagraph (3)(a)(I)(i) of this Subsection(A). For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the member's Annuity Starting Date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical member who is age 65 and has the same Accrued Benefit as the member.

- (II) Except with respect to a member who is a "Qualified member" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code), if the Annuity Starting Date for the member's benefit is before age 62
 - (i) If the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement the Dollar Limitation at the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the member's age based on completed calendar months as of the Annuity Starting Date).
 - (ii) If the Plan does have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement the Dollar Limitation at the

member's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the member's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Subsection (A), and (bb) the limitation determined under Subparagraph (3)(a)(II)(i) of this Subsection (A).

- (b) For Annuity Starting Dates in limitation years beginning before July 1, 2007.

Age as of Annuity Starting Date:	Adjustment of Dollar Limitation:
Over 65	<p>The smaller of:</p> <ul style="list-style-type: none"> (a) the actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or (b) the actuarial equivalent of the limitation for age 65, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v). <p>Any increase in the Dollar Limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.</p>
62 to 65	No adjustment.
Less than 62	<p>The smaller of:</p> <ul style="list-style-type: none"> (a) the actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or (b) the actuarial equivalent of the limitation for age 62, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v). <p>This adjustment shall not apply to any "Qualified member" as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code.</p>

- (4) With respect to clause (3)(a)(I)(i), clause (3)(a)(II)(i) and Paragraph (3)(b) above, no adjustment shall be made to the Dollar Limitation to reflect the probability of a member's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the member prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the Plan does not charge members for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the member's death.
- (5) The term "limitation year" is the 12 month period which is used for application of the limitations under Code Section 415 and shall be the calendar year.
- (6) The limitations set forth in this Subsection (A) shall not apply if the Annual Pension does not exceed \$10,000 provided the member has never participated in a Defined Contribution Plan maintained by the City.
- (7) Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Subsection 415(d) of the Code.
- (8) In the case of a member who has fewer than 10 years of participation in the Plan, the Dollar Limitation set forth in Paragraph (3) of this Subsection (A) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10.
- (9) Any portion of a member's benefit that is attributable to mandatory member contributions (unless picked-up by the City) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.
- (10) If the benefit payable under the system would (but for this Section) exceed the limitations of Section 415 of the Internal Revenue Code by reason of a benefit payable under another defined benefit plan aggregated with this system under Code Section 415(f), the benefit under this system shall be reduced only after all reductions have been made under such other plan. As of January 1 of each calendar year commencing on after January 1, 2008, the dollar limitation as determined by the Commissioner of the Internal Revenue Service for that calendar year, adjusted for the member's age in accordance with the applicable

IRS regulations, shall become effective as the maximum permissible dollar amount of benefit payable under the system during the limitation year ending within that calendar year.

- (11) For a member who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.
- (12) The determination of the Annual Pension under Paragraph (A)(1) of this Subsection (A) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.
- (13) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Subsection (a) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this Subsection (A) shall be used to decrease future employer contributions.
- (14) For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, Compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in this Subsection (A), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July

1, 2007, compensation shall include payments that otherwise qualify as compensation and that are made by the later of: (a) 2 and ½ (two and one-half) months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance.

(B) *Required Beginning Date:* Notwithstanding any other provision of the Plan, payment of a member's retirement benefits under the Plan shall commence not later than the member's Required Beginning Date, which is defined as the later of 1 and 2 below:

(1) -with respect to a member who reached age 70½ prior to January 1, 2020, April 1 of the calendar year that next follows the calendar year in which the member attained the age of 70½ years; or

-with respect to a member who attained age 70½ 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 member attained the age of 72 years; or

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

(2) April 1 of the calendar year that next follows the calendar year in which the member retires.

(C) *Required Minimum Distributions.*

(1) *Required Beginning Date.* The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's Required Beginning Date as defined in Subsection (B) of this Article.

(2) *Death of member Before Distributions Begin.*

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

(i) If the member's surviving spouse is the member'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 member died, or by December 31 of the calendar year in which the

member would have attained his or her Required Beginning Date, if later.

- (ii) If the member's surviving spouse is not the members's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.
- (iii) If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(b) The member's entire interest shall be distributed as follows:

- (i) *Member Survived by Designated Beneficiary.* If the member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the member's entire interest will be distributed, beginning no later than the time described in Subparagraph (2)(a) above, over the life of the designated beneficiary or over a period certain not exceeding:
 - (I) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death; or
 - (II) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.
- (ii) *No Designated Beneficiary.* If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest will be

completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

- (c) *Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.* In any case in which (i) the member dies before the date distribution of his or her interest begins, (ii) the member's surviving spouse is the member's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, Subparagraphs (2)(a) and 2(b) above shall apply as though the surviving spouse were the member.
- (3) *Requirements For Annuity Distributions That Commence During Member's Lifetime.*
- (a) *Joint Life Annuities Where the Beneficiary Is Not the Member's Spouse.* If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspousal beneficiary, annuity payments to be made on or after the member's Required Beginning Date to the designated beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the member using the table set forth in Q&A-2 of Section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.
 - (b) *Period Certain Annuities.* Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches age 70, the applicable distribution period for the member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the member as of the member's birthday

in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this Subparagraph (3)(b), or the joint life and last survivor expectancy of the member and the member's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

- (4) *Form of Distribution.* Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Subparagraphs (4)(a), (4)(b) and (4)(c) below. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the member's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.
- (a) *General Annuity Requirements.* If the member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
- (i) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
 - (ii) the distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in Paragraphs 2 or 3 above, whichever is applicable, of this Subsection (C);
 - (iii) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
 - (iv) payments will either be non-increasing or increase only as follows:

- (I) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - (II) to the extent of the reduction in the amount of the member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the member's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;
 - (III) to provide cash refunds of employee contributions upon the member's death; or
 - (IV) to pay increased benefits that result from a Plan amendment.
- (b) *Amount Required to be Distributed by Required Beginning Date.* The amount that must be distributed on or before the member's Required Beginning Date (or, if the member dies before distributions begin, the date distributions are required to begin under Subparagraph (2)(a)(i) or (2)(a)(ii), whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's Required Beginning Date.
- (c) *Additional Accruals After First Distribution Calendar Year.* Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

- (5) For purposes of this Subsection (C), distributions are considered to begin on the member's Required Beginning Date. If annuity payments irrevocably commence to the member (or to the member's Surviving Spouse) before the member's Required Beginning Date (or, if to the member's Surviving Spouse, before the date distributions are required to begin in accordance with Subparagraph (2)(a) above), the date distributions are considered to begin is the date distributions actually commence.
- (6) *Definitions.*
- (a) *Designated beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Treasury regulations.
- (b) *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's Required Beginning Date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph (2) of this Subsection (C).
- (c) *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (D) (1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Subsection, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (2) *Definitions.*

The following definitions apply to this Subsection:

- (a) *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

- (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;
 - (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;
 - (iii) the portion of any distribution which is made upon hardship of the member; and
 - (iv) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
- (3) *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.

- (4) *Distributee:* A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.
- (5) *Direct rollover:* A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- (E) Notwithstanding any other provision of this Plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the Plan shall be \$1000.
- (F) *Compensation Limitations Under 401(a)(17):* In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each member taken into account under the Plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is \$200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.
- Any reference in the Plan to the limitation under Section 401 (a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.
- (G) At no time prior to the satisfaction of all liabilities under the plan with respect to members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

(H) Notwithstanding any other provision hereunder, a member's accrued benefit under the Plan shall become non-forfeitable upon the attainment of the age and service requirements for Normal Retirement.

Section 3. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 4. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 5. Specific authority is hereby given to codify this Ordinance.

Section 6. This Ordinance shall become effective immediately upon its passage on second and final reading.

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 _____, 2023.

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

First Reading _____

Second Reading _____

Approved as to Legal Form and Sufficiency:

Lynn Gelin, City Attorney