

Meeting Date: 6/22/10

Agenda Item 21

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration/Discussion Presentation

SHORT TITLE AN ORDINANCE AMENDING CHAPTER 34, "CITY POLICY," OF THE CODE OF ORDINANCES, RELATING TO THE POLICE & FIREFIGHTERS' RETIREMENT SYSTEM BY AMENDING SECTION 34.0603, "DEFERRED RETIREMENT OPTION PLAN (DROP), INCORPORATING A DROP LOAN PROGRAM.

Summary of Purpose and Why:

- (1) Origin of request for this action: Police & Fire Fighters' Retirement System
- (2) Primary contact: Paul O'Connell, Chairman, Police & Fighters' Retirement System 954 786-4601
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding: _____

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE

City Manager *Dennis W. Beaud*

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 st Reading <u>6/8/10</u>	1 st Reading _____	Results: _____	Results: _____
APPROVED			
2 nd Reading <u>6/22/10</u>			

ORDINANCE NO. 2010-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 34, "CITY POLICY," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, RELATING TO THE POLICE & FIREFIGHTERS' RETIREMENT SYSTEM BY AMENDING SECTION 34.0603, "DEFERRED RETIREMENT OPTION PLAN (DROP)," INCORPORATING A DROP LOAN PROGRAM; PROVIDING FOR SEVERABILITY, PROVIDING AN EFFECTIVE DATE.

WHEREAS, current economic conditions and market downturns have placed increasingly burdensome obligations on Retirement System participants; and

WHEREAS, the Board of Trustees of the City of Pompano Beach Police & Firefighters' Retirement System has recommended the changes described below as being in the best interest of the Retirement System participants and beneficiaries; and

WHEREAS, the City Commission has received and reviewed an actuarial impact statement from the Retirement System's actuary relating to the amendments set forth herein; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notices described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 34.0603, “Deferred Retirement Option Plan (DROP),” of Chapter 34, “City Policy,” of the City of Pompano Beach Code of Ordinances is hereby amended as follows:

§ 34.0603 DEFERRED RETIREMENT OPTION PLAN (DROP).

A Deferred Retirement Option Plan (DROP) is hereby authorized. The DROP is to be administered by the Board of Trustees. Police officer members may elect to enter the DROP upon reaching normal retirement as set forth and in accordance with the terms and conditions of the DROP document in existence as negotiated in the collective bargaining agreements between the Broward County Police Benevolent Association of Pompano Beach, Florida and the City or Broward County Sheriff’s Office. In no event shall the Board administer a plan which results in the disqualification of the system under the Internal Revenue Code.

(A) *Eligibility.* Any active member of the Pompano Beach Police and Firefighters’ Retirement System who is eligible to receive a normal retirement pension, may elect to participate in the DROP. However, said election must be made at or before the employee has attained twenty-five (25) years of continuous service with the City. Except as provided below, after an employee has exceeded twenty-five (25) years of continuous service, s/he would no longer be eligible to participate in the DROP. In cases where an employee has reached twenty-five (25) years of continuous service, but still has not become eligible for normal retirement, that employee will be eligible to elect to participate in the DROP upon (but not after) reaching eligibility for normal retirement. Firefighter members will “retire” for purposes of the pension plan, but may continue their employment with the City for a maximum ninety-six (96) months from the effective date of the member’s DROP election.

...

(G) *DROP Account Earnings.*

(1) After each fiscal year quarter, the average daily balance in a member’s deferred retirement option account shall be credited or debited at a rate equal to the actual net rate of investment return realized by the Retirement System for that quarter. “Net investment return” for the purpose of this paragraph is the total return on the Retirement System’s assets (except those assets invested pursuant to DROP member direction under subsection 2 below) net of brokerage commissions and transaction costs.

...

(4) Police officer members of the DROP who have elected to participate in the DROP loan program, as detailed herein, shall not receive any earnings on outstanding loan balances until such time as a repayment is made. Repayments are qualified as principal and interest with the latter being reflected on member DROP accounts as "earnings."

...

(L) *Benefits Not Guaranteed.* All benefits payable under the DROP shall be paid only from the assets of the DROP and neither the City nor the Board of Trustees 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.

(M) DROP Loan Program

(1) Police officer DROP participants may apply to the Board of Trustees to borrow from the Retirement System up to fifty percent (50%) of the total balance in their respective DROP Account, up to a maximum of \$50,000. The Board of Trustees shall approve or deny any such application in accordance with the terms and conditions specified herein. Board of Trustees shall not have the authority to deny Member loan applications that satisfy requirements outlined herein. All loans to police officer DROP participants shall be secured by the Member's DROP Account and no payments from the Member's DROP Account shall be made to the Member, survivor or beneficiary while a loan balance remains outstanding. Should any loan balance remain unpaid after the balance in the Member's DROP Account has been exhausted, then that balance shall be secured and paid by offsetting such Member, survivor or beneficiary's other benefits payable by the Retirement System. The loan must be evidenced by the Member's promissory note payable to the Retirement System and shall have a definite interest rate, repayment schedule, and maturity date. The promissory note shall provide that in the event that the loan is not repaid, at a time when the Member is entitled to a distribution, any unpaid balance of the loan, plus interest, shall be retained by the Board of Trustees out of such distribution. The Board of Trustees shall be authorized to take any and all necessary action to reinforce such Member's obligations.

(2) In making its determination with respect to eligibility for, terms and conditions of, and interest rates on any loan, the Board of Trustees shall act in a uniform and nondiscriminatory manner. The outstanding principal of any loan to a police officer Member shall not exceed fifty percent of the Member's vested amount in the DROP account, provided, that the maximum loan amount shall not exceed \$50,000.00. The promissory note shall bear interest at the annual interest rate quoted as the "prime rate" in the *Wall Street Journal* on the day which the Member files all necessary forms for his DROP loan with the Board of Trustees.

(3) If a police officer Member or beneficiary, directly or indirectly, receives any amount as a loan from the Retirement System, such amount shall be treated as a taxable distribution from the Retirement System to the individual if:

(a) The amount of the loan exceeds the lesser of (i) \$50,000.00 (reduced to the extent that the Member or beneficiary's highest balance for plan loans outstanding during the preceding 12 months exceeds the current balance for plan loans); or (ii) one-half of the Member's DROP account (or \$10,000 if greater); and

(b) The loan by its terms is not required to be repaid within five years of the date the funds are actually received by the borrower (i.e. Member).

(4) Loan Amount and Term: The Board of Trustees may loan to a police officer DROP participant Member a minimum of \$5,000.00 and a maximum of \$50,000.00. The loan shall be repaid by the Member over a period of time not to exceed five years, as elected by the Member at the time of the loan, with installment payments to be paid on a biweekly or monthly basis, as chosen by the Member, with each payment being comprised of principal and interest. Member may elect to have installment payments automatically deducted by the Pompano Beach Credit Union and paid directly to the Retirement System. Alternatively, the Member may elect that the loan installment payments be automatically deducted from his or her monthly pension benefit from the Retirement System.

(a) Suspension of Loan Repayment-Leave for Military Absence: In accordance with IRC section 414(u)(4), the Retirement System shall permit postponement of loan repayments for military service personnel while performing military service. Any such postponement shall not alter the accrual of interest. Any such suspension of loan repayments during a leave of absence for military service will not cause the loan to be deemed a taxable distribution so long as:

1. Loan repayments resume upon the completion of the military service; and

2. The amount remaining due on the loan is repaid in substantially level installments; and

3. The loan is fully repaid by the end of the original term of the loan plus the period of military service.

(5) Loan Costs and Expenses: The electing police officer Member shall pay all costs of the loan, including documentary stamps, intangible taxes, loan-servicing fees, and all other costs associated with loan.

(6) Default: Events of Default under the terms of the loan shall include, but are not limited to bankruptcy, insolvency, or failure to make any installment loan payment when due.

(7) Grace Period: In the event of a default due to a participating police officer Member's failure to make an installment payment when due, then the Retirement System, at its sole discretion, may provide written notice to such Member of the occurrence of such default, and afford such Member a grace period not to exceed ten days from the date upon which the subject payment(s) was due, within which such Member may make payment to the Retirement System to cure such default.

(8) Attorney's Fees and Costs: In the event of a default, and should the Board of Trustees determine that it is required to pursue legal relief to enforce a police officer Member's loan repayment obligations hereunder, then such Member shall be held responsible for any and all attorney's fees and costs incurred by the Retirement System to enforce such Member's obligations.

SECTION 2. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Sections of this Ordinance may be renumbered or re-lettered to accomplish this intention and the word "Ordinance" may be changed to "Section", "Article" or other appropriate word as the codifier may deem fit.

SECTION 3. This Ordinance shall become effective upon adoption and shall apply to all retirements on or after that date. Any employee contributions due on account of the retroactive application of this ordinance shall be paid by the employer through employee pickup within sixty (60) days of adoption.

PASSED FIRST READING this _____ day of _____, 2010.

PASSED SECOND READING this _____ day of _____, 2010.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

EGR:jrm
5/5/10
L:ord/ch34/2010-151a



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December 10, 2009

Ms. Lindsay Dalton, Deputy Administrator
Pompano Beach Police & Firefighters'
Retirement System
2335 E. Atlantic Blvd., Suite 400
Pompano Beach, FL 33062

Re: Pompano Beach Police and Firefighters' Retirement System

Dear Lindsay:

We have reviewed the proposed ordinance amending the Pompano Beach Police and Firefighters' Retirement System. This ordinance would allow for a DROP loan program for Police Officers only. In our opinion, this amendment will have no actuarial impact on the Plan.

Please send this letter to the Division of Retirement before the final public hearing on the ordinance.

We welcome your questions and comments.

Sincerely yours,

J. Stephen Palmquist, ASA
Senior Consultant and Actuary

JSP/rb

RECEIVED
DEC 11 2009

POMPANO BEACH POLICE & FIRE
RETIREMENT SYSTEM



CITY OF POMPANO BEACH
OFFICE OF CITY MANAGER

2010 MAR 19 PM 1:35

City Attorney's Communication #2010-891

March 18, 2010

TO: Dennis W. Beach, City Manager
FROM: Erin Gill Robles, Assistant City Attorney
RE: Police Officer DROP Loan Ordinance

Attached please find a proposed ordinance implementing a DROP loan program for Police Officer members of the Police and Firefighters' Pension Plan. The Retirement System Board of Trustees is requesting that the item be placed on the next available agenda for consideration by the City Commission. The attached ordinance was prepared by the law firm representing the Pompano Beach Police and Firefighters' Retirement System. Also attached is an impact statement prepared by the Retirement Board actuary indicating that there will be "no cost" to the plan as a result of the proposed amendment, as well as a copy of the Consent to Waiver of Bargaining signed by both BSO, the current employer of the police officer members of the pension plan, and the FOP, the bargaining representative for the subject employees.

The DROP loan program provides police officer members of the Pension Plan who have entered the DROP with the ability to take loans from their DROP accounts. Although this benefit is permitted by the Internal Revenue Code, it is not required. The program provides for a five year loan term for all loans with the exception of loans taken to purchase, construct, or remodel a member's primary residence the term of which is extended to 15 years. Pursuant to the Internal Revenue Code, a loan that is in default is generally treated as a taxable distribution from the plan of the entire outstanding balance of the loan. Further, any balance remaining on a DROP loan upon termination of employment is also treated as a taxable distribution. Although the loan program does not directly impact the City or any current employees, it may be worthwhile to make this potential negative tax implication more clear in the ordinance and provide for any protective measures from a loan being deemed as a taxable distributions as allowable by law.

Please do not hesitate to contact me should you have any questions or concerns on this matter.



ERIN GILL ROBLES

EGR/ds
l:cor/manager/2010-891
Attachments

VOLUNTARY WAIVER AGREEMENT

I, Paul O'Connell, the undersigned, hereby expressly and affirmatively state that I voluntarily wish to permanently and irrevocably waive the right to apply for or receive a loan from my DROP account, provided the amendment to Ordinance # 34.063 is adopted and enacted by the City of Pompano Beach; said amendment providing for a loan provision.

I understand that I will not apply for a DROP loan. I understand that I am waiving my right to apply for a DROP loan and will be ineligible to apply for a DROP loan at any time in the future.

I voluntarily assume full responsibility as a result of my waiver in said program.

I have had an opportunity to ask questions and consider my decision. Any questions I have asked have been answered to my complete satisfaction.

If any term or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law governing this Agreement, the validity of the remaining portions shall not be affected thereby.

This document shall remain in effect for the duration of my employment with the Broward Sheriff's Office.

ACCEPTED and AGREED to on this 20th day of May, 2010.

James M. Orlando
Witness

Paul O'Connell
Paul O'Connell



Subscribed and Sworn
To Before Me This
20 Day of May By Paul O'Connell
Sandra A. Couzzo
Notary Public