

ORDINANCE NO. 0-2019-06

AN ORDINANCE OF THE CITY OF HOLLYWOOD, FLORIDA, AMENDING SECTION 33.025 OF THE CODE OF ORDINANCES, "EMPLOYEES' RETIREMENT FUND", PROVIDING EFFECTIVE DATES FOR CERTAIN PROVISIONS; PROVIDING FOR REQUIRED UPDATES RELATED TO CREDITED SERVICE; PROVIDING FOR A DEFINITION OF NET MARKET RATE OF RETURN FOR DROP PARTICIPANTS; PROVIDING FOR REQUIRED UPDATES RELATED TO DIRECT ROLLOVERS; PROVIDING FOR MAXIMUM PENSION LIMITATIONS; PROVIDING FOR REQUIRED MINIMUM DISTRIBUTIONS; PROVIDING FOR THE PRECLUSION OF PROHIBITED TRANSACTIONS; PROVIDING FOR AN EXPRESSION OF INTENT THAT THE PLAN REMAIN QUALIFIED UNDER THE INTERNAL REVENUE CODE; PROVIDING FOR REEMPLOYMENT AFTER RETIREMENT; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICT.

WHEREAS, the City of Hollywood, Florida, adopted the "City of Hollywood Employees' Retirement Fund" (the "Plan") for general employees of the City, originally effective October 1, 1958; and

WHEREAS, the Plan is a governmental tax-qualified retirement plan, operated in accordance with the exemptions extended to governmental retirement plans pursuant to Section 414(d) of the Internal Revenue Code; and

WHEREAS, the Plan has been amended on multiple occasions; and

WHEREAS, the City obtained a favorable determination letter from the Internal Revenue Service on September 3, 2015, confirming that the Plan meets all applicable requirements for a qualified plan with the adoption of certain amendments; and

WHEREAS, in accordance with the IRS determination letter, the Plan document must be amended to maintain compliance with the Internal Revenue Code and IRS regulations; and

WHEREAS, the City also desires to provide for the reemployment of retired members of the Plan under certain circumstances.

(Coding: Words in ~~struck-through~~ type are deletions from existing text; underscored words are additions to existing text.)

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are confirmed as being true and correct and are incorporated in this Resolution.

Section 2: That Subsection 33.025(A) of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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RETIREMENT

EMPLOYEES' RETIREMENT FUND

§ 33.025 PENSIONS AND RETIREMENT

(A) *Establishment and purpose.*

(1) The "City of Hollywood Employees' Retirement Fund" (the "Fund"), comprising a retirement plan for general employees of the City, originally effective October 1, 1958, is hereby amended. The Fund consists of a defined benefit plan and a deferred retirement option plan, both of which are intended to qualify under section 401(a) of the Internal Revenue Code. The plan is a governmental plan under section 414(d) of the Internal Revenue Code. The plan is maintained for the exclusive benefit of eligible city employees and their beneficiaries. The benefits under the plan shall be in addition to amounts received as federal social security benefits, except where social security benefits are specifically applied as offsets in the case of disability benefits hereunder; the benefits under this plan shall also be in addition to benefits received by any member from any other private or public retirement system. Except as otherwise specifically provided, the amended plan shall be effective October 1, 2013. Notwithstanding the foregoing, the following effective dates shall apply:

(a) Subsection (Y) is amended effective January 1, 2009 to provide for direct rollovers by non-spouse beneficiaries.

(b) The definition of 415 compensation in subsection (D) is modified to include differential pay effective for "limitation years" beginning after December 31, 2008.

(c) Section (D)(5) is amended, effective for employees who die after December 31, 2006 while engaged in qualified military service, to provide that they shall be treated as having returned to employment immediately prior to death for certain plan purposes.

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Section 3: That subsection 33.025(D) of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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RETIREMENT

EMPLOYEES' RETIREMENT FUND

§ 33.025 PENSIONS AND RETIREMENT

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(D) *Credited service.* Each member shall receive credit for service rendered as an employee as follows:

(1) Any employee in the service of the city on September 30, 1958, or on sick leave or on an approved leave of absence on such date, provided such leave shall not have extended for more than six months after such date, shall be entitled to credit for service rendered as an employee of the city prior to October 1, 1958, for the purpose of the Fund.

(2) Each person becoming a member of the Fund after September 30, 1958, shall be entitled to credited service for all service rendered the city on or after October 1, 1958, for which he or she shall have received compensation; provided, however, that no credited service shall be earned after a member has entered the DROP plan as herein described.

(3) In computing credited service, 12 months of service shall constitute a year of service and 15 days or more of service during any month shall constitute a month of service.

(4) A member may receive additional credited service for up to six

months in the last year of city employment by paying into the Fund the member contributions that normally would have been paid to the Fund had the employee worked the necessary time to complete the year. Additional credited service purchased in accordance with this division may not be used to obtain the minimum service required for vesting or participation in the DROP plan.

(5) An employee shall receive credited service for all purposes, including vesting, for the years or fractional parts of years that he or she performs "Qualified Military Service," including voluntary or involuntary service, in the armed forces of the United States as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L. 103-353), after separation from employment with the city, to perform training or service, provided that:

(a) The employee must return to his or her employment with the city within one (1) year following the date of military discharge or his or her release from active service.

(b) The employee is entitled to reemployment under the provisions of USERRA.

(c) The employee pays to the plan the amount he or she would have contributed to the plan as pick-up contributions if his or her employment would have continued during the period he or she was absent due to Qualified Military Service. Such payment must be made by the earlier of a period equal to three (3) times the period of absence or five (5) years after reemployment.

(d) The maximum credit for military service pursuant to this paragraph shall be five (5) years.

(e) This division (5) is intended to satisfy the minimum requirements of USERRA, as may be amended from time to time. To the extent that this division does not meet the minimum requirements of USERRA, the provisions of USERRA shall govern.

If an employee dies on or after January 1, 2007 while performing Qualified Military Service as defined by USERRA, the employee's beneficiaries shall be entitled to any benefits to which the employee would have been entitled had he or she resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments, as defined under section 3401(h)(2) of the Internal Revenue Code, from the city shall be treated as employed by the city, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

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~~(5) A member shall be eligible to receive up to five years of credited service under the plan for service in the uniformed services of the United States as provided in the Uniformed Services Employment and Reemployment Rights Act of 1994 (28 U.S.C. §§ 4301 et seq.), as amended, provided that the member:~~

~~(a) Was employed by the city when he or she entered the uniformed services;~~

~~(b) Is reemployed by the city within the time specified in the Act;~~

~~(c) Leaves his or her contributions in the plan during the period of military service; and~~

~~(d) Deposits into the Fund within a period that does not exceed the period of military service the member contributions that would have been required to have been made by members during the period of such service based on the members' city compensation prior to entering military service, for each month of credited service, together with interest equal to the overall rate of return on Fund investments from the date of reemployment to the date of deposit.~~

~~This division (5) is intended to comply with all applicable provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (28 U.S.C. §§ 4301 et seq.), as amended, and in the event of any conflict or inconsistency with the Act, the provisions of the Act shall be controlling.~~

Section 4: That Subsection 33.025(H) of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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RETIREMENT

EMPLOYEES' RETIREMENT FUND

§ 33.025 PENSIONS AND RETIREMENT

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(H) *Deferred retirement option plan.*

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(8) DROP payments shall earn interest at a rate set by the Board of Trustees, through the date of termination of the member's participation in the DROP. Notwithstanding the preceding sentence, effective July 1, 2006 for members included in the AFSCME General bargaining unit, May 1, 2007 for members included in the AFSCME Professional and Supervisory units, and July 1, 2007 for members not included in any bargaining unit, DROP payments shall earn interest at the same rate as the net market rate of rate-of-investment return on plan assets. For purposes of this subsection (H), **NET MARKET RATE OF RETURN** means the rate of return on a market value basis net of investment related expenses for each year ending September 30; however, in no event shall DROP payments earn interest at a rate of less than zero percent. Upon termination of a member's participation in the DROP and separation from city employment, the DROP account balance credited to the member shall be distributed to the member under one or a combination of the following options selected by the member in accordance with procedures established by the Board:

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Section 5: That Subsection 33.025(Y) of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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RETIREMENT

EMPLOYEES' RETIREMENT FUND

§ 33.025 PENSIONS AND RETIREMENT

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(Y) *Direct transfers of eligible rollover distributions.*

(1) *Rollover distributions.*

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(b) *Definitions.*

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: 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 ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income. Any portion of any distribution which would be includible in gross income will be an eligible rollover distribution if the distribution is made to an individual retirement account described in section 408(a) of the Internal Revenue Code, to an individual retirement annuity described in section 408(b) of the Internal Revenue Code or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is not so includible.

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 (1) a traditional individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code (a traditional IRA) or a Roth individual retirement account or annuity described in section 408A of the Internal Revenue Code (a Roth IRA); or (2) a qualified defined contribution, defined benefit, or annuity plan described in section 401(a) or 403(a) of the Internal Revenue Code or to an annuity contract described in section 403(b) of the Internal Revenue Code, if such plan or contract provides for separate accounting for amounts so transferred (including interest thereon), 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.

ELIGIBLE RETIREMENT PLAN. An eligible retirement plan is an individual retirement account described in section 408(a) of the Internal Revenue Code, an individual retirement annuity described in section 408(b) of the Internal Revenue Code, an annuity plan described in section 403(a) of the Internal Revenue Code, an eligible deferred compensation plan described in section 457(b) of the Internal Revenue Code which is maintained by an eligible employer described in section 457(e)(1)(A) of the Internal Revenue Code and which agrees to separately account for amounts transferred into such plan from this plan, an annuity contract described in section 403(b) of the Internal Revenue Code, or a qualified trust described in section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.

DISTRIBUTEES. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse. For distributions occurring in plan years beginning

after December 31, 2009 (or in any earlier plan year beginning after December 31, 2006), a distributee also includes the participant's non-spouse designated beneficiary. In the case of a non-spouse beneficiary, the direct rollover may be made only to a traditional IRA or Roth IRA that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of section 402(c)(11) of the Internal Revenue Code. Also, in this case, the determination of any required minimum distribution under section 401(a)(9) of the Internal Revenue Code that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

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Section 6: That Subsection 33.025(Z) of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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RETIREMENT

EMPLOYEES' RETIREMENT FUND

§ 33.025 PENSIONS AND RETIREMENT

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~~(Z) *Maximum pension limitation.*—Notwithstanding any other provision of this plan, the total annual benefit paid to a member may not exceed the maximum adjusted benefit defined in section 415(b) of the Internal Revenue Code.~~

(1) *Basic limitation.* Notwithstanding any other provisions of this plan to the contrary, the member contributions paid to, and retirement benefits paid from, the plan shall be limited to such extent as may be necessary to conform to the requirements of section 415 of the Internal Revenue Code for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code (\$160,000), subject to the applicable adjustments in section 415(b) and subject to any additional limits that may be specified in this plan. For purposes of this subsection (Z), "limitation year" shall be the calendar year.

For purposes of section 415(b) of the Internal Revenue Code, the term "annual benefit" means a benefit payable annually in the form of a straight life annuity without regard to the benefit attributable to after-tax employee contributions (except pursuant to section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in section 415(b)(2)(A) of the Internal Revenue Code), and with the benefit attributable determined in accordance with Treasury Regulations located in 26 C.F.R. 1.415(b)-1.

(2) Adjustments to basic limitation for form of benefit. If the form of benefit is other than the annual benefit defined in division (1), the benefit shall be adjusted so that it is the equivalent of the annual benefit using factors prescribed in Treasury Regulations. If the form of benefit, without regard to any automatic benefit increase feature, is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the section 415(b) limit applicable at the annuity starting date or by adjusting the form of benefit to an actuarially equivalent amount, determined using the assumptions specified in 26 CFR 1.415(b)-1, that takes into account the additional benefits under the form of benefit as follows:

(a) Benefit forms not subject to section 417(e)(3) of the Internal Revenue Code: The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subdivision (2)(a) if the form of a member's benefit is either a non-decreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the employee (or in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or an annuity that decreases during the life of the member merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of social security supplements or qualified disability payments (as defined in section 401(a)(11) of the Internal Revenue Code. For a benefit paid in a form described in this subdivision (2)(a), the actuarially equivalent straight life annuity is equal to the greater of:

1. The annual amount of 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

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5% interest rate assumption and the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code); or

(b) Benefit forms subject to section 417(e)(3) of the Internal Revenue Code: If a form of member's benefit is other than a benefit form described in subsection (2)(a), the actuarially equivalent straight life annuity benefit is the greatest of:

1. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

2. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable computed using a 5.5% interest rate assumption for the applicable statutory interest rate assumption and (i) for years prior to January 1, 2009 the applicable mortality tables for the distribution under 26 CFR 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) and (ii) for years after December 31, 2008 the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code); or

3. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable computed using the applicable interest rate for the distribution under 26 CFR 1.417(e)-1(d)(3), the 30-year Treasury rate; prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period, and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under 26 CFR 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) and (ii) for years after December 31, 2008, the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(c) The actuary may adjust the section 415(b) limit at that annuity starting date in accordance with subdivisions (a) and (b) above.

(3) Benefits not taken into account. For purposes of this subsection (Z), the following benefits shall not be taken into account in applying these limits:

(a) Any ancillary benefit which is not directly related to retirement income benefits;

(b) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form.

(c) Any other benefit not required under section 415(b)(2) of the Internal Revenue Code and Regulations thereunder to be taken into account for purposes of the limitation of section 415(b)(1) of the Internal Revenue Code;

(4) COLA effect. Effective on and after January 1, 2003, for purposes of applying the limits under section 415(b) of the Internal Revenue Code (the "Limit"), the following will apply:

(a) A member's applicable limit will be applied to the member's annual benefit in the member's first limitation year of benefit payments without regard to any automatic cost of living adjustments;

(b) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit, including any adjustment to the section 415(b)(1)(A) dollar limit under section 415(d), and the regulations thereunder; but

(c) In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Internal Revenue Code and the regulations thereunder.

Unless otherwise specified in the plan, for purposes of applying the limits under section 415(b) of the Internal Revenue Code, a member's applicable limit will be applied taking into consideration cost of living increases as required by section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(5) Other adjustments in limitations.

(a) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this subsection (Z) shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to section 415(d) of the Internal Revenue Code) beginning at age sixty-two (62).

(b) In the event the member's benefit is based on at least fifteen (15) years of credited service as a full-time police officer or firefighter, the adjustments provided for in (5)(a) above shall not apply.

(c) The reductions provided for in (5)(a) above shall not be applicable to disability benefits or pre-retirement death benefits.

(d) In the event the member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limit set forth in this subsection (Z), such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall

be made in accordance with regulations promulgated by the Secretary of the Treasury or his or her delegate.

(6) Less than ten (10) years of service. The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of credited service shall be the amount determined under division (a) 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 (10). The reduction provided by this division (6) cannot reduce the maximum benefit below 10% of the limit determined without regard to this division. The reduction provided for in this division shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(7) Participation in other defined benefit plans. The limit of this subsection (Z) with respect to any member who at any time has been a member in any other defined benefit plan, as defined in section 414(j) of the Internal Revenue Code, maintained by the city shall apply as if the total benefits payable under all city defined benefit plans in which the member has been a member were payable from one plan.

(8) Ten thousand dollar (\$10,000) limit. Notwithstanding anything in this subsection (Z) to the contrary, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the city contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and 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, the limit under this subsection shall be a reduced limit equal to ten thousand dollars (\$10,000) 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.

(9) Reduction of benefits. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the Board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures to defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the Board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the Board and the plan administrator of all other plans covering such member.

(10) Service credit purchase limits.

(a) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of this subsection (Z) will be treated as met only if:

1. The requirements of section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of section 415(b), or

2. The requirements of section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of section 415(c).

3. For purposes of applying subdivision (a)1, the plan will not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subdivision (a)3, and for purposes of applying subdivision (a)2, the plan will not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this subdivision (a)3.

(b) For purposes of this division (10), the term "permissive service credit" means service credit:

1. Recognized by the plan for purposes of calculating a member's benefit under the plan.

2. Which such member has not received under the plan,
and

3. Which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the plan, include service credit for periods for which there is no performance of service, and, notwithstanding subdivision (2)b, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the plan.

(c) For purposes of applying the limits in this division (10) only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulations located in 26 CFR 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations Section 1.415(c)-2, or successor regulation, is specified by the plan, compensation will be defined as wages within the meaning of section 3401(a) of the Internal Revenue Code and all other payments of compensation to a member by the city

for which the city is required to furnish the member a written statement under sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2) of the Internal Revenue Code.

1. However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation will also include any 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.

2. For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of 2½ months after the member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

A. The payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member had the member continued in employment with the City; or

B. The payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued.

3. Back pay, within the meaning of Treasury Regulations Section 1.415(c) - 2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(d) Notwithstanding any other provision of law to the contrary, the Board may modify a request by a member to make a contribution to the plan if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code by using the following methods:

1. If the law requires a lump sum payment for the purchase of service credit, the Board may establish a periodic payment deduction plan for the member to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code.

2. If payment pursuant to paragraph (d)1 will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, the Board may either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution

(e) If the annual additions for any member for a plan year exceed the limitation under section 415(c) of the Internal Revenue Code, the excess annual addition will be corrected as permitted under the Member Plans Compliance Resolution System (or similar IRS correction program).

(f) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this division (10) shall not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code.

(11) Additional limitation on pension benefits. Notwithstanding anything herein to the contrary:

(a) The normal retirement benefit or pension payable to a retiree who becomes a member of the plan and who has not previously participated in such plan, on or after January 1, 1980, shall not exceed one hundred percent (100%) of average final compensation. However, nothing contained in this subdivision shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

(b) No member shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different public employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

Section 7: That Section 33.025(FF) of the Code of Ordinances is hereby created to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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RETIREMENT
EMPLOYEES' RETIREMENT FUND

§ 33.025 PENSIONS AND RETIREMENT

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(FF) Distribution of benefits. As of March 20, 2019, this plan shall pay all benefits in accordance with a good faith interpretation of the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations promulgated thereunder, as applicable to a governmental plan as defined in section 414(d) of the Internal Revenue Code. 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 participant 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), or the calendar year in which the participant retires; and

(b) The benefit shall be paid over the life of the participant or over the lifetimes of the participant and designated beneficiary and shall be paid over the period extending not beyond the life expectancy of the participant and designated beneficiary.

Where benefit payments have commenced in accordance with the preceding paragraphs and the participant dies before his or her 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 shall 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 shall 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, if later.

(b) If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(c) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(d) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before

distributions to the surviving spouse are required to begin, this division (2), other than subdivision (2)(a), shall apply as if the surviving spouse were the participant. For purposes of this division (2), unless subdivision (2)(d) applies, distributions are considered to begin on the participant's required beginning date. If subdivision (2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subdivision (2)(d). If distributions under an annuity meeting the requirements of this subsection (FF) commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subdivision (2)(a)), the date distributions are considered to begin is the date distributions actually commence.

Section 8: That Section 33.025(GG) of the Code of Ordinances is hereby created to read as follows:

TITLE III: ADMINISTRATION

* * *

CHAPTER 33: CITY EMPLOYEES

* * *

RETIREMENT

EMPLOYEES' RETIREMENT FUND

§ 33.025 PENSIONS AND RETIREMENT

* * *

(GG) Prohibited transaction. The Board may not engage in any transaction prohibited under section 503(b) of the Internal Revenue Code.

Section 9: That Subsection 33.025(HH) of the Code of Ordinances is hereby created to read as follows:

TITLE III: ADMINISTRATION

* * *

CHAPTER 33: CITY EMPLOYEES

* * *

RETIREMENT

EMPLOYEES' RETIREMENT FUND

§ 33.025 PENSIONS AND RETIREMENT

* * *

(HH) Qualification of plan. It is intended that this plan shall constitute a qualified public pension plan under the applicable provisions of the Internal Revenue Code for a qualified plan under section 401(a) of the Internal Revenue Code and a governmental plan under section 414(d) of the Internal Revenue Code, as now in effect and as may be amended from time to time. Any modification or amendment of this plan may be made retroactively, if necessary or appropriate to maintain qualification.

Section 10: That Subsection 33.025(II) of the Code of Ordinances is hereby created to read as follows:

TITLE III: ADMINISTRATION

* * *

CHAPTER 33: CITY EMPLOYEES

* * *

RETIREMENT

EMPLOYEES' RETIREMENT FUND

§ 33.025 PENSIONS AND RETIREMENT

* * *

(II) Reemployment after retirement. To the extent permitted under the Internal Revenue Code with regard to in-service distributions, the benefits otherwise payable to a retiree who has retired under the normal retirement provisions of this plan and attained age 62 shall not be discontinued if such retiree is subsequently reemployed by the city.

Section 11: That it is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Hollywood, Florida, and the provisions of this Ordinance may be renumbered to accomplish such intention.

Section 12: That if any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid, such invalidity shall not affect the validity of any remaining portions of this Ordinance.

AN ORDINANCE AMENDING SECTION 33.025 OF THE CODE OF ORDINANCES, "EMPLOYEES' RETIREMENT FUND", PROVIDING EFFECTIVE DATES FOR CERTAIN PROVISIONS; PROVIDING FOR REQUIRED UPDATES RELATED TO CREDITED SERVICE; PROVIDING FOR A DEFINITION OF NET MARKET RATE OF RETURN FOR DROP PARTICIPANTS; PROVIDING FOR REQUIRED UPDATES RELATED TO DIRECT ROLLOVERS; PROVIDING FOR MAXIMUM PENSION LIMITATIONS; PROVIDING FOR REQUIRED MINIMUM DISTRIBUTIONS; PROVIDING FOR THE PRECLUSION OF PROHIBITED TRANSACTIONS; PROVIDING FOR AN EXPRESSION OF INTENT THAT THE PLAN REMAIN QUALIFIED UNDER THE INTERNAL REVENUE CODE; PROVIDING FOR REEMPLOYMENT AFTER RETIREMENT.

Section 13: That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict are repealed to the extent of such conflict.

Section 14: That this Ordinance shall be in full force and effect immediately upon its approval by a "majority plus one" vote of the City Commission and 50% plus one of the voting members of the Employees' Retirement Fund.

ADVERTISED on January 24, 2019.

PASSED on first reading this 16 day of January, 2019.

PASSED AND ADOPTED on second reading this 20 day of MARCH, 2019.



JOSH LEVY, MAYOR

ATTEST:



PATRICIA A. CERNY, MMC, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY for the use and reliance of the City of Hollywood, Florida only:



DOUGLAS R. GONZALES, CITY ATTORNEY *dt*

