

ORDINANCE NO. 947

AN ORDINANCE OF THE CITY OF OKEECHOBEE AMENDING THE CITY OF OKEECHOBEE AND OKEECHOBEE UTILITY AUTHORITY EMPLOYEES' RETIREMENT SYSTEM, ADOPTED PURSUANT TO ORDINANCE NO. 828; AMENDING SECTION 1, DEFINITIONS, BY AMENDING THE DEFINITION OF "CREDITED SERVICE"; AMENDING SECTION 10, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 15, DISTRIBUTION OF BENEFITS; AMENDING SECTION 24, DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS; AMENDING SECTION 28, DEFERRED RETIREMENT OPTION PLAN; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE:

NOW, THEREFORE, BE IT ORDAINED before the City Council for the City of Okeechobee, Florida; presented at a duly advertised public meeting; and passed by majority vote of the City Council; and properly executed by the Mayor or designee, as Chief Presiding Officer for the City:

SECTION 1: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 1, Definitions, by amending the definition of "Credited Service", to read as follows:

Credited Service means the total number of years and fractional parts of years of service as a General Employee with member contributions when required, omitting intervening years or fractional parts of years when such Member was not employed by the City as a General Employee. A Member may voluntarily leave his Accumulated Contributions in the Fund for a period of five (5) years after leaving the employ of the City pending the possibility of being reemployed as a General Employee, without losing credit for the time that he was a Member of the System. If a non-vested Member leaves the employ of the City and is not reemployed within five (5) years, his Accumulated Contributions, if one-thousand dollars (\$1,000.00) or less, will be returned. If a Member who is not vested is not reemployed within five (5) years, his Accumulated Contributions, if more than one-thousand dollars (\$1,000.00), will be returned only upon the written request of the Member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the Board. If a vested Member leaves the employ of the City, his Accumulated Contributions will be returned upon his written request. Upon return of his Accumulated Contributions, all of his rights and benefits under the System are forfeited and terminated.

The years or fractional parts of a year that a Member serves in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, after separation from employment as a General Employee with the City to perform training or service, and reemployment on or after December 12, 1994, shall be added to his years of Credited Service for all purposes, including vesting, provided that:

- A. The Member must return to his employment as a General Employee within one (1) year from the earlier of the date of his military discharge or his release from service.
- B. The Member deposits into the Fund the same sum that the Member would have contributed if he had remained a General Employee during his absence. The Member must deposit all missed contributions within a period equal to three (3) times the period of military service, but not more than five (5) years from the date of reemployment or he will forfeit the right to receive Credited Service for his military service pursuant to this Section.
- C. The maximum credit for military service pursuant to this Section shall be five (5) years.

- D. The Member must have been discharged or released from service under honorable conditions.
- E. This Section is intended to satisfy the minimum requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L. 103-353). To the extent that this Section does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

SECTION 2: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 10, Optional Forms of Benefits, as follows:

SECTION 10. OPTIONAL FORMS OF BENEFITS.

- 1. In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a Member, upon written request to the Board may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:
 - A. A retirement income of a modified monthly amount, payable to the Member during the lifetime of the Member and following the death of the Member, 100%, 75%, 66-2/3% or 50% of such monthly amount payable to a joint pensioner for his lifetime. Except where the Retiree's joint pensioner is his Spouse, The present value of payments to the Retiree shall not be less than fifty percent (50%) of the total present value of payments to the Retiree and his joint pensioner; the payments to the joint pensioner as a percentage of the payments to the Retiree shall not exceed the applicable percentage provided for in the applicable table in the Treasury regulations.

SECTION 3: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 15, Distribution of Benefits, as follows:

SECTION 15. MINIMUM DISTRIBUTION OF BENEFITS.

~~Notwithstanding any other provision of this System to the contrary, a form of retirement income payable from this System after the Effective Date of this ordinance, 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 70-1/2, or the calendar year in which Member retires;
 - B. The distribution shall commence not later than the calendar year defined above; and a), shall be paid over the life of the Member or over the lifetimes of the Member and Spouse, issue or dependent; or b), 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 System has been distributed, the remaining portion of such interest in the System 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 System has commenced, Member's entire interest in the System 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 System 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
 - C. Such distribution begins within one year of the Member's death unless the Member's Spouse shall receive the remaining interest in which~~

case the distribution need not begin before the date on which the Member would have attained age 70-1/2 and if the Spouse dies before the distribution to the Spouse begins, this Section shall be applied as if the Spouse were the Member.

1. General Rules.

- A. Effective Date. The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- B. Precedence. The requirements of this Section will take precedence over any inconsistent provisions of the Plan.
- C. Requirements of Treasury Regulations Incorporated. All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code.
- D. TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section other than this subsection 1.D., distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to Section 242(b)(2) of TEFRA.

2. Time and Manner of Distribution.

- A. 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 which shall not be 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 (70 1/2) or the calendar year in which the Member retires unless otherwise provided for in the Plan or required by law.
- B. Death of Member Before Distributions Begin. 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:
 - (1) 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 age 70 1/2, if later.
 - (2) If the Member's surviving spouse is not the Member'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.
 - (3) 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.
 - (4) If the Member's surviving spouse is the Member's sole designated beneficiary and the surviving spouse dies after the Member but before distributions to the surviving spouse begin, this subsection 2.B., other than subsection 2.B.(1), will apply as if the surviving spouse were the Member. For purposes of this subsection 2.B. and subsection 5., distributions are considered to begin on the Member's required beginning date or, if subsection 2.B.(4) applies, the date of distributions are required to begin to the surviving spouse under subsection 2.B.(1). If annuity payments irrevocably commence to the Member before the Member's required beginning date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection 2.B.(1)), the date distributions are considered to begin is the date distributions actually commence.
- C. 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 of subsections 3, 4 and 5 of this Section. 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 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 Treasury regulations that apply to individual accounts.

3. Determination of Amount to be Distributed Each Year.

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:

- (1) The annuity distributions will be paid in periodic payments made at intervals not longer than one year.
- (2) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsection 4 or 5.
- (3) 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.
- (4) Payments will either be nonincreasing or increase only as follows:
 - (a) By an annual percentage increase that does not exceed the cumulative 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 or by a fixed annual increase of five percent or less.
 - (b) 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 described in subsection 4 dies or is no longer the Member's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p).
 - (c) To provide cash refunds of Accumulated Contributions upon the Member's death.
 - (d) 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 subsection 2.B.) 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.

4. Requirements for Annuity Distributions That Commence During a 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 nonspouse 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)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Member and a nonspouse beneficiary and a period certain annuity, the requirements 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 subsection 4.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.

5. Requirements for Minimum Distributions Where Member Dies Before Date Distributions Begin.

- A. 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 subsection 2.B.(1) or 2.B.(2), over the life of the designated beneficiary or over a period certain not exceeding:
- (1) 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.
 - (2) 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 the contains the annuity starting date.
- B. 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. If the Member dies before the date distribution of his interest begins, the Member's surviving spouse is the Member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection 5 will apply as if the surviving spouse were the Member, except that the time by which distributions must begin will be determined without regard to subsection 2.B.(1).

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)-1, Q&A-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 subsection 2.B.
- 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. Required Beginning Date. The date specified in subsection 2.A.

SECTION 4: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 24, Direct Transfers of Eligible Rollover Distributions, to read as follows:

SECTION 24. DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS: ELIMINATION OF MANDATORY DISTRIBUTIONS.

* * *

3. Elimination of Mandatory Distributions. Notwithstanding any other provision herein to the contrary, in the event this Plan provides for a mandatory (involuntary) cash distribution from the Plan not otherwise required by law, for an amount in excess of one-thousand dollars (\$1,000.00), such distribution shall be made from the Plan only upon written request of the Member and completion by the Member of a written election on forms designated by the Board, to either receive a cash lump sum or to rollover the lump sum amount.

SECTION 5: That the City of Okeechobee and Okeechobee Utility Authority Employees' Retirement System, adopted pursuant to Ordinance No. 828, is hereby amended by amending Section 28, Deferred Retirement Option Plan, to read as follows:

SECTION 28. DEFERRED RETIREMENT OPTION PLAN.

* * *

4. Distribution of DROP Accounts on Termination of Employment.

A. Eligibility for Benefits.

A Member shall receive the balance in his DROP Account in accordance with the provisions of this subsection 4. upon his termination of employment as a General Employee. Except as provided in subsection 4.D-F., no amounts shall be paid to a Member from the DROP prior to his termination of employment as a General Employee.

B. Form of Distribution.

- (1) Unless the Member elects otherwise, distribution of his DROP Account shall be made in a lump sum, subject to the direct rollover provisions set forth in subsection 4.G-F. A Member may, however, elect, in such time and manner as the Board shall prescribe, that his DROP distribution be used to purchase a nonforfeitable fixed annuity payable in such form as the Member may elect. Elections under this paragraph shall be in writing and shall be made in such time or manner as the Board shall determine. If the annuity form selected is not a qualified joint and fifty percent (50%) survivor annuity with the Member's Spouse as the Beneficiary, the annuity payable to the Member and thereafter to his Beneficiary shall be subject to the

~~incidental death benefit rule as described in Section 401(a)(9)(G) of the Code and its applicable regulations.~~

- (2) If a Member dies before his benefit is paid, his DROP Account shall be paid to his Beneficiary in such optional form as his Beneficiary may select. If no Beneficiary designation is made, the DROP Account shall be distributed to the Member's estate.

C. Date of Payment of Distribution.

- (1) Except as otherwise provided in this subsection 4., distribution of a Member's DROP Account shall be made as soon as administratively practicable following the Member's termination of employment. Distribution of the amount in a Member's DROP account will not be made unless the Member completes a written request for distribution and a written election, on forms designated by the Board, to either receive a cash lump sum or a rollover of the lump sum amount.

- (2) ~~In lieu of a distribution as described in paragraph (1) above, a Member may, in accordance with such procedures as the Board shall prescribe, elect to have the distribution of his DROP Account made as of the first day of any month coincident with or following his termination of employment as a General Employee; provided, however, payments shall be made before the distribution date elected by the Member to the extent necessary to comply with the provisions of subsections 4.D. and 4.F.~~

D. Age Seventy and One-Half (70-1/2) Required Distribution:

~~In no event shall the provisions of subsection 4. operate so as to allow the distribution of a Member's DROP Account to be later than the April 1 following the later of the calendar year in which he terminates his employment as a General Employee or he attains age seventy and one-half (70-1/2). In the event a Member is required to receive payment while in service under the provisions of this subsection D., he shall receive one lump sum payment on or before his required beginning date equal to his entire DROP Account balance and annual lump sum payments thereafter of amounts credited to his DROP Account during each calendar year. Upon the Member's subsequent termination of employment, payment of his DROP Account shall be made in accordance with the provisions of subsection 4.B.~~

D.E. Proof of Death and Right of Beneficiary or Other Person.

The Board may require and rely upon such proof of death and such evidence of the right of any Beneficiary or other person to receive the value of a deceased Member's DROP Account as the Board may deem proper and its determination of the right of that Beneficiary or other person to receive payment shall be conclusive.

E.F. Distribution Limitation.

Notwithstanding any other provision of this subsection 4., all distributions from the DROP shall conform to the "Minimum Distribution Of Benefits" provisions as provided for herein, regulations issued under Section 401(a)(9) of the Code, including the incidental death benefit provisions of Section 401(a)(9)(G) of the Code. Further, such regulations shall override any DROP provision that is inconsistent with Section 401(a)(9) of the Code.

F.G. Direct Rollover of Certain Distributions.

This subsection applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the System in Section 24.

* * *

SECTION 6: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.


SECTION 7: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section,

subsection, sentences, clauses, or phrases under application shall not be affected thereby.

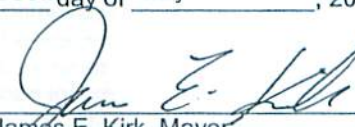
SECTION 8: That this Ordinance shall become effective upon adoption. Introduced on first reading and set for public hearing this 2nd day of May, 2006.


James E. Kirk, Mayor

ATTEST:


Lane Gamiotea, CMC, City Clerk

Passed on second and final reading this 16th day of May, 2006.


James E. Kirk, Mayor

ATTEST:


Lane Gamiotea, CMC, City Clerk

APPROVED FOR LEGAL SUFFICIENCY:


John R. Cook, City Attorney

CLERK'S CERTIFICATE

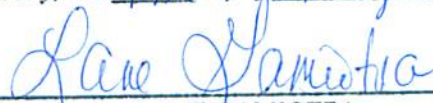
STATE OF FLORIDA)
COUNTY OF OKEECHOBEE)ss:
CITY OF OKEECHOBEE

I, LANE GAMIOTE, HEREBY CERTIFY THAT I am the duly qualified Clerk of the City of Okeechobee, Florida; that the above and foregoing is a true and correct copy of a document the original of which is on file in the Office of the City Clerk of the City of Okeechobee, Florida

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said city, this 16th day of May, A.D. 2006

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Seal


LANE GAMIOTE
City Clerk