

ORDINANCE NO. 2011-13

(GENERAL EMPLOYEES PENSION FUND)

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA AMENDING ORDINANCE NO. 2010-33 ADOPTED DECEMBER 16, 2010; PROVIDING FOR A REVISED AND RESTATED GENERAL EMPLOYEES MUNICIPAL PENSION TRUST FUND; PROVIDING FOR SEVERABILITY OF PROVISIONS; PROVIDING FOR PUBLICATION; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Ordinance No. 2010-33 adopted by the Village Council on December 16, 2010 is hereby amended and restated to read in its entirety as follows:

Section 1. Legislative Intent - Statutory Authority.

The Village Council, pursuant to the statutory authority under Chapter 112, Florida Statutes, and Article VIII, '2, Constitution of the State of Florida, has previously declared its intent and purpose in adopting this Article to establish a pension plan for general Employees, carrying with it the date of December 27, 1990, as the date the General Employee Pension Trust Fund was established. The Village Council further finds that the Village of Palm Springs originally established a Retirement Plan, effective November 1, 1970 and that said Plan was revised and restated October 1, 1986, March 12, 1992, October 1, 1998, June 8, 2000, September 27, 2001, and February 28, 2002, September 12, 2002, February 13, 2003, October 28, 2004, October 27, 2005, September 28, 2006, April 8, 2010, and December 16, 2010. The Plan was amended and restated to include elected officers of the Village of Palm Springs effective October 1, 2002.

The Plan was closed to new members effective June 30, 2010. Prior to the determination to move to the Florida Retirement System, the membership held a referendum in favor of such a move. The individual members were provided information regarding their benefits and the individual members made a determination whether to stay

in the Village Pension Plan or to move to the Florida Retirement System. All future Employees shall be compulsory member of the Florida Retirement System.

Section 2. Purpose.

The Village Council declares and finds that municipal Employees and elected Village Officers perform services and functions within the Municipality that are vital to health, well-being and general welfare of the Municipality and its residents. Therefore, the Village Council finds and declares this to be a proper and legitimate stated purpose to provide a uniform system of pension benefits for general Employees and elected Village Officers, as hereinafter defined.

Section 3. Title.

This Ordinance shall be known and be cited as the "General Employees' Pension Plan."

Section 4. Effective Date.

The provisions of this Ordinance shall become effective in accordance with the laws of the State of Florida on the effective date of this ordinance.

Section 5. Establishment and Continuation of Trust Fund.

As of July 1, 2010, the Plan shall be closed to new members. Employees hired on or after June 30, 2010 shall become members of the Florida Retirement System. The Village Council, having declared itself on purpose and intent, does hereby continue the establishment and creation within the Village, the General Employees' Pension Trust Fund, to be funded in accordance with the Village's Defined Benefit Employee Pension Plan adopted by the Village Council on November 19, 1970, at the contribution level established by the most recent actuarial valuation for those members hired before June 30, 2010 who

elect to remain in this Plan. This System is intended to be a tax qualified plan under Code Section 401(a) and meet the requirements of a governmental plan as defined in Code Section 414(d).

Section 6. Plan Administrator.

The Plan Administrator of the Village of Palm Springs General Employees' Pension Plan shall be the Board of Trustees of this Pension Plan.

Section 7. Definitions.

As used herein, unless otherwise defined or required by the context, the following words or phrases shall have the meaning indicated.

- a. Board - means the Board of Trustees of the Village of Palm Springs General Employees' Pension Plan, which shall administer and manage the Pension Fund.
- b. Municipality - means the Village of Palm Springs, Florida.
- c. Employee - means a person employed before June 30, 2010 by the Municipality in a general employment capacity on a full time basis, including any initial probationary employment period. The term "Employee" shall not include a person employed as a police officer or a person whose customary employment is for not more than 20 hours a week, or a person whose customary employment is for not more than 5 months in any plan year.
- d. Child or children - means the Participant's natural or legally adopted child or children.
- e. Member or Participant - means an Employee or elected officer who has been admitted as a member of the Pension Fund before June 30, 2010.

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f. Beneficiary - means the person or persons entitled to receive benefits hereunder at the death of a Participant, who has or have been designated in writing as a Beneficiary or beneficiaries by that Participant.

g. Pension Fund - means the Village of Palm Springs General Employees' Pension Fund as established under this Ordinance.

h. Effective Date - means the date on which this Ordinance becomes effective.

i. Trustee - means a duly elected or appointed member of the Board of Trustees of the Pension Fund.

j. Credited Service - means the total number of years and fractional parts of years of service as an Employee or Elected Officer, omitting intervening years or fractional parts of years when such Employee is not employed by the Municipality or such Elected Officer is not serving as an Elected Officer of the Municipality.

1. Credit for military service - Creditable service of any member shall also include military service in the armed forces of the United States if:

(A) The member is in the active employ of the Village immediately prior to such service and leaves a position, other than a temporary position, for the purpose of induction into the Armed Forces of the United States or entry upon duty in the Armed Forces of the United States.

(B) The member is entitled to re-employment under the provisions of the Federal Veterans' Re-employment Rights Act.

(C) The member applies for re-employment with the Village within the time set forth in the Federal Veterans' Re-employment Rights Act and is re-employed by the Village;

(D) The member makes the required Employee or Elected Officer contributions, if any, for each month of service credit during such period of military service, based upon the Employee's or Elected Officer's rate of monthly compensation as of the date that the Employee or Elected Officer left his or her position; and

(E) The period of service claimed pursuant to this subsection does not exceed the periods specified by the Federal Veterans' Re-employment Rights Act which are applicable in the member's case.

2. Transfer of Service between Village Plans -

a. In the event that a Member of any other Village pension or retirement Plan changes his job status with the Village such that he is considered a Participant as defined in this Plan, he shall be subject to the following:

(1) If not already fully vested in another Village Pension or Retirement Plan, the Accumulated Contributions from the other Plan, if any, will be retained by the other Plan. The Member shall be treated the same as an "Inactive Member" of the other Plan and therefore entitled to the Plan of Benefits which were in existence in the other Plan on the date of transfer to this Plan. Credited Service up to the date of transfer to this Plan will be counted for purposes of determining eligibility for benefits and vesting, but not for purposes of benefit accrual. Credited Service in the other Plan shall be credited with the multiplier for that Plan at the time of transfer, and service in this Plan shall be credited with the multiplier for this Plan. Upon retirement, the Member shall receive pension payments from each Plan using the final average earnings at the time of retirement for both Plans, based upon the service and multiplier in each Plan, and each pension payment shall become due and payable on the respective plan's early or normal retirement date.

(2) If already fully vested in another Village Pension Plan, the member shall be entitled to all of the rights and benefits according to that Plan, and upon transferring into this Plan, shall be entitled to all rights and benefits as a new Employee, provided such transfer was before June 30, 2010. Any members who transfer within the Village to a position formerly covered by this Plan on or after June 30, 2010 shall be a new member in the Florida Retirement System.

(3) To become eligible for a pension in both plans, the member must have satisfied the service requirements for full vesting, that is, ten (10) years of total combined service with the Village. Should a member not fully vest, then the benefit payable shall be the partial benefit which was earned under each Plan, if any.

k. Earnings - means the total annual gross income reportable on the Employee's W-2 plus all tax deferred items of income; provided, however, that upon termination payment for no more than 120 hours of accrued but unused personal leave time, shall be included in this final year's earnings for the purpose of this Plan. For an elected officer, Earnings mean total gross income reportable on form W-2 plus all tax deferred items of income.

l. Spouse - means the lawful husband or wife of a Participant at the time of the Participant's retirement or death.

m. Final Average Earnings - means the Participant's average yearly earnings during the five consecutive Plan years which give the highest average out of the last ten Plan years, immediately preceding the Participant's normal retirement date or, if earlier, the Participant's early retirement date, or date of termination or date of death.

n. Elected Officer - means a Council Member or Mayor as elected in accordance with the Charter of the Village. The Elected Officer pension start date shall be the date the member is first elected as Mayor or Council Member, provided that date is on or before June 30, 2010.

o. 415 Compensation means, for purposes of the application of Code Section 415 limits, the wages or earnings as defined for purposes of income tax withholding under Code Section 3401(a), plus all other payments of compensation or earnings to an Employee by the employer for which the employer is required to furnish the Employee a written statement under Code Secs. 6041(d) and 6051(a)(3). This safe harbor definition of compensation may be modified to exclude amounts paid or reimbursed by the employer for moving expenses incurred by an Employee, but only to the extent that, at the time of the payment, it is reasonable to believe that these amounts are deductible by the Employee under section 217. Effective for limitation years beginning after July 1, 2007, this definition will include amounts paid within two and one half (2.5) months after the Employee's severance from employment or the limitation year that contains the severance from employment.

Section 8. Creation of the Board of Trustees.

The Trustee of such Fund shall consist of five (5) members, who shall be selected as follows:

a. One member shall consist of an elected Village Council Member, appointed by a majority vote of the Council, to serve at the pleasure of the Council, so long as said Member shall remain a Member of the Village Council, as an *ex-officio* duty.

b. The Finance Director of the Village, who shall serve as long as he/she shall

continue to hold such position, and upon vacancy in the position, the successor Finance Director shall succeed to the position of Member of the Board.

c. Two active Employee Participants elected by a majority of the voting active Employee pension plan Participants, to serve for a period of four (4) years, or until such member leaves the Village's full time employment or resigns from the Board, whereupon an election shall be held to fill an unexpired term. An Employee member so elected may succeed himself/herself in office.

d. A resident of the Village (not connected with the Municipal Government), elected by a majority of the other four (4) Board Members. This member shall serve for a period of four (4) years, or until such time as he/she terminates residency within the Village, at which time a successor shall be selected by the majority of the then remaining Board Members. The resident member may succeed himself/herself in office.

Section 9. Officers of Pension Board.

The five (5) Board Members shall elect a Chairperson, Vice-Chairperson and a Secretary. The Chairperson shall preside at all of the meetings of the Board, and the Secretary shall keep a complete minute book of the proceedings of the Board. The Board may retain the services of an Administrator to prepare and custody the minutes on behalf of the Secretary.

Section 10. Compensation.

All members of the Board of Trustees shall serve without compensation, but may receive reimbursement of expenses and per diem as allowed by law.

Section 11. Meetings Quorum, Vote Required.

The said Board of Trustees shall hold a meeting at least once each quarter, and

shall designate the time and place thereof. All meetings of the Board shall be open to the public, except those matters held in executive session. The Board may adopt rules and regulations as to procedure and shall keep a record of its proceedings. Three (3) members of the Board shall constitute a quorum at any meeting of the Board. Each Member attending shall be entitled to one (1) vote on each question before the Board, and the votes of at least three (3) concurring Members shall be necessary for a decision by the Board at any of its meetings. A Trustee shall have the right to recuse himself or herself from voting as the result of any conflict of interest, providing the Trustee states in writing the nature of the conflict.

The Board of Trustees may use electronic technology for a formal meeting, so long as a physical quorum is present, to allow absent members to attend a meeting.

Section 12. Powers and Duties Of Trustees.

a. Each Board of Trustees shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description. The Board of Trustees shall also have the power to engage such actuarial, accounting, legal, and other services as shall be required to transact the business of the Pension Fund. The compensation of all persons engaged by the Board of Trustees and all other expenses of the Board necessary for the operation of the Pension Fund shall be paid from the Fund at such rates and in such amounts as the Board of Trustees shall agree.

b. The duties and responsibilities of the Board of Trustees shall include, but not necessarily be limited to the following:

1. To construe the provisions of the Pension Fund and determine all questions

arising thereunder.

2. To determine all questions relating to eligibility and participation.
3. To determine and certify the amount of all retirement allowances or other benefits hereunder.
4. To establish uniform rules and procedures to be followed for administrative purposes, benefit applications and all matters required to administer the Pension Fund.
5. To distribute to Participants and beneficiaries at regular intervals, information concerning the Pension Fund.
6. To receive and process all applications for participation and benefits.
7. To authorize all payments whatsoever from the Fund, and to notify any disbursing agency, in writing, of approved benefit payments and other expenditures arising through operation of the Pension Fund.
8. To have performed actuarial studies and valuations at least every three years, and make recommendations regarding any and all changes in the provisions of the Pension Fund.
9. To perform such other duties as are specified in this Ordinance or by law.

Section 13. Indemnification of Trustees.

The Pension Fund may indemnify and protect the individual Trustees or the Pension Board against all damage claims and suits including defense thereof, when the damages or claims are sought for negligent or wrongful acts are alleged to have been committed in the scope of employment or performance of the Trustee's duties or powers. However, the Trustees shall not be indemnified for willful misconduct or gross negligence. The Pension Board is authorized to insure against loss or liability of the Trustees which may result from

these damage claims.

Section 14. Membership and Participation.

a. All Employees hired before June 30, 2010, became Participants and members in the Pension Fund as a condition of employment. Each Employee shall complete a membership form prescribed by the Board. All elected officials elected before June 30, 2010 shall be members of the Plan. All Employees hired, or Elected Officer elected, after June 29, 2010 shall become Participants and members in the Florida Retirement System in accordance with Village of Palm Springs Resolution 2010-02.

b. There shall be the following classes of members or Participants under the Pension Plan:

1. An active member is a Participant under the Plan who is currently employed by or an Elected Officer of the Municipality before June 30, 2010.

2. A terminated member is a former active member who is no longer an Employee or an Elected Officer of the Municipality, who is entitled to non-forfeitable benefits under the Plan, and who has not reached his or her early retirement date or normal retirement date in the event a member opts not to take early retirement.

3. A retired member is a member who has retired under the Plan.

c. For purposes of all benefits hereunder, membership and participation in the Fund shall be considered to have been in effect from the date of employment, even though officially accepted or approved by the Board at a later date. An individual Participant loses his or her membership status upon death or when all his or her retirement benefit credit has been canceled.

d. Beginning June 30, 2010, any retired member who is rehired by the Village as a General Employee shall, upon re-employment, become a mandatory member of the Florida Retirement System and shall accrue no additional service under this Plan.

Section 15. Vesting.

A terminated Participant's vested percentage in the Municipality's contributions in the Pension Fund on the date of termination shall be determined from the following Vesting Schedule:

VESTING SCHEDULE

<u>YEARS OF SERVICE</u>	<u>VESTED PERCENTAGE</u>
Less than 5	0%
5 but less than 6	50%
6 but less than 7	60%
7 but less than 8	70%
8 but less than 9	80%
9 but less than 10	90%
10 or more	100%

Section 16. Computation and Maintenance of Credited Service.

The Pension Plan year begins October 1 and ends September 30, in any given Calendar year. A year of Credited Service equals the following:

- a. A year of credited service and fractional parts of years of credited service for each pension plan year beginning on or after October 1, 1977; and
- b. A year of credited service for each year taken to completed twelfths, prior to

November 1, 1976 during which the Employee was employed by the Municipality. A year of credited service will be given for the twelve month period beginning on November 1, 1976 and ending on October 31, 1977, if the Employee had at least 1,000 hours of Service.

- c. A year of credited service for each Plan year served as an elected official.

Section 17. Eligibility for Benefits.

A Participant becomes eligible for Pension Plan benefits on the date he becomes a retired member or on the date of death.

Section 18. Retirement Benefits.

a. A Participant's normal retirement date shall be the first day of the month coincident with or next following, the attainment of age 62, and the completion of at least 5 years of credited service. Normal retirement under the Pension Plan is retirement from employment with the Municipality on or after the normal retirement date. Normal Retirement as an Elected Officer means a Council Member or Mayor who no longer serves as an Elected Officer and who is age 62 with at least 5 years of credited service.

b. A Participant retiring hereunder on or after his or her normal retirement date can elect to receive any one of the following retirement benefit options:

1. Option No. 1: A monthly benefit payable to the Participant for the Participant's lifetime. Upon the Participant's death, the monthly benefit ceases. The yearly amount of base retirement benefit to be paid under this subsection shall be two and one-half percent (2.50%) of the Participant's final average earnings multiplied by the Participant's credited service not to exceed twenty-five years of such service.

2. Option No. 2: A reduced monthly benefit payable to the Participant for his or her lifetime. If the Participant dies before receiving 120 monthly retirement benefits, the

designated Beneficiary will receive a monthly benefit payment in the same amount as the Participant received until the total monthly benefit paid to both the Participant and Beneficiary equals 120 monthly payments. If the Beneficiary dies before receiving the balance of the payments, such payments shall go to a contingent Beneficiary designated by the member, or if no contingent Beneficiary is designed, to the Beneficiary's estate.

3. Option No. 3: A reduced monthly benefit payable to the Participant during his or her lifetime. Upon the Participant's death, the Beneficiary will receive a lifetime monthly benefit payment in the same amount as the Participant was receiving. No further benefits are payable upon the death of the designated Beneficiary. In the event of the death of the Beneficiary prior to the death of the Participant, this monthly benefit, at the time of the Beneficiary's death, will be increased to the monthly benefit payable to the Participant had the Participant elected Option No. 1 above.

4. Option No. 4: A reduced monthly benefit payable to the Participant during his or her lifetime. Upon the Participant's death, the Beneficiary will receive a lifetime monthly benefit payment in an amount equal to fifty percent (50%) as the amount the Participant was receiving. No further benefits are payable upon the death of the designated Beneficiary. In the event of the death of the Beneficiary prior to the death of the Participant, the monthly benefit, at the time of the Beneficiary's death will be increased to the monthly benefit payable to the Participant had the Participant elected Option No. 1 above.

c. Options 2, 3, and 4 set forth above shall have the same actuarial present value as Option 1 above. Actuarial equivalencies shall be calculated using such rates of interest and mortality tables as the pension board shall from time to time adopt. In no case

shall a rate of interest be less than 5 percent a year, compounded yearly. No change in interest rate or mortality table shall reduce the accrued benefit of any Member. In the event the makeup of the Pension Board is changed in a manner that brings the Board under direct control of the City, actuarial equivalencies shall be calculated using the 1983 Group Annuity Mortality Table (Male) and an interest rate of 5 percent a year, compounded yearly.

d. A Participant may not change his or her retirement option, and in the case of electing Option 3 or Option 4 above may not change his or her Beneficiary, after the date of cashing or depositing his or her first retirement check.

e. All changes in benefit amounts shall occur on the first day of the month following the event necessitating the change.

f. Notwithstanding any provisions of this Ordinance to the contrary, Participants shall be 100% vested upon reaching normal retirement.

g. In accordance with Internal Revenue Code Section 401(a)(36), a member who has reached age 62, is eligible for normal retirement, has not separated from employment, and is enrolled in the Florida Retirement System may begin receiving distributions from this Plan, upon application to the Board of Trustees on a form provided for that purpose. This provision is only applicable to former members who are enrolled in the Florida Retirement System.

Section 19. Cost-of-Living Adjustments.

a. As of each Plan anniversary date following:

1. The normal retirement date, or early retirement date of a Participant who was an active member or a terminated member, immediately prior to becoming a retired

member, or

2. The death of an active member whose Beneficiary is eligible for benefits under the Plan; the monthly benefit payable to the Participant or Beneficiary described above will be subject to the cost-of-living adjustments as described in subsection (b).

b. Cost-of-Living adjustments will be based on the Consumer Price Index (Urban Wage Earners and Clerical Workers), published quarterly by the Bureau of Labor Statistics. The adjustment for each Plan year will be determined by dividing the Consumer Price Index for the quarter ending in June by the Consumer Price Index for the quarter ending in June for the immediately preceding year. The monthly amount of benefit payable or credited during the current Plan Year will equal the monthly amount payable to credited during the preceding Plan Year adjusted by the percentage increase in the Consumer Price Index, to the nearest one-tenth of one percent.

c. No annual percentage increase of a monthly amount of benefit will exceed 3%.

d. All cost-of-living adjustments will be effective on the first day of each Plan Year. In the event an Employee or Elected Officer retires on a day other than the first day of a plan year, the cost-of-living adjustment for the Participant will be reduced by a pro-rated amount, using the number of days in the previous plan year the Participant had been retired as the numerator and 365 days as the denominator times the cost of living adjustment.

Section 20. Early Retirement Benefits.

a. A Participant who has completed 10 years or more of service for vesting purposes may elect to retire at an early retirement date, which is the first day of the month

which precedes his or her normal retirement date by not more than ten years.

b. Early retirement benefits shall be the normal retirement benefit set out in Section 18 of this Ordinance, reduced by 5% for each year that precedes the Participant's normal retirement date.

Section 21. Pre-retirement Death.

a. A pension shall be paid to the designated survivor pension Beneficiary of a deceased Participant in accordance with form of payment Option No. 3 provided in Section 18, notwithstanding the fact that the Participant is not retiring, if all of the following requirements are met:

1. the Participant, at time of death, had ten (10) or more years of credited service; and
2. the designated survivor pension Beneficiary files written application for pension with the pension board.

b. Amount of Survivor Pension: The amount of pension is the deceased Participant's accrued normal retirement pension at time of death under form of payment Option No. 3.

c. Commencement and Termination of Pension: Payment of the pension shall commence the first day of the month following the month in which occurs the death of the Participant. The last pension payment shall be the payment for the month in which occurs the death of the named survivor pension Beneficiary.

d. Designation and Election Presumed if Married: A Participant who is married at the time of death shall be presumed to have designated the spouse as survivor pension Beneficiary and elected form of payment Option No. 3 if no valid designation and election

is on file with the Pension Board.

Section 22. Beneficiaries.

a. Each Participant may, on a form provided for that purpose, designate a Beneficiary to receive pension benefits, if any, that may be payable under the Pension Plan in the event of the Participant's death. The designation of Beneficiary form must be signed by the Participant and filed with the Board of Trustees.

b. Any designation of Beneficiary may be revoked or amended by the Participant by signing and filing a new designation of Beneficiary form with the Board of Trustees.

c. In the event that a deceased Participant fails to designate a Beneficiary in the manner set forth in paragraph (a) above, or if the named Beneficiary should predecease the Participant, any benefits which may be payable under the Pension Plan with respect to the deceased Participant may be paid to the estate of the Participant.

Section 23. Funding and Contributions.

a. Municipal Contributions. The Municipality shall make monthly contributions to the Pension Fund in an amount required to meet the minimum actuarially determined amounts as of the last actuarial valuation.

b. Participant Contributions. Effective with the first full payroll period ending after the effective date of this Ordinance, the Participants shall contribute three percent (3%) of their earnings from the Village to the Pension Fund. Such amount will be deducted from each Participant's earnings and will be deposited into the Fund immediately.

c. Other Contributions. Private donations, gifts and contributions may be accepted and deposited with the Pension Fund. Such deposits shall be accounted for

separately and kept on a segregated accounting basis. Funds arising from such sources may not be used to reduce what would have otherwise been required Municipal contributions.

d. The Village shall pick up the member contributions required by this subpart for all compensation earned after September 30, 2001. The contributions so picked up shall be treated as contributions being paid by the employer in lieu of contributions by the Employee in determining tax treatment under the United States Internal Revenue Code. The Village shall pick up the member contributions from funds established and available in the salaries account, which funds would otherwise have been designated as member contributions and paid to the pension plan. Member contributions picked up by the Village pursuant to this section shall be treated for all other purposes of this and other laws of the Village in the same manner and to the same extent as member contributions made prior to September 30, 2001.

e. Refunds. If a Participant leaves the service of the Village before vesting and before being eligible to retire under the provisions of this Ordinance, he or she shall be entitled to a refund of all contributions made to the Plan, without interest.

Section 24. Adjudication of Benefit Claims.

a. Any Participant, Beneficiary of a Participant, or other persons claiming a benefit under this Plan shall have a right to a hearing as to his or her entitlement to any benefits under this Pension Plan.

b. All decisions of the Board of Trustees relating to the granting or denial of benefits shall be made by a written order signed by a majority of the Board of Trustees. The order shall be served by certified mail to the Claimant to their last known addresses.

c. In the event that a Participant, Beneficiary, or the spouse or child of a Participant or other person, wishes a hearing as to any decision or order entered by the Pension Board, then that person or his or her duly authorized representative shall submit their case to the Board of Trustees, along with a written request for a hearing. If no written request for a hearing is filed, the Board of Trustees may rule on any claim by mail. Any submission under this section must be filed with the Pension Board within thirty (30) days from the mailing date of the Pension Board's initial order.

d. Upon the receipt of any written submission by a Claimant, the Board shall schedule an opportunity for a full and fair hearing of the issue within the next sixty (60) days, and such scheduled hearing shall be communicated in writing to the Claimant. The Claimant and/or his or her duly authorized representative may then appear at such scheduled hearing to present their case. The Board shall, within thirty (30) days after such hearing, make a final ruling in writing on the request of the Claimant. The written decision shall include the reasons for such decision and, such decision shall be final.

Section 25. Hearing Procedures.

a. The Chairperson shall preside over the hearing and shall with the advice of legal counsel, rule on all evidentiary and other legal questions that arise during the hearing.

b. Either party, the Claimant or the Board, may file pleadings within the time limits set herein. Procedural motions are to be determined by the Chairperson of the Board at any time. All parties are to furnish copies of all pleadings to the opposing parties and exchange lists with names and addresses of witnesses expected to be called to testify at the hearing, as well as the list of exhibits that are intended to be introduced, at least forty-five (45) days prior to the hearing. Testimony of witnesses shall be under oath or affirmation. Depositions or affidavits shall not be admissible unless upon stipulation by all

parties. The Chairperson, any Member of the Board, the Attorney for the Board, the Claimant and the Claimant's attorney, upon recognition by the Chairperson, may direct questions to any witness during the proceedings. Each party shall have the right to present evidence relevant to the issues, to cross-examine witnesses, to impeach witnesses and to respond to the evidence presented against the party. Each party shall have the right to represent any opening and closing arguments. Any party may secure the services of a court reporter to record the proceedings with the cost to be borne by the party requesting the court reporter or requesting the transcription of the proceedings.

c. In all cases, unless otherwise provided in this section, the burden of proof shall be on the Claimant.

Section 26. Subpoena of Witnesses.

In all proceedings under Section 24, above, the Board shall have the power to subpoena and require the attendance of witnesses and the production of documents for discovery prior to and at the proceedings provided for in each section, in the manner provided for in the courts of this state. A reasonable fee may be charged for the issuance of any subpoenas not to exceed the fees set forth in Florida Statutes. The Chairperson or any Board Member may administer oaths to witnesses.

Section 27. Termination of Service.

A Participant, whose employment with the Municipality is terminated, either voluntarily or involuntarily, shall have a non-forfeitable interest, if any, in his or her vested amounts under the Vesting Schedule set forth in Section 15 of this Ordinance. The terminated Employee shall be required to withdraw his or her vested amounts at the time of his or her termination if his or her vested amount, as actuarially determined and reduced to

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present value, is less than \$1,000.00. In the event the foregoing amount is more than \$1,000.00, the Board has the right but not the obligation to offer to the terminated Employee the opportunity to withdraw his or her vested amount.

Section 28. Termination or Reduction of Benefits.

a. The termination or reduction of any Participant or Beneficiary's benefits will be done by written order in accordance with Section 24 of this Ordinance.

b. Any adversely affected Participant or Beneficiary may seek a hearing under that section of this Ordinance.

Section 29. Overpayment-Deduction.

The amount of any overpayment of pension benefits under this Pension Plan, due to fraud, negligent or purposeful misrepresentation or error, of any pension or benefit granted under the Pension Plan shall be deducted from any future payments to the recipient of such benefit or pension.

Section 30. Actuarial Evaluation.

An actuarial valuation of the Pension Plan shall be made at least once every three (3) years commencing from the last actuarial report of the Plan. Such evaluation shall be prepared by an enrolled actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

Section 31. Retirement Recordkeeping.

The Pension Board shall keep a record of all persons enjoying a pension under the provisions of this Ordinance in which it shall be noted the time when the pension is allowed

and when the same shall cease to be paid. Additionally, the Board shall keep a record of all Participants employed by the Municipality in such a manner as to show the name, address, date of employment and date such employment is terminated.

Section 32. Investment of Pension Funds.

The Board of Trustees shall have full power to invest and reinvest such assets in any of the following forms of investments:

- a. Time or savings accounts of a national bank, a state bank insured by the Federal Deposit Insurance Corporation, or a savings and loan association insured by the Federal Savings and Loan Insurance Corporation.
- b. Obligations of the United States or obligations guaranteed as to principal and interest by the United States.
- c. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by the corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, or stocks issued by corporations organized under the laws of foreign jurisdictions, provided:
 1. The Board of Trustees shall not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company. This restriction does not apply to United States government securities.

Section 33. Investment Duties of Trustees.

- a. Any Pension Board Trustee shall discharge his or her duties with respect to the Pension Fund solely in the interests of the Participants and beneficiaries and:
- b. For the exclusive purpose of:
 1. Providing benefits to Participants and their beneficiaries; and

2. Defraying reasonable expenses of administering the Retirement System or Pension Fund;

c. With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims;

d. By diversifying the investments of the Retirement System or Pension Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

Section 34. Investment Manager.

The Board of Trustees shall have the power to appoint an Investment Manager to invest, acquire and dispose of assets of the Pension Fund.

Section 35. Disbursements from Pension Fund.

The Board of Trustees may make such disbursements from the Fund for such purposes, and in such amounts, and at such times, as are necessary to cover the administrative costs, investment costs and benefit costs. Administrative costs shall include but are not limited to actuarial fees, plan administrator fees, performance evaluation costs, and other consulting services as are deemed necessary by the Board, including per diem expenses of the Board Members.

Investment costs shall include but are not limited to Investment Manager's fees, and investment transaction cost.

Benefit cost shall include but are not limited to pension benefit payments to retirees, death benefit payments and transactional costs for the benefit payments and calculations.

Section 36. Exemption from Execution Non-Assignability.

The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this Ordinance and the accumulated contributions and the cash securities in the Fund created under this Ordinance are hereby exempted from any state, county or municipal tax of the state and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be un-assignable.

Section 37. Pension Validity.

The Board of Trustees shall have the power to examine into the facts upon which any pension shall heretofore have been granted under any prior or existing law, or shall hereafter be granted or obtained erroneously, fraudulently or illegally for any reason. Said Board is empowered to purge the pension rolls of any person heretofore granted a pension under prior or existing law or heretofore granted under this article if the same is found to be erroneous, fraudulent or illegal for any reason; and to reclassify any person who has heretofore under any prior or existing law been or who shall hereafter under this article be erroneously, improperly or illegally classified.

Section 38. Repeal or Termination of Pension Plan.

a. This Ordinance establishing the Pension Fund, and subsequent Ordinances pertaining to said Pension Fund, may be modified, terminated, or amended, in whole or in part; provided that if this or any subsequent Ordinance shall be amended or repealed in its application to any person benefitting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the Participant or Beneficiary shall not be affected thereby, except to the extent that the assets of the Pension Fund may be determined to be inadequate.

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b. If this Ordinance shall be repealed, or if contributions to the Pension Fund are discounted, the Board shall continue to administer the Pension Fund in accordance with the provisions of this Ordinance, for the sole benefit of the then Members, and Beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under on the Options provided for in this Ordinance who are designated by any of said Members. In the event of repeal, or if contributions to the Pension Fund are discontinued, there shall be full vesting (100%) of benefits accrued to date of repeal and the assets of the Pension Fund shall be allocated in an equitable manner to provide benefits on a proportionate basis to the person so entitled in accordance with the provisions thereof.

c. After all the vested and accrued benefits provided hereunder have been paid and after all liabilities have been satisfied, then and only then, shall any remaining funds revert to the General Fund of the Municipality.

Section 39. IRC Qualification.

The Village intends the Pension Plan be a qualified plan under the applicable provisions of Section 401(a) of the Internal Revenue Code and that the related trust be an exempt organization under Section 5-1 of the Internal Revenue Code. Any provision of this retirement Ordinance to the contrary notwithstanding, the Pension Board shall at all times administer the Pension Plan so as to fulfill this intent and to comply with the applicable provisions of Section 415 of the Internal Revenue Code. The sum of the defined benefit fraction and the defined contribution fraction, both as defined in Section 415 of the Internal Revenue Code, applicable to a Participant who is also a Participant in a defined contribution plan maintained by the Village shall not exceed 1.0.

Section 40. Required Distributions.

a. In accordance with IRC Section 401(a)(9), including the minimum distribution incidental benefit requirements of Section 1.401(a)(9)-2, Code Section 401(a)(9)(G), all benefits under this plan will be distributed, beginning not later than the required beginning date set forth below, over a period not extending beyond the life expectancy of the Participant or the life expectancy of the Participant and a Beneficiary designated in accordance with Section 18.

b. Any and all benefit payments shall begin by April 1 of the calendar year following the calendar year of the member's retirement date; provided however, all Participants who will reach 70 before December 31, 1999 may, at Participant option, elect to begin benefits on April 1 of the calendar year following the calendar year in which the member attains age 70 2.

c. If an Employee or Elected Officer dies before his entire vested interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as provided for under Section 18.

d. The distribution shall commence to the Employee or Elected Officer not later than the calendar year defined above; and shall be paid over the life of the Participant or over the lifetimes of the Participant and spouse, or dependent, or, shall be paid over the period extending not beyond the life expectancy of the Participant and spouse, or dependent.

e. Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the Participant dies before his/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.

f. If the Participant's death occurs before the distribution of his/her interest in the Plan has commenced, the Participant's entire interest in the Plan shall be distributed within five (5) years of the Participant's death, unless it is to be distributed in accordance with the following rules:

1. The Participant's remaining interest in the Plan is payable to his/her spouse or dependent;
2. 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 or dependent; and
3. Such distribution begins within one year of the Participant's death unless the Member's spouse, issue or dependent 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 2 and if the spouse, issue or dependent dies before the distribution to the spouse, issue or dependent begins, this Section shall be applied as if the spouse, issue or dependent were the Plan Participant.

Section 41. Rollover Distributions.

a. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a

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Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the Distributee in a direct rollover.

1. "Eligible rollover distribution:" An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the Distributee or an alternate payee under an income deduction order under Florida law, except that an eligible rollover 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; and any distribution to the extent such distribution is required under Section 401(a)(9) of the Code.

2. "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, or a qualified trust described in section 401(a) of the Code, an eligible deferred compensation plan described in '457(b) which is maintained by an eligible employer described in '457(e)(1)(A) of the Code or an annuity contract described in '403(b) of the Code that accepts the Distributee's eligible rollover distribution.

3. "Distributee:" A Distributee includes an Employee, Elected Officer or former Employee or Elected Officer. 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 entitled to payment for alimony and child support under a domestic relations order determined to be qualified by this Fund, are distributed with regard to the interest of the spouse or former spouse.

4. "Direct rollover:" A direct rollover is a payment by the Plan to the eligible retirement plan specified by the Distributee.

Section 42. Internal Revenue Code Limits.

a. 415 Basic Limitations. Notwithstanding anything to the contrary in this Plan, the provisions of Section 415 and its regulations are hereby incorporated by reference into this Plan. Subject to the adjustments in Code Section 415, the maximum amount of the actual annual retirement income paid in any year with respect to a Participant under this Plan attributable to employer provided benefits shall not exceed the dollar amount allowable for any calendar year pursuant to '415(b) of the Code, as adjusted in such calendar year for increases in the cost of living in accordance with Regulations issued by the Secretary of the Treasury under '415(d) of the Code. For purposes of applying the basic limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by Treasury Regulations, so that such benefits are the Actuarial Equivalent of a straight life annuity. For purposes of this subsection Article, the following benefits shall not be taken into account:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) Any other benefit not required under '415(b)(2) of the Code and Treasury Regulations thereunder to be taken into account

for purposes of the limitation of ' 415(b)(1) of the Code.

b. For purposes of applying the limitations of Code Section 415(b), compensation includes those items as set forth in Reg. 1.415-2(d). This definition specifically includes the crediting of compensation while absent from service for military duty; such crediting shall exceed the compensation that would have been credited under the System if System services had continued.

c. To prevent disqualification of the Plan under Section 415 of the Internal Revenue Code, the Board of Trustees reserves the right to further reduce Participant benefits in accordance with the applicable provisions of Section 415. If there is any discrepancy between the provisions of this section and Section 415 of the Internal Revenue Code and the regulations thereunder, such discrepancy shall be resolved in such a way to give full force and effect to the provisions of Section 415 of the Internal Revenue Code.

d. Additional Limitation on Pension Benefits. Notwithstanding anything herein to the contrary:

1. The normal retirement benefit or pension 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 100 percent of his/her average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments. In all events, distributions shall be limited by the applicable provisions of Code Section 415(b) limits.

2. No Member of the Plan who is not now a Member of such Plan 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 another retirement system or plan. This restriction does not apply to Social Security benefits or Federal benefits under Chapter 67, Title 10, U.S. Code.

e. Compensation in excess of limitations set forth in Section 401 (a) (17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for an "eligible Employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993.

Section 43. Severability

If any section, part of a section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holdings on invalidity shall not affect this remaining portion of this Ordinance and it shall be construed to have been the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative part herein, and the remainder of the Ordinance after the exclusion of such part or parts shall be deemed to be held valid as if such part or parts had not been included therein, or if this Ordinance or any of the provisions thereof shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holdings shall not affect the applicability thereof to any other person, property or circumstances.

Section 44. Repeal of Conflicting Ordinances

All ordinances or portions thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 45. Effective Date

Except as otherwise provided, this Ordinance shall become effective upon adoption.

Council Member Waller offered the foregoing Ordinance, and moved its adoption. The motion was seconded by Council Member Gunther and upon being put to a vote, the vote was as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
BEV SMITH, MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DOUG GUNTHER, VICE MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JONI BRINKMAN, MAYOR PRO TEM	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PATTI WALLER, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SERGIO ESCALADA, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VILLAGE OF PALM SPRINGS, FLORIDA

BY: [Signature]

BEV SMITH, MAYOR

First Reading 7-14-2011

Second Reading 7-28-2011

ATTEST:

BY: Virginia M. Walton

VIRGINIA M. WALTON, VILLAGE CLERK

REVIEWED FOR FORM AND LEGAL SUFFICIENCY

BY: [Signature]

GLEN J. TORCIVIA, VILLAGE ATTORNEY