MEMORANDUM

Date: September 17, 2013

TO: Town Commission

FROM: Dave Bullock, Town Manager

SUBJECT: Ordinance 2013-16, Amending Chapter 34, Employment Policies (General Employees)

Ordinance 2013-16 incorporates changes to Town Code Chapter 34 to comply with recent changes to the Internal Revenue Code (IRC) relating to tax qualified pension plans. The amendments clarify language required by the IRC and are mandatory amendments that must be adopted by September 30, 2013.

Attached is a letter from General Employees' Retirement System Board Attorney, Lee Dehner that more fully details provisions of Ordinance 2013-16. The Ordinance has been reviewed by the General Employees Retirement System Board of Trustees prior to being forwarded for Commission consideration.

Also attached is a letter from the General Employees' Retirement System Board Actuary that confirms there is no impact to the assumptions used in determining the funding requirements, nor are there any changes in valuation results.

The Town Commission held first reading and discussion of Ordinance 2013-16 at the September 3, 2013 Regular Meeting and forwarded the Ordinance to the September 23, 2013 Special Meeting for second reading, public hearing and adoption.

Please don't hesitate to contact me if you have any questions.

ORDINANCE NO. 2013-16

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING CHAPTER 34, *EMPLOYMENT POLICIES*, OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA; AMENDING SECTION 34.73, *DEFINITIONS AMENDING THE DEFINITIONS OF "ACTUARIAL EQUIVALENT" AND "CREDITED SERVICE"*; AMENDING SECTION 34.76, *FINANCES AND FUND MANAGEMENT*, IN SUBSECTION (6)(b)5.; AMENDING SECTION 34.85, *MAXIMUM PENSION*; PROVIDING FOR SEVERABILITY OF PROVISIONS; PROVIDING FOR CODIFICATION; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA, THAT;

SECTION 1. Chapter 34, Employment Policies, of the Code of Ordinances of the Town of Longboat Key, Florida, is amended by amending Section 34.73, Definitions, by amending the definitions of "Actuarial Equivalent" and "Credited Service", to read as follows:

"Actuarial equivalent" means a benefit or amount of equal value, based upon the RP 2000 Combined Healthy Mortality Table and an interest rate of ~~eight~~ seven and three-quarter percent (7.75%) per annum. This definition may only be amended by the town pursuant to the recommendation of the board using assumptions adopted by the board with the advice of the plan's actuary, such that actuarial assumptions are not subject to town discretion.

"Credited service" means the total number of years and fractional parts of years 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 town as a general employee. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the town 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 vested member leaves the employ of the town, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a general employee with the town within five years, his accumulated contributions, if $1,000.00 or less, shall be returned. If a member who is not vested is not reemployed within five years, his accumulated contributions, if more than $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. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated. Upon any reemployment, a general employee shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his accumulated contributions from the fund, unless the general employee repays into the fund the contributions he has withdrawn, with interest, as determined by the board, within 90 days after his reemployment.

The years or parts of a year that a member performs "qualified military service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a general employee to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

A. The member is entitled to reemployment under the provisions of USERRA.

B. The member returns to his employment as a general employee within one year following the earlier of the date of his military discharge or his release from service, unless otherwise required by USERRA.

C. The member deposits into the fund the same sum that the member would have contributed, if any, if he had remained a general employee during his absence. The maximum credit for military service pursuant to this subchapter shall be five years. The member must deposit all missed contributions within a period equal to three times the period of military service, but not more than five years, following re-employment or he will forfeit the right to receive credited service for his military service pursuant to this paragraph.

D. This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA qualified military service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

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

SECTION 2. Chapter 34, Employment Policies, of the Code of Ordinances of the Town of Longboat Key, Florida, is amended by amending Section 34.76, Finances and Fund Management, subsection (6)(b)5., to read as follows:

5. Stocks, commingled funds ~~administered by national or state banks~~, mutual funds and bonds or other evidences of indebtedness, provided that:

SECTION 3. Chapter 34, Employment Policies, of the Code of Ordinances of the Town of Longboat Key, Florida, is amended by amending Section 34.85, Maximum Pension, to read as follows:

34.85 Maximum pension.

(A) *Basic limitation*. Notwithstanding any other provisions of this system to the

contrary, the member contributions paid to, and retirement benefits paid from, the system shall be limited to such extent as may be necessary to conform to the requirements of Code § 415 for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in Code § 415(b), 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 Code § 415(b)(1)(A) ($160,000.00), subject to the applicable adjustments in Code § 415(b) and subject to any additional limits that may be specified in this system. For purposes of this section, "limitation year" shall be the calendar year.

For purposes of Code § 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Code § 415(n) and to rollover contributions (as defined in Code § 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(B) *Adjustments to basic limitation for form of benefit.* ~~If the form of benefit without regard to any benefit increase feature is not a straight life annuity, then the code Section 415(b) limit applicable at the annuity starting date is reduced to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation § 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit.~~ If the benefit under the plan is other than the annual benefit described in subsection (A), then 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 the 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 Code § 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation § 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

(1) For a benefit paid in a form to which Code § 417(e)(3) does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

a. 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 form of benefit to the member, or

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

(2) For a benefit paid in a form to which Code § 417(e)(3) applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

a. 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;

b. 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 five and one-half (5.5) percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation § 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 Code § 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Code § 417(e)(3)(B)); or

c. 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 Treasury Regulation § 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 Treasury Regulation § 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 Code § 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing § 417(e)(3)(B) of the code), divided by 1.05.

(3) The actuary may adjust the 415(b) limit at the annuity starting date in accordance with subsections (1) and (2) above.

(C) *Benefits not taken into account.* For purposes of this Section, the following benefits shall not be taken into account in applying these limits:

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

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

(3) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.

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

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

(2) thereafter, in any subsequent ~~calendar~~ 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 Code § 415(b)(1)(A) dollar limit under Code § 415(d), and the regulations thereunder; but

(3) in no event shall a member's benefit payable under the system in any ~~calendar~~ limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code § 415(d) and the regulations thereunder.

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

(E) *Other adjustments in limitations.*

(1) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Code § 415(b) ~~of the Code~~, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a $160,000.00 annual benefit beginning at age 62.

(2) In the event the member's benefit is based on at least 15 years of credited service as a full-time employee of the fire or police department of the town, the adjustments provided for in (E)(1) above shall not apply.

(3) The reductions provided for in (E)(1) above shall not be applicable to pre-retirement death benefits paid pursuant to section 34.79.

(4) In the event the member's retirement benefit becomes payable after age 65, for purposes of determining whether this benefit meets the limit set forth in subsection (A) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

(F) *Less than ten years of participation or service.* The maximum retirement benefits payable under this section to any member who has completed less than ten years of credited service with the town shall be the amount determined under subsection (A) of this section 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. The reduction provided by this subsection cannot reduce the maximum benefit below ten percent of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement death benefits paid pursuant to section 34.79.

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

(H) *Ten thousand dollar limit; less than ten years of service.* Notwithstanding ~~the foregoing~~ anything in this section 34.85, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection (H) of section 34.85 if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the town contributes, do

not exceed $10,000.00 for the applicable ~~plan~~ limitation year and for any prior ~~plan~~ limitation year and the town has not 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 with the town, the limit under this subsection (H) of section 34.85 shall be a reduced limit equal to $10,000.00 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.

(I) *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 member participated, such reduction to be made first with respect to the plan in which 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 for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which 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.

(J) *Service credit purchase limits.*

(1) 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 system, as allowed in sections 34.96 and 34.97, then the requirements of this section will be treated as met only if:

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

b. The requirements of Code § 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code § 415(c).

~~c.~~ For purposes of applying subsection (J)(1)a., the system will not fail to meet the reduced limit under Code § 415(b)(2)(C) solely by reason of this subsection ~~c.~~, and for purposes of applying subsection (J)(1)b. the system will not fail to meet the percentage limitation under Code § 415(c)(1)(B) solely by reason of this subsection ~~c~~.

(2) For purposes of this subsection the term "permissive service credit" means service credit -:

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

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

c. Which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, 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 system, include service credit for periods for which there is no performance of service, and, notwithstanding the clause of subsection (J)(2)b., may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(K) *Contribution limits.*

(~~3~~ 1) For purposes of applying the Code § 415(c) limits ~~in this subsection (J)~~ which are incorporated by reference and for purposes of this subsection (K), only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a ~~calendar~~ limitation year, except as noted below and as permitted by Treasury Regulations § 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations § 1.415(c)-2, or successor regulation, is specified by the system, compensation will be defined as wages within the meaning of Code § 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Code §§ 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Code § 3401(a) 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 Code § 3401(a)(2).

a. However, for ~~calendar~~ limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Code §§ 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For ~~calendar~~ limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Code § 132(f)(4).

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

1. The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee'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 employee while the employee continued in employment with the employer; or

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

c. Back pay, within the meaning of Treasury Regulations § 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.

(~~4~~ 2) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Code § 415 by using the following methods:

a. 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 Code §§ 415(c) or 415(n).

b. If payment pursuant to subsection ~~(J)(4)a.~~ (K)(2)a. will not avoid a contribution in excess of the limits imposed by Code § 415(c), the board may either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(3) If the annual additions for any member for a limitation year exceed the limitation under Code § 415(c), the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this subsection (K) shall not exceed the annual limit under Code § 401(a)(17).

(~~K~~ L) *Additional limitation on pension benefits.* Notwithstanding anything herein to the contrary:

(1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100% of his 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.

(2) No member of the system 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 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 4. All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. 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 6. That this ordinance shall take effect upon second reading and adoption.

Passed on first reading this _____ day of _____, 2013.

Adopted on second reading and public hearing this ____ day of _____, 2013.

_____
James L. Brown, Mayor

ATTEST:

_____
Trish Granger, Town Clerk

End of Agenda Item