M E M O R A N D U M

Date: December 16, 2014

TO: Town Commission

FROM: Dave Bullock, Town Manager

SUBJECT: Ordinance 2015-04, Amending Chapter 34, Employment Policies and Chapter 35, General Policy for Clarification of Leave Payout Provision; Deleting References to Chapters 175 & 185, F.S.; and Indemnification Language Modifications for the Consolidated Retirement System

---

Ordinance 2015-04 provides for the following:

1) The leave payout provision for all member groups has been clarified.

For the purpose of determining a member's frozen accrued benefit the salary included any payments of accrued leave that would have been included in the member's salary if the member retired. The Ordinance further stated that any use of that unpaid leave after the date of the freeze would then be subtracted and the frozen benefit would be reduced. The language did not account for the fact that employees are accruing and using new leave balances weekly. This Ordinance modifies the language so that the Member's benefit is reduced only if the leave balance at time of retirement is less than originally calculated at the time of the freeze. Thus, regardless of the amount of leave earned and used after the freeze date, if a member has at least as much accrued leave on separation from employment as he/she had at the freeze date, the amount of leave on the freeze date will be included in the frozen benefit.

2) We have deleted all references to Chapters 175 & 185, F.S.

With the passage of Ordinance 2013-21 dated May 20, 2013, and Ordinance 2014-01 dated January 6, 2014, the Town elected to withdraw from the premium tax revenue sharing program under Chapters 175 and 185, Florida Statutes. This Ordinance deletes all reference to said Chapters.

3) Added indemnification language for the new Consolidated Retirement Board of Trustees.

New indemnification language was added to defend and hold harmless members of the board of the consolidated retirement system arising out of their official duties, to the extent not covered by insurance contracts.

Ordinance 2015-04 was presented at the December 10, 2014, Regular Workshop Meeting and forwarded to the January 5, 2015, Regular Meeting for first reading.

ORDINANCE 2015-04

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING THE CONSOLIDATED RETIREMENT SYSTEM FOR EMPLOYEES OF THE TOWN OF LONGBOAT KEY BY AMENDING SECTION 34.12, PLAN FREEZE AND PARTICIPATION IN DEFINED CONTRIBUTION PLAN; REMOVING UNNECESSARY REFERENCES TO CHAPTERS 175 AND 185 OF THE FLORIDA STATUTES FROM SECTION 34.25, REPORTS TO DIVISION OF RETIREMENT; SECTION 34.29, MISCELLANEOUS PROVISIONS; SECTION 34.31, DOMESTIC RELATIONS ORDERS; RETIREE DIRECTED PAYMENTS; EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY; SECTION 34.43, DEFINITIONS; SECTION 34.52, OPTIONAL FORMS OF BENEFITS; SECTION 34.55, REPORTS TO DIVISION OF RETIREMENT; SECTION 34.60, REPEAL OR TERMINATION OF SYSTEM; SECTION 34.101, BOARD OF TRUSTEES; AMENDING SECTION 34.42 PLAN FREEZE AND ENROLLMENT IN FLORIDA RETIREMENT SYSTEM; AMENDING SECTION 34.72, PLAN FREEZE AND PARTICIPATION IN DEFINED CONTRIBUTION PLAN; CREATING SECTION 34.103, INDEMNIFICATION, INDEMNIFYING BOARD MEMBERS FROM PERSONAL LIABILITY ARISING OUT THEIR OFFICIAL DUTIES; AMENDING SECTION 35.02, LIABILITY OF TOWN OR TOWN OFFICIALS TO INCLUDE CONSOLIDATED RETIREMENT SYSTEM BOARD MEMBERS; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. Section 34.12, Plan freeze and participation in defined contribution plan, Subsection (A), is amended to read as follows:

34.12. - Plan freeze and participation in defined contribution plan.
Notwithstanding any other provision of the system:

(A) The accrued benefits of all members of this system who are employed and not participating in the DROP on February 1, 2014, shall be frozen on that date. All members shall be fully vested in their frozen accrued benefit. The value of each member's frozen accrued benefit shall be calculated in accordance with the provisions of the system in effect on January 25, 2014, based on the member's credited service and average final compensation on that date. The frozen accrued benefit shall be payable to the member upon termination of town employment and attaining age 55 with ten years of credited service, 25 years of credited service regardless of age, or age 60 regardless of years of credited service, whichever occurs first. In applying the preceding sentence, credited service shall include all credited service as a member of this system prior to February 1, 2014, and all periods of employment as a full-time police

officer with the Town of Longboat Key on and after February 1, 2014. For the purpose of determining a member's frozen accrued benefit in accordance with this subsection (A), salary shall include any payments of accrued leave that would have been included in the member's salary if the member retired prior to February 1, 2014. ~~However, the member's accrued leave balance shall be reduced by the amount of vacation or sick leave used subsequent to February 1, 2014, and the member's frozen accrued benefit shall be adjusted accordingly.~~ Notwithstanding the preceding sentence, upon separation from employment, the amount of accrued leave included in a member's salary for the purpose of determining the member's frozen accrued benefit shall be the lesser of the amount of leave accrued at the time of separation from employment, or the amount of accrued leave that would have been included in the member's salary if the member retired prior to February 1, 2014, and the member's frozen accrued benefit shall be adjusted accordingly.

SECTION 2. Section 34.25, Reports to division of retirement, is amended to read as follows:

34.25. - Reports to division of retirement.

Each year and no later than March 15th, the board shall file an annual report with the division of retirement containing the documents and information required by state law ~~F.S. § 185.221~~.

SECTION 3. Section 34.29, Miscellaneous provisions, Subsection (I), is deleted as follows:

34.29. - Miscellaneous provisions.

~~(I) *Compliance with F.S. ch. 185.* It is intended that the system will continue to qualify for funding under F.S. § 185.08. Accordingly, unless otherwise required by law, any provision of the system which violates the requirements of F.S. ch. 185, as amended from time to time, shall be superseded by and administered in accordance with the requirements of such chapter.~~

SECTION 4. Section 34.31, Domestic relations orders; retiree directed payments; exemption from execution, non-assignability, Subsection (B), is amended to read as follows:

34.31. - Domestic relations orders; retiree directed payments; exemption from execution, non-assignability.

(B) *Retiree directed payments.* The board may, upon written request by a retiree or by a dependent, when authorized by a retiree or the retiree's beneficiary, authorize the system to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the town, to pay the certified bargaining agent of the town, to make payment to insurance companies for insurance premiums ~~as permitted by F.S. ch. 185~~, and to make any payments for child support or alimony.

SECTION 5. Section 34.42, Plan freeze and enrollment in the Florida Retirement System, Subsection (A), is amended to read as follows:

34.42. - Plan freeze and enrollment in the Florida Retirement System.

Notwithstanding any other provision of the system:

(A) The accrued benefits of all members of this system who are employed and not participating in the DROP on September 30, 2013, shall be frozen on that date. All members shall be fully vested in their frozen accrued benefit based on their length of service as of September 30, 2013. The value of each member's frozen accrued benefit shall be calculated in accordance with the provisions of the system in effect on September 30, 2013, based on the member's credited service and average final compensation on that date. The frozen accrued benefit shall be payable to the member upon termination of town employment and attaining age 55 with ten years of credited service, 25 years of credited service regardless of age, or age 60 regardless of years of credited service, whichever occurs first. In applying the preceding sentence, credited service shall include all credited service as a member of this system prior to October 1, 2013, and all periods of employment as a full-time firefighter with the Town of Longboat Key on and after October 1, 2013. For the purpose of determining a member's frozen accrued benefit in accordance with this subsection (A), salary shall include any payments of accrued leave that would have been included in the member's salary if the member retired prior to October 1, 2013. ~~However, the member's accrued leave balance shall be reduced by the amount of vacation or sick leave used subsequent to October 1, 2013, and the member's frozen accrued benefit shall be adjusted accordingly.~~ Notwithstanding the preceding sentence, upon separation from employment the amount of accrued leave included in a member's salary for the purpose of determining the member's frozen accrued benefit shall be the lesser of the amount of leave accrued at the time of separation from employment, or the amount of accrued leave that would have been included in the member's salary if the member retired prior to October 1, 2013, and the member's frozen accrued benefit shall be adjusted accordingly.

SECTION 6. Section 34.43, Definitions, Subsection (A) is amended to read as follows:

34.43. - Definitions.

(A) As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meaning indicated:

"Credited service" means the total number of years and fractional parts of years of service as a firefighter with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the town as a firefighter. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the fire

department pending the possibility of being reemployed as a firefighter, without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the fire department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a firefighter with the fire department within five years, his accumulated contributions shall be returned. 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 firefighter 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 firefighter 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 fractional parts of a year that a member services in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, or as a firefighter with any employer prior to employment with the Town of Longboat Key, including prior service as a firefighter with the town, shall be added to the member's credited service for all purposes, including vesting, provided that:

(1) The member submits a written request, to purchase credited service for prior service with the city, prior firefighter service for any other employer or prior military service, in writing to the board.
(2) The member contributes to the system the full actuarial cost of all such credited service that would have occurred had the member been employed by the Town of Longboat Key as a firefighter for the period of credited service purchased, computed as a lump sum payment into the system. Such payment may be by direct transfer of eligible rollover distribution from any other qualified plan as described in the Internal Revenue Code, to include as illustrative and not limiting; a member's individual retirement account (408(a) account), individual retirement annuity (408(b) account), annuity plan (403(a) account), qualified trust (401(a) account) and deferred compensation account (457 account).
(3) The purchase of credited service under this section by member shall be paid in full prior to the member's actual retirement date in accordance with all terms, rules, procedures or regulations established by the board. Such purchase of credited service shall take effect upon vesting in the system. If a member terminates employment with the town prior to attaining vested status and receives a refund of member contributions, the amount paid for such prior credited service shall also be refunded.
(4) Credited service for prior military or firefighter service shall not be granted for service where the member is receiving or is entitled to receive a benefit from another governmental pension system.
(5) Credited service for prior firefighter service under this section shall only be provided for service as a firefighter~~, as defined in F.S. ch. 175~~.
(6) Credited service for prior military and firefighter service, shall not exceed five years.

SECTION 7. Section 34.52, Optional forms of benefits, Subsection (B) is amended to read as follows:

34.52. - Optional forms of benefits.

(B) The member, upon electing any option of this section, will designate the joint pensioner (subsection (A)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner up to two times ~~as provided in F.S. § 175.333~~, without the approval of the board of trustees or the current joint survivor or designated beneficiary. The member need not provide proof of the good health of the joint survivor or beneficiary being removed, and the joint survivor or beneficiary being removed need not be living. After any such change in joint survivor or beneficiary, the member's pension benefit will be recalculated accordingly by the actuary and retirement income shall be payable to the member based on the new calculation.

SECTION 8. Section 34.55, Reports to division of retirement, is amended to read as follows:

34.55. - Reports to division of retirement.

Each year and no later than March 15, the board shall file an annual report with the division of retirement containing the documents and information required by state law ~~F.S. § 175.261~~.

SECTION 9. Section 34.60, Repeal or termination of system, Subsection (B) is amended to read as follows:

34.60. - Repeal or termination of system.

(B) If sections 34.43 through 34.67 shall be repealed, or if contributions to the system are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in F.S. ch. 121, the board shall continue to administer the system in accordance with the provisions of sections 34.43 through 34.67, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in sections 34.43 through 34.67, who are designated by any of said members. In the event of repeal, discontinuance of contributions, or transfer merger or consolidation of government units, services or functions, there shall be full vesting (100 percent) of benefits accrued to date of repeal. The board shall determine the date of distribution and the asset value required to fund all non-forfeitable

benefits after taking into account the expenses of such distribution. The board shall inform the town, or then current plan sponsor, if additional assets are required in which event the town, or then current plan sponsor, shall continue to financially support the pension plan until all non-forfeitable benefits have been funded. At such time, the funds shall be appropriated and distributed in accordance with F.S. § ~~the provisions of F.S. ch.~~175.361.

SECTION 10. Section 34.72, Plan freeze and participation in defined contribution plan, Subsection (A) is amended to read as follows:

34.72. - Plan freeze and participation in defined contribution plan.

Notwithstanding any other provision of the system:

(A) The accrued benefits of all members of this system who are employed and not participating in the DROP on September 30, 2013, shall be frozen on that date. All members shall be fully vested in their frozen accrued benefit based on their length of service. The value of each member's frozen accrued benefit shall be calculated in accordance with the provisions of the system in effect on September 30, 2013, based on the member's credited service and average final compensation on that date. The frozen accrued benefit shall be payable to the member upon termination of town employment and attaining age 55 with 30 years of credited service or age 62 regardless of years of credited service, whichever occurs first. Alternatively, a member who is employed and not participating in the DROP on September 30, 2013, may elect to receive the frozen accrued benefit, reduced in accordance with subsection 34.78(D), upon termination of town employment and attaining age 50 with 15 years of credited service. In applying the preceding two sentences, credited service shall include all credited service as a member of this system prior to October 1, 2013, and all periods of employment with the Town of Longboat Key on and after October 1, 2013. For the purpose of determining a member's frozen accrued benefit in accordance with this subsection (A), salary shall include any payments of accrued leave that do not exceed the member's accrued leave balance as of July 1, 2011, and that would have been included in the member's salary if the member retired prior to October 1, 2013. ~~However, the member's accrued leave balance as of July 1, 2011 shall be reduced by the amount of vacation or sick leave used after that date, and the member's frozen accrued benefit shall be adjusted accordingly.~~ Notwithstanding the preceding sentence, upon separation from employment the amount of accrued leave included in a member's salary for the purpose of determining the member's frozen accrued benefit shall be the lesser of the amount of leave accrued at the time of separation from employment, or the amount of accrued leave that would have been included in the member's salary if the member retired prior to October 1, 2013, and the member's frozen accrued benefit shall be adjusted accordingly.

SECTION 11. Section 34.101, Board of Trustees, Subsection (K), is amended as follows:

34.101. - Board of Trustees.

(K) The boards of trustees for the existing police officers', firefighters', and general employees' retirement systems shall continue to operate through September 30, 2014, for the primary purpose of facilitating the transfer of contracts, investment holdings, assets and liabilities of the police officers', firefighters', and general employees' retirement systems, as well as all documents and records of those plans, to the new board of trustees established pursuant to subsection (E) above. ~~During the period prior to October 1, 2014, the boards of trustees for the police officers', firefighters', and general employees' retirement systems shall continue to perform their duties as set forth in sections 34.15, 34.45, and 34.75~~.

SECTION 12. A new Section 34.103, Indemnification, is created and reads as follows:

34.103. - Indemnification.

(A) To the extent not covered by insurance contracts in force from time to time, the town shall indemnify, defend and hold harmless members of the board of the consolidated retirement system from all personal liability for damages and costs, including court costs and attorneys' fees, arising out of claims, suits, litigation, or threat of same, herein referred to as "claims", against these individuals because of acts or circumstances connected with or arising out of their official duty as members of the board. The town reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or to not appeal from any adverse judgment or ruling, and in either event will indemnify, defend, and hold harmless any members of the board of the consolidated retirement system from the judgment, execution, or levy thereon.

(B) This section shall not be construed so as to relieve any insurance company or other entity liable to defend the claim or liable for payment of the judgment or claim, from any liability, nor does this section waive any provision of law affording the town immunity from any suit in whole or part, or waive any other substantive or procedural rights the town may have.

(C) This section shall not apply, nor shall the town be responsible in any manner to defend or pay for claims arising out of acts or omissions of members of the board of the consolidated retirement system which constitute felonies or gross malfeasance or gross misfeasance in office.

SECTION 13. Section 35.02, Liability of town or town officials, Subsection (A) is amended as follows:

35.02. - Liability of town or town officials.

(A) To the extent not covered by insurance contracts in force from time to time, the town shall indemnify and hold harmless its town commissioners, officers, officials, appointed board members, department heads, and employees from all personal liability for damages and costs, including court costs and attorney's fees, arising out of claims, suits, litigation, or threat of same, herein referred to

as "claims," against these individuals because of acts or circumstances connected with or arising out of their official duty or employment as commissioner, officer, official, appointed board member, department head, or employee of the town. For purposes of this section, all members of the board of trustees of the municipal firefighters, police officers, ~~and~~ general employees, and consolidated retirement trust fund shall be deemed to be appointed board members. The town reserves the right, in its sole discretion, to settle or not settle the claim at any time, and to appeal or not to appeal from any adverse judgment or ruling, and in either event will indemnify and hold harmless any commissioners, officers, officials, appointed board members, department heads, and employees from the judgment, execution, or levy thereon.

SECTION 14. All other ordinances of the Town of Longboat Key, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

SECTION 15. 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 phrase under application shall not be affected thereby.

SECTION 16. This Ordinance shall take effect upon adoption.

Passed on first reading the ___, day of _____, 20__.

Adopted on second reading and public hearing the ____ day of _____, 20___.

_____
James L. Brown, Mayor

ATTEST:

_____
Trish Granger, Town Clerk

End of Agenda Item