

## M E M O R A N D U M

**TO:** Town Commission

**FROM:** Tom Harmer, Town Manager

**REPORT DATE:** October 15, 2019

**MEETING DATE:** November 4, 2019

**SUBJECT:** Ordinance 2019-15, Amending the General Employees' Retirement System Section 34.72 Plan Freeze and Participation in Defined Contribution Plan; Repealing Section 34.95 Deferred Retirement Option Plan (DROP)

### **Recommended Action**

Forward Ordinance 2019-15, to the December 2, 2019 Regular Meeting for second reading and public hearing.

### **Background**

The Town of Longboat Key General Employees' Retirement System (the "Plan") was closed to new members on September 30, 2013, and the accrued benefits of Retirement System members were frozen on that date. As a result of the Plan freeze, employees ceased contributing to the Plan and members became 100% vested regardless of the number of years of credited service. Members with less than 10 years of credited service were allowed to elect to receive a refund of their accumulated contributions or the actuarial present value of their frozen accrued benefit, in lieu of any other benefit under the Plan. Members who, as of June 1, 2013, were within five years of the normal retirement date, were allowed to enter the DROP without penalty or enhancements on the first day of any month prior to the freeze date.

All employees who had been participating in the Plan and all General Employees hired on or after October 1, 2013 were provided retirement benefits under a new defined contribution plan. Employees who were members of the Plan on September 30, 2013, but not participating in the DROP on that date were no longer eligible to participate in the DROP.

A current employee recently requested to enter the DROP based on their interpretation of the existing language under the Town Code. Both the attorney for the Consolidated Retirement System and the Town's pension counsel opined that, based on the language of the Plan Ordinance and information provided to employees before the 2013 retirement plan changes, employees who were members of the Plan on September 30, 2013 but not participating in the DROP on that date are not eligible to participate in the DROP. The Consolidated Retirement System Board of Trustees considered the request and voted to deny based on the Board of Trustees' and the attorney's opinions.

To avoid future uncertainty about the eligibility of General Employees to participate in the DROP, the proposed amendment clarifies the Plan Ordinance in Section 34.72 (D), corrects a scrivener's error in 34.72 (F) and repeals the DROP provision Section 34.95.

### **Staff Recommendation**

Forward Ordinance 2019-15, to the December 2, 2019 Regular Meeting for second reading and public hearing.

### **Attachments**

- A. Memo from Steve Branham, Chairman, Consolidated Retirement System Board of Trustees to Town Commission

B. Ordinance 2019-15

## M E M O R A N D U M

**TO:** Town Commission

**FROM:** Steve Branham, Chairman, Consolidated Retirement System Board of Trustees (Pension Board)

**MEETING DATE:** November 4, 2019

**SUBJECT:** Ordinance 2019-15, Amending the General Employees' Retirement System Section 34.72 Plan Freeze and Participation in Defined Contribution Plan; Repealing Section 34.95 Deferred Retirement Option Plan (DROP)

### **Purpose**

This memo is to inform you of the action taken by the Pension Board regarding a request from a Town of Longboat Key General Employee, Ms. Donna Chipman, to participate in the Deferred Retirement Option Plan. She appeared before the Pension Board on May 17, 2019 and August 21, 2019 requesting approval to participate in the DROP.

### **Background**

The Town of Longboat Key General Employees' Retirement System (the "Plan") was closed to new members on September 30, 2013, and the accrued benefits of Retirement System members were frozen on that date. As a result of the Plan freeze, employees ceased contributing to the Plan and members became 100% vested regardless of the number of years of credited service. Members with less than 10 years of credited service were allowed to elect to receive a refund of their accumulated contributions or the actuarial present value of their frozen accrued benefit, in lieu of any other benefit under the Plan. Members who, as of June 1, 2013, were within five years of the normal retirement date, were also allowed to enter the DROP without penalty or enhancements on the first day of any month prior to the freeze date.

All employees who had been participating in the Plan and all general employees hired on or after October 1, 2013 were provided retirement benefits under a new defined contribution plan.

### **Discussion**

At the time of her request in May 2019, Town staff indicated that the DROP was no longer an option for her, as per existing ordinance, and that all employees were given notice of their options regarding the DROP at the time the retirement plans were "frozen." The Pension Board discussed the issue at length and considered the existing ordinance and the process and materials by which employees were informed of the changes to the retirement plans. The Pension Board decided to table the issue until opinions could be sought and received from the Pension Board Attorney, Mr. Ron Cohen, and the Town's Pension Attorney, Mr. Jim Lynn. The latter is actually the author of the ordinance to which Ms. Chipman refers. Both attorneys are widely considered to be top experts in the State of Florida on pension-related legal matters. In addition, the Town Attorney, Ms. Maggie Moonie-Portale reviewed the issue and supported the opinions of the other two attorneys. Their opinion is that employees who were members of the Plan on September 30, 2013, but not participating in the DROP on that date were no longer eligible to participate in the DROP.

The Pension Board considered Ms. Chipman's request again at its regular quarterly meeting on August 21, 2019. The Pension Board's view is that the opinions of the three attorneys are consistent with the our interpretation of the ordinance and the apparent intention of the Commission. That view is documented by our careful consideration of all facets of the issue and rendering a vote of 6-1 to deny Ms. Chipman's request to be allowed to enter the DROP.

**ORDINANCE 2019-15**

**AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, AMENDING THE GENERAL EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTION 34.72, PLAN FREEZE AND PARTICIPATION IN DEFINED CONTRIBUTION PLAN; REPEALING SECTION 34.95, DEFERRED RETIREMENT OPTION PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with Ordinance 2013-15, the Town of Longboat Key General Employees' Retirement System was closed to new members on September 30, 2013, and the accrued benefits of Retirement System members were frozen on that date; and

**WHEREAS**, commencing October 1, 2013, all employees who had been participating in the General Employees' Retirement System and all general employees hired on or after that date have participated in a defined contribution retirement plan established by the Town; and

**WHEREAS**, a question recently arose as to whether employees who were members of the General Employees' Retirement System on September 30, 2013, but not participating in the Deferred Retirement Option Plan (DROP) on that date were eligible to participate in the DROP; and

**WHEREAS**, both the attorney for the Consolidated Retirement System Board of Trustees and the Town's pension counsel have opined that, based on the language of the General Employees' Retirement System ordinance and information provided to employees before the 2013 retirement plan changes, employees who were members of the Retirement System on September 30, 2013, but not participating in the DROP on that date are not eligible to participate in the DROP; and

**WHEREAS**, at a meeting of the Board of Trustees of the Consolidated Retirement Plan on October 21, 2019, the Board of Trustees determined that employees who were members of the General Employees' Retirement System on September 30, 2013, but not participating in the deferred retirement option plan (DROP) on that date were not eligible to participate in the DROP; and

**WHEREAS**, to avoid future uncertainty about the eligibility of general employees to participate in the DROP, an amendment clarifying the General Employees' Retirement System ordinance and repealing the DROP provision is warranted.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:**

SECTION 1. Section 34.72, Plan freeze and participation in defined contribution plan, 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. 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.

(B) No benefits shall be accrued under this system on or after October 1, 2013, and no member contributions to this system shall be required on or after that date. The Town shall continue to make contributions to the system in accordance with Subsection 34.77(B), and the Board shall continue to administer the system in accordance with Sections 34.73 through 34.98, as modified by this Section 34.72, until all accrued benefits have been paid to all eligible members and beneficiaries.

(C) Any member of this system who is employed on September 30, 2013, and has less than ten years of credited service on that date may elect to receive a refund of their accumulated contributions or the actuarial present value of their frozen accrued benefit, in lieu of any other benefit under the system. Such election must be made in writing on a form provided by the Town on or before December 13, 2013, and if a member does not make a timely election he/she shall retain the frozen accrued benefit and shall not be eligible for a refund of accumulated contributions or the actuarial present value of their frozen accrued benefit, except as otherwise provided in the plan.

(D) Effective October 1, 2013, all current and future general employees of the Town of Longboat Key shall participate in a defined contribution retirement plan established by the Town of Longboat Key, and shall be eligible for benefits and make contributions to the defined contribution plan for all service as a general employee with the Town on and after that date, in accordance with the defined contribution plan, as it may be amended from time to time. Members of this system who are employed on September 30, 2013, and are not participating in the DROP on that date shall not thereafter be eligible to participate in the DROP.

(E) Members of this system who retired, entered the DROP, or terminated Town employment with the right to a deferred vested benefit prior to October 1, 2013, shall be

entitled to receive benefits from the system in accordance with the provisions of the system in effect on the date of their retirement, DROP entry, or termination of employment. Members who retire or enter the DROP prior to October 1, 2013, shall not be eligible for reemployment with the Town after that date, except at the exclusive option of the Town.

(F) Notwithstanding the provisions of Subsection 34.95(B)(1) concerning eligibility to participate in the DROP, a member who as of June 1, 2013, is within five years of the normal retirement date, may enter the DROP without penalty or enhancements on the first day of any month prior to September 30, 2013. Any member entering DROP pursuant to this provision must execute a voluntary resignation irrevocable for any reason to be effective at the end of the member's participation in the DROP, and which provides that the member shall not be eligible for reemployment with the Town, except at the exclusive option of the Town.

(G) Effective July 5, 2016, any member of this system with the right to receive a deferred vested benefit who has not begun to receive a benefit may, on or before October 1, 2016, make a one-time irrevocable election on a form provided by the Town to receive a refund of their accumulated contributions or the actuarial present value of their frozen accrued benefit, in lieu of any other benefit under the system. For the purpose of determining the actuarial present value of the frozen accrued benefit, such benefit shall include the lesser of the amount of leave accrued as of July 5, 2016, 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.

SECTION 2. Section 34.95, Deferred retirement option plan, is hereby repealed and deleted in its' entirety.

SECTION 3. 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 4. Codification. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Longboat Key.

SECTION 5. If any section, subsection, sentence, clause, or 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 6. This Ordinance shall take effect upon adoption.

Passed on first reading and public hearing the \_\_\_\_ day of \_\_\_\_\_, 2019.

Passed on second reading and public hearing the \_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
George L. Spoll, Mayor

ATTEST:

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Trish Shinkle, Town Clerk

**End of Agenda Item**