

March 4, 2009
April 2, 2009

ORDINANCE NO. 2009-06

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, TO THE POLICE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTION 11-54, TOWN CODE, RETIREMENT; AMENDING DEFINITION OF "ACTUARIAL EQUIVALENT"; AMENDING DEFINITION OF "COMPENSATION OR SALARY"; AMENDING THE DEFINITION OF "CREDITED SERVICE"; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING FOR REPEAL OF ORDINANCES AND RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 110-24) ("HEART") was passed into federal law permitting qualified plans to provide certain benefits to members of the Fund absent from employment on active duty military service; and

WHEREAS, the Board has determined it is in the best interest of the Members and Beneficiaries to make such changes to the Retirement Plan; and

WHEREAS, The Town Commission desires to make such changes to the Retirement Plan.

BE IT ENACTED by the Town of Melbourne Beach, Florida:

Section 1. That section 11-54 of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§ 11-54. RETIREMENT.

* * *

(b) ~~Definitions. For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

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

* * *

(2) **ACTUARIAL EQUIVALENT.** A benefit or amount of equal value, based upon the RP 2000 ~~1983 Group Annuity~~ Mortality Table and an interest rate of 8% per year.

* * *

(7) **COMPENSATION or SALARY** -The total cash remuneration including "overtime" paid by the Town to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer.

(A) The member's **COMPENSATION or SALARY** contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the **COMPENSATION or SALARY** the member would receive if he or she were not participating in such program and shall be treated as compensation for retirement purposes under this System.

(B) For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation

for any plan year shall not include any amounts in excess of the Internal Revenue Code s. 401(a)(17) limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation of ~~\$200,000~~ ~~\$225,000~~ shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 401(a)(17)(B). For any person who first became a member prior to the first plan year beginning on or after January 1, 1996, the limitation on compensation shall be not less than the maximum compensation amount that was allowed to be taken into account under the plan as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401 (a)(17)(1991).

(C) Effective for payments after 12/31/08, as provided for by Internal Revenue Code §414(u)(7), this definition of compensation shall include any differential wage payment from the employer to a member as a result of the member's absence from employment while serving in qualified military service.

* * *

(8) **CREDITED SERVICE** means the aggregate number of years of service and fractional parts of years of service of any police officer, omitting intervening years and fractional parts of years when such police officer may not have been employed by the Town subject to the following conditions:

- (A) No member shall receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the System for those years or fractional parts of years of service, unless the member repays into the System the amount he or she has withdrawn, plus interest as determined by the board. The member shall have at least 90 days after his or her re-employment to make repayment.
- (B) A member may voluntarily leave his or her contributions in the fund for a period of five years after leaving the employ of the Department, pending the possibility of his or her being rehired, without losing credit for the time he or she has participated actively as a police officer. If he or she is not re-employed as a police officer with the Department within five years, his or her contributions shall be returned to him or her without interest.
- (C) Credited service under this section shall be provided only for service as a Police Officer as defined below.

(D) In determining the creditable service of any member, credit for up to five years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service, if:

1. The police officer is a member in the active employ of the municipality prior to such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.
2. The police officer is entitled to re-employment under the provisions of the Uniformed Services Employment and Re-employment Rights Act.
3. The police officer returns to his or her employment as a police officer of the municipality within one year from the date of his or her release from such active service except that members who die or become disabled while serving on active duty military service shall be entitled to the rights of this section even though such member was not re-employed by the Town. Members who die or become disabled while on active duty military service shall be treated as though re-employed the day before the member

became disabled or died, was credited with the service they would have been entitled to under this section, and then either died a non-duty death while employed or became disabled from a non-duty disability.

* * *

(f) Disability benefits.

(1) Service incurred. Any member who receives a service-connected injury, disease or disability, which injury, disease or disability causes said member to be totally and permanently disabled by reason of any cause other than as set forth in sub-section (f)(4) on or after the effective date of the plan, shall receive in equal monthly installments an amount equal to 50% of his rate of regular base salary in effect as of the date of disability. The benefit shall be paid as of the date the Board determines entitlement to such disability retirement and will continue to be paid ~~of disability~~ until the earlier of recovery, as determined by the Board, or death. In the event of death within ten years of the date of disability and during the existence of the disability, benefits shall be continued to the member's beneficiary for the balance of the ten year period.

(A) Any condition or impairment of health of any and all police officers employed in the Department and who are members

of the Plan caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the member, resulting in total or partial disability shall be presumed to be accidental and suffered in the line of duty, provided that such member shall have successfully passed a physical examination upon entering such service, which physical examination, including electrocardiogram, failed to reveal any evidence of such condition, and, further, that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance. In order to be entitled to the presumption in the case of hepatitis, meningococcal meningitis, or tuberculosis, the member must meet the requirements of section 112.181, Florida Statutes.

B. The final decision as to whether a member meets the requirements for duty disability pension rests with the Board

and shall be based on substantial competent evidence on the record as a whole.

- (2) Nonservice-incurred. Any member who receives a nonservice-connected injury, disease or disability and which injury, disease or disability causes said member to be totally and permanently disabled by reason of any cause other than as set forth in subsection (f)(4) on or after the effective date of the plan, shall receive a refund of his own member contributions. This subsection (f)(2) shall not apply to any member with ten or more years of service. The benefit payable to a member who retires from the service of the town, after ten years of service, with a total and permanent disability as a result of a non-line of duty injury or illness is the accrued normal retirement benefit payable for ten years certain and life, but shall not be less than 25 percent% of his or her average monthly compensation as of the Member's disability retirement date. The benefit shall be payable as of the date that the Board determines entitlement to such disability retirement. The final decision as to whether a member meets the requirements for duty disability pension rests with the Board and shall be based on substantial competent evidence on the record as a whole.
- (3) Determination of disability. All questions relating to eligibility for initial payment or continuance of disability benefits shall be

determined by the Board of Trustees, taking into consideration the recommendations of a qualified physician or surgeon appointed by the Board of Trustees and based upon the methods and procedures established by the Board of Trustees. In the event that any disabled member could otherwise still be employed or re-employed as a police officer within the department, except that the position for which he is qualified is not available due to being currently filled, the benefit shall be payable only until such position again becomes available. The Board shall require, at its expense, periodic medical reexamination of disabled members. The final decision as to whether a member meets the requirements for disability pension rests with the Board and shall be based on substantial competent evidence on the record as a whole.

- (4) Exclusions. Monthly disability benefits shall not be payable in cases where the disability is a result of:
- (A) Excessive and habitual use by the police officer of drugs, intoxicants, or narcotics;
 - (B) Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime felony;
 - (C) Injury or disease sustained while serving in the Armed Forces. This exclusion does not affect Members who have

become disabled as a result of intervening military service under the federal Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 110-245); or

(D) Injury or disease sustained while working for anyone other than the Town and arising out of such employment.

(E) Injury or disease sustained by the police officer after employment has terminated.

(5) Recovery. In the event of recovery from disability as determined by the Board and immediate re-employment by the town as a police officer, the period of time while disabled shall be included as credited service. In the event of the recovery, but without immediate re-employment as an employee, the member's future benefits shall be determined as though initially terminated employment on his date of disability.

(6) Medical Board. No police officer shall be permitted to retire under the provisions of this sub-section (f) until examined, by a duly qualified physician or surgeon to be selected by the Board of Trustees for that purpose, and found to be disable in the degree and manner specified in this sub-section (f). Any police officer retiring under this sub-section (f) shall be examined periodically by a duly qualified physician or surgeon, or at the option of the Board of Trustees, a board of physicians or surgeons to be selected by

the Board of Trustees for that purpose, to determine if such disability has ceased to exist.

- (A) Permanent and total disability. A police officer will be considered totally disabled if, in the opinion of the Board of Trustees, said police officer is wholly prevented from rendering useful and efficient service as a police officer; and a police officer will be considered permanently disabled if, in the opinion of Board of Trustees, said police officer is likely to remain so disabled continuously and permanently from a cause other than as specified in sub-section (f)(4).
- (B) Nonservice-incurred. A nonservice-incurred injury, disability, or disease shall be one incurred other than in the line of duty.

* * *

- (i) 415 Internal Revenue Code Limits ~~Maximum benefit limitations.~~
 - (1) Basic Limitations. Subject to the adjustments in paragraph 3, 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:

- _____ (A) Any ancillary benefit which is not directly related to retirement income benefits;
- _____ (B) 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.
- _____ (2) Participation in Other Defined Benefit Plans. The limitation of this subsection with respect to any Participant who at any time has been a Participant in any other defined benefit plan (as defined in §414(j) of the Code) maintained by the Town shall apply as if the total benefits payable under all defined benefit plans in which the Participant has been a Participant where payable from one Plan.
- _____ (3) Adjustments in Limitations.
 - _____ (A) In the event the Participant's retirement benefits become payable before age sixty-two (62), the maximum amount of annual retirement income limitation prescribed by this Article

shall be reduced in accordance with Regulations issued by the Secretary of the Treasury pursuant to the provisions of §415(b) of the Code, so that such limitation (as reduced) equals an annual benefit (beginning when such retirement income begins) which is equivalent to the Code §415(b) maximum amount of annual retirement income beginning at age 62. This limitation shall not apply to qualified police or firefighters as that term is defined in Code Section 415(b)(2)(G).

_____ (B) In the event the Participant's benefit is based on at least fifteen (15) years of Credited Service, the adjustments provided for in subparagraph (a) above shall not apply.

_____ (C) The reductions provided for in subparagraph (a) above shall not be applicable to disability benefits or pre-retirement death benefits.

_____ (D) In the event the Participant's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the basic limitation set forth in paragraph 1 herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made using an assumed interest rate of five percent (5%) and shall be made in

accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

_____ (E) Less than Ten (10) Years of Service. The maximum retirement benefits payable under this Section to any Participant who has completed less than ten (10) years of Credited Service with the Town shall be the amount determined under paragraph 1 multiplied by a fraction, the numerator of which is the number of the Participant's years of Credited Service and the denominator of which is ten (10). The reduction provided for in this subparagraph shall not be applicable to disability benefits or pre-retirement death benefits.

_____ (F) Ten Thousand Dollar \$10,000 Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a Participant shall be deemed not to exceed the limitations in this subsection if the benefits payable, with respect to such Participant under this Plan and under all other qualified defined benefit pension plans to which the Town contributes, do not exceed ten thousand dollars (\$10,000) for the applicable Plan year and for any prior Plan Year and the Town has not at any time maintained a qualified defined contributions plan in which the Participant participated.

(G) Reduction of benefits. Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Participant's benefit under any defined benefit plans in which Participant participated, such reduction to be made first with respect to the plan in which Participant 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 Participant participated, such reduction to be made first with respect to the plan in which Participant 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 different manner and priority pursuant to the agreement of the Board and the plan administrator of all other plans covering such Participant.

 (H) Cost-of-Living Adjustments. The limitations as stated herein shall be adjusted annually in accordance with any cost-of-living adjustments prescribed by the Secretary of the Treasury pursuant to §415(d) of the Code.

- ~~(1) Basic limitations. Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a member under this System shall not exceed:~~
- ~~\$180,000 or such lesser dollar amount as may be allowable for any calendar year pursuant to section 415(b) of the U.S. Internal Revenue 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 section 415(d) of the U.S. Internal Revenue Code~~
- ~~For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by U.S. Treasury Regulations, so that such benefits are the actuarial equivalent of a straight life annuity.~~
- ~~(2) Participation other defined benefit plan. The limitation 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 Section 414(j) of the U.S. Internal Revenue Code) maintained by the Town shall apply as if the total benefits payable under all defined benefit plants in which the member has been a member were payable from one plan.~~
- ~~(3) Adjustments in limitations. In the event the member's retirement~~

~~benefits become payable before unreduced social security benefits are payable, the \$180,000 limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the U.S. Internal Revenue Code. If the member's retirement benefit becomes payable after unreduced social security benefits are payable, for purposes of determining whether this benefit meets the limitation set forth in subsection (i)(1) (f)(1)(A) above, such benefit shall be adjusted to that it is actuarially equivalent to the benefits beginning at the age when unreduced social security benefits are payable. This adjustment shall be made using an assumed interest rate of five percent (5%) and shall be made in accordance with regulations promulgated by the Secretary of the Treasury or said Secretary's delegate.~~

~~(4) Less than ten years of service. The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of credited service with the town shall be the amount determined under subsection (i)(1) (f)(1)(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 (10).~~

~~(5) \$10,000 limit. Notwithstanding the foregoing, the retirement benefit~~

~~payable with respect to a member shall be deemed not to exceed the limitations set forth in this section if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the town contributes, do not exceed \$10,000 for the applicable plan year and for any prior plan year.~~

~~(6) Accrued benefit of effective date. Notwithstanding the above limitations, if any member as of the effective date hereof, has an accrued benefit as of that date that exceeds the above limitations, then such limitations shall equal such accrued benefit. However, no cost of living adjustments as provided in subsection (i)(7) below shall be applicable to the amount of retirement benefit so determined.~~

~~(7) Cost of living adjustments. The limitations as stated in sub-sections (i) (1), (2), and (3) herein shall be adjusted to the time payment of a benefit begins in accordance with any cost of living adjustments prescribed by the Secretary of the Treasury pursuant to Section 415(d) of the U.S. Internal Revenue Code.~~

~~(8)(4) Additional Limitation on Pension Benefits. Notwithstanding anything herein to the contrary:~~

~~(A) Effective for Retirees who first became Members after January 1, 1980, the normal retirement benefit or pension~~

payable shall not exceed 100 percent (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.

- (B) 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 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.

(5) This section shall be effective for distributions after December 31, 2001.

* * *

- (k) Required Distributions. ~~Distribution of benefits. Notwithstanding any other provision of this System to the contrary, a form of retirement income payable from this System after the Effective Date of this ordinance, shall satisfy the following conditions:~~

(1) Effective for distributions after December 31, 1996, in accordance with IRC Section 401(a)(9), 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 member or the life expectancy of the member and a beneficiary.

_____ (2) Any and all benefit payments shall begin by the later of:

_____ (A) April 1 of the calendar year following the calendar year of the member's retirement date; or

_____ (B) April 1 of the calendar year following the calendar year in which the member attains age 70½.

_____ (3) If an employee 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 this plan.

_____ (4) All distributions under this Plan will be made in accordance with this section, Code Section 401(a)(9) and the regulations thereunder, notwithstanding any provisions of this Plan to the contrary, effective beginning January 1, 2003.

~~_____ (1) If the retirement income is payable before the member's death,~~

~~_____ (A) It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½, or the calendar year in which member retires.~~

~~_____ (B) The distributions shall commence not later than the calendar year defined above; and a), shall be paid over the life of the~~

~~member or over the lifetimes of the member and spouse, issue or dependent, or b), shall be paid over the period extending not beyond the life expectancy of the member and Spouse, issue or dependent.~~

~~Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before his entire interest in the System has been distributed, the remaining portion of such interest in the system shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.~~

- ~~————— (2) If the member's death occurs before the distribution of his interest in the System has commenced, member's entire interest in the System shall be distributed within five (5) years of member's death, unless it is to be distributed in accordance with the following rules:~~
- ~~————— (A) The member's remaining interest in the System is payable to his Spouse, issue or dependent;~~
- ~~————— (B) The remaining interest is to be distributed over the life of the Spouse, issue or dependent or over a period not extending beyond the life expectancy of the Spouse, issue or dependent; and~~
- ~~————— (C) Such distribution begins within one year of the member's death unless the member's spouse, 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 70½ 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 member.~~

Section 2. Severability and Interpretation.

- (a) In the event that any term, provision, clause, sentence or section of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.
- (b) In interpreting the provisions of this Ordinance, the following rules and symbols shall apply:
 - (1) Words underlined are additions to existing text.
 - (2) Words ~~stricken through~~ are deletions from existing text.
 - (3) Asterisks (* * *) indicates an omission from this Ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinance denoted by the asterisks and not set forth in this

Ordinance shall remain unchanged upon adoption of this Ordinance.

Section 3. Ordinances and Resolutions in Conflict. All ordinances or resolutions or parts thereof that may be determined to be in conflict with this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall become effective immediately upon adoption.

PASSED by the Town Commission of the Town of Melbourne Beach on first reading on the day of _____, 2009, and ADOPTED by the Town Commission of the Town of Melbourne Beach, Brevard County, Florida, on second reading/final reading on the ____ day of _____, 2009.

TOWN OF MELBOURNE
BEACH, FLORIDA

By: _____

Rita A. Karpie, Mayor

ATTEST:

Christina M. Hoffkins, Town Clerk (TOWN SEAL)

BSJ/adt
April 7, 2009 - ka
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