CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

06 SEP 28 A9:11

DEPARTMENT: **City Pension Office**

AGENDA DATE: **October 3, 2006**

CONTACT PERSON/PHONE: **Robert Ash/ 541- 4545**

DISTRICT(S) AFFECTED: All: Employees of the City County Health and Environental District.

SUBJECT:

Pension Ordinance Amendment: An Ordinance Amending Chapter 2.64 of the El Paso Municipal Code (City Employees' Pension Fund) to Allow Other Entities, Including the El Paso City County Health and Environmental District, to Adopt the City Employees' Pension Fund

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BACKGROUND / DISCUSSION:

Although the City County Health and Environmental District (the "District") had not formally adopted the El Paso City Employees' Pension Fund (the "Fund") as its own pension plan, historically, the employees of the District have participated and continue to participate in the Fund. Pursuant to the Internal Revenue Code of 1986, as amended, only employees of the plan sponsor and the employees of an adopting employer may participate in a 401(a) plan. That said, on March 8, 2006, the Board of Health of the District adopted a resolution whereby the District formally adopted the Fund for its employees. In accordance with the Internal Revenue Code, this amendment proposes to change the Fund from a single employer plan to a multiple employer plan and thereby allow the District to become an adopting employer of the Fund. This amendment shall not result in any increased cost or benefit to the City or Fund participants..

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

There are no costs assocaiated with the proposed amendment.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

The pension fund's Board of Trustees unamiuosly recommended approval of this proposed amendment on March 15, 2006.

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) [signature] **FINANCE:** (if required) _____

DEPARTMENT HEAD: Robert B. Ash - Pension Administrator

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: Joyce A. Trelian **DATE:** 9/26/06

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MEMORANDUM

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TO: City Manager: Joyce Wilson
Mayor John Cook and Members of the City Council

From: Robert Ash: Pension Administrator

September 27, 2006

Re: Agenda Item: Pension Ordinance Amendment

A technical amendment to the pension ordinance will be introduced on October 3, 2006 with a corresponding public hearing scheduled for October 17, 2006. The proposed pension ordinance amendment addresses the participation by City-County Health and Environmental District (the "***District***") employees in the El Paso City Employees' Pension Fund (the "***Fund***").

Pursuant to Chapter 2.64.130 of the El Paso Municipal Code (City Employees' Pension Fund), District employees have participated and continue to participate in the Fund. The Internal Revenue Code provides that only employees of the *sponsor employer* or *adopting employer* may participate in a 401(a) Plan (i.e., the Fund). Although historically, through the adoption of their respective annual budgets the City and the District approved participation by District employees in the Fund, the District has not formally adopted the Fund to become an adopting employer thereof. In order to address this issue, this ordinance amendment will change the Fund from a single employer pension plan to a multiple employer plan, and thereby allow the District as well as any other entity which City Council approves to become an adopting employer of the Fund.

The benefits provided by the Fund and the participation of employees of the District will be unaffected by this ordinance amendment. Also, please note that this amendment will not result in any increased cost or benefit to the City or Fund participants.

On March 8, 2006, the Board of Health of the District adopted a resolution whereby the District formally adopted the Fund. On October 17, 2006 a resolution will be included in the City Council agenda to approve the District's adoption of the Fund.

The City's outside tax counsel Mr. Robert Zaborowski and the Board of Trustees of the Fund have reviewed this ordinance amendment and recommend its approval.

Should you have any question regarding this proposed amendment, please do not hesitate to contact me at your convenience at x 4545.

C: Mr. William Studer: Deputy City Manager
Mr. Juan F. Sandoval: Chairman Pension Fund Board of Trustees
Mr. Charlie F. McNabb Esq.: City Attorney
Mr. Jorge Villegas Esq.: Assistant City Attorney

Doc no. 25472 v2

ORDINANCE NO._____

AN ORDINANCE AMENDING CHAPTER 2.64 OF THE EL PASO MUNICIPAL CODE (CITY EMPLOYEES' PENSION FUND) TO ALLOW OTHER ENTITIES, INCLUDING THE EL PASO CITY COUNTY HEALTH AND ENVIRONMENTAL DISTRICT, TO ADOPT THE CITY EMPLOYEES' PENSION FUND

WHEREAS, Chapter 2.64 (City Employees' Pension Fund) of the El Paso City Code (the "***Code***") establishes the creation of a pension fund for eligible City of El Paso (the "***City***") employees known as the City Employees' Pension Fund (the "***Fund***");

WHEREAS, the Fund does not include participants who are fire fighters or police officers;

WHEREAS, Section 2.64.020 of the Code provides that the Fund shall be administered by a Board of Trustees (the "***Board***");

WHEREAS, on August 29, 1984, the El Paso City-County Health District was established through a cooperative agreement entered into by and between the City and the Commissioner's Court of El Paso County, Texas (the "***Cooperative Agreement***");

WHEREAS, on March 10, 1992, the Cooperative Agreement was amended to change the name of the El Paso City-County Health District to El Paso City-County Health and Environmental District (the "***District***");

WHEREAS, the City provides general and administrative support to the District, including but not limited to the processing of the District's payroll;

WHEREAS, in the past, employees of the District were governed by the Civil Service Rules of the City and participated in the Fund;

WHEREAS, pursuant to Section 2.64.130 of the Code, employees of the District have historically participated in the Fund and have been treated, for all matters relating to the Fund, similar to City employees;

WHEREAS, pursuant to the Internal Revenue Code of 1986, as amended, a sponsoring employer of a pension fund may allow another entity, whether or not it is affiliated with the sponsoring employer, to become a participating employer of the Fund; provided that such entity makes its own contributions to the Fund for its employees;

WHEREAS, the City is the sponsoring employer of the Fund**;**

WHEREAS, although historically the District has been treated by the City and has acted similar to a participating employer of the Fund, the District had not formally adopted the Fund until March 8, 2006 when the Board of Health of the District adopted a resolution whereby the District formally adopted the Fund for its employees;

WHEREAS, pursuant to the interlocal agreement that exists between the City and the El Paso County, the City shall continue to provide general and administrative support to the District, which includes but is not limited to the processing of the District's payroll;

WHEREAS, the City desires to approve the District's adoption of the Fund and allow the District to become a participating employer of the Fund;

WHEREAS, the Texas Legislature changed Title 109 PENSIONS to include the words "fire fighters" and " police officers" making it appropriate to change the words "Firemen" and "Policemen" to "Fire Fighters" and "Police Officers" in the Chapter 2.64 of the Code; and

WHEREAS, the City and the Board of Health of the District believe it to be in the best interest of the City, the Fund, and the Fund's participants and beneficiaries, to amend Chapter 2.64 of the Code, as follows.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That Section 2.64.010 of the Code shall be amended to read in its entirety as follows:

   There shall be established by the city a pension fund for city employees and all employees of any other entity including but not limited to the El Paso City County Health and Environmental District, that with the City's consent, adopts the pension fund and, thereby, becomes an adopting employer of the fund. This fund does not include participants who are fire fighters or police officers. Such fund shall be known as the City Employees' Pension Fund.

2. That Section 2.64.120 A of the Code shall be amended as follows:

   All classified civil service employees shall be members of the fund as of the date of their appointment, subject to the conditions specified in the subsections which follow:
   A. Persons eligible to membership in the fire fighter's and police officer's pension system set up by state law shall not be eligible for membership in the city employee's pension fund.

3. That Section 2.64.130 of the Code shall be amended to read in its entirety as follows:

   The provisions of this chapter are extended to all employees of the El Paso City County Health and Environmental District; and all provisions of this chapter shall be applicable to such employees.

4. That Section 2.64.140 of the Code shall be amended to replace the words "firemen" and "policemen" with "fire fighters" and "police officers." Nothing in this ordinance is intended to impact the existing El Paso Firemen and Policemen Pension Fund.

5. That the second sentence of Section 2.64.190A.1 of the Code shall be amended as follows:

A. Every employee who is a participant in the fund shall contribute thereto six and three-fourths percent of his/her salary or wages. The city and all related agencies as heretofore established and as may be additionally established by City Council from time to time, and any other entity which becomes a participating employer in the pension fund, including but not limited to the El Paso City County Health and Environmental District, shall contribute an amount equal to ten and one-fourth percent of the salary or wages of their respective employees who contribute to the fund, subject to subsection (A)(1) of this section.

1. In any case in which the periodic salary or wage of a participant, because of the employee's accident with pay status, is insufficient to allow for deduction from salary or wages of the required employee contribution, or when salary or wages are not subject to deductions, the employee shall be responsible for making payment of the required contribution directly to the city comptroller, not later than one week after the applicable bi-weekly pay day. Failure to make the required contributions will result in loss of pension service credit for the period for which contributions have not been made. Contributions paid later than one week after the applicable pay day will be subject to the addition of interest at the rate of seven and one-half percent per annum compounded annually until such contributions are paid.

6. That the amendments to Chapter 2.64 of the Code, as set forth hereinabove, shall be effective as of August 29, 1984.

7. That except as expressly amended herein; Chapter 2.64 of the Code shall remain in full force and effect.

[*Signature page to follow*]

ORDINANCE NO. _____

Signature Page

PASSED AND APPROVED this _____ day of _____, 2006.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Jorge Villegas
Assistant City Attorney

_____
Eddie Miranda, Board Counsel

APPROVED AS TO CONTENT:

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Robert B. Ash, Pension Administrator
City Employees' Pension Fund

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Robert B. Zaboroski
City Tax Counsel