

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

DEPARTMENT: City Manager's Office – Finance and Administrative Services Portfolio

AGENDA DATE: Introduction of Ordinance - October 15, 2013
Public Hearing Date - October 29, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Robert Ash (541-4765)
Mathew Behrens (541-4550)

DISTRICT(S) AFFECTED: ALL

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

An Ordinance amending Title 2, Chapter 2.64 of the El Paso City Code (City Employees' Pension Fund) to clarify that the Pension Plan is exclusive to City Employees; to reflect a compensation ceiling for calculating contribution or benefit accruals; to reflect that vested benefits and employee contributions are non-forfeitable should the plan terminate; to define compensation and gross compensation; to clarify that an employee shall not forfeit any contributions should they leave service before reaching retirement age; to reflect a limit on plan benefits paid out in accordance with the Internal Revenue Code; to allow beneficiaries to have any portion of an eligible distribution paid directly to an eligible plan; to replace the terms "earnings" and "gross earnings" with "compensation" and "gross compensation"; to allow non-spousal beneficiaries to make direct rollovers; and to replace the term "permanent part-time" with "regular part-time".

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City's Code is amended to reflect changes to the City's Employee Pension Fund. The bulk of the changes were made at the request of the Internal Revenue Service (IRS) so that the City could receive a determination letter from the IRS. The determination letter will secure various benefits including binding the IRS to its determination that the pension plan is a qualified plan, protect the City from changes to administrative positions taken by the IRS, grants the City a five year remedial period to make changes due to changes in federal law, and the ability to self-correct through the Employees Plans Compliance Resolution System. It should be noted the City's Pension was already administratively following the requested changes to the code, but the IRS requested that the code reflect these activities. Other minor changes were made to reflect changes in the charter.

The attached slide show details the various changes. Mr. Robert Ash, Pension Administrator, will be making the presentation.

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?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 2, CHAPTER 2.64 OF THE EL PASO CITY CODE (CITY EMPLOYEES' PENSION FUND) TO CLARIFY THAT THE PENSION PLAN IS EXCLUSIVE TO CITY EMPLOYEES; TO REFLECT A COMPENSATION CEILING FOR CALCULATING CONTRIBUTION OR BENEFIT ACCRUALS; TO REFLECT THAT VESTED BENEFITS AND EMPLOYEE CONTRIBUTIONS ARE NON-FORFEITABLE SHOULD THE PLAN TERMINATE; TO DEFINE COMPENSATION AND GROSS COMPENSATION; TO CLARIFY THAT AN EMPLOYEE SHALL NOT FORFEIT ANY CONTRIBUTIONS SHOULD THEY LEAVE SERVICE BEFORE REACHING RETIRMENT AGE; TO REFLECT A LIMIT ON PLAN BENEFITS PAID OUT IN ACCORDANCE WITH THE INTERNAL REVENUE CODE; TO ALLOW BENEFICIARIES TO HAVE ANY PORTION OF AN ELIGIBLE DISTRIBUTION PAID DIRECTLY TO AN ELIGIBLE PLAN; TO REPLACE THE TERMS "EARNINGS" AND "GROSS EARNINGS" WITH "COMPENSATION" AND "GROSS COMPENSATION"; TO ALLOW NON-SPOUSAL BENEFICIARIES TO MAKE DIRECT ROLLOVERS; AND TO REPLACE THE TERM "PERMANENT PART-TIME" WITH "REGULAR PART-TIME".

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That Title 2 (Administration and Personnel), Chapter 2.64 (City Employees' Pension Fund), Section 2.64.010 (Exclusive Benefits of Participants) shall be amended and the phrase "the exclusive benefit of" shall be inserted in between the words "for" and "city" so as to clarify that the pension plan is exclusive to City employees. The section shall now read in its entirety as follows:

Section 2.64.010 – Created.

There shall be established by the city a pension fund for both the exclusive benefit of city participants and all participants from any other entity that with the city's consent, adopts the pension fund and, thereby, becomes an adopting employer of the fund (hereafter, "other approved employer"). This fund does not include participants who are firefighters or police officers. Such fund shall be known as the city employees' pension fund. Further, all references in this chapter to "fund", "plan", "city employee's pension fund", "city employee's pension plan", "pension fund" or "pension plan" shall mean the city employees' pension fund. All references in this chapter to participant or fund participant shall mean those persons who participate in the fund pursuant to the provisions of this chapter, and may also be referred to as members of the fund. Additionally, all references in this chapter to "city" shall mean the City of El Paso, Texas.

2. That Title 2 (Administration and Personnel), Chapter 2.64 (City Employees' Pension Fund), Section 2.64.190 (Contributions) is amended to create a compensation ceiling for

ORDINANCE NO. _____

13-1144-003/PL#1905562_7/ORD AMD 2.64/MKB

purposes of calculating contribution or benefit accruals. The section will be amended by adding paragraph (D), which will read in its entirety as follows:

Paragraph 2.64.190(D)

- D. Notwithstanding any other provisions in the Plan, compensation in excess of the limit contained in Internal Revenue Code section 401(a)(17) or successor statute, if any (or such other amounts as may be determined by taking into account the cost-of-living adjustment provided under Internal Revenue Code section 401(a)(17) or any successor statute) shall be disregarded for all purposes of calculating a participant's allocations for any plan year.

3. That Title 2 (Administration and Personnel), Chapter 2.64 (City Employees' Pension Fund), Section 2.64.190 (Contributions) shall be amended so that should the plan terminate vested benefits and employee contributions are non-forfeitable. The section will be amended by adding paragraph (E), which shall read in its entirety as follows:

Paragraph 2.64.190(E)

- E. Upon termination of the Plan, the participant's contributions as an employee and any vested benefits shall be non-forfeitable, including without limitation employer's contributions.

4. That Title 2 (Administration and Personnel), Chapter 2.64 (City Employees' Pension Fund), Section 2.64.190 (Contributions) shall be amended to define compensation and gross compensation. This section shall be amended by adding paragraph (F), which shall read in its entirety as follows:

Paragraph 2.64.190(F)

- F. Compensation.
 - 1. Compensation shall mean base salary. Base salary is a fixed amount of money paid to an employee by an employer in return for work performed. Base salary does not include benefits, bonuses or any other potential compensation from an employer. Base salary is paid, most frequently, in a bi-weekly paycheck. In most years, an employee's base salary is paid in 26 even paychecks over the course of the year.
 - 2. Gross compensation shall mean base salary as defined in section 2.64.190(F)(1) and will also include overtime, bonuses, and some other non-periodic payments.

5. That Title 2 (Administration and Personnel), Chapter 2.64 (City Employees' Pension Fund), Section 2.64.200 (Repayment of Contributions) Paragraph (A) is amended so that an employee shall not forfeit any contributions if they separate from employment before reaching early retirement age. The section will be amended to read in its entirety as follows:

Paragraph 2.64.200(A)

- A. Participant permanently separated after February 28, 1955. Any participant who is permanently separated from the city service after February 28, 1955, without becoming entitled to benefits under the pension system shall be entitled to repayment of all contributions made by him to the pension fund. Whenever a plan participant who is eligible or not eligible for retirement from city service under either Section 2.64.200(A)(1) or (2), decides to retire from service, such plan participant may take a lump sum refund of contributions.

6. That Title 2 (Administration and Personnel), Chapter 2.64 (City Employees' Pension Fund), Section 2.64.200 (Retirement Pensions) shall be amended so that the plan is in compliance with the requirement of Internal Revenue Code section 415 that sets a limit on the amount of benefits to be paid out to a plan participant. The section will be amended by adding paragraph (G), which shall read in entirety as follows:

Paragraph 2.64.200(G)

- G. Limit of Benefits.
 - 1. Notwithstanding any other provision herein, the annual benefit provided with respect to any plan participant who retires and is eligible to receive benefits may not exceed the benefits allowed for a governmental defined benefit plan qualified under Internal Revenue Code section 401 or its successor statute and such limit shall increase each year to the extent permitted by annual cost-of-living increase adjustments announced by the Secretary of the Treasury under Internal Revenue Code section 415(d) or a successor statute. Such increased benefit limits shall apply to participants who have retired and are eligible to receive benefits, including participants who have commenced to receive benefits, before the effective date of the adjustment.
 - 2. If the combined benefits from two or more defined benefit plans sponsored by the City would otherwise exceed the limits imposed by subparagraph (1) and Internal Revenue Code section 415(b) or successor statutes, the benefits provided under this Plan shall be reduced to the extent necessary to comply with those requirements.

7. That Title 2 (Administration and Personnel), Chapter 2.64 (City Employees' Pension Fund), Sections 2.64.200 (Retirement Pensions) and 2.64.205 (Proportionate Retirement Benefits) shall be amended so as to replace the terms "earnings" and "gross earnings" with "compensation" and "gross compensation". The effected sections shall read in their entirety as follows:

Sections 2.64.200(B)(1)-(4)

1. Effective September 1, 1984, any person so retired, who was first a fund participant before September 1, 2011, shall be entitled to receive a monthly pension from the fund in an amount equal to: (1) two and one-half percent of the monthly average of the pensionable gross compensation received by the participant during the three years immediately preceding retirement; or (2) two and one-half percent of the monthly average of the base salary received by the participant during the year immediately preceding retirement; or (3) two and one-half percent of the monthly base salary the participant is entitled to receive for the month immediately preceding retirement, whichever is greater, multiplied by the number of completed years of service, plus 0.2083 of one percent of such average or entitled monthly pay for each complete or fractional part of a month of service which is not part of a complete year, or
2. Any person so retired who was first a fund participant on or after September 1, 2011 shall be entitled to receive a monthly pension from the fund in an amount equal to two and one-fourth percent of the monthly average of the pensionable gross compensation received by the participant during the last three years immediately preceding retirement multiplied by the number of completed years of service credit, plus .1875 of one percent of such average monthly pay for each complete or fractional part of a month which is not part of a complete year; provided, however, that under no circumstance shall said monthly pension exceed ninety percent of the participant's three year average monthly pensionable gross compensation, and
3. Unless otherwise approved by the board of trustees, the monthly pension of a participant who was first a participant before September 1, 2011 will be computed on the basis of the monthly base salary the participant is entitled to receive for the month immediately prior to retirement.
4. Pensionable gross compensation received by a participant that exceed the amount he is entitled to be paid in the permanent position to which he has been regularly appointed, shall be excluded from the computation of monthly pension benefits.

Sections 2.64.205(A)(3)(a)-(b)

3. The final pay for purposes of retirement calculations will be calculated under either subsection A. or B., as applicable:
 - a. For employees who first became fund participants before September 1, 2011, the final pay for purposes of retirement calculations will be the monthly average of the pensionable gross compensation received by the employee for the last three years

prior to the date that the employee stops making pension contributions to the city employees' pension fund, or the monthly average of the base salary received by the employee for the year immediately prior to the date that the employee stops making pension contributions to the city employees' pension fund, or the monthly base salary pay the employee is entitled to receive for the month immediately prior to the date that the employee stops making pension contributions to the city employees' pension fund, whichever is greater, or

- b. For employees who first became fund participants on or after September 1, 2011, the final pay for purposes of retirement calculations shall be the monthly average of the pensionable gross compensation received by the participant during the last three years immediately preceding retirement; provided, however, that under no circumstance shall said final pay exceed ninety percent of the participant's average monthly gross pay.

8. That Title 2 (Administration and Personnel), Chapter 2.64 (City Employees' Pension Fund), Section 2.64.220 (Repayment of Contributions) is amended to allow beneficiaries to have any portion of an eligible distribution paid directly to an eligible plan and to allow non-spousal beneficiaries to make direct rollovers. The section will be amended by adding paragraph (I), which will read in its entirety as follows:

Paragraph 2.64.220(I)

I. Direct Rollovers.

1. A beneficiary may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution (as defined in Treasury Regulation section 1.402(c)-2, successor statute, or other applicable sections or regulations) paid directly to an eligible retirement plan (as defined in Treasury Regulation section 1.402(c)-2 Q&A(2), successor statute, or other applicable sections and regulations) specified by the beneficiary in a direct rollover. For purposes of this subsection the relevant rules and regulations under the Internal Revenue Code and Treasury Regulations governing eligible rollover distribution shall apply, including without limitation Internal Revenue Code sections 402(c), 401(a), 408(a)-(b), 403(a), 457(b), and their successor statutes.
2. For purposes of this section dealing with eligible rollover or distributions, a "beneficiary" shall include an employee or former employee. In addition, the employee's or former employee's surviving spouse or designated beneficiary ("Non-Spouse Designated Beneficiary") is a beneficiary, and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations

order, as defined in Internal Revenue Code section 414(p) or successor statute, is a beneficiary with regard to the interest of the spouse or the former spouse.

9. That Title 2 (Administration and Personnel), Chapter 2.64 (City Employees' Pension Fund), Sections 2.64.120 (Participation in Pension System – Civil Service Employees), 2.64.130 (Participation in Pension System – City-county Health District Employees), and 2.64.200 (Retirement Pensions) are amended to replace the term “permanent part-time” with “regular part-time”. The effected sections will be amended to read in their entirety as follows:

Paragraph 2.64.120(B)

- B. Seasonal or temporary employees shall not be eligible. Regular part-time employees may at their option become members of the city employees' pension fund by making the irrevocable election to participate in the fund as provided by and in accordance with the terms set forth in Section 2.64.140

Section 2.64.140

Full-time employees who become employed by the city after June 3, 1997, the effective date of this section, and who are not in the classified civil service, including employees employed by the El Paso Water Utilities or the mass transit department board (except police officers, firefighters and officials elected by vote of the people) shall become fund participants. Regular part-time employees and eligible contract employees who elect to participate in the fund, and all employees of any other entity that with the city's consent adopts the pension fund ("other approved employer") may become participants by making an irrevocable election to participate or not participate which shall be made at the time that the person completes the paperwork required at the time of hire by the human resources department, or in the case of an employee of another approved employer, by submitting the irrevocable election to participate or not participate to the board of trustees on or before the first day of employment with such other approved employer. The following provisions shall additionally apply:

Paragraph 2.64.200(F), Subparagraph 2.64.200(F)(1), and Subparagraph 2.64.200(F)(7)

Retirement pension of regular part-time employees who elect to participate in the fund will be calculated as follows:

1. For purposes of calculating benefits earned from regular part-time service, service credit shall be accrued as follows: for each year worked, or part thereof, the number of hours actually worked will be aggregated and expressed as a ratio of hours worked to a base of full-time equivalent hours over the same period. Service credit so earned shall then be multiplied by two and one-half percent for the persons who first became fund participants before September 1, 2011, or two and one-fourth for the

persons who first became fund participants on or after September 1, 2011, of a full-time equivalent yearly final base salary to arrive at the benefit due.

- 7. A retiree of the pension fund who is rehired as a regular part-time employee by the city and elects to participate in the pension fund, shall have his final pension benefit calculated in two (or more) distinct parts representing the two (or more) distinct periods of service, and as further provided in section 2.64.120 H. of this Code, as such subsections are germane depending on the applicable facts and circumstances.

10. Except as herein amended, that Title 2 (Administration and Personnel), Chapter 2.64 (City Employees' Pension Fund) of the El Paso City Code shall remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 2013.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



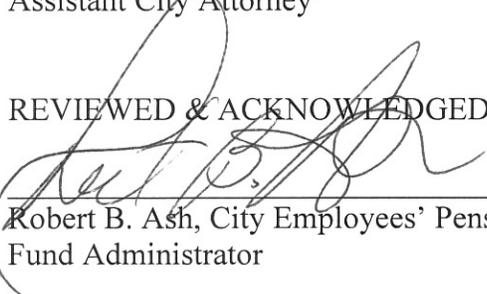
Matthew K. Behrens
Assistant City Attorney

APPROVED AS TO CONTENT:



Carmen Arrieta-Candelaria,
City Chief Financial Officer

REVIEWED & ACKNOWLEDGED:



Robert B. Ash, City Employees' Pension
Fund Administrator