

**ORDINANCE NO. 2019-2158**

**AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, PROVIDING FOR AMENDMENT OF ARTICLE IV OF CHAPTER 17 OF THE CODE OF ORDINANCES OF THE CITY OF NEW PORT RICHEY, PERTAINING TO THE POLICE OFFICERS' RETIREMENT SYSTEM; PROVIDING FOR AMENDMENT OF SUBSECTION (h) OF SECTION 17-65, PERTAINING TO THE \$10,000.00 MAXIMUM PENSION; PROVIDING FOR AMENDMENT OF SECTION 17-65.2, PERTAINING TO MISCELLANEOUS PROVISIONS, BY ADDING SUBSECTION (j) THERETO; PROVIDING FOR MISSING BENEFIT RECIPIENTS; PROVIDING FOR AMENDMENT OF SUBSECTION (f) OF SECTION 17-65.13, PERTAINING TO GENERAL PROVISIONS IN THE DEFERRED RETIREMENT OPTION PLAN; PROVIDING FOR REPEAL OF PARAGRAPH (8) THEREOF, PERTAINING TO ESCHEAT OF DROP BENEFITS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Council deems it advisable to amend the City's Police Officers' Retirement System to address the benefits provided thereby; and

WHEREAS, it is declared as a matter of legislative determination and public policy that the provisions and prohibitions herein are necessary in the public interest; and it is further declared that the provisions and prohibitions herein are in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life in the City in accordance with the City's police powers.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW PORT RICHEY, FLORIDA;

**Section 1. Chapter 17, Article IV, Section 17-65, Subsection (h) of the Code of Ordinances, pertaining to the \$10,000.00 maximum pension, is hereby amended as follows (strikeout text is deleted and underlined text is added):**

(h) *Ten Thousand Dollar (\$10,000) Limit; Less Than Ten Years of Service.* Notwithstanding anything in this section 17-65, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection (h) of section 17-65 if the benefits payable, with respect to such member under this system and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year ~~and~~ or for any prior limitation year and the City has not at any time maintained a qualified defined contribution plan in which the member participated; provided, however, that if the member has completed less than ten (10) years of credited service with the City, the limit under this subsection (h) of section 17-65 shall be a reduced limit equal to ten thousand dollars (\$10,000) 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).

**Section 2. Chapter 17, Article IV, Section 17-65.2 of the Code of Ordinances, pertaining to**

**miscellaneous provisions of the retirement system, is hereby amended by adding Subsection (J) thereto, as follows** (strikeout text is deleted and underlined text is added):

(j) *Missing benefit recipients.* The system shall follow the procedures outlined in the IRS Employee Plans Compliance Resolution System (EPCRS) Program and other applicable IRS guidance to locate any missing individuals to whom a full unreduced benefit payment is due and if, at the conclusion of such efforts, the individual cannot be located, the existing procedure of cancelling payments otherwise due (provided that, if the individual is later located, the benefits due shall be paid) will apply.

**Section 3. Chapter 17, Article IV, Section 17-65.13, Subsection (f) of the Code of Ordinances, pertaining to general provisions in the deferred retirement option plan, is hereby amended by repealing Paragraph (8) thereof, pertaining to escheat of DROP benefits, as follows** (strikeout text is deleted and underlined text is added):

(f) *General provisions.*

- (1) *The DROP is not a separate retirement plan.* Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 17-65.13 for the remainder of his employment, rather than in the normal manner provided under the plan. Upon termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a rollover. The DROP account distribution is in addition to the member's monthly benefit.
- (2) *Notional account.* The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the member's termination from the DROP. The member has no control over the investment of the DROP account.
- (3) *No employer discretion.* The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.
- (4) *IRC limit.* The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).
- (5) *Amendment of DROP.* The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.
- (6) *Facility of payment.* If the board shall find that a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the board may direct that any benefit due him, unless claim shall have been made for the benefit by a duly appointed legal representative, be paid to his spouse, a child, a parent or other blood relative, or to a person with whom he resides.

Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.

(7) *Information.* Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board the information that it shall require to establish his rights and benefits under the DROP.

~~(8) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three (3) years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three (3) months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.~~

(9 8) *Written elections, notification.*

a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.

b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.

(10 9) *Benefits not guaranteed.* All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the city nor the board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

(11 10) *Construction.*

a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.

b. The titles and headings of the subsections in this section 17-65.13 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

(~~12~~ 11) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

(~~13~~ 12) *Effect of DROP participation on employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

**Section 4. Conflict with Other Ordinances and Codes.** All ordinances or parts of ordinances of the City of New Port Richey, Florida, in conflict with the provisions of this ordinance, are hereby repealed to the extent of such conflict.

**Section 5. Severability.** If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

**Section 6. Effective Date.** This ordinance shall take effect immediately upon its adoption as provided by law.

**Section 7. Codification.** Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of New Port Richey.

The foregoing Ordinance was duly read and approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this \_\_\_\_ day of \_\_\_\_\_, 2019, and read and adopted on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this \_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:

By: \_\_\_\_\_  
Judy Meyers, City Clerk

By: \_\_\_\_\_  
Robert Marlowe, Mayor-Council Member

(Seal)

APPROVED AS TO FORM AND LEGALITY FOR  
THE SOLE USE AND RELIANCE OF THE CITY  
OF NEW PORT RICHEY, FLORIDA:

\_\_\_\_\_  
Timothy P. Driscoll, City Attorney