

CITY OF SANIBEL

ORDINANCE 13-001

AN ORDINANCE AMENDING CHAPTER 50, ARTICLE III, THE PENSION PLAN FOR THE CITY'S POLICE OFFICERS, TO PROVIDE FOR COMPLIANCE WITH THE INTERNAL REVENUE CODE; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEALER; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on January 8, 2011 an application was filed with the Internal Revenue Service for a Favorable Determination Letter regarding the qualified status of the Plan under Section 401(a) of the Internal Revenue Code; and

WHEREAS, on January 24, 2013, the Internal Revenue Service issued a Favorable Determination Letter, finding that the Plan complies with all qualification requirements; and

WHEREAS, the Favorable Determination Letter is subject to the timely adoption of the amendments provided herein; and

WHEREAS, the trustees of the City of Sanibel Municipal Police Officers' Retirement Trust Fund have requested and approved such amendments as being in the best interests of the participants and beneficiaries as well as improving the administration of the plan; and

WHEREAS, the City Council has received, reviewed and considered an actuarial impact statement describing the actual impact of the amendments provided for herein; and

WHEREAS, public hearings have been held pursuant to F.S., Chapter 166;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA:

SECTION 1. The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. Section 50-286 of the City of Sanibel Code of Ordinances is hereby amended as follows:

Sec. 50-286. Normal retirement age.

The normal retirement age shall be the first day of the month on which or after the participant attains either age 60 with five vesting credits or age 55 with ten vesting credits.

Vesting of benefits upon Normal Retirement Date. Any provision of this plan to the contrary notwithstanding, a Member's accrued benefit shall become 100% vested upon the attainment of the Normal Retirement Date.

SECTION 3. Section 50-356(a) of the City of Sanibel Code of Ordinances is hereby repealed/deleted in its entirety and replaced with the following language:

Sec. 50-356. Internal Revenue Code Compliance.

(a) Maximum amount of retirement income.

(1) The limitations of this Subsection (a) shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein, and are intended to comply with the requirements of the Pension Protection Act of 2006 and shall be construed in accordance with said Act and guidance issued thereunder. The provisions of this Subsection (a) shall supersede any provision of the Plan to the extent such provision is inconsistent with this Subsection.

The Annual Pension as defined in Paragraph (2) below otherwise payable to a Member at any time shall not exceed the Dollar Limitation for the Member multiplied by a fraction whose value cannot exceed one, the numerator of which is the Member's number of years (or part thereof, but not less than one year) of service with the City and the denominator of which is 10. For this purpose, no more than one year of service may be credited for any Plan Year. If the benefit the Member would otherwise accrue in a limitation year would produce an Annual Pension in excess of the Dollar Limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Dollar Limitation.

(2) "Annual Pension" means the sum of all annual benefits, payable in the form of a straight life annuity. Benefits payable in any other form shall be adjusted to the larger of:

(A) For limitation years beginning on or after July 1, 2007

(I) the straight life annuity (if any) payable to the Member under the Plan commencing at the same Annuity Starting Date as the Member's form of benefit, or

(II) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

(B) For limitation years beginning before July 1, 2007

(I) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using the interest rate and mortality basis specified by the Board of Trustees for determining Actuarial Equivalence under the Plan for the particular form of payment, or

- (II) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (a), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

- (3) “Dollar Limitation” means, effective for the first limitation year beginning after January 1, 2001, \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a Member’s benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The Dollar Limitation shall be further adjusted based on the age of the Member when the benefit begins as follows:

- (A) For Annuity Starting Dates in limitation years beginning on or after July 1, 2007

- (I) If the Annuity Starting Date for the Member’s benefit is after age 65

- (i) If the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the Member's age based on completed calendar months as of the Annuity Starting Date).

- (ii) If the Plan does have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Subsection (a), and (bb) the limitation determined under Subparagraph (3)(A)(1)(i) of this Subsection(a). For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date is the annual amount of such annuity payable

to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Member who is age 65 and has the same Accrued Benefit as the Member.

(II) Except with respect to a Member who is a "Qualified Member" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code), if the Annuity Starting Date for the Member's benefit is before age 62

(i) If the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the Member's age based on completed calendar months as of the Annuity Starting Date).

(ii) If the Plan does have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Subsection (a), and (bb) the limitation determined under Subparagraph (3)(A)(II)(i) of this Subsection (a).

(B) For Annuity Starting Dates in limitation years beginning before July 1, 2007

<u>Age as of Annuity Starting Date:</u>	<u>Adjustment of Dollar Limitation:</u>
<u>Over 65</u>	<p><u>The smaller of:</u> (a) <u>the actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or</u></p> <p>(b) <u>the actuarial equivalent of the limitation for age 65, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).</u></p> <p><u>Any increase in the Dollar Limitation determined in accordance with this paragraph shall not reflect a mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the Member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.</u></p>
<u>62 to 65</u>	<u>No adjustment.</u>
<u>Less than 62</u>	<p><u>The smaller of:</u> (a) <u>the actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or</u></p> <p>(b) <u>the actuarial equivalent of the limitation for age 62, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).</u></p> <p><u>This adjustment shall not apply to any "Qualified Member" as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code.</u></p>

- (4) With respect to clause (3)(A)(I)(i), clause (3)(A)(II)(i) and Paragraph (3)(B) above, no adjustment shall be made to the Dollar Limitation to reflect the probability of a Member's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Member prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Member's death if the Plan does not charge Members for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Member's death.
- (5) The term "limitation year" is the 12 month period which is used for application of the limitations under Code Section 415 and shall be the calendar year.

- (6) The limitations set forth in this Subsection (a) shall not apply if the Annual Pension does not exceed \$10,000 provided the Member has never participated in a Defined Contribution Plan maintained by the City.
- (7) Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section Subsection 415(d) of the Code.
- (8) In the case of a Member who has fewer than 10 years of participation in the Plan, the Dollar Limitation set forth in Paragraph (3) of this Subsection (a) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10.
- (9) Any portion of a Member's benefit that is attributable to mandatory Member contributions (unless picked-up by the City) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.
- (10) Should any Member participate in more than one defined benefit plan maintained by the City, in any case in which the Member's benefits under all such defined benefit plans (determined as of the same age) would exceed the Dollar Limitation applicable at that age, the accrual of the Member's benefit under this Plan shall be reduced so that the Member's combined benefits will equal the Dollar Limitation.
- (11) For a Member who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

- (12) The determination of the Annual Pension under Paragraph (A)(1) of this Subsection (a) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.
- (13) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Subsection (a) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this Subsection (a) shall be used to decrease future employer contributions.
- (14) For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, Compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in this Subsection (a), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007, compensation shall include payments that otherwise qualify as compensation and that are made by the later of: (a) 2 and ½ (two and one-half) months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance.

SECTION 4. Section 50-356(c), paragraphs 3(A) and 6(A) of the City of Sanibel

Code of Ordinances is hereby amended as follows:

Sec. 50-356. Internal Revenue Code Compliance.

...

(c) *Required minimum distributions.*

...

(3) *Requirements for annuity distributions that commence during participant's lifetime.*

(A) *Joint life annuities where the beneficiary is not the participant's spouse.* If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

...

(6) *Definitions*

(A) *Designated beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section ~~1.401(a)(9)-4~~, ~~Q&A-4~~, 1.401(a)(9)-4 of the Treasury regulations.

...

SECTION 5. Section 50-356(d) of the City of Sanibel Code of Ordinances is hereby repealed/deleted in its entirety and replaced with the following language:

Sec. 50-356. Internal Revenue Code Compliance.

(d) (1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions

The following definitions apply to this Section:

(A) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

(ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;

(iii) the portion of any distribution which is made upon hardship of the member; and

(iv) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion

consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(3) *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.

(4) *Distributee:* A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse 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 Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.

(5) *Direct rollover:* A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

...

SECTION 6. Section 50-356(g) of the City of Sanibel Code of Ordinances is hereby repealed/deleted in its entirety with all subsequent sections being renumbered accordingly:

Sec. 50-356. Internal Revenue Code Compliance.

...

~~(g) For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, Compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in Subsection (a) of Section 50-356 hereof, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code.~~

~~(gh) At no time prior to the satisfaction of all liabilities under the plan with respect to members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.~~

SECTION 7. Section 50-356 of the City of Sanibel Code of Ordinances is hereby amended by adding a new subsection (h) as follows:

Sec. 50-356. Internal Revenue Code Compliance

...

(h) *Uniformed Services Employment and Reemployment Rights Act.* The Plan shall at all times be administered in accordance with the provisions of the Uniformed Services Employment and Reemployment Rights Act, which Act is hereby incorporated by reference.

SECTION 8. Section 50-383 of the City of Sanibel Code of Ordinances is hereby amended by adding a subsection (c) as follows:

Sec. 50-383. - Pre-retirement death benefits for vested participants.

(a) Any participant whether or not still in active employment, who has a nonforfeitable (vested) right to any portion of the accrued benefit, and who dies prior to the commencement of benefits, shall have a survivor benefit payable on his behalf. The survivor benefit shall be payable to the participant's designated beneficiary and shall be the benefits otherwise payable to the police officer at early or normal retirement age, as elected by the beneficiary.

(b) If the participant dies before vesting, the beneficiary of the deceased police officer shall be entitled to a refund of 100 percent, without interest, of the contributions made to the fund by the deceased police officer.

(c) Death while performing USERRA-qualified active military service – In the case of a Member who dies on or after January 1, 2007 while performing “Qualified Military Service” under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act (“USERRA”) within the meaning of Section 414(u) of the Internal Revenue Code, any “additional benefits” (as defined by Section 401(a)(37) of the Internal Revenue Code) provided under the Plan that are contingent upon a Member’s termination of employment due to death shall be determined as though the Member had resumed employment immediately prior to his death. With respect to any such “additional benefits,” for vesting purposes only, credit shall be given for the period of the Member’s absence from covered employment during “Qualified Military Service”.

SECTION 9. Section 50-461 of the City of Sanibel Code of Ordinances is hereby amended to read as follows:

Sec. 50-461. Termination of pension plan.

In the event of termination of the pension plan, the board of trustees shall follow the procedures contained in Florida Statutes, the Internal Revenue Code, and all other applicable laws. A member’s accrued benefit shall become 100% fully vested (non-forfeitable) upon the termination of this plan.

SECTION 10. Code of Ordinances. This Ordinance shall be deemed to be an amendment to the Code of Ordinances of the City of Sanibel, and it shall be recodified pursuant to Section 5 of Ordinance No. 81-07.

SECTION 11. Conflict. All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed. If any part of this ordinance conflicts with any other part, it shall be severed and the remainder shall have full force and effect and be liberally construed.

SECTION 12. Severance. If any section, subsection, sentence, clause, phrase, or portion of this ordinance, or application hereof is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion of application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application thereof.

SECTION 13. Effective Date. This Ordinance shall take effect upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Lee County, Florida on this 16 day of July, 2013.

AUTHENTICATION:



Kevin Ruane, Mayor



City Clerk

APPROVED AS TO FORM: 

Kenneth B. Cuyler, City Attorney

7/17/13

Date

Vote of Council Members:

Ruane	aye
Congress	aye
Denham	aye
Harrity	aye
Jennings	aye

First Reading	June 04, 2013
Publication Date	July 05, 2013
Second Reading	July 16, 2013

Date Filed with City Clerk: July 16, 2013

SUGARMAN & SUSSKIND

PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

Robert A. Sugarman♦
Howard S. Susskind
Kenneth R. Harrison, Sr.
D. Marcus Braswell, Jr.
Pedro A. Herrera
Noah Scott Warman
Ivelisse Berio LeBeau

♦Board Certified Labor
& Employment Lawyer

100 Miracle Mile
Suite 300
Coral Gables, Florida 33134
(305) 529-2801
Broward (954) 327-2878
Toll Free 1-800-329-2122
Facsimile (305) 447-8115

May 30, 2013

Board of Trustees
City of Sanibel Municipal Police Officers' Retirement Trust Fund
c/o Janice Rezendes
Sanibel Police Department
800 Dunlop Road
Sanibel, FL 33937

Re: IRS Post Favorable Determination Ordinance Amendment

Dear Trustees:

We write to explain the various amendments contained within the IRS compliance ordinance that we recently prepared for you.

The favorable determination letter that you recently received is subject to the adoption of the amendments contained within the ordinance. In other words, the amendments are required in order for the letter to remain valid.

None of the amendments should have any effect on the funding or operations of the plan or on the contributions to the plan or the benefits paid by the plan. This is because the plan has already been operating in accordance with the requirements of the Internal Revenue Code (for instance, the plan does not pay benefits in excess of the Section 415 limits). The Code requires, however, not only that the plan be operated in accordance with the Code, but also that the plan document contains certain Code requirements in writing.

100% Vesting Upon Normal Retirement Age

The code requires that a participant's benefit become 100% vested upon the attainment of Normal Retirement Age under the plan.

Though your plan has been operated in accordance with that requirement, the plan document must also provide for that requirement in writing.

415 Limitations

This is the most voluminous of the amendments contained within the proposed ordinance.

In April 2007, the IRS issued new, final regulations relating to Section 415 of the Code. Section 415 limits the amount of benefits that a participant can receive each year under the plan (the current amount of the limitation is \$205,000). The regulations included certain transitional rules relating to the calculation of benefits for years prior to 2007.

The compliance ordinance that we prepared for you prior to the filing of the determination letter provided for prospective compliance with the regulations. The IRS requested, however, that the retroactive, transitional language be included, as well.

The new provision contains all required retroactive and prospective language.

Amendments to the minimum distribution requirements under 401(a)(9) of the Code

Section 401(a)(9) of the code provides for certain rules relating to the time frame and manner in which benefits must be paid under the plan. Recent changes in the law amended some of those requirements.

The compliance ordinance that you previously adopted provided for full compliance with Section 401(a)(9). The guidance that the IRS had published relating to this requirement, however, contained some typographical errors made by the IRS.

The ordinance rectifies the errors contained in the IRS publications.

Amendments to provisions relating to Rollover Distributions

Recent changes in the law amended the definition of Rollover Distributions to provide for rollovers to Roth IRAs, as well as rollovers into IRAs by non-spousal beneficiaries.

The ordinance amends the plan provisions relating to Rollover Distribution in order to provide for full compliance with the recent changes.

Board of Trustees
City of Sanibel Municipal Police Officers' Retirement Trust Fund
May 30, 2013
Page 3

Compensation for purposes of 401(a)(17) and 415

For the purpose of improving the readability of the plan, the amendment integrates into the 415 compliance section the rules relating to the definition of compensation for the purposes of Sections 415 and 401(a)(17) of the Code.

You may recall that the previous compliance ordinance that we drafted for you added this language as a new subsection (g) to Section 50-356.

We felt it would improve the readability of the plan to integrate this language into the 415 section rather than having it appear as a standalone subsection.

Uniformed Services Employment and Reemployment Rights Act (USERRA)

This amendment provides for compliance with all requirements under USERRA. The IRS Code does not mandate that said requirements be detailed in the plan document. Rather compliance by reference is satisfactory. This amendment provides for compliance with all of the Code requirements relating to USERRA.

Amendment for HEART ACT

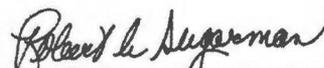
The HEART Act provided for certain benefits for survivors of participants who die while in USERRA-qualified military service.

Under HEART, survivor benefits are determined as though the person returned to work and died immediately thereafter. Also, for vesting purposes with respect to survivor benefits, credit is given for the time during which the person was in USERRA-qualified service.

100% Vesting Upon Termination of the Plan

As with vesting upon the attainment of Normal Retirement Age, the Code provides that all accrued benefits shall become 100% vested upon termination of the plan. We have added a provision to comply with that requirement.

Yours truly,



ROBERT A. SUGARMAN

Board Certified Labor & Employment Lawyer