

**CITY COMMISSION AGENDA  
CITY HALL COMMISSION CHAMBERS  
300 W. Plant Street**

**REGULAR MEETING**

**MARCH 12, 2009**

**6:30 P.M.**

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**CALL TO ORDER**

Determination of a Quorum

Invocation and Pledge of Allegiance

1. **APPROVAL OF MINUTES** - Regular Meeting of February 26, 2009
  
2. **GENERAL ELECTION RESULTS**  
**Resolution 09-05:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, DECLARING THE RESULTS OF THE GENERAL ELECTION HELD ON MARCH 10, 2009 FOR COMMISSIONER DISTRICT 2 AND AUTHORIZING ISSUANCE OF A CERTIFICATE – City Clerk Golden
  
3. **OATH OF OFFICE**  
City Commissioner District 2 elected March 10, 2009 – City Clerk Golden
  
4. **FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**
  - A. **Ordinance 09-07:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 0.459 ± ACRES LOCATED AT 778 SOUTH STREET, AND MORE SPECIFICALLY DESCRIBED HEREIN INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE **with the second reading and public hearing being advertised in the future for a date certain** – Planning Director Williams
  - B. **Ordinance 09-08:** AN ORDINANCE AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY CHANGING THE DESIGNATION FROM ORANGE COUNTY LOW DENSITY RESIDENTIAL TO CITY LOW DENSITY RESIDENTIAL FOR PROPERTY GENERALLY DESCRIBED AS 0.459 ± ACRES LOCATED AT 778 SOUTH STREET; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE **with the second reading and public hearing being advertised in the future for a date certain** – Planning Director Williams
  - C. **Ordinance 09-09:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING APPROXIMATELY 0.796 ± ACRES OF CERTAIN REAL PROPERTY LOCATED AT 778 SOUTH STREET AND PARCEL ID# 25-22-27-0000-00-070 FROM ORANGE COUNTY CITRUS RURAL AND CITY PUD TO CITY R-1; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE **with the second reading and public hearing being advertised in the future for a date certain** – Planning Director Williams
  
5. **FIRST READING OF PROPOSED ORDINANCE**
  - A. **Ordinance 09-18:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 50-193, 50-194, AND 50-195 OF THE WINTER GARDEN CITY

CODE; ALTERING THE DEFINITIONS OF “PERMANENT RESIDENCE” AND “TEMPORARY RESIDENCE” CONTAINED IN SECTION 50-193 OF THE CITY CODE TO BE CONSISTENT WITH SUCH DEFINITIONS AS AMENDED IN § 775.21(2), FLA. STAT.; EXPANDING THE APPLICABILITY OF THE CITY’S CURRENT RESIDENCE RESTRICTIONS CONCERNING SEXUAL OFFENDERS TO INCLUDE THOSE INDIVIDUALS WHO COMMITTED A SEXUAL OFFENSE AGAINST A MINOR OUTSIDE THE JURISDICTION OF THE STATE OF FLORIDA AND ANY PERSON COMMITTING A SEXUAL OFFENSE AGAINST PERSONS YOUNGER THAN 18 YEARS OF AGE AT THE TIME SUCH OFFENSE WAS COMMITTED; INCLUDING SCHOOL BUS STOPS AS BEING AMONG THOSE AREAS A SEX OFFENDER MAY NOT RESIDE WITHIN 2,500 FEET OF; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE **with the second reading and public hearing being scheduled for March 26, 2009** – Police Chief Brennan

6. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCE**

- A. **Ordinance 09-03**: AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-186, DEFINITIONS; AMENDING SECTION 54-190, CONTRIBUTIONS; AMENDING SECTION 54-191, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 54-192, PRE-RETIREMENT DEATH; AMENDING SECTION 54-193, DISABILITY; AMENDING SECTION 54-194, VESTING; AMENDING SECTION 54-195, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 54-200, MAXIMUM PENSION; AMENDING SECTION 54-201, MINIMUM DISTRIBUTION OF BENEFITS; AMENDING SECTION 52-202, MISCELLANEOUS PROVISIONS; AMENDING SECTION 54-203, REPEAL OR TERMINATION OF SYSTEM; AMENDING SECTION 54-204, EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY; AMENDING SECTION 54-206, FORFEITURE OF PENSION; AMENDING SECTION 54-209, DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS, ELIMINATION OF MANDATORY DISTRIBUTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE (*Postponed from February 26, 2009*) – City Manager Bollhoefer

7. **REGULAR BUSINESS**

- A. Recommendation to approve a Developer’s Agreement and Stormwater Pond Maintenance Agreement for property located at 14120 W. Colonial Drive (Gardenia Plaza) – Planning Director Williams
- B. Recommendation to approve a Preliminary Plat for property located at 14120 W. Colonial Drive (Gardenia Plaza), with conditions – Planning Director Williams
- C. Recommendation to approve a Site Plan for property located at 14120 W. Colonial Drive (Gardenia Plaza), with conditions – Planning Director Williams
- D. **Resolution 09-06**: A RESOLUTION OF THE CITY COMMISSION OF THE CITY WINTER GARDEN, FLORIDA, APPOINTING A MAYOR PRO-TEM - City Clerk Golden

8. **MATTERS FROM CITIZENS** (*Limited to 3 minutes per speaker*)

9. **MATTERS FROM CITY ATTORNEY** – Kurt Ardaman

**10. MATTERS FROM CITY MANAGER – Mike Bollhoefer**

- A. Presentation by Police Chief Brennan on red light cameras (*Postponed from February 26, 2009*)

**11. MATTERS FROM MAYOR AND COMMISSIONERS**

**ADJOURN** to a regular City Commission meeting on March 26, 2009 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor

Please Note: In accordance with Florida Statutes 286.0105: Any person who desires to appeal any decision at this meeting will need a record of the proceedings and for this purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is based, which such written record is not provided by the City of Winter Garden.

Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained at the meeting from the Information Technology Director.

Also, in accordance with Florida Statute 286.26: Persons with disabilities needing assistance to participate in any of these proceedings should contact the Office of the City Clerk, 300 W. Plant Street, Winter Garden, FL 34787, (407) 656-4111 x 2254 48 hours in advance of the meeting.

**RESOLUTION 09-05**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, DECLARING THE RESULTS OF THE GENERAL ELECTION HELD ON MARCH 10, 2009 FOR COMMISSIONER DISTRICT 2 AND AUTHORIZING ISSUANCE OF A CERTIFICATE**

**WHEREAS**, on March 10, 2009, a General Election was conducted in accordance with the Charter and Ordinances of the City of Winter Garden, and the State of Florida Election Code; and

**WHEREAS**, the Registration Book closing for the election reflected that the total Registered Voters in District 2, Precinct 2103 is 3,982; and

**WHEREAS**, the City Clerk for Winter Garden has obtained the Certificate of Election Results from the City Canvassing Board, which is hereby made a part of this Resolution, for the purpose of electing the City Commissioner of District 2.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA**, that we do hereby declare that:

- \_\_\_\_\_ is duly elected as City Commissioner of District 2 to serve a three-year term; and

hereby authorizes the City Clerk to issue the candidate elected for District 2 a Certificate of Election.

This Resolution is duly adopted at a regular meeting of the City Commission of the City of Winter Garden, Florida, held on the 12<sup>th</sup> day of March 2009.

\_\_\_\_\_  
John Rees, Mayor

ATTEST:

\_\_\_\_\_  
Kathy Golden, CMC, City Clerk

ORDINANCE 09-07

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 0.459 ± ACRES LOCATED AT 778 SOUTH STREET, AND MORE SPECIFICALLY DESCRIBED HEREIN INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owners of the land generally described as 0.459 ± acres located at 778 South Street and legally described in Section 2 of this Ordinance, which land is contiguous to the corporate limits of the City of Winter Garden, Florida, have pursuant to the prerequisites and standards as set forth in Chapter 171, F.S., petitioned the City Commission of the City of Winter Garden for voluntary annexation;

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: That the City Commission through its Planning and Zoning Board has conducted an investigation to determine whether the described property meets the prerequisites and standards set forth in Chapter 171, F.S. and has held a public hearing on said petition and made certain findings.

SECTION 2: That, after said public hearing and having found such petition meets said prerequisites and standards, the property legally defined in ATTACHMENT "A" and graphically shown on the attached map shall be annexed into the City of Winter Garden, Florida, and

SECTION 3: That the City of Winter Garden, Florida, shall have all of the power, authority, and jurisdiction over and within the land as described in Section 2 hereof, and of the inhabitants thereof, and property therein, as it does and have over its present corporate limits and all laws, ordinances, and resolutions of said City shall apply and shall have equal force and effect as if all the territory had been part of said City at the time of the passage of such laws, ordinances, and resolutions.

SECTION 4: The area annexed to the City shall be subject to the taxes and debts of the City upon the effective date of the annexation. However, the annexed area shall not be subject to municipal ad valorem taxation for the current year if the effective date of the annexation falls after the City levies such tax.

SECTION 5: Should any portion of this Ordinance be held invalid, then such portions as are not declared invalid shall remain in full force and effect.

SECTION 6: This Ordinance shall become effective upon adoption at its second reading.

READ FIRST TIME: March 12, 2009.

READ SECOND TIME AND PUBLIC HEARING HELD: \_\_\_\_\_, 2009.

APPROVED:

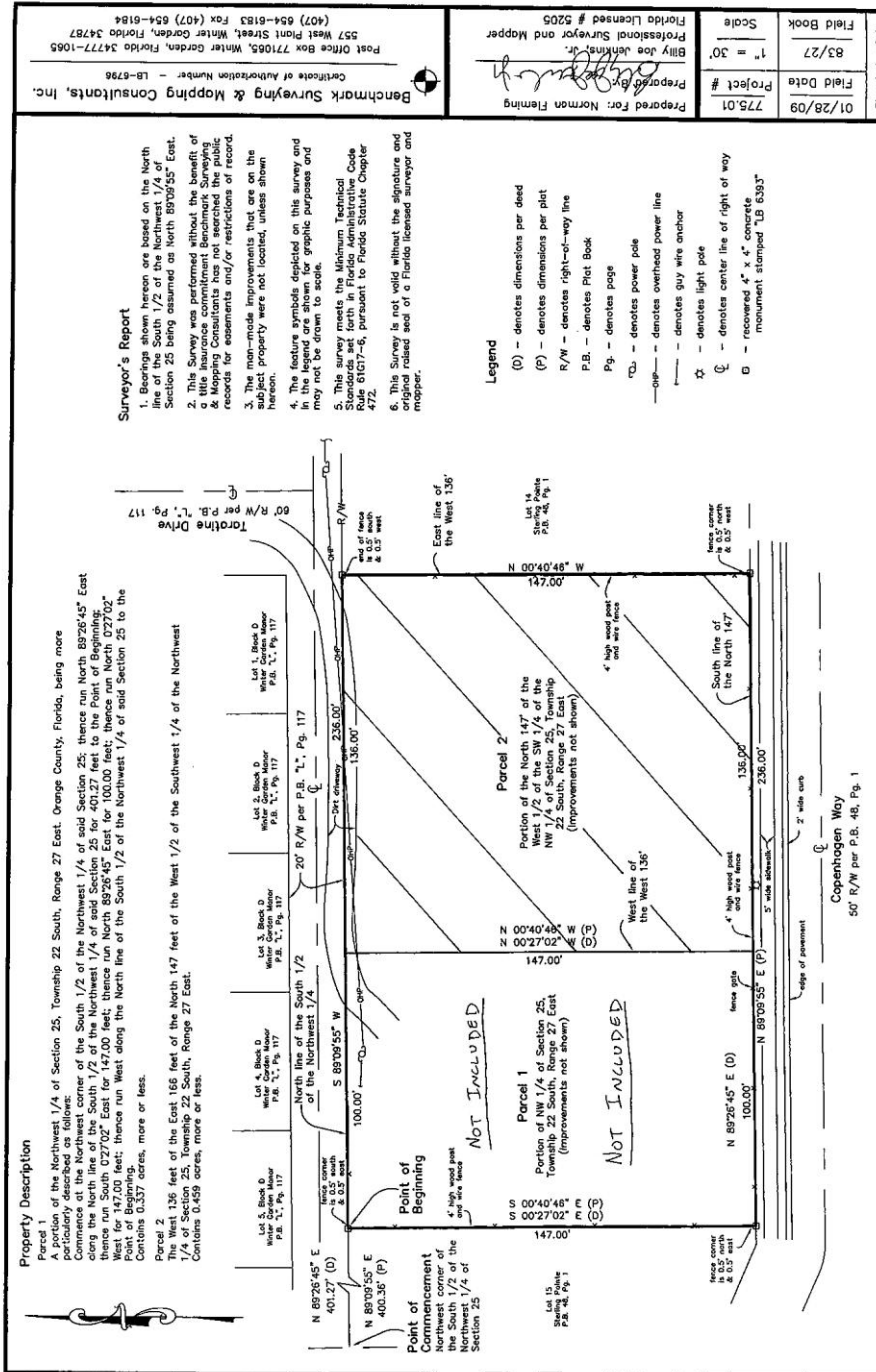
ATTEST:

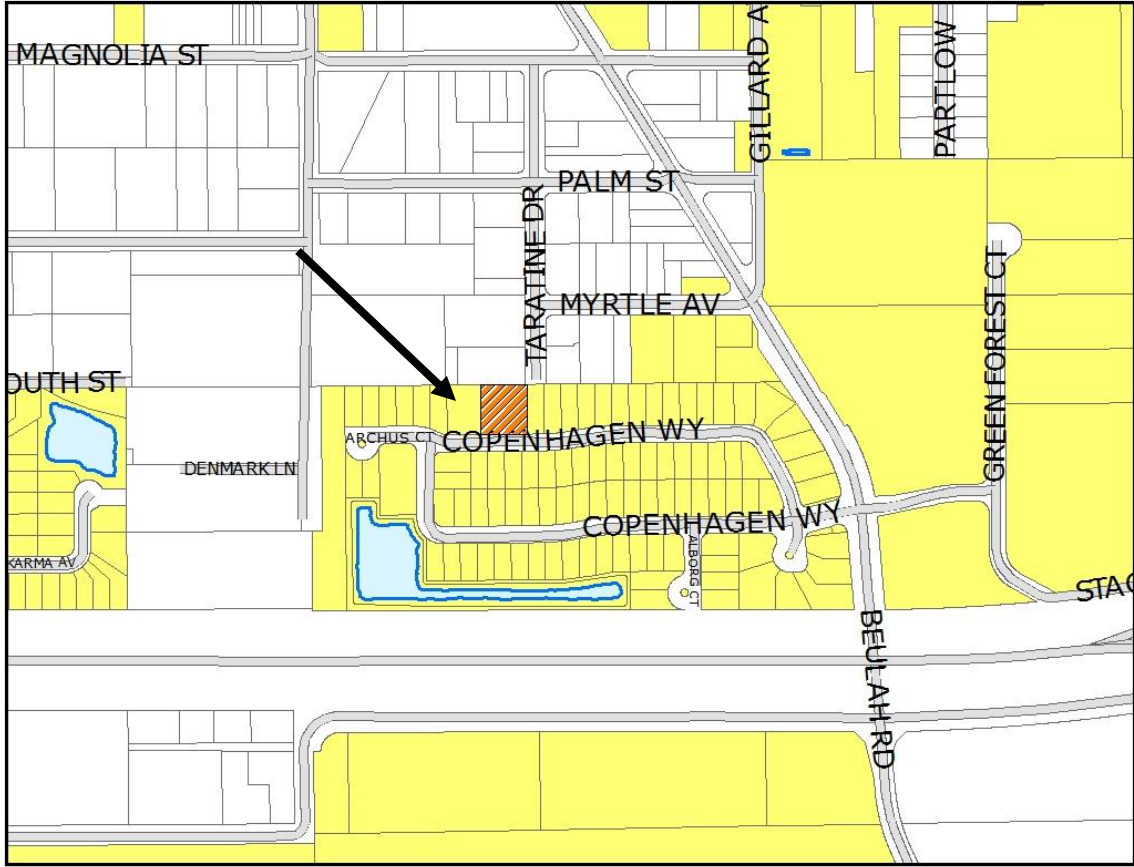
\_\_\_\_\_  
JOHN REES, Mayor/Commissioner

\_\_\_\_\_  
KATHY GOLDEN, City Clerk

# Attachment "A"

The West 136 feet of the East 166 feet of the North 147 feet of the West 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 25, Township 22 South, Range 27 East. Contains 0.459 acres, more or less.





ORDINANCE 09-08

AN ORDINANCE AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY CHANGING THE DESIGNATION FROM ORANGE COUNTY LOW DENSITY RESIDENTIAL TO CITY LOW DENSITY RESIDENTIAL FOR PROPERTY GENERALLY DESCRIBED AS 0.459 ± ACRES LOCATED AT 778 SOUTH STREET; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on the 13 of June, 1991, the City Commission of the City of Winter Garden adopted Ordinance 91-16 which adopted a new Comprehensive Plan for the City of Winter Garden, and

WHEREAS, the owners of land generally described as approximately 0.459 ± acres located at 778 South Street have petitioned the City to amend the Future Land Use Map of the Comprehensive Plan by changing the designation of said property from "ORANGE COUNTY LOW DENSITY RESIDENTIAL" to "CITY LOW DENSITY RESIDENTIAL", and

WHEREAS, the City Commission has conducted the prerequisite advertised public hearings as per Chapter 163 regarding the adoption of this ordinance for a Small Scale Comprehensive Plan Amendment, and

WHEREAS, the aforesaid petition complies with the Florida Statutes as a Small Scale Comprehensive Plan Amendment,

THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN FLORIDA:

SECTION 1: The City of Winter Garden hereby amends The Future Land Use Map of the Comprehensive Plan with Exhibit "A".

SECTION 2: The City Planner is hereby authorized and directed to amend the Official Winter Garden Future Land Use Map in accordance with the provisions of this Ordinance.

SECTION 3: Should any portion of this Ordinance be held invalid, then the entire Ordinance shall be null and void.

SECTION 4: This Ordinance shall become effective upon the later of:

- (i) adoption at its second reading; and
- (ii) the date the Department of Community affairs renders a letter identifying the Department will not conduct a compliance review or issue a Notice of Intent in accordance with procedures contained in Section 163.3187(3)(a), Florida Statutes,  
  
or
- (iii) when a final order issued by the Department of Community Affairs finding the amendment to be in compliance is accordance with Chapter 163.3184, F.S., or

- (iv) the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184, F.S.

The Department's Notice of Intent to find an amendment in compliance is deemed a final order if no timely petition challenging the amendment is filed.

READ FIRST TIME: March 12, 2009.

READ SECOND TIME AND PUBLIC HEARING HELD: \_\_\_\_\_, 2009.

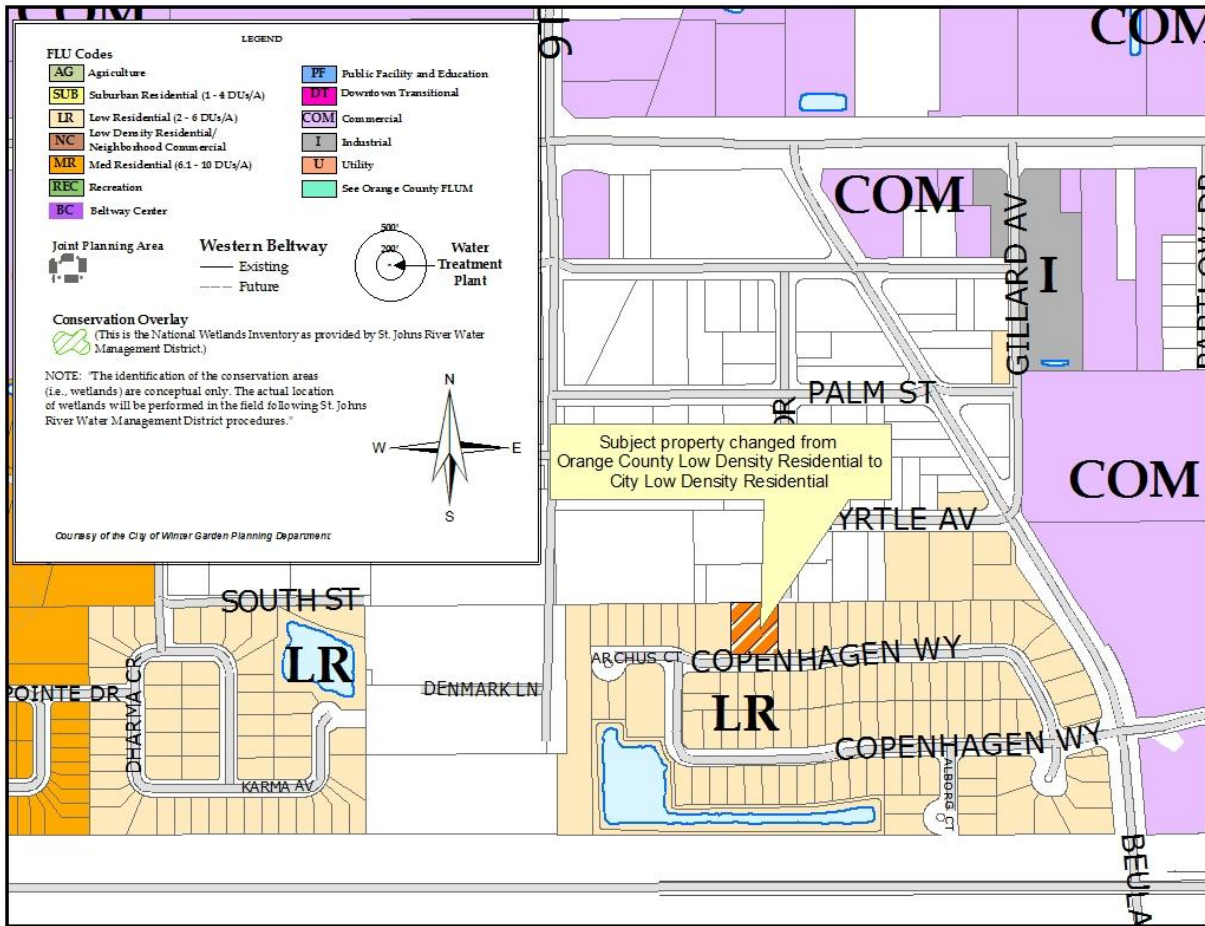
APPROVED:

\_\_\_\_\_  
JOHN REES, Mayor /Commissioner

ATTEST:

\_\_\_\_\_  
KATHY GOLDEN, City Clerk

# Exhibit "A"



ORDINANCE 09-09

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING APPROXIMATELY 0.796 ± ACRES OF CERTAIN REAL PROPERTY LOCATED AT 778 SOUTH STREET AND PARCEL ID# 25-22-27-0000-00-070 FROM ORANGE COUNTY CITRUS RURAL AND CITY PUD TO CITY R-1; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owner of real property generally described as approximately 0.796 ± acres located at 778 South Street and Parcel ID# 25-22-27-0000-00-070 and legally described in Section 1 of this ordinance has petitioned the City to zone said property from Orange County Citrus Rural and City PUD to the City’s R-1 zoning classification, therefore;

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1: After due notice and public hearing, the zoning classification of real property legally described on ATTACHMENT “A,” is hereby rezoned from Orange County Citrus Rural and City PUD to City R-1 in the City of Winter Garden, Florida.

SECTION 2: The City Planner is hereby authorized and directed to amend the Official Winter Garden Zoning Map in accordance with the provisions of this ordinance.

SECTION 3: Should any portion of this Ordinance be held invalid, then the entire Ordinance shall be null and void.

SECTION 4: This Ordinance shall become effective upon the amendment of the City of Winter Garden Comprehensive Land Use Plan for the property described herein providing for a land use designation which allows the zoning that is to be established by this ordinance.

FIRST READING: March 12 2009.

SECOND READING AND PUBLIC HEARING HELD: \_\_\_\_\_ 2009.

APPROVED:

\_\_\_\_\_  
JOHN REES, Mayor/Commissioner

ATTESTED:

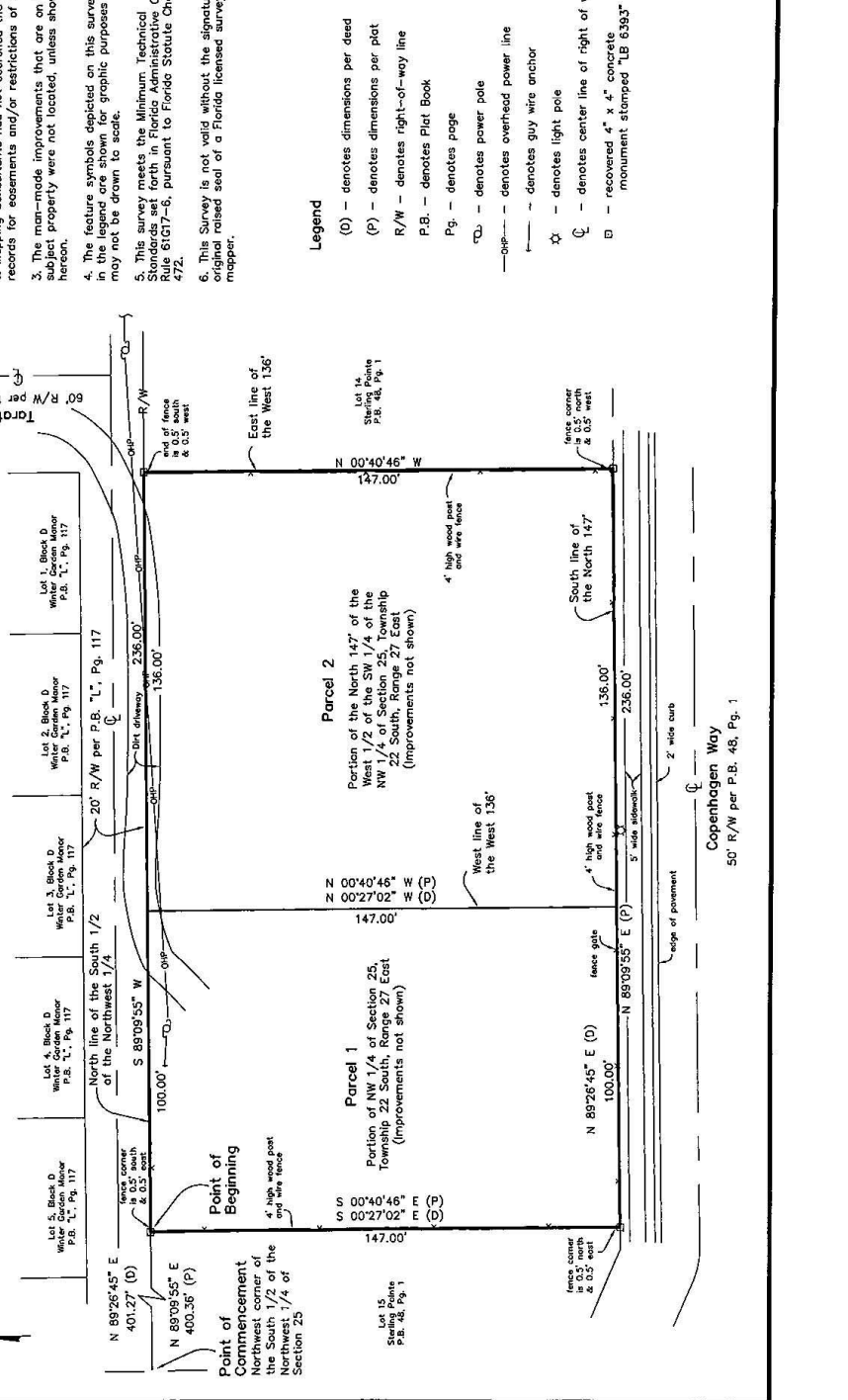
\_\_\_\_\_  
KATHY GOLDEN, City Clerk

**Attachment “A”**

**Property Description**

**Parcel 1**  
 A portion of the Northwest 1/4 of Section 25, Township 22 South, Range 27 East, Orange County, Florida, being more particularly described as follows:  
 Commence at the Northwest corner of the South 1/2 of the Northwest 1/4 of said Section 25; thence run North 89°26'45" East along the North line of the South 1/2 of the Northwest 1/4 of said Section 25 for 401.27 feet to the Point of Beginning; thence run South 0°27'02" East for 147.00 feet; thence run North 89°26'45" East for 100.00 feet; thence run North 0°27'02" West for 147.00 feet; thence run West along the North line of the South 1/2 of the Northwest 1/4 of said Section 25 to the Point of Beginning.  
 Contains 0.357 acres, more or less.

**Parcel 2**  
 The West 136 feet of the East 166 feet of the North 147 feet of the West 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 25, Township 22 South, Range 27 East.  
 Contains 0.169 acres, more or less.



**Surveyor's Report**

1. Bearings shown hereon are based on the North line of the South 1/2 of the Northwest 1/4 of Section 25 being assumed as North 89°09'55" East.
2. This Survey was performed without the benefit of a title insurance commitment. Benchmark Surveying & Mapping Consultants has not searched the public records for encumbrances and/or restrictions of record.
3. The man-made improvements that are on the subject property were not located, unless shown hereon.
4. The feature symbols depicted on this survey and in the accompanying plat are for graphic purposes and may not be drawn to scale.
5. This survey meets the Minimum Technical Standards set forth in Florida Administrative Code Rule 61G17-6, pursuant to Florida Statute Chapter 472.
6. This Survey is not valid without the signature and original raised seal of a Florida licensed surveyor and mapper.

**Legend**

- (D) — denotes dimensions per deed
- (P) — denotes dimensions per plat
- R/W — denotes right-of-way line
- P.B. — denotes Plat Book
- Pg. — denotes page
- ⊙ — denotes power pole
- ⊕ — denotes overhead power line
- ⊖ — denotes guy wire anchor
- ⊗ — denotes light pole
- ⊘ — denotes center line of right of way
- ⊚ — recovered 4" x 4" concrete monument stamped LB 6393

Prepared For: Norman Fleming  
 Prepared By: Billy Joe Jenkins, Jr.  
 Florida Licensed Professional Surveyor and Mapper  
 Florida License # 5205

Field Date: 01/28/09  
 Field Book: 83/27  
 Project #: 775.01  
 Scale: 1" = 30'

Post Office Box 771065, Winter Garden, Florida 34777-1065  
 557 West Point Street, Winter Garden, Florida 34787  
 (407) 654-6183 Fax (407) 654-6184

Certificate of Authorization Number — LB-6796  
 Benchmark Surveying & Mapping Consultants, Inc.

Sheet 1 of 1

**ORDINANCE 09-18**

**AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 50-193, 50-194, AND 50-195 OF THE WINTER GARDEN CITY CODE; ALTERING THE DEFINITIONS OF “PERMANENT RESIDENCE” AND “TEMPORARY RESIDENCE” CONTAINED IN SECTION 50-193 OF THE CITY CODE TO BE CONSISTENT WITH SUCH DEFINITIONS AS AMENDED IN § 775.21(2), FLA. STAT.; EXPANDING THE APPLICABILITY OF THE CITY’S CURRENT RESIDENCE RESTRICTIONS CONCERNING SEXUAL OFFENDERS TO INCLUDE THOSE INDIVIDUALS WHO COMMITTED A SEXUAL OFFENCE AGAINST A MINOR OUTSIDE THE JURISDICTION OF THE STATE OF FLORIDA AND ANY PERSON COMMITTING A SEXUAL OFFENSE AGAINST PERSONS YOUNGER THAN 18 YEARS OF AGE AT THE TIME SUCH OFFENSE WAS COMMITTED; INCLUDING SCHOOL BUS STOPS AS BEING AMONG THOSE AREAS A SEX OFFENDER MAY NOT RESIDE WITHIN 2,500 FEET OF; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Winter Garden (“City”) is deeply concerned about the numerous occurrences in the State of Florida and the United States, where sexual offenders have been released from custody and repeat the unlawful acts for which they had initially been sentenced;

**WHEREAS**, the City has previously reviewed the evidence concerning the recidivism rate for released sexual offenders and determined such rate to be alarmingly high, especially for those offenders who commit their crimes against children;

**WHEREAS**, the City is a family-oriented community that continues to highly value its children and is a locale which families with children have traditionally held in high regard;

**WHEREAS**, schools, day care centers, public parks and public playgrounds have been determined to be places within the City where children are frequently and regularly located and at which they are involved in activities, and to and from which children walk while passing the residences of persons who may target children for sexual offenses;

**WHEREAS**, §§ 794.065 and 947.1405, Fla. Stat. (2008), prohibit certain sexual offenders from residing within one thousand (1,000) feet of specified locations, with § 947.1405, Fla. Stat., specifically enumerating school bus stops as being among such locations;

**WHEREAS**, the City’s current incarnation of its sexual predator ordinance does not prohibit the residence of sexual predators near designated school bus stops, and the City wishes to incorporate such prohibition into its Code to better protect children residing within the City;

**WHEREAS**, the City desires to establish a policy providing maximum protection to its citizens from criminal activity, which thereby advances the health, safety, and general welfare of citizens residing within the City;

**WHEREAS**, the State Legislature has reduced the time in which a sexual offender establishes a “permanent residence” from 14 or more consecutive days to 5 or more consecutive days pursuant to § 775.21(2)(f), Fla. Stat., and the City desires to alter its definition of “permanent residence” to mirror current state law and provide additional protections to its citizens;

**WHEREAS**, the State Legislature has reduced the time in which a sexual offender establishes a “temporary residence” from 14 or more days to 5 or more days and made other modifications consistent therewith pursuant to § 775.21(2)(g), Fla. Stat., and the City desires to alter its definition of “temporary residence” to mirror current state law and provide additional protections to its citizens;

**WHEREAS**, the City, having previously enacted an ordinance restricting individuals who have committed a sexual offense against a person less than sixteen (16) years of age pursuant to the laws of Florida from residing within 2,500 feet of schools, day care centers, parks, or playgrounds, has since noted that such restrictions were inapplicable to persons committing a sexual offense outside the State of Florida and were otherwise inapplicable to persons committing sexual offenses against minors aged sixteen (16) or older;

**WHEREAS**, the City now desires to extend the applicability of the residence restrictions contained in Section 50-194 of the Winter Garden Code of Ordinances to those individuals committing sexual offenses outside the jurisdiction of the State of Florida and to those individuals who have perpetrated a sexual offense against persons who were less than eighteen (18) years of age at the time such offense occurred;

**WHEREAS**, Article VIII, § 2(b) of the Florida Constitution and § 166.021, Fla. Stat., provide the City with the authority and power to protect the health, safety and welfare of its citizens;

**WHEREAS**, this Ordinance is enacted under the general home rule and police powers of the City of Winter Garden and is not a zoning matter or a land development regulation;

**WHEREAS**, the City has complied with all requirements and procedures of Florida law in processing, noticing and advertising this Ordinance; and

**WHEREAS**, after public notice and due consideration of public comment, the City Commission of the City of Winter Garden hereby finds and declares that the adoption of this Ordinance is necessary and appropriate to advance and serve the health, safety and general welfare of the citizens of Winter Garden, Florida; now, therefore,

**BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:**

**SECTION I:** Section 50-193 of the Winter Garden Code of Ordinances is hereby amended as follows (~~struck out~~ text indicates deletions while underlined text indicates additions):

Sec. 50-193. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Permanent residence* means a place where the person abides, lodges, or resides for ~~14~~five (5) or more consecutive days.

*Temporary residence* means a place where the person abides, lodges, or resides for a period of ~~14~~five (5) or more days in the aggregate during any calendar year and which is not the person's permanent address, or ~~a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence~~for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

**SECTION II:** Section 50-194 of the Winter Garden Code of Ordinances is hereby amended as follows (~~struck out~~ text indicates deletions while underlined text indicates additions):

Sec. 50-194. Sexual offender and sexual predator residence prohibition; measurement; penalties.

- (a) It is unlawful for any person who has been convicted of a violation of F.S. §§ 794.011, 800.04, 827.071, or 847.0145, or a similar offense pursuant to the laws of any federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, or of any state or territory of the United States or other jurisdiction, regardless of

whether adjudication has been withheld, in which the victim of the offense for which the conviction resulted was less than ~~16~~18 years of age at the time the offense was committed, to establish a permanent or temporary residence within 2,500 feet of any school, designated school bus stop, day care center, park, or playground.

- (b) *Measurement.* For purposes of determining the minimum distance separation, the 2,500 feet requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of a school, designated school bus stop, day care center, park, or playground.
- (c) *Penalties.* A person who violates this section shall be punished by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment; for a second or subsequent conviction of a violation of this section, said person shall be punished by a fine not to exceed \$1,000.00 or imprisonment for a term not exceeding one year, or by both such fine and imprisonment.
- (d) *Exceptions.* A person residing within 2,500 feet of any school, designated school bus stop, day care center, park, or playground does not commit a violation of this section if any of the following apply: (1) the person established the permanent residence or temporary residence and reported and registered the residence pursuant to F.S. §§ 775.21, 943.0435, or 944.607, prior to the effective date of this article; (2) the person was a minor when he/she committed the offense and was not convicted as an adult; (3) the person is a minor; (4) the school, designated school bus stop, day care center, park, or playground within 2,500 feet of the person's permanent residence was opened after the person established the permanent residence and reported and registered the residence pursuant to F.S. §§ 775.21, 943.0435, or 944.607.

**SECTION III.** Section 50-195 of the Winter Garden Code of Ordinances is hereby amended as follows (~~struck out~~ text indicates deletions while underlined text indicates additions)

Sec. 50-195. Property owners prohibited from renting real property to certain sexual offenders and sexual predators; penalties.

- (a) It is unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to section 50-194 of this Code, if such place, structure, or part thereof, trailer or other conveyance, is located within 2,500 feet of any school, designated school bus stop, day care center, park, or playground.
- (b) A property owner's failure to comply with the provisions of this section shall constitute a violation of this section and shall subject the property owner to the code enforcement provisions and procedures as provided in this Code, including action before the code enforcement board and the issuance of citation by a police officer as a class IV violation. In the alternative, the City may pursue any other enforcement action or legal remedy available under controlling state law, including but not limited to injunctive relief. If injunctive relief or other civil judicial relief is sought, the city shall be entitled to recover its reasonable attorneys' fees and costs from the defendant. The foregoing shall be supplemental to and not in derogation of any other remedy.

**SECTION IV.** INCONSISTENCY. If any Ordinances or parts of Ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflict.

**SECTION V.** SEVERABILITY. If any portion of this Ordinance is determined to void, unconstitutional, or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.



ORDINANCE NO. 09-03

AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-186, DEFINITIONS; AMENDING SECTION 54-190, CONTRIBUTIONS; AMENDING SECTION 54-191, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 54-192, PRE-RETIREMENT DEATH; AMENDING SECTION 54-193, DISABILITY; AMENDING SECTION 54-194, VESTING; AMENDING SECTION 54-195, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 54-200, MAXIMUM PENSION; AMENDING SECTION 54-201, MINIMUM DISTRIBUTION OF BENEFITS; AMENDING SECTION 52-202, MISCELLANEOUS PROVISIONS; AMENDING SECTION 54-203, REPEAL OR TERMINATION OF SYSTEM; AMENDING SECTION 54-204, EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY; AMENDING SECTION 54-206, FORFEITURE OF PENSION; AMENDING SECTION 54-209, DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS, ELIMINATION OF MANDATORY DISTRIBUTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

**SECTION 1:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-186, Definitions, to amend the definitions of “*Actuarial Equivalent*”, “*Credited Service*”, and “*Salary*”, to read as follows:

\* \* \* \* \*

*Actuarial equivalent* means a benefit or amount of equal value, ~~based upon the 1983 Group Annuity Mortality Table and an interest rate to be determined by the board with the advice of the board's actuary determined~~ on the basis of actuarial equivalency using assumptions adopted by the board such that benefit calculations are not subject to city discretion.

\* \* \* \* \*

\* \* \* \* \*

*Credited service* means the total number of years and fractional parts of years of service as a firefighter or police officer with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a firefighter or police officer. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the fire or police department pending the possibility of being reemployed as a firefighter or police officer, without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the fire or police department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a firefighter or police officer with the fire or police department within five years, his accumulated contributions, if one-thousand dollars (\$1,000.00) or less, shall be returned. If a Member who is not vested is not reemployed within five (5) years, his Accumulated Contributions, if more than one-thousand dollars (\$1,000.00), will be returned only upon the written request of the Member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the Board. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated. Upon any reemployment, a member shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his accumulated contributions from the fund, unless the member repays into the fund the contributions he has withdrawn, with interest, as determined by the board, within 90 days after his reemployment. ~~Current members shall be permitted to repurchase prior service pursuant to the previous sentence if the request to repurchase and the payment of the required amount is made within six months from the effective date of the ordinance adopting this provision.~~

~~The years or fractional parts of a year that a member serves in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after~~

separation from employment as a firefighter or police officer with the city to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

- (a) The member is entitled to reemployment under the provisions of USERRA.
- ~~(a b)~~ The member ~~must~~ returns to his employment as a firefighter or police officer within one year from the earlier of the date of his military discharge or his release from active service, unless otherwise required by USERRA.
- ~~(b)~~ ~~The member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L. 103-353).~~
- ©) The maximum credit for military service pursuant to this paragraph shall be five years.
- (d) This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

In the event that a member of this system has also accumulated credited service in another pension system maintained by the city, then such other credited service shall be used in determining vesting as provided for in section 54-194, and for determining eligibility for early or normal retirement. Such other credited service will not be considered in determining benefits under this system. Only his credited service under this system on or after his date of membership in this system will be considered for benefit calculation. In addition, any benefit calculation for a member of this system who is or becomes eligible for a benefit from this system after he has become a member of another pension system maintained by the city, shall be based upon the member's average final compensation, credited service and benefit accrual rate as of the date the member ceases to be a firefighter or police officer.

\* \* \* \* \*

*Salary* means the total cash remuneration including "overtime: paid by the primary employer to a firefighter or 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. Compensation in excess of the limitations set forth in section 401(a)(17) of the Code ~~shall be disregarded.~~ as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

**SECTION 2:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-190, Contributions, subsection (c), *City contributions*, to read as follows:

(c) *City contributions.* So long as this system is in effect, the city shall make quarterly contributions to the fund in an amount equal to ~~the difference in each year, between the total aggregate member contributions for the year plus state contributions for such year, and the total cost for the year,~~ the required city contribution as shown by the ~~most recent~~ applicable actuarial valuation of the system. ~~The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability as provided in F.S. ch. 112, pt. VII.~~

**SECTION 3:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-191, Benefit Amounts and Eligibility, to add subsection (e), *Required distribution date*, to read as follows:

(e) *Required distribution date.* The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70½) or the calendar year in which the member terminates employment with the city.

**SECTION 4:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-192, Pre-Retirement Death, to read as follows:

**Sec. 54-192. Pre-retirement Death.**

(a) *Prior to vesting or eligibility for retirement.* The beneficiary of a deceased member who was not receiving monthly benefits or who was not yet vested or eligible for early or normal retirement shall receive a refund of 100 percent of the member's accumulated contributions.

(b) *Deceased members vested or eligible for retirement with spouse as beneficiary.* This subsection (b) applies only when the member's spouse is the sole designated beneficiary. The spouse beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:

(1) If the member was vested, but not eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the date that the deceased member would have been eligible for early or normal retirement, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable. The spouse beneficiary may also elect to receive an immediate benefit,

payable for ten years, which is actuarially reduced to reflect the commencement of benefits prior to the early retirement date.

- (2) If the deceased member was eligible for normal or early retirement, the spouse beneficiary shall receive a benefit payable for ten years, beginning on the first day of the month following the member's death or at the deceased member's otherwise early or normal retirement date, at the option of the spouse beneficiary. The benefit shall be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced as for early retirement, if applicable.
- (3) A spouse beneficiary may not elect an optional form of benefit, however, the board may elect to make a lump sum payment pursuant to section 54-195 subsection (g).
- (4) A spouse beneficiary may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.
- (5) Notwithstanding anything contained in this section to the contrary, in any event, distributions to the spouse beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date selected pursuant to the above provisions in this section that must be on or before December 31 of the calendar year in which the member would have attained 70½.
- (6) If the surviving spouse beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the spouse beneficiary's estate in a lump sum.

(c) Deceased Members Vested or Eligible for Retirement with Non-Spouse Beneficiary. This subsection applies only when the member's spouse is not the beneficiary or is not the sole designated beneficiary, but there is a surviving beneficiary. The beneficiary of any member who dies and who, at the date of his death was vested or eligible for early or normal retirement, shall be entitled to a benefit as follows:

- (1) If the member was vested, but not eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten (10) years. The benefit will begin by December 31 of the calendar year immediately following the calendar year in which the member died. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation and actuarially reduced to reflect the commencement of benefits prior to the normal retirement date.
- (2) If the deceased member was eligible for normal or early retirement, the beneficiary will receive a benefit payable for ten (10) years, beginning on the first day of the month following the member's death. The benefit will be calculated as for normal retirement based on the deceased member's credited service and average final compensation as of the date of his death and reduced for early retirement, if applicable.
- (3) A beneficiary may not elect an optional form of benefit, however the board may elect to make a lump sum payment pursuant to Sec. 54-195, subsection (g).
- (4) A beneficiary, may, in lieu of any benefit provided for in (1) or (2) above, elect to receive a refund of the deceased member's accumulated contributions.
- (5) If a surviving beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the surviving beneficiary's estate by December 31 of the calendar year of the beneficiary's death in a lump sum.
- (6) If there is no surviving beneficiary as of the member's death, and the estate is to receive the benefits, the actuarial equivalent of the member's entire

interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

- (7) The Uniform Lifetime Table in Treasury Regulations § 1.401(a)(9)-9 shall determine the payment period for the calendar year benefits commence, if necessary to satisfy the regulations.

**SECTION 5:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-193, Disability, subsection (f), *Disability payments*, to read as follows:

(f) *Disability payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:

- (1) If the retiree recovers from the disability ~~prior to his normal retirement date~~, the payment due next preceding the date of such recovery; or
- (2) If the retiree dies without recovering from disability ~~or attains his normal retirement date while still disabled~~, the payment due next preceding his death or the one hundred twentieth monthly payment, whichever is later.

Provided, however, the disability retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in section 54-195, subsection (a)(1) or (a)(2), which shall be the actuarial equivalent of the normal form of benefit.

**SECTION 6:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-194, Vesting, to read as follows:

**Sec. 54-194. Vesting.**

If a member terminates his employment as a firefighter or police officer, either voluntarily or by discharge, and is not eligible for any other benefits under this system, the member shall be entitled to the following:

- (1) If the member has less than ~~ten~~ six years credited service upon termination, the member shall be entitled to a refund of his accumulated contributions or the member may leave it deposited with the fund.
- (2) If the member has ~~ten~~ six or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit, determined in the same manner as for normal or early retirement and based upon the member's credited service, average final compensation and the benefit accrual rate as of the date of termination, payable to him commencing at the member's otherwise normal or early retirement date, determined based upon his actual years of credited service, provided he does not elect to withdraw his accumulated contributions and provided the member survives to his otherwise normal or early retirement date. If the member does not withdraw his accumulated contributions and does not survive to his otherwise normal or early retirement date, his designated beneficiary shall be entitled to a benefit as provided herein for a deceased member, vested or eligible for retirement under pre-retirement death.

**SECTION 7:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-195, Optional Forms of Benefits, to amend subsection (a), to add subsection (e)(5), and to amend subsection (g), to read as follows:

\* \* \* \* \*

(a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a member, upon written request to the board, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

- (1) A retirement income of a monthly amount payable to the retiree for his lifetime only.

- (2) A retirement income of a modified monthly amount, payable to the retiree during the lifetime of the retiree and following the death of the retiree, 100 percent, 75 percent, 66 2/3 percent or 50 percent of such monthly amount payable to a joint pensioner for his lifetime. Except where the retiree's joint pensioner is his spouse, the payments to the joint pensioner as a percentage of the payments to the Retiree shall not exceed the applicable percentage provided for in the applicable table in the Treasury regulations. (See Q&A-2 of 1.401(a)(9)-6)
- (3) If a member retires prior to the time at which social security benefits are payable, he may elect to receive an increased retirement benefit until such time as social security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the system, based upon the social security law in effect at the time of the member's retirement.
- (4) The member may elect a percentage of benefit in a lump sum as follows:
- a. Ten percent (10%) of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining ninety percent (90%) paid under the normal form or as per (1), (2) or (3) above.
  - b. Fifteen percent (15%) of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining eighty-five percent (85%) paid under the normal form or as per (1), (2) or (3) above.
  - c. Twenty percent (20%) of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining eighty percent (80%) paid under the normal form or as per (1), (2) or (3) above.

d. Twenty-five percent (25%) of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining seventy-five percent (75%) paid under the normal form or as per (1), (2) or (3) above.

\* \* \* \* \*

(e)(5) The member's benefit under this section must begin to be distributed to the member no later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70½) or the calendar year in which the member terminates employment with the city.

\* \* \* \* \*

(g) Notwithstanding anything herein to the contrary, the board in its discretion, may elect to make a lump sum payment to a member or a member's beneficiary in the event that the monthly benefit amount is less than \$100.00 or the total commuted value of the ~~remaining~~ monthly income payments to be paid do not exceed one thousand dollars (\$1,000.00) ~~\$5,000.00~~. Any such payment made to any person pursuant to the power and discretion conferred upon the board by the preceding sentence shall operate as a complete discharge of all obligations under the system with regard to such member and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons.

**SECTION 8:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-200, Maximum Pension, to read as follows:

**Sec. 54-200. Maximum pension.**

(a) ~~Basic limitation.~~ 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 \$160,000.00. 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 treasury regulations, so that such benefits are the actuarial equivalent of a straight life annuity. For purposes of this section, the following benefits shall not be taken into account:

(1) ~~Any ancillary benefit which is not directly related to retirement income benefits;~~

~~(2) — Any other benefit not required under section 415(b)(2) of the Code and regulations thereunder to be taken into account for purposes of the limitation of section 415(b)(1) of the Code.~~

~~(b) — *Participation in other defined benefit plans.* 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 Code) maintained by the city shall apply as if the total benefits payable under all defined benefit plans in which the member has been a member were payable from one plan.~~

~~(c) — *Adjustments in limitations.*~~

~~(1) — In the event the member's retirement benefits become payable before age 62, the \$160,000.00 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 Code, so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a \$160,000.00 annual benefit beginning at age 62.~~

~~(2) — In the event the member's benefit is based on at least 15 years of credited service, the adjustments provided for in subsection (1) above, shall not apply.~~

~~(3) — The reductions provided for in subsection (1) above, shall not be applicable to disability benefits paid pursuant to section 54-193, or pre-retirement death benefits paid pursuant to section 54-192.~~

~~(4) — If the member's retirement benefit becomes payable after age 65, for purposes of determining whether this benefit meets the limitation set forth in subsection (a) above, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made in accordance with regulations promulgated by the secretary of the treasury or his delegate.~~

~~(d) — *Less than ten years of service.* The maximum retirement benefits payable under this section to any member who has completed less than ten years of credited service with the city shall be the amount determined under subsection (a) above, 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. The reduction provided for in this subsection shall not be~~

~~applicable to disability benefits paid pursuant to section 54-193, or pre-retirement death benefits paid pursuant to section 54-192.~~

~~(e) — *\$10,000.00 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 system and under all other qualified defined benefit pension plans to which the city contributes, do not exceed \$10,000.00 for the applicable plan year and for any prior plan year and the city has not at any time maintained a qualified defined contribution plan in which the member participated.~~

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

~~(g) — *Cost of living adjustments.* The limitations as stated in subsections (a), (b) and (c) above, 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 Code.~~

~~(h) — *Additional limitation on pension benefits.* Notwithstanding anything herein to the contrary:~~

~~(1) — The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed 100 percent 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.~~

~~(2) 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 a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.~~

(a) *Basic limitation.* Notwithstanding any other provisions of this system to the contrary, the member contributions paid to, and retirement benefits paid from, the system shall be limited to such extent as may be necessary to conform to the requirements of Code Section 415 for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A) (\$160,000), subject to the applicable adjustments in Code Section 415(b) and subject to any additional limits that may be specified in this System. For purposes of this section, "limitation year" shall be the calendar year.

(b) *Adjustments to Basic Limitation for Form of Benefit.* If the form of benefit without regard to any benefit increase feature is not a straight life annuity, then the Code Section 415(b) limit applicable at the annuity starting date is reduced to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(II)) that takes into account the death benefits under the form of benefit.

(c) *Benefits Not Taken into Account.* For purposes of this Section, the following benefits shall not be taken into account in applying these limits:

- (1) Any ancillary benefit which is not directly related to retirement income benefits;
- (2) Any other benefit not required under §415(b)(2) of the Code and Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1).

(d) *COLA Effect.* Effective on and after January 1, 2003, for purposes of applying the limits under Code Section 415(b) (the "Limit"), the following will apply:

- (1) A member's applicable limit will be applied to the member's annual benefit in the member's first calendar year of benefit payments without regard to any automatic cost of living adjustments;

- (2) thereafter, in any subsequent calendar year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but
- (3) in no event shall a member's benefit payable under the system in any calendar year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.

Unless otherwise specified in the system, for purposes of applying the limits under Code Section 415(b), a Member's applicable limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(e) *Other Adjustments in Limitations.*

- (1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Code Section 415(b) of the Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).
- (2) In the event the member's benefit is based on at least fifteen (15) years of credited service as a full-time employee of the fire department of the City, the adjustments provided for in (e)(1) above shall not apply.
- (3) The reductions provided for in (e)(1) above shall not be applicable to disability benefits pursuant to Sec. 54-193, or pre-retirement death benefits paid pursuant to Sec. 54-192.
- (4) In the event the member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limit set forth in subsection (a) 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 in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

(f) Less than Ten (10) 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 City shall be the amount determined under subsection (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). The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to Sec. 54-193, or pre-retirement death benefits paid pursuant to Sec. 54-192.

(g) Participation in Other Defined Benefit Plans. The limit 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 Code Section 414(j) maintained by the City shall apply as if the total benefits payable under all City defined benefit plans in which the member has been a member were payable from one plan.

(h) Ten Thousand Dollar (\$10,000) Limit. Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this section 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 plan year and for any prior plan year and the City has not any time maintained a qualified defined contribution plan in which the member participated.

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

(j) *Service Credit Purchase Limits.*

(1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the system, as allowed in Sections 54-211 and 54-212, then the requirements of this section will be treated as met only if:

a. the requirements of Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Code Section 415(b), or

b. the requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).

c. For purposes of applying subparagraph (j)(1)a., the System will not fail to meet the reduced limit under Code Section 415(b)(2)(c) solely by reason of this subparagraph c., and for purposes of applying subparagraph (j)(1)b. the System will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this subparagraph c.

(2) For purposes of this subsection the term "permissive service credit" means service credit—

a. recognized by the system for purposes of calculating a member's benefit under the plan,

b. which such member has not received under the plan, and

c. which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the system, include service credit for periods for which there is no performance of service, and,

notwithstanding clause (j)(2)b., may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(3) For purposes of applying the limits in this subsection (j)., only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a calendar year, except as noted below and as permitted by Treasury Regulations Section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations Section 1.415(c)-2, or successor regulation, is specified by the system, compensation will be defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2).

a. However, for calendar years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For calendar years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Code Section 132(f)(4).

b. For limitation years beginning on and after January 1, 2007, compensation for the calendar year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the calendar year that includes the date of the employee's severance from employment if:

1. the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular

working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

2. the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

c. Back pay, within the meaning of Treasury Regulations Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Code Section 415 by using the following methods:

a. If the law requires a lump sum payment for the purchase of service credit, the board may establish a periodic payment deduction plan for the member to avoid a contribution in excess of the limits under Code Sections 415(c) or 415(n).

b. If payment pursuant to subparagraph (j)(4)a. will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the board may either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(k) *Additional Limitation on Pension Benefits.* Notwithstanding anything herein to the contrary:

(1) The normal retirement benefit or pension payable to a retiree who becomes a member of the system and who has not previously participated in such system, on or after January 1, 1980, shall not exceed one hundred 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.

- (2) 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 a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

**SECTION 9:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-201, Minimum Distribution of Benefits, to read as follows:

**Sec. 54-201. Minimum distribution of benefits.**

- (a) *General rules.*
- (1) *Effective date.* Effective as of January 1, 1989, the plan will pay all benefits in accordance with a good faith interpretation of the requirements of Internal Revenue Code Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Internal Revenue Code Section 414(d). Effective on and after January 1, 2003, the plan is also subject to the specific provisions contained in this Section. The provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (2) *Precedence.* The requirements of this section will take precedence over any inconsistent provisions of the plan.
- ~~(3) *Requirements of treasury regulations incorporated.* All distributions required under this section will be determined and made in accordance with the treasury regulations under section 401(a)(9) of the code.~~
- (4) 3 *TEFRA section 242(b)(2) elections.* Notwithstanding the other provisions of this section other than this subsection ~~(a)(4)~~ (a)(3), distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that related to section 242(b)(2) of TEFRA.

- (b) *Time and manner of distribution.*
- (1) *Required beginning date.* The member's entire interest will be distributed, or begin to be distributed, to the member no later than the member's required beginning date which shall not be later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70 ½) or the calendar year in which the member ~~retires unless otherwise provided for in the plan or required by law~~ terminates employment with the city.
- (2) *Death of member before distributions begin.* If the member dies before distributions begin, the member's entire interest will be distributed, or begin to be distributed no later than as follows:
- a. If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by a date on or before December 31 of the calendar year in which the member would have attained age 70 ½, if later, as the surviving spouse elects.
- b. If the member's surviving spouse is not the member's sole designated beneficiary, then, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the member died.
- c. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.
- d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a., will apply as if the surviving spouse were the member.

For purposes of this subsection (b)(2) and subsection (e), distributions are considered to begin on the member's required beginning date or, if subsection (b)(2)d. applies, the date of distributions are required to begin to the surviving spouse under subsection (b)(2)a. If

annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)a.) the date distributions are considered to begin is the date distributions actually commence.

(3) Death After Distributions Begin. If the member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

~~(3 4)~~ *Form of distribution.* Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance ~~of subsections (c), (d) and (e) of~~ with this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the code and treasury regulations. Any part of the member's interest which is in the form of an individual account described in section 414(k) of the code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the code and treasury regulations that apply to individual accounts.

(c) *Determination of amount to be distributed each year.*

(1) *General ~~annuity~~ requirements.* If the member's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

a. The annuity distributions will be paid in periodic payments made at intervals not longer than one year.

b. ~~The distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsection (d) or (e).~~ The member's entire interest must be distributed pursuant to Sec. 54-191, Sec. 54-192, Sec. 54-194 or Sec. 54-195 (as applicable) and in any event over a period

equal to or less than the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. The life expectancy of the member, the member's spouse, or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

e. ~~Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted.~~

d. ~~Payments will either be nonincreasing or increase only as follows:~~

1. ~~By an annual percentage increase that does not exceed the cumulative annual percentage increase in a cost of living index that is based on prices of all items and issued by the Bureau of Labor Statistics or by a fixed annual increase of five percent or less.~~

2. ~~To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection (d) dies or is no longer the member's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p).~~

3. ~~To provide cash refunds of accumulated contributions upon the member's death.~~

4. ~~To pay increased benefits that result from a plan amendment.~~

(2) *Amount required to be distributed by required beginning date.* The amount that must be distributed on or before the member's required beginning date (or, if the member dies before distributions begin, the date distributions are required to begin under Sec. 54-192 subsection (b)(2)a. or (b)(2)c.) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g.,

~~bi-monthly, monthly, semi-annually, or annually.~~ All of the member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

(3) *Additional accruals after first distribution calendar year.* Any additional benefits accruing to the member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

~~(d) — Requirements for annuity distributions that commence during a member's lifetime.~~

~~(1) — Joint life annuities where the beneficiary is not the member's spouse.~~ If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member'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 member using the table set forth in Q&A 2 of section 1.401(a)(9) 6T of the treasury regulations. ~~If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirements in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.~~

~~(2) — Period certain annuities.~~ Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the Uniform Lifetime Table set forth in section 1.401(a)(9) 9 of the treasury regulations for the calendar year that contains the annuity starting date. ~~If the annuity starting date precedes the year in which the member reaches age 70, the applicable distribution period for the member is the distribution period for age 70 under the Uniform Lifetime Table set~~

~~forth in section 1.401(a)(9) 9 of the treasury regulations plus the excess of 70 over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this subsection (d)(2), or the joint life and last survivor expectancy of the member and the member's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9) 9 of the treasury regulations, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.~~

~~(e) — Requirements for minimum distributions where member dies before date distributions begin.~~

~~(1) — Member survived by designated beneficiary. If the member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the member's entire interest will be distributed, beginning no later than the time described in subsection (b)(2)a. or (b)(2)b., over the life of the designated beneficiary or over a period certain not exceeding:~~

~~a. — Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death.~~

~~b. — If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year the contains the annuity starting date.~~

~~(2) — No designated beneficiary. If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.~~

~~(3) — Death of surviving spouse before distributions to surviving spouse begin. If the member dies before the date distribution of his interest begins, the member's surviving spouse is the member's~~

~~sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection (e) will apply as if the surviving spouse were the member, except that the time by which distributions must begin will be determined without regard to subsection (b)(2)a.~~

(d) General distribution rules.

- (1) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.
- (2) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Internal Revenue Code Section 401(a)(9)(G) and Treasury Regulation Section 1.401-1(b)(1)(I) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from the retirement system.

(~~f~~ e) Definitions.

- (1) 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)-1, Q&A-4, of the treasury regulations.
- (2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to ~~subsection (b)(2)~~ Sec. 54-192.

~~(3) — *Life expectancy.* Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9) 9 of the treasury regulations.~~

~~(4) — *Required beginning date.* The date specified in subsection (b)(1).~~

**SECTION 10:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-202, Miscellaneous provisions, to read as follows:

**Sec. 54-202. Miscellaneous provisions.**

(a) *Interest of members in system.* ~~At~~ All assets of the fund are held in trust, and at no time prior to the satisfaction of all liabilities under the system with respect to retirees and 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.

(b) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the city commission which shall have the effect of reducing the then vested accrued benefits of members or a member's beneficiaries.

(c) *Qualification of system.* It is intended that the system will constitute a qualified public pension plan under the applicable provisions of the Code for a qualified plan under code section 401(a) and a governmental plan under code section 414(d), as now in effect or hereafter amended. Any modification or amendment of the system may be made retroactively, if necessary or appropriate, to qualify or maintain the system as a plan meeting the requirements of the applicable provisions of the Code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

(d) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce future city contributions.

(e) *Prohibited Transactions.* Effective as of January 1, 1989, a board may not engage in a transaction prohibited by Internal Revenue Code Section 503(b).

(f) USERRA. Effective December 12, 1994, notwithstanding any other provision of this system, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. To the extent that the definition of "credited service" sets forth contribution requirements that are more favorable to the member than the minimum compliance requirements, the more favorable provisions shall apply.

(g) Vesting.

(1) Member will be 100% vested in all benefits upon attainment of the plan's age and service requirements for the plan's normal retirement benefit; and

(2) A member will be 100% vested in all accrued benefits, to the extent funded, if the plan is terminated or experiences a complete discontinuance of employer contributions.

(h) Electronic Forms. In those circumstances where a written election or consent is not required by the plan or the Internal Revenue Code, an oral, electronic, or telephonic form in lieu of or in addition to a written form may be prescribed by the board. However, where applicable, the board shall comply with Treas. Reg. § 1.401(a)-21.

(e i) Compliance with F.S. chs. 175 and 185. It is intended that the system will continue to qualify for funding under F.S. §§ 175.101 and 185.08. Accordingly, unless otherwise required by law, any provision of the system which violates the requirements of F.S. chs. 175 and 185, as amended from time to time, shall be superseded by and administered in accordance with the requirements of such chapter.

**SECTION 11:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-203, Repeal or termination of system, subsection (c), to read as follows:

\* \* \* \* \*

(c) The following shall be the order of priority for purposes of allocating the assets of the system as of the date of repeal of this article, or if contributions to the system are discontinued with the date of such discontinuation being determined by the board:

- (1) Apportionment shall first be made in respect of each retiree receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) member, and each member who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the actuarial equivalent of such benefit, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.
- (2) If there be any asset value remaining after the apportionment under subsection (1) above, apportionment shall next be made in respect of each member in the service of the city on such date who is vested and who is not entitled to an apportionment under subsection (1) above, in the amount required to provide the actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), based on the credited service and average final compensation as of such date, and each vested former member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.
- (3) If there be any asset value after the apportionments under subsections (1) and (2) above, apportionment shall be made in respect of each member in the service of the city on such date who is not entitled to an apportionment under subsections (1) and (2) above, in the amount equal to member's accumulated contributions, provided that, if such remaining asset value be less than the

aggregate of the amounts apportioned hereunder such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

- (4) If there be any asset value remaining after the apportionments under subsections (1) through (3) above, apportionment shall lastly be made in respect of each member included in subsection (3) above, to the extent of the actuarial equivalent of the nonvested accrued normal retirement benefit, less the amount apportioned in subsection (3) above, based on the credited service and average final compensation as of such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.
- (5) In the event that there be asset value remaining after the full apportionment specified in subsection (1) through (4), such excess shall be returned to the city, less return of the state's contributions to the state, provided that, if the excess is less than the total contributions made by the city and the state to the date of termination such excess shall be divided proportionately to the total contributions made by the city and the state.

The allocation of the fund provided for in this subsection may, as decided by the board, be carried out through the purchase of insurance company contracts to provide the benefits determined in accordance with this subsection. The fund may be distributed in one sum to the persons entitled to said benefits or the distribution may be carried out in such other equitable manner as the board may direct. The fund may be continued in existence for purposes of subsequent distributions.

~~If, at any time during the first ten years after the effective date of the ordinance originally establishing this system, the system shall be terminated or the full current costs of the system shall not have been met, anything in the system to the contrary notwithstanding, city contributions which may be used for the benefit of any one of the 25 highest paid members on the effective date, whose anticipated annual retirement allowance provided by the city's contributions at member's normal retirement date would exceed \$1,500.00, shall not exceed the greater of either a) \$20,000.00, or b), an amount computed by multiplying the smaller of \$10,000.00 or 20~~

~~percent of such member's average annual earnings during his last five years of service by the number of years of service since the effective date. In the event that it shall hereafter be determined by statute, court decision, ruling by the Commissioner of Internal Revenue, or otherwise, that the provisions of this paragraph are not then necessary to qualify the system under the Code, this paragraph shall be ineffective without the necessity of further amendment of this article.~~

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**SECTION 12:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-204, Exemption from execution, non-assignability, to read as follows:

**Sec. 54-204. Domestic relations orders; retiree directed payments; exemption from execution, nonassignability.**

(a) Domestic relations orders.

(1) Prior to the entry of any domestic relations order which affects or purports to affect the system's responsibility in connection with the payment of benefits of a retiree, the member or retiree shall submit the proposed order to the board for review to determine whether the system may legally honor the order.

(2) If a domestic relations order is not submitted to the board for review prior to entry of the order, and the system is ordered to take action that it may not legally take, and the system expends administrative or legal fees in resolving

the matter, the member or retiree who submits such an order will be required to reimburse the system for its expenses in connection with the order.

(b) Retiree directed payments. The board may, upon written request by a retiree or by a dependent, when authorized by a retiree or the retiree's beneficiary, authorize the system to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the city, to pay the certified bargaining agent of the city, to make payments to insurance companies for insurance premiums if permitted by F.S. Chs. 175 and 185, and to make any payments for child support or alimony.

(c) Exemption from execution, non-assignability. Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this article and the accumulated contributions and the cash securities in the fund created under this article are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable.

**SECTION 13:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-206, Forfeiture of pension, subsection (a), to read as follows:

(a) Any member who is convicted of the following offenses committed prior to retirement, or whose employment is terminated by reason of his admitted commission, aid or abetment of the following specified offenses, shall forfeit all rights and benefits under this system, except for the return of his accumulated contributions, if any, as of the date of termination. Specified offenses are as follows:

- (1) The committing, aiding or abetting of an embezzlement of public funds;
- (2) The committing, aiding or abetting of any theft by a public officer or employee from employer;
- (3) Bribery in connection with the employment of a public officer or employee;
- (4) Any felony specified in F.S. Ch. 838;
- (5) The committing of an impeachable offense;
- (6) The committing of any felony by a public officer or employee who willfully and with intent to defraud the public or the public agency, for which he acts or in which he is employed, of the right to receive the faithful performance of his duty as a public officer or employee, realizes or obtains

or attempts to obtain a profit, gain, or advantage for himself or for some other person through the use or attempted use of the power, rights, privileges, duties or position of his public office or employment position; or

- (7) The committing on or after October 1, 2008, of any felony defined in F.S. Sec. 800.04, against a victim younger than sixteen (16) years of age, or any felony defined in F.S. Ch. 794, against a victim younger than eighteen (18) years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

\* \* \* \* \*

**SECTION 13:** That Chapter 54, Pensions and Retirement, Article III, Pension Plan for Firefighters and Police Officers, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-209, Direct transfer of eligible rollover distributions; Elimination of mandatory distributions; to read as follows:

**Sec. 54-209. Direct transfers of eligible rollover distributions.**

- (a) *Rollover distributions.*
- (1) *General.* This section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the system 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 board, 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.*
- a. *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- b. *Distributee:* A distributee includes an employee or former employee. ~~In addition, It also includes the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse and the employee's or former employee's spouse or former spouse.~~ Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section

401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

- c. *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 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 ten years or more; any distribution to the extent such distribution is required under § 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. ~~Any~~ Effective January 1, 2002, any portion of any distribution which would be includible in gross income as after-tax employee contributions will be an eligible rollover distribution if the distribution is made to an individual retirement account described in § 408(a); to an individual retirement annuity described in § 408(b); ~~or~~ to a qualified defined contribution plan described in § 401(a) or 403(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is ~~includible in gross income and the portion of such distribution which is not so includible~~ not so includible; or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

d. *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in § 408(a) of the Code; an individual retirement annuity described in section 408(b) of the Code; an annuity plan described in § 403(a) of the Code; effective January 1, 2002, an eligible deferred compensation plan described in § 457(b) of the code which is maintained by an eligible employer described in § 457(e)(1)(A) of the code and which agrees to separately account for amounts transferred into such plan from this plan; effective January 1, 2002, an annuity contract described in § 403(b) of the code; ~~or a~~ a qualified trust described in § 401(a) of the Code; or effective January 1, 2008, a Roth IRA described in Section 408A of the Code, that accepts the distributee's eligible rollover distribution. This definition shall also apply in the case of an eligible rollover distribution to the surviving spouse.

(b) *Rollovers or transfers into the fund.* On or after January 1, 2002, the system will accept, solely for the purpose of purchasing credited service as provided herein, permissible Member requested transfers of funds from other retirement or pension plans, member rollover cash contributions and/or direct cash rollovers of distributions made on or after January 1, 2002, as follows:

(1) *Transfers and direct rollovers or member rollover contributions from other plans.* The system will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 401(a) or 403(a) of the Code, from an annuity contract described in section 403(b) of the Code or from 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. The system will also accept legally permissible member requested transfers of funds from other retirement or pension plans.



(2) *Member rollover contributions from IRAs.* The system will accept a member rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over ~~and would otherwise be includible in gross income.~~

(c) *Elimination of mandatory distributions.* Notwithstanding any other provision herein to the contrary, in the event this plan provides for a mandatory (involuntary) cash distribution from the plan not otherwise required by law, for an amount in excess of one-thousand dollars (\$1,000.00), such distribution shall be made from the plan only upon written request of the member and completion by the member of a written election on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount.

**SECTION 15:** Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Garden.

**SECTION 16:** All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 17:** If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

**SECTION 18:** That this Ordinance shall become effective upon adoption.

PASSED ON FIRST READING, this 22nd day of January, 2009.

PASSED AND ADOPTED ON SECOND READING, this \_\_\_ day of \_\_\_\_\_, 2009.

APPROVED:

JOHN REES, MAYOR/COMMISSIONER

ATTEST:

City of Winter Garden City Commission  
Regular Meeting Agenda for March 12, 2009

KATHY GOLDEN, CITY CLERK  
dm/wtg/pf/12-03-08.ord

**RESOLUTION 09-06**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY  
WINTER GARDEN, FLORIDA, APPOINTING A MAYOR PRO-TEM**

**WHEREAS**, Sec. 2 of the City Charter states that the at the first regular commission meeting after an election, including any runoffs and swearing in of commissioner(s); and

**WHEREAS**, Sec. 2 of the City Charter also states the commission shall elect from among its members a Mayor Pro-Tem; and

**WHEREAS**, the Charter also states that the Mayor Pro-Tem shall serve until a successor is elected; and

**WHEREAS**, a new Mayor Pro-Tem must be appointed;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF  
WINTER GARDEN, FLORIDA:**

**Section 1.** That \_\_\_\_\_ is appointed to serve as Mayor Pro-Tem until the first meeting after the 2011 election has been certified.

**Section 2.** That this resolution shall be in full force and effect immediately upon its passage and adoption.

This Resolution is duly adopted at a regular meeting of the City Commission of the City of Winter Garden, Florida, held on the 12<sup>th</sup> day of March 2009.

APPROVED:

\_\_\_\_\_  
John Rees, Mayor/Commissioner

ATTEST:

\_\_\_\_\_  
Kathy Golden, City Clerk