

REQUESTED COMMISSION ACTION:

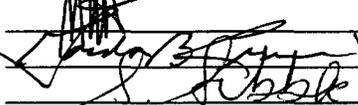
Consent     
  Ordinance     
  Resolution     
  Consideration/ Discussion     
  Presentation

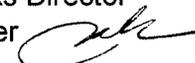
**AN ORDINANCE AMENDING CHAPTER 34, "CITY POLICY," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 34.0571, "INTERNAL REVENUE CODE COMPLIANCE," TO PROVIDE FOR COMPLIANCE WITH THE INTERNAL REVENUE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR AN EFFECTIVE DATE.**

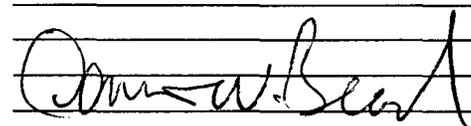
**Summary of Purpose and Why:**

This ordinance revises the Police and Firefighters Retirement System to implement changes required by the IRS Code. There is no actuarial impact for these changes.

- (1) Origin of request for this action: Police and Fire Retirement System
- (2) Primary staff contact: Glenda Rowley 954-782-4161
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: None

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENT HEAD SIGNATURE
Budget	03.12.2015	Approve	
Human Resources	03.11.2015	Approve	
City Attorney	03.12.2015	Reviewed for Form	
Finance	03.12.2015	Approve	

Advisory Board  
 Planning Director  
 Public Works Director  
 City Manager 



**ACTION TAKEN BY COMMISSION:**

Ordinance	Resolution	Consideration
<u>Workshop</u>		
1 <sup>st</sup> Reading <u>3/24/15</u>	1 <sup>st</sup> Reading _____	Results: _____
<u>Approved</u>		
2 <sup>nd</sup> Reading <u>4/14/15</u>	_____	Results: _____
_____	_____	_____
_____	_____	_____

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**AN ORDINANCE AMENDING CHAPTER 34, "CITY POLICY," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 34.0571, "INTERNAL REVENUE CODE COMPLIANCE," TO PROVIDE FOR COMPLIANCE WITH THE INTERNAL REVENUE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on January 30, 2014, an application was filed with the Internal Revenue Service for a Favorable Determination Letter regarding the qualified status of the Plan under Section 401(a) of the Internal Revenue Code; and

**WHEREAS**, on December 1, 2014, the Internal Revenue Service issued a Favorable Determination Letter, finding that the Plan complies with all qualification requirements; and

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

**WHEREAS**, the trustees of the City of Pompano Beach Police & Firefighters' Retirement System have requested and approved such amendments as being in the best interests of the participants and beneficiaries as well as improving the administration of the plan,

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

**WHEREAS**, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

**WHEREAS**, a public hearing before the City Commission was held pursuant to the published notices described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact heard; now, therefore,

**BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** Section 34.0571, "Internal Revenue Code Compliance," of the City of Pompano Beach Code of Ordinances is amended to read as follows:

**§ 34.0571 INTERNAL REVENUE CODE COMPLIANCE.**

(A) Maximum pension.

...

(14) For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the participant and which is not includible in the gross income of the participant by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in this subsection (A), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the participant by reason of Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007, compensation shall include payments that otherwise qualify as compensation and that are made by the later of: (a) two and one-half months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance. With respect to plan years beginning on or after December 31, 2008, Compensation shall also include differential wage payments within the meaning of Section 3401(h)(2) of the Internal Revenue Code.

...

**SECTION 2.** If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any provisions or applications of

this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 3.** All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

**SECTION 4.** This Ordinance shall become effective upon adoption.

**PASSED FIRST READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**PASSED SECOND READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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**LAMAR FISHER, MAYOR**

**ATTEST:**

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**ASCELETA HAMMOND, CITY CLERK**

GBL:jrm  
2/19/15  
L:ord/2015-215

**POMPAÑO BEACH POLICE & FIREFIGHTERS'  
RETIREMENT SYSTEM**

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2335 East Atlantic Boulevard • Suite 400 • Pompano Beach, FL 33062 • PHONE (954) 782-4161 • FAX (954) 782-5784

February 18, 2015

Mr. Dennis Beach  
City of Pompano Beach  
100 W. Atlantic Blvd., 4<sup>th</sup> Floor East  
Pompano Beach, Florida 33060

Re: Proposed Ordinance

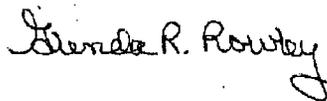
Dear Mr. Beach:

On December 1, 2014 the Internal Revenue Service issued a Determination Letter extending the Plan's qualification under the Internal Revenue Code, which letter is contingent on passage of mandated compliance amendments. The attached proposed ordinance incorporates those amendments.

The Board of Trustees for the Pompano Beach Police & Firefighters' Retirement System has reviewed the proposed ordinance and is referring it to you with a recommendation for adoption by the City Commission. The attached Actuarial Impact Statement indicates that there is no measurable or foreseeable cost to the Plan.

Your assistance in advancing this through the appropriate channels will be greatly appreciated.

Regards,



Glenda R. Rowley, CEBS  
Executive Director

Attachments

c: Phyllis Korab, Assistant City Manager  
Gordon Linn, City Attorney  
Tracy Lyons, Assistant City Attorney  
Michael Smith, Human Resources Director

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: DEC 01 2014

CITY OF POMPANO BEACH FL  
C/O SUGARMAN & SUSSKIND PA  
DAVID E ROBINSON  
100 MIRACLE MILE STE 300  
CORAL GABLES, FL 33134

Employer Identification Number:  
59-6000411  
DLN:  
17007034080014  
Person to Contact:  
DWAYNE T MASON ID# 31037  
Contact Telephone Number:  
(513) 263-4750  
Plan Name:  
POMPANO BEACH POLICE & FIREFIGHTERS  
RETIREMENT SYSTEM  
Plan Number: 001

Dear Applicant:

We have made a favorable determination on the plan identified above based on the information you have supplied. Please keep this letter, the application forms submitted to request this letter and all correspondence with the Internal Revenue Service regarding your application for a determination letter in your permanent records. You must retain this information to preserve your reliance on this letter.

Continued qualification of the plan under its present form will depend on its effect in operation. See section 1.401-1(b)(3) of the Income Tax Regulations. We will review the status of the plan in operation periodically.

The enclosed Publication 794 explains the significance and the scope of this favorable determination letter based on the determination requests selected on your application forms. Publication 794 describes the information that must be retained to have reliance on this favorable determination letter. The publication also provides examples of the effect of a plan's operation on its qualified status and discusses the reporting requirements for qualified plans. Please read Publication 794.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other federal or local statutes.

This determination letter gives no reliance for any qualification change that becomes effective, any guidance published, or any statutes enacted, after the issuance of the Cumulative List (unless the item has been identified in the Cumulative List) for the cycle under which this application was submitted.

This determination is subject to your adoption of the proposed amendments submitted in your letter dated 10/29/14. The proposed amendments should be adopted on or before the date prescribed by the regulations under Code section 401(b).

This determination letter is based solely on your assertion that the plan is entitled to be treated as a Governmental plan under section 414(d) of the

Letter 2002

CITY OF POMPANO BEACH FL

Internal Revenue Code.

This determination letter is applicable to the plan and related documents submitted in conjunction with your application filed during the remedial amendment cycle ending 1/31/14.

This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received. This letter expires on January 31, 2019. This letter considered the 2012 Cumulative List of Changes in Plan Qualification Requirements.

We have sent a copy of this letter to your representative as indicated in the Form 2848 Power of Attorney or appointee as indicated by the Form 8821 Tax Information Authorization.

If you have questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew E. Zuckerman". The signature is written in a cursive style with a long horizontal stroke at the end.

Andrew E. Zuckerman  
Director, EP Rulings & Agreements

Enclosures:  
Publication 794

January 10, 2015

Pompano Beach Police & Firefighters' Retirement System  
Board of Trustees  
c/o Glenda R. Rowley, CEBS, Executive Director  
2335 E. Atlantic Blvd., Suite 400  
Pompano Beach, FL 33062

Actuarial Impact Statement  
Components of Compensation

Dear Glenda:

Section 112.63(3) of the Florida Statutes specifies that an actuarial impact statement is to be issued before a change to retirement benefits is adopted and that a copy of such statement is to be forwarded to the Division of Retirement.

Our understanding is that the amendment would provide for compliance with the Internal Revenue Code regard the inclusion, within the Plan's definition of Compensation, of differential wage payments within the meaning of Section 3401(h)(2) of the Internal Revenue Code with respect to plan years beginning on or after December 31, 2008.

Since the System is currently being valued as if the System is already in compliance with the Internal Revenue Code regulations regarding compensation, this change will not result in any measurable or foreseeable actuarial impact on the City of Pompano Beach Police and Firefighters' Retirement System.

In our opinion these changes are in compliance with Section 14, Article X of the State Constitution and with Section 112.64 Florida Statutes.

Please let us know if you have any questions or comments.

Sincerely,



David D. Harris, ASA, FCA, MAAA, EA

DDH/di  
503501/740

cc: Pedro Herrera

Q:\DB Dept\DB Clients\050 Atlanta\5035-01 Pompano Beach Police & Fire\Actuarial Impact Statements\2015\Actuarial Impact Statement (IRS Compliance) (2015-01-10).docx

**(a) Wages**

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

**(1)** for active service performed in a month for which such employee is entitled to the benefits of section 112 ([/uscode/text/26/112](#)) (relating to certain combat zone compensation of members of the Armed Forces of the United States) to the extent remuneration for such service is excludable from gross income under such section; or

**(2)** for agricultural labor (as defined in section 3121 ([/uscode/text/26/3121](#)) (g) ([/uscode/text/26/usc\\_sec\\_26\\_00003121----000-#g](#))) unless the remuneration paid for such labor is wages (as defined in section 3121 ([/uscode/text/26/3121](#)) (a) ([/uscode/text/26/usc\\_sec\\_26\\_00003121----000-#a](#))); or

**(3)** for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

**(4)** for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

**(A)** on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

**(B)** such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter; or

**(5)** for services by a citizen or resident of the United States for a foreign government or an international organization; or

**(6)** for such services, performed by a nonresident alien individual, as may be designated by regulations prescribed by the Secretary; or

**[(7) Repealed. Pub. L. 89-809 ([/usc-cgi/get\\_external.cgi?type=pubL&target=89-809](#)), title I, § 103(k), Nov. 13, 1966, 80 Stat. 1554 ([/usc-cgi/get\\_external.cgi?type=statRef&target=date:Nov. 13, 1966ch:nonestatnum:80\\_1554](#))]**

**(8)**

**(A)** for services for an employer (other than the United States or any agency thereof)—

**(i)** performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911 ([/uscode/text/26/911](#)); or

**(ii)** performed in a foreign country or in a possession of the United States by such a citizen if, at the time of the payment of such

remuneration, the employer is required by the law of any foreign country or possession of the United States to withhold income tax upon such remuneration; or

**(B)** for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services; or

**(C)** for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico; or

**(D)** for services for the United States (or any agency thereof) performed by a citizen of the United States within a possession of the United States to the extent the United States (or such agency) withholds taxes on such remuneration pursuant to an agreement with such possession; or

**(9)** for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

**(10)**

**(A)** for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

**(B)** for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back; or

**(11)** for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

**(12)** to, or on behalf of, an employee or his beneficiary—

**(A)** from or to a trust described in section 401 ([/uscode/text/26/401](#))

**(a)** ([/uscode/text/26/usc\\_sec\\_26\\_00000401----000-#a](#)) which is exempt from tax under section 501 ([/uscode/text/26/501](#)) **(a)**

([/uscode/text/26/usc\\_sec\\_26\\_00000501----000-#a](#)) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

**(B)** under or to an annuity plan which, at the time of such payment, is a plan described in section 403 ([/uscode/text/26/403](#)) (a) ([/uscode/text/26/usc\\_sec\\_26\\_00000403----000-#a](#)); or

**(C)** for a payment described in section 402 ([/uscode/text/26/402](#)) (h) (1) ([/uscode/text/26/usc\\_sec\\_26\\_00000402----000-#h\\_1](#)) and (2) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to an exclusion under such section for payment; or

**(D)** under an arrangement to which section 408 ([/uscode/text/26/408](#)) (p) ([/uscode/text/26/usc\\_sec\\_26\\_00000408----000-#p](#)) applies; or

**(E)** under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457 ([/uscode/text/26/457](#)) (b) ([/uscode/text/26/usc\\_sec\\_26\\_00000457----000-#b](#)) which is maintained by an eligible employer described in section 457 ([/uscode/text/26/457](#)) (e)(1)(A) ([/uscode/text/26/usc\\_sec\\_26\\_00000457----000-#e\\_1\\_A](#)), <sup>[1]</sup> or

**(13)** pursuant to any provision of law other than section 5(c) or 6(1) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of such Act; or

**(14)** in the form of group-term life insurance on the life of an employee; or

**(15)** to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 ([/uscode/text/26/217](#)) (determined without regard to section 274 ([/uscode/text/26/274](#)) (n) ([/uscode/text/26/usc\\_sec\\_26\\_00000274----000-#n](#))); or

**(16)**

**(A)** as tips in any medium other than cash;

**(B)** as cash tips to an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is \$20 or more; <sup>[2]</sup>

**(17)** for service described in section 3121 ([/uscode/text/26/3121](#)) (b) (20) ([/uscode/text/26/usc\\_sec\\_26\\_00003121----000-#b\\_20](#)); <sup>[2]</sup>

**(18)** for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 ([/uscode/text/26/127](#)), 129 ([/uscode/text/26/129](#)), 134 ([/uscode/text/26/134](#)) (b)(4) ([/uscode/text/26/usc\\_sec\\_26\\_00000134----000-#b\\_4](#)), or 134 ([/uscode/text/26/134](#)) (b)(5) ([/uscode/text/26/usc\\_sec\\_26\\_00000134----000-#b\\_5](#)); <sup>[2]</sup>

**(19)** for any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74 ([/uscode/text/26/74](#)) (c) ([/uscode/text/26/usc\\_sec\\_26\\_00000074----000-#c](#)), 108

(/uscode/text/26/108) (f)(4) (/uscode/text/26/usc\_sec\_26\_00000108----000-#f\_4), 117 (/uscode/text/26/117), or 132 (/uscode/text/26/132); <sup>[2]</sup>

**(20)** for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105 (/uscode/text/26/105) (h)(6) (/uscode/text/26/usc\_sec\_26\_00000105----000-#h\_6)); <sup>[2]</sup>

**(21)** for any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106 (/uscode/text/26/106) (b) (/uscode/text/26/usc\_sec\_26\_00000106----000-#b); <sup>[2]</sup>

**(22)** any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106 (/uscode/text/26/106) (d) (/uscode/text/26/usc\_sec\_26\_00000106----000-#d); or

**(23)** for any benefit or payment which is excludable from the gross income of the employee under section 139B (/uscode/text/26/139B) (b) (/uscode/text/26/usc\_sec\_26\_00000139---B000-#b).

The term “wages” includes any amount includible in gross income of an employee under section 409A (/uscode/text/26/409A) and payment of such amount shall be treated as having been made in the taxable year in which the amount is so includible.

#### **(b) Payroll period**

For purposes of this chapter, the term “payroll period” means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term “miscellaneous payroll period” means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual or annual payroll period.

#### **(c) Employee**

For purposes of this chapter, the term “employee” includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term “employee” also includes an officer of a corporation.

#### **(d) Employer**

For purposes of this chapter, the term “employer” means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

**(1)** if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term “employer” (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

**(2)** in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term “employer” (except for purposes of subsection (a)) means such person.

**(e) Number of withholding exemptions claimed**

For purposes of this chapter, the term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402

(/uscode/text/26/3402) (f) (/uscode/text/26/usc\_sec\_26\_00003402----000-#f), or in effect under the corresponding section of prior law, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

**(f) Tips**

For purposes of subsection (a), the term "wages" includes tips received by an employee in the course of his employment. Such wages shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053 (/uscode/text/26/6053)

(a) (/uscode/text/26/usc\_sec\_26\_00006053----000-#a) or (if no statement including such tips is so furnished) at the time received.

**(g) Crew leader rules to apply**

Rules similar to the rules of section 3121 (/uscode/text/26/3121) (o) (/uscode/text/26/usc\_sec\_26\_00003121----000-#o) shall apply for purposes of this chapter.

**(h) Differential wage payments to active duty members of the uniformed services****(1) In general**

For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

**(2) Differential wage payment**

For purposes of paragraph (1), the term "differential wage payment" means any payment which—

**(A)** is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 (/uscode/text/38/part-III/chapter-43) of title 38 (/uscode/text/38), United States Code) while on active duty for a period of more than 30 days, and

**(B)** represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.