

**GOLDEN BEACH**

**ORDINANCE NO. 518.07**

**AN ORDINANCE OF THE TOWN OF GOLDEN BEACH, FLORIDA AMENDING THE TOWN OF GOLDEN BEACH EMPLOYEES' PENSION PLAN AS SET FORTH IN SECTION 24-33 "BENEFIT AMOUNT AND ELIGIBILITY" OF THE TOWN CODE OF ORDINANCES TO COMPLY WITH THE INTERNAL REVENUE SERVICE'S REQUIREMENTS FOR ISSUANCE OF A DETERMINATION LETTER; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Golden Beach Employees' Pension Plan ("Plan") has applied to the Internal Revenue Service for a determination letter that the Plan is a Qualified Plan under Section 401 of the Internal Revenue Code; and

**WHEREAS**, the Internal Revenue Service has determined that certain retroactive amendments to the Plan must be adopted in order for the Plan to satisfy the requirements of Section 401 of the Internal Revenue Code; and

**WHEREAS**, the Town of Golden Beach ("Town") hereby adopts all of the retroactive amendments to the Plan that the Internal Revenue Service has determined to be necessary to the issuance of a favorable determination letter.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

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**Section 2. First Retroactive Amendment To Section 24-33.** The fourth subparagraph of Paragraph (2), Subsection (f), Section 24-33 "Benefit Amounts and Eligibility", Division 1 "General Employees", Article II "Retirement", Chapter 24 "Personnel", of the Town of Golden Beach Code of Ordinances, is amended, and shall be retroactively effective as of January 1, 1997, as follows<sup>1</sup>:

(f) Limitation on Benefits. In no event may a Member's annual benefit exceed the lesser of:

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Except with respect to distributions on or after January 1, 1997 to "Qualified Police Officers," as that term is defined in Section 415(b)(2)(G) of the Code, ~~if~~ distribution of retirement benefits begins before age 62, the dollar limitation as described in paragraph (f)(1) of this Section 24-33 of the Plan shall be reduced actuarially using an interest rate assumption equal to the greater of five percent or the interest used in the most recent annual actuarial valuation; provided however, that benefits shall not be reduced below \$75, 000 if payment of benefits begins at or after age 55 and not below the actuarial equivalent of \$75,000 if payment of benefits begins before age 55. If retirement benefits begin after age 65, the dollar limitation of paragraph (f)(1) shall be increased actuarially using an interest assumption equal to the lesser of five percent or the interest rate used in the most recent annual actuarial valuation. For purposes of this subsection, the "average annual compensation for a Member's three highest paid consecutive years" shall mean the Member's greatest aggregate compensation during the period of three consecutive years in which the individual was an active Member of the Plan.

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**Section 3. Second Retroactive Amendment to Section 24-33.** Section 24-33 "Benefit Amounts and Eligibility", Division 1 "General Employees", Article II "Retirement", Chapter 24 "Personnel", of the Town of Golden Beach Code of Ordinances is amended by adding a Paragraph (3), and this amendment shall be retroactively effective as of January 1, 1994, as follows:

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<sup>1</sup> / Proposed additions to text of Town Code are indicated by underline; proposed deletions from text of Town Code are indicated by ~~strikethrough~~.

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(3) In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the Plan to the contrary, the annual Earnings of each Member taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the Plan to the limitation under section 401 (a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

If Compensation for any prior determination period is taken into account in determining a Member's benefits accruing in the current Plan Year, the Compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period.

With respect to Plan Years beginning on or after January 1, 1998 the term "Earnings" shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457. For limitation years beginning on and after January 1, 2001, earnings paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Code.

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**Section 4. Third Retroactive Amendment to Section 24-33.** Subsection (g) of Section 24-33 "Benefit Amounts and Eligibility", Division 1 "General Employees", Article II "Retirement", Chapter 24 "Personnel", of the Town of Golden Beach Code of Ordinances is hereby retroactively amended, effective December 31, 1986, as follows:

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~~(g) Distributions in Plan Years Beginning After December 31, 1984. Commencing with the first Plan Year beginning after December 31, 1984, the entire interest of a Member shall~~

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~~either be distributed to him not later than April 1 of the calendar year in which he attains age 70 1/2 or the calendar year in which he retires, whichever is later. In the alternative, distribution shall commence no later than the above specified commencement date and be distributable over a period of time not exceeding the limitations hereinafter set forth:~~

- ~~(1) Distributions to a Member shall not extend beyond the life of the Member or the lives of the Member and his designated Beneficiary, or over a period not extending beyond the life expectancy of the Member or the life expectancy of the Member and his designated Beneficiary.~~
- ~~(2) If distribution has commenced to a Member, and such Member dies before receiving his entire interest, the remainder of such interest shall be distributed over a period at least as rapidly as under the method of distribution in effect prior to such Member's death (e.g., remainder of period certain basis).~~
- ~~(3) Any method of distribution selected and made in writing by a Member prior to January 1, 1984, and which is in compliance with Plan provisions prior to said date, shall be permitted hereunder even though not in accordance with the above provisions as applied to Plan Years beginning after December 31, 1983.~~

- (g) Distributions in Plan Years after December 31, 1986. Benefit payments to a Member must commence no later than the April 1 of the calendar year immediately following the calendar year in which the Member attains age 70 1/2, or with respect to Plan Years beginning on or after January 1, 1997, the later of (i) the calendar year in which the Member attains age 70 1/2, or (ii) the calendar year in which the Member retires. For Members whose benefits commence after April 1 of the calendar year following the calendar year in which the Member attains age 70 1/2, such Member's benefit amount (including any additional benefit which is accrued after such date) shall be actuarially increased for the period between (i) April 1 of the calendar year following the calendar year in which the Member attains age 70 1/2 (or the end of the Plan Year in which any additional benefit is accrued) and (ii) the Member's benefit commencement date. Such actuarial increase shall be determined using the interest and mortality assumptions used for the purposes of Actuarial Equivalence, and may be offset to the extent an actuarial increase is otherwise provided due to delayed retirement.

The retirement income to a Member shall be distributed over the life of such Member or over the lives of such Member and a designated beneficiary, or over a period not extending beyond the life expectancy of such Member or the life expectancy of such Member and a designated beneficiary.

If unpaid amounts remain at the death of a Member receiving benefits, such remaining amounts will be distributed at least as rapidly as under the method of distribution being used as of the date of the Member's death.

In the case in which distributions have not commenced to a Member prior to the Member's death, the entire interest of the Member will be distributed within five years after the death of such Member. However, such five-year rule will not apply if any portion of the Member's interest is payable to a designated

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beneficiary, where such portion will be distributed over the life of such designated beneficiary, or over a period not extending beyond the life expectancy of such beneficiary beginning not later than one year after the date of the Member's death or such later date as the Secretary of the Treasury may by regulations prescribe. If the designated beneficiary is the surviving Eligible Spouse of the Member, the date on which the distributions would be required to begin shall not be earlier than the date on which the Member would have attained age 70½. If the surviving Eligible Spouse dies before payments are required to commence, the five-year rule shall be applied as if the surviving Eligible Spouse were the Member.

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**Section 5. Fourth Retroactive Amendment to Section 24-33.** Section 24-33 'Benefit Amounts and Eligibility', Division 1 'General Employees', Article II 'Retirement', Chapter 24 'Personnel', of the Town of Golden Beach Code of Ordinances is hereby amended by adding a subsection (h), and this amendment shall be retroactively effective from January 1, 1993, as follows:

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(h) Eligible rollover distributions:

(1) Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the board of trustees, 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. 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 (1) 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 (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

b. Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan

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described in section 403(a) of the Code or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

c. Distributee: A distributee includes a Member or former Member.

d. Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

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**Section 6. Fifth Retroactive Amendment to Section 24-33.** Section 24-33 "Benefit Amounts and Eligibility", Division 1 "General Employees", Article II "Retirement", Chapter 24 "Personnel", of the Town of Golden Beach Code of Ordinances is hereby amended and shall be retroactively effective from January 1, 2002, as follows:

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- (f) Limitation on Benefits. In no event may a Member's annual benefit exceed:
- 1) ~~\$90,000~~\$160,000 (adjusted for cost-of-living in accordance with Internal Revenue Code (IRC) Section 415(d), but only for the year in which such adjustment is effective), ~~or~~
  - 2) ~~One hundred percent of the average annual compensation for the Member's three highest paid consecutive years; however, benefits of up to \$10,000 a year can be paid without regard to the 100 percent limitation if the total retirement benefits payable to a Member under all defined benefit plans (as defined in IRC Section 414(j)) maintained by the City for the present and any prior year do not exceed \$10,000 and the City has not at any time maintained a defined contribution plan (as defined in IRC Section 414(i)) in which the employee was a Member.~~

If the Member has less than ten years of service with the City (as defined in IRC Section 415(b)(5) and as modified by IRC Section 415(b)(6)(D), the limitation set forth in this Paragraph (1) shall be reduced by multiplying such limitation by a fraction, not to exceed one. The numerator of such fraction shall be the number of years, or part thereof, of service with the City; the denominator shall be ten years.

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For purposes of this subsection, the "annual benefit" means a benefit payable annually in the form of a straight life annuity with no ancillary or incidental benefits and with no Member or rollover contributions. To the extent that ancillary benefits are provided, the limits set forth in this Paragraph (1) will be reduced actuarially, using an interest rate assumption equal to the greater of five percent or the interest rate used in the most recent annual actuarial valuation, to reflect such ancillary benefits.

Except with respect to distributions on or after January 1, 1997 to "Qualified Police Officers" as that term is defined in Section 415(b)(2)(G) of the Code, if distribution of retirement benefits begins before age 62, the dollar limitation as described in paragraph (1) shall be reduced actuarially using an interest rate assumption equal to the greater of five percent or the interest used in the most recent annual actuarial valuation; ~~provided however, that benefits shall not be reduced below \$75,000 if payment of benefits begins at or after age 55 and not below the actuarial equivalent of \$75,000 if payment of benefits begins before age 55. If retirement benefits begin after age 65, the dollar limitation of paragraph (f)(1) shall be increased actuarially using an interest assumption equal to the lesser of five percent or the interest rate used in the most recent annual actuarial valuation. For purposes of this subsection, the "average annual compensation for a Member's three highest paid consecutive years" shall mean the Member's greatest aggregate compensation during the period of three consecutive years in which the individual was an active Member of the Plan.~~

With respect to distributions effective after December 31, 2002, notwithstanding any other plan provisions to the contrary, the applicable mortality table used for purposes of adjusting any benefit or limitation under § 415(b)(2)(B), (C), or (D) of the Internal Revenue Code is the table prescribed in Rev. Rul. 2001-62. For any distribution with an annuity starting date on or after December 31, 2002 and before the adoption date of this Paragraph, if application of the amendment as of the annuity starting date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payment made before the adoption date of this section. However, the amount of any such reduction that is required under § 415(b)(2)(B) must be reflected actuarially over any remaining payments to the participant.

- 2) The term "Earnings" shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457. For limitation years beginning on and after January 1, 2001, earnings paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Code.

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In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual earnings of each Member taken into account under the Plan shall not exceed the maximum allowable under Section 401(a)(17), as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which earnings are determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

~~(3) In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the Plan to the contrary, the annual Earnings of each Member taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost of living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.~~

~~Any reference in the Plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision.~~

~~If Compensation for any prior determination period is taken into account in determining a Member's benefits accruing in the current Plan Year, the Compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period.~~

~~With respect to Plan Years beginning on or after January 1, 1998 the term "Earnings" shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457. For limitation years beginning on and after January 1, 2001, earnings paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Code.~~

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**Section 7. Sixth Retroactive Amendment to Section 24-33.** Section 24-33 "Benefit Amounts and Eligibility", Division 1 "General Employees", Article II "Retirement", Chapter 24 "Personnel", of the Town of Golden Beach Code of Ordinances is hereby amended by adding a subsection (h), and this amendment shall be retroactively effective from January 1, 2002, as follows:

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(h) Eligible rollover distributions:

(1) Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the board of trustees, 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. *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 (1) 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 (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

b. *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. An eligible retirement plan shall also mean, with respect to distributions made after December 31, 2001, an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified

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domestic relation order, as defined in Section 414(p) of the Code.

c. *Distributee*: A distributee includes a Member or former Member.

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

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**Section 8. Conflict.** That all ordinances or parts of ordinances, all Town Code sections or parts of Town Code sections, and all resolutions or parts of resolutions in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**Section 9. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be in valid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 10. Inclusion in the Code.** That it is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and made part of the Code of the Town of Golden Beach; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" may be changed to "Section" or other appropriate word.

**Section 11. Effective Date.** This Ordinance shall take effect according to the effective dates set forth herein.

**PASSED AND ADOPTED** on first reading this 16<sup>th</sup> day of January, 2007.

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The Motion to adopt the foregoing Ordinance was offered by Councilmember Einstein seconded by Councilmember Lusskin and on roll call the following vote ensued:

Mayor Glenn Singer	<u>Aye</u>
Vice Mayor Bernstein	<u>Aye</u>
Councilmember Einstein	<u>Aye</u>
Councilmember Lusskin	<u>Aye</u>
Councilmember Rojas	<u>Aye</u>

**PASSED AND ADOPTED** on second reading this 8th day of March, 2007.

ATTEST:

  
ELIZABETH SEWELL  
TOWN CLERK

  
MAYOR GLENN SINGER

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

  
TOWN ATTORNEY

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