

**St. Petersburg City Council Agenda Item
Meeting of October 1, 2009**

To: **The Honorable Jeff Danner, Chair and Members of City Council**

Subject: Amending Article III, Division 1 of Section 22, St. Petersburg City Code, relating to the City of St. Petersburg 401(a) Plan for the purpose of allowing a change in eligibility for participation.

Action Being Requested: Council action is being sought to approve amendments to the City Code that pertain to the 401(a) Plan for the purpose of allowing all management and general employees to voluntarily elect to participate in this plan in lieu of participating in the Employees' Retirement System (ERS) Pension Plan.

Summary: The City current operates a defined contribution plan for eligible management employees. The program was created by Ordinance and it is necessary to modify the City Code when changes to the plan are implemented. All current eligible management employees have the option of participating in the 401(a) Plan or the Pension Plan.

At the request of Administration, a study was conducted to determine the economic effect of allowing all general employees the option of participating in the Pension Plan or the 401(a) Plan similar to management employees. The Budget, Finance and Taxation Committee of City Council also reviewed the study and requested that Administration move forward to amend the City Code to allow employees the choice of participating in the 401(a) Plan or the Pension Plan. General economic conditions affecting governmental budgets, changing demographics of the population eligible to participate and general trends in the design of pension and benefit programs are encouraging municipalities to either replace traditional pension plans such as the Employees Retirement System or to provide a choice of plans for eligible employees.

The proposed change allows general employees the choice to participate in the 401(a) Plan if the employee is not covered by a collective bargaining agreement which prohibits such an election. Currently, all of the City's collective bargaining agreements specify that employees covered by these agreements participate in one of the City's defined benefit plans. As such this change initially will only apply to newly employed employees in eligible non-union positions. Since this proposed Ordinance does not supersede the provisions of the current collective bargaining agreements no union action is required.

Cost: The City contributes 11% of each participating employee's base pay to the 401(a) Plan each pay period. The cost of this proposed change will be determined by the number of eligible employees choosing to participate. These costs will be mitigated by an associated reduction in the City's annual contribution to the Pension Plan.

Recommendations:

Recommended City Council Action:

1. Conduct first reading
2. Set second reading and Public Hearing for October 15, 2009

Attachments (1) Proposed Ordinance

Approvals:


Administration

09-14-09
Date


Budget

9/14/9
Date

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 22, ST. PETERSBURG CITY CODE, RELATING TO DEFERRED COMPENSATION AND DEFINED CONTRIBUTIONS PLANS BY (1) AMENDING SECTION 22-61 AUTHORIZING THE MAYOR TO EXECUTE A PROTOTYPE PLAN AND TRUST AGREEMENT AND DELETING THE PROHIBITION OF DISBURSEMENTS FROM THE PLAN DUE TO A QUALIFIED DOMESTIC RELATIONS ORDER, (2) AMENDING SECTION 22-62 TO ALLOW ELIGIBLE EMPLOYEES TO PARTICIPATE IN THE DEFINED CONTRIBUTION PLAN UNLESS CONTRARY TO COLLECTIVE BARGAINING AGREEMENTS AND TO DELETE THE PROHIBITION OF DISBURSEMENTS FROM THE PLAN DUE TO A QUALIFIED DOMESTIC RELATIONS ORDER; AND PROVIDING AN EFFECTIVE DATE.

THE CITY OF ST. PETERSBURG DOES ORDAIN:

Section 1. That Section 22-61 of the St. Petersburg City Code is amended to read as follows:

Sec. 22-61. Deferred compensation plan.

- (a) The City does determine to provide a deferred compensation plan for eligible employees and eligible elected legislative officials, which is called the City of St. Petersburg Deferred Compensation Plan.
- (1) The City Council hereby approves and establishes this deferred compensation plan ("457 Plan") as the restatement of and successor to the previous 457 Plan heretofore established by Ordinance No. 255-F and codified as this division. This 457 Plan shall be maintained as an eligible deferred compensation plan under the provisions of Section 457 of the Internal Revenue Code.
- (2) A copy of the 457 Plan document shall be maintained in the City's Pension Office, and will be made available for viewing or copying upon request during normal business hours.
- (3) Nothing contained in this 457 Plan shall be deemed to constitute an employment contract or agreement for services between the participant and the employer nor shall it be deemed to give a participant any right to be retained in the employ of, or under

contract to, the employer. Nothing herein shall be construed to modify the terms of any employment contract or agreement for services between a participant and the employer as this 457 Plan is intended to be a supplement thereto.

(b) For the purpose of this section, an eligible employee shall be a person who:

(1) Occupies a full time position with the City including the Mayor, or is a part time employee who has a regular schedule of hours worked each pay period.

(c) For the purpose of this section, an eligible elected legislative official shall be each City Council Member while each is serving in their elected capacity during their term of office.

(d) The Mayor is authorized to approve and execute on behalf of the City, a prototype governmental deferred compensation plan and trust agreement, or plan documents, trust agreements, and subsequent amendments to the trust agreement(s) to conform the plan and trust agreement with the Internal Revenue Code and Regulations, to carry out the intent and purposes of this section and within the limitations provided herein. The Mayor shall be the public official designated to make determinations provided for in Section 112.215(6)(b), Florida Statutes.

(e) Except as required pursuant to state domestic relations laws, the right of a person to payments or disbursements from the deferred compensation account, or to any other right accrued or accruing under the provisions of this division shall not be subject to execution, garnishment, attachment, the operation of any bankruptcy or insolvency law, claims under a qualified domestic relations order, or any other process of law whatsoever and shall be unassignable except as specifically provided in this division.

(f) The 457 Plan shall be construed under the laws of the State to the extent not expressly preempted by federal law.

Section 2. That Section 22-62 of the St. Petersburg City Code is amended to read as follows:

Sec. 22-62. Defined contribution plan.

(a) The City does determine to provide a defined contribution plan for eligible elected legislative officials, except as otherwise provided in the plan document, eligible administrative management employees, ~~and former eligible administrative management employees~~ and all other eligible employees of the City in the classified or unclassified service of the City, unless such participation is contrary to any collective bargaining agreement. This plan shall be called the City of St. Petersburg 401(a) Plan ("401(a) Plan").

(1) Nothing contained in the 401(a) Plan shall be deemed to constitute an employment contract or agreement for services between the participant and the employer nor shall it be deemed to give a participant any right to be retained in the employ of, or under contract to, the employer. Nothing herein shall be construed to modify the terms of any employment contract or agreement for services between a participant and the employer as this 401(a) Plan is intended to be a supplement thereto.

(2) A copy of the 401(a) Plan document shall be maintained in the City's Pension Office, and will be made available for viewing or copying upon request during normal business hours.

(b) For the purpose of this section, an eligible administrative management employee shall be a person who:

(1) Occupies a full-time position as a member of the administrative management personnel of the City administration as included in a list filed by the Mayor with the City Clerk, which list shall include the Mayor and all full time attorneys holding attorney positions provided for in Section 3.06 of the City Charter ; and

(2) Has elected not to participate in the Employees' Retirement System; or

(3) Is initially employed in an administrative management position and who has elected not to participate in any retirement system sponsored wholly or in part by the City; or is not eligible to participate in any other retirement system funded in whole or in part by the City.

(c) For the purpose of this section, an eligible elected legislative official shall be each City Council Member while each is serving in their elected capacity during their term of office.

(d) For the purpose of this section, an eligible former administrative management employee shall be a person who at the time of reorganization of the City administration was an eligible administrative management employee, was a member of the City's 401(a) Plan, and who after reorganization is no longer an eligible administrative management employee and is still eligible to participate in the 401(a) Plan. In the case of any question as to who is qualified as an eligible former administrative management employee, the Mayor shall make the final determination.

(e) ~~Notwithstanding the provision of any other ordinance collective bargaining agreement, no person who is eligible to participate in the City's 401(a) Plan and who does so participate, shall participate in any other retirement or pension plan offered by the City. An eligible administrative management employee, eligible former administrative management employee who is participating in the 401(a) Plan shall be allowed to withdraw from participating in the Employees' Retirement System as set forth in Divisions 2 and 3 of Article IV of this chapter. An eligible administrative management employee, eligible former administrative management employee or other eligible employee of the City in the classified or unclassified service of the City shall be allowed to withdraw from participating in the Employees' Retirement System as set forth in Division 3 of Article IV of this chapter in order to participate in the 401(a) plan. Eligible administrative management employees, and eligible former administrative management employees or other eligible employees of the City in the classified or unclassified service of the City who withdraw from the Employees' Retirement System in order to participate in the 401(a) Plan shall be entitled to withdraw their accumulated contributions or vest their benefits, if eligible, under the Employees' Retirement System.~~

(1) Nothing in this section should be construed to allow eligible administrative management employees to return to the Employees' Retirement System once they have elected to participate in the 401(a) Plan. ~~if such return is contrary to any other ordinance or Internal Revenue Service regulations.~~

(f) The City shall contribute to the 401(a) Plan a uniform rate for each eligible ~~administrative management employee, former eligible administrative management employee, and each eligible elected legislative official~~ employee an amount not exceeding the amount allowed by law. Such uniform rate of contribution shall be fixed by the Mayor; however, the City Council may set, by resolution, a separate and different rate

of contribution by the City to the 401(a) Plan for eligible elected legislative officials. Participants may not contribute to the 401(a) Plan, and such 401(a) Plan shall only receive contributions from the City.

(g) The Mayor is authorized to execute on behalf of the City a prototype money purchase plan and trust adoption agreement to carry out the intent and purposes of this section and within the limitations provided in this section and to conform the plan and trust adoption agreement with the Internal Revenue Code and Regulations.

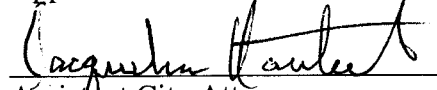
(h) Except as required pursuant to state domestic relations laws, the right of a person to a retirement income, an annuity, a retirement allowance, or to any other right accrued or accruing under the provisions of this division shall not be subjected to execution, garnishment, attachment, the operation of any bankruptcy or insolvency law, ~~claims under a qualified domestic relations order,~~ or any other process of law whatsoever and shall be unassignable except as specifically provided in this division.

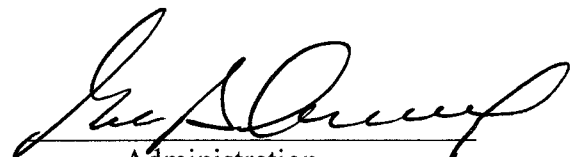
(i) The 401(a) Plan shall be construed under the laws of the State to the extent not expressly preempted by federal law.

Section 3. Language which is ~~struck through~~ indicates deletions, and language which is underlined indicates additions.

Section 4. Effective Date. In the event this ordinance is not vetoed by the Mayor in accordance with the City Charter, it shall become effective upon the fifth business day after adoption unless the Mayor notifies the City Council through written notice filed with the City Clerk that the Mayor will not veto the ordinance, in which case the ordinance shall take effect immediately upon filing such written notice with the City Clerk. In the event this ordinance is vetoed by the Mayor in accordance with the City Charter, it shall not become effective unless and until the City Council overrides the veto in accordance with the City Charter, in which case it shall become effective immediately upon a successful vote to override the veto.

Approved as to form and content:


Assistant City Attorney
Jacqueline Kovilaritch


Administration