

ORDINANCE NO. 16-2004

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA AMENDING SECTION 2-281 OF THE FIREFIGHTERS' RETIREMENT PLAN EXPRESSLY AUTHORIZING THE CITY COUNCIL TO APPOINT THE CITY MANAGER TO THE FIREFIGHTERS PENSION BOARD; UPON SAID APPOINTMENT, IMPOSING EX OFFICIO DUTIES ON THE CITY MANAGER AS A FULL MEMBER OF THE PENSION BOARD; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 2-281 and Chapter 175, Florida Statutes, authorizes the City Council to appoint two residents of Cocoa to serve on the firefighter's pension Board; and

WHEREAS, Article IV, Section 1(b), Cocoa Charter requires the City Manager to be a resident of Cocoa through his or her tenure; and

WHEREAS, the Florida Attorney General has opined that serving as a member of a municipal pension board constitutes an "office" for dual office holding purposes under Article II, Section 5(a), Florida Constitution; and

WHEREAS, municipal officers, like the City Manager, are not precluded from serving on pension boards of trustees of municipal police and firefighter's pension trust funds so long as such ex officio duties are imposed by City Code. See *City of Orlando v. Department of Insurance*, 528 So.2d 468 (Fla. 5th DCA 1988); *Opinion of the Florida Attorney General*, 2004-05; and

WHEREAS, the City Council of the City of Cocoa hereby finds that imposing ex officio duties on the City Manager as a member of the firefighter's pension board, from time to time, is in the best interests of the public health, safety, and welfare of the citizens of Cocoa.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby fully incorporated herein by reference as legislative findings and the intent and purpose of the City Council of the City of Cocoa.

Section 2. Code Amendment. Section 2-281 of the City of Cocoa Code is hereby amended to read as follows: (underlined type indicates additions and ~~strikeout~~ type indicates deletions:

Sec. 2-281. Board designated as administrator; composition.

The sole and exclusive administration and responsibility for the proper operation of the system and for making effective the provisions of this article are hereby vested in the board which shall be designated as the plan administrator for the system. The board shall consist of five (5) persons as follows:

- (a) Two (2) legal residents of the city who shall be appointed by the city council to serve for a period of two (2) years unless sooner replaced by the city council. The City Council may appoint the City Manager to serve as one of the two legal residents of the City and such appointment shall constitute ex officio duties on the City Manager. An appointed board member may succeed himself or herself;
- (b) Two (2) employee members, each to be elected by the actively employed members for a two (2) year term in a manner to be determined by the board; and
- (c) A fifth member, elected by the other four (4) members of the board, to be appointed by the city council as a ministerial duty for a two (2) year term. Such fifth member shall be allowed to succeed himself or herself in office if reelected.

Section 3. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the City Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

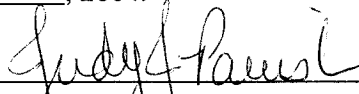
Section 4. Incorporation Into Code. This ordinance shall be incorporated into the Cocoa City Code and any section or paragraph number or letter and any heading may be changed or modified as necessary to effectuate the foregoing.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption by the City Council of the City of Cocoa, Florida.


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ADOPTED by the City Council of the City of Cocoa, Florida, in a regular meeting assembled on the 13th day of April, 2004.



Judy J. Parrish, Mayor

ATTEST:



Joan Clark, City Clerk

First Reading: March 23, 2004

Second Reading: April 13, 2004

Effective Date: April 13, 2004

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