



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

REGULAR MEETING

JANUARY 5, 2009

7:30 P.M.

CALL TO ORDER

Determination of a Quorum

Invocation and Pledge of Allegiance

1. APPROVAL OF MINUTES

Regular Meeting of December 11, 2008

2. FIRST READING OF PROPOSED ORDINANCE

A. **Ordinance 09-02**: AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE II, PENSION PLAN FOR GENERAL EMPLOYEES, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-26, DEFINITIONS; AMENDING SECTION 54-31, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 54-32, PRE-RETIREMENT DEATH; AMENDING SECTION 54-33, DISABILITY; AMENDING SECTION 54-35, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 54-39, MAXIMUM PENSION; AMENDING SECTION 54-40, MINIMUM DISTRIBUTION OF BENEFITS; AMENDING SECTION 52-41, MISCELLANEOUS PROVISIONS; AMENDING SECTION 54-42, REPEAL OR TERMINATION OF SYSTEM; AMENDING SECTION 54-43, DOMESTIC RELATIONS ORDERS, RETIREE DIRECTED PAYMENTS, EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY; AMENDING SECTION 54-45, FORFEITURE OF PENSION; AMENDING SECTION 54-47, DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS, ELIMINATION OF MANDATORY DISTRIBUTIONS; DELETING SECTION 54-49, SEPARATION FROM EMPLOYMENT FOR MILITARY SERVICE; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE **with the second reading and public hearing scheduled for January 22, 2009** – City Manager Bollhoefer

3. SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCE

A. **Ordinance 09-01**: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 38-91, 38-93 and 38-98 THROUGH 38-100 IN DIVISION 3, ARTICLE II, CHAPTER 38 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN DEFINING AND REGULATING LOT CLEANING; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE – City Planner Wilson

4. REGULAR BUSINESS

A. **Resolution 09-01**: A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, ADOPTING AND APPROVING A REVISED RATE SCHEDULE FOR ALL OPENING AND

CLOSING SERVICES AND CERTAIN OTHER MATTERS AT THE WINTER GARDEN CEMETERY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING FOR AN EFFECTIVE DATE – Public Services Director Cochran

B. Renewal of the Inter-Local Voluntary Cooperation Mutual Aid Agreement with multiple Orange County municipal law enforcement agencies – Police Chief Brennan

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

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

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

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

ADJOURN to a regular City Commission meeting on January 22, 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.

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.

ORDINANCE 09-02 (SEE NEXT PAGE)

ORDINANCE NO. 09-02

AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE II, PENSION PLAN FOR GENERAL EMPLOYEES, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-26, DEFINITIONS; AMENDING SECTION 54-31, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 54-32, PRE-RETIREMENT DEATH; AMENDING SECTION 54-33, DISABILITY; AMENDING SECTION 54-35, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 54-39, MAXIMUM PENSION; AMENDING SECTION 54-40, MINIMUM DISTRIBUTION OF BENEFITS; AMENDING SECTION 54-41, MISCELLANEOUS PROVISIONS; AMENDING SECTION 54-42, REPEAL OR TERMINATION OF SYSTEM; AMENDING SECTION 54-43, DOMESTIC RELATIONS ORDERS, RETIREE DIRECTED PAYMENTS, EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY; AMENDING SECTION 54-45, FORFEITURE OF PENSION; AMENDING SECTION 54-47, DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS, ELIMINATION OF MANDATORY DISTRIBUTIONS; DELETING SECTION 54-49, SEPARATION FROM EMPLOYMENT FOR MILITARY SERVICE; 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 II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-26, 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 RP-2000 Combined Healthy Mortality Table-Sex Distinct Projected to 2025 by Scale AA and an interest rate of seven and one quarter percent per annum~~ 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 ~~completed months of continuous fractional parts of years of~~ service as a general employee since a member's last date of employment as a general employee.

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 9 54-34, 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 general employee.

The years or parts of a year that a member 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 general employee to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

- (1) The member is entitled to reemployment under the provisions of USERRA.
- (2) The member returns to his employment as a general employee within one (1) year following the earlier of the date of his military discharge or his release from service, unless otherwise required by USERRA.
- (3) 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.

* * * * *

Salary means the total compensation for services rendered to the city as a general employee reportable on the member's W-2 form including bonuses and plus all tax deferred, tax sheltered or tax exempt items of income derived from elective employee payroll deductions or salary reductions. 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 II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-31, 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 3: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-32, Pre-Retirement Death, to read as follows:

Sec. 54-32. 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, if any.

(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 54-35, 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, if any.
 - (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. 54-35, 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, if any.
- (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 4: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-33, Disability, subsection (d), *Disability payments*, to read as follows:

(d) *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.

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 54-35, subsection (a)(1) or (a)(2), which shall be the actuarial equivalent of the normal form of benefit.

SECTION 5: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-35, Optional Forms of Benefits, to amend subsection (a)(2), to add subsection (e)(5), and to amend subsection (g), to read as follows:

* * * * *

- (a)(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)

* * * * *

(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 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 6: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-39, Maximum Pension, to read as follows:

Sec. 54-39. 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.~~

~~—— 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 § 415(b)(2) of the Code and regulations thereunder to be taken into account for purposes of the limitation of § 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 § 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 limitation prescribed by this section shall be reduced in accordance with regulations issued by the secretary of the treasury pursuant to the provisions of § 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 one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).~~
 - ~~—— (2) — The reductions provided for in (c)(1) above, shall not be applicable to disability benefits paid pursuant to section 54-33, or pre-retirement death benefits paid pursuant to section 54-32.~~
 - ~~—— (3) — 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) herein, 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 54-33, or pre-retirement death benefits paid pursuant to section 54-32.~~

~~—— (c) *\$10,000 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 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), herein 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 § 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 another 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. 54-33, or pre-retirement death benefits paid pursuant to Sec. 54-32.

(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. 54-33, or pre-retirement death benefits paid pursuant to Sec. 54-32.

(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 54-50 and 54-51, 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 7: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-40, Minimum Distribution of Benefits, to read as follows:

Sec. 54-40. 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. 54-31, Sec. 54-32, Sec. 54-34 or Sec. 54-35 (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.

~~c. 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. 54-32 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.~~

- ~~(c) *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 (c) 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. 54-32.

~~(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 8: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-41, Miscellaneous provisions, to read as follows:

Sec. 54-41. 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.

SECTION 9: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-42, 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 (c)(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 (c)(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, if any) 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, if any), 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 remaining after the apportionments under subsections (c)(1) and (2), 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 (c)(1) and (2) in the amount equal to the member's accumulated contributions, if any, 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.
 - (4) If there be any asset value remaining after the apportionments under paragraphs (1), (2), and (3), apportionment shall lastly be made in respect of each member included in paragraph (3) above to the extent of the actuarial equivalent of the non-vested accrued normal retirement benefit, less the amount apportioned in paragraph (3),

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 subsections (c)(1), (2), (3) and (4) above, such excess shall be returned to the city.

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 this article [July 8, 1999] 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.~~

* * * * *

SECTION 10: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-43, Domestic Relations Orders, retiree directed payments; exemption from execution, non-assignability, subsection (b), *Retiree directed payments*, to read as follows:

(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, and to make any payments for child support or alimony.

SECTION 11: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-45, 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 12: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by amending Section 54-47, Direct transfer of eligible rollover distributions; Elimination of mandatory distributions; to read as follows:

Sec. 54-47. 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. *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 not~~ 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.

- b. *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 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.

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

(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 13: That Chapter 54, Pensions and Retirement, Article II, Pension Plan for General Employees, of the City of Winter Garden Code of Ordinances, is hereby amended by deleting Section 54-49, Separation from employment for military service, in its entirety, as follows:

~~Sec. 54-49. Separation from employment for military service:~~

~~—(a)—~~ 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, after separation from employment as a general employee with the city to perform training or service, and reemployment on or after December 12, 1994, shall be added to his years of credited service for all purposes, including vesting, provided that:

- ~~(1) The member must return to his employment as a general employee within one year from the earlier of the date of his military discharge or his release from service.~~
- ~~(2) The maximum credit for military service pursuant to this section shall be five years.~~
- ~~(3) The member must have been discharged or released from service under honorable conditions.~~
- ~~(4) This section is intended to satisfy the minimum requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), (P.L. 103-353). To the extent that this section does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.~~

SECTION 14: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Garden.

SECTION 15: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 16: 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 17: That this Ordinance shall become effective retroactively to September 10, 2008.

PASSED ON FIRST READING, this _____ day of _____, 2009.

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

APPROVED:

JOHN REES, MAYOR/COMMISSIONER

ATTEST:

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

ORDINANCE 09-01

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 38-91, 38-93 and 38-98 THROUGH 38-100 IN DIVISION 3, ARTICLE II, CHAPTER 38 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN DEFINING AND REGULATING LOT CLEANING; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1: Authority: The City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

SECTION 2: Adoption: Chapter 38, Article II, Division 3, Sections 38-91, 38-93, 38-98, 38-99 and 38-100 of the Winter Garden Code of Ordinances are hereby amended to shall read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 38-91. Delegation of authority.

The board of city commissioners hereby designates the Code Enforcement Director, Code Enforcement Division of the City as the Enforcement Official of this article and delegates to the Code Enforcement Division Manager the authority to enforce the provisions of this article, including the authority to cause any violation of this article to be terminated and abated, and the authority to impose a lien, ~~and request the board to impose a special assessment lien~~ upon any lot, tract or parcel of property for the actual cost of terminating and abating such violation.

Sec. 38-93. Definitions.

For the purpose of this article, the following words and terms shall have the meanings respectively ascribed:

Actual cost shall mean the actual contract amount, as invoiced by an independent contractor, for terminating and abating a violation of this article on any lot, tract or parcel of residential or commercial property pursuant to an order of the zoning director, plus the cost of serving notice, obtaining title information, advertising and recording any liens imposed hereunder.

~~*Building Official* shall mean the Director of Code Enforcement.~~

Code enforcement Division Manager shall mean the Manager of the City of Winter Garden Code Enforcement Division, or authorized designee.

Code enforcement Inspector shall mean a Code Enforcement Division Inspector of the Code Enforcement Division, and may include the Code Enforcement Division Manager.

Compost bin shall mean a container which is designed for the purpose of allowing plant material to decompose for use as fertilizer. For purposes of this article, any such compost bin shall be constructed of wire, wood lattice or other material which allows air to filter through the structure. The maximum permissible capacity for any compost bin shall be sixty-four (64) square feet with a maximum height of five (5) feet.

Excessive growth shall mean, grass, weeds or brush that has reached a height of at least eighteen (18) inches.

Exterior portion of any building shall mean those portions of a building which are open-sided, such that the open space within such portions of the building may be lawfully viewed by the public or any member thereof from a sidewalk, street, alleyway, parking lot or from any adjoining or neighboring premises. This definition includes such open-sided structures as carports and porches.

Exterior portion of the property shall mean those portions of a lot, tract or parcel of land which is either (1) outside of any building erected thereon, or (2) if there is no building erected thereon the entire lot, tract or parcel, regardless of whether such portions are exposed to public view or are surrounded by a fence, wall, hedge or other similar structure. For purposes of this article, the term "exterior portion of the property" shall include the "exterior portion of any building" only where specifically stated.

Fill shall mean material such as dirt that is imported and deposited on property by artificial means.

Garbage container shall mean a container made of nonabsorbent material provided with a close-fitting cover, side bail handles, and of thirty-two (32) gallons or less gross capacity, capable of receiving and holding waste material without leakage or escape of odors, or a waterproof bag of strength and material capable of receiving and holding waste material without leakage or escape of odors.

Grass, weeds, or brush shall mean any grass or weeds, or brush typical of the state which, when allowed to grow in a wild and unkempt manner, will reach a height of eighteen (18) inches or more. This definition does not include bushes, shrubs, trees, vines, flowering plants, or any other living plant life typically used and actually being used for landscaping purposes.

Imminent public health threat shall mean the condition of any lot, tract or parcel or land that, because of the accumulation of junk, trash, or debris, such as broken glass, rusted metal, automotive and appliance parts, some of which may contain chemicals, such as Freon, oils, fluids, etc., may cause injury or disease to humans or contaminate the environment, or the condition of any lot, tract or parcel that, because of the excessive growth of grass, weeds, bush or is a harbor for criminal activity.

Improved property shall mean any lot, tract or parcel of land in the city used for residential, commercial, professional office or industrial purposes which contains one or more buildings or structures, paving or other improvements, excluding solely underground utilities, pipes, wires, cable culverts, conduits or other similar improvements.

Mechanical garbage container shall mean any portable, nonabsorbent container approved by the board of city commissioners which is used to store large volumes of refuse and which is emptied by mechanical means.

Nonliving plant material shall mean nonliving vegetation such as leaves, grass cuttings, shrubbery cuttings, tree trimmings and other material attending the care of lawns, shrubs, vines and trees.

Property shall mean any lot, tract or parcel of land, or portion thereof, whether improved or unimproved, that is utilized or zoned for residential, commercial, professional office or industrial use, or any lot, tract or parcel of land, or portion thereof, and adjacent right-of-way, whether improved or unimproved, that is zoned agricultural but is being utilized, as determined by the code enforcement division manager, for residential, nonagricultural commercial, professional office or nonagricultural industrial use.

Trash, junk and debris shall mean waste material, including, but not limited to, putrescible and nonputrescible waste, combustible and noncombustible waste, and generally all materials such as paper, cardboard, tin cans, lumber, concrete rubble, glass, bedding, crockery, household furnishings, household appliances, dismantled pieces of motor vehicles or other machinery, rubber tires or rusted metal articles of any kind.

Unimproved property shall mean any lot, tract or parcel of land in the city used for residential, commercial, professional office or industrial purposes which does not contain any buildings or structures, paving or other improvements, but may include solely underground utilities, pipes, wires, cables, culverts, conduits or other similar improvements.

~~*Separate Offense* shall mean a violation that exist more than 24 hours after proper notice.~~

All other words and terms shall be from the latest edition of Webster Dictionary.

Sec. 38.98. Enforcement; abatement of nuisance.

(a) First violation. ~~(1)~~ Whenever a code enforcement Inspector reports to the code enforcement division manager that there appears to be a violation of section 38-94 or 38-95, the code enforcement division manager shall direct that a notice of violation be served upon the owner, and, if applicable, the agent, custodian, lessee or occupant, directing such owner, and, if applicable, the agent, custodian, lessee or occupant, to terminate and abate the violation within ten (10) calendar days of the date such notice is received. For purposes of this Division "notice is received" on the earliest of the day it is hand delivered to the property owner, the date the property is posted with said notice, or five days after said notice is mailed to the property owner, postage prepaid by certified mail, hand delivered or posted. For purposes of this article, the term "notice is received" means the date the owner, agent, custodian, lessee or occupant initials or otherwise indicates his receipt of the notice of violation. However, in the event the notice of violation is not accepted or is returned, the term "notice is received" shall mean ten (10) calendar days after the later of the date the notice of violation was mailed or the property was posted. The code enforcement division manager shall, within five (5) days of the date the notice is mailed, cause a sign to be placed upon the property in a conspicuous and easily visible location. The sign shall be at least eight inches by twelve inches in size and shall include the following information:

a. a sufficient description by address and/or legal description to identify the property upon which the violation exists;

b. a description of the violation to be terminated and abated; ~~and~~

c. a statement that if the described violation is not terminated and abated within ten (10) calendar days after notice is received the code enforcement division manager shall cause the violation to be terminated and abated, ~~and~~

d. ~~that to impose~~ a special assessment lien shall be imposed upon the property for the actual cost of such termination and abatement, plus administrative expenses, and

e. a preliminary nonbinding, minimum estimate of the cost of termination and abatement.

~~For purposes of this Division section "notice is received" on the earliest of the day it is hand delivered to served upon the property owner, or the date the property is posted with said notice, or five (5) days after said notice is mailed to the property owner, postage prepaid. A preliminary nonbinding, minimum estimate of the cost of termination and abatement shall be provided as part of the notice of violation. The estimated cost of termination and abatement shall be based upon the then current rate as may be established by the board of city commissioners.~~

f.~~(2)~~ The notice of violation shall further state in bold and conspicuous letters that if such violation, within the ten-day period prescribed by subsection (a) of this section:

1a. Has not been terminated and abated; or

2b. Has not been timely appealed in accordance with section 38-99; or

~~3e.~~ Has been timely appealed but the appeal process proves unsuccessful, then the code enforcement division manager shall cause the violation to be terminated and abated, and the actual cost of such termination and abatement, plus administrative fees~~expenses~~, shall constitute a special assessment lien on the property in accordance with section 38-100.

~~(b) Subsequent violation during same calendar year.~~ If weeds, excessive growth of grass or plant material are permitted to grow or accumulate on private property in violation of this article more than one (1) time ~~during the same growing season within one calendar year of, and a prior violation that was terminated and abated pursuant to this Division of this article was set before the code board during such growing season in the manner set forth in section 38-98 of this Code,~~ then the Director of Code Enforcement, or his/her duly authorized agent, may, without further notification, remove such noxious growths in the manner set forth in section 38-98(c) of this Code, and may collect the total cost of such removal in the manner set forth in section 38-98 ~~100~~ of this Code. The Director of Code Enforcement or designee may hire and enter into contracts with independent contractors to destroy or remove such weeds, excessive growth of grass or plant material.

(c) Imminent health threat (first and subsequent violations). In a case involving a condition which poses an imminent public health threat, the code enforcement division manager may, without prior notice, authorize the immediate termination and abatement of the condition.

~~(d) After the fact notice: Whenever the code enforcement division manager proceeds pursuant to sub-section (b) or (c) herein. However,~~ an after-the-fact notice shall be provided not later than five (5) days after the termination or abatement of the condition ~~pursuant to the procedures described in subsection (a) above, where the notice is for a first violation, and the notice shall explain how the code enforcement division manager determined that the property contained a condition which posed an imminent public health threat requiring its immediate termination and abatement, that the property has been cleaned of the condition, and that the aggrieved party may file a notice of appeal to show that the property did not contain such violation,~~ which notice shall include the following:

1. a description of the conditions that were terminated and abated;
2. whether the conditions were terminated and abated without prior notice due to sub-section (b) or (c), herein;
3. the actual cost of the termination and abatement, together with administrative fees, is due to be paid within ten days of the notice;
4. that the failure to pay the actual costs and administrative fees when due will result in imposition of a special assessment lien against the property; and
5. that the property owner may file a notice appeal to show that the property did not contain such violation within ten days of the notice, as provided by Section 38-99.

~~(e) (d)~~ If the owner ~~or owners~~ or other person in control of any property ~~described in section 38-98 of this Code~~ fails to destroy the weeds, excessive growth of grass or other plant material and thereby abate the nuisance within ten (10) days after the notice described in Section 38-98(a) is delivered, the Director of Code Enforcement or designee, shall cause such nuisance to be terminated and abated. ~~weeds, excessive growth of grass or other plant material to be destroyed by one of the methods set forth in section 38-98 of this Code.~~ The Director of Code Enforcement or designee may hire and enter into contracts with independent contractors to destroy or remove such weeds, excessive growth of grass or other plant material.

~~(e)~~ Upon the completion of the destruction of such noxious growths by the director of public works, or by a person authorized by contract, the director of public works, or his duly authorized agent, shall cause the total cost of such work to be determined and by report certify the same to the city clerk.

(f) Upon approval of such report by the Code Enforcement Manager, the Code Enforcement Manager shall endorse the report and shall cause the certified cost to be included in a special tax bill to be collected by the Orange County Tax Collector. The special tax bill shall include a charge of thirty dollars (\$30.00) for each inspection of the property and the giving of notice plus the cost of abatement as determined by the Director of Code Enforcement. In the event the tax collector is unable to collect the certified cost on the special tax bill within ninety (90) days of the due date, the director of code enforcement and Orange County tax collector shall cause the certified cost to be added to the annual real estate tax bill for the property and the certified cost shall be collected in the same manner and procedure for collecting real estate taxes. If the certified cost is not paid when due, the tax bill shall be considered delinquent, and the collection of the delinquent bill shall be governed by the laws governing delinquent and back taxes. The tax bill from the date of its issuance shall be deemed a personal debt against the property owner and shall also be a first lien on the property until paid. In the event a lawsuit is required to enforce the tax bill, the city may charge the property owner costs of collecting the tax bill including attorneys' fees

Sec. 38.99. Appeals.

(a) Within the ten-day (10) period prescribed by subsection 38-98 after notice is received, an aggrieved party may appeal the code enforcement division manager's determination that a notice of violation is warranted for the property in question pursuant to ~~(see subsection 38-98(a),~~ or that the property did not contain a condition authorizing immediate termination and abatement, pursuant to ~~which posed an imminent public health threat (see subsection 38-98 (b) and (c)).~~

(b) An appeal by an aggrieved party shall:

(1) Be accompanied by a filing fee as determined by the board of city commissioners; and

(2) Be addressed to the code enforcement division manager; and

(3) Be either hand-delivered to the code enforcement division manager or postmarked within the ten-day period after notice is received.

(c) Upon receipt of a timely appeal, the code enforcement manager shall schedule a hearing date before the code enforcement board.

(d) At the hearing, the code enforcement board shall allow the code enforcement division manager or designee(s) and the aggrieved party an opportunity to present evidence and to examine and cross-examine witnesses. After considering the evidence and testimony, the hearing Inspector or code enforcement board shall make a factual determination as to whether the property is (or was, with respect to subsection 38-98 in violation of this article. If the hearing Inspector or code enforcement board makes a factual determination that the property is (or was) in violation of this article, he shall affirm the code enforcement division manager's issuance of the notice of violation and, with respect to an appeal brought under subsections 38-98 (a), (b) or (c), ~~99 and 38-100~~ issue an order requiring the aggrieved party to promptly clean the property in order to terminate or abate the violation, or, with respect to an appeal filed under subsection 38-98 (b) or (c) issue an order holding that the conditions allowed ~~constituted an immediate public health threat requiring~~ its immediate termination or abatement. If the aggrieved party has not remedied the violation within five (5) calendar days after the date of the code enforcement board's written order holding that this article has been violated, then the code enforcement division manager may have the property cleaned, and the property owner shall be responsible for such costs and related expenses. If the code enforcement board makes a factual determination that the property is not (or was not, with respect to subsection 38-98(b) or (c) in violation of this Division article, then the filing fee shall be returned to the aggrieved party, and, with respect to an appeal filed under subsection 38-98(b) or (c) ~~9~~ the city shall be responsible for the costs of cleaning the property.

(e) Appeal of the code enforcement board decision, whether it is a first or subsequent offense, or an imminent health threat, shall be filed in a timely manner with the circuit court under the provisions of section 71 of the Winter Garden Code.

Sec. 38.100. Liens; assessment.

(a) After causing the nuisance condition to be remedied as provided in section 38-98, the code enforcement division manager shall certify to the city clerk the actual cost incurred in remedying the condition, whereupon such cost, plus a charge equal to 100 percent of such cost to cover city administrative expenses, shall become payable within 10 days, after which a special assessment lien and charge will be made upon the property, which shall be payable with interest at the rate of 12 percent per annum from the date of such certification until paid. The actual cost and administrative expenses of a termination and abatement of a violation of this article when such termination and abatement is accomplished under the direction of the code enforcement division manager shall be levied and constitute a special assessment lien against the property as set forth in subsection (c).

(b) Prior to approving and recording a claim of special assessment lien pursuant to subsection (c), the city shall, by hand or certified mail, return receipt requested, deliver or send a notice of assessment of costs to the last known owner of record of the subject real property. If the assessment is not paid or arrangements satisfactory to the city have not been made to pay such assessment within ~~tenthirty (30)~~ days after notice is received~~return of the receipt~~, then the claim of special assessment lien may be ~~approved and~~ recorded.

(c) Such lien shall be enforceable in the same manner as a tax lien in favor of the city and may be satisfied at any time by payment thereof, including accrued interest. Notice of such lien may be filed in the office of the clerk of the circuit court and recorded among the public records of the county. After the violation of this article is abated in accordance with this article and complies with the requirements of subsection (b), the city is authorized to approve and record a claim of special assessment lien in the official records of the city. The claim of special assessment lien is subject to the following conditions and requirements as set forth in Section 2-69 in the Winter Garden Code.

(d) The city attorney is authorized and directed to institute such proceedings in the name of the city in any court having jurisdiction over such matters against any property for which a lien has been filed pursuant to this and the property owner shall be liable for all costs, including reasonable attorney's fees, incurred in any such action.

SECTION 3: Codification: Section 2 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

SECTION 4: Control: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls.

SECTION 5: Severability: It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

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

FIRST READING: _____ December 11 _____, 2008.

SECOND READING AND PUBLIC HEARING: _____ January 5 _____, 2009.

ADOPTED this _____ day of _____, 2009, by the City Commission of the City of Winter Garden, Florida.

RESOLUTION 09-01

A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, ADOPTING AND APPROVING A REVISED RATE SCHEDULE FOR ALL OPENING AND CLOSING SERVICES AND CERTAIN OTHER MATTERS AT THE WINTER GARDEN CEMETERY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Winter Garden City Commission adopted Ordinance 96-06 (the Cemetery Ordinance) which included a provision now in Section 26-30(c) providing for the City Commission's adoption of a rate schedule for opening and closing services and other matters at the Winter Garden Cemetery by Resolution; and

WHEREAS, the City Commission and City Staff have considered the costs and expenses relating to the matters set forth in this Resolution and the need for the City to protect the City's financial resources and the resources of the citizens of the City of Winter Garden; and

WHEREAS, On December 13, 2008 the City Commission approved Resolution 08-15 extending the agreement with Quality Vaults Inc. for funeral opening and closing services, and amending the rate schedule. It has been determined that the rates specified in this Resolution are reasonable and proper.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Winter Garden, Florida:

Section 1: The applicable rates for opening and closing services and related matters as specified on the attached Exhibit "A" are hereby adopted and approved by the City Commission of the City of Winter Garden.

Section 2: That all Resolutions or parts thereof that are in conflict with this Resolution are hereby rescinded and repealed to the extent of said conflict.

Section 3: That this Resolution shall take effect January 9th, 2009.

PASSED AND ADOPTED this ____ day of _____ 2009.

EXHIBIT "A"

**CEMETERY RATES
 REVISED
 (Effective 1/05/09)**

	Current fee	New fee
Opening and closing services without setup	\$620.00 *	\$670.00*
Opening and closing services with setup	\$725.00 *	\$775.00*
Opening and closing service for disinterment and reinterment inside Cemetery	\$1,070.00	\$1,120.00
Opening and closing services for disinterment for removal from Cemetery	\$585.00	\$635.00
Opening and closing services for reinterment from another Cemetery	\$585.00	\$635.00
Opening and closing with setup for infant burial	\$585.00	\$635.00
Setup services for cremation	\$450.00	\$575.00
Opening and closing services of a plot for cremation without setup	\$ 85.00	\$ 85.00
Columbarium Opening and closing with setup	\$400.00	\$525.00
Columbarium Opening and closing without setup	\$250.00	\$350.00
Miscellaneous expenses:		
Extra Chairs (12)	\$125.00	\$175.00
Extra tent	\$125.00	\$175.00
Saturday Services add	\$200.00	\$225.00
Monday Holiday Services add	\$350.00	\$425.00
Services not completed by 4:00 p.m.	\$25 per hour (prorated)	\$25 per hour (prorated)
Services scheduled at or after 3:00 p.m.	\$75 flat fee	\$100 flat fee

*Grave, mausoleum catacombs and columbarium services are the same price.