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MEMORANDUM

To: Mayor, City Council Representatives and the City Manager

From: Robert Ash
Administrator – City Employees' Pension Fund

Re: Proposed Pension Ordinance Amendment

June 16, 2005

The Board of Trustees of the City Employee's Pension Fund is proposing a pension ordinance amendment that was introduced on June 7, 2005 with a public hearing scheduled for June 21, 2005. Our outside tax attorneys suggested this amendment as a first step to obtaining a private letter ruling from the IRS regarding the possibility of having pension contributions made on a pre-tax basis. The Board of Trustees of the City Employees' Pension Fund voted in a public meeting in favor of this proposed ordinance amendment. I wanted to summarize the proposed ordinance amendment for your consideration.

The proposed ordinance amendment will amend various sections of the current pension ordinance found in Chapter 2.64 of the Municipal Code. These amendments are ministerial in nature and are needed to update the current provisions of the pension ordinance. The proposed amendment updates provisions of the pension ordinance that have become obsolete. References made regarding a previous buy back program, which was offered to certain employees in 1997 through 2001, is being deleted. References made to Section 415 of the Internal Revenue Code are being deleted. We also propose to delete references made to participation restrictions based upon age since none currently exists. We have proposed elimination to references made to buy back provisions for buy backs that occurred before January 1, 1981. Certain Sections are being renumbered because of the deletions being proposed.

There is no cost to the City in implementing this proposed ordinance amendment. There will be no benefit changes to the participants or retirees of the Fund if this proposed pension ordinance is approved.

Should you have any questions or require clarification regarding this proposed ordinance amendment please do not hesitate to contact me at your convenience at x4545.

C: Juan F. Sandoval: Chairman Pension Board of Trustees
Jorge Villegas: Assistant City Attorney
Richarda Momsen: City Clerk

ORDINANCE NO._____

AN ORDINANCE AMENDING CHAPTER 2.64 OF THE El PASO MUNICIPAL CODE (CITY EMPLOYEES' PENSION FUND) TO DELETE REFERENCES REGARDING IRS SECTION 415, CLARIFY ELECTIVE EMPLOYEE BUY BACK PROVISIONS BY DELETING PROVISIONS WHICH ARE OBSOLETE AND RENUMBERING SECTIONS IDENTIFIED AS PORTIONS OF SECTIONS 2.64.120, 2.64.140, 2.64.160, 2.64.190, 2.64.200, 2.64.260 AND 2.64.400.

WHEREAS, Chapter 2.64 (City Employees' Pension Fund) of the El Paso Municipal Code (the "***Code***"), establishes the creation of a pension fund for all City of El Paso (the ***"City"***) employees under Civil Service except firemen, policemen and fire alarm operators, known as the City Employees' Pension Fund (the ***"Fund"***);

WHEREAS, Section 2.64.020 of the Code provides that the Fund shall be administered by a Board of Trustees (the ***"Board"***);

WHEREAS, tax attorneys retained by the City (the ***"Tax Attorneys"***) have recommended to the City and the Board that various subsections of Chapter 2.64 of the Code be amended due to their obsoleteness; and

WHEREAS, the City and the Board believe it to be in the best interest of the City, the Fund, and the Fund's participants and beneficiaries, to amend Chapter 2.64 of the Code as proposed by the Tax Attorneys.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That Subsections D., I., and K. of Section 2.64.120 of the Code shall be deleted in their entirety.

2. That Subsections E., F., G., and H. of Section 2.64.120 of the Code shall be renumbered as Subsections D., E., F., and G., respectively.

3. That Subsection G. of Section 2.64.120 of the Code shall be amended to read in its entirety as follows:

G. Some persons given provisional or temporary appointments after April 30, 1952, and afterwards given permanent appointments, lost considerable pension time under Subsection F of this Section because they were, without their fault, not appointed as promptly as they should have been. To prevent injustice to such persons, the following options are now extended to every person who comes within all three of the following classes: (i) such person was provisionally or temporarily appointed after April 30, 1952; (ii) such person was not retired before February 11, 1971; and (iii) such person received a permanent appointment while serving in this provisional or temporary status.

1. If such employee retires because of reaching compulsory retirement age, he/she may, for pension purposes, get credit for such provisional or temporary time by paying into the fund. The interest rate will be seven and one-half percent per annum compounded annually for back contribution payments. The city will make contributions without interest in accordance with the formula in effect at such previous time. If the employee wishes to take advantage of the option to get credit for such provisional or temporary time, he shall pay the required amount before he/she submits his/her application for retirement to the board.
2. [INTENTIONALLY OMITTED].
3. If such employee dies, the pension office shall as soon as possible, notify all persons known to have the right to death benefits. Notice to minors shall be given to the person entitled to receive payments for their benefit. Any person entitled to receive death benefits of the employee shall have thirty (30) days after the date of death to make up the back contributions, with like consequence as in the previous case.

4. That Subsection A. of Section 2.64.140 of the Code shall be amended to read in its entirety as follows:

A. Any full-time employee who was eligible to apply for membership in the fund at the time of his/her original appointment, but who did not submit his/her application within the ninety-day period after original appointment, any employee appointed after May 24, 1984, may submit an application at any time after original appointment. Applicants who are not grant-funded employees shall pay into the fund, in one lump sum at any time prior to submitting an application for retirement, the amount of contributions which they would have paid had they been members of the fund from the date of their original appointments, or any late date, but not to include any time during breaks in service, plus interest at the rate of seven and one-half percent per annum, compounded annually, on the total amount for the period from the date when the first contribution would have been made to the date when the total is actually paid. Any buy-back shall be made in one lump sum. In the case of non-grant funded employees, the city will make corresponding contributions without interest, in accordance with the

formula in effect at such previous time, provided, however that such employees must pay interest at the current actuarial rate assumption approved by the board on the employer contributions for the portion of buy-back periods which are longer than five years, as well as the interest on employee contributions; provided, further, however, that this provision relating to paying interest on employer contributions shall not apply to employees in the unclassified service who are eligible for membership in the pension fund at the time Ordinance No. _____ is adopted. Periods of buy-back on which interest on the employer portion of the contribution is payable shall cover continuous or intermittent service most immediately contiguous to the period of buy-back without payment of interest on the employer portion.

If such option is exercised, all rights or benefits under the fund which depend upon the length of service shall be determined as if the employee had been a member from the date of his/her original appointment, or such other period for which this option is exercised, excluding any time during a break in service, to which date his/her contributions have been made good. An employee may not make more than one election to buy-back service credit towards eligibility and benefits under this section.

5. That Subsection D of Section 2.64.140 of the Code shall be amended to read in its entirety as follows:

D. Persons who are already employed by the city on July 25, 1968, the effective date of this Section, and are qualified to become members of the pension fund hereunder shall have the further option of paying into the fund the amount of contributions which they would have paid had they been members from the date of their appointment. The interest will be seven and on-half percent per annum compounded annually. The city will make corresponding contributions without interest in accordance with the formula in effect at such previous time. Such option must be exercised before receiving any death, disability or pension benefits. If such option is exercised, all rights or benefits under the fund which depend upon length of service shall be determined as if the employee had been a member from the date of his/her appointment, to which date his contributions have been made good.

6. That Subsection E.2. of Section 2.64.140 of the Code shall be amended to read in its entirety as follows:

2. Full-time grant funded employees not in the classified services who become members of the fund, shall have the further option, at any time prior to submitting an application for retirement, of paying into the fund the amount of contributions which they would have paid had they been members from the date of their original appointments, but not to include any time during a break in service, plus interest at the rate of seven and

one-half percent (7½%) per annum, compounded annually, on the total amount for the period from the date when the first contribution would have been made to the date when the total is actually paid, on the following conditions: the employer's corresponding contributions, which shall be made without interest and in accordance with the formula in effect during the employee's time of previous service, must be made as an allowable expense in the relevant grant budget in effect when the employee exercises this option; provided, however, such employees must pay interest at the current actuarial rate assumption approved by the board on the employer contributions for the period of buy-back which is in excess of five years, as well as the interest on employee contributions; further provided, however, that this provision relating to paying interest on employer contributions shall not apply to such grant-funded employees who are eligible for membership in the pension fund at the time the ordinance codified in this subsection is adopted. Any buy-back shall be made in one lump sum. Periods of buy-back on which interest on the employer portion of contribution is payable shall cover continuous or intermittent service most immediately contiguous to the period of buy-back without payment of interest on the employer portion.

7. That Section 2.64.160 of the Code shall be deleted in its entirety.

8. That Section 2.64.165 of the Code shall be renumbered as Section 2.64.160 of the Code.

9. That Subsection A. of Section 2.64.190 of the Code shall be amended so that the entire first paragraph reads in its entirety as follows:

A. Every employee who is a participant in the fund shall contribute thereto 6.75 percent of his/her salary or wages. The city and all its agencies of a proprietary nature shall contribute an amount equal to 10.25 percent of the salary or wages of their respective employees who contribute to the fund, subject to Subsection 1 of this Section.

10. That Subsection F.6. of Section 2.64.200 of the Code shall be amended to read in its entirety as follows:

6. Employees who elect to participate in the pension fund shall have the further option of paying into the fund, in one lump sum, at any time prior to submitting an application for retirement, the amount of contributions which they would have paid, had they been members of the fund from the date of their original appointments, or any late date, but not to include any time during breaks in service, plus interest at the rate of seven and one-half percent per annum, compounded annually, on the total amount for the period from the date when the first contribution would have been made to the date when the total is actually paid. Any buy-back shall be made in one lump sum. In the case of nongrant-funded employees, the city will

make corresponding contributions, without interest, in accordance with the formula in effect at such previous time; provided, however, that such employees must pay interest at the current actuarial rate assumption approved by the board on the employer contributions for the portion of buy-back periods which are longer than five years, as well as the interest on employee contributions; further provided, however, that this provision relating to paying interest on employer contributions shall not apply to employees in the service who are eligible for membership at the time the Ordinance codified in this section is adopted. Periods of buy-back without interest on the employer portion of contribution shall cover the first continuous or intermittent service most immediately contiguous to the date of the buy-back. Periods of buy-back on which interest on the employer portion of contribution is payable shall cover continuous or intermittent service most immediately contiguous to the period of buy-back without payment of interest on the employer portion.

11. That Subsection B. of Section 2.64.260 of the Code shall be amended such that the fifth sentence will read in its entirety as follows:

> The payment shall be the amount he and the city would have both contributed if he had continued receiving from the City the same salary as he received at the time his leave began.

12. The Subsection C.2. of Section 2.64.260 of the Code shall be amended such that the second sentence will read in its entirety as follows:

> The employee shall receive credit for the length of previous service for which he repays contributions.

13. That Section 2.64.400 of the Code shall be amended to read in its entirety as follows:

> **2.64.400 Internal Revenue Code Application.**
>
> Notwithstanding anything else contained in this chapter to the contrary, the benefits, limitations, adjustments and other requirements prescribed in the chapter shall at all times comply with the provisions of the Internal Revenue Code, as amended, and all regulations promulgated under the Internal Revenue Code, the terms of which are specifically incorporated into this chapter by reference.

14. That except as expressly amended herein. Chapter 2.64 of the Code shall remain in full force and effect.

(Signature Page To Follow)

ORDINANCE NO. _____

Signature Page

PASSED AND APPROVED this _____ day of _____, 2005.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Jorge Villegas
Assistant City Attorney

APPROVED AS TO CONTENT:

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Robert B. Ash, Pension Administrator
City Employees' Pension Fund

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Eddie Miranda, Board Counsel