DEFERRED ITEMS 6.

MIAMIBEACH

## COMMITTEE MEMORANDUM

TO: Finance and Economic Resiliency Committee Members

FROM: Rafael A. Paz, City Attorney

DATE: January 27, 2023

SUBJECT: **DISCUSS VESTED EMPLOYEES IN TIER B THAT HAVE BEEN REHIRED IN TIER C**

## BACKGROUND

This item, which would require an amendment to the City's ordinance for the Miami Beach Employees' Retirement Plan (the "Pension Plan"), has been pending since 2021. Originally, the item was intended to solely deal with finding an equitable solution for six (6) employees who were fully vested in their Tier B pension, left City employment, subsequently returned to City employment, and re-vested under Tier C of the Pension Plan. This scenario presents administrative and other challenges because employees would essentially have two (2) different pensions for their City service, and some of the benefits of the Tier B pension directly conflict with Tier C, namely the normal retirement age for a Tier B employee is 55, and the normal retirement age for a Tier C employee is 62.

The below exhibit provides detail benefit information of each Tier:

| Tier B | Tier C |
|---|---|
| · Age 55 with 5 years of Creditable Service<br>· 3% Multiplier<br>· Annual Cost of Living 2.5%<br>· 50% Spouse/Domestic Partner Survivor benefit<br>· Health benefits for retirees hired before 3/18/2006 determined each year as a part of the budget process, currently approximately 50% of premium<br>· Health benefits for retirees hired on or after 3/18/2006 is a stipend of $10 for each Creditable Year of Service, up to a maximum of $250 a month for under age 65; $5 for each Creditable Year of Service, up to a maximum of $125 a month for age 65 and older and 62 can be calculated and paid out retroactively. | · The earlier of age 55 with 30 years of Creditable Service or Age 62 with 5 years of Creditable Service<br>· 2.5% Multiplier<br>· Annual Cost of Living 1.5%<br>· Life Annuity with optional Survivor Benefits<br>· Health benefits for retirees hired before 3/18/2006 determined each year as a part of the budget process, currently approximately 50% of premium<br>· Health benefits for retirees hired on or after 3/18/2006 is a stipend of $10 for each Creditable Year of Service, up to a maximum of $250 a month for under age 65; $5 for each Creditable Year of Service, up to a maximum of $125 a month for age 65 and older. |

The below exhibit provides the eligibility dates for each Pension Plan Tier:

| Classification | Group | Tier A | Tier B | Tier C |
|---|---|---|---|---|
| Classified[1] | AFSCME | Hired before 4/30/1993 | Hired on or after 4/30/1993 and before 9/30/2010 | Hired on or after 9/30/2010 |
| | GSA or "Other" | Hired before 8/1/1993 | Hired on or after 8/1/1993 and before 9/30/2010 | Hired on or after 9/30/2010 |
| | CWA | Hired before 2/21/1994 | Hired on or after 2/21/1994 and before 10/27/2010 | Hired on or after 10/27/2010 |
| Unclassified | N/A | Hired before 10/18/1992 | Hired on or after 10/18/1992 and before 9/30/2010 | Hired on or after 9/30/2010 |

At the April 29, 2022 FERC meeting, the Committee asked the Administration to continue exploring options that would equitably address the issues for employees who leave the City and return at a later date.

The referral of this item was initially sponsored by Commissioner Samuelian. After Commissioner Samuelian's untimely passing, the item was subsequently sponsored by Commissioner Richardson at the July 29, 2022 FERC Meeting, who has proposed a solution to the foregoing equity issues for the vested Tier B employees, along with a prospective solution for other employees who leave City service prior to vesting and subsequently return to City service.

In addition, Commissioner Richardson has proposed other amendments, to better align the Pension Plan to the City Charter and City Code, particularly as it relates to Charter Officers and Elected Officials.

## ANALYSIS

The Human Resources Department and the City Attorney's Office have engaged the City's outside pension counsel, James W. Linn, to assist with the drafting of the proposed Ordinance amendments, which are attached as an exhibit to this Committee Memorandum.

The proposed Ordinance amendments provide as follows:

1. **Resolution for *Vested* Tier B Members Who Left City Employment and Were Subsequently Re-employed and Vested in Tier C.** The Ordinance allows the vested Tier B members who terminated employment, did not receive a refund of their accumulated contributions, and were subsequently reemployed, to continue as a vested Tier B member following reemployment. For such employees, the member would receive the benefits of Tier B under a single pension (namely, the more favorable retirement age of 55 years provided to Tier B members), with the exception that for each year of service following their re-employment after September 30, 2010, the pension accrual multiplier for those years shall be the same 2.5% provided to Tier C members hired after September 30, 2010 (October 27, 2010 for CWA bargaining unit members). In other words, the members would receive a single pension – with most of the more favorable Tier B benefits

[1] Police and Fire have their own pension plan, created by separate Ordinance.

– but with an accrual factor of 3.0% and COLA of 2.5% for each year of service in Tier B, and an accrual factor of 2.5% and COLA of 1.5% for each year of service in Tier C after re-employment with the City. Any former city employee who previously vested in Tier B and subsequently returns to City employment would benefit from the proposed new rule in the same manner.

2. **<u>Resolution for Tier B Employees Who Left City Employment *Prior to* Vesting and Are Subsequently Re-Employed by the City in Tier C.</u>** There are a few employees with a period of service in Tier B but who left City employment *prior to* vesting and were subsequently re-employed by the City after September 30, 2010 (October 27, 2010 for CWA bargaining unit members). If the employees did not receive a refund of their accumulated contributions (i.e., if the employees did not cash out of the Plan), the proposed Ordinance would allow the employees to count their prior period of service toward creditable service in Tier C. Once vested in Tier C, the member will receive all benefits afforded to members in Tier C (including the 1.5% COLA for all periods of service), with the exception that the pension accrual factor for periods of service under Tier B would be 3% (the Tier B multiplier), and the pension accrual factor for periods of service after re-employment would be the standard Tier C multiplier of 2.5%.

3. **<u>Resolution for Tier C Employees Who Leave City Employment, and Subsequently Return to City Employment.</u>** The Ordinance resolves the foregoing issues prospectively for all employees in Tier C, to allow Tier C members who terminate employment but leave their contributions in the Plan to be re-employed and continue accruing benefits in accordance with Tier C (with all periods of service in Tier C counting toward the vested pension benefit under Tier C).

4. **<u>Automatic Application for Bargaining Unit Employees Upon Agreement with the Unions</u>**. The Ordinance applies the foregoing provisions immediately to non-bargaining unit employees, and would apply to bargaining unit employees upon agreement with the unions.

5. **<u>Vesting Period and Benefits for Elected Officials and Charter Officers.</u>** With regard to Charter Officers and Elected Officials, the Ordinance conforms certain Plan provisions to the City Charter and City Code, and makes other changes as follows:

    a. For Elected Officials, provides that an Elected Official is vested in the Plan upon completion of 4 years of service or one full term, as contemplated in Section 2.03 of the City Charter, which provides that service "in excess of 50 percent of any term of office shall be considered a full term").

    b. The new vesting period for Elected Officials would resolve the inherent equity issue of requiring a 5 year vesting period for Elected Officials who only serve for a term of 4 years (for commissioners) or 2 years (for the Mayor), effectively precluding Commissioners from vesting as members of the Plan unless they seek and are elected to a second term of office, and precluding the Mayor from vesting as a member of the Plan unless the Mayor seeks and is elected to three terms of office.

c. For Charter Officers, the proposed Ordinance provides for a vesting period of 4 years (as opposed to the current vesting period of 5 years). In the case of the Inspector General in particular, a 4-year vesting period for the Inspector General would align the Plan with Section 2-256(b)(3) of the City Code, which provides that the Inspector General serves for a term of 4 years, unless the Inspector General is reappointed by the City Commission for a second four-year term.

d. Adds a definition of "Charter Officers" at Section 2.05, to include the City Manager, City Attorney, City Clerk and Inspector General.

e. Adds a definition of "Final Average Monthly Earnings" for Elected Officials and Charter Officers, to mean the highest 5 year average annual earnings, or if the member has less than 5 years of service, the average for the member's period of service.

f. Clarifies the benefit calculation provision in Section 5.01(b)(6) for Elected Officials, the City Manager, City Attorney and City Clerk, who also have periods of service in other City positions, to make it clear that the member's benefit will consist of 2 parts: (1) the 4% pension accrual factor applied to the member's final average monthly earnings for service as an Elected Official, City Manager, City Attorney and City Clerk; plus (2) the benefit accrual factor otherwise applicable to the member's other service applied to the member's final average monthly earnings for the period of other service as a City employee, namely, either a 3% accrual factor for Tier B periods of service, or a 2.5% accrual factor for Tier C periods of service.

g. Due to limitations in State law, the proposed new vesting period and other benefits, if adopted by the City Commission, could only apply to employees and officers employed or holding office at the time the Ordinance amendment is adopted. Section 215.425 of the Florida Statutes, as well as court opinions and Florida Attorney General opinions interpreting said statute, make clear that government entities are prohibited from expending public funds to award extra or additional compensation to former employees for work that has already been performed. The prohibition does not apply if the extra compensation is authorized while the employee or official is still performing services for the governmental entity. Thus, the pension changes in the ordinance would not apply to former Elected Officials who are not employed by the City at the time the ordinance takes effect. However, the provisions outlined above in Sections 1-3 and 5(g) would apply to a former Elected Official who returns to City service in a position covered by the Plan.

## FINANCIAL IMPACT

Upon the direction of FERC, the Administration will obtain a report from the pension actuary on the financial impact to the City's unfunded liability for any of the changes being considered.

**Applicable Area**

Citywide

| Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14? | Does this item utilize G.O. Bond Funds? |
|---|---|
| No | No |