5.1
PUBLIC HEARING

TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: William Ackerman, CPA, Budget & Finance Director/797-1050

PREPARED BY: William Ackerman, CPA, Budget & Finance Director

SUBJECT: ORDINANCE

AFFECTED DISTRICT: N/A

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE TOWN OF DAVIE POLICE PENSION PLAN TO COMPLY WITH CHAPTER 185, FLORIDA STATUTES; AMENDING THE DEFINITION OF COMPENSATION IN SECTION 1.7 TO INCLUDE UP TO 150 HOURS OF OVERTIME; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE

REPORT IN BRIEF: Pursuant to Florida State Statute 185, certain "minimum" benefits shall be provided in the Town's Police Pension plan. One such required minimum benefit is the inclusion of paid "overtime" hours in the definition of "compensation." Chapter 185.02(4) requires that "…in no event shall such overtime limit be less than 300 hours per officer…" This ordinance modifies the "compensation" definition to gradually increase hours of overtime to 150. The plan is not required to meet these statutory minimum benefits until future premium tax revenue becomes sufficient to fund the cost. However, inclusive hours of overtime must be totally paid by the funds provided through the State.

As a result, we respectfully request Town Councils approval to the attached ordinance on the first reading.

PREVIOUS ACTIONS: Town Council previously approved Ordinance 2006-003 increasing the overtime hours to 120 on January 4, 2006.

CONCURRENCES: The Town's pension attorney reviewed the attached ordinance and a copy of the letter is attached.

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

If yes, expected cost: $

Account Name:

If no, amount needed: $

What account will funds be appropriated from:

Additional Comments: funded by Chapter 185 funds.

RECOMMENDATION(S): Motion to approve the Ordinance

Attachment(s):
Ordinance
Letter from Lewis, Longman, & Walker, P.A.
Florida Statutes 185

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE TOWN OF DAVIE POLICE PENSION PLAN TO COMPLY WITH CHAPTER 185, FLORIDA STATUTES; AMENDING THE DEFINITION OF COMPENSATION IN SECTION 1.7 TO INCLUDE UP TO 150 HOURS OF OVERTIME; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie has previously adopted Ordinance 99-20 amending and restating the pension plan for sworn Police Officers;

WHEREAS, the Town of Davie Police Pension Plan is required to comply with the minimum benefit requirements of Chapter 185, Florida Statutes; and

WHEREAS, the membership has approved the use of extra premium tax revenue from the State to treat up to 150 hours of overtime per year as pensionable earnings.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, THAT:

Section 1: Section 1.7 of the Town of Davie Police Pension Plan is hereby amended to read as follows:

1.7 Compensation.

(a) Compensation shall mean the Participant's base salary, assignment and longevity pay received from the Town for each Plan Year, and effective October 1, 2001 through September 30, 2003, shall include up to seventy (70) hours of overtime each year; effective October 1, 2003 compensation shall include up to one hundred and twenty (120) hours of overtime each year; effective October 1, 2006 compensation shall include up to one hundred and fifty (150) hours of overtime each year. It includes any elective deferrals under any Code Section 457 Plan excludes all other forms of direct or indirect compensation. Longevity pay is earned uniformly throughout the Plan Year and will be credited for the payroll period in which it is earned regardless of the date when it is paid.

Section 2: Members of the Plan shall be required to begin making employee contributions on overtime upon the effective date of this ordinance. Members shall not be required to make retroactive employee contributions

on overtime prior to the effective date of this ordinance. The cost of the retroactive employee contributions shall be paid using state premium revenue and shall not constitute a liability of the Town.

Section 3: If any clause, section, or other part or application of this Ordinance shall be held in any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and shall not affect the validity of the remaining portions or applications which shall remain in full force and effect.

Section 4: All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5: In adopting this ordinance, it is the Town Council's intent that the increased definition of compensation contained herein be funded entirely from premium tax revenues received by the plan pursuant to Chapter 185, Florida Statutes, and not from increased contributions from the Town. The increased definition of compensation contained in this ordinance shall be funded by using the entire excess annual premium tax revenue fund of $59,868, plus a one-time use of $99,737 from the accumulated excess premium tax reserve. In conjunction with each future actuarial valuation of the plan, the actuary will recalculate the cost of the increased definition of compensation contained herein. To the extent that the premium tax monies allocated to fund the increased definition of compensation in the first year, as reflected above, are not available or are not sufficient to fund the cost of providing such benefit in any future year, the definition of compensation will be adjusted prospectively to a level that the amount of premium tax revenues reflected above can fully fund.

Section 6: This Ordinance shall become effective immediately upon adoption, provided that the provisions of this Ordinance shall have been approved by the State.

PASSED ON FIRST READING THIS _____ DAY OF _____, 2007

PASSED ON SECOND AND FINAL READING THIS _____ DAY OF _____, 2007

_____

MAYOR/COUNCILMEMBER

ATTEST:

_____

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2007

Coding: Words in stricken type are deletions from existing text.
Words in underline type are additions.

LEWIS, LONGMAN & WALKER, P.A.
ATTORNEYS AT LAW

Reply To: Tallahassee

September 14, 2007

Mr. Gary Shimun
Town Administrator
Town of Davie
6591 Orange Drive
Davie, FL 33314-3399

Re: Proposed Police Pension Ordinance

Dear Mr. Shimun:

As requested, we have reviewed a proposed ordinance amending the Town of Davie Police Pension Plan that was enclosed with Adam Levinson's letter to you dated August 23, 2007. The proposed ordinance would increase the amount of overtime included in the definition of compensation for purposes of calculating pension benefits. We have reviewed the proposed ordinance for compliance with applicable state and federal laws, and compared the content of the ordinance with the intent of the Town and the Fraternal Order of Police as expressed in the correspondence forwarded to us. Our comments on the proposed ordinance follow.

Section 1 of the ordinance revises Section 1.7 of the police pension plan to increase from 120 to 150 hours the amount of annual overtime that is included in compensation for purposes of determining a police officer's retirement benefit. The benefit improvement is applied retroactively to October 1, 2006. If this proposed revision is implemented, plan members will be required to pay member contributions on all future overtime compensation up to 150 hours per year.

Under Section 185.35 (1)(b), Florida Statutes, the Town is required to comply with the minimum benefit provisions of Chapter 185 only to the extent that additional premium tax revenues become available to incrementally fund the cost of compliance. The term "additional premium

tax revenues" refers to premium tax revenues in excess of the amount received by the Town in 1998.

Once the plan is in compliance with all of the minimum benefits under Chapter 185, as subsequent additional tax revenues become available, they must be used to provide "extra benefits" (benefits greater than those provided to the Town's general employees). Currently, the Town is not in compliance with one minimum benefit under Chapter 185. Specifically, section 185.02(4), Florida Statutes defines "compensation" to include no less than 300 hours of overtime. Compliance with this provision is considered a "minimum benefit"; therefore additional premium tax revenues may be applied toward the funding of the proposed benefit improvement.

The introductory language in Section 1.7(a) is outdated. Federal law no longer requires non-discrimination testing for governmental plans. Accordingly, we recommend that the phrase, "For Accrued Benefits and Nondiscrimination Testing" be deleted.

Section 2 of the proposed ordinance makes it clear that members are not required to pay contributions on the overtime compensation over 120 hours earned between October 1, 2006 and the effective date of the ordinance. The retroactive member contributions shall be paid from the available premium tax revenues, which according to the Plan's actuary, are sufficient to fund the contributions. This section also makes it clear that the Town is not responsible for funding the retroactive application of the benefit improvement.

While Section 2 makes it clear that the Town is not responsible for funding the retroactive application of the benefit improvement, the proposed ordinance is not at all clear that the future costs associated with this improvement will be funded <u>solely</u> with additional premium tax revenues and not with increased Town contributions. It is probable that the future cost of the benefit improvement provided under the proposed ordinance may at some point exceed the amount of available premium tax revenues. If this occurs, the Town will be responsible for any shortfall, through increased employer contributions.

If it is the Town's intent that the revised definition of compensation not result in increased cost to the Town in the short or long term, we recommend that language be included in the ordinance that would ensure this result. The following language, inserted as a new section of the proposed ordinance, would make the Town's intent clear:

> In adopting this ordinance, it is the Town Council's intent that the increased definition of compensation contained herein be funded entirely from premium tax revenues received by the plan pursuant to Chapter 185, Florida Statutes, and not from increased contributions from the Town. The increased definition of compensation contained in this ordinance shall be funded by using the entire excess annual premium tax revenue fund of $59,868, plus a one-time use of

$99,737 from the accumulated excess premium tax reserve. In conjunction with each future actuarial valuation of the plan, the actuary will recalculate the cost of the increased definition of compensation contained herein. To the extent that the premium tax monies allocated to fund the increased definition of compensation in the first year, as reflected above, are not available or are not sufficient to fund the cost of providing such benefit in any future year, the definition of compensation will be adjusted prospectively to a level that the amount of premium tax revenues reflected above can fully fund.

In our opinion, the proposed ordinance complies with applicable state and federal law. Furthermore, with the inclusion of the above language, the proposed ordinance would appropriately implement the enhanced definition of compensation in a manner that would be fully funded with premium tax revenues, now and in the future.

Please call us if you have any further questions concerning these matters.

Sincerely,

Glenn E. Thomas

cc: William Ackerman, Director
Budget & Finance Department

"Glenn Thomas"
<gthomas@llw-law.com>
10/17/2007 01:29 PM

To <Raquel_Gray@davie-fl.gov>
cc
bcc
Subject RE: Davie Police Pension - Chapter 185 mandated overtime ordinance

History: This message has been replied to.

Raquel,
The Ordinance I received from Mr. Levinson this morning incorporates all of the changes we recommended and would accomplish the intent of the parties. If you require a separate writter opinion, please let me know.
-Glenn Thomas

-----Original Message-----
From: Raquel_Gray@davie-fl.gov [mailto:Raquel_Gray@davie-fl.gov]
Sent: Wednesday, October 17, 2007 11:27 AM
To: Glenn Thomas
Subject: Fw: Davie Police Pension - Chapter 185 mandated overtime ordinance

Mr. Thomas,

Please review to see if everything is ok with the ordinance. Thank you.

Raquel B. Gray
Administrative Aide
Town of Davie
Budget and Finance Department
(954) 797-1050
(954) 797-1049 Fax
Raquel_Gray@davie-fl.gov

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----- Forwarded by Raquel Gray/Davie on 10/17/2007 11:25 AM -----

William Ackerman/Davie
10/17/2007 11:01 AM

To"Raquel Gray" <raquel_gray@davie-fl.gov>
cc
SubjectFw: Davie Police Pension - Chapter 185 mandated overtime ordinance

Select Year: 2007 Go

The 2007 Florida Statutes

Title XII
MUNICIPALITIES

Chapter 185
MUNICIPAL POLICE PENSIONS

View Entire Chapter

185.02 Definitions.--For any municipality, chapter plan, local law municipality, or local law plan this chapter, the following words and phrases as used in this chapter shall have the following mear unless a different meaning is plainly required by the context:

(1) "Average final compensation" means one-twelfth of the average annual compensation of the 5 years of the last 10 years of creditable service prior to retirement, termination, or death.

(2) "Casualty insurance" means automobile public liability and property damage insurance to be a at the place of residence of the owner, or if the subject is a commercial vehicle, to be applied at place of business of the owner; automobile collision insurance; fidelity bonds; burglary and theft insurance; and plate glass insurance. "Multiple peril" means a combination or package policy that includes both property coverage and casualty coverage for a single premium.

(3) "Chapter plan" means a separate defined benefit pension plan for police officers which incorp by reference the provisions of this chapter and has been adopted by the governing body of a municipality as provided in s. 185.08. Except as may be specifically authorized in this chapter, provisions of a chapter plan may not differ from the plan provisions set forth in ss. 185.01-185.34 185.37-185.39. Actuarial valuations of chapter plans shall be conducted by the division as provide 185.221(1)(b).

(4) "Compensation" or "salary" means the total cash remuneration including "overtime" paid by th primary employer to a police officer for services rendered, but not including any payments for ex duty or a special detail work performed on behalf of a second party employer. However, a local l may limit the amount of overtime payments which can be used for retirement benefit calculatior purposes, but in no event shall such overtime limit be less than 300 hours per officer per calenda

(a) Any retirement trust fund or plan which now or hereafter meets the requirements of this cha shall not, solely by virtue of this subsection, reduce or diminish the monthly retirement income otherwise payable to each police officer covered by the retirement trust fund or plan.

(b) The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program auth under the Internal Revenue Code shall be deemed to be the compensation or salary the member receive if he or she were not participating in such program and shall be treated as compensatior retirement purposes under this chapter.