

**ORDINANCE NO. 23-36**

**AN ORDINANCE OF THE CITY OF KEY WEST AMENDING THE CITY OF KEY WEST POLICE OFFICERS' AND FIREFIGHTERS' RETIREMENT PLAN CODIFIED IN CHAPTER 46, ARTICLE IV; AMENDING THE SECTIONS PERTAINING TO DISABILITY AND DEATH BENEFITS TO INCORPORATE THE CONCLUSIVE CANCER PRESUMPTION ESTABLISHED BY SECTION 112.1816, FLA. STAT., AND THE REBUTTABLE DISEASE PRESUMPTIONS UNDER SECTIONS 112.18, 112.181 AND 175.231, FLA. STAT.; AMENDING THE SECTION PERTAINING TO COMPLIANCE WITH THE INTERNAL REVENUE CODE; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, changes to the Internal Revenue Code may happen quickly and frequently. There is a benefit in authorizing the Board to make appropriate changes to the Plan in order to maintain the Plan's tax qualified status;

**WHEREAS**, effective January 1, 2023, the Internal Revenue Code was amended by increasing the required minimum distribution age from 72 to 73; and

**WHEREAS**, after years of study, the National Institute for Occupational Safety and Health (NIOSH) concluded that firefighters are at a higher risk of developing twenty-one enumerated types of cancer.

**WHEREAS**, the Florida Legislature, in recognition of this elevated cancer risk, has created a conclusive duty-related cancer presumption.

**WHEREAS**, Senate Bill 426 (SB 426) amends Chapter 112, Florida Statutes, by creating Section 112.1816, governing disability and death benefits for firefighters.

**WHEREAS**, SB 426 governs all Firefighter Pension Plans in Florida.

**WHEREAS**, the Board of Trustees of the City of Key West Police Officers' and Firefighters' Retirement Plan has prepared this ordinance to implement SB 426, effective July 1, 2019.

**WHEREAS**, Florida Statutes 112.18 and 112.181 create rebuttable disease presumptions for in the line of duty death or disability benefits for Police Officers and Firefighters.

**WHEREAS**, the City of Key West City Commission finds that it would be in the best interest of the citizens of the City and the members of the City of Key West Police Officers' and Firefighters' Retirement Plan to amend the Plan as set forth

below to maintain compliance with the Internal Revenue Code and the Florida Statutes;

**NOW, THEREFORE,** BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA:

**SECTION 1:** That section 46-324 of the City of Key West Police Officers' and Firefighters' Retirement Plan is hereby amended as follows:

**Sec. 46-324. - Disability.**

(b) A member shall be eligible for a service-incurred disability retirement from his entry date into the plan. A service-incurred disability retirement shall mean that the disability arose as a result of an act occurring in the performance of service with the city. In determining whether a disability arose in the line of duty, the board may consider evidence that the medical condition giving rise to the disability was a preexisting condition. The board shall also consider the presumptions incorporated herein:

(1) Rebuttable Presumption for hypertension and heart disease. Any condition or impairment of health of a member caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence, provided that such member shall have successfully passed a physical examination upon entering into such service, including cardiogram, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance. The provisions of Sections 112.18, 112.181 and 175.231, Fla. Stat., are hereby codified within the Plan and are intended to be incorporated by reference. The Board of Trustees may adopt uniform administrative rules for the conduct of hearings relating to this presumption and for the determination of any disqualifying events as reflected in Chapters 112 and 175, Fla. Stat.

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\*(Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading. Added language is double underlined and ~~double struck through~~ at second reading.)

(2) Additional rebuttable presumption for hepatitis, meningitis and tuberculosis. The presumption provided for in this subparagraph (2) shall apply only to those conditions described in this subparagraph (2) that are diagnosed on or after January 1, 1996.

(3) Non-rebuttable conclusive cancer presumption. The provisions of Section 112.1816, Fla. Stat., are hereby codified within the Plan and are intended to be incorporated by reference. The Board of Trustees may adopt uniform administrative rules for the conduct of hearings relating to this presumption and for the determination of any disqualifying events as reflected in the statute.

**SECTION 2: That section 46-325 of the City of Key West Police Officers' and Firefighters' Retirement Plan is hereby amended and shall read as follows:**

**Sec. 46-325. - Death Benefits.**

(c) All benefits provided for in this section shall comply with the provisions of Sections 112.18, 112.181, 112.1816, and 175.231 of the Florida Statutes.

**SECTION 3:        That section 46-326 of the City of Key West  
Police Officers' and Firefighters' Retirement Plan is hereby  
amended and shall read as follows:**

**Sec. 46-326. - Compliance with Internal Revenue Code.**

(d) In no event may a member's retirement benefit be delayed beyond the later of April 1 following the calendar year in which the member attains age ~~72~~ 73, provided the member had not attained age ~~70½~~ 72 by December 31, ~~2019~~ 2022, or April 1 of the year following the calendar year in which the member retires. When a distribution of the participant's entire interest is not made in a lump sum, the distribution will be made in one or more of the following ways: over the life of the participant; over the life of the participant and designated beneficiary; over a period certain not extending beyond the life expectancy of the participant; or over a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary. The Plan will make all future required minimum distributions in compliance with the prevailing age restrictions and additional parameters set out in the Internal Revenue Code as amended from time to time.

(e) If the distribution has commenced before the participant's death, the remaining interest will be distributed at least as rapidly as under the method of distribution being used as of the date of the participant's death. The method of distribution, if the participant dies before distribution is commenced, must satisfy the following requirements:

(1) Any remaining portion of the participant's interest that is not payable to a beneficiary designated by the participant will be distributed within five years after the participant's death.

(2) Any portion of the participant's interest that is payable to a beneficiary designated by the participant will be distributed either: (i) within five years after the participant's death; or (ii) over the life of the beneficiary, or over a period certain not extending beyond the life expectancy of the beneficiary, commencing not later than the end of the calendar year following the calendar year in which the participant died, or, if a designated beneficiary is the participant's surviving spouse, commencing not later than the end of the calendar year following the calendar year in which the participant would have

attained age ~~72~~ 73, provided the member had not attained age 72 by December 31, 2022. The Plan will make all future required minimum distributions in compliance with the prevailing age restrictions and additional parameters set out in the Internal Revenue Code as amended from time to time.

**SECTION 4:** Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Key West.

**SECTION 5:** All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 6:** 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 7:** That this Ordinance shall become effective upon its adoption.



Read and passed on first reading at a regular meeting held  
this 12th day of October, 2023.

Read and passed on final reading at a regular meeting held  
this 12th day of October, 2023.

Authenticated by the presiding officer and Clerk of the  
Commission on 16th day of October, 2023.

Filed with the Clerk October 16, 2023.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Lissette Carey	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Absent</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

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TERI JOHNSTON, MAYOR

ATTEST:

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KERI O'BRIEN, CITY CLERK