



TO: LINDA COX, CITY CLERK

FROM: SARA HEDGES, CITY ATTORNEY *SH*

RE: PORF ORDINANCE CHANGE FOR RETIREMENT AND OPT OUT

CAO RLS FILE: RLS 25-113

DATE: MAY 30, 2025

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I have reviewed the above Request for Legal Services (RLS) related to amending the Code to extend the DROP period for police officers to six (6) years, deleting lump sum language related to total and permanent disability, and to allow the Chief of Police to opt out of the Police Officer Retirement Plan ("Plan"). This RLS is a second review related to RLS 25-12. The Ordinance was previously reviewed and approved related to the DROP and lump sum amendments without inclusion of the opt out language for the Chief of Police for the Plan.

After the Ordinance approval in RLS 25-12, the Police Officers Retirement Fund Board of Trustees ("Board") attorney provided additional language related to the ability of the Chief of Police to opt out of the Plan based on a request from the PBA Union. The Finance Director subsequently indicated this opt out language should be included in the Ordinance, and it should be retroactive to June 1, 2015.

It has consistently been and still is this Office's recommendation, though not legally required, that the language allowing the Chief of Police to opt out of the Plan be removed from this Ordinance and be addressed in a separate Ordinance. The reasoning for this is as follows:

1. The ability of the Chief of Police to opt out of the Plan and how the Chief of Police must do so has not been reviewed by the City Commission, nor has the City Commission given any direction on this issue to know whether the proposed changes are desired and likely to be approved.
2. Inclusion of the opt out language in the Ordinance risks the DROP changes not being approved if the City Commission does not wish to amend the Code with the currently drafted opt out language.
3. The actual language from Section 185.02(16), Florida Statutes, on which the Code

definition of a police officer (which is where the opt out language has been added) states: "Any plan may provide that the police chief shall have an option to participate in that plan."

The language included in this Ordinance instead states: "All police officers are mandatory members of the plan except, effective June 15, 2015, the chief of police may elect to opt out of participation, notwithstanding any other provision of this Code. This opt out is a one-time option offered at the time of employment."

The statute does not contemplate a retroactive opt out ability, nor does it appear to require the City give the Chief of Police the ability to opt out of the Plan. It is unclear why the term is written differently in the Ordinance than the statute. It is also unclear whether the retroactivity date to June 1, 2015 was specifically reviewed and approved by the Board's attorney, since the language she provided did not include this date and was provided by the Finance Director.

4. The language of the Ordinance does not include the process for how the Chief of Police is to opt out of the Plan. Section 2-263 of the Code of Ordinances requires that if the Chief of Police is to opt out of the general retirement system, the Chief of Police must do so in writing to the retirement board within 30 days of assuming the position as the Chief of Police. The requirements should be consistent. It is unclear whether the process to opt out of the Plan has been considered by the Board, the union, or City staff.
5. The reasoning behind the opt out language change to the Code is unclear. Further, it is unclear why only the Chief of Police is being permitted to opt out of the Plan.
6. It is unclear what is to happen to the monetary funds that would be deposited into the fund when the Chief of Police participates if the Chief of Police chooses to opt out of the Plan.

An Actuarial Impact Letter, indicating no impact was previously provided by the Board attorney related to the Ordinance approved in RLS 25-12 with the DROP extension and the lump sum language change. It does not appear a letter has been provided now that the additional language allowing the Chief of Police to opt out of the Plan has been included in the Ordinance. It is recommended such be obtained, if the opt out language remains in the Ordinance.

As was noted in the Memorandum for RLS 25-12, it has been relayed that the changes reflected in the Ordinance related to, at least, the DROP terms were discussed with the PBA Unions during previous negotiations and were agreed to. It was previously recommended by this Office that the agreement from the PBA Unions be put in writing so there are no issues with them objecting to the Ordinance. This written agreement has not been received as of this date. It is still recommended written agreement from the PBA Unions be obtained for the entire Ordinance, in final form, prior to review by the City Commission.

I have reviewed the updated Ordinance that was provided and made suggested changes to the Ordinance. Despite the above recommendation to address the opt out language in a separate Ordinance, I have not removed the opt out language from the Ordinance to not further delay the

needed changes related to the DROP terms. A Track Changes version and a Clean Copy of the Ordinance are uploaded to Agenda Quick. The Clean Copy is approved as to legal form and correctness, meaning it can be adopted, though the above recommendations remain from this Office.

The Clean Copy of the Ordinance and this Memorandum should be provided to the Board's attorney for review, comment, and approval on the Ordinance in final form. If any additional changes are made to the Ordinance, the Ordinance should be resubmitted for additional review as to form and correctness.

If you have any questions, please do not hesitate to contact this Office via phone or e-mail. Thank you.