

STAFF REPORT REGULAR MEETING

AGENDA DATE: June 4, 2024

DEPARTMENT: Human Resources

TITLE:

Resolution No. 15-2024 – authorizing retroactive amendments to the City of Lake Worth Beach (FPDP) 401(a) Plan

SUMMARY:

Resolution No. 15-2024 documents (i) the type of employee contribution elections permitted under the Plan since 2016, (ii) the legal name of the employer and the legal name of the Plan following the 2019 change to the City's legal name, and (iii) the treatment of short-term emergency disaster-related pay as earnings under the Plan since 2021.

BACKGROUND AND JUSTIFICATION:

The City, as the sponsoring employer, established a tax-qualified, defined contribution retirement plan in 2010 for the benefit of eligible employees, which plan has been amended from time to time and is currently referred to as the City of Lake Worth Beach (FPDP) 401(a) Plan ("Plan").

From inception, the Plan provides eligible employees with the opportunity to make one-time elections to make pre-tax contributions from their earnings ("pick-up contributions"). In 2016, the Plan's governing document was amended to remove the pick-up contribution election option and to instead allow eligible employees a new, ongoing opportunity to affirmatively make or change after-tax employee contributions.

To maintain the tax-qualified status of the Plan under the Internal Revenue Code, the Plan must be operated in accordance with its written governing document.

Unfortunately, due to lack of implementation support from the Plan's third-party professional recordkeeper and turnover in Human Resources personnel in 2016 such that new personnel were not informed of the change to the Plan design, the employee after-tax contribution elections were never offered to any eligible employees. Rather, existing Plan participants continued to make pick-up contributions if they previously elected them, and new eligible employees have been offered the opportunity to make pick-up contribution elections. The City's Human Resources and Finance personnel recently discovered this issue during an internal review of the Plan.

During the internal review of the Plan, it was also noticed that the legal name of the employer and the legal name of the Plan were not updated in the Plan's governing document following the 2019 change to the City's legal name.

During the internal review of the Plan, it was also noticed that while overtime is a type of pay that is excluded from the Plan's definition of Earnings for purposes of contributions to the Plan, the administrative practice since 2021 has been to treat additional short-term emergency disaster pay, which could be construed as a type of overtime in the context of this Plan, as included in the Plan's definition of Earnings for purposes of contributions to the Plan.

The failure to operate the Plan in accordance with its written governing document was an operational error that jeopardizes the tax-qualified status of the Plan. Under these particular circumstances, the Self Correction Program of the IRS Employee Plans Compliance Resolution System, described in IRS Revenue Procedure 2021-30, as expanded under section 305(a) of the federal SECURE 2.0 Act of 2022,

permits the City to cure the tax-qualification error by adopting a retroactive amendment to the Plan's governing document to align the terms of the Plan's governing document with past operations.

Accordingly, it is recommended that the City adopt retroactive amendment and restatements of the Plan's governing documents to:

- (i) retroactively remove the after-tax employee contribution election option and reinstate employee pick-up contribution elections, effective January 1, 2016;
- (ii) retroactively amend the name of the employer and the name of the Plan, effective March 12, 2019; and
- (iii) retroactively amend the Plan to specify that notwithstanding the general exclusion of overtime from the Plan's definition of Earnings, additional short-term emergency disaster pay is included in Earnings, effective January 1, 2021.

MOTION:

Move to approve/disapprove Resolution 15-2024, authorizing retroactive amendments to the City's (FPDP) 401(a) Plan.

ATTACHMENT(S):

Resolution 15-2024
Exhibit "A"
Exhibit "B"
Exhibit "C"