

CITY OF LOOKOUT MOUNTAIN, GEORGIA

ORDINANCE NO. 148

An Ordinance to amend an Ordinance approved May 18, 1978, as amended, establishing a retirement plan for the employees of the City of Lookout Mountain, Georgia, and setting forth the joint trust agreement and the contract for the administration of said plan by the City and the Georgia Municipal Employees Benefit System as provided by O.C.G.A. Section 47-5-1 et seq., so as to change and clarify the definition of Credited Past Service; to change and clarify the definition Earnings; to clarify the definition of Annual Earnings; to change and clarify the definition of Disability; to clarify the definition of Disability Retirement Date; to remove the maximum age at which a full-time employee hired subsequent to the effective date of the plan may participate in the plan; to allow credit for military service for reemployed employees; to clarify normal retirement date; to clarify the provisions pertaining to delayed retirement date; to change and clarify the provision pertaining to disability retirement date; to cap the amount of earnings to be taken into account for benefit computation in accordance with Internal Revenue Code Section 401(a)(17); to require limitations on annual benefits a participant can receive in accordance with Internal Revenue Code Section 415(b); to change certain provisions pertaining to optional forms of retirement income; to provide lump sum distributions for small annuities in accordance with Internal Revenue Code Section 417(e); to remove lock-in provision in death benefit prior to retirement; to change and clarify termination and portability; to change and clarify interest in event of plan termination or lump sum distribution; to change the provision pertaining to accrual of interest; to change and clarify the provisions pertaining to errors in computation; to provide an effective date; to repeal conflicting ordinances; and for other purposes.

BE IT ORDAINED by the Mayor and Council of the City of Lookout Mountain, Georgia, and it is hereby ordained by the authority thereof:

Section 1. An Ordinance establishing a retirement plan for the employees of the City of Lookout Mountain, Georgia, and setting forth the joint trust agreement and the contract for the administration of said Plan between the City and the Georgia Municipal Employees Benefit System as provided by O.C.G.A. Section 47-5-1 et seq., is hereby amended by striking Section 25, Section 28, Section 29, Section 42, Section 44, and Section 45, from Article II, and substituting in lieu thereof the following:

"Section 25. Credited Past Service shall mean the number of years and complete months of Past Service:

a. Of an Eligible Employee employed on the Effective Date of the Plan.

b. Of an Eligible Employee not employed on the Effective Date of the Plan who had Service prior to such Effective Date, provided that subsequent to such Effective Date, the Employee performs the lesser of: Service and leave of absence equal to the break in Service, or Service and leave of absence equal to five (5) years.

c. Of an Eligible Employee whose initial employment date is subsequent to the Effective Date of the Plan, however, said Employee's Credited Past Service shall only be the number of years and complete months of continuous Service from his latest employment date to his Enrollment Date.

Section 28. Earnings shall mean the total normal compensation paid to an Employee but shall exclude compensation for reimbursed expenses and other unusual compensation. Earnings shall also include overtime, holiday, sick, vacation pay, and compensation deferred and redirected pursuant to the Internal Revenue Code.

Section 29. Annual Earnings shall mean the Earnings which have been paid to a Participant for Service rendered during any consecutive twelve (12) calendar month period preceding the most recent termination. It shall be limited to such maximum amount, if any, as may be prescribed in Article V, Section 1b(5), of the Plan.

Section 42. Vesting, Vested Right, Vested Benefit shall mean the rights of a Terminated Participant as specified in Article VII of the Plan.

Section 44. Disability shall mean:

a. A physical or mental disability of a participant who because of such disability becomes entitled to receive disability insurance benefits under the Federal Social Security Act, as amended; provided, however,

(1) Such disability commenced on a specified date during the period of the Participant's employment with the City; and,

(2) Such disability was not self-inflicted, incurred in military service, incurred in the commission of a felonious enterprise, or the result of the use of narcotics or drugs or habitual use of alcohol; and,

(3) Such disability will be permanent and continuous during the remainder of the participant's life; or,

b. A Participant who is not disabled in accordance with the above definition of Disability solely because he lacks the quarters of Social Security coverage required to receive a disability insurance benefit under the Federal Social Security Act, as amended, shall be under Disability if the Pension Committee shall determine that he is permanently incapacitated on the basis of a certificate signed by two (2) physicians (one physician selected and

paid by the disabled Participant and one physician selected and paid by the Employer); stating that,

(1) Such Participant is permanently and totally physically or mentally disabled by anatomical, physiological, or psychological abnormalities that are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, so as to be prevented from engaging in any occupation or employment whatsoever for remuneration or profit; and,

(2) Such Disability commenced on a specified date during the period of the Participant's employment with the City; and,

(3) Such Disability will be permanent and continuous during the remainder of the Participant's life; and,

(4) Such disability was not self-inflicted, incurred in military service, incurred in the commission of a felonious enterprise, or the result of the use of narcotics or drugs or habitual alcoholism.

c. The Pension Committee shall have the right to require the Participant who is under Disability to be examined by a physician chosen by the Pension Committee to confirm the continuation of a Disability.

Section 45. Disability Retirement Date shall mean the first day of the first calendar month in which a Participant becomes entitled to receive Disability, as provided in Article IV, Section 1 and Section 5. However, in no event shall said Disability Retirement Date be earlier than one (1) calendar month following his termination of employment as a result of a Disability."

Section 2. Said Ordinance is further amended by striking paragraph "b" from Article III, Section 3, and substituting in lieu thereof, a new paragraph "b", to read as follows:

"b. Each Full-Time Employee hired after the Effective Date of the Plan shall be eligible to participate in the Plan on the first day of the month immediately following or coinciding with the date he completes one (1) year of continuous Service. Each Full-Time Employee who, as of July 1, 1988, was previously excluded from participation in the Plan because he was over the Plan's maximum entry age, shall be eligible to participate in the Plan on the later of: July 1, 1988, or the first day of the month immediately following or coinciding with the date he completes one (1) year of continuous Service. A Full-Time Employee who was previously excluded from participation because of age shall receive credit for all Service, including Service prior to July 1, 1988."

Section 3. Said Ordinance is further amended by striking subparagraphs (3) and (4) from Article III, Section 3d, and substituting in lieu thereof, new subparagraphs (3) and (4), to read as follows:

"(3) A former Participant who is reemployed in an Eligible Employee class after being on an authorized leave of absence and who meets the provisions of Article III, Section 5a, shall not be deemed to have broken continuity of Service and may resume participation on the first day of the month coinciding with or next following the month in which he is reemployed in accordance with the terms of the leave as approved by the Governing Authority; or,

(4) A former Participant who is reemployed in an Eligible Employee class after a period of service in the Armed Forces of the United States, and who meets the provisions of Article III, Section 5b, shall not be deemed to have broken continuity of Service and may resume participation on the first day of the month

coinciding with or next following the month in which he is reemployed, and the time he was absent shall be taken into account for the purpose of calculating benefits under the Plan."

Section 4. Said Ordinance is further amended by striking paragraph "d" from Article III, Section 4, and add a new Section 5 at the end of Article III, to read as follows:

Section 5. Leaves of Absence.

a. General Leaves of Absence. The Governing Authority shall determine the date of expiration of a leave of absence granted to a Participant. Such periods of absence shall not be counted as Credited Future Service for the purpose of computing a benefit hereunder unless the leave, as authorized by the Governing Authority, specifically permits such Participant to continue accumulating Credited Future Service during the authorized leave of absence. Such Participant shall, for the purposes of the Plan, not be deemed to have broken continuity of Credited Future Service, provided:

- (1) He was regularly employed by the Employer immediately prior to his leave of absence; and,
- (2) He makes application for reemployment on or before the date of expiration of a leave of absence; and,
- (3) He is reemployed as an Eligible Employee within ninety (90) days after such application.

b. Military Leaves of Absence. A former Employee who is reemployed in an Eligible Employee class after service in the Armed Forces of the United States shall, for the purposes of the Plan, not be deemed to have broken continuity of Service, and all military service shall be counted for the purpose of computing a benefit, provided:

- (1) He was regularly employed by the Employer immediately prior to his military service; and,

(2) The Plan was in effect on the date he left employment for such military service; and,

(3) He makes application for reemployment within ninety (90) days after he first becomes entitled to his discharge or release from service in the Armed Forces of the United States; and,

(4) He is reemployed as an Eligible Employee within ninety (90) days after such application.

c. If a Participant or Employee has not returned to his regular employment as an Eligible Employee in accordance with the provisions of paragraph "a" or "b" in this Section, his interest, if any, under the Plan shall be only such as existed at the commencement of such leave of absence."

Section 5. Said Ordinance is further amended by striking Section 2 from Article IV, and substituting in lieu thereof a new Section 2, to read as follows:

"Section 2. Normal Retirement Date. The Normal Retirement Date of a Participant shall be the first day of the month coinciding with or next following the date he has attained age sixty-five (65) and has completed five (5) years of Total Credited Service."

Section 6. Said Ordinance is further amended by striking Section 4 and Section 5 from Article IV, and substituting in lieu thereof a new Section 4 and Section 5, to read as follows:

"Section 4. Delayed Retirement Date. A Participant may retire from the Service of the City on the first day of any month subsequent to his Normal Retirement Date.

Section 5. Disability Retirement Date. A Participant may retire under the provisions of the Plan

on the first day of the first calendar month in which a Participant becomes entitled to receive Disability benefits regardless of any age or service restrictions otherwise contained herein. Upon actual Retirement, such Participant shall receive the Disability Retirement benefit provided in Article V, Section 4, or any other Retirement benefit granted under the Plan for which he is eligible if such benefit is greater than the aforesaid Disability Retirement benefit. However, under no circumstances shall any Retired Participant be entitled at one time to more than one type of Retirement Benefit granted under the Plan."

Section 7. Said Ordinance is further amended by striking subparagraph (1) and subparagraph (2) from Article V, Section 1b, and substituting in lieu thereof, a new subparagraph (1) and subparagraph (2), to read as follows:

"(1) Credited Past Service shall be as defined in Article II, Section 25, except, however, that any Eligible Employee who does not elect to become a Participant as of the date he is first qualified to do so may elect to become a Participant on the first day of any succeeding month; provided, however, that the Credited Past Service of such Participant shall not include the period of Service from the date he was first qualified to become a Participant to the date he elects to become a Participant, or any creditable Past Service due him on the date he was first qualified to become a Participant under the Plan.

(2) Credited Future Service shall be as defined in Article II, Section 26, and limited to time spent as a Participant in the Active employ of the Employers, except as provided in Article III, Section 5. Breaks in regular full-time employment followed by the lesser of: Service and leave of absence equal to the break in

Service, or Service and leave of absence equal to five (5) years will not break continuity of Service but the time absent will not be considered as a period of Credited Future Service, except as herein otherwise provided."

Section 8. Said Ordinance is further amended by striking subparagraph (5) in Article V, Section 1b, and substituting in lieu thereof, a new subparagraph (5), to read as follows:

"(5) Maximum Annual Earnings to be used for computing Final Average Earnings for benefit accrual shall not exceed \$200,000.00."

Section 9. Said Ordinance is further amended by inserting a Section 7 into Article V, to read as follows;

"Section 7. Limitation on Annual Benefit. A Participant's annual benefit shall not exceed the lesser of: (1) 100% of the Participant's high 3 years average compensation, or (2) a dollar amount which is adjusted for inflation based on 215(i)(2)(A) of the Social Security Act. If a Participant's total annual benefits are not in excess of \$10,000.00 this section will not apply. Furthermore, if the Participant retires before age 62 the limit shall be actuarially reduced in accordance with Internal Revenue Code 415(b)(2)(C) and (F)."

Said Ordinance is further amended by striking Section 5 from Article VI, and substituting in lieu thereof, a new Section 5, Section 6, and Section 7, to read as follows:

"Section 5. Cancellation of Election. The election by a Participant of any option in Section 2 of this Article VI shall be null and void if either the Participant or his designated Beneficiary shall die before the Participant's effective Retirement date.

Section 6. Notwithstanding any other provision to the contrary, a Participant's election of the form of benefit payment will be restricted to assure compliance with the minimum distribution incidental death benefit requirements of Internal Revenue Code Section 401(a)(9).

Section 7. Rule for Small Annuities. The present value of a retirement fund benefit shall be distributed to the Participant or Terminated Participant or the Terminated Participant's Beneficiary if the benefit does not exceed Internal Revenue Code Section 411(a)(11)(a) limit on the date of termination. The value of a Participant's or Terminated Participant's benefit shall be determined in accordance with Article VIIA Section 6 on the date of the Participant's termination."

Section 11. Said Ordinance is further amended by striking Section 1 from Article VII, and substituting in lieu thereof, a new Section 1 to read as follows:

"Section 1. Death Prior to Retirement.

a. If the employment of a Participant is terminated by reason of death prior to his becoming eligible for Early or Normal Retirement in accordance with Article IV, no benefit shall be payable under the Plan to any heirs, assigns, or to the Participant's estate.

b. Upon becoming eligible for Early or Normal Retirement in accordance with Article IV, a Participant may designate one and only one Beneficiary Prior to Retirement on a form provided for that purpose. In so doing, he specifically provides thereby that in the event his employment or term of office is terminated by reason of his death prior to Retirement that his designated and surviving Beneficiary Prior to Retirement shall receive a Retirement benefit in the amount of the decreased retirement benefit

that would have been otherwise payable to said Participant had he retired on the day of his death and elected the optional form of Retirement payment designated herein as Option A at one hundred percent (100%).

c. Designation of a Beneficiary Prior to Retirement may be changed by the Participant in writing on a form provided for that purpose at any time prior to actual Retirement. Only the last such designation of a Beneficiary Prior to Retirement shall have effect and any new designation of a Beneficiary Prior to Retirement invalidates, supersedes, and revokes any prior designation.

d. Any failure by a Participant to designate a Beneficiary Prior to Retirement under the provisions of this Article VII, Section 1, or any failure of a designated Beneficiary to survive the Participant, shall preclude the payment of any benefit authorized herein."

Section 12. Said Ordinance is further amended by striking Section 3 from Article VII, and substituting in lieu thereof, a new Section 3, and Section 4, to read as follows:

"Section 3. Termination of Employment Before Retirement. A Participant whose employment is terminated under any of the following conditions for any reason other than death or Retirement shall be entitled to a Vested Right in his accrued benefit. Payment of such Vested Retirement Benefit shall commence on the first day of the month following his Normal or Early Retirement Date at the option of the Participant and shall be payable on the first day of each month thereafter during the life of the Participant. The amount of such Monthly Retirement Benefit shall be computed in the manner prescribed for Normal or Early Retirement in Article V herein, but based upon his Final Average Earnings and Total Credited Service up to the

Participant's date of termination of employment with the City. The conditions for a Vested Retirement Benefit under this section shall be one of the following:

a. A Participant whose employment is terminated voluntarily or involuntarily shall be entitled to a Vested Benefit if he has completed a minimum of ten (10) years of Credited Service in the Plan; or,

b. A Participant whose employment is terminated involuntarily and without cause shall be entitled to a Vested Benefit if he has completed a minimum of five (5) years of Credited Service in the Plan. For the purpose of this condition, "cause" for dismissal shall mean negligence or inefficiency in performing the duties of the position held, unfitness to perform assigned duties, insubordination, or misconduct reflecting discredit on the City or upon the Governing Authority; or,

c. A Participant whose employment is terminated because he is disabled shall be entitled to a Vested Benefit provided his period of Disability began on or before the Participant's date of Termination of employment as a result of a Disability. No Disability benefit shall be payable unless application for such benefit is made within one (1) year after employment is terminated as a result of such Disability, except when a delay is caused by a pendency of a Disability determination by the Social Security Administration.

Section 4. Termination of Employment Before Retirement; Portability.

a. A Participant whose employment is terminated either voluntarily or involuntarily for any reason other than death, Disability, or Retirement, after participation in the Plan, shall have a right to a Vested Retirement Benefit under the conditions set forth below. The amount of the Monthly Retirement Benefit shall be computed in the manner prescribed for Normal or Early Retirement in Article V herein, but based on his Final Average Earnings and Total Credited Service up to the Participant's date of termination of employment with the Employer. Payment of such

benefit shall commence, at the option of the Participant, on the first day of the month following his Normal or Early Retirement Date as prescribed in the Plan and shall be payable on the first day of each month thereafter, provided:

(1) That any future employer be a GMEBS employer which maintains a GMEBS retirement plan with a provision on portability that is the same or substantially similar to this Section; and,

(2) That to be entitled to any benefits under the provisions of this Plan, the Participant must meet, through his Total Credited Service with all GMEBS employers, the Service requirements for Vesting as provided for herein; and,

(3) That each break in employment between GMEBS employers shall not exceed five (5) years.

b. In the event the Participant's immediately preceding employment was with a GMEBS employer or employers, the service performed for such former employer or employers shall be used for the purpose of qualifying the Participant for Vesting or Retirement under this Plan. In no event shall service with another GMEBS employer be used to calculate the benefit amount due the Participant from this Employer.

c. In the event the Employer is his final GMEBS employer, the benefit under this Section shall begin when the Participant retires and shall be computed as prescribed in Article V."

Section 13. Said Ordinance is further amended by striking Section 6 from Article VIIA, and substituting in lieu thereof, a new Section 6, to read as follows:

"Section 6. Other Forms of Payment. Other forms of benefit payment made under Article VI, Section 7, or upon plan termination, or if required for compliance with Section 401(a)(9) of the Internal Revenue Code, shall be computed on the basis of the actual age of the Participant and/or

Beneficiary at the time of distribution and under the following actuarial assumptions:

a. Interest: Rates that would be used to value the benefits for a Pension Benefit Guaranty Corporation trustee single-employer plan which terminates on the first day of the calendar year in which the distribution is made.

b. Mortality: The mortality basis in use at the time of payment by the Pension Benefit Guaranty Corporation for male retirees regardless of the actual sex of any Participant or Beneficiary.

c. Age at Which Payments Begin: The greater of Normal Retirement Date or the age at time of distribution of the Participant and/or Beneficiary."

Said Ordinance is further amended by striking Section 1 from Article VIII, and substituting in lieu thereof, a new Section 1, to read as follows:

"Section 1. City Contributions. The City shall make the necessary Contributions to fund this Retirement Plan. The amount of these Contributions shall be based upon the actuarial assumptions adopted by the Board of Trustees, the benefits provided in this Plan, and the number of Participants and their respective ages, Earnings, and lengths of Creditable Service and such other factors as the Board of Trustees shall deem appropriate to assure proper funding of this Plan. Contributions by the City shall be applied as necessary to assure the payment of Accrued Benefits to Participants and Beneficiaries. Contributions received by GMEBS by the last day of any month shall accrue interest from the first day of the following month."

Section 15. Said Ordinance is further amended by striking Section 8 from Article XIV, and substituting in lieu thereof, a new Section 8, to read as follows:

"Section 8. Reserved."

Section 16. Said Ordinance is further amended by striking Section 11 from Article XIV, and substituting in lieu thereof a new Section 11, to read as follows:

"Section 11. Errors in Computation of Benefits. Any overpayments or underpayments from the Trust Fund to a Retired Participant or to a Beneficiary caused by errors of computation shall be corrected with interest compounded annually from the date of the miscalculation. The rate applied shall be the actuarial assumption rate utilized by the plan actuary for estimating future plan investment earnings as of the date of the correction. Overpayments shall be charged against Retirement payments next succeeding the correction. Underpayments shall be made up from the Trust Fund."

Section 17. Said Ordinance is further amended by striking the phrase "Joint Municipal Employees' Retirement System" and the acronym "JMERS" throughout the Plan and the Joint Trust Agreement, and substituting in lieu thereof, the phrase "Georgia Municipal Employees Benefit System" and the acronym "GMEBS".

Section 18. The rights and obligations under the Plan with respect to persons whose employment with the City was terminated for any reason whatsoever prior to the effective date of this amendment are fixed and shall be governed by such Plan as existed and was in effect at the time of such termination.

Section 19. Severability:

If any section, subsection, sentence, or clause in this ordinance be adjudged invalid, such adjudication shall not affect the validity of the ordinance or code as a whole or of any section, subsection, sentence, or clause hereof or thereof not adjudged invalid.

Section 20. Part of Code of Ordinances:

It is the intention of the governing body and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City

of Lookout Mountain, Georgia, and the sections of this Ordinance may be re-numbered to accomplish such intention.

Section 21. Repealer.

All other ordinances or parts thereof heretofore enacted by the City in conflict herewith are hereby repealed.

Section 22. Effective Date:

This ordinance shall be effective ten (10) days after its adoption and approval by at least three members of the Council of this City after two readings at least one week apart.

APPROVED ON FIRST READING ON October 18, 1990.

James D. Crawford
Member of City Council

David L. Child
Member of City Council

James P. Bentley
Member of City Council

Susan W. Petway
Member of City Council

James D. Ennis
Member of City Council

Don N. Ham
Mayor of Lookout Mountain,
Georgia

APPROVED AND ADOPTED ON SECOND READING ON November 15, 1990.

James D. Crawford
Member of City Council

David L. Child
Member of City Council

Susan W. Petway
Member of City Council

James D. Ennis
Member of City Council

James P. Bentley
Member of City Council

Don N. Ham
Mayor of Lookout Mountain,
Georgia

ATTEST:

[Signature]
City Clerk of Lookout Mountain,
Georgia