

ORDINANCE NO. 7551-19

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 31, PENSIONS AND RETIREMENT, OF THE CODE OF THE CITY OF NEWPORT NEWS, VIRGINIA, BY ADDING THERETO A NEW ARTICLE, NAMELY: ARTICLE IV., LINE OF DUTY ACT.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

That Chapter 31, Pensions and Retirement, of the Code of the City of Newport News, Virginia, be, and the same hereby is, amended and reordained, by adding thereto a new article, namely: Article IV., Line of Duty Act, as follows:

CHAPTER 31

PENSIONS AND RETIREMENT

ARTICLE IV. LINE OF DUTY ACT

DIVISION 1. ADOPTION; PURPOSE

Sec. 31-150. Created; title; operative date.

A line of duty act plan and trust is hereby created, which shall be known as the City of Newport News Line of Duty Act Benefits Fund, and shall be operative as of the date of adoption of the ordinance from which this article is derived, at which time contributions to the fund shall begin.

Sec. 31-151. Statement of purpose; amendments.

(a) The purpose of the fund is to provide an orderly means whereby disabled persons, eligible spouses, eligible dependents, and beneficiaries as defined in the Virginia Line of Duty Act, Code of Virginia § 9.1-400 et seq (1950) as amended, may receive such benefits as are provided by the Virginia Line of Duty Act.

(b) No amendments to any provision of this article shall be enacted by the city council unless and until such amendment shall have been studied by the board of trustees of the fund and the board's recommendations shall have been received by the city council.

Secs. 31-152--31-154. Reserved.

DIVISION 2. DEFINITIONS

Sec. 31-155. Definitions

The terms used in the Article shall be given the meaning assigned to them in Code of Virginia § 9.1-400 (1950) as amended. Virginia Line of Duty Act means the Line of Duty Act found in the Code of Virginia, §9.1-400 et seq, 1950 as amended. Board means the board of trustees provided for in section 31-70 which shall administer the fund provided for in this article. Fund means the City of Newport News Line of Duty Act Benefits Fund.

Secs. 31-156–31-160. Reserved.

DIVISION 3. MEMBERSHIP

Sec. 31-161. Membership generally.

The membership of the Line of Duty Act fund shall include only those, who by virtue of their employment with the City of Newport News, Virginia or the Sheriff of the City of Newport News, Virginia, and their eligible spouses, dependents or beneficiaries, are provided for in the Virginia Line of Duty Act, to the extent and in such a manner as the Virginia Line of Duty Act provides for such persons.

DIVISION 4. LINE OF DUTY ACT BENEFITS

Sec. 31-162. General provisions.

Disabled persons, eligible spouses and eligible dependents shall receive such benefits as required by the Virginia Line of Duty Act.

Sec. 31-163. Fund's contribution.

The fund shall contribute toward a member's Line of Duty Act benefits in accordance with the provisions of the Virginia Line of Duty Act.

Secs. 31-164–31-168. Reserved.

DIVISION 5. DEATH BENEFIT

Sec. 31-169. General provisions.

The Fund shall make a one-time payment, as a death benefit, to the beneficiary of a deceased person pursuant to the provisions of the Virginia Line of Duty Act.

Secs. 31-171–31-176. Reserved.

DIVISION 6. FUNDING

Sec. 31-177. Line of Duty Act benefits reserve.

(a) All of the assets of the fund shall be held in the Line of Duty Act reserve fund, in which shall be accumulated all assets transferred from any predecessor fund and all contributions made pursuant to this division or any other provision of this article, and to which all income from the invested assets of the fund shall be credited. From this reserve shall be paid benefits of the fund as provided for in this article, as well as the necessary administrative expenses.

(b) The annual contributions to the reserve shall be determined in accordance with the provisions of this division.

Secs. 31-178–31-193. Reserved.

DIVISION 7. ADMINISTRATION

Sec. 31-194. Administration generally.

(a) The fund shall be administered as a separate and distinct irrevocable trust for the exclusive benefit of its members by the board which also administers the City of Newport News Employees' Retirement Fund.

(b) Although administered by the board which also administers the City of Newport News Employees' Retirement Fund, the fund shall exist as a separate and distinct fund, existing in its own right pursuant to the provisions of this article, and as such, the board's administration of the fund carries with it a separate and distinct fiduciary duty to the fund and its members.

(c) Notwithstanding any provision of this article to the contrary, the fund shall be administered in compliance with the continuation coverage and portability provisions of 42 U.S.C. Section 300 et seq., commonly known as COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985, as amended).

Sec. 31-195. Board of trustees.

The Board of Trustees of the City of Newport News Employees' Retirement Fund shall administer the City of Newport News Line of Duty Act Benefits Fund for the exclusive benefit of its members in accordance with the provisions of this article.

Sec. 31-196. Supplemental plan provisions.

(a) The provisions of this article may be supplemented periodically by one (1) or more written documents which shall be referred to as the supplemental plan provisions, which shall constitute a part of the regulations for the operation of the fund. The board is authorized to adopt such supplemental plan provisions as are required to maintain the fund as a qualified governmental plan under applicable federal and state laws and the regulations promulgated thereunder, as the same may be amended periodically. A current copy of all supplemental plan provisions adopted by the board shall be maintained by the board and be available to all members upon request.

(b) The board is a public body pursuant to the Virginia Freedom of Information Act and is subject to the provisions thereof.

Sec. 31-197. Day-to-day administration by the department of finance.

For the purposes of administering the fund in accordance with the terms of this article and to execute the orders and directions of the board and the committee on investments, the fund shall be administered by the city's department of finance, division of pensions, or its successor. The city's director of finance shall be the administrative head of this division, which shall be subject to all the laws, rules and regulations governing all departments, divisions and bureaus of the city government.

Sec. 31-198. Duties of director of finance as secretary of board.

The city's director of finance shall be an ex officio secretary of the board and shall be in charge of the books, records, accounts, files and all papers and documents belonging to the board, other than those in the possession or under the control of the city treasurer; shall record all payments made to the fund and deposit funds with the city treasurer; shall, together with the city treasurer, sign checks for payment of sums due by the fund in accordance with authorization of the board; and shall

perform such other duties as may be assigned to such director by the board. A corporate surety bond acceptable to the board shall be furnished by the secretary of the board in such amount as the board may determine.

Sec. 31-199. Board advisors.

- (a) The city attorney shall be legal advisor to the board.
- (b) The director of the city's department of internal audit shall be an advisor to the board.

Sec. 31-200. Reserved.

Sec. 31-201. Custodian of fund.

(a) The city treasurer shall be an ex officio treasurer of the fund and shall be the official custodian of all cash and securities belonging to the fund, which shall be maintained in a special irrevocable trust fund for the account of the fund. The treasurer shall receive all moneys and securities for the account of the fund and shall, together with the director of finance, sign checks for payments by the fund in accordance with authorization of the board.

(b) Notwithstanding the provisions of subsection (a) above, and in the alternative, the board may, at its option, select a professional custodian for any part or all of its funds and securities, and have such securities registered in such custodian's nominee's name.

(c) A corporate surety bond acceptable to the board shall be furnished by the treasurer and professional custodian in such amounts as the board shall determine.

Sec. 31-202. Powers and duties of the board in administering the fund.

(a) The fund shall be administered by the board, whose powers and duties include but are not limited to:

- (1) Maintaining records of all of its proceedings and making such records available for inspection by the public in accordance with law.
- (2) Incurring expenditures as it deems necessary for the efficient administration of the fund. The board, subject to applicable rules and regulations, may provide funds for, or contract for, actuarial, medical, professional and other support personnel as may be required for the proper operation of the fund.

- (3) Causing an actuarial investigation to be made of all the experience under the fund at least once in each five-year period and at such other times as required by the board. The board shall also cause actuarial gain/loss analyses to be made in conjunction with each actuarial valuation of the fund. Pursuant to such investigations and analyses, the board shall periodically revise the actuarial assumptions.
 - (4) Causing an annual actuarial valuation to be made of the assets and liabilities of the fund.
 - (5) Publishing the results of each actuarial valuation of the assets and liabilities.
 - (6) Publishing annual financial statements of the fund or annual reports in accordance with law.
 - (7) Promulgating regulations and procedures and making determinations necessary to carry out the provisions of this article.
 - (8) Purchasing insurance to insure against losses suffered by the fund if any member of the board or of any advisory committee breaches any standard of care required by law.
 - (9) Adopting rules and policies that bring the fund into and kept in compliance with applicable laws or regulations.
- (b) Neither the board nor the various committee members shall incur any liability for any losses suffered by the fund if properly administered under the provisions of this article.

Sec. 31-203. Investment of reserves.

- (a) The board shall have full power, in its sole discretion, to invest and reinvest all funds and property of the fund pursuant to the provisions of this article.
- (b) The board is hereby delegated with the power and authority to enter into an agreement with one (1) or more persons or qualified institutions under which the investment responsibilities of the board shall be delegated to such person or institution. Such agreement shall be executed by the chairman of the board.
- (c) The reserve of the fund may be invested only in:
 - (1) Interest-bearing bonds or other obligations of the United States or the state;
 - (2) General obligation bonds and revenue bonds of the state or of any political

subdivision within the state;

- (3) Corporate bonds rated "A" or higher by two (2) out of three (3) nationally known security rating concerns, provided, however, that no more than one (1) percent of the fund may be invested in corporate bonds rated less than "A" but not less than "BB";
- (4) Federally insured mortgages and mortgage passthroughs on a to-be-announced (TBA) basis as long as funds are set aside to purchase the mortgage on settlement date so as not to leverage the fund;
- (5) Equities;
- (6) Certificates of deposit;
- (7) Guaranteed investment contracts;
- (8) Real estate; and
- (9) Standing timber and timber rights.

The investments in equities, excluding equities in real estate investment trusts, shall not exceed seventy-five (75) percent of the market value of the assets of the fund as reported on a calendar quarterly basis. To the extent such percentage limitation is exceeded as of the end of any quarter, the board shall take such action as may be necessary to reduce the equity allocation to the required percentage as soon as practicable.

Sec. 31-204. Committee on investments; consultants for investments.

(a) The committee on investments shall make recommendations to the board for the investments of the reserve or the sale of the securities of the fund. The board shall not make any investment nor sell any securities of the fund unless recommended in writing by the committee on investments.

(b) Notwithstanding the foregoing, in the alternative, the board may, at its option, select one (1) or more consultants for portfolio management for the purposes of making investments of the reserve and/or sales of the securities of the fund.

Sec. 31-205. Payment of costs and administration.

All costs and expenses incurred in the administration of the fund shall be paid by the fund from the assets of the fund, and no part of such expenses shall be charged to or paid by the city.

Notwithstanding the foregoing, the city will comply with the Virginia Line of Duty Act, as required, through the fund or by other means.

Sec. 31-206. Records and accounts; annual audit.

Proper and adequate records and accounts shall be established and maintained which will give full effect to the requirements of this article. An annual audit of the books, accounts and records of the fund shall be made by the director of the city's department of internal audit or a certified public accountant.

Sec. 31-207. Annual report.

As of the close of each fiscal year, the board shall cause an annual report to be prepared for inclusion in the city's comprehensive annual financial report for submission to the city council, showing the assets and liabilities of the fund at the end of such year and the income and expenditures for the year and other data pertinent to the operation of the fund.

Sec. 31-208. Right to amend or terminate.

Subject to section 31-151(b), the city council retains the right to amend or terminate the benefits provided under this article at any time for any reason in any manner not prohibited by law.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON May 14, 2019

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk