

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2011-12

No. 201

AN ORDINANCE IN AMENDMENT OF AND IN ADDITION TO CHAPTER 1999-45 OF THE ORDINANCE OF THE CITY OF PROVIDENCE APPROVED NOVEMBER 15, 1999

Approved March 21, 2011

Be it ordained by the City of Providence:

Chapter 1999-45 of the Ordinance of the City of Providence approved November 15, 1999 shall be amended hereby as follows:

Sec. 17-189.1. Revocation or reduction of retirement benefits of employees for dishonorable service.

(a) Payment of a retirement allowance or annuity or other benefit or payment as provided in chapter 17 shall be for "honorable service" only.

(b) ***Definitions.*** For purposes of this section:

(1) "Board" shall mean the Retirement Board of the Employees' Retirement System of the City of Providence;

(2) "crime related to his or her public employment" shall constitute "dishonorable service," and shall include any of the following conduct, whether or not the conduct results in a criminal conviction:

(A) committing, or aiding or abetting the commission of, embezzlement of public funds;

(B) committing, or aiding or abetting the commission of, any felonious theft by a public employee from his or her employer;

(C) committing, or aiding or abetting the commission of, bribery in connection with, or involving, a public employee;

(D) committing, or aiding or abetting the commission of, any felony by a public employee who willfully, and with the intent to defraud, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person, through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment; and

(E) Any other misconduct or crime which the Board, by a majority vote, determines is "dishonorable service," after weighing and balancing the following factors:

- (i) the employee's length of service;
- (ii) the basis for retirement, i.e., age, service, disability, etc.;
- (iii) the extent to which the employee's pension has vested;
- (iv) the duties of the particular employment;
- (v) the employee's public employment history and record;
- (vi) the employee's other public employment and service;
- (vii) the nature of the misconduct or crime, whether it involved an isolated act or multiple acts, and its gravity or substantiality;
- (viii) the relationship between the misconduct or crime and the employee's public duties;
- (ix) the quality of moral turpitude or the degree of guilt and culpability, including the employee's motives and reasons, personal gain, and the like;
- (x) the availability and adequacy of penal sanctions; and
- (xi) other personal circumstances relating to the employee bearing upon the justness of forfeiture.

(3) "Employee" shall mean any current or former city elected official, or any appointed official, or employee of the city, or of a city board, commission or agency, who is otherwise entitled to receive a pension

(4) "Pension" shall include an employee's retirement allowance or annuity or other benefit or payment as provided in chapter 17.

(c) **Mandatory Board Action.** Notwithstanding any other provision of law, a pension shall be revoked or reduced by the Board under this section if an employee is convicted of, or pleads guilty or *nolo contendere*, to any crime related to his or her public employment. Any such conviction or plea shall be deemed to be "dishonorable service" and a breach of the employee's contract with his or her employer; however, for purposes of this section, "pleads guilty or *nolo contendere*" shall not include any plea of guilty or *nolo contendere* which does not result in a conviction by virtue of G.L. 1956, § 12-10-12 or § 12-18-3, as amended.

(d) **Permissive Board Action.** Notwithstanding any other provision of law, a pension *may* be revoked or reduced by the Board under this section if a majority of the Board determines **[by a preponderance of the evidence]** that an employee has engaged in "dishonorable service" after weighing and balancing the factors set forth in section (b)(1)(E).

(e) **Due Process.** If a majority of the members of the Board vote to consider any action to revoke or reduce any pension, the Board, before taking any such action, shall:

(1) conduct a meeting with the involved employee [**and inform the employee of the alleged conduct forming the basis of the contemplated Board action**] ; and thereafter,

(2) provide the employee, and his or her spouse or domestic partner, dependents and/or designated beneficiaries, with ample notice [**of the relevant alleged conduct**] and an opportunity to be heard.

(f) *Balancing Test; Calculations.* This ordinance is intended to be equitable, rather than penal, in nature. Thus, when deciding to revoke or reduce a pension, the Board shall weigh and balance the factors set forth in section (b)(1)(E). In addition:

(1) the Board need not compare an employee's periods of dish[**onorable**] service with periods of allegedly honorable service, other than as may be required to determine the legitimate interest of an innocent spouse, domestic partner, dependent, and/or designated beneficiary, and the Board may revoke or reduce a pension even if the evidence of "dishonorable service" is limited to an isolated act by an employee who had separate periods of city employment;

(2) the Board shall decide whether the revocation or reduction shall take effect (and be calculated) from the date: (A) of the dishonorable service; or (B) the date notice was provided under section (e)(2); or (C) the date of the Board's decision under section (g); and

(3) if the Board determines to revoke or reduce a pension, the employee's contribution to the pension system shall be refunded, without interest; however, if, as of the date of the Board decision, the employee: (i) has not made full restitution for any loss proximately caused by his or her dishonorable service (including, but not limited to, the fees and costs incurred by the Board), and/or (ii) has already received pension payments, the amount of the unreimbursed loss and/or the pension payments received shall be deducted from any such refund.

(g) *Appeal and Standard of Review.* (1) If the Board determines by a majority vote that revocation or reduction of a pension is warranted, it shall make specific factual findings in support thereof and shall render a written decision, which shall be appealable to the Superior Court as long as such an appeal is filed within twenty (20) calendar days from the date the Board decision was rendered. Such appeals shall be decided by the Superior Court sitting without a jury, and there shall be no automatic stay pending appeal.

(2) When reviewing a Board decision, the Superior Court shall not substitute its judgment for that of the Board as to the weight of evidence on questions of fact. The court may affirm the decision of the Board, or alternatively, may remand the case for further proceedings or reverse or modify the decision, if the substantial rights of the employee have been prejudiced because of findings, inferences, conclusions, or decisions of the board which are:

- (A) in violation of constitutional, statutory or ordinance provisions;
- (B) in excess of the authority granted to the board by ordinance;
- (C) made upon unlawful procedure;
- (D) affected by other error of law;
- (E) clearly erroneous in view of the reliable, probative and substantial evidence of the whole record; or
- (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(h) **Separability.** The unconstitutionality or invalidity of any section or part of this ordinance shall not invalidate or impair the validity, force or effect of any other section or part thereof, which shall remain in full force and effect.

(i) **Effective Date.** This amended ordinance [shall apply to all applications for pension benefits made on or after January 1, 2011].

APPROVED

Angel Taveras

MAYOR 3/21/11

In City Council
 MAR 03 2011
 Read and Passed the First Time
 And Referred to the Committee
 On Finance Ordinances
Ann M. Stebbins Clerk

IN CITY COUNCIL
 MAR 17 2011
 FINAL READING
 READ AND PASSED
Ann M. Stebbins
 PRESIDENT
Ann M. Stebbins
 CLERK