

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, AUTHORIZING THE CITY ATTORNEY TO FILE A CIVIL ACTION AGAINST THE EMPLOYEES RETIREMENT BOARD (THE "BOARD") FOR GRANTING PENSIONS TO INDIVIDUALS DEEMED VESTED SOLELY AS A RESULT OF THE ORDINANCE FREEZING THE PRIOR PLAN IN 2011.

WHEREAS, on September 7, 2011, the City Commission adopted Ordinance No. O-2011-25 (the "Ordinance"), which froze the then existing Employees Pension Plan as of September 30, 2015, but only as to plan members who were paid out of the City's general fund; and

WHEREAS, the Ordinance contains new language in Section 33.025(A)(5) that says all general fund members will be vested in benefits accrued to September 30, 2011, and payable under the terms and conditions of the plan then in effect; and

WHEREAS, since the adoption of the Ordinance, the Board has administered the plan by treating all general fund members, including those who were not vested under the plan as it existed prior to September 30, 2011, as vested in the benefits that they accrued up to September 30, 2011; and

WHEREAS, the attorney for the Board has approved the manner in which the Board has administered the Ordinance; and

WHEREAS, the City Attorney's Office has researched the issues raised by the Board's actions and has determined that (i) technically, the freezing of a pension plan terminates the plan and (ii) the Internal Revenue Code requires a qualified defined benefit pension plan to provide that, upon its termination, the rights of all affected employees to benefits accrued to the date of such termination are nonforfeitable; and

WHEREAS, the Florida Governmental Conflict Resolution Act (the "Act") creates a mandatory governmental conflict resolution procedure that must be complied with prior to the filing of a civil action by one governmental entity against another governmental entity, unless the first government entity, by a three-fourths vote of its governing body, finds that an immediate danger to the health, safety, or welfare of the public requires immediate action, or that significant legal rights will be compromised if a court proceeding does not take place before the provisions of the Act are complied with;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the City Attorney is hereby authorized and directed to file a civil action against the Board and any other appropriate parties to seek any and all remedies that may be available to the City to resolve this matter.

Section 2: That the City Commission hereby finds that an immediate danger to the health, safety or welfare of the public requires immediate action or that significant legal rights will be compromised if a court proceeding does not take place before the provisions of the Act are complied with.

Section 3: That this resolution shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
PETER BOBER, MAYOR

ATTEST:

\_\_\_\_\_  
PATRICIA A. CERNY, MMC  
CITY CLERK

APPROVED AS TO FORM & LEGALITY  
for the use and reliance of the  
City of Hollywood, Florida only:

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JEFFREY P. SHEFFEL, CITY ATTORNEY