

1 Introduced by Council Members Crescimbeni, Gulliford and
2 Schellenberg:
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5 **ORDINANCE 2014-721**

6 AN ORDINANCE INVOKING THE CITY OF JACKSONVILLE'S
7 RIGHT TO TERMINATE THE RESTATED AGREEMENT BETWEEN
8 THE CITY OF JACKSONVILLE AND THE JACKSONVILLE POLICE
9 AND FIRE PENSION BOARD OF TRUSTEES, DATED MARCH 5TH,
10 2001, AS AMENDED, ON THE GROUNDS THAT THE RESTATED
11 AGREEMENT IS ILLEGAL AND UNENFORCEABLE; AUTHORIZING
12 THE OFFICE OF GENERAL COUNSEL TO TAKE FURTHER ACTION
13 TO EFFECTUATE THE PURPOSE OF THIS ORDINANCE;
14 REQUESTING ONE CYCLE EMERGENCY PASSAGE; PROVIDING AN
15 EFFECTIVE DATE.
16

17 **WHEREAS**, on March 5, 2001, the Jacksonville Police and Fire
18 Pension Board of Trustees (the "Board"), and the City of
19 Jacksonville (the "City") entered into a Restated Agreement
20 Between the Board and the City to resolve certain disputes
21 pertaining to the Jacksonville Police and Fire Pension Fund (the
22 "Fund") which is commonly referred to as the "Thirty Year
23 Agreement"; and

24 **WHEREAS**, Ordinance 2000-1164-E was enacted approving the
25 Thirty Year Agreement and subsequent legislation, Ordinances
26 2003-303-E, 2003-1338-E, and 2006-508-E, amended the Thirty Year
27 Agreement; and

28 **WHEREAS**, the Thirty Year Agreement addresses various
29 operational aspects of funding for the City's police and
30 firefighters' pension plans and, among other things, contains
31 the City's agreement to provide certain retirement benefits to

1 participants and retirees of the police and firefighters'
2 pension plans; and

3 **WHEREAS**, pursuant to Section 31 of the Thirty Year
4 Agreement, the term of the Thirty Year Agreement extends to
5 September 30, 2030; and

6 **WHEREAS**, the Board has interpreted the Thirty Year
7 Agreement to require the existing benefit structure for
8 participants and retirees to remain in place until the term
9 expires on 2030; and

10 **WHEREAS**, under Section 30 of the Thirty Year Agreement, the
11 parties acknowledge and agree that they are bound and governed
12 by state and local law; and

13 **WHEREAS**, Article I, section 6 of the Florida Constitution
14 provides public employees with the right to collectively
15 bargain; and

16 **WHEREAS**, Florida Courts have found that all terms and
17 conditions of employment are subject to collective bargaining,
18 not just the provisions contained in the parties' collective
19 bargaining agreement, School Board of Orange County v.
20 Palowitch, 367 So. 2d 730 (Fla. 4th DCA 1979); and

21 **WHEREAS**, under Florida law, retirement benefits for public
22 employees are considered terms and conditions of employment
23 subject to the collective bargaining process, City of
24 Tallahassee v. Public Employers Relations Commission, 410 So. 2d
25 487 (Fla. 1981); and

26 **WHEREAS**, Section 447.309(5), *Florida Statutes*, provides in
27 pertinent part that "[a]ny collective bargaining agreement shall
28 not provide for a term of existence of more than 3 years"; and

29 **WHEREAS**, the legal validity of the Thirty Year Agreement has
30 been publicly challenged on the grounds that the Thirty Year
31 Agreement is in fact collective bargaining and thus subject to the

1 3 year limitation provided in Section 447.309(5), *Florida Statutes*;
2 and

3 **WHEREAS**, in Frank Denton v. Mayor Alvin Brown and the City of
4 Jacksonville, et al., 16-2013-CA-5799 (4th Jud. Cir. 2013); First
5 DCA Appeal No. 14-0443, the First District Court of Appeal
6 concluded, in accord with the Circuit Court on appeal, that the
7 City and Board engaged in negotiated pension benefits, which is the
8 subject of collective bargaining, when the City and the Board
9 attempted to amend the Thirty Year Agreement through mediated
10 sessions which resulted in the filing of Ordinance 2013-366, the
11 precursor to Ordinance 2014-386, currently pending; and

12 **WHEREAS**, the Thirty Year Agreement may in fact violate Article
13 1, section 6 of the Florida Constitution, by restricting public
14 employees from collective bargaining because it well exceeds the
15 maximum term allowed for collective bargaining agreements in
16 Section 447.309(5), *Florida Statutes*; and

17 **WHEREAS**, since the term of the Thirty Year Agreement exceeds
18 the maximum term allowed in Section 447.309(5), *Florida Statutes*,
19 and the parties are required to follow state law, the maximum term
20 provided by state law has expired; therefore the Thirty Year
21 Agreement is void and unenforceable and any terms or provisions
22 within the Thirty Year Agreement are subject to the collective
23 bargaining process moving forward; and

24 **WHEREAS**, for the reasons indicated above the Council finds
25 that the Thirty Year Agreement violates state law and desires to
26 formally terminate the Thirty Year Agreement; now therefore

27 **BE IT ORDAINED** by the Council of the City of Jacksonville:

28 **Section 1. Termination of the Thirty Year Agreement and**
29 **Notice of Termination.** For the foregoing reasons, the Council
30 hereby declares that the Thirty Year Agreement is void and
31 unenforceable as it violates state law. This Ordinance shall

1 initiate the notice of termination contemplated in Section 31 of
2 the Thirty Year Agreement on behalf of the City. The Office of
3 General Counsel is hereby directed to complete the remaining
4 requirements of Section 31 within three (3) days of the
5 effective date of this Ordinance.

6 **Section 2. Requesting One Cycle Emergency Passage**
7 **Pursuant to Council Rule 4.901 Emergency.** One cycle emergency
8 passage of this legislation is requested. The nature of the
9 emergency is that there is pending legislation, Ordinance 2014-386,
10 which proposes to amend the Thirty Year Agreement and the instant
11 legislation should be considered concurrently as it is in conflict.

12 **Section 3. Effective Date.** This Ordinance shall become
13 effective upon signature by the Mayor of upon becoming effective
14 without the Mayor's signature.

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16 Form Approved:

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18 /s/ Paige Hobbs Johnston

19 Office General Counsel

20 Legislation Prepared By: Paige Hobbs Johnston

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1 Introduced by Council Member Schellenberg:
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4 **ORDINANCE 2014-722**

5 AN ORDINANCE APPROPRIATING \$1,000,000 FROM
6 GENERAL FUND - TRANSFERS FROM FUND BALANCE FOR
7 LEGISLATIVE COUNSEL FOR THE CITY COUNCIL ON
8 THE ISSUE OF PENSION LITIGATION; WAIVING
9 SECTION 108.505 (SPECIAL COUNSELS), *ORDINANCE*
10 *CODE*, TO ALLOW FOR THE COUNCIL EXECUTIVE
11 COMMITTEE TO MAKE SELECTION; CITY COUNCIL
12 SHALL CONFIRM ANY SELECTION AND ENGAGEMENT
13 LETTER FOR LEGISLATIVE COUNSEL; REQUESTING ONE
14 CYCLE EMERGENCY PASSAGE; PROVIDING AN
15 EFFECTIVE DATE.
16

17 **WHEREAS**, in February 2013, a suit was filed against the City
18 styled *Randall Wyse, et al, vs. City of Jacksonville, et al*, Case
19 No. 3:13-cv-121-J-34MCR (the "Wyse" litigation), to determine
20 whether the Board of Trustees of the Police and Fire Pension Fund
21 is the appropriate entity to negotiate for police and fire pension
22 benefits; and

23 **WHEREAS**, the City has raised the legal validity of the "Thirty
24 Year Agreement" which includes all prior settlement agreements
25 between the City of Jacksonville and the Board of Trustees (as
26 approved by Ordinances 2000-1164-E, 2003-303-E, 2003-1338-E, and
27 2006-508-E) through an affirmative defense in the *Wyse* litigation
28 but has not initiated a claim or counterclaim based on this legal
29 issue; and

30 **WHEREAS**, since the *Wyse* litigation began in 2013, the Mayor,
31 through the Administration and the Office of General Counsel,

1 representing the City of Jacksonville, and the Board of Trustees,
2 representing the PFPF, have engaged in settlement negotiations
3 which would further amend the "Thirty Year Agreement"; and

4 **WHEREAS**, in furtherance of settlement, the Administration, on
5 behalf of the Mayor, has filed Ordinance 2014-386, now pending
6 before City Council, which would purportedly become the Fourth
7 Amendment to the "Thirty Year Agreement"; and

8 **WHEREAS**, approval of Ordinance 2014-386 by City Council would
9 ultimately result in the approval of the Fourth Amendment to the
10 "Thirty Year Agreement" by both the PFPF and the City; and

11 **WHEREAS**, such approval of the Fourth Amendment would in
12 essence validate and affirm the legality of the "Thirty Year
13 Agreement" and would likely provide for a Consent Judgment that
14 would settle all claims made by both parties in the *Wyse* litigation
15 without addressing the validity of the "Thirty Year Agreement" or
16 the merits of the parties' claims; and

17 **WHEREAS**, it is Council's belief that the questions of law
18 raised in the *Wyse* litigation are decided appropriately through the
19 court process and by final adjudication of the claims made in the
20 legal proceeding by a judge, rather than by further amending the
21 "Thirty Year Agreement", which Council believes is illegal, invalid
22 and not binding upon the City; and

23 **WHEREAS**, the Council recognizes that it is in the best
24 interests of the citizens of the City of Jacksonville as well as
25 the members of the PFPF that any outstanding disputes be
26 comprehensively and fully resolved through the final adjudication
27 of the claims in the *Wyse* litigation; and

28 **WHEREAS**, §7.201 of the Charter provides for hiring of
29 legislative counsel within the legislative branch whose purpose
30 shall be to advise and assist the Council in the achievement of
31 legislative policies and to perform such other related duties as

1 Council may by Ordinance direct; and

2 **WHEREAS**, the City Council under the Charter authority, desires
3 to invoke the provision for legislative counsel to advise on an
4 immediate and deliberate evaluation on current pension matters,
5 including *Randall Wyse, et al, vs. City of Jacksonville, et al*,
6 Case No. 3:13-cv-121-J-34MCR; now therefore

7 **BE IT ORDAINED** by the Council of the City of Jacksonville:

8 **Section 1. Appropriation.** For the 2014-2015 fiscal year,
9 within the City's budget, there are hereby appropriated the
10 indicated sum(s) from the account(s) listed in subsection (a) to
11 the account(s) listed in subsection (b):

12 (a) Appropriated from:

13 **General Fund - Transfer from Fund Balance**

14 JXSF011-38901 \$1,000,000

15 (b) Appropriated to:

16 **To be determined** \$1,000,000

17 **Section 2. Purpose.** The purpose of this appropriation is
18 to provide up to \$1,000,000 of funding for the purpose of hiring
19 special legislative counsel in advising City Council on existing
20 matters pertaining to pension reform including *Randall Wyse, et al*,
21 *vs. City of Jacksonville, et al*, Case No. 3:13-cv-121-J-34MCR as
22 the Council directs, and to supplement not to replace services
23 provided by the Office of General Counsel.

24 **Section 3. Waiving Section 108.505 (Special counsels),**
25 **Ordinance Code.** Section 108.505 (Special counsels), *Ordinance*
26 *Code*, is hereby waived to allow for the Council Executive Committee
27 to select the Council Legislative Counsel. The waiver of Section
28 108.505 is needed because the City Council needs to be able to
29 select the special outside counsel due to the unique nature of the
30 pension proceedings.

31 **Section 4. Council Confirmed.** An engagement letter shall

1 reflect the selection of Legislative Counsel, qualifications, scope
2 of service, and terms, and be confirmed by City Council.

3 **Section 5. Requesting One Cycle Emergency Passage**
4 **Pursuant to Council Rule 4.901 Emergency.** One cycle emergency
5 passage of this legislation is requested. The nature of the
6 emergency is that there is pending legislation, Ordinance 2014-386,
7 which proposes to resolve the issues raised in *Randall Wyse, et al,*
8 *vs. City of Jacksonville, et al,* Case No. 3:13-cv-121-J-34MCR a
9 settlement agreement; therefore, the instant legislation should be
10 considered concurrently with Ordinance 2014-386, as it is in
11 conflict.

12 **Section 6. Effective Date.** This ordinance shall become
13 effective upon signature by the Mayor or upon becoming effective
14 without the Mayor's signature.

15 Form Approved:

16
17 /s/ Paige Hobbs Johnston

18 Office of General Counsel

19 Legislation Prepared By: Paige Hobbs Johnston

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