

EMERGENCY ORDINANCE NO. 2566

ESTABLISHING A NEW HIRE POLICE MONEY PURCHASE DEFINED CONTRIBUTION PLAN AND A NEW HIRE FIRE MONEY PURCHASE DEFINED CONTRIBUTION PLAN

Intent and Purpose:

The reasons for adopting an emergency ordinance to establish a New Hire Police Money Purchase Defined Contribution Plan and a New Hire Fire Money Purchase Defined Contribution Plan follows:

The City Charter requires that pensions be approved by Ordinance. The failure to have done so previously causes the Council a great deal of concern and after many hours of discussion, both in public and otherwise, the Council now concludes that to wait and adopt such an ordinance in the normal course is inadvisable. An Emergency Ordinance, because it is effective immediately, will save 30 days in the application of such ordinances. While such a time frame might be argued by some to be irrelevant when compared to the five years prior, the Council finds that any time saved in complying with the Charter is of value.

Because the discussions between the City and Police and Fire new hire pensioners have brought to light the fact that the City at present does not have control of the plans, the timing issue is even more critical.

The Council finds and determines that the City should have management control at the earliest possible date so that the City can assure that those administrative, investment and other decisions concerning the plans are made by those with sufficient expertise, namely, the City Manager, the City Finance Director and the City Personnel Director. To allow the pensioners to make those decisions would be irresponsible.

The conclusion that the City should control the plan is also compelled by recent events whereby, because of lack of City control, the Police New Hire Plan has stated its intention to change investment managers and trustees. While the City does not know that that decision is a bad one, the Council finds that it is imperative that the City evaluate such decisions and consent to them prior to implementation. The City Council finds that a deliberate process, typically involving requests for proposals, which fully evaluates the costs involved, scope of investment risk, and a full understanding of fees to be charged, among other issues, is in the best interests of all concerned. The Council understands that such a proposal evaluation process has not yet been followed, to the possible detriment of the pensioners.

Certain members of the Police Plan have expressed privately their concern that the City does not control their pension assets. The Council finds and determines that it should exercise all possible oversight and control in order to assuage the concerns of like employees and that the City should do so at the earliest possible

moment; hence, the need for the emergency adoption of the ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRANT JUNCTION, COLORADO:

For the reasons stated, the Council finds and declares that an emergency exists, therefore;

The attached Exhibit establishing a New Hire Police Money Purchase Defined Contribution Plan and a New Hire Fire Money Purchase Defined Contribution Plan is hereby adopted as an Emergency Ordinance.

PASSED and ADOPTED this 15 day of April, 1992.

NAME

President of the Council

Attest:

Theresa F. Martinez

Acting City Clerk

ESTABLISHING A NEW HIRE POLICE MONEY PURCHASE DEFINED CONTRIBUTION PLAN AND A NEW HIRE FIRE MONEY PURCHASE DEFINED CONTRIBUTION PLAN

Statement of intent and purpose.

WHEREAS, Article XI of the Charter of the City of Grand Junction provides the exclusive and mandatory method for providing for pensions and pension matters, to wit, adoption of an ordinance. This ordinance is adopted in order to create a pension plan, for certain police and fire personnel, which comports with the required ordinance adoption process and other applicable laws; and

WHEREAS, the City Council recognizes a logic underlying the directive of Article XI which is to allow the citizens of the City the opportunity to refer the creation of such a plan and its terms to the voters, pursuant to Article XVI of the Charter; and

WHEREAS, the Council acknowledges that the General Assembly has adopted Article 30 of Title 31. The Council views such a statutory scheme as not legislating in all particulars or in a way that provides guidance for all questions. The Council views the establishment, amendment, administration, and workings of "alternative pension plans" as mostly local in character. To the fullest extent allowable by law, therefore, the Council intends and desires to legislate in this area of local concern, but only to the extent of adopting provisions which do not directly conflict with the laws adopted by the General Assembly. The Council's intent is to further explain and provide guidance, in

areas not addressed by the General Assembly, in this area of local concern; and

WHEREAS, the background, which will help to understand the need for the adoption of this ordinance, follows; and

WHEREAS, police and fire sworn employees hired by the City after 1978 were covered by the state-wide pension program administered by the Fire & Police Pension Association ("FPPA"). That statewide system, administered by the FPPA, was a defined benefit system. Those sworn employees who were hired after December 31, 1977, were beneficiaries of the "new hire" FPPA program; and

WHEREAS, around 1985, the City and the affected "new hire" employees decided to withdraw from the applicable defined benefit FPPA plan and to institute a defined contribution money purchase plan. Withdrawal from FPPA was expected to provide participants more control over their own financial futures and eliminate all possibility of unfunded liabilities by converting to a defined contribution plan in which the City guarantees a specific contribution rather than a specific benefit; and

WHEREAS, in December of 1986, plans were approved by the City Council by resolution; and

WHEREAS, these newly adopted plans were to become effective January 1, 1987. FPPA remitted to these new plans the monies accumulated on behalf of the Grand Junction police and fire "new hire" employees. FPPA provided an accounting for these monies that allowed each employee to receive a specific credit for all past contributions and earnings made on behalf of that employee; and

WHEREAS, FPPA withheld monies representing forfeitures. These monies were amounts the City had contributed, and earnings thereon, on behalf of employees who had separated from the City's service prior to vesting in the FPPA plans; and

WHEREAS, in February of 1987, the City joined with Littleton and several other Colorado cities in a lawsuit against FPPA. Eventually, the Court of Appeals in July of 1989, agreed with the cities and FPPA remitted to the City of Grand Junction, in March of 1990, approximately \$648,000; and

WHEREAS, the City's purpose in pursuing the litigation was to recoup taxpayer dollars paid by the City to the FPPA on behalf of persons who were no longer employed by the City, who had withdrawn their own contributions. The City-match contributions, on behalf of these ex-employees, were being withheld by FPPA. The City Council intended that the proceeds, if obtained from the FPPA, would be used to fund future City contributions to the police and fire pensions; and

WHEREAS, in April of 1987, the police and fire participants, or the boards of the respective pensions, purportedly amended the

money purchase plans to require that the City disburse to individual plan participants the approximately \$648,000 proceeds from the Littleton litigation. The City Council did not approve this amendment; and

WHEREAS, neither of the 1986 plans for police and fire has been amended to comply with federal statutory changes such as the 1986 Tax Reform Act, as amended, and related regulations. The City has engaged the services of tax counsel who has written a plan to comply with applicable federal and state laws. The adoption of a plan which qualifies under federal law is necessary to avoid a challenge that the plan is not "qualified" under the Internal Revenue Code; and

WHEREAS, since 1987 it has become increasingly apparent to the City that City management and oversight is needed and is beneficial; and

WHEREAS, the police and fire "new hire" pension boards have filed suit to compel the City to remit to them the FPPA forfeiture proceeds; and

WHEREAS, the City Council views the present lawsuit as an attempt: (1) to control the purse strings of the City; and (2) to create a windfall for the pensioners in excess of that authorized by the statutes and certainly in excess of that contemplated by the City Council;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

1. The Council finds and determines that it would be irresponsible if it did not adopt an ordinance which makes explicit (a) that control of any such pensions or plans shall remain with the Council; (b) that the Council reserves the right to modify the plan(s) over time, subject to limitations imposed by applicable law; and (c) the Council must reserve the right to alter the level of City contributions while complying with minimums required by applicable law.

2. Pursuant to Article XI of the Charter of the City, section 88, the attached "City of Grand Junction, Colorado Police New Hire Money Purchase Defined Contribution Retirement Plan" (hereinafter "Police Plan" or "Plan") and the attached "City of Grand Junction, Colorado Fire New Hire Money Purchase Defined Contribution Retirement Plan" (hereinafter "Fire Plan" or "Plan"), which by this reference are incorporated herein as though fully set forth, are adopted and established.

3. Except to the extent that any provisions thereof are inconsistent with any term or provision of this Ordinance or of the Police Plan or the Fire Plan, the alternative pension plan (as that term is used in Article 30 of Title 31 of the Colorado Revised Statutes), as more particularly described in the

Resolution of this Council on December 17, 1986, a true and correct copy of which is on file with the City Clerk (hereinafter referred to as "1986 Police Plan", "1986 Fire Plan" or "1986 Plan"), and any practices, funding and account creation pursuant thereto, are hereby ratified, effective nunc pro tunc January 1, 1987.

4. To the extent that any provision, practice or interpretation of either the 1986 Police Plan or the 1986 Fire Plan is inconsistent with or in conflict with any term or provision of the Police Plan or Fire Plan, respectively, the provisions of the respective Police Plan or Fire Plan shall control and govern.

5. Sections 5.1 (b) of the Police Plan and Fire Plan are not intended to, nor shall they be construed to, be a basis for compelling the City Council, or the management of the city, to pay to any pension board, pension plan, participant or beneficiary of any pension plan or board, any funds which were the subject matter in the case entitled City of Littleton, et al. v. Fire and Police Pension Assoc., 786 P.2d 458 (1989). Any monies or funds which the City of Grand Junction received from the Fire and Police Pension Association as a result of said litigation (hereinafter "Littleton funds") are not dealt with in the Police Plan nor in the Fire Plan nor in any of the provisions of the respective plans. Rather, the City Council finds and determines, as it did when it adopted the 1991 and 1992 annual appropriations ordinances and the budgets for the City for 1991 and 1992, that the Littleton funds shall be allocated and used by the City as directed by C.R.S. 31-30-1003(2), as has already been the actual practice of the City, to match employee contributions on a bi-weekly basis.

6. The Council finds that the adoption of the Fire Plan and the Police Plan, and the use of the Littleton funds, complies with the directives of the General Assembly. To the extent that the General Assembly has not preempted this area of the law, the City Council intends that the Police Plan, the Fire Plan and this ordinance shall provide such rules and direction.

7. Until such time as the duly constituted boards, created by the Police Plan and the Fire Plan, act, the respective trustees, administrators, and investment managers shall continue in their current capacities and roles. The City Manager shall cause such trustees, administrators and investment managers to be notified of the adoption of this ordinance and the adoption of the Police Plan and the Fire Plan.

8. The City Council intends that the sections, provisions, terms and paragraphs of this ordinance and the sections, provisions and paragraphs of the Police Plan and the Fire Plan are severable, and if any such section, provision, term or paragraph be declared unconstitutional, invalid or unenforceable by the valid judgment of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining sections, provisions, terms and paragraphs.

9. To the extent that any sections or provisions of Article 2 of the City Code are inconsistent with this ordinance or the Police Plan or the Fire Plan, such sections or provisions of Article 2 are deemed amended or repealed as may be required.

10. Each pay period, the Finance Director shall pay from the general funds of the City an amount equal to that mandated by state law, presently eight percent (8%) of the base salary of each participant in the Police Plan and the Fire Plan, but only so long as each and every one of the participants also pays an equal amount each such pay period (hereinafter the "contribution rate"). The City Council may, by ordinance, increase the contribution rate to a percentage in excess of the minimum required by state law, and, thereafter by ordinance, decrease the contribution rate back to a lesser amount not less than the minimum required by state law, for such periods and under such conditions as it deems appropriate.

11. Loans made prior to the effective date of this ordinance by either the board of the 1986 Police Plan or the board of the 1986 Fire Plan shall, notwithstanding the lack of authority in the Police Plan or Fire Plan, shall continue to be repaid pursuant to the existing terms and agreement, however, no additional loans, increased principal amounts or refinancings are authorized. Notwithstanding the foregoing, the Police Plan and the Fire Plan may authorize emergency loans, as provided in the respective plans.

12. The management and control of the Police Plan and the Fire Plan shall reside in the City Manager of the City and his designees, subject to the terms and provisions of the Police Plan or the Fire Plan, as the case may be.

13. When the City received the litigation proceeds in 1990, those funds were budgeted and expended to make the employer contributions as required by state statutes. That budgeting and those expenditures are approved and are to continue until the funds have been fully expended as specified in the respective budgets and as specified herein.

I HEREBY CERTIFY that the foregoing emergency ordinance entitled:

ESTABLISHING A NEW HIRE POLICE MONEY PURCHASE DEFINED CONTRIBUTION PLAN AND A NEW HIRE FIRE MONEY PURCHASE DEFINED CONTRIBUTION PLAN" was introduced, read, passed and adopted as an emergency, numbered E2566, and ordered published by the unanimous vote of the members of the City Council of the City of Grand Junction, Colorado, at a regular meeting of said Council held on the 15th day of April, 1992.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official Seal of said City this 16th day of April, 1992.

Theresa F. Martinez

Theresa F. Martinez, CMC
Acting City Clerk

Published: April 19, 1992