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CITY OF BURLINGTON, VERMONT
OFFICE OF THE CITY ATTORNEY AND
CORPORATION COUNSEL

MEMORANDUM

TO: CITY COUNCIL

FROM: RETIREMENT BOARD
PAUL SISSON, INTERIM CAO
NIKKI FULLER, ASST. CITY ATTORNEY

SUBJECT: UPDATE: RETIREMENT ORDINANCE CORRECTIVE ACTION

DATE: JUNE 13, 2012

Background: In January 2011, several amendments to the retirement ordinance were approved by the City Council to bring the ordinance into IRS compliance. These changes were necessary to maintain the plan's tax-qualified status and to aid in the City's effort to obtain a favorable determination from the IRS. One of the amended provisions was B.C.O. §24-19. This section previously prohibited persons hired at or after normal retirement age (65) from being members of the Burlington Employee's Retirement System (BERS). This language was stricken from the ordinance as a part of the January 2011 amendments.

The City recently received a favorable determination which includes a compliance statement. The IRS accepted the City's amendment of this provision, but also requires that we implement a plan to rectify the status of those affected. In short, it is not sufficient to simply amend the ordinance; we must also take corrective action and put the employees where they would be had there been no error.

Corrective Action: Under the amended provision, all employees must be members, including those hired at or over the age of 65 and all must contribute to BERS.¹ There are 5 current employees that did not become members of BERS when they were hired pursuant to the pre-amended §24-19. Below are the corrective actions to be implemented:

¹ Prior to 2006, employees did not contribute to the retirement system. The City made 100% of the contribution for each employee.

1. The 5 current employees that were affected will become members of BERS effective July 1, 2012 and begin making prospective contributions to BERS.
2. These employees will receive service credit from the date of their initial hire and will be placed under the plan effective at the time of their hire.
3. No contributions will be required from the employees prior to July 1, 2012. The Board, pursuant to its authority to correct errors in contributions under B.C.O. § 24-35, will credit those employees with having made any required contributions from the date of their initial hire or as of July 1, 2006, whichever is later. These missed contributions total approximately \$50,000. The expectation is that this amount will be funded in the FY13 fiscal year.
4. The employees will also be credited from their initial date of hire with what would have been the City's portion of contributions for those employees. The estimated amount of these contributions is \$324,000. Again, the expectation is that this amount will be funded in the FY13 fiscal year.

Conclusion: The retirement administrator has audited the records of BERS for the last 10 years to determine if there are former employees that might have been affected by the pre-amended ordinance. No employees that have left the City's employment in the last 10 years appear to have been affected. It is our hope and belief that a ten-year review will be the retroactive limit of any corrective action expected by the IRS.

We will continue to update you as we work through other matters identified by the IRS Compliance Statement.



BURLINGTON EMPLOYEES' RETIREMENT SYSTEM

James T. Strouse
Chairman of the Board
Robert Hooper
Vice-Chairman

Marina Collins
Retirement Administrator
802-865-7097
802-865-7142 (TTY)

June 19, 2012

John Doe

Dear Mr. Doe:

During a recent audit of our records, it has come to our attention that you should be a member of the Burlington Employees' Retirement System (BERS). You became a regular employee of the City on November 1, 1999 and at that time should have become a member of BERS as all employees are required to participate.

To resolve this issue, you will be given retroactive membership to the date of November 1, 1999. Since 2006, an employee contribution has been required. The City will make, on your behalf, any contributions you were to have made from July 1, 2006 to June 30, 2012, giving you an estimated current retirement benefit of between \$4,800 and \$6,400 per year. However, beginning on or about July 1, 2012, the City will begin deducting from your salary the 3% employee retirement contribution as outlined in the Burlington City Ordinance §24-29 , or as it may be amended, allowing you to accrue a greater retirement benefit for the future.

We realize you may have many questions, so please schedule a meeting with me to have any of your questions or concerns addressed and go over the benefit in detail. I can be reached at (802) 865-7097 or email me at mcollins@ci.burlington.vt.us

Sincerely,

Marina Collins
Retirement Administrator