

## ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Chapter 2.65 of the Lincoln Municipal Code relating  
2 to the Police and Fire Pension Plan A by amending Section 2.65.120, Trustee to Trustee Transfers,  
3 to provide, in the case of an eligible rollover distribution, for separate accounting for taxable and  
4 non-taxable amounts; amending Section 2.65.220, Qualified Retirement Plan, to provide that a  
5 member shall be 100% vested upon attainment of requirements for an age and service retirement and  
6 to provide that a deceased member's military service be counted for vesting purposes; and repealing  
7 Sections 2.65.120 and 2.65.220 of the Lincoln Municipal Code as hitherto existing.

8 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

9 Section 1. That Section 2.65.120 of the Lincoln Municipal Code be amended to read  
10 as follows:

11 **2.65.120 Trustee to Trustee Transfer.**

12 (a) For purposes of the Plan and compliance with Section 401(a)(31) of the Internal Revenue  
13 Code, this section applies notwithstanding any contrary provision or retirement law that would  
14 otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and  
15 in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover  
16 distribution paid directly to an eligible retirement plan specified by the distributee in a direct  
17 rollover.

18 (b) "Eligible rollover distribution" means any distribution of all or any portion of the balance  
19 to the credit of the distributee, except that an eligible rollover distribution does not include: any  
20 distribution that is one of a series of substantially equal periodic payments (not less frequently than  
21 annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life

1 expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period  
2 of ten years or more; any distribution to the extent such distribution is required under Section  
3 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross  
4 income; and any other distribution that is reasonably expected to total less than \$200 during the year.  
5 Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover  
6 distribution merely because the portion consists of after-tax employee contributions that are not  
7 includible in gross income. However, such portion may be transferred only (i) to an individual  
8 retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to  
9 a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code that  
10 agrees to separately account for amounts so transferred (and earnings thereon), including separately  
11 accounting for the portion of the distribution that is includible in gross income and the portion of  
12 the distribution that is not so includible; (ii) on or after January 1, 2007, to a qualified defined  
13 benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract  
14 described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for  
15 amounts so transferred (and earnings thereon), including separately accounting for the portion of the  
16 distribution that is includible in gross income and the portion of the distribution that is not so  
17 includible; or (iii) on or after January 1, 2008, to a Roth IRA described in Section 408A of the  
18 Internal Revenue Code. Effective January 1, 2002, the definition of eligible rollover distribution  
19 also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate  
20 payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal  
21 Revenue Code.

22 (c) “Eligible retirement plan” means any of the following that accepts the distributee’s  
23 eligible rollover distribution:

1 (1) An individual retirement account described in Section 408(a) of the Internal  
2 Revenue Code,

3 (2) An individual retirement annuity described in Section 408(b) of the Internal  
4 Revenue Code,

5 (3) An annuity plan described in Section 403(a) of the Internal Revenue Code,

6 (4) A qualified trust described in Section 401(a) of the Internal Revenue Code that  
7 agrees to separately account for amounts transferred into that plan from this Plan,

8 (5) Effective January 1, 2002, an annuity contract described in Section 403(b) of the  
9 Internal Revenue Code,

10 (6) Effective January 1, 2002, a plan eligible under Section 457(b) of the Internal  
11 Revenue Code that is maintained by a state, political subdivision of a state, or any agency or  
12 instrumentality of a state or a political subdivision of a state that agrees to separately account for  
13 amounts transferred into that plan from this Plan, or

14 (7) Effective January 1, 2008, a Roth IRA described in Section 408A of the Internal  
15 Revenue Code.

16 (d) "Distributee" means an employee or former employee. It also includes the employee's  
17 or former employee's surviving spouse and the employee's or former employee's spouse or former  
18 spouse who is the alternate payee under a qualified domestic relations order, as defined in Section  
19 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a  
20 nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the  
21 Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an  
22 individual retirement account or individual retirement annuity established for the purpose of

1 receiving the distribution, and the account or annuity will be treated as an “inherited” individual  
2 retirement account or annuity.

3 (e) “Direct rollover” means a payment by the plan to the eligible retirement plan specified  
4 by the distributee.

5 (f) In the event of a mandatory distribution greater than \$1,000 in accordance with the  
6 provisions of Section 2.65.045(b)(5) or Section 2.65.070, if the member does not elect to have such  
7 distribution paid directly to an eligible retirement plan specified by the member in a direct rollover  
8 or to receive the distribution directly in accordance with subsection (a), then the Plan Administrator  
9 will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan  
10 Administrator.

11 Section 2. That Section 2.65.220 of the Lincoln Municipal Code be amended to read  
12 as follows:

13 **2.65.220 Qualified Retirement Plan.**

14 The City intends that the Plan be a qualified governmental plan under Sections 401(a) and  
15 414(b) of the Internal Revenue Code, as amended. The Plan shall be administered so as to fulfill  
16 this intent, including but not limited to the following:

17 (a) Distributions from the Plan will comply with the requirements of Internal Revenue Code  
18 Section 401(a)(8) and regulations thereunder, including that forfeitures of benefits by any member  
19 or former member of the Plan will not be applied to increase the benefits that any member would  
20 otherwise be entitled to receive under the Plan. However, such forfeitures may be used to reduce  
21 employer contributions.

22 (b) Notwithstanding anything in the Plan to the contrary, a member shall be 100% vested in  
23 his or her benefit upon attainment of the requirements for a regular age and service retirement

1 benefit under Section 2.65.040(a), and a ~~A~~ member shall be 100% vested in his or her accumulated  
2 contributions at all times.

3 (c) Minimum Distributions. The Plan will pay all benefits in accordance with a good faith  
4 interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the  
5 regulations in effect under that section, as applicable to a governmental plan within the meaning of  
6 Section 414(d) of the Internal Revenue Code. The Plan is subject to the following provisions:

7 (1) Distribution of a member's benefit must begin by the required beginning date,  
8 which is the later of the April 1 following the calendar year in which the member attains age 70 ½  
9 or April 1 of the year following the calendar year in which the member terminates. If a member fails  
10 to apply for retirement benefits by the later of either of those dates, the Plan shall begin distribution  
11 of the monthly benefit as required by this rule in the form of a straight life annuity.

12 (2) The member's entire interest must be distributed over the member's life or the  
13 lives of the member and a designated beneficiary, or over a period not extending beyond the life  
14 expectancy of the member or of the member and a designated beneficiary.

15 (3) The Plan, pursuant to a qualified domestic relations order, may establish separate  
16 benefits for a member and nonmember.

17 (4) If a member dies after the required distribution of benefits has begun, the  
18 remaining portion of the member's interest must be distributed at least as rapidly as under the  
19 method of distribution before the member's death.

20 (5) If a member dies before required distribution of the member's benefits has begun,  
21 the member's entire interest must be either:

1 (i) Distributed (in accordance with federal regulations) over the life or life  
2 expectancy of the designated beneficiary, with the distributions beginning no later than December  
3 31 of the calendar year following the calendar year of the member's death, or

4 (ii) Distributed within five years of the member's death.

5 (6) The amount of an annuity paid to a member's beneficiary may not exceed the  
6 maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the  
7 Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury  
8 Regulation Section 1.401(a)(9)-6, Q&A-2.

9 (7) The death and disability benefits provided by the Plan are limited by the  
10 incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury  
11 Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death  
12 or disability benefits payable may not exceed 25% of the cost for all of the members' benefits  
13 received from the Plan.

14 (8) Notwithstanding the other provisions of this rule or the provisions of the Treasury  
15 Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the  
16 Internal Revenue Code based on a reasonable and good faith interpretation of that section.

17 (d) Compensation Limits

18 (1) Effective with respect to plan years beginning on and after September 1, 1996,  
19 and before September 1, 2002, the annual compensation of a plan member which exceeds \$150,000  
20 (as adjusted for cost-of-living increases under Section 401(a)(17)(B) of the Internal Revenue Code)  
21 shall be disregarded for purposes of computing employee and employer contributions to or benefits  
22 due from the Plan. Effective only for the 1996 plan year, in determining the compensation of an  
23 employee eligible for consideration under this provision, the rules of Section 414(g)(6) of the

1 Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall  
2 include only the spouse of the member and any lineal descendants of the employee who have not  
3 attained age 19 before the close of the year.

4 (2) Effective with respect to plan years beginning on and after September 1, 2002,  
5 the annual compensation of a plan member which exceeds \$200,000 (as adjusted for cost-of-living  
6 increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code) may not be taken  
7 into account in determining benefits or contributions due for any plan year. Annual compensation  
8 means compensation during the plan year or such other consecutive 12-month period over which  
9 compensation is otherwise determined under the plan (the determination period). The cost-of-living  
10 adjustment in effect for a calendar year applies to annual compensation for the determination period  
11 that begins with or within such calendar year. If the determination period consists of fewer than 12  
12 months, the annual compensation limit is an amount equal to the otherwise applicable annual  
13 compensation limit multiplied by a fraction, the numerator of which is the number of months in the  
14 short determination period, and the denominator of which is 12. If the compensation for any prior  
15 determination period is taken into account in determining a plan member's contributions or benefits  
16 for the current plan year, the compensation for such prior determination period is subject to the  
17 applicable annual compensation limit in effect for that prior period.

18 (e) Veterans' Rights.

19 (1) Effective December 12, 1994, notwithstanding any other provision of the Plan,  
20 contributions, benefits and service credit with respect to qualified military service are governed by  
21 Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and  
22 Reemployment Rights Act of 1994.

1 (2) Effective with respect to deaths occurring on or after January 1, 2007, while a  
2 member is performing qualified military service (as defined in Chapter 43 of Title 38, United States  
3 Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a  
4 member, are entitled to any additional benefits that the Plan would provide if the member had  
5 resumed employment and then died, such as accelerated vesting or survivor benefits that are  
6 contingent on the member's death while employed. In any event, a deceased member's period of  
7 qualified military service must be counted for vesting purposes.

8 (3) Beginning January 1, 2009, to the extent required by Sections ~~3401(h) and~~  
9 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (~~while~~  
10 ~~the individual is performing qualified military service~~ (as defined in Chapter 43 of Title 38, United  
11 ~~States Code~~ under Section 3401(h)(2) of the Internal Revenue Code) from an employer shall be  
12 treated as employed by that employer, and the differential wage payment shall be treated as earned  
13 compensation, ~~but contributions attributable to such differential wage payments shall not be made~~  
14 ~~unless and until the member returns to active employment and makes up the missed contributions~~  
15 for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue  
16 Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent  
17 manner.

18 Section 3. That Sections 2.65.120 and 2.65.220 of the Lincoln Municipal Code as  
19 hitherto existing be and the same are hereby repealed.

20 Section 4. Pursuant to Article VII, Section 7 of the City Charter, this ordinance shall  
21 be posted on the official bulletin board of the City, located on the wall adjoining the City Clerk's  
22 office at 555 S. 10th Street, in lieu of and in place of newspaper publication with notice of passage  
23 and such posting to be given by publication one time in the official newspaper by the City Clerk.

1 This ordinance shall take effect and be in force from and after its passage and publication as herein  
2 and in the City Charter provided.

Introduced by:

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Approved as to Form & Legality:

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City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2011:

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Mayor