

ORDINANCE NO. 12-1595

AN ORDINANCE AMENDING THE CODE OF THE TOWN OF SURFSIDE; RELATING TO THE RETIREMENT PLAN FOR EMPLOYEES OF THE TOWN OF SURFSIDE; AMENDING SECTION 2-176 OF THE CODE TO CLARIFY THE NORMAL RETIREMENT DATE FOR POLICE OFFICERS UNDER THE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside sponsors a defined benefit retirement plan for town employees;

WHEREAS, an Amendment to Section 2-176 of the Town Code is needed to further clarify the normal retirement date for police officers in the plan;

WHEREAS, the Commission of the Town of Surfside believes that the adoption of this amendment is in the best interests of the citizens and taxpayers of the Town;

NOW, THEREFORE, BE IT ORDAINED by the Town Commission of the Town of Surfside:

Section 1. SECTION 2-176, Service Retirement Allowance, is hereby amended and to be read as follows:

Sec. 2-176. Service Retirement Allowance.

(a) Normal Retirement Date. Each member who retires or otherwise terminates employment with the town on or after his normal retirement date, as determined below, shall be entitled to receive a service retirement annuity in the amount provided in subsection (c) of this section. Effective October 1, 1984, the normal retirement date for each member shall be the first day of the month coincident with or next following the earlier of:

- (1) For members who are police officers:
- a. The attainment of age 52 and the completion of 20 years of creditable service; or
 - b. The attainment of age 62 and the completion of 5 years of creditable service; or
 - c. The completion of 25 years of service; or
 - d. The completion of 15 years and 4 months of service if hired on a full time basis in March, 2003.

* * *

Section 2. All sections or parts of sections of the Town Code, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same, are hereby repealed to the extent of such conflict.

Section 3. Should this ordinance or any part thereof be declared invalid by a Court of competent jurisdiction, the invalidity of any part of this ordinance shall not otherwise affect the validity of the remaining provisions of this ordinance, which shall be deemed to have been enacted without the invalid provision.

Section 4. It is the intention of the Commission of the Town of Surfside that the provisions of this ordinance shall become and be made a part of the Code of the Town of Surfside, and that the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intentions.

Section 5. This ordinance shall become effective upon final passage.

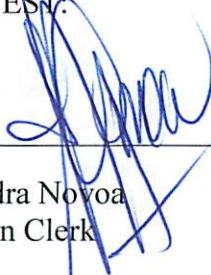
PASSED AND ADOPTED ON FIRST READING, this 13 day of November, 2012.

PASSED AND ADOPTED ON SECOND READING, this 11 day of December, 2012.



Daniel Dietch, Mayor

ATTEST:



Sandra Novoa
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**



Lynn M. Dannheisser, Town Attorney

Moved by: Vice Mayor Karukin
Second by: Commissioner Olchyk

Vote:

Mayor Dietch	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Vice Mayor Michael Karukin	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Marta Olchyk	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Joe Graubart	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Michelle Kligman	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 07-35060 CA 08
Consolidated with 07-17286 CA 08

JOHN DAVIS, individually,
and by and through FLORIDA
STATE LODGE, FRATERNAL
ORDER OF POLICE, INC.,

Plaintiffs,

vs.

TOWN OF SURFSIDE, a Florida
Municipality,

Defendant.


SETTLEMENT AGREEMENT

The Plaintiffs, JOHN DAVIS, individually, and by and through FLORIDA STATE LODGE, FRATERNAL ORDER OF POLICE, INC. ("Employee"), and the Defendant, TOWN OF SURFSIDE ("Town") hereby agree to this Settlement Agreement as follows:

1. Employee shall be reinstated to duty as a Police Sergeant and retroactive to October 12, 2007 reinstatement in the FDLE-ATMS database in good standing by replacing the current database code, and the Town will send an amended FDLE-CJSTC form 61 & 78 stating that the "Employee was reinstated with no break in service and the Employee's status code has been changed." The Employee will be assigned as a Federal Task Force Officer (TFO) with DHS-ICE, to the extent that the Employee can, within ninety (90) days of his reinstatement with the Town, secure such a position with no involvement of the Town, except for the Town agreeing to any necessary TFO standard assignment MOU with DHS-ICE. If requested by ICE, the Town will provide a neutral recommendation confirming dates of employment and entering and exiting salary, and allow ICE to conduct an appropriate background check, and shall have no other involvement or communications with ICE regarding Employee or his attempts to secure or maintain a position with DHS-ICE. If this Agreement is approved by the Commission on November 13, 2012, then on December 11, 2012 Employee will be reinstated and placed on non-disciplinary administrative leave. If the Employee fails to secure a position with DHS-ICE within ninety (90) days of his reinstatement on December 11, then

COLE, SCOTT & KISSANE, P.A.

DADELAND CENTRE II - 9150 SOUTH DADELAND BOULEVARD - SUITE 1400 - P.O. BOX 569015 - MIAMI, FLORIDA 33256 - (305) 350-5300 - (305) 373-2294 FAX



Employee agrees he will remain on non-disciplinary administrative leave with pay for the duration of his employment with the Town. The duration of Employee's employment with the Town shall be for one (1) year and four (4) months beginning December 11, 2012, and ending on April 16, 2014 or on the date that the Pension Board determines that he has achieved 15 years and 4 months of creditable pension service, at which time Employee shall retire and be entitled to pension benefits in accordance with paragraph 12 below. The Town agrees that final approval of this Agreement shall be placed on the Commission's November 13, 2012 agenda, and that if approved, this Agreement shall be binding on both parties. The parties agree that this Settlement Agreement shall not be maintained in the Employee's personnel file.

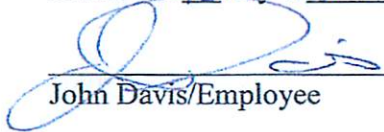
2. Employee will be placed at the Sergeant's rate of pay step 3 in accordance with the current FOP-CBA with assignment pay for detectives, which pay shall remain the same during the entire pendency of this Agreement unless otherwise agreed to in any successor CBA. Any payout of accrued time earned prior to reinstatement shall be paid out at a rate of \$41.61 per hour; any accrued time earned after reinstatement shall be paid out at the employee's then-current rate of pay.
3. All listed I.A. cases and reprimands will be "Marked Rescinded per the Adjudication of the Town Manager" in written form and stored separately from the personnel file. The Town represents that there are no current or open internal affairs investigations involving the Employee as of the date of this agreement.
4. If the ICE detachment terminates for any reason, Employee will return to non-disciplinary administrative leave with pay for the duration of his employment with the Town as defined in paragraph 1 above.
5. Town and Employee will enter a non-disparagement agreement for the term of employment and thereafter.
6. Town will give a neutral recommendation with dates of hire and position held at time of retirement.
7. Employee will waive his rights to Surfside off-duty and over-time details, all uniform shift bids and uniform duty during this agreement as outlined in the FOP-CBA and in accordance with the Undercover DHS-ICE TFO assignment. Any amount of overtime earned at ICE must be reimbursable to the Town by ICE and not Employee.
8. Employee may remain a Member of local FOP Lodge 135 as a matter of law, however, despite this, Employee voluntarily agrees in consideration for some of the benefits provided in this Agreement that he will not take any role in the local FOP Lodge 135 or attend any local union meetings during his term of employment and assignment, except for voting.
9. Employee will agree to limit all contact with the Town and Police Department to the Chief and/or Assistant Chief of Police only. Furthermore, the Employee agrees to have no contact with any Town employees / police personnel without the expressed authorization and or direction as issued by the Chief of Police during any time these employees are conducting Town business. This Agreement does not preclude employee from maintaining friendships with current Town employees and contacting them on personal issues while none of them are conducting Town business.

10. Employee agrees to refrain from visiting and/or utilizing the Police Department facility and/or Town Hall, unless authorized or directed to do so by the Chief of Police or his designee. Employee must be escorted at all times while in Town Hall.
11. As settlement of all monetary claims, and upon approval by the Town Commission of this Agreement, the Town will by no later than December 11, 2012, pay the total sum of \$200,000.00 (net of any Employee pension contribution as specified in this paragraph) toward the Employee's repayment of retroactive years in the pension system from October 12, 2007 to the date of reinstatement and toward Employee's buy-back of four (4) years and four (4) months of creditable years of service, if such years are determined to be creditable by the Town Pension Board. The remaining amount will be paid to the Employee in a lump sum payment by check made out to Phillips, Richard & Rind, P.A. Trust Account and mailed to 9360 SW 72nd Street, Suite 283, Miami, FL 33173. In addition to a lump sum payment of \$200,000 (net of any Employee pension contribution), upon reinstatement and contingent upon approval by the Town Commission, Employee shall be deemed to have earned 96 hours of sick leave and 235 hours of vacation. The Employee pension contribution for his retroactive years in the pension system from October 12, 2007 to the date of reinstatement is \$34,310.55, and his pension contribution for the buy-back of four (4) years and four (4) months of creditable years of service is \$108,273.00. These amounts will be paid by the Town on behalf of the Employee directly to the pension system from the \$200,000.00 settlement amount, and the remainder of \$57,416.45 shall be paid to the Employee in a lump sum as specified in this paragraph.
12. Employee will be reinstated on December 11, 2012 until his "voluntary retirement in good standing" (FDLE-ATMS Code 7A Retired) which will be on April 16, 2014 or the date upon which the Pension Board determines that he has achieved 15 years and 4 months of creditable pension service. The Town shall cause the pension ordinance to be amended so that Employee shall be entitled to retire with 15 years and 4 months of creditable service on April 16, 2014 and receive his full unreduced monthly pension benefit beginning on May 1, 2014. Upon retirement, Employee payout of any balances shall be based upon the then current Employee Handbook and Administrative Policies and Procedures. This will be so reflected in the FDLE ATMS database by the police administration; and the Employee will receive a police department retirement I.D. Card and his assigned badge. This term of reinstatement will be for 1 year and 4 months.
13. The Town will issue Police Department credentials and badges, departmental weapon, and other standard equipment deemed necessary by the Chief of Police, departmental I.D. Miami-Dade Court ID#, mail/subpoena routing method, departmental email if required by HIDTA as verified by the Chief of Police, vehicle, and fuel card (i.e. Miami-Dade County Fleet fuel card option), provided Employee is attached to ICE per paragraph 1 of this Agreement. If not attached to ICE, Employee will not be entitled to any of the foregoing.
14. The Town will forward electronically payroll communications, H.R. benefits routing and mandatory training / qualifications.
15. Upon reaching a final agreement and after approval of this Agreement by the Commission, the Town and Employee agree that each will request that Case No: 07-35060 CA 08, presently set for trial on November 19, 2012, be removed from the trial

docket. After approval by the Pension Board of Employee's retroactive pension contribution and buy-back, Second Reading by the Commission of any necessary pension ordinance changes, and Employee's reinstatement, Employee agrees to dismiss Case Nos. 07-35060 CA 08 and No. 07-17286 CA 08 with prejudice.

16. The Employee understands that this Agreement is contingent upon approval by the Town Commission. The Town administration agrees to advocate for approval of the Agreement by the Town Commission. If the Town Commission does not ultimately approve this Agreement, it is understood both parties will return to their current legal status and that the litigation will proceed as scheduled.
17. The Employee agrees that upon approval of this Agreement by the Town Commission, he will waive any and all rights he currently has against the Town under The Police Officer Bill of Rights, as more fully set forth in F.S. 112.532, et seq. Employee further understands that he is not "employed" by the Town for any other reason or purpose except to effectuate the terms of this Settlement Agreement. The Town recognizes that Employee during his work at ICE or while he is on administrative leave is a "Law enforcement officer" as that term is defined in F.S. 112.531. While Employee is assigned to ICE he will have full and complete rights under F.S. 112.532. If Employee is terminated by ICE, Employee will return to non-disciplinary administrative leave with pay and agrees to waive all rights under F.S. 112.532, except to defend himself against any claims of wrongdoing.
18. In addition thereto, the Employee agrees that he will sign a general release to be held in escrow waiving any and all claims he has against the Town, and fully releasing the Town and its agents, representatives, legal counsel, assigns and employees, from any and all claims, grievances, complaints, charges, disciplinary actions or otherwise that the employee has or may have against the Town, including but not limited to those set forth in Case No. 07-35060 CA 08 and Case No. 07-17286 CA 08, upon approval of this agreement by the Town Commission ("Approval"). It is the intent of the parties that this agreement satisfies all grievances by and between them and that all known or unknown claims, grievances, complaints, charges, disciplinary actions or otherwise are hereby settled and considered discharged by this agreement. The release will be released from escrow and delivered to the Town Attorney within three (3) days of dismissal of Case No. 07-35060 CA 08 and Case No. 07-17286 CA 08.
19. The Employee agrees that this Agreement sets forth the entirety of the Agreement between the Employee and the Town and the Employee hereby waives all other claims for monetary and non-monetary damages, injunction, attorney's fees, costs, and any and all other rights he may have from any source, against the Town or its current or former employees, agents or officials.
20. The Employee acknowledges that he has read and understands this Agreement, has had the opportunity to show it to independent legal counsel, and hereby consents to be fully bound by its terms and conditions.
21. The parties agree that due to time constraints, signatures need not be originals to make this Agreement binding upon them.
22. The Court will retain jurisdiction for purposes of enforcing this Agreement.

Dated this 13 day of Nov., 2012.



John Davis/Employee

Roger Carlton/Town Manager

Approved as to legal form and sufficiency as to the Town only:

Lynn Dannheisser/Town Counsel

GENERAL RELEASE

THIS GENERAL RELEASE ("Release") is entered into on this 13th day of November, 2012, by John Davis, individually, and by and through Florida State Lodge, Fraternal Order of Police, Inc. (the "Plaintiff") and the Town of Surfside, a Florida Municipality, ("the Defendant").

RECITALS

- A. The Plaintiff filed two actions against the Defendant in the Circuit Court of the State of Florida, Miami-Dade County, (Case Nos: 07-35060 CA 08 and 07-17286 CA 08), which arose out of his termination as a police officer with the Defendant. In the actions, the Plaintiff sought to enjoin the Defendant from terminating him and recover monetary and other damages.
- B. On November 13, 2012 the parties executed a Memorandum of Settlement Agreement which incorporates by reference this Release.
- C. In consideration of the payments made to Plaintiff as more fully set forth in the Memorandum of Settlement Agreement, the Plaintiff agrees to enter into this Release and fully and completely release the Defendant, and its agents, representatives, legal counsel, assigns and employees, from any claim, grievance, cause of action or otherwise, of any kind the Plaintiff currently possesses as of November 13, 2012, whether known or unknown, as more fully set forth in paragraphs 1 and 4 below.
- D. It is understood and agreed by the Parties that the Memorandum of Settlement Agreement and this Release arise out of a dispute between

them and represents a compromise of all claims, grievances and causes of action or otherwise between them, and it is not to be construed as an admission of liability, fault or wrongdoing in any manner on the part of the Defendant.

AGREEMENT

1. Release and Discharge

In consideration of the payments called for in the Memorandum of Settlement Agreement, the Plaintiff completely releases and forever discharges the Defendant, and each of their past, present and future employees, contractors, servants, officers, directors, attorneys, agents, servants, representatives, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms, or corporations with whom any of the former have been, are now or may hereafter be affiliated, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, claims, rights, damages, cost, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, and for compensation, which the Plaintiff now has, or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of Plaintiff's employment with the Defendant, or which are the subject of the claims Plaintiff filed against the Defendant as set forth in Recital A, above, including, without limitations, any and all known or unknown claims to the Plaintiff, which have resulted or may result from the alleged acts or omissions of the Defendant. This Release, on the part of the Plaintiff, shall be a fully binding and complete settlement between the Plaintiff, the Defendant and their past, present and future employees, contractors, servants, officers,

directors, attorneys, agents, servants, representatives, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms, or corporations with whom any of the former have been, are now or may hereafter be affiliate.

It is understood and agreed to by the Plaintiff that this Release is the broadest possible release, but that he is not releasing the Defendant for any claim or cause of action which may accrue after November 13, 2012 for actions that occurred after November 13, 2012.

In further consideration of the payments called for in the Memorandum of Settlement Agreement, the Plaintiff also agrees to dismiss in its entirety the claims it currently has pending against the Defendant, styled John Davis, individually, and by and through Florida State Lodge, Fraternal Order of Police, Inc. and the Town of Surfside, a Florida Municipality, (Case Nos: 07-35060 CA 08 and 07-17286 CA 08).

2. Payment

In consideration of the Release set forth above, and the payments and agreements contained in the Memorandum of Settlement Agreement, the Defendant agrees to make the payments and fulfill the obligations as more fully set forth in the Memorandum of Settlement Agreement.

3. Attorney's Fees and Costs

Each party hereto shall bear all attorney's fees and costs arising from the actions of its own counsel in connection with this matter, the Memorandum of Settlement Agreement, this Release and the matters and documents referred to herein, the filing of a Dismissal of the action, and all related matters.

4. General Release

The Plaintiff hereby acknowledges and agrees that the Release set forth in paragraph 1 is a general release. The Plaintiff further agrees that he has accepted payment of the sums specified in the Memorandum of Settlement Agreement as a complete compromise of matters involving disputed issues of law and fact and he assumes the risk that the facts or law may be otherwise than he believes. It is understood and agreed by the Plaintiff that this settlement is a compromise of a doubtful and disputed claim, and the payment is not to be construed as an admission of liability or wrongdoing on the part of the Defendant.

5. Delivery of Dismissal with Prejudice

Upon Plaintiff's reinstatement as set forth in the Memorandum of Settlement Agreement, counsel for the Plaintiff will deliver to counsel for the Defendant an executed Dismissal with Prejudice of the civil actions described in Recital A above. The Plaintiff has authorized Plaintiff's attorney to execute this Dismissal on his behalf and hereby authorizes counsel for the Defendant to file said Dismissal with the court and enter it as a matter of record.

6. Warranty of Capacity to Execute Agreement

The Plaintiff represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Release except as otherwise set forth herein and that he has the sole right and exclusive authority to execute this Release and receive the sums specified in it; and that he has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Release.

The Plaintiff further represents that he enters into this Release voluntarily and has not been coerced or influenced to execute the Memorandum of Settlement Agreement or this Release in any manner.

7. Confidentiality

The Parties mutually agree that to the extent allowed by law, given the Defendant's status as a Florida municipality, neither they nor their attorneys or representatives shall reveal to anyone, other than as may be required by law, any of the terms of the Memorandum of Settlement Agreement, this Release or any of the amounts, numbers or terms and conditions of any sums payable to Plaintiff thereunder.

8. Entire Agreement and Successors in Interest

The Memorandum of Settlement Agreement and this Release contain the entire agreement between the Plaintiff and the Defendant with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

9. Representation of Comprehension of Document

In entering into this Release, the Plaintiff represents that he has relied upon the legal advice of his attorneys, who are the attorneys of his own choice and that the terms of this Release have been completely read and explained to him by his attorneys, and that those terms are fully understood and voluntarily accepted.

10. Governing Law

This Release shall be construed and interpreted in accordance with the laws of the State of Florida.

11. Additional Documents

The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Release.

12. Disputes

The Parties agree that the Court shall retain jurisdiction of this matter in the event any disputes arise regarding the Memorandum of Settlement Agreement or this document.

13. Effectiveness

This Release shall become effective following execution by the Plaintiff.

Executed at Miami, Florida, this _____ day of November, 2012.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this day of _____, 2011.

IN THE PRESENCE OF:

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

SS:

John Davis

Sworn to and subscribed before me this ____ day of November, 2012, by John Davis, who is personally known to me or who has produced as identification

NOTARY PUBLIC