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Via Email: [mryan@sunrisefl.gov](mailto:mryan@sunrisefl.gov)  
Copy to City Attorney: [TMoss@sunrisefl.gov](mailto:TMoss@sunrisefl.gov)

Honorable Mayor Michael Ryan  
City of Sunrise  
10770 W Oakland Park Blvd  
Sunrise, FL

Re: Response to the questions posed to the Chairman for the City of Sunrise Police  
Officers' Board of Trustees

Dear Mayor Ryan:

This letter is in response to your questions posed to the Chairman for the Sunrise Police Retirement Plan. The Board requested that it be prepared by the Service Providers for the Plan since we are in the best position to answer your questions on behalf of the Board. The responses were prepared by me, with input from the Administrator and review by the Consultant. WE hopefully answered all of your questions by addressing the issues in its entirety. If you have any questions remaining after reading this letter, please feel free to reach out to the Plan Administrator for follow-up and of course, we welcome you to all Board meetings.

I. Dual Office Holding: Active Police Officers are considered public officials in some instances, and Trustee on a pension board is a public official. The Florida constitution prohibits a public official to hold more than one office under Article II, section (5) and acceptance of one office may result in the vacancy of the first office. The Florida Constitution does not define the terms "office" or "officer" for purposes of the dual office-holding prohibition nor has the Legislature defined the terms. The Florida Courts have held that "office implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office, while an "employment" does not comprehend a delegation of any part of the sovereign authority." *State ex rel. Holloway v. Sheats*, 83 So. 508, 509 (Fla. 1919). In determining whether police officers are considered public officers for purposes of dual office holding the Florida Attorney General has stated, "it is the powers a law enforcement officer may exercise, particularly the authority to

arrest without a warrant and to carry a firearm in carrying out his duties...that characterize the law enforcement officer as an ‘officer’”. Attorney General Opinion 77-63.

There is an exception to this law where state statute or municipal ordinance state that a public official is to hold a second office; this is called an Ex-Officio position and allows the public official to hold a second office<sup>1</sup>. The City of Sunrise City Code, contained a provision, since I believe inception (1989.) that the two city appointees are to be city residents who are police officers who are members of the Plan, thereby creating an ex-officio position allowing active officers to sit on the board without violating the dual office-holding prohibition. When the City changed the ordinance in 2024 and removed the language requiring police officers to be the city appointees, they removed the ex-officio exception. Once that was removed, it could be considered a dual office holding for active police officers to sit on the Board (other than the two elected members as required by state statute) and the current police officer trustees were replaced by non-police city employees. It is clear that the officers were permitted under City Code to be appointed as Trustees. Certainly in the most recent Boards, the appointed officers were highly decorated officers and also carried out their fiduciary duties faithfully.<sup>2</sup>

II. Actuarial Study: This issue is addressed as a benefit for one of the Collective Bargaining Units. It is important to note that any study done on behalf of the Plan is a study for all members of the plan. We have also attached a letter that was sent to the City Attorney and City Manager on September 6, 2024, in response to a letter to the Plan from the City Attorney. It is unclear if the City Manager shared the correspondence with the commission along with having raised the issue again at the March 6 commission meeting, so it is reiterated here.

You state that the “the study was not requested by the City.” Perhaps you are unaware that this issue has been raised, researched and discussed amongst City personnel before the actuarial study was requested. No one is disputing that such a change is a subject of mandatory bargaining, nor did the Board in any way circumvent this process. There is no “collusion” between parties. Quite simply, the Board responded to a request from the City personnel to assist in determining the cost of a potential benefit that may be up for discussion, and had requested information relevant to such a change.

You also allege that the “board is not involved in the consideration or approval of a pension benefit change.” The City of Sunrise,

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<sup>1</sup> “It has long been a settled rule in this state, however, that, assuming a particular officeholder is subject to the dual office-holding prohibition of Article II, section 5(a), Florida Constitution, a legislative designation of that officer to perform *ex-officio* the function of another or additional office is not a holding of two offices at the same time in violation of the Constitution, provided the duties imposed are consistent with those being exercised.” Florida AGO 2003-20.

<sup>2</sup> While I believe the Attorney General’s Opinion regarding police officers and dual officer holding as it applies to holding a pension board position may be argues, there is no constitutional sanction for its violation and in fact, even if found to be a dual office-holding, Florida law provides that the officer becomes a *de facto* officer to the first office. Gryzik v. State, 380 So. 2d 1102, 1104 (Fla. 1st DCA 1980).

Florida Municipal Code (“Code”) specifically states that “the Board may make recommendations to the Commission on pension benefit changes.” (Code Sec. 11-47). It would be remiss of the Board to make any recommendations without presenting the cost of such a change. You quote that it states in Ch. 185, Florida Statutes, and “nothing herein shall empower a board to amend provisions of a retirement plan without approval of the municipality.” We agree completely and in the history of the Plan, the Board has never amended provisions of the ordinance, never attempted to amend the ordinance, nor would anyone ever consider that the Board had that ability. They did however prepare themselves to make a recommendation as specifically authorized by the Ordinance.

To reiterate, the study would apply all police pension members and was directed by the Chairman and ratified by the Board. The Chairman requested the study at the behest of high-ranking charter officer(s) of the City of Sunrise in order to be prepared for further discussions on this issue. The Chairman had the authority to act between meetings and at the first meeting thereafter, the action was brought before the board of trustees and ratified. It was clear that in order to address this issue, the City needed to know the costs involved and this Board had always considered issues affecting the City. It is unfortunate that as you can read in the attached letter, in doing so, those very same decorated officers felt threatened by the City accusing them of criminal acts.

III. The Pension Office Lease: The office lease began on June 18, 1998 and the management representative for the building is Jesus Rodriguez. When the lease began in June 1998, the cost per square foot for rental was \$10.50. The rent was negotiated to \$15.00 per square foot in 2014 and will remain such through the term of the current three-year lease extension which expires January 1, 2027.<sup>3</sup>

The Board of Trustees reviews the terms of the lease and may extend the lease. Extensions are not automatic. According to the most recent City of Sunrise CAFR the current commercial vacancy rate in the city of sunrise is 8.5% and average market asking rent is \$30.41 per square foot. In addition to rent, the Plan covers the expenses necessary to maintain the office and conduct the business of the plan which includes a copier, internet, insurance, phone system. The Board has chosen to maintain its own office space for several reasons:

1. The day-to-day business of the board of trustees is conducted by staff who maintain the necessary documents in the office. This allows the Board to maintain the official records of the members of the plan in-house and safeguarded like an evidence room in a police setting. All within its control which would not be available at a third party storage center.

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<sup>3</sup> Trustee Alfredo Montano is contacting the management company to see what terms are available for possibly terminating the lease prior to the end of the lease period.

2. The “Office of Retirement” was established in 1998 to hold the Board of Trustees and the administration to the highest level of service to our active and retired personnel. Unlike the other city plans who have engaged administrators from anywhere in Florida, this Board has always wanted an administrator who can be readily available to the members. As Sgt. Arroyo stated at a recent Board meeting, the Pension Office has been a place that members can feel welcome and as part of a family knowing that the City of Sunrise cares about them and their families and provides a welcoming place to have their questions answered.<sup>4</sup> It is unfortunate that Sgt Arroyo felt he needed to end the use of the Pension Office and sadly made the motion to do so at the most recent pension meeting.

In 2011, it was determined that the extra office area can be subleased to offset some of the cost. The current administrator offered to contract with the Board at a cost based upon the amount of square footage used for any pension work for plans other than the City of Sunrise. In terms of the Subleased Office, it is fully operational on its own and has its own computers, copy machine, scanner, telephone system, furniture, filing cabinets. The only thing shared is the internet, which a shared Wi-Fi in a public setting. The sublease payments have been documented by the City of Sunrise Finance Department who provides the trial balances for the Plan’s audit each year.<sup>5</sup>

The lease and extensions are approved by the Board and discussed at meetings. It is not done in a vacuum as, in addition to maintaining the plan trial balances, the City of Sunrise has traditionally sends representatives from the Finance Department to attend every pension board meeting. The finance director has been present many times and all minutes are provided to the City and on the Plan website. It is disingenuous for the City Manager or anyone else to imply or state outright that city administrations for the last 27 years were not aware of the Board’s decisions.

The City is also aware that every year the Plan conducts its own independent audit using an outside CPA firm. As part of that audit, the auditor is required to assess the plan’s expenses. When the expense assertions were raised last year by the city manager, the independent auditor wrote the following to the Board of Trustees as it related to the administrative expenses of the Plan. *“The annual administrative expenses as a percentage of the Plan’s net position restricted for pensions appear to be reasonable and consistent with other plans we have experience auditing. Our audit did not reveal any instances of fraud, waste, or abuse.”*

The Plan is also required to have an actuarial valuation each year. On April 14, 2025, the Board of Trustees received the actuarial valuation for the Plan where the Plan stated that the administrative cost for the Sunrise Plan is .15%. The Actuary reported that he has over 130 clients and that the average administrative cost of his 130 clients was in excess of .30% which is double that of the Sunrise Police Plan.<sup>6</sup>

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<sup>4</sup> In a shocking display, the City Manager chose to ridicule Sgt. Arroyo’s heartfelt comments in a public forum and on the record. At the most recent meeting, Sgt Arroyo stated that the City Manager privately apologized but we all felt the pain in his eyes as he discussed it.

<sup>5</sup> To date in excess of \$45, 000 has been paid toward the pension office expenses.

<sup>6</sup> There were questions regarding specific office items:

IV. Pension Plan Administrator contract: The contract with the current administrator was first entered into in 2003. It is an open contract and may be modified by the Board at any time. Administrative rates are determined solely by the Board of Trustees which takes into account the performance of the Administrator and staff. If it decides that an increase is warranted then the actuary provides the Board with the CPI on an annual basis to consider. This is done at a public meeting and with city finance representatives present. Although there were references to an annual 5% increase, the average payroll adjustment since 2013 equals 2.9%. During that same period, the CPI was 2.7%.

There is a separate contract for the Plan's secretary who is assessed increases in the same manner. The position of the Recording Secretary predates the Office of Retirement originating in the 1990's. The current Recording Secretary is the third person holding that position. She has served the Board of Trustees and the active and retired members of the Plan with nothing less than dignity and integrity for the last 20 years. The City Manager's public allegation that she is merely the secretary for the Plan Administrator doing his personal business is unfounded. The Recording Secretary has her own job description and has taken on additional duties over the years without an issue. We serve as a team, a form of checks and balances, which is paramount when dealing with the vast amount of funds of the Plan. The Office of Retirement is more accountable and more transparent because of her painstaking efforts. Again, the average payroll adjustment since 2013 equals 2.9%. During that same period, the CPI was 2.7%.

It is unknown whether previous Boards have done a comparison of Administrator costs. It is a difficult assessment since every plan has unique issues and procedures and this Board demanded that not only the plan but the members be afforded attention as quickly as possible. Since this Administrator and staff have performed exceedingly well for the Plan and its members, in order to afford no disruption to either, the Board did not raise any reason for change.

There had been a persistent issue through the years with retirement calculations due to the inability of the City of Sunrise Payroll Department to provide electronic payroll data. This was compounded by several issues due to failures with a rollout of a new payroll system. In 2020, the Board of Trustees determined the necessity for data entry personnel to convert the hardcopy pdf payroll printouts that the City provides for the Board to calculate the benefits. The Board Actuary,

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4 cases of paper ordered between March and December 2023 which for the sole use of the Sunrise Police Plan

6 cases of bottled water purchased during a period of 3 board which since 1998 the water has been used for our volunteer Trustees, Investment Managers, Presenters and Members of the Plan when they come into the Office of Retirement.

Sam's Club card membership purchased by Board authorized by the Board for purchase of office materials but has been closed since 2023.

Gaming computer purchased and sent to an address in Loxahatchee which belongs to the Plan's IT representative for him to set up for Plan usage. It was purchased because it was the best equipment for the best price to use for Plan business and meetings.

The candles purchased by Bath and Body works was made to mask the odor from the adjoining City of Sunrise Utility Plant. It was looked upon as a reasonable pension plan work accommodation for Mrs. Ostrander who has a sensitivity issue with foul odors.

who is tasked with preparing the calculations, developed a program for the “hard copy payroll data from the city” to be keypunched. This is done at a cost to the Plan of \$125.00 per calculation that the key punch representative is paid for this service. If the Actuary had to perform this service in order to complete each member’s retirement calculations, it would have been two to three times that cost.

V. Credit Card: The Administrator and each Trustee may be issued a Plan credit card for use only for pension travel. This originated because the Board determined that as volunteers who are required to get education, Trustees should not be obligated to use their own personal funds to attend an educational conference and have to wait for reimbursement. At a recent meeting, it was discussed how the Plan sustained the cost of taxes when the hotel refused to grant a tax exemption since the member did not have a credit card in the Plan name. The cost of the tax was more than the annual cost of the credit card. If any trustee does not wish to have a credit card, we will simply not order him/her one. The Board determined that the cost to the Plan for the cards is outweighed by the savings to the Plan.

The credit cards and monthly bills are paid by the plan through a warrant which is created for each bill being paid. The Board Chairman and Board Secretary reviews and approves the payment and then at the board meeting, each invoice is detailed in a report that ratified by the Board. A policy is in place for the use of the credit cards and a policy is in place where bills which are not for contractual vendors are sent to trustees in advance.

VI. Travel/Trustee Training Program: this was also addressed in the September 6, 2024 letter directed to the City Attorney and for the benefit of the City Manager. Despite the previous correspondence, the City Manager raised this issue again at the commission meeting. He implied that anyone<sup>7</sup> can go to a conference at the expense of the Plan and failed to relay to the Commission and public the Plan’s response to this issue. The Plan’s training policy is attached and clearly indicates criteria by which the Board may approve someone to attend an educational conference. In response to the accusations in the City Attorney’s letter of misuse of funds for training, Plan attorney wrote:

Your second claim of a “misuse of funds” is the use of funds to educate members of the Plan who express an interest in becoming a trustee. The Board is given authority by the City to adopt a travel policy providing for members of the Board to attend trustee educational events. In Code Section 11-13 the Board is given the following power and duty:

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(7) To make such rules and regulations as are necessary for the effective administration of the plan;

Also, Code Section 11-13, subsection (c) provides in part that:  
The board members shall be the named fiduciaries of the fund

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<sup>7</sup> In fact, the City Manager alluded to “friends” attending the conference

and, in that capacity, shall hold, manage, control, and safeguard the fund solely in the interests of members of the plan in the following manner:

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(5) To administer the plan funds in accordance with the laws, statutes, ordinances, rules and regulations of the board, documents and other instruments governing the fund.

The Board is mandated to administer the plan in accordance with a number of different instruments, including the regulations of the Fund. Please be aware that, in accordance with the authority and duties granted to it, by the City, the Board has adopted a written “Pension Plan Trustees- in Training – Program” and it is attached. This policy specifically gives the Board the option to send a Plan member who is interested in becoming a trustee the ability to get them educated by sending them to educational events.

Your statement that pension boards are required to follow the travel and per diem requirements under Section 112.061, Florida Statutes is **not correct**. Section 166.021(9) (b) specifically provides that they are not required to do so, as follows:

Notwithstanding s. 112.061, the governing body of a municipality or an agency thereof may provide for a per diem and travel expense policy for its travelers which varies from the provisions of s. 112.061. Any such policy provided by a municipality or an agency thereof on January 1, 2003, shall be valid and in effect for that municipality or agency thereof until otherwise amended. A municipality or agency thereof that provides any per diem and travel expense policy pursuant to this subsection shall be deemed to be exempt from all provisions of s. 112.061. A municipality or agency thereof that does not provide a per diem and travel expense policy pursuant to this subsection remains subject to all provisions of s. 112.061.

Your statement that “no other public pension board has a similar policy” is also incorrect. There are many plans throughout the state who send non-trustee plan members to get educated, *including the Sunrise Fire Board* who has sent two non-trustee plan members to FPPTA conferences for education and certification. This is a prudent practice by the Boards across the

state, especially for a Board such as Sunrise Police which only has two-year terms, instead of the four-year terms allowable by state law.

I am certain that you recognize the formidable task of fiduciaries to plans that are responsible for the retirement of first responders. They are responsible for prudent investment decisions, for maintaining benefits, for determining the appropriate assumptions and reviewing all plan documents. In fact the City Ordinance provides that: the Trustees must act “With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; “This is the same as Florida laws. This is an objective standard, and trustees are required to act in accordance with being familiar with such matters. This standard is applicable from the day they begin as a Trustee.

The amount of laws, documents and responsibility is daunting which is why, as you rightly point out that the state law requires education. However, and especially with a city that only allows for two year terms, the learning curve can take up the members’ entire term and more. Plans across the state recognize this and provide for those interested members to receive education. While there is no certainty that those trained go on to become trustees, especially in Sunrise, there are few people interested. In fact, for the Police Board, only one person, Darwin Arroyo, has attended the meetings and requested training. He has been outspoken in his desire to be a Trustee and may be one of a very few running, if not the only one, to replace the member that has resigned.

In fact, Sgt. Arroyo did become a Trustee for one of the prior board members that resigned and was able to come to the Board with a foundation of pension knowledge. It is important to note, that in response to the Plan Attorney pointing out that the Fire Board has had the training in place for years, often sends at least two non-board members and has never been questioned, the Asst. City Manager, Emilie Smith, stated at a pension meeting that it was acceptable because the Fire Board used recapture commissions and not trust funds<sup>8</sup>. She was informed that 1) recapture commissions are trust funds, and 2) the Sunrise Police plan has also received recapture funds for

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<sup>8</sup> This was prior to Ms. Smith being appointed to the Police Board so it was understandable that she was not aware of these caveats.



many years. In fact, to date the Police plan has received over \$166,537.12 in recapture monies and has spent only \$2,306.76 for the training program.

VII. Recording for November 2024 Pension Board Meeting: The Board of Trustees has delegated to the Plan Administrator the task of minutes and recording of meetings. The meeting is recorded through a Digital Recording Program through Soniclear. Copies of the recordings are provided whenever requested.

At some point during the meeting, the administrative staff realized there were issues with the recording. As addressed to the City Attorney by the Board Attorney, there was no obstruction, no editing and no withholding of public records. The pension meetings are recorded digitally with the use of a board approved program called “Soniclear” on a pension plan laptop. At this meeting, the program failed, and the laptop was restarted several times. During this meeting staff took screen shots of the laptop to send to Soniclear to address these failure(s). Staff also e-mailed Soniclear during and after the meeting to have the program evaluated. Soniclear remotely addressed the issue and remedied the matter. The program was used at the April 14, 2025, meeting without incident. However, at the Board meeting on April 14, one of the Trustees stated on the record that he knew Soniclear very well, that it can be manipulated and he did not trust the Administrator. The Attorney for the Plan felt obligated to investigate this matter further and had a conference call with Alan Bartholomew, President of Soniclear. He provided 163 pages of documents showing the data from the November meeting recording and indicated where the data shows persistent issues with the network. He stated that this resulted in faults in the recording. When asked specifically about the ability of someone to manipulate the data showing in the recording documents, he stated that he wrote the program and would be unable to do so and that it would take some genius spy level hack to do so. He said he is clear that there was no manipulation but that if the Board wanted to pursue it further it would take a specialized forensic auditor of this type of data program to look into it in any more detail. I was satisfied that there was no indication of manipulation on the part of the Administrator and did not investigate further.

The police pension board has never wavered from its requirement to be open and transparent. For the last decade official minutes have been publicly posted on our website. Investment reports are posted on our website. The website is constantly updated to keep the members informed in an open transparent manner. Independent audit reports are posted on the website. Actuarial valuations are posted on the website. Chapter 112. Reports are posted on the website. Senate bill 534 reports are posted on the website. The annual administrative budget is posted on the website. This is not something other City of Sunrise boards can claim. The Police Pension Board has always insisted on providing as much information as possible to not only the City but members with the public as well. The access to these reports is intentional and deliberate.

VIII. Administrative Costs compared to the Fire and General Board: Ms. Smith has brought to the Board’s attention that the administrative costs for the Police Plan are about \$100,000 more than the Fire and General plan. As discussed throughout this letter, each board determines the appropriate expenses for its plan knowing that each plan’s needs and demands are unique. That being said, every year, the Board of Trustees gauge the administrative expenses on a large pool of pension plans, not just two other local plans. The Administrator has provided the Board with

comparisons of other plans throughout Broward County many of which were significantly higher. As part of the audit process, the auditors consistently report that the police plan expenses are reasonable. The Police Board also details this information on a non-required schedule within the audit for transparency purposes. The Board actuary also reports administrative expenses as well. As stated previously, at the April 14th meeting the actuary compared our Police Plan to 130 of his other clients and found on average our Plan expenses to be 50% less than his other plans.

Mayor, we hope that this provides you with a better understanding of the issues that the City Manager has raised again, the questions you posed and the Board's positions. We know that the Board wishes to move on, and continue to perform its fiduciary duties in the same exemplary manner as the prior police boards. Hopefully that means an agreement on a fifth member as well.

We appreciate your interest and your input and are happy to respond further and/or expound on anything. As always, we welcome you to any pension meeting.

Sincerely,

*Richelle Levy*

Richelle Levy  
Lorium Law