

THE TOWN OF FOREST HEIGHTS

RESOLUTION NO. 76-13

**A RESOLUTION TO AMEND AND CLARIFY THE LIMITS AND CONDITIONS ON EMPLOYEE WITHDRAWALS PREVIOUSLY ESTABLISHED BY RESOLUTION 55-12 WHEREIN THE COUNCIL ELECTED TO AMEND THE ICMA-RC 457 GOVERNMENTAL DEFERRED COMENSATION PLAN DOCUMENT TO LIMIT THE APPROVAL OF EMERGENCY WITHDRAWALS BY PARTICIPATING EMPLOYEES OR BENEFICIARIES AND PURSUANT TO SAID RESOLUTION FURTHER RE-AUTHORIZED OR RATIFIED THE IMPLEMENTATION OF AN EMPLOYEE LOAN PROGRAM TO ALLOW PARTICIPANTS IN THE RETIREMENT PLAN TO TAKE LOANS FROM THE PLAN, TO RE-APPROVE OR RATIFY LOAN APPROVAL GUIDELINES BY AGREEMENT WITH ICMA-RC, AND FURTHER AUTHORIZE THE TOWN ADMINISTRATOR TO EXECUTE A LOAN ADMINISTRATION AGREEMENT OR OTHER DOCUMENTS ON BEHALF OF THE TOWN, AND GENERALLY RELATING TO EMPLOYEE PENSIONS AND BENEFITS.**

Introduced by: Mayor Jacqueline Goodall

**WHEREAS**, pursuant to Section 33-68 of the Town Charter, the Town shall have the power to do all things necessary to include its officers and employees, or any of them, within any retirement system or pension system under the terms of which they are admissible, and to pay the employer's share of the cost of any such retirement or pension system out of the general funds of the Town; and

**WHEREAS**, pursuant to Section 2.3 of the Town Ordinance Code, the Town Council is authorized and empowered to provide the employees of the Town with benefits, including, but not limited to, death benefits, surgical, hospitalization and other sick benefits, under group insurance plans or otherwise, and

**WHERAS**, the Mayor and Council previously approved and directed by Resolution 30-11 that the Town Administrator shall terminate a 401 Plan previously held by Reliance Trust Company and transfer said plan to ICMA-RC under the ICMA-RC 401 Money Purchase Plan, and that the Town Administrator was further directed to arrange for employee participation solely in a 457 Deferred Compensation Plan (Plan No. 306814), made available through ICMA-RC and funded, in part, by employer contributions of 6% of each participant's allocated compensation, and said resolution further named the Town Administrator as Plan Administrator of said 457 Deferred Compensation Plan; and

**WHEREAS**, the Mayor and Council previously approved by Resolution 53-11 ICMA-RC's Letter Agreement dated September 28, 2011, thereby establishing a Vantagepoint Payroll Deduction IRA Program for the Town's employees; and

THE TOWN OF FOREST HEIGHTS

RESOLUTION NO. 76-13

**WHEREAS**, the Mayor and Council previously considered a resolution to allow under the new retirement plan the ability of participants to take or obtain loans from the 457 Deferred Compensation Plan; and

**WHEREAS**, the Mayor and Council finds that an employee's "account" is defined in Section 2.03 of the 457 Gov't Deferred Comp. Plan & Trust document (the "Plan") which includes the "Participant's Deferred Compensation" and reflecting any distributions (i.e., deductions), and that "Deferred Compensation" is defined in Section 2.07 as "[t]he amount of 'Includible Compensation' otherwise payable to the Participant...", and that "Includable Compensation" is defined in the Plan in Section 2.12 as "compensation" further defined by Section 415(c)(3) of the [IRS] Code; and

**WHEREAS**, the Mayor and Council further finds that Treas. Reg., Section 1.415-2(d)(2) provides a detailed definition of IRC 415(c)(3) compensation which includes all wages, salaries and other amounts received that are includible in the employee's gross income, and items which are always required to be excluded from compensation for purposes of IRC Section 415 limitations under Treas. Reg. 1.415-2(d)(3) are contributions made by the employer to deferred compensation plans to the extent that the contributions are not includible in the employee's gross income; and

**WHEREAS**, the Mayor and Council previously found in the recitals of Resolution 55-12 and hereby find that it was in the best interest of the Town and its employees that the new retirement plan afford participants in addition to obtaining loans from their 457 Deferred Compensation Plan accounts that said employees also be allowed to request distributions from their accounts for unforeseeable emergencies subject to certain limitations.

**NOW THEREFORE, BE IT RESOLVED** by the Mayor and Town Council of the Town of Forest Heights that said governing body hereby elects to ratify, readopt, amend and clarify interpretation of the ICMA-RC 457 Governmental Deferred Compensation Plan and Trust Document to no longer permit, except as otherwise stated herein below, any unforeseen-emergency withdrawals pursuant to Section 7.07 or in-service distribution of rollover contributions pursuant to Section 7.08 of said Plan and Trust Document; and

**BE IT FURTHER RESOLVED** by the Mayor and Town Council of the Town of Forest Heights hereby amending and readopting Resolution 55-12 and thereby, subject to the limitations found in Sections 7.07 and 7.08 of said Plan and Trust Document, unforeseen-emergency withdrawals may be authorized by the Plan Administrator, who has been and is hereby re-designated to be the Town Administrator, pursuant to the following additional conditions and limitations (changes to substantive provisions of Resolution 55-12 are shown in ALL CAPS):

- 1.) Town Administrator Approvals. A Participant or Beneficiary may apply to the Plan Administrator (i.e., the Town Administrator) appointed by the Employer (i.e., the Town) to receive that part of the value of his or her Account that is reasonably needed to satisfy

The Town of Forest Heights

Resolution 76-13

Page 2

THE TOWN OF FOREST HEIGHTS

**RESOLUTION NO. 76-13**

the emergency need provided that only one (1) such payment or distribution not to exceed \$2,500 shall be made during any given Plan Year (i.e., calendar year). Such approvals must further comply with the rules applicable to distributions for unforeseeable emergencies found in Sections 7.07 and 7.08 of said Plan and Trust Document, THIS RESOLUTION, and Section 1.457-6(c) of the U.S. Treasury Regulations.

- 2.) Mayor and Council Approvals. A Participant or Beneficiary may apply to the Plan Administrator to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need that exceeds the limitation in paragraph 1 immediately above only with the approval of the Mayor and Council. Such approvals must further comply with the rules applicable to distributions for unforeseeable emergencies found in Sections 7.07 and 7.08 of said Plan and Trust Document, THIS RESOLUTION and Section 1.457-6(c) of the U.S. Treasury Regulations.
- 3.) Participant or Beneficiary Disclosures. A Participant or Beneficiary shall certify in writing or on a form prepared by the Plan Administrator under penalty of perjury that the withdrawal amount designated is necessary to meet the applicant's financial need created by the hardship to the extent that no other funds are reasonably available, that the applicant has determined that there are no other distributions and nontaxable loans currently available to the Participant or Beneficiary under a 457(b) account or any other benefit plans maintained by the employer or State Retirement Plan, and that the applicant holds the employer harmless from any losses or financial obligation that may arise by reason of authorizing a financial hardship request with respect to the 457(b) arrangement.
- 4.) ELIGIBLE FUNDS MUST BE VESTED. IN NO EVENT SHALL AN EMPLOYEE BE GRANTED A DISTRIBUTION OR LOAN OF ANY FUNDS PURSUANT TO THIS POLICY UNLESS THE FUNDS IN THE APPLICABLE EMPLOYEE'S ACCOUNT WERE EITHER CONTRIBUTED BY THE EMPLOYEE AS THE PARTICIPANT'S DEFERRED COMPENSATION (I.E., COMPENSATION WHICH INCLUDES ALL WAGES, SALARIES AND OTHER AMOUNTS RECEIVED THAT ARE INCLUDIBLE IN THE EMPLOYEE'S GROSS INCOME) AND/OR CONTRIBUTED BY THE TOWN WHICH ARE CONSIDERED VESTED. ALL FUNDS SUBJECT TO DISTRIBUTION OR LOAN SHALL BE CONSIDERED "VESTED" TO THE EMPLOYEE'S ACCOUNT OR OTHERWISE OWNED (I.E., CONTRIBUTED) BY THE EMPLOYEE BEFORE ANY DISTRIBUTION OR LOAN CAN BE MADE TO THE EMPLOYEE. AN EMPLOYEE WITH ZERO (\$0) OWNED AND/OR VESTED FUNDS IN HIS OR HER ACCOUNT SHALL NOT RECEIVE ANY EMERGENCY PAYMENT WHATSOEVER; AND, LIKEWISE, AN EMPLOYEE WITH LESS THAN \$2,500 IN HIS OR HER ACCOUNT OF HIS OR HER OWN FUNDS CAN ONLY RECEIVE AN EMERGENCY DISTRIBUTION OR LOAN UP TO THE AMOUNT OF THE EMPLOYEE'S CONTRIBUTION IF HE OR SHE HAS NOT YET VESTED IN THE PLAN.

The Town of Forest Heights

Resolution 76-13

Page 3

THE TOWN OF FOREST HEIGHTS

RESOLUTION NO. 76-13

**BE IT FURTHER RESOLVED** that the Mayor and Council hereby re-approves or ratifies ICMA-RC's Loan Guidelines Agreement, as previously completed by the Town Administrator, and attached as Exhibit 1 of Resolution 55-12 and incorporated by reference herein, thereby establishing the purpose, eligibility, frequency and amount of loans, length of loans, loan repayment process, interest rates, loan application procedure, fees and other related matters; and

**AND BE IT FURTHER RESOLVED** that the Mayor and Council hereby orders the Town Administrator to deliver a letter to ICMA-RC referencing this Resolution and stating the Town's election to no longer permit emergency withdrawals from a participating employee's deferred compensation account except as permitted by this Resolution; and

**BE IT FURTHER RESOLVED** that the Mayor and Council hereby authorizes the Town Administrator to take any and all actions required to implement this Resolution, to complete, execute or prepare any necessary forms, administration agreements, or other documents, and to otherwise carry out the intent of the Mayor and Council as expressed herein, and that the Mayor and Council hereby further adopts and incorporates the above recitals as if they were written word for word herein; and

**AND BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately upon passage.

**PASSED** this 4<sup>th</sup> day of November 2013.

**APPROVED:** By Resolution of the Town Council of The Town of Forest Heights, Maryland

<u>ROLL CALL VOTE</u>	<u>YEA/NAY/ABSTAIN/ABSENT</u>
GOODALL	<u>YEA</u>
KENNEDY II	<u>YEA</u>
STONER	<u>YEA</u>
BARNES	<u><del>YEA</del> ABSENT</u>
MUHAMMAD	<u>YEA</u>
SMITH-BARNES	<u>YEA</u>
MANN	<u>YEA</u>

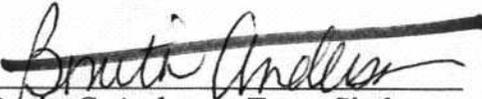
**I HEREBY CERTIFY** that the above Resolution No. 76-13 was passed by the required yea and nay votes of the Mayor and Council of the Town of Forest Heights on the 4<sup>th</sup> day of September 2013.

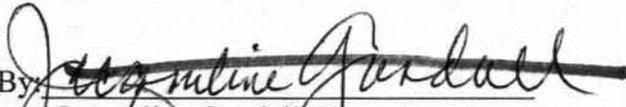
THE TOWN OF FOREST HEIGHTS

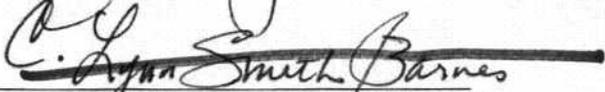
RESOLUTION NO. 76-13

ATTEST:

THE MAYOR AND COUNCIL OF THE  
TOWN OF FOREST HEIGHTS

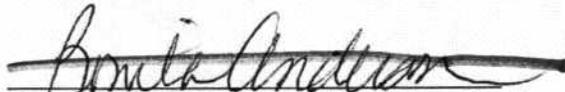
  
Bonita C. Anderson, Town Clerk

By:   
Jacqueline Goodall, Mayor

By:   
C. Lynn Smith-Barnes, Council President

CLERK'S CERTIFICATION

I, Bonita Anderson, the duly appointed Town Clerk of The Town of Forest Heights, Maryland, do hereby certify that the foregoing is a full, true, and correct copy of a resolution of the governing body of said municipal corporation, duly and regularly called and held in all respects as required by law, and the charter, bylaws or ordinances of said Town, at the office hereof on the 4th day of September 2013 at which meeting a majority of the Council of said municipal corporation was present and voted in favor of said resolution; and that said resolution is in full force and effect.

  
Bonita Anderson, Town Clerk