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CITY OF BURLINGTON, VERMONT  
OFFICE OF THE CITY ATTORNEY AND  
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## MEMORANDUM

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**TO:** CITY COUNCIL

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

**SUBJECT:** RETIREMENT ORDINANCE AMENDMENT  
CORRECTIVE ACTION REQUIRED BY IRS

**DATE:** SEPTEMBER 18, 2012

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**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. Many of these amendments were required as a result of our participation in the IRS' Voluntary Correction Program which allowed us to make necessary corrections without IRS sanctions and permitted us to apply for favorable determination status.

In May 2012, the City received a favorable determination, but includes a compliance statement requiring certain additional corrections. The compliance statement determined that given the definition of normal retirement age in our ordinance, any member who reaches age 65 must be fully vested regardless of years of service. Currently, Seven years of service is required to be fully vested in the City's retirement system. The IRS is, therefore requiring the City to treat anyone who has reached 65 years of age as fully vested in the retirement system regardless of their years of service in accordance with our ordinance's current definition. In other words, if we hired a 55 year old Class A employee or 65 year old Class B employee, they would be fully vested in the retirement system on day one. Clearly, this would be unfair to employees under 55 or 65 years of age that do not remain in service for seven years. Thus, not only do we need to take corrective action pursuant to the compliance statement, we also need to correct the language of the ordinance. Fortunately, there have only been three persons to which we would be required to apply the current language of the ordinance.

**Corrective Action:** After consultation, with Buck Consultants, we have determined to avoid this unfair result; the definition of retirement must be corrected to include the 7 year service requirement for full vesting. Thus, all employees will be required to have 7 years of service to be fully vested. As always, the IRS requires that we take corrective action and to place the employees affected in the place they would have been had the current ordinance been applied.

1. Two of the three employees affected have left City service and withdrew their contributions perhaps because they were not treated as fully vested. They will be contacted and given the option of becoming fully vested members. Since they are not in City service, the only contribution required from them will be the amount of the contributions that they had made up to the date of their separation from the City. With the payment of the withdrawn contributions, they will begin to receive their retirement benefits.
2. The other employee is a recent hire and must be treated as fully vested, but will continue to make her contributions until she is no longer employed with the City.

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